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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. 195/20/WZ/2018

1806

Date of Issue: 29.03.2023

ORDER NO. 183 /2023-CEX (WZ)/ASRA/MUMBAI DATED 29.03.2023  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS  
ACT, 1962.

Applicant : M/s Highyield Agritech Corporation

Respondent: Pr. Commissioner of Customs, Indore.

Subject : Revision Application filed, under Section 129DD of the Customs  
Act, 1962, against the Order-in-Appeal No. IND-EXCUS-000-  
APP-187/17-18 dated 26.09.2017 passed by the Commissioner  
(Appeals) CGST& C.Ex. Indore.

**ORDER**

This Revision Application has been filed by M/s Highyield Agritech Corporation (hereinafter referred to as 'applicant'), against the Order-in-Appeal No. IND-EXCUS-000-APP-187/17-18 dated 26.09.2017 passed by the Commissioner (Appeals) CGST& C.Ex. Indore.

2. Brief facts of the case are that Applicant are engaged in the trading of various goods including fertilizers. They have filed a Bill of Entry No. 6244503 dated 26.07.2014 for import of goods. Customs officer have approved the Bill of Entry and cleared goods on payment of assessed duty. However, later on they came to know that they had paid higher rate of duty than the actual effective rate of customs duty and therefore they had filed refund claim for that excess paid duty under Section 27 (1) (a) of the Customs Act, 1962 which was rejected vide OIO No. 297/REFUND/AC/CD/PITH/14-15 dated 27.02.2015. Being aggrieved by the aforesaid order-in-original the applicant filed appeal before Commissioner (Appeals) CGST& C.Ex. Indore, who vide Order-in-Appeal No. IND-EXCUS-000-APP-187/17-18 dated 26.09.2017 rejected their appeal.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 129 DD of the Customs Act, 1962 before the Government.

4. Personal hearing was fixed in this case, Shri. Harkesh Meena, AC appeared online on behalf of the Respondent and submitted that the appeal before Comm(A) has been rightly rejected assessment of Bill of Entry was not challenged. He requested to uphold Comm(A) order.

5. Government has carefully gone through the relevant case records available in case files, perused the impugned Order-in-Original, Order-in-Appeal. It is observed that the applicant is aggrieved by the Commissioner (Appeal)', Indore OIA No. IND-EXCUS-000-APP-187/17-18 dated 26.09.2017 and the Revision application is filed against the same.

6. Government observes that the refund of excess duty paid has been claimed by the Applicant under Section 27 (1) (a) of the Customs Act, 1962, which is reproduced as under:

**{ Section 27. Claim for refund of duty. -**

<sup>2</sup> [(1) Any person claiming refund of any duty or interest,-

(a) paid by him; or

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest:

**Provided** that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, such application shall be deemed to have been made under sub-section (1), as it stood before the date on which the Finance Bill, 2011 receives the assent of the President and the same shall be dealt with in accordance with the provisions of sub-section (2):

**Provided** further that the limitation of one year shall not apply where any duty or interest has been paid under protest.

<sup>3</sup> [ **Provided** also that where the amount of refund claimed is less than rupees one hundred, the same shall not be refunded.]

**Explanation.** - For the purposes of this sub-section, "the date of payment of duty or interest" in relation to a person, other than the importer, shall be construed as "the date of purchase of goods" by such person.

(1A) The application under sub-section (1) shall be accompanied by such documentary or other evidence (including the documents referred to in section 28C">section 28C) as the applicant may furnish to establish that the amount of duty or interest, in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty or interest, has not been passed on by him to any other person.

(1B) Save as otherwise provided in this section, the period of limitation of one year shall be computed in the following manner, namely-

(a) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of section 25">section 25, the limitation of one year shall be computed from the date of issue of such order;

*(b) where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year shall be computed from the date of such judgment, decree, order or direction;*

*(c) where any duty is paid provisionally under section 18">section 18, the limitation of one year shall be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.]”*

7. The powers for revision under the statute are limited to certain matters. Government reproduces the text of Section 129DD here for easy reference:

*“SECTION 129DD : Revision by Central Government.- (1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order.*

*Provided that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.*

*Explanation. - For the purposes of this sub-section, "order passed under section 128A" includes an order passed under that section before the commencement of section 40 of the Finance Act, 1984, against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.*

*(1A) The Commissioner of Customs may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 128A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.*

*(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made :*

*Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.*

(3) *An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of, -*

*(a) two hundred rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is one lakh rupees or less;*

*(b) one thousand rupees, where the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is more than one lakh rupees :*

*Provided that no such fee shall be payable in the case of an application referred to in sub-section (1A).*

*(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).*

*(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section, -*

*(a) in any case in which an order passed under section 128A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value, and*

*(b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.*

*(6) Where the Central Government is of opinion that any duty of customs has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 28 "*

8. Government finds that Section 129 DD read with proviso to Section 129 A (1) of Customs Act, 1962 empowered the Central Government to revise or review the appellate orders passed by Commissioner of Customs (Appeals) if such order related to:-

- i) Any goods imported or exported as baggage;
- ii) Any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such

destination if goods unloaded at such destination are short of the quantity required to be unloaded at the destination;

iii) Payment of drawback as provided in Chapter X and the rules made there under.

9. In the instant case the issue of refund of excess duty paid under Section 27(1) (a) of the Customs Act, 1962 does not fall under the jurisdiction of this office. In the result, the revision application filed by the Applicant is not maintainable under Section 129DD of the Customs Act, 1962.

10. In view of the above discussions, the Government is of the opinion that the issue involved in this case does not fall within the jurisdiction of this authority and the application is not maintainable for want of jurisdiction in terms of Section 129DD of the Customs Act, 1962.

11. In view of the above discussions, the revision applications filed by the Applicant are dismissed as non-maintainable due to lack of jurisdiction.

  
(SHRAWAN KUMAR)

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

ORDER No. 83 /2023-CEX (WZ)/ASRA/Mumbai DATED 24/03, 2023

To,

1. M/s. Highyield Agritech Corporation, 305, Utsav Avenue, 3<sup>rd</sup> Floor, 12/5, Ushaganj Charoha (Jaora Compound), Indore (M.P.)
2. The Pr. Commissioner of Customs, 3<sup>rd</sup> Floor, 12/2/7 & 12/2/8, B-Zone Business Space Building, Gram Pipliya Kumar, Nipania, Indore (M.P.)- 452010.

Copy to:

1. The Commissioner (Appeals), CGST & CX, Manik Bagh Palace, Post Box No. 10, Indore (MP)-452001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.