		<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</b>
A. File No.	:	VIII/48-35/Adj/Pr.Commr/MCH/2016-17
B. Order-in- Original No.	:	MUN-CUSTM-000-COM-13-18-19
C. Passed by	:	<b>Shri Sanjay Kumar Agarwal</b> Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order	:	06.07.2018
E. Date of issue	:	06.07.2018
F. SCN No. & Date	:	F.No. DRI/AZU/GRU-8/INT-7/2016(RENUKA) dated 27.12.2016
G. Noticee(s)/Party/Importer	:	M/s. Shree Renuka Sugars Ltd., situated at BC 105, Havelock Road, Cantonment, Belgaum – 590001

1. यह अपील आदेश संबंधित 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 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129 A (1) के अंतर्गत प्रपत्र सीए- 3 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 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

**“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवा कर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ,  
2<sup>nd</sup> फ्लोर, बहुमाली भवन, मंजुश्रीमिल कंपाउंड, गिर्धनगर ब्रिज के पास,  
गिर्धनगर पोस्ट ऑफिस, अहमदाबाद -04”**

**“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,  
2<sup>nd</sup> floor, Bahumali Bhavan, Manjushri Mill Compound,  
Near Girdharnagar Bridge, Girdhanagar PO, Ahmedabad 380 004.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।  
Appeal shall be filed within three months from the date of communication of this order.
4. उक्त अपील के साथ 1000/-रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो, 5000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो, 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्डपीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।  
Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची-1, न्यायालय शुल्क अधिनियम, 1870 के मद सं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।  
The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।  
Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए। While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.
8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा। An appeal against this order shall lie before the Tribunal 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: SCN F. No. DRI/AZU/GRU-8/INT-7/2016(RENUKA) dated 27.12.2016 issued by the Additional Director General, DRI, AZU, Ahmedabad to M/s. Shree Renuka Sugars Ltd., situated at BC 105, Havelock Road, Cantonment, Belgaum – 590001.

**Brief facts of the case:**

M/s. Shree Renuka Sugars Ltd., situated at BC 105, Havelock Road, Cantonment, Belgaum – 590001 (hereinafter also referred to as M/s SRSL), having IEC No. 0798015616, were engaged in export of refined sugar. M/s SRSL were having sugar refining plant at Survey No. 178/1, At & Post: Bharapar near Gandhidham in Kutch District. They used to import raw sugar and clear it by availing duty exemption against advance authorizations/ advance authorizations for annual requirement. For fulfillment of export obligation, they used to export refined sugar classifiable under customs tariff item 17019990.

2. Vide notification No. 37/ 2016-Customs dated 16.06.2016, the export duty exemption available to raw sugar, white or refined sugar, covered under customs tariff heading 1701, was removed with immediate effect. By virtue of that notification, export of raw sugar, white or refined sugar attracted export duty at the rate of 20% ad valorem, with effect from 16.06.2016. The Chronology of duty exemption to sugar is summarized in table below:

Notification No. & Date	Date/ period of effect	Effect of the notification
-----	Prior to 01.03.2013	Export duty @ 20% was leviable
15/2013-Customs dated 01.03.2013	From 01.03.2013 (up to 15.05.2016)	The export duty was exempted
37/2016-Customs dated 16.06.2016	On & after 16.06.2016 (up to 05.07.2016)	The exemption was removed. Export duty leviable (even for export under advance authorization).
41/2016-Customs dated 06.07.2016	On & after 06.07.2016	Conditional exemption extended for export under advance authorization.

From table above it appeared that on and after 16.06.2016 to 05.07.2016 duty was leviable on export of sugar even if it was under advance authorization.

3. Specific intelligence gathered by the officers of Directorate of Revenue Intelligence (hereinafter referred to as DRI for the sake of brevity) indicated that despite withdrawal of exemption of export duty, vide notification No. 37/ 2016-Customs dated 16.06.2016, M/s. Shree Renuka Sugars Ltd. continued export of refined sugar from AP&SEZ, Mundra, without making payment of export duty.

