



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62

A	File No.	VIII/48-1894/LAR-59/Gr-V/MCH/18-19
B	Order-in-Original No.	MCH/DC/Gr.V/MK/68/2020-21
C	Passed by	Shri Mukesh Kumar Deputy Commissioner of Customs, Custom House, Mundra
D	Date of Order	01.05.2020
E	Date of Issue	01.05.2020
F	SCN NO. & Date	SCN F.No. VIII/48-1894/LAR-59/Gr-V/MCH/18-19 dated 21.11.2019
G	Noticee / Party / Importer / Exporter	M/s. Kyros Ceramic, 8-A, National Highway, Shakti Chamber, S.No. - F-41, Opp- HDFC Bank, Trajpar, Morbi, Dist-Rajkot, Gujarat- 363642
H	DIN	20200571MO00005H2BC6

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1 -में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमा शुल्क आयुक्त (अपील), कांडला

7 वीं मंजिल, मृदुलटावर, टाइम्सऑफ इंडिया के पीछे, आश्रमरोड़, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA

Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए -

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by

(i) उ उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Sub: M/s. Kyros Ceramic, 8-A, National Highway, Shakti Chamber, S.No. - F-41, Opp- HDFC Bank, Trajpar, Morbi, Dist-Rajkot, Gujarat- 363642, holding IEC No. 2412005702 have short paid IGST.

Brief Facts of the Case:-

1. M/s. Kyros Ceramic, 8-A, National Highway, Shakti Chamber, S.No. – F-41, Opp- HDFC Bank, Trajpar, Morbi, Dist-Rajkot, Gujarat- 363642, holding IEC No. 2412005702 (hereinafter referred as the importer) had filed Bills of Entry No. 4796829 dated 15.01.2018, 5431031 dated 03.03.2018 and 5805981 dated 31.03.2018 for importation of Pump for Airless system through Customs Broker M/s. Sai Clearing and forwarding agency.

2. During the course of audit Customs Revenue Audit (Para-03, LAR -59/2018-19) observed that it was noticed from the data analysis of bill of entries that the said importer imported "Pump for Airless system - details as per invoice and packing list" under chapter Heading 8413 and classified under Sr. No 192 of schedule –II of IGST and paid IGST @12%, However, the items are to be correctly classified under Sr. No 453 of Schedule-III of IGST and duty to be levied 18% IGST.

3. The import of goods has been defined in the IGST Act, 2017 and Section 5 of IGST Act, 2017 stipulates that "Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act 1962."

4. Further as per Sub section 7 of Section 3 of Customs Tariff Act, 1975 any article which has been imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty percent, as is leviable under Section 5 of the IGST Act 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section 8 or sub-section 8A as the case may be.

5. On the basis of the above observations of the Customs Revenue Audit a show cause notice F. No. VIII/48-1894/LAR-59/Gr-V/MCH/18-19 dated 21.11.2019 was issued to the importer calling upon them to show cause to the Deputy Commissioner of Customs, Customs House Mundra as to why

(i) Integrated Goods and Service Tax of Rs. 3,37,385/-/- (Rupees Three Lakhs thirty seven thousands three hundred and eighty five Only) (the differential IGST as detailed in Annexure-A to the SCN) leviable on the impugned goods and short paid by the importer in terms of Section 28(1) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017, along with applicable interest under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017 should not be demanded.

(ii) Penalty should not be imposed under Section 117 of the Customs Act, 1962.

Defence reply:-

6 In reply to the subject show cause notice, M/s. Kyros Ceramic, did not submit any reply.

Personal Hearing:-

7. Personal hearings in the matter were fixed on 20.02.2020 & 05.03.2020. Importer submitted reply on 05.03.2020 and Shri Bhagyesh Vadukul, authorized person of the importer, presented for personal hearing and made submissions as per letter dated 05.03.2020 and further stated that they are ready to pay the differential IGST short paid.

Discussions and findings:-

8. I have carefully gone through the Show Cause Notice No. VIII/48-1894/LAR-59/Gr-V/MCH/18-19 dated 21.11.2019 issued to M/s. Kyros Ceramic, I find that Importer has agreed with the objection raised in show cause notice and resdy to pay the differential IGST short paid.

9. In this case, Show Cause Notice No: VIII/48-1894/LAR-59/Gr-V/MCH/18-19 dated 21.11.2019 has been issued to M/s. Kyros Ceramic, for recovery of differential amount of IGST of Rs.3,37,385/- under Section 28(1) of the Customs Act, 1962 read with Section 5 of the IGST Act, 2017 alongwith interest under Section 28AA of the Customs Act, 1962 read with Section

50 of the IGST Act, 2017 and proposing for imposition of penalty under Section 117 of the Customs Act, 1962.

10. As the issue pertains to applicability of the correct sr. no. of IGST Notification No.01/2017 dated 28.06.2017 on the imported goods, I proceed to examine the same. I find that the importer has imported Pump for Airless system.

