**Circular No. 37/2001 - Customs**
18th June, 2001.

**F. NO. - 528/43/2001 - CUS(T.U.)**
Government of India
Ministry of Finance
Department of Revenue
(Tariff Unit)

**Subject:** Extension of benefit of conditional Central Excise notifications for the purpose of levy of countervailing duty under Section 3(1) of the Customs Tariff Act, 1975 - regarding.

I am directed to refer to the subject mentioned above and to say that representations have been received in Board"s office whether the benefit of conditional Central Excise notification prescribing a concessional excise duty should be taken into account for the purpose of levy of additional duty (CVD) on imported goods. As for instance, candles attract excise duty at 16%. However, units which do not avail of CENVAT credit in respect of input or capital goods, and which pay the entire duty either in cash or through their PLA can avail of a concessional rate of excise duty of 4%. The issue raised is whether candles imported into India should attract CVD at 16% or 4%.

2. The matter has been examined. While examining the issue of extending the benefit of Central Excise exemption notification No. 19/98-CE, the larger 5 Member bench of CEGAT in a recent judgement in the case of Priyesh Chemicals & Metals Vs. Commissioner of Central Excise, Bangalore [2000 (38) RLT 588 (7)] held that

"there is no dispute that exemption notification under Central Excise Act and Rules applied to imported goods for the purpose of levy of additional duty of Customs. There is also no dispute that the imported goods/importers should satisfy the conditions of exemption notifications if they claim the benefit of exemption. This is the law laid down by Supreme Court in the Thermax case [1992 (61) ELT 352 (SC)] and the Bombay High Court in the Ashok Traders case [1987 (32) ELT 262 (Bom)]. We are in complete agreement with the Revenue on this issue. In the present case, the appellant are contending that they satisfied the condition stipulated in the proviso to notification No. 19/88 by stating that they had not availed themselves of Modvat Credit on the inputs used in the manufacture of the imported consignment of Zinc Ash. This is not the correct understanding of the requirement of notification. The exemption notification stipulates that "no credit of duty paid on the inputs used in the manufacture of said goods have been taken under Rule 56A or Rule 57A of Central Excise Rules 1944". In order to satisfy this condition it has to be shown that the Zinc Ash in question had been manufactured from inputs on which no credit of duty has been taken. The goods were manufactured abroad. It is common knowledge that the Central Excise Act of India and Central Excise Rules of India do not apply to manufacture abroad. Therefore, the appellant"s claim that the imported consignments fulfil the requirement of notification has no substance or basis in facts. In other words, it is clear from the exemption notification that it exempts only Zinc Ash which is produced from duty paid inputs. In order to satisfy this condition, it is necessary that a manufacturer seeking exemption should prove that the Zinc Ash was produced from duty paid inputs. Imported goods are incapable of fulfilling this condition and therefore, could not claim the exemption under notification No.19/88-CE."

3. In view of the above decision of the CEGAT, it is clear that where the importer does not fulfil the conditions stipulated in an Excise notification, he cannot claim benefit of the same for CVD purposes. Accordingly, it is clarified that the imported goods will not be eligible for the benefit of conditional Central Excise notification when it is not possible to verify the conditions stipulated in the notification. Thus, in the example cited above, candles imported into India will be chargeable to CVD @ 16% and not 4% as it is not possible to verify the condition regarding non-availment of CENVAT credit as also other conditions. Where practice is otherwise, immediate safeguard measures for recovery of duties short levied may be taken.

4. It may also be noted that the above judgement does not deny the benefit of an exemption under conditional Central Excise notification to imported goods while charging CVD where the fulfillment of a mere procedural requirement may have been violated and all substantive requirements laid down are fulfilled as viewed by the Supreme Court in the Thermax case referred to above. Pending provisional assessments if any may be finalised in accordance with the above clarification. Difficulties, if any, in implementation of above clarification may be brought to the notice of the Board.

Kindly acknowledge receipt of this Circular.

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