4. Based on the said intelligence, copies of relevant shipping bills (RUD No. 1 of SCN) Nos: 8179645 and 8179679 both dated 09.06.2016 (both LEO dated 18.06.2016), 8267478 dated 04.06.2016 (LEO dated 17.06.2016), 8267483 dated 14.06.2016 (LEO dated 16.06.2016), 8277976, 8278671, 8278739, 8278771 and 8289687 all dated 15.06.2016 (all LEO dated 16.06.2016), 8296872, 8297080 8300661 all dated 16.06.2016 (all LEO dated 16.06.2016), 8299012 and 8299019 both dated 16.06.2016 (both LEO dated 17.06.2016), 8320330 and 8321421 both dated 17.06.2016 (both LEO dated 19.06.2016), 8356558 dated 18.06.2016 (LEO dated 19.06.2016) and 8348631 dated 18.06.2016 (LEO dated 20.06.2016) (hereafter referred as shipping bills under investigation which are also mentioned in

Annexure-A) and related export documents were collected from customs. It appeared from the shipping bills and related export documents that M/s SRS� declared description of the export goods as white refined sugar. Further, it appeared that in respect of export consignments in which the proper officer granted order for permitting clearance and loading of the goods (let export order) on or after 16.06.2016, the export duty was not paid by the exporter.

5. During the course of investigation, statements of following persons of the exporter and their appointed customs brokers were recorded:

5.1 Statement of Shri Anoop Mishra, Deputy General Manager in M/s. Shree Renuka Sugars Ltd. was recorded under Section 108 of the Customs Act, 1962, before the Sr. Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 22.07.2016 (RUD No. 2 of SCN) wherein he stated, inter alia, that M/s SRS� was engaged in refining and export of sugar; that they used to import raw sugar under advance authorization/ advance authorization for annual requirement and after refining, they used to export refined sugar and fulfill export obligation; that he was aware that exemption of export duty of various kinds of sugar was removed vide Notification No. 37/2016-Customs dated 16.06.2016; that since their export was in obligation of advance authorizations, they approached the Government of India for issuance of necessary notification/ clarification in the matter; that considering prayer of the trade, the Central Government issued notification No. 41/2016-Customs dated 06.07.2016 which conditionally exempts export duty in respect of export of sugar under obligation of advance authorization; that after issuance of notification No. 37/2016-Customs dated 16.06.2016, certain export consignments of sugar were cleared vide shipping bills mentioned in Annexure-A at Custom House Mundra without payment of duty under good faith that it was not leviable for exports under advance authorization; that they had made payment of duty with interest under protest, against the duty liability which may arise in the matter.

5.2 Statement of Shri Ram Kishor Dudi, Customs 'G' Card holder in M/s. Regal Shipping Pvt. Ltd. (customs broker) was recorded under section 108 of the Customs Act, 1962, before the Sr. Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 07.07.2016 (RUD No. 3 of SCN) wherein he stated, inter alia, that they attended customs clearance work in respect of export of sugar for M/s. Shree Renuka Sugars Limited; that M/s. Shree Renuka Sugars Limited exported sugar under advance authorizations/ advance authorization for annual requirement by declaring description as white refined sugar; that he was aware that exemption of export duty to various kinds of sugar was removed vide notification dated 16.06.2016; that exemption from export duty was granted in respect of export of various kinds of sugar under advance authorization vide notification No. 41/2016-Customs dated 06.07.2016; that they had obtained LEO under shipping bills under investigation and he was aware that export duty was leviable on the export of raw sugar

exported under these shipping bills but as told by exporter that they approached finance ministry for exemption hence duty was not paid in good faith.

**5.3** Statement of Shri Chokkara Muralidhara Rao, Customs "G" Card holder in M/s. Pravin Bhatt & Sons (customs broker) was recorded under section 108 of the Customs Act, 1962, before the Sr. Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 05.07.2016 (RUD No. 4 of SCN) wherein he stated, inter alia, that they attended clearance of export consignments of sugar for M/s. Shree Renuka Sugars Limited; that M/s. Shree Renuka Sugars Limited was exporting refined white crystal sugar under advance authorization for annual requirement; that he was aware that exemption of export duty on various kinds of sugar was removed vide notification dated 16.06.2016; that they had obtained LEO under shipping bills under investigation and he was aware that export duty was leviable on the export of raw sugar exported under these shipping bills but as told by exporter that they approached finance ministry for exemption hence duty was not paid in good faith.

