

CHAPTER VI

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 of duties aggregating ₹ 1.52 crore due to incorrect grant of exemption noticed (October 2013 to January 2015) are discussed in the following paragraphs.

Incorrect exemption of CVD without required test report

6.1 In terms of notification no.7/2012-CE dated 17 March 2012, as amended by notification no.8/2013 dated 1 March 2013, 'All goods of cotton, not containing any other textile material' falling under Chapters 61, 62 and 63 of the Central Excise Tariff Schedule (except 6309 00 00 and 6310) attract countervailing duty (CVD) equivalent to Central Excise duty at the concessional rate of 6 per cent ad valorem instead of the tariff rate of 12 per cent ad valorem.

The CBEC vide circular no.23/2004-cus dated 15 March 2004, issued instruction that in cases where 25 percent of samples are required to be sent for testing hazardous dyes to the Textiles Committee Laboratory under the Ministry of Commerce, the testing for composition should also be done at the Textile Committee laboratory to avoid duplication. However, where no test of azo hazardous dyes are required as per the DGFT notification, the testing for composition should be carried out at the Central Revenue Control Laboratory (CRCL) - in house testing laboratory.

Audit scrutiny of imports of readymade garments through the Petrapole Land Custom Station (LCS) for the period from 1 April 2013 to 31 March 2014 revealed that garments declared as made of cotton were routinely allowed benefit of assessment at concessional CVD rate of 6 per cent instead of the tariff rate of 12 per cent without drawal of 25 percent of samples and testing thereof to confirm the composition of the goods. Instead, a combined Azo dye cum Composition test report from Bangladesh University of Textiles (BUT), Dhaka, filed by the importers, was relied upon to allow the benefit of concessional rate of CVD. However, the BUT, Dhaka was not approved as a testing agency for acceptance of fabric composition tests, either by the CBEC or the DGFT. Accordingly, grant of CVD exemption of ₹ 41.75 lakh in 42 test checked imports without required test report, was irregular.

On this being pointed out (March 2014), the Customs department contended (February 2015) that the BUT, Dhaka's pre-shipment certificate was acceptable as it was an accredited entity to issue the said certificate because the Deputy High commission for the people's Republic of Bangladesh informed the Customs that BUT, Dhaka was authorized by the Government of Bangladesh to issue the certificate regarding Azo and hazardous dyes.

The Department was informed (April 2015) that their reply was not tenable because the pre-shipment certificate was required as per conditions of Import Policy and instructions issued by Ministry of Commerce and Ministry of Finance (March 2004) to ensure absence of the hazardous dye in the imported textiles & Textiles articles and not for composition i.e textile/non-texturised or containing material other than cotton. But in none of the above mentioned instructions, the MoC/MoF instructed to accept the Textile/Textile articles composition certification in these Pre-shipment certificates.

Audit is flagging the issue not about presence of hazardous dyes in the imported material but clearance of the imported textile material at concessional rate of duty without testing composition of textile material i.e. "Whether containing textile material other than cotton or not" for which pre shipment certificate of BUT is not sufficient. Tests for composition of imported textile/textile articles have to be carried out either at the In-house Central Revenue Control Laboratory (CRCL) or Textiles Committee laboratory under the Ministry of Commerce for deciding textile material content.

Ministry in their reply (December 2015) reported that after review of similar cases SCNs have been issued to concerned importers for differential duty amounting to ₹ 1.14 crore which includes amount of ₹ 41.75 lakh pointed out by audit.

Incorrect exemption of Basic customs duty

6.2 'Projectors' that are solely or principally used in an automatic data processing system are classifiable under Custom Tariff Heading (CTH) 85286100. Whereas other projectors which are capable of working with automatic data processing machines as well as television and video are classifiable under CTH 85286900.

M/s MIRC Electronic Ltd., had imported (March to June 2013) eight consignments of 'Projectors' of various models through ACC, Mumbai. These goods were classified under CTH 85286100 and assessed at concessional rate of duty under serial no.17 of notification no.24/2005-cus dated 1 March 2005.

Audit noticed from the products catalogue that the imported models of 'Projectors' were having video input and Composite Video input provision and hence could be used with an automatic processing system as well as with Television and Videos. Accordingly, the imported goods merited classification under CTH 85286900 and leviable to BCD at the rate of 10 per cent. Thus, extending the benefit of aforesaid exemption notification and the misclassification resulted in short levy of duty of ₹ 40.85 lakh.

On this being pointed out (July 2015), the Ministry while not admitting the observation stated (December 2015) that as per the catalogue submitted by the importer, the projector models imported (112i, 114i ST) does not have S-Video input. However, to protect the revenue interest a demand cum less charge notice has been issued to the importer. Documentary evidence in support of their reply has not been furnished.

The reply is not tenable because the website of the supplier www.infocus.com/projetors/IN114 or IN112 clearly specifies that these projectors have S-Video connections.

6.3 Similarly, M/s PID Pvt. Ltd., and four others had imported (March to June 2013) seven consignments of 'Projectors' of various models through ACC, Mumbai. These goods were classified under CTH 85286100 and assessed at concessional rate of duty under serial no.17 of notification no.24/2005-cus dated 1 March 2005.

Audit noticed from the products catalogue that the imported models of 'Projectors' were having video input and Composite Video input provision and hence could be used with an automatic processing system as well as with Television and Videos. Accordingly, the imported goods merited classification under CTH 85286900 and leviable to BCD at the rate of 10 percent. Thus, extending the benefit of aforesaid exemption notification and the misclassification resulted in short levy of duty of ₹ 14.66 lakh.

This was pointed to the Department/Ministry in April 2014/July 2015, their reply has not been received (January 2016).

