

REGISTERED SPEED POST



**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. NO. 371/21/SL/13-RA

Date of Issue:

ORDER NO. 297/2022-CUS (WZ) /ASRA/MUMBAI DATED 20-10-2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDE SECTION 129DD OF CUSTOMS ACT,
1962.

Applicant : M/s Viraj Impex Pvt. Ltd.

Respondent : Commissioner of Customs (Appeals), Mumbai Zone-I.

Subject : Revision Applications filed under Section 129DD of Customs
Act, 1962 against Order in Appeal No. 1006/MCH/AC/MCD/
2012 dated 21-12-2012 passed by Commissioner of Customs,
(Appeals), Mumbai-I.

ORDER

This Revision Application has been filed by M/s Viraj Impex Pvt. Ltd. having their office at Viraj Impex House, 47, P. D'Mello Road, Mumbai-400009 (hereinafter referred to as the "applicant") against Order-in-Appeal No. 1006/MCH/AC/MCD/2012 dated 26-12-12 passed by Commissioner of Customs (Appeals), Mumbai-II.

2. The brief facts of the case are that the applicant had imported 176 Bundles of Non-Alloy Steel Billets of which 6 pieces were said to be short-landed. Having already paid duty on all 176 steel Billets, the appellant claimed refund of duty paid amounting to Rs.1,21,626/- on short-landed 6 Steel Billets after getting the short-landing certificate from the Mumbai Port Trust. The refund claim was rejected by the AC vide his OIO No.S/8-8-16/2004 MCD dated 09-01-2009 on grounds that there was no short landing as evidenced by the tally sheet, that no shortage was found at the time of physical examination by the Appraiser and that it appeared that the shortage was noticed while taking cargo delivery but Customs were not associated at the time of survey.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the appeal and upheld the Order in Original vide her OIA No. 1006/MCH/AC/MCD/2012 dated 21-12-2012.

4. Aggrieved by the aforesaid OIA, the applicant filed the Revision Application on the following grounds:

(a) The Commissioner (Appeals) failed to understand the normal procedure followed in clearance of goods. The applicant had imported 176 Bundles-997.050 M.T., vide Bill of Entry no. 496927 dtd. 23-09-2004. The materials are of various thickness, sizes, weight, consignees. As such it is impossible to know or to count their Bundles in total or consignee wise till the last day or till when approx. 90% of the bundles get delivered. The examination order requires Shed Appraiser to check and Inspect only 10% of the packages at

random as per Customs Appraising Manual. Accordingly Shed Appraiser checks 10% of bundles and gives Out of Charge Order for the presented Bill of Entries. Delivery of the goods is taken in supervision of surveyor, BPT Tally clerk and the authorized representative of the importer to avoid any cross delivery. Hence Full Out of Charge Order for the bundles given by the shed appraiser cannot be valid reason to reject the claim of the importer.

(b) The Commissioner (Appeals) had not relied on Short Landing Certificate dtd. 3-11-2004 issued by Mumbai Port Trust.

(c) The Commissioner (Appeals) failed to understand that Refund claims are always filed if goods are short landed. There cannot be further more documents with Importer to substantiate his claim as short landing certificate is issued by BPT after verifying all aspect like discharge tally sheet, etc.

(d) The Commissioner (Appeals) failed to understand that insurance claim for the said refund was duly settled by the insurance co. after thorough verification and checks.

(e) The Commissioner (Appeals) failed to understand that department accepts claims only after receipt of short landing certificate from the Mumbai port trust. It takes months to the Port Trust Authorities for issuing the said certificate as they have to search entire port and only after satisfying that these coils are not at all landed in the port they issue the Short Landing Certificate. The applicant filed their claims immediately on receipt of Short Landing Certificate from Mumbai Port Trust.

(f) The Commissioner (Appeals) erred by stating that the claim of the appellants is without the supporting document i.e. Discharge Tally Sheet which is never in possession of any importer and is solely a property of Customs Authorities.

(g) The Commissioner (Appeals) had not relied on the following judgments' submitted by the applicant on the identical issues which clearly states that "*it is departments duty to examine whether the shortage of the goods was on the part of steamer agent, i.e. the goods were not unloaded by the steamer agent and in that case the responsibility for the shortage is on the steamer agent u/s. 116 of the Customs Act, 1962. Similarly if the shortage occurred after unloading of the goods but before delivery to the consignee and if there is any pilferage, etc., the custodian is liable to pay duty*":

a. Order No.127-132/2003 of The Government of India dtd. 21/04/2003 passed by Shri Dinesh Kacker, Joint Secretary to the Govt. of India.

b. Order No. 73/2011-Cus Dated 05/04/2011 of The Govt. of India, passed by Shri D.P. Singh, Joint Secretary to The Govt. of India.

(h) The Applicant therefore requested to direct the department to refund the amount of custom duty of all the 16 pieces short landed as per short landing certificate and to pay to the Applicant Interest at the prevailing rate of interest on the claim amount from the date of their claim lodged with the department to the date of final payment of claim amount.