**5.4** Statement of Shri Maheep Pratap Shahi, Customs "G" Card holder in M/s. Indian Shipping Services (Customs Broker) was recorded under section 108 of the Customs Act, 1962, before the Sr. Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 07.07.2016 (RUD No. 5 of SCN) wherein he stated, inter alia, that they were attending customs clearance work in respect of export of sugar for M/s. Shree Renuka Sugars Limited; that M/s. Shree Renuka Sugars Limited was exporting sugar under advance authorization for annual requirement by declaring its description as white refined sugar; that he was aware that exemption of export duty of various kinds of sugar was removed vide notification dated 16.06.2016; that they had obtained LEO under shipping bills under investigation and he was aware that export duty was leviable on the export of raw sugar exported under these shipping bills but as told by exporter that they approached finance ministry for exemption hence duty was not paid in good faith.

**6. Provisions relating to exemptions granted under advance authorization scheme and advance authorization under annual requirement scheme:**

**6.1** M/s. SRS� used to import raw sugar by availing exemption from import duty under advance authorization / advance authorization for annual requirement. They used to refine the imported raw sugar at their refinery plant situated at Survey No. 178/1, At & Post Bharapar near Gandhidham in Kutch District. They used to export refined sugar in discharge of export obligation under advance authorization/ advance authorization for annual requirement. The consignments covered under shipping bills mentioned in Annexure-A were presented for export, in discharge of export obligation under advance authorization/ advance authorization for annual requirement schemes. Notification No. 18/2015-Cus dated 01.04.2015 covers exemption under advance authorization scheme. Further, the notification No. 20/2015-Cus dated 01.04.2015 covers exemption under advance authorization for

annual requirement scheme. The said notification provides for exemption from duties relating to imports only and does not provide exemption from export duty.

**6.2** Para 4.01 of the Foreign Trade Policy provides that duty exemption schemes consist of (i) advance authorization (which will include advance authorization for annual requirement) and (ii) duty free import authorization (DFIA). Further, Para 4.14 provides details of duties exempted. It states that imports under advance authorizations are exempted from payment of basic customs duty, additional customs duty, education cess, anti-dumping duty, safeguard duty and transition product specific safeguard duty, wherever applicable. It does not provide exemption from export duty.

**6.3** In the light of above provisions and notifications, it appeared that the Foreign Trade Policy and the exemption notifications issued under the Ministry of Finance in respect of advance authorization/ advance authorization for annual requirement provide for exemption to materials imported into India from the duty of customs leviable thereon which is specified in the first schedule to the Customs Tariff Act, 1975, additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty. These provisions and notifications do not provide exemption to the export goods from customs duty specified in the second schedule to the Customs Tariff Act, 1975. The subject consignments of refined sugar were being exported and the export duty was leviable under second schedule to the Customs Tariff Act, 1975. Thus, it is amply clear that exemption from export duty to the subject export consignments were not available under advance authorization and advance authorization for annual requirement. Therefore, after issuance of notification dated 16.06.2016, the goods being exported for fulfillment of export obligation under advance authorization/ advance authorization for annual requirement were not exempted from export duty.

**7.** Whereas, the Government of India issued notification No. 41/2016-Customs dated 06.07.2016, further amending the notification No. 27/2011-Customs dated the 01.03.2011 to provide exemption from export duty to sugar exported under advance authorization scheme subject to specified conditions. The chronological sequence of change in duty liability of export of sugar has been explained in para 2. Since it does not have retrospective effect, export duty during 16.06.2016 to 05.07.2016 was leviable on export of raw sugar, white or refined sugar.

**8. Details of payments (made under protest)**

During the course of investigation, the exporter ascertained the export duty and interest thereon and voluntarily made payments of the same in respect of export clearances by them during 16.06.2016 to 05.07.2016. The exporter made the payment under challan No. 72 dated 08.07.2016 and challan No. 78 dated 15.07.2016 (RUD No. 6 of SCN). They made the

said payment under protest and informed the same to customs and DRI authorities vide letters dated 08.07.2016 and 15.07.2016 (RUD No. 7 of SCN).

