Circular No. 26/2004-Cus
March 31, 2004

F. No. 528/134/2003-Cus (TU)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

Subject- Levy of CVD on various types of gums, lacs and resins etc. under CETH 13.01 - reg.

I am directed to say that divergence of practice regarding the leviability of CVD on lacs, gums, resins etc. has been brought to the notice of the Board. Under the current Central Excise Tariff Schedule, lacs, gums, resins etc. if manufactured with the aid of power, are classifiable under 1301.10 of CETH and attract 16% CE duty. In case these items are manufactured without the aid of power, the classification would be under 1301.90 of CETH and attract 'nil' CE duty. In the case of imports, it is difficult to ascertain whether the subject goods have been manufactured with the aid of power or without it and hence the classification as well as the collection of CVD becomes a matter of dispute.

2. This matter was discussed in the Tariff Conference of Chief Commissioners of Customs held at Visakhapatnam on 25th and 26th September, 2003 [Agenda Point A-27].

3. The Conference referred to the CEGAT decision in case of M/s Sudharsan Pine Products [1999(111) ELT (TRIB)] where the benefit of exemption has been allowed in respect of such goods on the basis of a simple declaration by the supplier. However, Board's Circular [No.37/2001-Cus., dated 18.6.2001] on a similar subject states that the condition of a notification must be verified before allowing the concessional rate of duty on an item.

4. The Conference took the view that since verification of the use of power or otherwise in the exporting country is difficult, classification on the basis of a simple declaration that the goods have been manufactured without the aid of power and thereby exempted from CVD, need not be allowed. The Conference also recommended an amendment to the Customs Tariff Act, 1975, providing that the benefit of conditional Central Excise notifications (or the tariff entry relating to use of power) should not be allowed on imported goods irrespective of the process involved (on the lines done in the case of EOU's) .

5. The matter has been examined by the Board. It is noted that no appeal has been filed against the decision in the case of Sudharsan Pine Products. It would therefore not be appropriate to ignore it. However, the Deptt. would be within its rights to verify through our missions abroad, or otherwise, the claim of the supplier or the importer (about non-use of power) and till then the assessments could be kept provisional. However, a certificate from the Chamber of Commerce or a Govt. agency of the supplying country to the effect that the product has been produced/extracted without the use of power, can be accepted.

6. Field formations may finalise the pending assessments, if any, accordingly.

H.K. Sharma
STO (TU)