



सीमा शुल्क प्रिंसिपल आयुक्तालय  
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS  
सीमा शुल्क भवन, नवरंगपुरा, अहमदाबाद 380009,  
"Customs House", Navarangpura, AHMEDABAD, 380009

**PREAMBLE**

A	File No.	VIII/10-06/Commr/O&A/ICD Dashrath/2013
B	Show Cause Notice No. and date	(i) VIII/10-06/Commr/O & A/ICD-Dashrath/13 dated 17.1.2014 (ii) VIII/10-12/ICD-Dash/CERA O & A/2013-14 dated 27.3.2014 and (iii) VIII/10-44/ICD-Dash/Apollo/O & A/2015 dated 26.6.2015
C	Order-In-Original No.	<b>AHM-CUSTM-000-COM-004-16-17</b>
D	Order-In-Original Passed By	<b>AJAY JAIN</b> , Principal Commissioner, Customs, Ahmedabad
E	Date of Order	14.06.2016
F	Date of Issue	14.06.2016
G	Name and Address of Noticees	M/s Apollo Tyres Ltd Branch No. 3 Village: Limbda District: Vadodara

1. This copy is granted free of Charge for the use of the person to whom it is issued.
2. An appeal against this Order files before the Customs, Excise and Service Tax Appellate Tribunal, Western Zonal Bench (WZB), O-20, New Mental Hospital Compound, Meghaninagar, Ahmedabad, PIN Code No:380 016 within three months from the date of receipt of this Order as provided under Section 129A(3) of the Customs Act, 1962.
3. The appeal is required to be filed in quadruplicate in from CA-3 as per Rule 6(4) of Customs (Appeals) Rules, 1982. It should be accompanied by following documents:-
  - I) Four copies of the Order, appealed against should be filed, where one copy should be a certified copy duly affixed a Court Fee Stamp of Rs.5=00.
  - II) A crossed demand draft drawn in favour of the Assistant Registrar of the Bench of the Tribunal on a branch of any Nationalized Bank located where the Tribunal is situated, for an amount of Rs.1,000/-, Rs.5,000/- or Rs.10,000/- as the case may be, in view of Sub- Section 6 of Section 129(A) of the Customs Act, 1962.
4. The Appeal should bear a Court Fee Stamp as provided under Indian Stamp Act, 1989 (enacted by the State legislation).
5. Any person desirous to file an Appeal against this Order Shall deposit seven and a half per cent (subject maximum of Rs. 10 crores) of the Duty demanded, inc case where duty or duty and penalty are in dispute, or penalty, where such penalty along is in dispute, failure of which the appeal will be liable to be rejected for non-compliance of the provisions of Section 129(E) of the Customs Act, 1962.
6. The Appeal should be presented in person to the Registrar of the Bench or to be sent by registered post addressed to the Registrar.



### Brief Facts of Case

- 1.1 This common Order disposes of three SCNs issued to M/s Apollo Tyres Ltd, Limbda, Vadodara at the request of the noticee. In all of the three SCNs, the issue is availability of exemption of additional duty of customs equivalent to rubber cess under Notfn No. 96/2009-Cus of 11.9.2009 and Notfn No. 97/2009-Cus of 11.9.2009.
- 1.2 A Show Cause Notice (SCN) F.No VIII/10-06/Commr/O & A/ICD-Dashrath/13 dated 17.01.2014 was issued to M/s Apollo Tyres Ltd (hereinafter referred to as noticee), Limbda, Vadodara having IEC no.1088000720. The SCN was issued in respect of import of natural rubber during the period of May 2011 to May 2012.
- 1.3 During this period, the noticee had imported 8140.656 MT of natural rubber at Inland Container Depot (ICD), Dashrath, Vadodra. The details, consignment wise are mentioned in Annexure A to the SCN. These goods were cleared by the noticee by availing exemption under notification no 96/2009-Customs dated 11.09.2009 under which basic customs duty as well as additional duty of customs leviable under section 3 of Customs Tariff Act is exempted.
- 1.4 It is alleged in the SCN that the noticee were required to pay Rubber Cess on these imports, but they did not pay the same. The Rubber Cess has been defined as duty of excise under section 12 of Rubber Act and is leviable on natural rubber produced or manufactured in India @ not exceeding two rupees per Kg. Section 3(1) of the Customs Tariff Act, 1975 provides levy of an additional duty equal to excise duty leviable on like goods produced or manufactured in India. Therefore Rubber Cess was required to be collected as additional duty on the natural rubber imported by noticee.
- 1.5 The noticee did not pay rubber cess to be levied as duty of excise on imported rubber under the pretext that rubber cess is also exempted under Advanced Authorization Scheme, whereas it appears that notification no. 96/2009-Customs is not applicable to rubber cess. As per SCN, the rubber cess is to be paid in cash and is not available as CENVAT credit under CENVAT credit rules, 2004.
- 1.6 It is alleged that the noticee resorted to self assessment under section 17 of the Customs Act, 1962('hereinafter referred to as the 'Act'). As the importer was liable to pay this cess, which they did not pay under self assessment, they have evaded payment of Rubber Cess by willful mis statement and suppression of facts. Therefore, extended period has been invoked for demanding duty within five years in terms of section 28 of the Customs Act, 1962.
- 1.7 The noticee were asked to show cause as to why 8140.656 MT of natural rubber valued at Rs 173,95,52,958/- should not be confiscated under Section 111(o) of the Act and why the duty of excise to be collected as an additional duty of customs should not be demanded from the noticee amounting to Rs 1,34,58,379/- under Section 28(4) of the Act in cash alongwith interest under Section 28AA of the Act. It was also proposed to penalize the noticee under Sections 112(a) and 114A of the Act.



14