## **9. Demand and appropriation of export duty**

**9.1** As discussed above in detail, export duty on refined sugar was leviable during 16.06.2016 to 05.07.2016, even if the same was exported in discharge of export obligation under advance authorization/ advance authorization for annual requirement. In respect of total 18 shipping bills, filed by M/s. Shree Renuka Sugars Ltd. for export of refined sugar, let export orders were granted during 16.06.2016 to 05.07.2016. Under the provisions of Section 16 of the Customs Act, 1962 the rate of export duty, if any, applicable to goods entered for export under section 50 is the rate in force on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51 *ibid*. Therefore, in the instant case, export duty was leviable in respect of all those export consignments of refined sugar wherein let export order was granted during 16.06.2016 to 05.07.2016. In respect of total 18 shipping bills filed by M/s SRSL through his appointed customs brokers, the export duty was payable. Total duty amount comes to **Rs. 4,21,14,078/-**, in respect of the 18 shipping bills, as detailed in Annexure-A to this notice. In the light of above discussed facts, the export duty totally amounting to **Rs. 4,21,14,078/-** (as mentioned in Annexure-A) is liable to be demanded and recovered from M/s. Shree Renuka Sugars Ltd. under Section 28(1) of the Customs Act, 1962. Applicable interest on the export duty is also liable to be demanded and recovered from them under section 28AA *ibid*. The amount deposited by them is liable to be appropriated against their liabilities by vacating the protest filed by them.

**9.2** During the course of investigation, the exporter voluntarily paid **Rs. 4,37,89,963/-** (*Rs. 4,33,40,175/- against duty and Rs. 4,49,788/- against interest*), under protest against export duty and interest thereon in respect of shipping bills detailed by them in a sheet dated 25.11.2016 (**RUD No. 8 of SCN**). Their calculation of duty and interest appeared erroneous. Actual amount of duty comes to Rs. 4,21,14,078/- and interest as Rs. 1,92,985/- as detailed in Annexure-A. The act of making the above discussed payment of export duty and interest thereon under protest shows that the exporter has not admitted the liability. The letter informing payment under protest shows that the exporter has intention to contest. The payment also appeared to have been made without agreeing to the applicability of export duty.

## **10. Roles and penalties**

Shri Anoop Mishra, Deputy General Manager in M/s. Shree Renuka Sugars Ltd. has stated in his statement that they used to import raw sugar under advance authorization/ advance authorization for annual requirement and after refining, they used to export refined sugar and fulfill export obligation. He also stated that he was aware that exemption of export duty on various kinds of sugar was removed vide notification No. 37/2016-Customs dated

16.06.2016. After issuance of notification No. 37/2016-Customs dated 16.06.2016, certain export consignments of sugar were cleared at custom house Mundra without payment of duty. Therefore, it appeared that though the exporter was aware of the fact that export duty was leviable on the consignments of refined sugar covered under shipping bills mentioned in Annexure-A wherein let export order was granted between 16.06.2016 to 05.07.2016. The section 17(1) of the Customs Act, 1962 provides that an exporter entering any export goods under section 50 has to self-assess the duty leviable on such goods. Self-assessment inter alia requires exporters to correctly declare value, classification, description of goods, exemption notifications etc. and self-assess the duty thereon. Therefore, in the instant case the exporter was bound by law to self-assess the duty leviable on the goods covered under shipping bills mentioned in Annexure-A. However, it appeared that though the exporter was aware of the fact that exemption from export duty was not available to them but deliberately availed undue exemption benefit on the goods covered under shipping bills mentioned in Annexure-A. These facts reveal that the exporter was duty bound to comply with the provisions of section 17(1) of the Customs Act, 1962 but failed to do so. Since no express penalty is provided for the said contravention, the exporter is liable to penalty under Section 117 ibid in respect of each of the shipping bills mentioned in the Annexure-A to this notice.

