Circular No.40/2001-CUS.

F.NO.446/10/2001-CUS.IV
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Excsie & Customs

13th July, 2001.

Sub : Clearance of vegetable oils imported for industrial purposes at concessional rate of duty under notification No.17/2001-Cus., dated 1.3.2001 - Reg.

Varying practices being adopted by Custom Houses in the matter of interpretation of notification No.17/2001-Cus., dated 1.3.2001, in regard to import of vegetable oils specially crude palm oil claimed to have been imported for industrial purposes have been brought to Board"s notice. Whereas, in some Custom Houses some manufacturer importers have been allowed the concessional rate of duty of 35% treating the crude palm oil imported as other than edible oil, doubts have been raised about admissibility of this concessional rate at certain other Custom Houses taking into account the Board"s instructions under Circular No.29/97-Cus., dated 31.7.1997. It has been argued that as per the said circular even though the crude palm oil imported as such, considering the composition, free fatty acid/acid content may not qualify to be termed as edible oil under the PFA Act, 1954, but since the oil imported can be made fit for human consumption after further processing, it has to be considered as vegetable oil of edible grade - having due regard to the Board"s said circular.

2. The issue has been examined in the Board and the circumstances in which the aforesaid Board"s circular was issued also looked into. Further, consultations also have been made held with the Ministry of Food & Directorate of Vanaspati. It is observed that notification No.17/2001-Cus., dated 1.3.2001 interalia prescribes effective rate of duty for various categories of vegetable oils and in terms of Sl.No.34 of the table annexed to the notification crude palm oil and its fractions of edible grade in loose or bulk form - attract customs duty at 75%. However, in terms of the same notification, Sl.No.29 of the said table, goods (other than edible oils falling under heading Nos. 15.07 to 15.15) are liable to a concessional duty of 35%. Doubts arise as to the exact scope of terms other than edible oils and edible grade which are not defined in the said notification for the purposes of extending the lower duty or charging higher duty for palm oil. It is observed that in "Edible Oils Packaging (Regulation) Order, 1998 issued under Essential Commodities Act by the Ministry of Food and Consumer Affairs (Department of Sugar and Edible Oils) vide notification G.S.R.584(E), dated 17.9.98, the term edible oil means vegetable oils and fats and includes any margarine, vanaspati, bakery shorting and fat spread as specified in the Prevention of Food Adulteration Act, 1954 and rules made thereunder for human consumption. The PFA Act, 1954 has laid down the standards of crude palm oil and prescribed the maximum limit of the acid value for crude palm oil as 10.0.

3. Considering this definition one of the food and drugs laboratory after taking samples from a consignment of the imported crude palm oil - which showed acid values varying from 13% to 18%, has opined that the samples do not conform to the standards of edible grade palm oil prescribed under PFA rules and is not edible as such. In another case, a chemical examiner relying upon the Board"s 1997 circular, even though the sample had acid values of more than 13% took the view that it may be considered as edible oil as after processing it could be made fit for human consumption. The discussions with the Ministry of Food and Agriculture and a critical look at the Board"s Circular of 1997 reveals that when the question of extending concessional rate for edible oils was examined in consultation with the Ministry of Food in 1997, for granting concessional rate for edible oils, it is the end use which was finally stressed. The definition of edible oil in "Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order, 1977 also is worth noting in this regard & it says edible oil means any oil used directly or after processing for human consumption and include hydrogenated vegetable oils.

4. It may be observed that this definition does not make every crude palm oil straightway to be termed as edible oil for the purposes of the aforesaid order. It is to be noted that the oil should not only be capable of being used after processing for edible purposes but the definition also contemplates that such oil after refining should be used for edible purposes. In fact, in the Board"s circular this aspect had been clearly mentioned and highlighted in the last para when clarifying the scope of the term vegetable oils of edible grade in serial number 15 to 11/97-Cus dated 1.3.97, for giving the concessional rate. In other words, the benefit of the concessional rate for edible oils was to be given so long as the oil imported was used for edible purposes even after refining.

5. In the context of the existing tax structure under 11/2001, Government has consciously provided for a concessional rate of 35% duty for oils used other than for edible purposes. Thus if it can be established by the importing industry/trade that the oil imported as such is not fit for human consumption, (and needs to be refined before it can possible be made fit for human consumption) and actually it is not being subjected to refining for edible use but on the other hand it is used for industrial purposes, it will not be proper to deny, the benefit of lower concessional rate of 35%. The onus of proving the actual final use could be put on the importer of such

crude palm oil wherever he claims that the consignment of crude palm oil which does not satisfy straightaway the conditions of edible grade crude palm oil under PFA Act, 1954, will not be refined for edible use but is actually used for industrial purpose after Customs clearance. In fact, if it is viewed that crude palm oil containing free fatty acids, acid value higher than the limits prescribed under the PFA Act, 1954 falls in the category of the edible grade, because it can be subsequently refined to make it fit for human consumption, then the concessional rate provided under serial number 29 of the table annexed to the notification 17/2001 may be redundant & would defeat the intention of the Government for giving the concessional duty for crude oils used for industrial purposes & not for edible purposes.

6. In view of the above, and with a view to ensure that the benefit of the concessional rate of 35% where claimed for crude oils is extended only where the actual use is shown to be for industrial application to the satisfaction of the proper officer, the following procedure/guidelines may be followed:-

(a) For consignments of vegetable oils, where the importers claim concessional rate of duty of 35% as applicable for oils other than edible oils, samples may be sent for testing to see whether the oil conforms to standards of PFA Act, 1954. If it is found that the vegetable oil conforms to the standards of PFA, 1954, the higher effective duty for edible oils only be charged & lower rate denied, apart from taking suitable action for misdeclaration etc.;

(b) In case on test, it is found that vegetable oil does not conform to the standards of PFA Act, 1954 and acid value & free fatty acid are higher than the permissible limits (i.e. acid value exceeds 10%) the consignments may be assessed provisionally at the rate claimed, i.e., 35% and allowed to be moved on execution of a bond for establishing the end use of the oil for actual manufacture of soap or other industrial use as claimed. The bond should cover the differential duty liability between the industrial and edible grade oil. In case, import is by an actual user manufacturer, a security/bank guarantee amounting to 25% of the bond value may be taken. However, where the import is not for actual use but for trading and sale to actual industrial users, the concessional rate may be extended on provisional basis but the amount of security/bank guarantee should be equal to bond value, i.e. 100% of differential duty liability between the industrial and edible grade oil.

(c) The bond shall be discharged and security/bank guarantee released when the actual end use certificate from the Assistant/Deputy Commissioner of Central Excise having the jurisdiction over the factories of soap manufacturers (or other industrial applications for which the vegetable oil is claimed to have been used), is produced to the Customs authorities within a period of 3 months or a period as may be extended by the Commissioner of Customs on being requested by the importers. In case, such certificate is not produced to Customs within 3 months or period as extended by the Commissioner of Customs, immediate recovery action of differential amount be initiated.

7. The above said instructions may be brought to the notice of all concerned by issuing suitable Public Notice and Standing Order.

8. Difficulties, if any, in implementation of this circular may be brought to the notice of the Board. Kindly acknowledge receipt of the circular.