

### **CHAPTER III**

#### **INCORRECT APPLICATION OF GENERAL EXEMPTION NOTIFICATIONS**

Government under section 25 (1) of the Customs Act, 1962 is empowered to exempt either fully or subject to such conditions as may be stipulated in the notification, goods of any specified description, from the whole or any part of duty of Customs leviable thereon. Customs authorities are tasked with implementing the exemption notifications by ensuring that the condition prescribed in the said notification are fully met before exemptions could be granted. During test check of records (May 2015 to April 2017), 17 cases of incorrect grant of exemption have been noticed involving total revenue implication of ₹ 17.35 crore. Out of these, 13 cases are discussed in the following paragraphs and four cases which have been accepted by the department and recoveries made/ recovery proceedings initiated are mentioned in **Annexure 5**.

#### **3.1 Irregular refund of special additional duty (SAD) under notification no.102/2007-cus dated 14 September 2007**

In terms of notification no.102/2007-cus dated 14 September 2007, imported goods intended for subsequent sale are exempted from SAD leviable under section 3(5) of the Customs Tariff Act, 1975, by way of refund of same, subject to payment of appropriate sales tax on sale of the said goods, and providing copies of invoices of sales of such imported goods along with the refund claim. Further, as per section 8 of the Central Sales Tax Act (CST) 1956, if the dealer sold the goods to another registered dealer, in course of inter-state trade, he shall be liable to pay CST at two percent or at the rate applicable on such goods under State Value added tax (VAT) Act, whichever is lower, along with submission of a declaration in the Form-C, obtained from the prescribed authority, duly filed in and signed by the registered dealer to whom the goods are sold.

Audit noticed cases of irregular refund of SAD by deploying various methods discussed below:

#### **Refund of SAD on the goods transferred/sold without requisite return or payment of CST/VAT**

**3.1.1 The SAD refund under aforesaid notification is subject to the conditions that the importers provide copies of (i) Document evidencing payment of the said additional duty; (ii) Invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed and (iii) Documents evidencing payment of appropriate sales tax or value added tax, as the case may be on sale of such imported goods.**

**Under the CST, Act 1956, transfer of goods from a head office to branch/agent does not amount to sale and sales tax is not leviable on such transactions. In such cases, as per section 6A (1) of CST Act 1956, the burden to prove that the transfer of goods is otherwise than by way of sale lies on the dealer for which he shall have to furnish declaration (in form F) containing the prescribed particulars duly supported by evidence of transportation of such goods.**

**Commissionerate of Customs (Port), Kolkata sanctioned refund of SAD of ₹ 22.25 lakh to M/s Shree Ambica Iron Industries, Kolkata in June 2014 against import of five consignments of “Power Tiller” effected between May and August 2013. The imported goods were said to be moved to the state of Odisha by way of transfer. However, neither the mandatory certificates in Form F for stock transfer nor Form C for payment of CST at lower rate were furnished with the refund claim.**

**Audit also noticed other irregularities/mis-declaration of Tax Identification Number (TIN) in the invoices,**

- i. Tax Information Number (TIN) No.19292692005 mentioned by M/s Shree Ambica Iron Industries in its challan cum tax invoices issued to consignment agent (Assam SAI Pvt. Ltd., Odisha), was actually pertaining to M/s Assam SAI Motors Pvt. Ltd., Nanda Mullick lane Kolkata-700006, West Bengal as verified from website of the Department of Commercial Tax of the Government of West Bengal.**
- ii. The goods were stated to be sold by the consignment agent to M/s New Royal Motors having TIN No.2177650030, but the said TIN was not found at the website of Odisha Government’s Commercial tax department.**
- iii. Certificate issued by M/s Ritesh Shah and Associates (Membership No.063069), Chartered Accountant was undated.**

**As the importer did not satisfy the condition 2 (d) of aforesaid notification by not furnishing evidence for payment of appropriate sales tax or VAT, refund of SAD amounting to ₹ 22.25 lakh was irregular.**

**The matter was pointed to the department in May 2015, their reply has not been received (September 2017).**

#### **Refund of SAD against invalid sales invoices**

**3.1.2 Commissionerate of Customs (Port), Kolkata sanctioned refund of SAD ₹ 11.64 lakh to M/s Puyang Refractories Group Company Private Limited in November 2014 against sale of imported goods between November 2013 and March 2014. Audit scrutiny revealed that no evidence for appropriate tax**

was submitted because sales made at concessional CST rate of two percent were not supported by mandatory declaration in Form –C. Therefore, goods were supposed to be sold at higher rate of sales tax/VAT rate of five percent, which was not done.

