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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. 195/12/WZ/2018 / 1920

Date of Issue: 31.03.2023

ORDER NO. 188 /2023-CEX (WZ)/ASRA/MUMBAI DATED 27.03.2023  
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 Masterplast India Private Limited

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-297/17-18 dated 31.10.2017 passed by the Commissioner  
of Customs(Appeals) CGST& C.Ex. Indore.

**ORDER**

This Revision Application has been filed by M/s Masterplast India Private Limited (hereinafter referred as 'applicant'), against the Order-in-Appeal No. IND-EXCUS-000-APP-297/17-18 dated 31.10.2017 passed by the Commissioner of Customs(Appeals) CGST& C.Ex. Indore.

2. Brief facts of the case are that Applicant are engaged in the manufacture of Plastic Master Batch falling under chapter 32 of the Central Excise Tariff Act, 1985. They have imported Moplen HP500N vide Bill of Entry No. 9715594 dated 27.06.2015 and not availed cenvat credit of the 4% SAD. Applicant had sold above imported goods to M/s Ultra Nonwoven, Silvassa under the cover of commercial invoice, by not passing on the amount of 4% SAD and had filed refund claim of SAD under Notification no. 102/2007-Cus dated 14.09.2007. The Assistant Commissioner, Customs, ICD, Dhanbad issued show cause notice dated 15.03.2016 by alleging the applicant to have issued the commercial invoice of same number twice and for failure to submit the original copy of the CST payment Challan. SCN was adjudicated vide OIO No. 29/AC/Refund/ICD-Dhannad/15-16 dated 16.07.2016, sanctioning refund partially. Being aggrieved by the aforesaid order-in-original the applicant filed appeal before Commissioner of Customs(Appeals) CGST& C.Ex. Indore, who vide Order-in-Appeal No. IND-EXCUS-000-APP-297/17-18 dated 31.10.2017 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. Mukesh Soni, Advocate, on behalf of Applicant appeared for hearing online on 12.10.2022 and reiterated earlier submissions. He submitted that on the ground of minor variation in invoice their claim was rejected. He informed that all necessary evidences have been given. He requests to allow their claim. While Shri Harkesh Meena, AC on behalf of the Respondent, appeared online on

30.11.2022 and submitted that invoice was not as per notification. He requested to maintain the Commissioner (Appeals) 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-297/17-18 dated 31.10.2017 and the Revision application is filed against the same.

6. Government observes that the Notification No. 102/2007-Customs dated 14.09.2007 has been issued in exercise of the powers conferred by Section 25 of the Customs Act, 1962. The preamble of the notification is reproduced below for a better appreciation of its ambit :

*"G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for subsequent sale, from the whole of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the said Customs Tariff Act (hereinafter referred to as the said additional duty)"*

It is clear from the text that notification deals in the goods imported into India for subsequent sale. This notification provides the refund of SAD suffered in the goods so imported.

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 empowers 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. Instant issue of the refund of SAD claim and non-fulfillment of the conditions contravening Notification No. 102/2007-cus dated 14.09.2017 do not fall under the jurisdiction of this office. In the result, the revision application filed by the Applicant are 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*  
*27/3/23*  
(SHRAWAN KUMAR)

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

ORDER No. /2023-CEX (WZ)/ASRA/Mumbai DATED 2023

To,

1. M/s Masterplast India Private Limited, Plot No. 1, Khasra 447-448, Badiyakeema, Nemawar Road, Opposite Barfani Convent School, Indore(M.P.)- 452016.
2. The Pr. Commissioner CGST& C.Ex., Manik Bagh Palace, Post Bag No. 10, Indore-452001.

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.