11. Therefore, M/s. Shree Renuka Sugars Ltd., BC 105, Havelock Road, Cantonment, Belgaum – 590001 vide SCN. F.No. DRI/AZU/GRU-8/INT-7/2016(RENUKA) dated 27.12.2016 was called upon to show cause to the Principal Commissioner of Customs, Mundra SEZ Port, Mundra, as to why:-

- (a) Export duty totally amounting to **Rs. 4,21,14,078/-** in respect of consignments of refined sugar exported under 18 shipping bills mentioned in Annexure –A should not be demanded and recovered under section 28(1) of the Customs Act, 1962, along with interest under section 28AA ibid.
- (b) Penalty should not be imposed on them under section 117 of the Customs Act, 1962, for the reasons discussed above.
- (c) The protest filed by them should not be vacated and the payments made by them, as detailed in Para 9.2 above, should not be adjusted and appropriated against their liability mentioned in Para 12(b) and 12(c) above.

**Defence reply:**

12.1 M/s SRS� vide their letter dated 11.09.2017 submitted their reply to Show Cause Notice and stated:

- That the matter involved in the said SCN is purely interpretation of statute relating to notification bearing No. 37/2016 Customs dated 16.06.2016 and 41/2016-Customs dated 06.07.2016,
- That they have preferred writ petition before Hon'ble High Court of Gujarat at Ahmedabad in the matter and submitted copy of the same.

- That the proceeding relating to above referred SCN may be kept under abeyance till the matter is decided by Hon'ble High Court of Gujarat at Ahmedabad.

**12.2** M/s SRS� vide their letter dated 07.11.2017 further submitted that Hon'ble High Court of Gujarat at Ahmedabad decided their SCA No. 7542/2017 vide oral order dated 01.11.2017 and submitted copy of the oral judgement dated 01.11.2017 passed by Hon'ble High Court of Gujarat at Ahmedabad and requested for early personal hearing in the matter.

**Discussion and findings:**

**13.** I have carefully gone through the records of the case, including the Show Cause Notice and the written submission dated 11.09.2016 and 07.11.2017 submitted by M/s SRS�. I have also gone through the SCA No. 7542/2017 filed by M/s SRS� and judgement dated 01.11.2017 passed by Hon'ble High Court of Gujarat at Ahmedabad.

**14.** I find that the following issues are involved in the subject Show Cause Notice, which is required to be decided:-

- (a) Whether the export duty totally amounting to Rs.4,21,14,078/- in respect of consignments of refined sugar exported under 18 shipping bills mentioned in Annexure A of the SCN can be demanded from them under Section 28(1) of the Customs Act,1962 along with interest under Section 28AA of the Customs Act,1962.
- (b) Whether penalty can be imposed under Section 117 of the Customs Act, 1962.

**15.1.** I find that M/s SRS� being aggrieved had filed an appeal before Hon'ble High Court of Gujarat at Ahmedabad vide SCA No. 7542/2017 against the Show Cause Notice on the ground that Notification No. 41/2016-Customs dated 06.07.2016 is clarificatory in nature as regards the exemption of export duty on sugar exported against a valid advance authorization; that the Principal Commissioner of Customs, who is the adjudicating authority, would not be in a position to decide on the question as to whether the Notification 41/2016-Customs dated 06.07.2016 is clarificatory in nature and that such relief can only be granted by the Court in exercise of powers under Article 226 of the Constitution of India.

**15.2** I have gone through the Hon'ble High Court of Gujarat, Ahmedabad oral judgement dated 01.11.2017 wherein the Hon'ble Court has decided the Special Civil Appeal No. 7542/2017 filed by the M/s SRS� in respect of applicability of Notification 41/2016-Customs dated 06.07.2016 and allowed the petition filed by M/s SRS�. The Hon'ble High Court of Gujarat while deciding the appeal in paras 15, 19 and 20 of oral order dated 01.11.2017 held that:

*“ Para 15: The crux of the issue is that the Government of India withdrew the exemption from payment of duty on export of sugar with the objective of controlling*