Exemption to Pre-painted coils of iron or non alloy steel

6.4 'Flat rolled products of iron or non alloy steel' are classifiable under Chapter 72 in accordance with the specification therein. Further as per serial no.334 of notification no.12/2012-cus dated 17 March 2012 (as amended) BCD on all goods other than seconds and defective falling under Customs tariff heading (CTH) 7210 is leviable at the rate of 7.5 per cent. While, seconds and

defectives goods falling under Chapter 72 are leviable at the rate of 10 per cent.

M/s Garg Sales Corporation imported (May to July 2014) 14 consignments of 'MS Pre-painted in coils/MS Defective Pre-painted in coils' through ICD, Tughlakabad. The goods were classified under CTH 72109090 and assessed to concessional duty BCD at the rate of 5 per cent after granting benefit of serial no.330 of aforesaid notification.

Audit scrutiny revealed that aforesaid goods are not eligible for benefit under aforesaid serial no.330, rather are covered under serial no.334 of the notification except seconds and defective and leviable to BCD at the rate of 7.5 per cent. Thus, incorrect grant of notification benefit had resulted in short levy of duty amounting to ₹ 28.03 lakh.

This was pointed to the Department/Ministry in August 2014/July 2015, their reply is awaited (January 2016).

Refund of special additional duty without fulfillment of conditions

6.5 The additional duty of custom (SAD) collected at the rate of 4 per cent under sub-section (5) of Section-3 of the Custom Tariff Act, 1975 on goods imported into India for subsequent sale may be refunded to the importer subject to compliance with the conditions of the notification no.102/2007-cus dated 14 September 2007. The conditions 2(b) of notification specify that refund of SAD is available only if the importer, while issuing the invoices for sale of the imported goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the additional duty of customs levied under sub section (5) of section 3 of the Customs Tariff Act, 1975 shall be admissible.

To ensure the compliance of this condition the importers were required to submit the copy of the sale invoices in terms of condition 2(e) (ii) of the aforesaid notification. However, on representation from the importers to minimize the paper work, the CBEC vide circular no.16/2008-cus {Para 2(iii)} dated 13 October 2008 decided to accept the copy of the sale invoices in the electronic form (including the form of CD) subject to submission of a paper declaration by the applicant indicating the invoice numbers contained in the media and subscribing to their truthfulness.

M/s. A. M. Cables Pvt. Ltd. and four other importers were sanctioned (August 2012 to May 2014) ₹ 13.96 lakh by the Kolkata (Port) Commissionerate as refund of SAD paid on their imported goods which were claimed to be subsequently sold in India. In all these cases, except one, the applicants had

submitted the copy of sale invoices in the electronic form in CD, as an evidence of sale of their imported goods. However, scrutiny of the sale invoices of all these cases revealed that none of these sale invoices raised by the applicants on the buyers of the imported goods had the endorsement of the non-admissibility of Cenvat credit on it, as required under condition 2(b) of the notification dated 14 September 2007. These claims of refund did not fulfil the prescribed conditions of notification dated 14 September 2007 accordingly, grant of SAD refund of ₹ 13.96 lakh was irregular.

On this being pointed out (October 2013, January 2014/January 2015) the department intimated (December 2014) recovery of ₹ 3.51 lakh from two importers (M/s A.M. Cables Pvt. Ltd., and M/s Select Marketing overseas Enterprise). In respect of other three importers, the department contended (June 2015) that the importers in their replies expressed helplessness in including the required endorsement on the soft copy of sale invoices as there was no option of affixing self declaration on the soft copy of sale invoices, for which a self declaration on importer's letter head with the required endorsement enclosed with the invoices was accepted by the department for fulfilment of the requirement of conditions of notification.

The Department was informed (June 2015) that importer's contention that the required endorsement was not possible in the soft copy of the sale invoice was not correct as similar endorsement was found to be there in the soft copy of sale invoices submitted in respect of other refund claims. Moreover, a separate self declaration/endorsement by importers on their letter head along with the sale invoices does not fulfil the motive behind the requirement of said endorsement as per prescribed conditions of aforesaid notification dated 14 September 2007, as it could not stop the buyers from availing the CENVAT credit on such purchase invoices which may result in double refund. Response of the department was awaited (January 2016).

The matter was reported to the Ministry in September 2015, their response is awaited (January 2016).

Exemption to 'Tricycles, scooters, pedal cars and similar wheeled toys and parts thereof

6.6 'Tricycles, scooters, pedal cars and similar wheeled toys dolls' etc. are classifiable under Customs tariff heading (CTH) 9503 and assessable to BCD at the rate of 10 per cent.

M/s National Impex imported (July 2013 to March 2014) 'Toy children bike/Scooter Car, Tricycles' through ICD, Tughlakabad. The imported goods

were classified under CTH 95030090 and assessed to BCD at the rate of 10 per cent with tariff concessions of 43 per cent under notification no.72/2005 dated 22 July 2005 (serial no.427 of part A).

Audit scrutiny revealed that benefit of serial no.427 of part A of aforesaid notification is applicable to goods other than 'Tricycles, scooters, pedal cars and similar wheeled toys, dolls, carriages weapons and parts' thereof. However, in the instant case the imported goods were baby tricycles/children toy, car/scooters etc. and similar wheeled toys of a kind used as ride on vehicles for children and thus do not eligible for benefit of serial no.427 of part A of custom notification no.72/2005. Thus incorrect grant of notification benefit resulted in short levy of duty amounting to ₹ 12.49 lakh.

On this being pointed out (July 2015), the Ministry reported (December 2015) issue of demand cum show cause notice to the importer.