



**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/48-15/Adj/ADC/MCH/19-20  |
| B | Order-in-Original No.                    | MCH/ADC/PSK/56/2019-20  |
| C | Passed by                                | Shri Prashant Kaduskar<br>Additional Commissioner of Customs,<br>Custom House, AP & SEZ, Mundra                   |
| D | Date of Order                            | 30.08.2019  |
| E | Date of Issue                            | 30.08.2019  |
| F | SCN NO. & Date                           | F. No. VIII/48-378/CERA/Gr.V/MCH/18-19/Pt.II<br>dated 05.07.2019  |
| G | Noticee / Party / Importer /<br>Exporter | M/s. Vijai Electricals Ltd.,<br>6-3-648/1&2, Off Rajbhavan Road,<br>Somajiguda, Hyderabad<br>Telangana – 500 082. |

*PO (EDIT)*  
*Pl. upload it on*  
*CH Mundra website*  
*03/09/19*

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, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”  
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA  
Having his office at 7<sup>th</sup> 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/- रुपये 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) 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 सं०-6 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, सीमा शुल्क (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.

Subject :- SCN F. No. VIII/48-378/CERA/Gr.V/MCH/18-19/Pt.II dated 05.07.2019 issued to M/s. Vijai Electricals Ltd., 6-3-648/1&2, Off Rajbhavan Road, Somajiguda, Hyderabad Telangana – 500 082.

**BRIEF FACTS OF THE CASE:**

**M/s. Vijai Electricals Ltd.**, 6-3-648/1&2, Off Rajbhavan Road, Somajiguda, Hyderabad, Telangana-500082 holding IEC No. 0988000105 (**hereinafter referred as “the noticee”**) had filed Bill of Entry No. 3546839 dated 09.10.2017 for importation of Goods i.e TEST 40MVA 60/31.50KV Power Transformer (Dry Air Filled) (Sr. No. 90144AZ6B) (Re-Import) (**hereinafter referred to as “impugned goods”**) through Customs Broker M/s. Jeena and Company. The details of the impugned goods are tabulated hereunder:-

| ANNEXURE-A   |         |            |  |          |          |      |     |                  |                           |  |                   |
|--------------|---------|------------|--|----------|----------|------|-----|------------------|---------------------------|--|-------------------|
| Sr. No       | BE No.  | BE Date    | Item Description   | Item No. | CTH      | Qty. | UQC | Assessable Value | Duty Leviable @ CVD/IGST% | Duty levied at the Import as per 1(d) of Noti. 45/2017 and 46/2017 Customs | Duty short levied |
| 1            | 3546839 | 09.10.2017 | Re Import after Test 40 MVA 60/31.50 KV Power Transformer (Dry Air Filled) ( Sr.No. 90144AZ 6B ) | 1        | 85042310 | 1    | SET | 25319389.11      | 4557490                   | 0  | 4557490           |
| <b>TOTAL</b> |         |            |  |          |          |      |     |                  |                           |  | <b>45,57,490</b>  |

**2.** During the course of audit, the Customs Revenue Audit observed that notification no. 45/2017-Customs dated 30.6.2017 exempts the goods falling with any chapter of the First Schedule of the Customs Tariff Act, 1975, when re-imported into India, from so much of the duty of customs leviable thereon which is specified in the first schedule, and the whole of the integrated tax, compensation Cess leviable thereon respectively under sub-section (7) and (9) of Section 3 of the said Customs Tariff Act, as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table in the notification. Further, Sr.No. 1(d) of the table of said notification states that if the goods exported under bond without payment of integrated Tax then amount of Integrated Tax not paid to be paid at the time of import.

**3.** Notification No. 46/2017-Customs dated 30.6.2017 exempts the goods falling within any chapter of the first schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the table below when re-imported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, and the whole of the additional duty, integrated tax, compensation Cess leviable thereon respectively under sub-sections (1), (3), (5), (7) and (9) of section 3 of the said Customs Tariff Act as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table in the notification. Further Sr. No.1(d) of Table of the said

notification states that if the goods exported under bond without payment of central excise duty then amount of central excise duty not paid to be paid at the time of import.

