

CHAPTER VII

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 stipulated in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon. During test check of records (December 2011 to January 2016), nine cases of incorrect grant of exemption have been noticed involving total revenue implication of ₹ 5.64 crore. Out of these, seven cases are discussed in the following paragraphs and two cases which have been accepted by the department and recoveries made/ recovery proceedings initiated are mentioned in **Annexure 11**.

Refund of additional duty of customs (SAD) on the basis of fabricated documents

7.1 In terms of notification no.102/2007-cus dated 14 September 2007, the goods falling in the first schedule to the Custom Tariff Act 1975, when imported into India for subsequent sale shall be exempted from whole of the additional duty of custom (SAD) leviable thereon under sub-section (5) of section (3) of the Customs Tariff Act subject to fulfillment, by the importer, of the condition laid down in paragraph 2 (a) to paragraph 2 (e) of the notification. To ensure compliance to these conditions, the importers were required in terms of paragraph 2 (e) to provide, inter alia, 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 (iii) documents evidencing payment of appropriate sale tax or value added tax, as the case may be, by the importer, on sale of such imported goods. CBEC through its circulars dated 28 April 2008 and 13 October 2008 instructed field formations, (circular nos. (i) 6/2008-Cus dated 28 April 2008 (ii) no.16/2008-cus dated 13 October 2008), to accept certificate from the statutory auditor/chartered accountant (CA), who certifies importer's annual financial accounts under the companies Act or any statute, as a proof of compliance to these conditions.

M/s Baba Loknath Traders was granted refund of SAD amounting to ₹ 34.86 lakh in terms of notification no.102/2007-cus by the Appraising Refund Section (Port) at Customs House, Kolkata under the jurisdiction of Kolkata (Port) Commissionerate. Scrutiny of documents in three out of four refund case files involving refund of ₹ 15.04 lakh revealed that the imported items were sold under Tax Payer Identification number (TIN)no.19891419558 with Kolkata address which on verification⁴⁴ was found to be registered in the

⁴⁴ www.tinxsys.com a Government website

name of another assessee M/s Three Eyes International Limited of Siliguri, West Bengal. The challans submitted by the importer, as a proof of payment of appropriate sale tax/VAT, revealed that Sales tax was paid in favour of different TIN no.19282524077. It was evident that the sale invoices produced by the importer were fabricated and VAT/CST challans were unrelated to these sale invoices indicating that appropriate sales tax/VAT was not paid on Sale of imported goods in India.

Besides, 58 out of total 74 (78%) sale invoices in the four refund files were also found to with incorrect TINs where either the name and address of the buyers given in invoices did not match with registered TIN details or buyer TIN was found to be non-existent indicating submission of fabricated sale invoices. Further, though the sale invoices and BE of imported goods in all the four refund files pertained to same period (September 2013 to June 2014), the importer had furnished CA certificates from two different CAs {Mr. Rajesh Jalan (one file) & D. Mukhopadhyay & Co. (three files)} both certifying that they had certified the Annual Financial Accounts of the importer which is not possible. The registration number of Mr. Rajesh Jalan was found non-existent in the database of Institute of Chartered Accountants of India (ICAI) which again cast doubt on genuineness of the CA certificates being submitted with the refund claim. It was evident that the refund of SAD of ₹ 34.86 lakh was irregularly claimed on the basis of fabricated documents which needed to be recovered from the importer as the conditions laid down in the notification no.102/2007-cus dated 14 September 2007 were not fulfilled.

On this being pointed out (February/April/June 2015), the Customs department informed (May 2015) recovery of ₹ 10.47 lakh in respect of two refund cases and issue of demand cum show cause notice in one case. Further progress is awaited (December 2016).

7.2 Audit scrutiny of 75 refund case files under Kolkata (Port) Commissionerate revealed that the importers had furnished the CA certificates duly certified by the CA Raj Krishna Kar having membership Number 009930 and address 19, Bechu Chatterjee Street, Kolkata-700009. Except for two CA certificates which were supposedly signed on 20 August 2014 and 11 August 2014, all other certificates in the form of Annexure-D submitted in respect of 73 refund claims were undated which was not acceptable.

In course of verification of the authenticity of the CA certificates from the Institute of Chartered Accountants of India (ICAI) website for the Membership Number (009930) provided in the aforementioned CA certificates, it was revealed that name of the said CA (viz,. Raj Krishna Kar) was removed with

effect from 16 March 2014 from the list of CA, as the CA had expired. This fact was substantiated by online verification from website of the Eastern India Regional Council of ICAI, News letter dated 1 June 2015, which mentioned that the name of the CA was removed due to death.

