

CHAPTER III

INCORRECT APPLICATION OF GENERAL EXEMPTION NOTIFICATIONS

The Government under section 25 (1) of the Customs Act, 1962 is empowered to exempt 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/excess levy of duties aggregating ₹ 89.31 crore due to incorrect grant of exemption noticed (July 2010 to June 2013) from scrutiny of records for the period May 2009 to March 2013 are discussed in the following paragraphs.

Assessing Officer allowed incorrect exemption from Additional duty of excise on textile articles

3.1 In the Finance Act, 2011, effective from 8 April 2011, all the goods specified in the First Schedule of the Additional duty of excise (Goods of Special Importance) Act, 1957 were deleted from the purview of said Act. Consequently, these goods were exempted under serial no.50 of notification no.20/2006-cus dated 1 March 2006 from the levy of special additional duty of customs which were liable to duty at four per cent in terms of notification no.19/2006-cus dated 1 March 2006.

Several consignments of textile and textile articles falling under the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, imported (April 2011 to March 2013) through Chennai (Sea), Commissionerate, JNCH Mumbai, Kolkata (Air & Port) Commissionerates, by M/s Shree Bahubali Interlinings & others were incorrectly allowed exemption from levy of Special Additional duty of customs in terms of serial no.50 of the notification no.20/2006-cus and notification no.21/2012-cus (serial no.12), even though, they were deleted from the aforesaid First Schedule with effect from April 2011. The exemption allowed under notification nos.20/2006 and 21/2002 was irregular and goods were subject to levy of SAD in terms of notification no.19/2006. This had resulted in short levy of customs duty of ₹ 77.10 crore.

The Deputy Commissioner of Customs, Chennai (Sea) reported (December 2012 to April 2013) partial recovery of ₹ 7.22 lakh along with interest of ₹ 0.70 lakh from five importers and issued demand notice to M/s Cibi Exports, Tirupur. Reply from other Commissionerates had not been received (March 2014).

Further, analysis of ICES 1.5 all India import data for the period April 2012 to March 2013 revealed that similar imports were also made from ports of Mumbai which were incorrectly granted exemption under notification no.20/2006 dated 1 March 2006 effective till 16 March 2012 and in terms of serial no. 12 of notification no. 21/2012-cus from 17 March 2012. This resulted in short levy of customs duty.

Accordingly, Ministry was requested (November 2013) to review all such cases and intimate their status, besides recovering short levy noticed, if any.

Ministry's response had not been received (March 2014).

Assessing Officer levied excess duty on imports

3.2 As per notification no.51/96-cus dated 23 July 1996, goods imported by Public Funded Research Institutes/Universities are exempted from whole of the additional duty of customs leviable under Section 3 of the Customs Tariff Act, 1975.

Audit scrutiny revealed that in case of 2991 items imported by Public Funded Research Units through ACC, Bangalore during the years 2010-11 to 2012-13, the Assessing Officer in contravention of provisions in the aforesaid notification, levied four per cent additional duty thereby resulting in excess levy of **CD** of ₹ 8.79 crore.

This was pointed to the Ministry in June 2013/November 2013, their reply has not been received (March 2014).

Assessing Officer allowed incorrect exemption to 'Windmill Beams'

3.3 'Wind operated electricity generator, its components and parts thereof, including rotor and wind turbine controller' are exempted from levy of additional duty of customs under notification No.6/2006-CE dated 1 March 2006 (serial no.84, List 5-Srl 13). 'Windmill beams' not being a part of the Electricity generator falling under Customs Tariff heading (CTH) 8503 are, therefore, not eligible for additional duty exemption. Instead they merit classification under CTH 7308 as 'Beams, channel, pillars prepared for use in structures' and are leviable to additional duty at the rate of 10 per cent.

Forty five consignments of 'Windmill Beams/Tower section for windmill' imported (January to November 2011) by M/s **Vstas Wind Technology India Pvt. Ltd.**, and two others through Chennai (Sea)/Gujarat Commissionerate were incorrectly allowed exemption from additional duty under aforesaid notification considering them as part of **Wind** operated electricity generator.

Windmill Beams could not be considered as part of the **Wind** operated electricity generator as they are not working parts of the turbine generator and have no operational or mechanical interaction with it. Accordingly, the imported items were not eligible for exemption from additional duty; instead duty was leviable at the rate of 10 per cent under CTH 7308. On a similar issue, it was also judicially held that the **Windmill towers** merit classification under CTH7308 and are not parts of wind operated electricity generator (United States International Commission, Ruling No.HQ 964757 dated 25 Sept 2001). Thus, incorrect grant of exemption resulted in short levy of ₹ 1.50 crore.

When we pointed this out (April 2012/June 2013), there was no response from the department. However, subsequent audit verification revealed that in similar imports (April to November 2011), by other importers (M/s Gamesa **Wind**

Turbine Ltd and M/s RRB Energy Ltd) the department while accepting the audit observation had issued demand notices. Further progress was awaited (March 2014).

