

CHAPTER IV EXEMPTIONS

The Government under section 25 (1) of the Customs Act, 1962 is empowered to exempt goods either absolutely or subject to such conditions as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon. Some illustrative cases of non-levy/short levy of duties aggregating Rs. 9.72 crore due to incorrect grant of exemptions are discussed in the following paragraphs. These observations were communicated to the Ministry through 14 draft audit paragraphs. The Ministry/department had accepted (till January 2010), the audit observations in 11 draft audit paragraphs with money value of Rs. 9.01 crore, of which Rs. 7.87 crore had been recovered.

4.1 Incorrect grant of exemption

4.1.1 Disposable spinal needles

As per Customs notification no. 21/2002-cus (serial no. 370) dated 1 March 2002, read with notification no. 6/2006-CE dated 1 March 2006, import of specified goods including ‘spinal instruments’ (serial no. E-9) intended for use as ‘assistive devices, rehabilitation aids and other goods for disabled’ are exempt from duty.

M/s Kanji Shavji Parekh (Calcutta) Pvt. Ltd. and M/s Surgiplus, Pondicherry imported (between May and November 2007), eight consignments of ‘Disposable Spinal Needle’ through the Kolkata (Port) commissionerate. The department allowed clearance of the goods at ‘nil’ rate of duty by extending the benefit under the aforesaid notifications. Audit observed that the goods were in the nature of general surgical instruments for enabling smooth penetration for spinal anesthesia and cerebrospinal fluid collection and not spinal instruments meant exclusively for use as ‘assistive devices/rehabilitation aids’ by the disabled/handicapped; hence the exemption was irregular. Thus, incorrect grant of exemption resulted in non-levy of duty of Rs.40.89 lakh.

On the matter being pointed out (April 2008); the department justified (July 2008) the grant of duty exemption on the ground that the importers of similar goods in one of the earlier cases had submitted certificates from various hospitals (including AIIMS, New Delhi) and reputed surgeons to the effect that the imported needles were ‘spinal instruments’ used for operation procedure.

The contention is not tenable because serial number 370 of the above notification allows exemption to goods for use by ‘disabled’ and not for goods for general use. Also, the needles in question were ‘spinal instruments’ for general use for enabling smooth penetration for spinal anesthesia and cerebrospinal fluid collection and not for use by the disabled in particular. Further, the certificates from hospitals and surgeons did not mention the users.

Reply of the Ministry has not been received (January 2010).

4.1.2 RF Telecommunication cable

“RF Telecommunication cable” is classifiable under the Customs tariff heading (CTH) 85444999 and leviable to basic customs duty (BCD) and additional duty (CVD). Further, customs notification 21/2005 dated 1 March 2005 exempt parts, components and accessories of mobile handsets from the levy of BCD and CVD, if the importer follows the procedure under Customs (Import of Goods at Concessional Rate of Duty for the Manufacture of Excisable Goods) Rules, 1996.

M/s Jas Telecom Pvt Ltd. imported (July 2008 to October 2008) three consignments of “RF Telecommunication cable” through Chennai Sea Port. The department classified the imported goods under CTH 85444999 and exempted these from both BCD and CVD under the above notification. Audit scrutiny revealed that the imported items being cables in ‘Reel (Reel=1000 meter)’/rolls, could not be considered either as parts or components or accessories of mobile handsets for allowing the exemption benefit. Further, the importer has also not followed the procedure prescribed in Customs (Import of Goods at concessional rate of Duty for the Manufacture of Excisable Goods) Rules, 1996. Accordingly, the exemption availed of under the aforesaid notification was incorrect and resulted in short levy of duty of Rs. 36.93 lakh which was recoverable alongwith interest.

On this being pointed out (December 2008), the department reported (April 2009) that demand notices had been issued. Report on recovery has not been received (January 2010).

This was reported (October 2009) to the Ministry; its response has not been received (January 2010).

4.1.3 Goods not re-exported

In terms of notification no. 158/95-cus dated 14 November 1995, goods which are manufactured in India and re-imported for reprocessing or refining or remaking etc. are exempt from payment of duty, subject to the condition that the goods are re-exported within six months from the date of re-import or such extended period not exceeding a further period of six months. In the event of failure to comply with the prescribed condition, the importer is liable to pay the duty exempted alongwith interest.

Twelve consignments of iron and steel and articles thereof were imported by M/s Metalink and nine others between November 2006 and August 2007 through the Kolkata (Port) commissionerate, availing of the benefit of duty exemption under the above notification. The importers neither submitted any proof of re-export of the goods nor sought any extension of time. The department did not initiate any action to recover the duty leviable but for exemption. The omission resulted in non-recovery of duty of Rs. 26.08 lakh.

This was pointed out to the department and the Ministry in June 2008/September 2009. Their responses have not been received (January 2010). However, subsequent verification revealed that in three out of the twelve cases, the department had issued show cause notices to M/s Metalink, Kolkata, (August 2008) and adjudicated (March 2009) with the order for recovery of the duty of Rs.10.66 lakh together with interest payable by enforcing the Bond and the bank guarantee.

4.1.4 Leased machinery and spares

In terms of notification no.27/2002-cus dated 1 March 2002, 'leased machinery, equipment or tools' temporarily imported for re-export within six months/one year from the date of import, are exempt from 85 per cent/70 per cent of the aggregate duties of customs. Further, as per judgement of the Supreme Court of India {1997 (96)ELT 214 (SC)}, an accessory when imported with a machine is not eligible for exemption unless it is specifically included in the exemption notification.

