

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

K.NANCY, B.COM., B.L. (HONS.),

M.S.HARSHA PRABHU, L.L.M.

CONSULTANTS:

GST, CUSTOMS, FOREIGN TRADE LAWS,
FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

1. **QUERIST:**

M/s. Virgo Polymer India Ltd.,
A1A MMDA Indl.,
MM Nagar,
Kanchipuram – 603 209.

2. **FACTS:**

The querist regularly imports various plastic raw materials for the purpose of trading and these are sold upon payment of appropriate local tax such as VAT. Based on such local tax payments, the querist is entitled for refund of special additional duty of customs paid at the time of import of the very same goods. Such payment of SAD is effected through debit in DEPB also, in addition to payment by cash, on various occasions by the querist. It appears that during the relevant period i.e. between 2007 and 2012 several claims for refund of SAD either by way of cash refund or by way of re-credit into DEPB were filed with customs authorities. While most of these cases have been finalised and refund allowed as per law, in respect of cases wherever the querist was found eligible to get refund, it is reported that there are a few cases where the claims have not been processed.

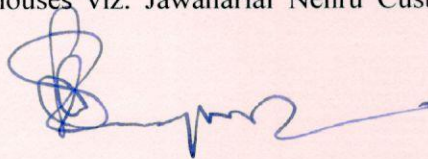
3. **QUERY:**

The querist has made available a chart of such cases and wants to know the options open to it to obtain the refund amounts at this stage.

4. **OPINION:**

4.1 From the chart it is seen that SAD refund claims filed on behalf of various group companies relate to the period 2007 to 2012. There are two cases relating to 2012 where it appears that the claim is on the ground that duty has been paid twice. It also appears that such duty has been paid by way of cash payment and not by debit in DEPB.

4.2 It is to be noted that DEPB scheme is no more in force and validity of the DEPB scrips which were issued earlier when the scheme was in operation have expired. Even during 2010 itself when the scheme was being phased out, there were lot of difficulties experienced by the importing public in getting re-credit in the DEPB licences that were going to be expired within short periods. In this context, apart from giving periodical instructions the Board has given final clarifications and notifications and based on such notifications and circulars issued periodically, one of the custom houses viz. Jawaharlal Nehru Custom



A-2, Srivatsam, 58, Thirumalai Pillai Road, T.Nagar, Chennai – 600 017.

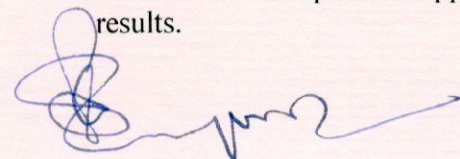
Email: smurugappan53@yahoo.com

Website: www.smurugappan.com

Phone: 044-28340431

House, Nhava Sheva has issued Public Notice No.1/2010 indicating the procedure to be followed by the importers seeking refund of SAD by way of re-credit in the DEPB book. Similar procedure was followed in other Custom Houses. A copy of the public notice issued by Nhava Sheva Customs is enclosed to this opinion. During this period, DGFT came forward to extend the validity period of DEPB scrips. Now, more than 10 years have passed and there is no way of giving life to those DEPB scrips. Even if files are to be traced in respect of re-credit in DEPB such an exercise will not yield any fruitful results. Though the department is under obligation to process the claims in time, especially, in respect of cases involving re-credit in duty credit scrips, at this distant date when the querist also has not followed up regularly with the customs authorities, it will be difficult to convince even High Courts for any relief by exercising writ jurisdiction.

- 4.3 Therefore, in our view, in respect of cases involving re-credit in DEPB, there are no bright chances to get any relief. One option, which will be within the scope of law, is to issue legal notice to customs asking for payment of compensation and then follow it up with filing of a suit against customs wherever the refund claims files are available and acknowledgements also are available. The ground for such a suit will be that the customs authorities have failed to process the claim on time and therefore the querist has been deprived of its financial benefit and accordingly, the customs department is liable to compensate the querist. Such an option, though available in law, will be a tedious one and also can cause strains in the relationship with customs.
- 4.4 In respect of other cases where acknowledgement is not available at all for filing a claim, nothing much can be done and in the absence of any evidence for submitting a claim and when the querist is unable to prove that a valid claim has been filed, it will be futile to follow up such cases to get any relief.
- 4.5 In other cases where acknowledgement is available and cash refund is to be given then the querist can consider following up on regular basis with customs authorities and where there is no file with customs authorities, then reconstruct the file for them by giving copies of all relevant papers. Where there is a file available or reconstructed, along with acknowledgement and only cash refund is due, it will be worth pursuing such cases. If customs authorities are not prepared to process such claims because of this distant date, then in such cases, the querist can exercise its option to approach High Court through a writ which can yield results.



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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.