**BY E-MAIL / COURIER**

**File No.90/2023-Opinion**

30.09.2023

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Sir,

**Sub.: Using RoDTEP scrips for payment of import duty – Clarifications – Reg.**

A. Please refer to our opinion of even number dated 20.06.2023 on the above subject. Subsequent to the above opinion, further clarifications were sought in terms of your mail dated 22.06.2023.

B. With regard to the points raised in your subsequent mail mentioned above, following clarifications are provided.

1.1 Section 28AAA of Customs Act refers to recovery of duties on imported goods from the original scrip holder, if it is found that the scrip used for payment of duty is fraudulent in nature or obtained by misrepresentation etc. At the same time, it is to be noted that the following proviso is incorporated below Section 28AAA.

***Provided****that the action relating to recovery of duty under this section against the person to whom the instrument was issued shall be* ***without prejudice to an action against the importer under section 28.***

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1.2 In the light of the above provision, it may be noted that while recovery can be made from the original scrip holder in terms of Section 28AAA, such an action will not preclude the customs authorities from taking action, including recovery action, on the importers in terms of Section 28. As such, the above proviso grants powers to the authorities to raise demands in terms of Section 28 of Customs Act on the importers also. Such situations may arise when recovery from the original scrip holder is rendered impossible.

2.1 It is true that Notification 75/2022 amended Notification 76/2021 with regard to recovery of dues from the transferee. It is to be seen that Notification 76/2021 is a self-contained notification issued in terms of Section 51B of Customs Act 1962 imposing certain conditions with regard to grant and use of scrips under RoDTEP scheme. The scheme incorporated in the above notification contains comprehensive procedures to be followed under the scheme, including the process to be followed for recovery of dues.

2.2 Originally, once a demand is made, the notification provided for its recovery in terms of Section 142 of Customs Act from the importer / transferee not withstanding a demand made on the original scrip holder. In terms of the subsequent amendment made as per Notification 75/2022, only these clauses in Notification 76/2021 were deleted. The powers granted to the customs authorities for recovery of short paid duties in terms of Section 28AAA as well as Section 28 is vast in scope and therefore, deletion of clauses relating to recovery from the importer in terms of Section 142 of the Customs Act in the above notification will not have any impact on the authorities if they decide to proceed in terms of Section 28 of Customs Act against the importer.

3.1 There are both decisions, for and against recovery of duties from the transferee, in case of fraudulent scrips under the earlier schemes contained in the Foreign Trade Policy. In the case of *Friends Trading Company Vs. Union of India* reported in *2010 (254) E.L.T. 652 (P&H)* (**copy of judgment enclosed**) the Punjab and Haryana High Court has taken a view that concession availed based on forged documents is not retainable. In the case of *Commissioner of Customs Vs. Leader Valves Ltd.* reported in *2007 (218) E.LT. 349 (P &H***) [ copy enclosed]** the very same the Punjab and Haryana High Court has held that extended period cannot be invoked against an importer for recovery of duty even in cases of use of fraudulent scrips, since the transferee/importers are not parties to the fraudulent claim by the exporter before the DGFT authorities. When this was challenged before the Supreme Court by way of Special Leave Petition, the Special Leave Petition was dismissed both on the grounds of delay as well as merit by the Supreme Court as reported in *2008 (227) E.L.T. A29 (S.C.)*. [**copy of the Supreme Court judgement is** **enclosed**].

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3.2 Thus, it can be seen that application of legal provisions can slightly vary depending upon the facts and circumstances of each case. However, the general principle is that if the importer is unaware of the fraud committed by the exporter in obtaining the scrip, then he cannot be saddled with a demand by invocation of extended period against him. This means that still duty can be recovered from the importer within the normal period of two years since the transferee cannot have a better title on the scrip than the original scrip holder as what is obtained by fraud becomes a nullity. The judgments and decisions rendered under the earlier schemes also will have relevance for recovery of duties under RoDTEP scheme to the extent they are not contrary to the specific conditions stipulated in terms of Notification 76/2021 referred to above. For example, the above notification prescribes recovery of duty credit where export proceeds are not realized. This aspect was not one of the disputed areas under the earlier schemes.

4. It will be useful to get an indemnity bond and also confirmation of receipt of export sale proceeds by the exporter when the scrips are purchased. However, since scrips are purchased from the market, getting appropriate confirmations on time can be a challenge.

5.1 It is also to be noted that getting indemnity from the seller of the scrip, either the original scrip holder or the authorized agent, will help the querist for recovery of damages and duty loss from the seller/scrip holder. It will not protect the querist from initiation of action by the department for recovery of dues, in case, provisions of Section 28 are relied upon for proceeding against an importer.

5.2 In the past, under various export incentive schemes, one of the areas leading to disputes is mis-classification of the products exported for availing a higher rate of incentive. Such disputes can arise under the present RoDTEP scheme also and hence, at a subsequent date if the department proceeds against the scrip holder, recovery of full duty or excess duty / benefit claimed cannot be contested. Obtaining indemnity will protect the querist to recover the loss, if any, by way of claims by the department. Therefore, in this background, the risk element cannot be completely ruled out.

**S. MURUGAPPAN**

Encl.: as above.

sm/ss

**Disclaimer:-** The above opinion is provided based on the information and documents made available to us by the queriest and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.