M/s Leighton Contractors (India) Private Limited, Mumbai temporarily imported (December 2006 and February 2007) two consignments of machineries such as 'crane barge' and 'utility vessel' alongwith 'spares' on re-export basis through Sikka Custom House under Jamnagar Commissionerate (Preventive). Although spares were not eligible for exemption under the above notification read with the Supreme Court's judgement, yet the department extended the benefit of exemption to them and allowed re-export of the machinery alongwith the spares in August 2007. This resulted in incorrect grant of exemption of Rs. 22.63 lakh.

On the issue being pointed out (May 2008), the department, inter alia, contended (between June and November 2008) that notification no. 27/2002-cus dated 1 March 2002 allowed benefit to all items falling under the First Schedule. As 'spares' fall within the Customs Tariff Act, they are eligible for the benefit. The Supreme Court in the case of Hindustan Sanitaryware and Industries Limited versus the Collector of Customs, Calcutta {1994 (114) ELT 778 (SC)} has held that "spare part though fitted to a machine subsequent to its manufacture, to replace a defective or worn out part, becomes a component of a machine, therefore, is a component part".

Reply of the department is not tenable on the following grounds:

- 'Equipment' is a device that typically provides a mechanical advantage in accomplishment of a task not otherwise possible whereas 'spares' means a part or sub-assembly for substitution, that is ready to replace an identical or similar part or sub-assembly. Thus, 'equipment' is an integral part of the machinery whereas 'spares' are used only for replacement.
- The 1997 judgement of the Supreme Court cited above does not leave any scope for ambiguity as it clearly spells out that any accessory not expressly included in the notification is not eligible for exemption. Further, the notification has selectively included 'equipment' and 'tools' for grant of exemption and 'spares' are not included for any consideration.
- Further, as per judgement of the Supreme Court; 'spare part' achieves the status of a 'component' only after it replaces a defective or worn out part. In the instant case, the spares were not put to use at all, but were re-exported and hence could not be construed as components also.

Reply of the Ministry has not been received (January 2010).

4.1.5 Pop corn (Maize)

Pop Corn (Maize) falling under the CTH 10059000 is assessable to BCD at the rate of 50 per cent ad valorem, under customs notification no. 21/2002 (serial no. 22) dated 1 March 2002. These goods were assessable to 'nil' rate

of BCD as per serial no. 22A of the same notification which was effective from 25 January 2007 to 31 December 2007 in terms of notification 9/2007-cus dated 25 January 2007.

Two consignments of “Pop Corn (Maize)” falling under the CTH 10059000 valued at Rs. 26.66 lakh imported (February 2008) by M/s Goyal International and M/s C.P. Overseas through Chennai (Sea) commissionerate were assessed to ‘nil’ BCD instead of 50 per cent BCD. This resulted in short levy of duty of Rs. 13.73 lakh.

On this being pointed out (July 2008), the department stated (February 2009) that demand notices for Rs. 8.35 lakh and Rs. 5.38 lakh were issued (July 2008) to M/s Goyal International and M/s C.P. Overseas respectively and were confirmed. The department further stated that aggrieved with the order-in-original, M/s Goyal International had filed an appeal with the Appellate Commissioner and the issue was pending a decision. Further progress has not been intimated (January 2010).

Reply of the Ministry has not been received (January 2010).

4.2 Short levy of duty due to mis-classification and incorrect grant of exemption

4.2.1 “Digital Cameras” are classified under CTH 85258020 and “Video Camera Recorders” are classified under CTH 85258030 and assessed to BCD at 10 per cent. “Digital Still Image Video Cameras” are exempt from BCD vide serial no. 13 of Customs notification 25/2005 dated 1 March 2005. The Central Board of Excise and Customs (Board) clarified vide their Circular no. 32/2007 dated 10 September 2007 that the benefit of entry at serial no. 13 of notification no. 25/2005 would be available to Digital Cameras with still image recording as its principal function and would include Digital Cameras that have the capability of recording moving images for limited period of time. However, Digital Cameras that can take both still images and moving images like “Camcorder” or “Video Recorder” falling under tariff item 85258030 are not covered under said entry.

M/s Panasonic Sales and Services India Pvt. Ltd. imported (July to October 2008) three consignments of “Digital Video Cameras” of models SDR H60, VDR D-50 etc, valued at Rs. 2.28 crore, through Chennai, Sea Port. These goods were classified under CTH 85258020 as “Digital Still Image Video Cameras” and assessed to ‘nil’ BCD under the notification cited above. Audit noticed that the imported models of Digital Video Cameras were actually “Camcorders” and, therefore, the imported goods were classifiable under CTH 85258030 as per the Board’s circular mentioned above and assessable to BCD at 10 per cent. The misclassification and incorrect grant of exemption resulted in short levy of duty of Rs. 20.68 lakh.

On this being pointed out (January 2009), the department stated (April 2009) that they had called for detailed explanation from the importer about the functioning of these cameras because it was not sure whether the camera shoots individual still pictures or shoots continuous video. Further progress has not been received (January 2010).

Reply of the Ministry has not been received (January 2010).

4.3 Others cases

In eight other cases involving short levy of Rs. 8.11 crore, the Ministry/department had accepted (till January 2010) audit observations in seven cases and had reported recovery of Rs. 7.79 crore in five cases.