**4.** The noticee had exported their goods under UT1 Bond. As per the said Sr.No.1(d) of the notifications, at the time of export if the exporter sends the goods under Bond then at the time of re-import the importer should pay the amount of Central Excise/IGST not initially paid at time of Export. It is evident on records that the noticee exported the re-imported goods under UT1 Bond without payment of Central Excise/IGST. Thus the IGST/Central Excise duty amount not paid is required to be demanded and recovered from the noticee.

**5.** The noticee had wrongly assessed the goods which resulted in short levy and short payment of Central Excise/IGST amounting to Rs. 45,57,490/-. From the advent of self assessment in 2011, it is the responsibility of the importer while presenting the bill of entry under Section 46 of the Customs Act, 1962, shall make and subscribe to a declaration as to the truth and correctness of the contents of the bill of entry and to classify the goods under appropriate tariff item. In the instant case, the noticee has wilfully not paid the IGST/Central Excise duty on re-import of exported goods. The noticee has not shown any intent to Suo motu pay the IGST/Central Excise duty amount not paid earlier which reveals his intents to evade the same. It appears that the short paid IGST/Central Excise is required to be recovered under Section 28 of Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 alongwith interest at appropriate rate as applicable under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017. Further, the Penalty is also required to be imposed on the noticee under Section 114A of the Customs Act, 1962.

**6.** The import of goods has been defined in the IGST Act, 2017 as bringing goods in India from a place outside India. All import shall be deemed as inter-state supplies and accordingly integrated tax shall be levied in addition to the applicable Custom duties. The IGST Act, 2017 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of Customs are levied on the said goods under the Customs Act, 1962. The Section 5 of Integrated Goods and Service Tax Act, 2017 states *"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."*

**7.** As per Section 7 of Customs Tariff Act, 1975 any goods which have 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 Integrated Goods and Service Tax, 2017 on a like goods on its supply in India, on the value of the imported articles as determined under sub-section 8 or sub-section 8A of the Customs Tariff Act, 1975 as the case may be.

8. In view of the above, M/s. Vijai Electricals Ltd., 6-3-648/1&2, Off Rajbhavan Road, Somajiguda, Hyderabad, Telangana-500082 has been called upon to show cause to the Additional Commissioner of Customs, Mundra, vide Show Cause Notice F. No. VIII/48-378/CERA/Gr.V/MCH/18-19/Pt-II dated 05.07.2019 asking them as to why:

- (i) Integrated Goods and Service Tax of Rs. 45,57,490/- (Rupees Forty Five Lakh Fifty Seven Thousand Four Hundred Ninety only) leviable on the impugned goods and not paid by them in terms of Section 28 of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017, alongwith applicable interest at appropriate rate 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 and recovered from them.
- (ii) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.

**WRITTEN SUBMISSION:**

9. The noticee, vide their letter dated 31.07.2018 has submitted the following submission:

The noticee has submitted that they had received a Contract PE 22/13 for Supply of 60K V/31.5KV, 40 MVA\_ Power Transformer to M/s CAMEG, Algeria. In terms of the conditions of the order M/s CAMEG, Algeria will select a Transformer from the LOT to be supplied and the same will be sent for short circuit tests in KEMA Laboratory, Netherlands. M/s. CAMEG selected the Transformer bearing serial no: N090144A268 for undergoing the circuit test in KEMA Laboratory. In order to fulfill the conditions laid down in the supply order they had sent the transformer (Sl.No: N090144A268) for purposed short circuit test at KEMA Laboratory. In this connection they are Exported the transformer to KEMA Laboratory by duly executing the Letter of under Taking (LUT) for availing the facility of without payment of tax.

9.1 The noticee submitted that they had sent one transformer to Netherland for testing purpose vide Shipping Bill (SB) No 7677956 Dated 29.07.2017. The said transformer was sent for testing purpose only and during the entire transaction the ownership of cargo remains with the noticee, means there was no commercial transaction/ sale / purchase or any other business activity happened during the course of export and re-import to and from KEMA Laboratory, Netherlands. While sending the same they had produced the "Guaranteed Remittance" (GR) waiver from their bankers and on the basis of the same the transaction was granted under Scheme 99 (NFEI). The same they had mentioned in their documents like Invoice & Packing List No. VE/EXP/KEMA/06/17-18 dated 21.07.2017. The said transformer came back to India after completion of testing at Netherland laboratory. Upon arrival they had filed the BE No 3546839 Dated 09.10.2017 and cleared the same by claiming re-import benefit using Notification No. 46/2017 Sr. No 5 of Customs dated 30.06.2017. The Bill of Entry was assessed & cleared under First Check

without any Customs Duty, IGST Payment etc. after due satisfaction of assessing officer.