Moreover, out of the above six, in five cases sales invoices produced in support of the claim were unreliable because the names of buyers and selling date were found to be different in sale invoices vis-a-vis CST return furnished with the claim.

Thus, veracity of documents on which department had allowed refund could not be fully substantiated by Audit. Therefore, refund of ₹ 11.64 lakh was irregular. The matter was brought to the notice of the department in April 2016/February 2017, their reply has not been received (September 2017).

#### **Refund of SAD on the basis of bogus invoices**

**3.1.3** M/s Daffodils India Private Limited had been allowed (April/May 2014) two refund claims of SAD totalling ₹ 10.26 lakh by Kolkata Port Commissionerate in respect of imported goods stated to be sold through branch transfer. However, it was observed that the stock transfer was neither supported by prescribed Form 'F' nor mentioned in the tax return (part 1: list of stock transfer consignments received from other states) for the relevant period thereby implying that there was no stock transfer. Further, in the Annexure submitted along with the refund claim, the quantity sold through consignment agent/stockist was also shown as nil. Thus, in the absence of evidence regarding stock transfer the inter-state movement of the instant goods shall be deemed, as per the CST Act, 1956 to have been occasioned as a result of sale and which are liable to sale tax. Accordingly, evidence of payment of appropriate sales tax/vat for refund of SAD in the instant case would be the documents pertaining to the inter-State sales and not those pertaining to the sales by the branch/agent, as was submitted.

It was also observed that the sale invoices submitted against the two refund claims, though issued in the same financial year to different buyers, bore same serial numbers indicating the possibility of the invoices being bogus/fictitious and unrelated to the VAT/CST challans showing payment of appropriate sales tax/VAT.

Thus, refund of SAD amounting to ₹ 10.26 lakh claimed on the basis of apparently bogus invoices was irregular and not in compliance to the conditions of the aforesaid notification.

On this being pointed out (October 2015), Commissioner of Customs, Kolkata Port informed (February 2017) that demand cum show cause notices have

been issued for recovery of the amount refunded. Further progress is awaited (September 2017).

#### **Refund of SAD on the basis of forged CA certificate**

**3.1.4 Customs Commissionerate, Kolkata Port sanctioned ₹ 10.78 lakh for refund of SAD to M/s Jagruti Componics Private Limited and M/s S.K. Timber & Company between May and November 2014 in three cases. In support of their claim the importers submitted certificates from a CA named Shri P.K. Agarwal, (membership number 056186) proprietor of the firm Agarwal & Company (firm registration no.322280E) with two different addresses of Kolkata in their certificates submitted for the aforesaid two firms. During audit scrutiny, details of the firm were verified from the website of Institute of Chartered Accountants of India {(ICIA) [www.icag.org](http://www.icag.org)} and it was noticed that CA membership number 056186 was registered in the name of “Agarwal Pawan Kumar” and not “P.K. Agarwal” mentioned in the papers submitted. Similarly, firm registration number 322280E was registered in the name of “Agarwal Pawan & Co.” and not “Agarwal & Co,” as stated in respect of certificates furnished for aforesaid two firms. The address of the firm registered with registration number 322280E on the ICAI website was given as “Century Plaza 81 Netaji Subhash Road, 3<sup>rd</sup> Floor, Room No.303, Kolkata” which differed from the address mentioned in respect of papers submitted by M/s Jagruti Componics Private Limited i.e. Mukherjee Building, 3 No., Central Avenue 3<sup>rd</sup> floor, Kolkata. Further audit verified the signatures and seal of Shri Pawan K. Agarwal available on records of the of department with those of Shri P.K. Agarwal in the certificate submitted by the M/s Jagruti Componics Private Limited and noticed a mismatch of signature and seal.**

**In view of different firm names, different addresses and mismatched signatures the veracity of the claims could not be fully substantiated.**

