**BY E-MAIL / COURIER**

**File No.20/2024-Opinion**

31.01.2024

M/s. Gmmco Limited,

6, G.S.T. Road,

St. Thomas Mount,

Chennai – 600 016.

Attn.: Mr. M. Muthukumar, Asst. General Manager-Commercial & Logistics –

<muthukumar.m@gmmcoindia.com >

**Mobile: 80560 42802**

Sir,

**Sub.: Re-assessment of Bills of Entry for paying differential duties.**

1. In connection with the above, find attached the following.

(a) Opinion.

(b) Our Bill towards professional charges.

2. Should you require any further clarification in this regard, please feel free to contact me. Kindly arrange for payment of the attached bill.

Regards,

**S. Murugappan**

Attached: as above.

sm/ss

**OPINION**

**1. QUERIST:**

M/s. Gmmco Limited,

6, G.S.T. Road,

St. Thomas Mount,

Chennai – 600 016.

**2. FACTS:**

 Querist regularly imports various parts for heavy earth moving equipment. During an investigation, officials of Directorate of Revenue Intelligence have suggested re-classification of a few items under chapter 87 and based on such re-classification, asked the querist to pay the differential duty with interest. It is reported that summons have been issued to the company officials and DRI has suggested the following options to pay the duty and close the issue.

i. Re-assess all Bills of Entry in the concerned custom house and make the duty difference payment and get the closure letter from customs and submit to DRI or

ii. Make the voluntary payment through TR6 challan and get the closure letter and submit to DRI.

**3. QUERY:**

 In the above context, querist would like to seek advice on the best way to make payment of the differential duty and close the matter.

**4. OPINION:**

4.1 In the normal course, when classification is found wrong and differential duty is payable, the customs authorities issue demand notices in terms of Section 28 of Customs Act 1962. Such demands can be issued for a two-year period and by invoking the mis-statement/suppression/collusion clause for a period of five years.

4.2 Section 28(1)(b) of Customs Act reads as follows:

*“(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,–*

*(i) his own ascertainment of such duty; or*

*(ii) the duty ascertained by the proper officer,*

*the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.*

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***[Provided****that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.]”*

 This is followed by Section 28(2) which reads as follows:

*“(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest:*

***[Provided****that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded.]”*

4.3 Thus, even without a demand notice being issued in terms of Section 28 mentioned above, it will be possible for an importer to pay the differential duty with interest on their own and intimate the department of such payment so that there is no notice issued subsequently and the matter is closed.

4.4 The above procedure envisages computing the differential duty with interest, its payment first and then submitting a letter to customs authorities with reference to such payment, seeking closure of the issue. In such a situation, necessarily differential duty and interest need to be paid online by way of TR6 Challan / E-Receipts first and then letter submitted.

4.5 Another option will be to seek re-assessment of the bills of entry by incorporating the correct classification of the items under reference and after such re-assessment, pay the differential duty with interest. In this case, based upon such re-assessment, differential duty will be paid and the IGST portion will get reflected in the GSTIN network to enable the importer to avail credit of the tax paid.

4.6 In this procedure, it becomes necessary for the querist to first write a letter to the customs authorities and seek re-assessment.

4.7 In this context, it is to be noted that as per the judgment of the Supreme Court in the case of ITC Limited Vs. Commissioner of Central Excise, Kolkata-IV reported in 2019 (368) E.L.T. 216, any re-assessment can be made on the basis of request by the importer only after modification of such assessment originally made, by way of appeal proceedings before the Commissioner

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(Appeals) under Section 128 of Customs Act 1962. In other words, an appeal has to be filed before the Commissioner of Customs (Appeals) within the time limit stipulated for filing such appeal and then based on the directions to be issued by the Commissioner (Appeals) for re-assessment, the group can re-assess the bills of entry to enable the querist to pay the differential duty.

4.8 Two aspects to be noted in this regard will be the expiry of time limit of 60 days from the date of the original assessment of the bills of entry for filing an appeal before the Commissioner (Appeals). It is quite possible that in almost all the cases, time limit would have lapsed and therefore, seeking re-assessment through appeal proceedings will be ruled out.

4.9 Even otherwise, when a request for such re-assessment is given and such re-assessment request is limited for a period of two years covering the consignments imported during that two-year period, then, it is quite possible for the department to come up with a request to the querist to pay the differential duty for bills of entry relating to the earlier period (for a total of 5 years) also by seeking re-assessment. It is also possible for the department to raise a demand invoking the extended period for recovery of the differential duty as it is normally noticed that irrespective any merits for invoking the extended period, demands are issued by invoking that clause.

4.10 If the querist has to adopt such a procedure, it can be a tedious one and also will involve risks for demand of duty for a larger period of 5 years.

4.11 In the matter of classification normally there is no scope for invoking the extended period as it involves a question of law and not facts. Therefore, in our view, it will be appropriate that the querist pays the differential duty with interest voluntarily for the normal period of 2 years and then submit a letter to customs as envisaged under Section 28(2) of Customs Act referred to above and get the issue closed. Once this process is completed, copies of the communication with the department can be shared with DRI for closure of their investigation.

**S. MURUGAPPAN**

sm/ss

**Disclaimer:-** The above opinion is provided based on the information and documents made available to us by the querist 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.