9.2 It has been argued that during the entire transaction the ownership of cargo remained with them only and no commercial transaction/supply made with respect to the said cargo. Since there is no sale or purchase in this case and only material movement happened for Testing purpose of the Transformer, no liability of tax arise at any point of time since basic principle of Tax collection is Transaction/supply (Sale or Purchase) where as in this case no transaction/supply took place, ownership remains with them during the whole movement and movement was done just for the Testing Purpose only and they had to go through this Custom process as testing lab situated in foreign land and not in India. While filing the Bill of Entry they had claimed the benefit under Notification No. 46/2017 Sr. No 5, and the same is assessed by the assessing officer without payment of IGST as assessing office was convinced that IGST payment does not applicable in this case. Incase if the assessment was done with the IGST payment, they were eligible for getting 100% refund immediately means only a transaction to be done so there is no intention to evade tax payment at any point of time since they were eligible for 100% refund.

9.3 It is further stated that the Tax Invoice No. 17180054 Dated 26.07.2017 issued by their supporting manufacturer wherein they had paid GST but the same was not claimed by them under Shipping Bill No: 7677956 dated 29.07.2017. They had submitted letter dated 11.10.2017 to the AC/DC of Customs in which they had mentioned that they had not claimed any rebate against payment of GST/Excise duty. Prior to issuance of the instant Show Cause Notice they had received two letters dated 15.06.2018 and 02.04.2019 from Mundra Customs and they had replied to the same on 28.06.2018 and 05.07.2019 respectively. In both replied they narrated the facts that the cargo moved only for testing purpose and no commercial transaction done in entire movement hence no IGST leviable.

9.4 The noticee prayed that they are a very reputed company and had never done any transaction to evade the revenue of Government and had never kept any intention to do so and requested that based on their above submissions the show cause notice demanding IGST Payment with interest and penalty in this case may be dropped. They have also submitted that they may be given an opportunity of personal hearing in the matter, if adjudicating authority wish to proceed further.

#### **RECORD OF PERSONAL HEARING:**

10. Personal hearing in the matter was fixed on 29.08.2019 at 11.30 A.M. Shri S.V. Modi, Consultant , Shri P.G. Patel, Vice president of M/s. Jeena& Company (Customs Broker) and Shri Galli Eswaraiyah, Deputy Manager (Taxation) of M/s. Vajai Electricals Ltd., appeared on the stipulated date and time on behalf of the Noticee and stated that the legal position stand clarified vide Board Circular No.21/2019-Cus. dated 24.07.2019 that for the goods exported for exhibition purpose/consignment basis is abinitio not a supply. Hence, the question of payment of IGST and subsequent refund thereof does

not arise. In the subject case the Transformer was sent to Netherlands for the quality testing purpose. There is not trade (buying/selling) involved and the ownership always remained with the noticee. Hence, the learned consultant state that the Circular No.21/2019-Cus. Dated 24.07.2019 is very much applicable in their case and hence the SCN needs to be dropped in abinitio. He also referred to Circular No. 108/27/2019-GSTdated 18.07.2019 and also Circular No.17/2019-Customs. The learned consultant submitted that they have wrongly claimed Notification No.46/2017-Cus dated 30.06.2017 instead of 45/2017-Cus dated 30.06.2017 by mistake in Bill of Entry. Hence, amendment is requested in terms of Section 149 of Customs Act, 1962.

