Circular No. 09/2018-Customs

F. No. 528/74/2012-STO (TU)
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes & Customs)
Tariff Unit
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North Block, New Delhi
Dated 19.04.2018

To,

All Principal Chief Commissioners /Chief Commissioners of Customs/Customs (Preventive)
All Principal Chief Commissioners/Chief Commissioners of Customs and GST
All Principal Commissioners /Commissioners of Customs/Customs (Preventive)

Subject: Classification of remnant fuel & oils -reg.

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Madam/Sir,

Kind attention is invited to the Board circular No. 37/96-customs dated 3.7.1996 on the above subject. In the said circular, Board had inter-alia clarified that in the case of a vessel brought for ship breaking, the *remnant fuel and oil* (other than fuel and oil contained in the vessels machinery and engines), ships stores etc. are classifiable separately in their appropriate headings and not in CTH 8908.

2. References have been received in the Board from field formations that Bills of entries related to ship breaking are being provisionally assessed in view of the dismissal of the departmental Civil Appeal against the CESTAT order dated 08.07.14 by Supreme Court in D.No.41289 of 2014 dated 31.07.2015. in the said order, CESTAT held that classification of the ships/vessels brought in for breaking up along with surplus fuel, will have to be considered classifiable under CTH 89.08 of the import policy as an integral part of the vessel/ships and as the imports under CTH 89.08 are free without any restriction, therefore, such MGO/HSD contained in vessels brought in for breaking up, cannot be held as liable for confiscation and no penalties imposable under section 112 (a) of the Customs Act, 1962. As mentioned above, Hon'ble SC vide order dated 31.07.2015 upheld the order of the CESTAT.

3. Field formations have stated that in view of the dismissal of the departmental appeal, clarification is required on the classification of remnant fuel and oil other than that contained in vessel's machinery etc. Industry Associations have also requested to revisit the said circular and to classify remaining fuel and oil alongwith other items like stores and Spares etc. as integral part of the vessel under 8908 in view of Hon'ble SC order dated 31.07.2015.

4. The matter has been examined in detail. This issue was also deliberated at length in the Annual Tariff Conference of Chief Commissioners/ Directors Generals held in Delhi on 4/5th March 2018.

5. The background of the case is that CESTAT decided a bunch of appeals wherein the appellants were challenging levy of redemption fine on remnant fuel and imposition of penalty on the importers who had filed bills of entry for ship breaking. The importers had classified the remnant fuel under tariff heading of chapter 27 in accordance with the Board Circular 37/96-Cus dated 03.07.96 and paid the duties accordingly. However, adjudicating authority/ appellate authority took a view that since items under Chapter 27 were canalized, therefore, the said goods (remnant fuels) were duly confiscated, redemption fine levied and penalties imposed. The matter was challenged before CESTAT which agreed with the view of DGFT that so far as classification of the ships/ vessels brought in for breaking up along with remnant fuel, will have to be considered classifiable under heading 89.08 of the import policy as an integral part of the vessel/ ship. Department's appeal against the said CESTAT order was dismissed by the Supreme Court. The issue has attained finality as the SC's order accepted by the Department.

6. However, in a subsequent change of stand, DGFT changed its stand vide notification No.07/2015-2020 dated 20th May, 2015 and reverted to the earlier view that remnantfuels (HSD/LDO) would be classified under Chapter 27. It also freed these items from policy restrictions when imported, brought on board in old ships / vessels meant for breaking (copy attached).

7. In view of the above, import of remnant fuels referred to in para 2(d) of Board circular 37/96-customs would not be subject to any policy condition under chapter 27 prior to 20th May 2015. As on 20th May 2015, DGFT has made special dispensation with regard to remnant fuels classifiable under heading 2710 and freed them from policy restriction vide notification No. 07/2015-2020.

8. Pending provisional assessments may be finalized accordingly.

9. Difficulties in this regard, if any, may be brought to the knowledge of Board.

Yours faithfully,

19/04/18

(RachnaTanwar)
OSD(Tariff Unit)

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Government of India
Ministry of Commerce & Industry
Department of Commerce
Udyog Bhawan, New Delhi

Notification No. 07 /2015-2020
Dated the 20th May, 2015

Subject: Amendment in import policy of fuels, incidental to the import of ship for ship breaking, under Chapter 27 of ITC (HS), 2012 – Schedule – 1 (Import Policy).

S.O. (E): In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, the Central Government hereby amends the Import Policy of fuels, incidental to the import of ship for ship breaking, under ITC (HS) code 2710 1930 and 2710 1940 of Chapter 27 of ITC (HS), 2012 – Schedule – 1 (Import Policy) as under:

ITC (HS) Code	Item	Existing Policy	Existing Policy Condition	Revised Policy Condition
2710 1930	High speed diesel (HSD)	State Trading Enterprise	Import as per Policy Condition (5) below.	Import as per Policy Condition (5) below. However, import of HSD, brought on board in old ships / vessels which are meant for breaking, whether within vessel's machinery/engine or outside (as remnant fuel) and is incidental to such ships / vessels, is "free".
2710 1940	Light diesel oil (LDO)	State Trading Enterprise	Import allowed through IOC subject to para 2.11 of Foreign Trade Policy.	Import allowed through IOC subject to para 2.20 of Foreign Trade Policy (2015-20). However, import of LDO, brought on board in old ships / vessels which are meant for breaking, whether within vessel's machinery/engine or outside (as remnant fuel) and is incidental to such ships / vessels, is "free".

2. Effect of this Notification: Import of High Speed Diesel (HSD) and Light diesel oil (LDO), brought on board in the old ships / vessels for purpose of breaking, and which are incidental to such ships / vessels, is "free".

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