5. Personal hearing was granted to the applicant on 29-07-2022 and 04-08-2022. Shri Kailash Didwania, Director appeared for the hearing. He submitted an additional written submissions. He submitted that they have been given a short landing certificate by Mumbai Port Trust. He further submitted that a Certificate from Jurisdictional Central Excise Office regarding non availing of Cenvat credit has also been submitted. He submitted a copy of JS (RA) where benefit in similar case has been given. He requested to allow his application.

6. Government has carefully gone through the relevant case records oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal, and the impugned applications.

7. Government observes that the applicant has filed the impugned Revision Application against Commissioner Appeal's Order dated 26-12-2012 rejecting the refund claim of the importer. The issue to be decided in this case is only regarding the admissibility of the refund claimed by the applicant on the duty paid on the short landed goods.

8. On perusal of the records of this case, Government observes the following:

a) The applicant imported 176 pieces of Hot rolled steel plates. The Discharge Tally Sheets issued by the Mumbai Port Trust Authority did not show any short landing of goods.

b) 'Out of charge' was issued for the entire quantity by the Customs Authority after physical examination. The Customs authorities are required to check and inspect only 10% of the pieces at random for issuing the Out of charge order.

c) After the Out of Charge order was issued, at the time of delivery it was found that there was a shortage of 6 pieces. The Port Authorities after checking issued the Short landing certificate to the applicant on 03-11-2004.

d) The applicant then filed the refund claim on the duty already paid on the aforesaid 6 bundles which they have not received.

e) There is no dispute by the department with respect to the duty paid on the entire quantity of goods.

9. Government finds that the Discharge Tally Certificate issued by the Port Trust on 14-07-2008 and the Out of Charge Order issued by the Customs Authorities are not based on 100% checking. The applicant at the time of delivery found the shortage which has been confirmed by the Mumbai Port Trust vide their short-landing certificate dated 03-11-2004 wherein the IGM No, Shed No. of the Dock, Bill of Entry, Quantity shortlanded, etc have been given. The Certificate given by the Custodian authority after proper verification is a valid document and cannot be set aside or ignored. Government finds that in case of M/s Hindalco Industries, GOI vide Order

No127/91 dated 25-1-94 had held that Short landing must be established by a Certificate issued by the Port Trust Authority for claiming Refund.

“Refund for short landing of one M.T. of Coal Tar Pitch - Short landing must primarily be established by a certificate issued by the Port Trust Authorities - Survey Report of M/s. General Inspection and Survey Company (India) Pvt. Ltd. cannot be sufficient basis for granting refund - Sections 27 and 129DD of the Customs Act, 1962.”

16. The applicant has paid duty for the entire consignment and he is eligible for the refund of the duty of goods which he has not received and this has been certified by the Mumbai Port Trust. Government relies on CEGAT Calcutta's Order No. A-34-Cal., dated 21-1-1999 in the case of M/s Union Carbide India Ltd Vs Commissioner of Customs Calcutta wherein it was held that –

“Refund - Short landing - Full quantity of goods on which duty paid by the importer not received - Short-supply of goods certified by Calcutta Port Trust through Short landing Certificate - Importer entitled to receive refund of duty paid by him in respect of goods which were short-landed and as such not received by him - Sections 27 and 23 of Customs Act, 1962. - The Short-landing Certificate issued by the Calcutta Port Trust clearly establish that the goods to the above extent never landed in India. On the contrary, the argument of the learned Departmental Representative that the non-appearance thereof in the Landing Tally always does not mean that the goods have not landed, is again assumptive in nature. The Survey Report of the independent surveyor also goes in favour of the appellants. In the circumstances, we hold that the appellants are entitled to the refund of duty paid by them in respect of goods which were short-landed and as such were never received by the appellants”

17. In view of the above, Government holds that the applicant is eligible for the refund claim and therefore modifies the impugned Order in Appeal to that extent. In respect to the Penal action dropped against the Steamer Agent,

Government does not find it necessary to interfere as no appeal is filed by the department against the said point.

18. In view of the above, Government sets aside the Order-in-Appeal No. 1006/MCH/AC/MCD/2012 dated 26-12-12 passed by Commissioner of Customs (Appeals), Mumbai-II and allows the refund claim. The Revision Application filed by the applicant is allowed.

19. The Revision Application is disposed off on above terms.


(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. ~~297~~/2022-CUS(WZ)/ASRA/Mumbai dated 20-10-2022

To,

M/s Viraj Impex Pvt. Ltd.
Viraj Impex House,
47, P. D'Mello Road,
Mumbai-400009

Copy to:

1. Principal Commissioner of Customs (General), New Custom House, Ballard Estate, Mumbai-400001.
2. A.C. Customs, MCD, MBT OSC Building, IV Floor, P.D.Mello Road, Opp. GPO, Mumbai-400001
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.