### **Discussion & Findings:-**

- 11.** I have carefully gone through the entire case record including the Show Cause Notice F. No. VIII/48-378/CERA/Gr. V/MCH/18-19/Pt-II dated 05.07.2019, the defence submission dated 31.07.2019 & oral submissions made during Personal Hearing on dated 29.08.2019 by Shri S.V. Modi, the learned Consultant.
- 12.** The only issue to be decided in the present proceeding is that whether Integrated Goods and Service Tax/Central Excise duty can be demanded on the impugned goods in terms of Section 28 of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 taking into consideration the proposals made in the Show Cause Notice and evidence on record of this case.
- 13.** On going through the relevant Shipping Bill & Bill of Entry, I find that the impugned goods were exported vide Shipping Bill No. 7677956 dated 29.07.2017 for testing purposes and re-imported vide Bills of Entry No. 3546839 dated 09.10.2017 under first check, wherein the re-imported goods were 100% examined for the purpose of establishment of identity. I find that the exported goods have been reimported within 6 months.
- 14.** I find that notification No. 45/2017-Customs dated 30.6.2017 exempts the goods falling with any chapter of the First Schedule of the Customs Tariff Act, 1975, when re-imported into India, from so much of the duty of customs leviable thereon which is specified in the first schedule, and the whole of the integrated tax, compensation Cess leviable thereon respectively under sub-section (7) and (9) of Section 3 of the said Customs Tariff Act, as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table in the notification. Further, Sr.No. 1(d) of the table of said notification states that if the goods exported under bond without payment of integrated Tax then amount of Integrated Tax not paid to be paid at the time of import.
- 15.** Further, I find that the Noticee exported their goods under UT1 Bond and had claimed benefit of exemption under Notification No. 46/2017-Customs dated 30.06.2017 on re-import. Notification No. 46/2017-Customs dated 30.06.2017 (which came into force with effect from the 1st day of July, 2017), exempts the goods falling within any chapter of the first schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the table below when re-imported into India, from so much of the duty of customs

leviable thereon which is specified in the said First Schedule, and the whole of the additional duty, integrated tax, compensation Cess leviable thereon respectively under sub-sections (1), (3), (5), (7) and (9) of section 3 of the said Customs Tariff Act as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table in the notification. Further Sr. No.1(d) of Table of the said notification states that if the goods exported under bond without payment of central excise duty then amount of central excise duty not paid to be paid at the time of import.

**16.** I find that Sr. No. 1(d) of the table of Notification No. 45/2017-Customs dated 30.06.2017 states that if the goods exported under bond without payment of integrated Tax then amount of integrated Tax not paid to be paid at the time of import.

**17.** Moreover, Sr. No. 1(d) of the table of Notification No. 46/2017-Customs dated 30.06.2017 states that if the goods exported under bond without payment of amount of Central Excise duty not paid then amount of Central Excise duty not paid to be paid at the time of import.

**18.** Further, Central Board of Indirect Taxes and Customs (CBIC), vide Circular No. 108/27/2019-GST dated 18<sup>th</sup> July, 2019 has issued clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion. The relevant extracts of the said Circular are reproduced herewith:-

*“2. The matter has been examined and in view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”) hereby clarifies various issues in succeeding paragraphs.*

*3. As per section 7 of the CGST Act, for any activity or transaction to be considered a supply, it must satisfy twin tests namely- Circular No. 108/27/2019-GST Page 2 of 7 (i) it should be for a consideration by a person; and (ii) it should be in the course or furtherance of business.*

*4. The exceptions to the above are the activities enumerated in Schedule I of the CGST Act which are treated as supply even if made without consideration. Further, sub-section (21) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the “IGST Act”) defines “supply”, wherein it is clearly stated that it shall have the same meaning as assigned to it in section 7 of the CGST Act.*

*5. Section 16 of the IGST Act deals with “Zero rated supply”. The provisions contained in the said section read as under: 16. (1) “zero rated supply” means any of the following supplies of goods or services or both, namely:— (a) export of goods or services or both; or (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit. Therefore, it can be*

concluded that only such „supplies” which are either “export” or are “supply to SEZ unit / developer” would qualify as zero-rated supply.

6. It is, accordingly, clarified that the activity of sending / taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act (hereinafter referred to as the “specified goods”), do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as “Zero rated supply” as per the provisions contained in section 16 of the IGST Act.”