Thus it was evident that the CA Certificates furnished by the importers in respect of refund claims signed on 20 August 2014 & 11 August 2014 after the death (15 March 2014) of the said CA, are forged CA certificates. Further, in the remaining 73 cases it was revealed that the records (i.e. Sale Invoices, TR6 Challan, Imports documents etc) were pertaining to the dates subsequent to the date of death but are supposed to be certified (although undated) by the CA which was not possible and accordingly all the objected claim of refund of SAD may be considered as fraudulent.

In view of submission of forged CAs' Certificate furnished by the importers, the conditions laid down in paragraph 2(b), 2(d) and 2(e)(iii) of the notification no.102/2007-cus dated 14 September 2007 were not fulfilled. Accordingly, refund of SAD of ₹ 2.04 crore, fraudulently claimed by the importers was irregular and required to be recovered besides initiation of appropriate penal measures against the importers.

On this being pointed out (September 2015 and January 2016), the Custom Department informed (May 2016) that Show Cause Notices have been issued to the importers for objected refund claims. But the reply is silent about initiation of penal/legal action against the importers. Further progress is awaited (December 2016).

Audit is of the view that the matter may be thoroughly investigated by the departmental vigilance authorities to avoid recurrence of such cases in future.

Ministry response has not been received (December 2016).

Short levy of Basic Customs duty (BCD) on steel wire, steel sheets, coils imports

7.3 As per serial no.334 of the customs notification no.12/2012 dated 17 March 2012, as amended (notification no.39/2015, serial no.334 dated 16 June 2015) BCD on imported goods falling under Customs tariff headings⁴⁵. is leviable at the rate of 7.5 per cent.

M/s V.Trade and 74 others imported (June to August 2015) "Steel wire Rod, steel sheets, coils, steel bars" etc. classified under CTH 7215, 7217, 7220, 7222, 7223, 7225, 7226 and 7228 through ICD, Tughlakabad, ICD Patparganj and

⁴⁵ (CTH) 7206, 7207, 7213, 7214, 7215, 7216, 7217, 7219, 7220, 7221, 7222, 7223, 7225 (except 72253090, 72254019, 722550 or 72259000), 7226 (except 72261100), 7227 or 7228

NCH, Delhi. The goods were cleared levying BCD at the rate of 5 per cent under serial no.330 of the customs notification no.12/2012 dated 17 March 2012 instead of applicable 7.5 (serial no.334 of aforesaid notification). Incorrect grant of notification benefit resulted in short levy of duty amounting to ₹ 96.15 lakh.

On this being pointed out (August/September/October 2015), the department intimated (September 2015/February 2016) recovery of ₹ 0.59 lakh from two importers (M/s Mangla Handless and M/s Metro Industries – ICD, Tughlakabad) and issue (February 2016) of show cause notice by Assistant Commissioner, NCH, Delhi to 12 importers. Reply in respect of remaining 61 importers is awaited (December 2016).

Short levy of BCD on import of projectors due to incorrect exemption

7.4 'Projectors' that are solely or principally used in an automatic data processing system are classifiable under Customs tariff heading (CTH) 85286100 and exempted from levy of basic customs duty (BCD) under notification no.24/2005-cus dated 1 March 2005 (serial no.17). Whereas 'Projectors' which are capable of working with automatic data processing machine as well as television and video are classifiable under CTH 85286900 and attracts BCD at the rate of 10 per cent along with applicable cess and duty.

M/s Vardhaman Technology Pvt. Limited and M/s Faxonics Technologies Pvt. Limited imported (July to October 2015) six consignments of 'Projectors CW 305ST DLP Projector and CX 305ST DLP' through JNCH, Nhava Sheva, Mumbai. These goods were classified under CTH 85286100 and assessed at concessional rate of BCD under serial no.17 of aforesaid notification. Audit noticed from the product catalogue that imported models of 'Projectors' were having RS-232 input, S-Video input and Composite Video input and hence could be used with automatic data processing machine as well as television and video. Accordingly, the imported goods merited classification under 85286900 and leviable to BCD at 10 per cent. Misclassification of imported goods and incorrect grant of exemption led to short levy of duty due to tune of ₹ 73.95 lakh.

This was communicated to the department in January 2016, their reply is awaited (December 2016).

Incorrect exemption from countervailing duty

7.5 Parts and accessories of instruments and appliances used in medical surgical, dental or veterinary sciences classified under Customs tariff heading (CTH) 9018 and 9019 are exempted from levy of countervailing duty (serial no.59 (i) of notification no.6/2006-CE dated 1 March 2006). Medical

equipments classified under CTH 9018/9019 are leviable to countervailing duty of 5 per cent (notification no.10/2006-CE dated 1 March 2006).

M/s Philips Electronics India Ltd., imported (June to October 2011) four consignments of 'Magnetic Resonance Imaging (MRI) System, Sonalleve MR HIFU kit' through Air Customs, Chennai. The imported goods were classified under CTH 90181300 and exempted from countervailing duty under serial no.59 (i) of the aforesaid notification no.6/2006 dated 1 March 2006 considering them as parts/accessories.

