Circular No.09 / 2012 - Customs

F. No. 528/11/2012-STO (TU)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

229A, North Block, New Delhi,
23rd March, 2012.

To

All Chief Commissioners / Commissioner of Customs / Customs (Prev.)
All Chief Commissioners / Commissioner of Customs & Central Excise
All Commissioners of Customs (Appeals)
All Commissioners of Customs & Central Excise (Appeals)
All Directors General under CBEC.

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Subject: Applicability of exemption under Sr. No. 4 of the Notification 4 / 2006 - CE dated 1/3/2006 on import of Ore Concentrates - regarding.

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Sir / Madam,

Doubts have been raised whether on imports of Ore Concentrate classifiable under Chapter 26 of the First Schedule to the Customs Tariff Act, 1975, the benefit that is admissible to "Ore" under Serial Number 4 of the Notification No. 4/2006 - CE dated 1.3.2006 can be granted to the "Concentrate" of that Ore. The issue was taken up for discussion during the Conference of Chief Commissioners of Customs on Tariff and allied matters held in May 2011.

2. The matter related to: (a) whether the term 'Ore' includes Concentrate, and (b) Whether insertion of Chapter Note 4 in the Chapter 26 will have any impact on the admissibility of notification benefit to Concentrates, was examined. The Conference noted the HS definitions of Ore and Concentrate are as follows:

"The term 'ore' applies to metalliferous minerals associated with the substances in which they occur and with which they are extracted from the mine; it also applies to native metals in their gangue (e.g. metalliferous sands").

"The term 'concentrates' applies to ores which have had part or all of the foreign matter removed by special treatments, either because such foreign matter might hamper subsequent metallurgical operations or with a view to economical transport".

It was also seen that the recent changes in the Central Excise Tariff treating the concentration of ore as amounting to manufacture would not in any way change the definition of Ore or Concentrate for the purpose of classification. This has been reiterated in a number of judgments and also vide Board Circular No.696/12/2003 - CX dated 26.2.2003.

3. In view of Chapter Note 4 to Chapter 26 of CETA, 1985 inserted vide Finance Act 2011, Ores and Concentrates are two distinct products. Thus, Concentrates suffer Central Excise duty being a manufactured

product. The implication for imported Concentrates is that the benefit of exemption of additional duty of Customs leviable under Section 3 of Customs Tariff Act, 1975 in terms of a notification that applies only to Ores is no longer available to Concentrates, even if Concentrates and Ores fall under the same tariff heading.

4. Thus, it is concluded in the Conference that the benefit of exemption notification under Sr. No. 4 of the Notification 4/2006-CE dated 1.3.2006 will be available only to imported Ores and not to imported Concentrates.

5. Suitable instructions may be given to the field formation and all pending assessments, if any, may be finalized accordingly. Difficulty faced, if any, may be brought to notice of the Board.

Yours faithfully,

(Subodh Singh),
OSD (Customs), Tariff Unit,
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