7. Since the activity of sending/taking specified goods out of India is not a supply, doubts have been raised by the trade and industry on issues relating to maintenance of records, issuance of delivery challan/tax invoice etc. These issues have been examined and the clarification is as under:-

| Sl. No. | Issue   | Clarification  |
|---------|---|--|
| 1.      | Whether any records are required to be maintained by registered person for sending / taking specified goods out of India? | The registered person dealing in specified goods shall maintain a record of such goods as per the format at Annexure to this Circular.   |
| 2.      | What is the documentation required for sending / taking the specified goods out of India?                                 | <p>a) As clarified above, the activity of sending / taking specified goods out of India is not a supply.</p> <p>b) The said activity is in the nature of “sale on approval basis” wherein the goods are sent / taken outside India for the approval of the person located abroad and it is only when the said goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place. The activity of sending / taking specified goods is covered under the provisions of sub-section (7) of section 31 of the CGST Act read with rule 55 of Central Goods &amp; Services Tax Rules, 2017 (hereinafter referred to as the “CGST Rules”).</p> <p>c) The specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules.</p> <p>d) As clarified in paragraph 6 above, the activity of sending / taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.</p> |
| 3.      | When is the supply of specified goods sent / taken out of India said to take place?                                       | a) The specified goods sent / taken out of India are required to be either sold or brought back within the stipulated period of six months from the date of removal as   |



|    |   |   |
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|    |   | <p>per the provisions contained in sub-Circular No. 108/27/2019-GST Page 4 of 7 section (7) of section 31 of the CGST Act.</p> <p>b) The supply would be deemed to have taken place, on the expiry of six months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period.</p> <p>c) If the specified goods are sold abroad, fully or partially, within the specified period of six months, the supply is effected, in respect of quantity so sold, on the date of such sale.</p>   |
| 4. | <p>Whether invoice is required to be issued when the specified goods sent / taken out of India are not brought back, either fully or partially, within the stipulated period?</p> | <p>a) When the specified goods sent / taken out of India have been sold fully or partially, within the stipulated period of six months, as laid down in sub-section (7) of section 31 of the CGST Act, the sender shall issue a tax invoice in respect of such quantity of specified goods which has been sold abroad, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.</p> <p>b) When the specified goods sent / taken out of India have neither been sold nor brought back, either fully or partially, within the stipulated period of six months, as laid down in sub-section (7) of section 31 of the CGST Act, the sender shall issue a tax invoice on the date of expiry of six months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.</p> |
| 5. | <p>Whether the refund claims can be preferred in respect of specified goods sent / taken out of India but not brought back?</p>   | <p>a) As clarified in para 5 above, the activity of sending / taking specified goods out of India is not a zero-rated supply. That being the case, the sender of goods cannot prefer any refund claim Circular No. 108/27/2019-GST Page 5 of 7 when the specified goods are sent / taken out of India.</p> <p>b) It has further been clarified in answer to question no. 3 above that the supply would be deemed to have taken place:</p> <p>(i) on the date of expiry of six months from the date of removal, if the specified goods are neither sold nor brought back within the said period; or</p> <p>(ii) on the date of sale, in respect of such quantity of specified goods which have been sold abroad within the specified period of six</p>   |

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|  |  | <p>months.</p> <p>c) It is clarified accordingly that the sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in sub-section (3) of section 54 the CGST Act read with sub-rule (4) of rule 89 of the CGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice on the dates as has been clarified in answer to the question no. 4 above. It is further clarified that refund claim cannot be preferred under rule 96 of CGST Rules as supply is taking place at a time after the goods have already been sent / taken out of India earlier.</p> |
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8. The above position is explained by way of illustrations below:

*Illustrations:*

i. M/s ABC sends 100 units of specified goods out of India. The activity of merely sending / taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules. In case the entire quantity of specified goods is brought back within the stipulated period of six months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case. In case, however, the entire quantity of specified goods is neither sold nor brought back within six months from the date of removal, a tax invoice would be required to be issued for entire 100 units of specified goods in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules within the time period stipulated under sub-section (7) of section 31 of the CGST Act.

ii. M/s ABC sends 100 units of specified goods out of India. The activity of sending / taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules. If 10 units of specified goods are sold abroad say after one month of sending / taking out and another 50 units are sold say after two months of sending / taking out, a tax invoice would be required to be issued for 10 units and 50 units, as the case may be, at the time of each of such sale in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. If the remaining 40 units are not brought back within the stipulated period of six months from the date of removal, a tax invoice would be required to be issued for 40 units in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. Further, M/s ABC may claim refund of accumulated input

tax credit in accordance with the provisions contained in sub-section (3) of section 54 of the CGST Act read with sub-rule (4) of rule 89 of the CGST Rules in respect of zero-rated supply of 60 units.