Further, analysis of ICES 1.5 all India import data for the period April 2012 to March 2013 revealed that similar imports were also made from various ports of Mumbai and Karnataka, and apparently incorrect exemption granted under aforesaid notifications resulted in short levy of customs duties.

Accordingly, Ministry was requested (November 2013) to review all such cases and intimate their status, besides recovering short levy noticed, if any.

Ministry's response had not been received (March 2014).

Assessing Officer incorrectly allowed exemption to Di-Ammonium Phosphate (DAP)

3.4 As per notification no.4/2006-CE dated 1 March 2006 (serial no.63) Goods classified under Customs Tariff Heading (CTH)/Central Excise Tariff Heading (CETH), other than those which are clearly not to be used (a) as fertilizers or (b) in the manufacture of other fertilizers, whether directly or through the stage of an intermediate product" are exempted from excise duty. Further, as per serial no.4 of notification no.20/2006-cus, fertilizers and all goods for manufacture of fertilizers are exempt from payment of special additional duty of customs (SAD). In addition, serial no.130 of Table B of the ITC HS Export Schedule 2, to the export policy read with the annexed list B, imposes export restriction on 'Di-Ammonium Phosphate (DAP)'. However, specified manufacturers of DAP were listed (export licensing note 1 at list B) who would be allowed to export their own manufactured DAP, subject to intimation to the Department of Fertilizers with a certificate that no concession/subsidy has been claimed.

M/s Mosaic India Pvt. Ltd., cleared (May 2009/December 2010) two consignments of 'DAP (CTH 31053000)' imported¹⁰ through Custom House (Jamnagar) on payment of concessional rate of customs duty availing exemption from C~~D~~ and SAD in terms of aforesaid notifications. Audit noticed that:-

- (i) The imported DAP was intended to be re-exported and not to be used as fertilizer, as per declaration given (February 2010) by the importer.
- (ii) The Department of Fertilizers (New Delhi) granted permission (September 2010) to the importer for exports of the imported DAP on the ground that the importer did not claim concessions on imported DAP, even though, export policy allows export of DAP manufactured by exporters only enlisted in list B.

¹⁰ Bill of Entry (BE) No.8 dated 28 May 2009 (2640 MT) was filed for home consumption at Custom House (CH) Jamnagar. BE No.F-~~YM~~-01 dated 4 July 2009 (2199.58 MT) was filed for warehousing at CH Jamnagar which was subsequently cleared through Central Excise (AR-V Jamnagar) by importer vide Ex-bond BE No.1/EB/10-11 dated 1 December 2010.

In the instant case the importer availed benefit of concessional rate of duty while importing the DAP, although imports meant to be re-exported were not used for manufacture of fertilizers in contravention of the EXIM Policy. In addition, the importer was not included as manufacturer in the prescribed export list B of the EXIM Policy. These two restrictions were not taken into account by both the departments (Department of Fertilizers, Customs) before incorrectly allowing export of DAP. Thus, incorrect grant of exemption resulted in short levy of customs duty to the tune of ₹ 1.35 crore.

The Superintendent (Central Excise Range-V) Jamnagar stated (June/July 2011) that Central Excise notification no.4/2006 (serial no.63) and Customs notification no.20/2006 (serial no.4) provide full exemption from CVD and SAD to fertilizers and since DAP is a fertilizer, exemption was admissible.

Department's reply may be viewed in the context of the fact that since the goods were re-exported instead of being used for the intended purpose as fertilizers, benefit under aforesaid notifications was not admissible. Further, allowing re-export of the imported DAP was also not in order, since the importer was neither a listed DAP exporter (as per schedule 2 of the EXIM Policy) nor did it export its own manufactured DAP.

Assistant Commissioner (Customs), Jamnagar informed (September 2011) that a show cause notice was being issued to the importer and Central Excise Superintendent has been asked to take action for recovery of the amount.

Meanwhile, Commissioner (Appeals), Rajkot rejected (February/March 2012) appeals of the importer against order in original passed by the Deputy Commissioner (Central Excise) Jamnagar (September 2011) confirming recovery of the amount objected, on the grounds of not depositing the pre-deposit amount of ₹ 30 lakh. Subsequently, the importer filed an appeal with CESTAT (Ahmedabad) which directed (December 2012) it to submit a pre-deposit of ₹ 1 lakh and also directed the first appellate authority to take up the matter for disposal on merits of the case. Further progress was awaited (March 2014).

Ministry's response had not been received (March 2014).

Assessing Officer incorrectly allowed exemption to parts of DD

3.5 Parts of DD are classifiable under Customs tariff heading (CTH) 85229000 which are not eligible for exemption from Basic customs duty (BCD) under customs notification no.25/2005 dated 1 March 2005 (serial no.11). BCD is leviable at the rate of 10 per cent on import of these parts.

