Circular No.7/2008-Cus

F.No.401/46/2008-Cus-III

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise and Customs

North Block, New Delhi.

28th May, 2008.

Subject: Sanction of Customs duty refunds - Unjust Enrichment - reg.

While reviewing a case of a refund arising out of an appellate order of the regional Bench of the Tribunal, it was found that a Assistant Commissioner of Customs had passed an order of refund sanctioning the refundable amount but crediting the same to Consumer Welfare Fund without going through the due process as provided in Section 27 of the Customs Act, 1962 and not looking into details of the materials on record to deny the refund to the assessee, on the grounds of unjust enrichment.

2. As may be observed, in terms of sub-section (2) of section 27, the concerned AC / DC of Customs has to go through the facts of the case and the material placed before him in order to determine whether the amount claimed by an applicant is refundable to him or not. Further, in terms of the first proviso to the aforesaid sub section, the AC/DC should go through the details of audited balance sheet and other related financial records, certificate of the Chartered Accountant etc., submitted by the applicant in order to decide whether the applicant had not passed on the incidence of the duty and interest thereon, if any, to any other person. The Order-in-Original passed by the AC/DC in the adjudication process should be a speaking order providing specific details including the relevant financial records that are relied upon to arrive at a conclusion whether the burden of duty or interest, as the case may be, has been passed on or not. Refund orders issued in a routine and casual manner thereby sanctioning the amount but crediting the same to the Consumer Welfare Fund without going through the factual details of the case and the due process as provided in the first proviso cannot be considered as a complete and speaking order.

3. I am, accordingly, directed to request you to instruct the officers working under your jurisdiction to carefully examine this aspect of the refund claim before passing an Order-in-Original, so that unnecessary hardships caused to the applicants and protracted litigation in claiming refunds is avoided.

Yours faithfully,

(Aseem Kumar)

Under Secretary (Customs)

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