19. Further, Central Board of Indirect Taxes and Customs (CBIC), vide Circular No. 21/2019-Customs dated 24<sup>th</sup> July, 2019 has issued clarification regarding applicability of Notification No. 45/2017-Customs dated 30.06.2017 on goods which **were exported earlier for exhibition purpose/consignment basis**. The relevant paras of the said Circular are reproduced herewith:-

*“Representations have been received for clarifying the issue of applicability of Notification no. 45/2017-Customs on the re-import of goods which had been earlier exported either for participation in exhibition or on consignment basis.*

2. *Matter has been examined. Circular No. 108/27/2019–GST dated 18.07.2019 has clarified that the activity of sending / taking the specified goods (i.e. goods sent / taken out of India for exhibition or on consignment basis for export promotion except the activities satisfying the tests laid down in Schedule I of the CGST Act, 2017) out of India do not constitute supply within the scope of Section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as ‘Zero rated supply’ as per the provisions contained in Section 16 of the IGST Act, 2017. Also that there is no requirement of filing any LUT/bond as required under section 16 of IGST Act, 2017 for such activity of taking specified goods out of India.*

3. **Situation mentioned at Sl. No. 1(d) of the Notification no. 45/2017-Customs dated 30.06.2017 require payment at the time of re-import of integrated tax not paid initially at the time of export, for availing exemption under the said notification. As in the case of re-import of specified goods, no integrated tax was required to be paid for specified goods at the time of taking these out of India, the activity being not a supply, hence the said condition requiring payment of integrated tax at the time of re-import of specified goods in such cases is not applicable. It is clarified that such re-import cannot be taken to be falling under situation at Sl. No. 1(d) of the said Notification. Such cases will fall more appropriately under residuary entry at Sl. No. 5 of the said Notification even though those specified goods were exported under LUT, in view of the fact that the activity of sending/taking specified goods out of India is neither a supply nor a zero rated supply.**

4. It is also clarified that, even in cases where exports have been made to related or distinct persons or to principals or agents, as the case may be, for participation in exhibition or on consignment basis, but, such goods exported are returned after participation in exhibition or the goods are returned by such consignees without approval or acceptance, as the case may be, the basic requirement of 'supply' as defined cannot be said to be met as there has been no acceptance of the goods by the consignees. Hence, re import of such goods after return from such exhibition or from such consignees will be covered by entry at Serial no. 5 of the Notification No. 45/2017 dated 30.06.2017, provided re-import happens before six months from the date of delivery challan.

5. **The above clarification shall apply to all pending matters involving similarly placed exporters and importers, as the case may be.**

20. In the instant case, I find that the Noticee had exported the impugned goods under UT 1 Bond for testing purpose to KEMA Laboratory, Netherlands and re-imported the same vide Bills of Entry No. 3546839 dated 09.10.2017. Further, the impugned goods were 100% examined under first check. The goods exported vide Shipping Bill dated 29.07.2017 have been reimported vide Bill of Entry dated 09.10.2017.

21. Further, I find that Section 7 of the CGST Act, 2017 states that any activity or transaction to be considered a supply, it must satisfy twin tests namely- i) it should be for a consideration by a person; and ii) it should be in the course of furtherance of business.

22. I also find that sub-section 21 Section 2 of the Integrated Goods and Services Tax (IGST) Act, 2017 defines that "supply" shall have the same meaning as assigned to it in Section 7 of the Central Goods and Services Tax Act.

23. In the present case, I find that the activity of sending the impugned goods out of India for testing purpose, except when such activity satisfy the tests laid down in Schedule I of the CGST Act, 2017 and it does not constitute 'Supply' as the said activity does not fall within the scope of Section 7 of the CGST Act as well as Section 2 (21) of the IGST Act as there is no consideration at that point of time. Further, the same cannot be considered as 'Zero rated Supply' as per the provisions contained in Section 16 of the IGST Act.

24. Further, Schedule I of the CGST Act, 2017 states the following activities to be treated as "Supply even if made without consideration":-

1. *Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.*

2. *Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:*

*Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.*

3. *Supply of goods—*

*(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or*

*(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.*

4. *Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.*

Accordingly, I find that the instant case does not fall under the ambit of Schedule I of the CGST Act, 2017.