I find that Pump falling under CTH 8413 has been covered under Notification No. 1/2017 – Integrated Tax (Rate) dated 28.06.2017 under four different heading. Serial No. 231 of Schedule I covers hand pump and parts thereof. Serial No 192 of Schedule II covers Power driven pump primarily designed for handling water, namely, centrifugal pumps (horizontal and vertical), deep tube-well turbine pumps, submersible pumps, axial flow and mixed flow vertical pumps. Serial 317A of schedule III covers Concrete pumps [8413 40 00], other rotary positive displacement pumps [8413 60]. Serial No. 117 of Schedule IV covers Pumps for dispensing fuel or lubricants of the type used in filling stations or garages [8413 11], Fuel, lubricating or cooling medium pumps for internal combustion piston engines [8413 30]. In case none of the above category is suitable for any given pump falling under CTH 8413, it falls under residuary serial number 453 of Schedule-III.

The relevant portion of Notification 1/2017-Integrated Tax (rate) dated 28.06.2017 is stipulated as under:

Notification No. 1/2017-Integrated Tax (Rate) -(Schedule-I)

S. No.	Chapter / Heading / Subheading / Tariff item	Description of Goods
231	8413, 8413 91	Hand pumps and parts thereof

(Schedule-II)

S. No.	Chapter / Heading / Subheading / Tariff item	Description of Goods
192	8413	Power driven pumps primarily designed for handling water, namely, centrifugal pumps (horizontal and vertical), deep tube-well turbine pumps, submersible pumps, axial flow and mixed flow vertical pumps

(Schedule-III)

S. No.	Chapter / Heading / Subheading / Tariff item	Description of Goods
317A	8413	Concrete pumps [8413 40 00], other rotary positive displacement pumps [8413 60]

(Schedule-IV)

S. No.	Chapter / Heading / Subheading / Tariff item	Description of Goods
117	8413	Pumps for dispensing fuel or lubricants of the type used in filling stations or garages [8413 11], Fuel, lubricating or cooling medium pumps for internal combustion piston engines [8413 30]

(Schedule-III)

S. No.	Chapter / Heading / Subheading / Tariff item	Description of Goods
453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI

The importer had imported the goods i.e. pump for airless system after classifying their goods under Sr. No. 192 of Schedule-II of IGST Notification no. 01/2017 dated 28.06.2017 and had paid IGST @ 12%.

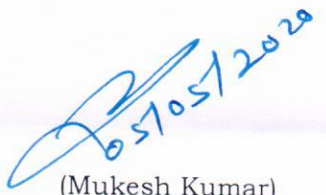
From the above I find that the goods imported by the Importer are correctly covered under sr.no. 453 of the Schedule -III of the IGST Notification No. 01/2017 dated 28.6.2017 and attract IGST @ 18%.

11. I find that the importer has wrongly assessed the goods under Schedule II Sr. No. 192 and availed benefit of lower rate of IGST which resulted in short payment of IGST amounting to Rs. 3,37,385/-. I find that the importer has wrongly assessed the goods under Schedule II Sr. No. 192 to evade the payment of IGST @ higher rate at the time of filing the Bill of Entry and therefore I find the short paid IGST is required to be demanded and recovered under Section 28 of Customs Act, 1962 read with Section 5 of the IGST Act, 2017 along with interest at applicable rate under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017 and penalty is required to be imposed on them under Section 117 of the Customs Act, 1962.

12. Accordingly I pass the following orders

ORDER:-

- A) I confirm and order to recover differential IGST of Rs. 3,37,385/-/- (Rupees Three Lakhs thirty seven thousands three hundred and eighty five Only) leviable on imported goods which was short paid by the importer in terms of Section 28(1) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017, along with applicable interest under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017.
- B) I impose a penalty of Rs. 34,000/- on the importer under Section 117 of the Customs Act, 1962.


(Mukesh Kumar)
Deputy Commissioner (Gr-V & VI)
Custom House, Mundra.

F.No. VIII/48-1894/LAR-59/Gr-V/MCH/18-19

Dated: 05.05.2020

To,
M/s. Kyros Ceramic,
8-A, National Highway, Shakti Chamber,
S.No. - F-41, Opp- HDFC Bank, Trajpar, Morbi,
Dist-Rajkot, Gujarat- 363642

Copy to:

- (1) The Principal Commissioner of Customs, Custom House, Mundra.
- (2) The Assistant / Deputy Commissioner (RRA), Custom House, Mundra.
- (3) The Assistant / Deputy Commissioner (TRC), Custom House, Mundra.
- (4) The Assistant / Deputy Commissioner (EDI), Custom House, Mundra.
- (5) M/s. Sai Clearing and forwarding agency , (Custom Broker)for information and necessary action.
- (6) Guard file

