**BY E-MAIL / COURIER**

**File No.41/2024-Opinion**

29.02.2024

M/s. Polymak Tools (India) Pvt. Ltd.,

Alsa Towers,

No.186/187, Poonamallee High Road,

Kilpauk, Chennai – 600 010.

Attn.: Mr. K. Gopinath, Manager-Accounts <accounts@polymak.co.in>

**Mobile: 95519 55599**

**Sub.:  Demand for payment of Penalty.**

Dear Mr. Gopinath,

1.         With regard to the above, please find attached the following.

i. Draft of the Reply which can be given to Customs in response to their further letter dated 31.01.2024.

ii. Our Bill towards fees for consultation and drafting of the reply.

2.        After making changes, if any, the draft reply can be typed in the company’s letterhead and after due signature submitted to the department along with the enclosure mentioned therein. Proper acknowledgement also may be taken.

3. Kindly arrange for payment of the attached bill.

Regards,

**S. Murugappan**

Attached: as above.

sm/ss

**Draft Reply:**

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

To:

The Assistant Commissioner of Customs,

(TBA Circle-I),

O/o The Principal Commissioner of Customs (Audit),

Custom House, No.60, Rajaji Salai,

Chennai – 600 001.

Sir,

**Sub.: Import of goods declared as “3 Inch Twist Knot Wire Brush (M10) PMTWB3” vide Bills of Entry No.7243554 dated 08.08.2023 & Others – Demand for differential duty arising due to wrong classification – Corrigendum – Reg.**

**Ref.: Corrigendum to Audit Consultative Letter dated 31.01.2024 – F.No.CHE/852/C-I/TBA-56/2023-AUDIT.**

1. We are in receipt of the above letter in terms of which a Corrigendum relating to payment of penalty is added to the notice issued earlier.

2. In this connection, we would like to point out that an Audit Consultative Letter, which was received by us on 19.10.2023 was issued pointing out short payment of customs duty on account of wrong classification. Accordingly, we were asked to pay the differential duty to the extent of Rs.27,63,665/-. The notice also referred to the provisions of Section 28 of Customs Act according to which, show cause notice and penalty proceedings are waived on payment of duty and applicable interest on being pointed out by customs officer within 30 days from the date of receipt of this letter.

3. After receipt of the above communication, we have paid the differential duty, Cess, IGST as well as interest as mentioned below for a total amount of Rs.34,39,896/-. A copy of the TR6 Challan showing payment of the differential duty with interest is **attached**.

|  |  |
| --- | --- |
| **Particulars** | **Amount (Rs.)** |
| DUTY | 21,29,171/- |
| CESS | 2,12,917/- |
| IGST 18% | 4,21,576/- |
| INTEREST | 6,76,232/- |

4. Therefore, in the above context, it is not clear on what basis a corrigendum has been issued by referring to Section 28(4) to the effect that show cause notice proceedings are waived on payment of differential duty along with applicable interest **and penalty** on being pointed out by the customs officer.

5. For the sake of appreciating the correct legal position, we have extracted below the provisions of Section 28(1), (2), (3) and (4).

***“Section 28. Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. -***

*(1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-*

*(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;*

***Provided****that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;*

*(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.*

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

*(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.*

*(3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (2).*

*(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*

*(a) collusion; or*

*(b) any wilful mis-statement; or*

*(c) suppression of facts,*

*by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.”*

6. The above is the relevant extract of Section 28 as in force today. Section 28(4) refers to non-payment of duty on account of collusion, wilful mis-statement etc. and the power to customs officials for issue of demand for a period of five years in such cases. It does not refer to payment of penalty at all.

7. Section 28(1) proviso refers to payment of differential duty and interest on own ascertainment or as ascertained by the proper officer along with interest payable under Section 28AA. Section 28(2) states that once payment has been made of the duty and interest as above, then, the proper officer shall not serve any notice under clause (a) of that sub-section in respect of duty or interest so paid or any penalty leviable under the provisions of Customs Act. Here, the reference is to duty and interest paid and any penalty that may be leviable. Therefore, once duty and interest are paid, there is no basis for issue of any show cause notice or for demanding any penalty.

8. Apart from the above, proviso to Section 28(2) stipulates that even when a show cause notice is issued, no penalty will be levied and the proceedings against whom the notice is served shall be deemed to be concluded if duty and interest are paid.

9. In the present case, the matter has not reached even the stage of pre-notice consultation letter as required under the relevant section. What was issued was only an audit consultative letter. No show cause notice as contemplated under Section 28 has been issued as will be evident from the above facts.

10. Under such circumstances, a corrigendum issued proposing levy of penalty when duty and interest have been paid in full, is not in accordance with the present legal provisions and not in accordance with law.

11. Considering the above and as we have already paid the applicable duty and interest, we request you to close the proceedings in terms of Section 28(2) of Customs Act as mentioned above.

Thanking you,

Yours faithfully,

For **Polymak Tools (India) Pvt. Ltd.**

Authorised Signatory

Encl.: as above.