Audit observed that the subject goods 'Sonalleve platform' are medical equipments. Therefore, the subject goods are not entitled to the benefit of exemption rather countervailing duty at the rate of 5 per cent was leviable. Incorrect grant of exemption resulted in short collection of duty of ₹ 61.60 lakh.

On this being pointed out (May 2016), Ministry admitting the observation stated (November 2016) that other Commissionerates are being informed for necessary action. Recovery particulars are awaited (December 2016).

Incorrect exemption from additional duty of customs on imports

7.6 As per serial no. 70 of notification no.21/2012-cus dated 17 March 2012, as amended by notification no.32/2012-cus dated 8 May 2012, all goods falling under Chapter 61 and 62 of Customs Tariff Act Articles of Apparel and clothing Accessories (excluding 61179000) (excluding 621790) when imported into India are exempted from whole of the additional duty of customs leviable thereon under section 3 (5) of the said Customs Tariff Act. This exemption shall apply on said imported goods on or after 1 May 2012 if the importer declares:-

i) The State of destination namely the State where the goods are intended to be taken immediately after importation whether for sale or for distribution on stock transfer basis; and

ii) Value Added Tax registration number or Sale Tax registration number or Central Sales Tax registration number, as the case may be, in the said State.

Audit scrutiny of Bills of Entry at Mahadipur Land Customs Station (LCS) under Malda Custom Division of West Bengal (preventive) Commissionerate revealed that 37 consignment of garments classified under Chapter 61 and 62 of customs tariff imported (August 2013 to October 2014) by M/s Radha Krishna Enterprise and eight others from Bangladesh were allowed exemption of the additional duty of customs leviable under Section 3 (5) of the aforesaid Act, under serial no.70 of notification no. 21/2012-cus dated 17 March 2012, without fulfilling both the prescribed conditions as mentioned above. The

incorrect exemption from additional duty of customs resulted in short levy of ₹38.68 lakh.

On this being pointed out (November 2014) the Customs authority (Mahadipur, LCS) intimated (November 2014) that importers declare their respective VAT/CST numbers and State code clearly in their bills of entry and on clearance of the goods from customs, the importers file way bill for taking the goods to their destination. Some copy of way bills were enclosed as a reference.

The Custom Department was informed (December 2014) that their contention was not tenable because copies of the enclosed way bills were not related to Bills of Entry objected by audit and they were related to the import of goods from Bangladesh to India and not to the transportation of imported goods from the point of customs discharge to the destination state. The VAT number (19836591084) given in two objected Bills of Entry by M/s. Radha Krishna Enterprise was also found to be registered in the name of other firm viz., M/s. Umed Export and that too was cancelled from 12 November 2013, as was evident from the website of West Bengal Directorate of Commercial Tax.

On this being pointed out the Customs Department reported (April 2015 & April 2016) that Show Cause cum Demand notices have been issued to importers which is under process of adjudication. Further progress is awaited (December 2016).

Incorrect exemption from BCD on import of soybean extraction

7.7 “De-oiled Soya Extract” classified under CTH 2304 was exempted from whole of the basic customs duty (BCD) under Sl. No. 104 D of the table appended to the notification no. 12/2012-cus dated 17 March 2012, inserted vide notification no.12/2014-cus dated 11 July 2014. As per proviso (bc) to the notification no.12/2012-cus, inserted vide notification dated 11 July 2014, the BCD exemption was not applicable on or after 1 April, 2015. There was no subsequent amendment of the notification no.12/2012-cus for extending any further BCD exemption to imported “De-oiled Soya Extract”.

M/s. Phoenix Overseas Limited, Kolkata had imported (May 2015) four consignments of ‘Soybean Extraction’ (CTH-2304) through Mahadipur Land Customs Station (LCS) of Malda Customs Division under Commissionerate of Customs (Preventive), West Bengal and incorrectly allowed BCD exemption under serial no.104D of the aforesaid notification dated 17 March 2012, even though the exemption had become invalid from 1 April 2015 in terms of proviso (bc) inserted vide notification dated 11 July 2014. This had resulted in non-levy of customs duty of ₹ 29.65 lakh.

On this being pointed out (October 2015), the Customs Department contended (March 2016) that since all the objected imports of 'De-oiled soya extract'/'Soybean Extraction' were made after 7 May 2015, as such did not attract BCD after issue of notification no.12/2014-cus dated 11 July 2014

The Department was informed (March 2016) that their reply was not tenable because the duty exemption on imported "De-oiled Soya extracts" under Sl. No. 104 D introduced vide notification dated 11 July 2014 was valid only upto 31 March 2015, as per proviso (bc) to the notification. Department response is awaited (December 2016).

Ministry reply has not been received (December 2016).

New Delhi
Dated: 23 January 2017



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