**In light of the foregoing, the CA certificates submitted in the above three cases of M/s Jagruti Componics Private Limited and M/s S.K. Timber & Company purportedly issued in the name of Shri P.K. Agarwal of the firm Agarwal & Company didn't seem to be genuine, hence, unacceptable to audit. Therefore, not only the refund of SAD amounting to ₹ 10.78 lakh was irregular and needs to be recovered along with interest thereon amounting to ₹ 2.25 lakh but also claims made by exporter on the basis of forged documents need proper investigation.**

**This was pointed to the department in October 2015 and to the Commissioner of Customs, Kolkata port in January 2017, but no reply has been received (September 2017).**

Audit had reported similar cases in the previous year's Audit Report No. 1 of 2017 (Paragraphs 7.1 and 7.2 refers), in response to which the Ministry had informed that the concerned Commissionerates had reported the matter to the vigilance branch. Though, action has been initiated in respect of cases pointed out by Audit, persistent occurrence of such cases is indicative of larger systemic lacunae which need to be addressed through stricter scrutiny of the CA certificates and other documents that are relied upon by the Commissionerates for granting refunds. Ministry's response falls short of assurance on this account.

### **3.2 Non levy of countervailing duty (CVD) due to incorrect exemption under notification no.39/1996-cus**

**3.2.1** Imports made by a person authorized by Government of India or the contractors of Government of India, Public Sector Undertakings of Central/State Government or the sub-contractors of such undertakings are not exempted from the whole of additional duties of Customs in terms of notification no.39/1996-cus (serial nos. 9 and 10) dated 23 July 1996 as amended by notification no.29/2015-cus dated 30 April 2015, (paragraph 2 serial no. ix) w.e.f. June 2015, read with notification no.30/2012-cus dated 8 May 2012. Accordingly, imports by contractors/sub-contractors are assessed under serial no.9A/10A of the notification and attract additional duties of Customs at 12.5 percent.

Several consignments of goods relating to Defence and Internal Security Forces imported (June 2015 to March 2016) through Chennai (Sea & Air) Commissionerates by contractors of Government of India, Public Sector Undertakings of Central Government and sub-contractors of Government Undertakings, were incorrectly exempted from additional duties of Customs under serial nos. 9 and 10 of notification no.39/1996-cus dated 23 July 1996 instead of levying additional duties of Customs at 12.5 percent.

This has resulted in non-levy of CVD amounting to ₹ 7.24 crore in 118 consignments.

On this being pointed out (May/July 2016), the department reported (June 2017) recovery of duty amounting to ₹ 21.19 lakh which included interest of ₹ 3.26 lakh in five consignments and issued demand notice to 8 importers. Further progress is awaited (September 2017).

**3.2.2** Online test audit of Bill of entry (BE) at Sea Port Cochin, Air Cargo Complex (ACC), Nedumbassery and ACC, Thiruvananthapuram for the period from 1 June 2015 to 19 March 2016 revealed that 113 consignments cleared by various importers other than Government of India/State Government were exempted from CVD/SAD assessed under serial no.9 & 10 of notification

no.39/1996-cus dated 23 July 1996 although the exemption was withdrawn vide notification no.29/2015-cus dated 30 April 2015. This resulted in non levy of duty of ₹ 2.39 crore.

On this being pointed out (March/April 2016), the department intimated (February 2017) recovery of ₹ 56.91 lakh along with interest in respect of 29 consignments cleared by importers through ACC, Nedumbassery. Central Excise and Customs Commissionerate, Trivandrum intimated (February 2017) recovery of ₹ 0.46 lakh in one consignment and issued show cause notice in remaining 47 consignments. While, Customs House, Kochi intimated (August 2016) that demand notices have been issued to the importers. Further progress is awaited (September 2017).

### **3.3 Short levy of Basic Customs duty (BCD) on import of non edible grade vegetable fats and oils under notification no. 12/2012-cus**

Import of edible grade refined groundnut oil (CTH 1508)/Sunflower oil (CTH 1512) and edible grade refined other vegetable oils (CTH 1515) are eligible for concessional rate of BCD under notification no.12/2012-cus (serial no.58) dated 17 March 2012. However, import of these refined oils for industrial use is not eligible for concessional rate of BCD.

Audit paragraph on incorrect application of notification benefits in similar imports has already been included in CAG's Audit Report No.12 of 2014 (para No.5.10), where the Ministry had admitted the para. Nevertheless similar cases continue being noticed in Audit, indicating that Board has not initiated corrective measures to address classification issues resulting in short levy of BCD. Ministry's comments are awaited (September 2017).