**25.** From the facts discussed hereinabove, I find that para 3 of the Circular No. 21/2019-Customs dated 24<sup>th</sup> July, 2019 issued by the Board states that Sl. No. 1(d) of the Notification no. 45/2017-Customs dated 30.06.2017 require payment at the time of re-import of integrated tax not paid initially at the time of export, for availing exemption under the said notification. As in the case of re-import of specified goods, no integrated tax was required to be paid for specified goods at the time of taking these out of India, the activity being not a supply. In this scenario, the question of payment of IGST at the time of reimport does not even arise in the present case. The issue is to be seen as to whether at all the impugned case is covered under Sr. No.1 (d) of Notification No. 45/2017-Cus dated 30.06.2017. I find that though the goods exported under bond without payment of Integrated tax, it was an export merely for testing of transformer and not export in real sense as goods were not sold to the foreign buyer and the ownership of goods remained with M/s Vijai Electricals Ltd. always. Thus, I find that the present case will fall under Sr. No. 5; "Goods other than that falling under Sr. No. 1, 2, 3 & 4" of Notification No. 45/2017-cus dated 30.06.2017. Since it is not a export in real sense as discussed above, the subject case is also not a zero rated supply or a supply. Hence, IGST is not payable *abinitio*.

**26.** I also find that the learned Consultant to the noticee stated during the course of personal hearing that they had wrongly claimed the Notification No.46/2017-Customs dated 30.06.2017 instead of Notification No.45/2017-Customs dated 30.06.2017 by mistake and requested for amendment in this


regard in Bill of Entry in terms of the Section 149 of Customs Act, 1962. I have gone through the both notifications and find that for IGST exemption Notification No.45/2017 is applicable and in case of Central Excise duty exemption Notification No.46/2017 applicable. In the instant case allegation is related to exemption for payment of IGST. As discussed supra, since the impugned transaction is neither supply nor zero rated supply, I find that the IGST is *abinitio* not payable.

**27.** In view of above, I find that re-import of impugned goods after testing at KEMA Laboratory, Netherlands is covered by entry at serial no. 5 of Notification No. 45/2017-Customs dated 30.06.2017 as the re-import happened within six months from the date of export. Therefore, the demand for IGST of Rs. 45,57,490/- made vide Show Cause Notice dated 05.07.2019 does not survive. Hence, consequently the demand of interest also does not survive. Hence, no penalty imposable in the subject case.

**28.** In view of the above, I pass the following order;

**:: ORDER ::**

I drop the proceedings under impugned Show Cause Notice dated 05.07.2019 issued to M/s. Vijai Electricals Ltd., 6-3-648/1&2, Off Rajbhavan Road, Somajiguda, Hyderabad Telangana – 500 082, *intoto*.

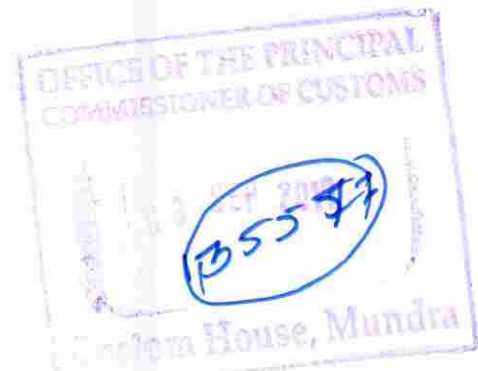
  
(PRASHANT KADUSKAR) 30/8/2019  
Additional Commissioner  
Custom House, Mundra.

F. No. VIII/48-15/Adj/ADC/MCH/19-20

Date: 30.08.2019

**By Speed post**

To  
M/s. Vijai Electricals Ltd.,  
6-3-648/1&2, Off Rajbhavan Road,  
Somajiguda, Hyderabad,  
Telangana-500082



**Copy to:**

- (i) The Principal Commissioner, Custom House, Mundra
- (ii) The Deputy Commissioner (RRA), Custom House, Mundra.
- (iii) The Deputy Commissioner (Gr-V), Custom House, Mundra.
- (iv) The Deputy Commissioner (TRC), Custom House, Mundra.
- (v) The Deputy Commissioner (EDI), Custom House, Mundra.
- (vi) Guard File.