M/s Sidhi Enterprises and M/s Ktman Traders imported (February to August 2012) nine consignments of 'DD parts' at a combined assessable value to ₹ 2.87 crore through ICD, Tughlakabad, New Delhi. The Assessing officer incorrectly allowed exemption from BCD under aforesaid notification treating them as 'Printed circuit assemblies for telephone answering machines', even

though, the imported goods were parts of DD and not eligible for such exemption. This resulted in short levy of duty of ₹ 34.18 lakh.

Ministry reported (August 2013) recovery of ₹ 5.08 lakh from M/s Ktman Traders and issue of protective demand to M/s Sidhi Enterprises.

Further, analysis of ICES 1.5 all India import data for the period April 2012 to March 2013 revealed that similar imports were also made from various ports of Delhi and Tamil Nadu, in which misclassification had resulted in short levy of duty.

Accordingly, Ministry was requested (November 2013) to review all such cases and intimate their status, besides recovering short levy noticed, if any.

Ministry's response had not been received (March 2014).

Assessing Officer, Kolkata (Port) allowed incorrect exemption to re-imported goods

3.6 As per provision of notification no.158/95-cus dated 14 November 1995, re-import of exported goods, within three years from the date of exportation, for repairing or reconditioning, shall be exempted from levy of whole of the duty of customs and additional duty, subject to the condition that the importer will execute a bond, undertaking to re-export the said goods after repair within six months from the date of re-importation. In case of failure to re-export the same within prescribed time, the importer is liable to pay an amount equal to the difference between the duty levied at the time of re-import and the duty leviable on such goods at the time of importation but for exemption.

M/s. Tata International Ltd. re-imported (June 2010) 'Machinery part for Aluminium Smelter', which were exported earlier in August 2009, through Commissionerate of Custom (Port) Kolkata for repairing, without payment of duty under aforesaid notification. The Provisional Duty (PD) Bond executed by the importer in compliance to the conditions of the said notification was cancelled (February 2011) by the department on the basis of the re-export documents submitted (November 2010) by the importer. However, scrutiny of the shipping bill, through which the goods were re-exported, revealed that the re-exported goods were not the same as the imported goods but were supplied as replacement of the re-imported goods which was evident from the declaration of the importer on the Shipping Bill. Thus, the condition of notification no.158/95 to re-export the imported goods after repair remained unfulfilled for which duty exemption benefits amounting to ₹ 12.43 lakh was recoverable from the importer.

Assistant Commissioner Custom House, Kolkata reported (December 2012) that a demand Notice had been issued (December 2012) to importer for payment of duty along with applicable interest.

Further, analysis of ICES 1.5 all India import data for the period April 2012 to March 2013 revealed that similar imports were also made from various ports of Delhi, Mumbai, Kolkata, and Karnataka and apparently granted incorrect exemption under aforesaid notification resulting in short levy of customs duties.

Accordingly, Ministry was requested (November 2013) to review all such cases and intimate their status, besides recovering short levy noticed, if any.

Ministry's response had not been received (March 2014).

Assessing Officer incorrectly allowed exemption to Titanium dioxide

3.7 In terms of serial no.552 and 555 of notification no.21/2002-cus dated 31 March 2002, 'Titanium dioxide' falling under CTH 28230010 and 'Pearl set pigment (Titanium dioxide)' classifiable under CTH 32061110 are not eligible for concessional rate of duty. Further, the product information accessed through Internet revealed that the item under description 'Hombitan' is nothing but the chemical 'Titanium dioxide'.

M/s Sumeet Industries Ltd. and others imported (August 2009 – June 2012) 15 consignments of 'Titanium dioxide' through JNCH, Mumbai, Kolkata (Port) and Custom House, Kochi. Of these, bills of entry (BsE) in respect of two showed the item description as 'Hombitan' and others as 'Titanium dioxide'. These goods were mis-classified under CTH 28230010/32061190 and assessed to concessional rate of duty under notification no.21/2002-cus dated 31 March 2002, even though, imported goods are not eligible for concessional rate of duty. Thus, incorrect extension of exemption benefit resulted in short levy of duty of ₹ 10.80 lakh.

The Assistant Commissioner of Customs, IAD (Import), JNCH reported (December 2010/April 2013) that an amount of ₹ 3.41 lakh was recovered from the importers in respect of five BsE and a demand notice was also issued in one case. The status in respect of the remaining BsE is awaited (March 2014).

Further, analysis of ICES 1.5 all India import data for the period April 2012 to March 2013 revealed that similar imports were made from ports of Mumbai, and Delhi and cleared at concessional rate of customs duty granting notification benefit. This resulted in short levy of customs duty.

Accordingly, Ministry was requested (November 2013) to review all such cases and intimate their status, besides recovering short levy, if any noticed.

Ministry's response had not been received (March 2014).