*the domestic sugar prices. This had nothing to do with the exporters such as the petitioners. Raw sugar imported against advance authorization on the condition of re-export had no impact on domestic sugar price. Impounding export duty on such exports would not serve the purpose of controlling local sugar prices. Apparently since inadvertently the withdrawal of exemption also hit the exports of sugar against advance authorization, the Government of India on the representations made by the trade, quickly reintroduced the exemption limited to such class. Very clearly thus, the Government of India was correcting an inadvertent error or an unintentional withdrawal of the exemption. If that be so, the exemption notification dated 06.07.2016 must be viewed as clarificatory or curative in nature. Any other view would leave the said class of exporters uncovered for a period of about three weeks allowing the department to levy the export duty which is a wholly unintended consequence of the Government of India policy.*

**Para 19:** *In the result, the petition is allowed in part. It is declared that the exemption notification dated 06.07.2016 with all its terms and conditions would apply for the period between 16.06.2016 to 06.07.2016 also. Consequently, subject to fulfilment of conditions contained in the said notification, the export of sugar made by the petitioners and other similarly situated exporters would continue to enjoy exemption from payment of export duty even during such period. The competent authority shall if needed, adjudicate the show cause notice on the basis of this declaration.*

**Para 20:** *Petition is disposed of accordingly. ”*

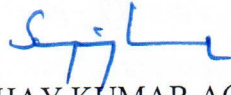
16. Further from the order of Hon'ble High Court of Gujarat, I find that Hon'ble High Court of Gujarat at Ahmedabad vide deciding the appeal relied upon the judgments viz. W.P.I.L. Ltd. v/s Commr. Of C.Ex., Meerut reported in 2005 (181) ELT 359 (S.C.), Ralson (India) Ltd. v/s Commr. Of C.Ex., Chandigarh reported in 2015 (319) ELT 234 and (S.C.), and Gujarat Paraffins Pvt. Ltd. v/s Union of India, reported in 2012 (282) ELT 33 (Guj.) and held that the Notification No. 41/2016-Customs dated 06.07.2016 would apply with retrospective effect and is clarificatory in nature. Accordingly, Hon'ble High Court of Gujarat passed oral order dated 01.11.2017 wherein it is held that the exemption Notification No. 41/2016-Customs dated 06.07.2016 with all its terms and conditions would apply for the period between 16.06.2016 to 06.07.2017.

17. From the facts discussed hereinabove, I find that the benefit of Notification No. 41/2016-Customs dated 06.07.2016 can be extended retrospectively for the period from 16.06.2016 to 06.07.2016 in light of Hon'ble High Court of Gujarat order dated 01.11.2017. I also find that white sugar, which was manufactured out of the imported raw sugar subsequently been exported under Advance License was free from duty during such period

and was also exempted by virtue of the said notification and the benefit of exemption have been correctly claimed by M/s SRSL. Thus, I hold that the demands raised against M/s SRSL could not sustain and I do not find any reason to confirm any of the charges levelled against M/s. Shree Renuka Sugars Ltd., Belgaum under the above SCN. Accordingly, I pass the following order:-

**::O R D E R::**

I drop the proceedings initiated against M/s. Shree Renuka Sugars Ltd., BC 105, Havelock Road, Cantonment, Belgaum- 590001 vide SCN. F.No. DRI/AZU/GRU-8/INT-7/2016(RENUKA) dated 27.12.2016 issued by the Additional Director General, DRI, AZU, Ahmedabad.

  
(SANJAY KUMAR AGARWAL)  
COMMISSIONER,  
CUSTOMS HOUSE, MUNDRA.

By REGD. POST A.D  
F.No. VIII/48-35/Adj/Pr.Commr/MCH/2016-17

Dated:06.07.2018

To,  
M/s. Shree Renuka Sugars Ltd.,  
BC 105, Havelock Road,  
Cantonment, Belgaum – 590001

**Copy Submitted to:**

- (1) The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad, alongwith a copy of the Show Cause Notice.
- (2) The Additional Director General, DRI, Ahmedabad Zonal Unit, Ahmedabad.
- (3) The Deputy Commissioner (RRA), Customs House Mundra.
- (4) The Deputy/Assistant Commissioner (Recovery), Customs House Mundra.
- (5) The Deputy/Assistant Commissioner (EDI), Customs House Mundra.
- (6) Guard File.