The cases are discussed below:

**3.3.1** M/s Suru Chemicals and 13 others imported (April 2015 to December 2016) 27 consignments of 'refined peanut oil/olive oil/almond base oil/sunflower oil and walnut oil/Vegetable oils' through JNCH, Nhava Sheva, Mumbai. The imported goods were classified under CTH 1508/1509/1515/1512 and levied concessional rate of BCD allowing benefit of notification no.12/2012 serial no.58. Audit noticed that the goods imported are for industrial use and not for edible purpose as such not eligible for aforesaid notification benefit. The misclassification and incorrect grant of exemption resulted in short levy of duty amounting to ₹ 3.77 crore.

On this being pointed out (March/April 2017), the Assistant Commissioner, Gr.II, JNCH, Nhava Sheva stated (April 2017) that a show cause notice is being issued. Reply in respect of remaining 13 importers is awaited (September 2017).

**3.3.2** M/s Scope Ingredients Private Limited imported (August 2014/October 2015) four consignments of 'Refined Shea Butter' through Sea Customs, Chennai. These goods were assessed at concessional rates of duty as applicable to edible grades of oils. Audit scrutiny revealed that the goods imported are for cosmetic uses as described, in the item description of the goods and as verified from the supplier's website ([www.olvea.com](http://www.olvea.com)). Accordingly, the imported goods are not fit for edible purposes; as such the exemption allowed was incorrect. This resulted in short levy of duty of ₹ 54.70 lakh.

On this being pointed out (February 2016), the department stated (May 2017) that importer has been directed to pay the short levy failing which appropriate action will be initiated under Customs Act 1962. Further progress is awaited (September 2017).

### **3.4 Non levy of CVD on import of casting for wind operated electricity generators**

In terms of notification no.1/2016-cus (CVD) dated 19 January 2016, castings for wind operated electricity generators (WOG) whether or not machined, in raw, finished or sub-assembled form or as a part of a sub-assembly or a part of an equipment/component meant for WOG, falling under CTH 84834000, 85030090 originating from People's Republic of China and exported by any exporter, are leviable to CVD at 13.44 percent of landed value.

M/s Gamesa Renewable Private Limited and three others imported (January to March 2016) various machined casting parts of WOG such as main axle, hollow shaft, machined hub etc. from People's Republic China through Chennai (Sea)/JNCH, Mumbai Customs. The goods were classified under CTH 85030090 but cleared without levying the CVD on the landed value under aforesaid notification. This resulted in non levy of duty of ₹ 1.53 crore.

On this being pointed out (March 2016/ January 2017), the department reported (November 2016) recovery of ₹ 0.40 crore from M/s Suzlon Energy and issued (March 2017) show cause notices to two importers (M/s Leit Wind Shriram Manufacturing Ltd., and M/s Regen Powertech Pvt. Ltd.). Further progress is awaited (September 2017).

### **3.5 Incorrect exemption of CVD on Mono Ammonium Phosphate imports**

"Mono Ammonium Phosphate a water soluble fertilizer" is classifiable under CTH 31054000 and leviable to CVD at the rate of one percent under notification no.12/2012-CE serial no.128 dated 17 March 2012.

M/s Vedant Fertilizers (India) Private Limited and 16 others imported (January 2015 to December 2016) 37 consignments of 'Mono Ammonium Phosphate'

from China through JNCH, Nhava Sheva, Mumbai. The goods were classified under CTH 31054000 but cleared without levying CVD under aforesaid notification serial no.127 treating imported Mono Ammonium Phosphate as input used in the manufacture of other fertilizers. Mono ammonium phosphate is a water soluble fertilizer and not an input for manufacture of fertilizers as evident from Customs notification 12/2012-cus serial no.202 dated 17 March 2012, accordingly leviable to one percent CVD under serial no.128 of CE notification. This resulted in short levy of duty to the extent of ₹ 17.01 lakh.

On this being pointed out (March 2017), the department stated (March/May 2017) that the concerned importers have been issued letters for production of relevant documents, while one importer (M/s Sneh Corporation) has paid ₹ 0.09 lakh. Further progress is awaited (September 2017).