Circular No.24/2004-Cus.
March 18, 2004

F.No.438/18 /2003-Cus.IV
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

Subject: Whether refunds arising out of Customs assessments should be taken up by filing a refund application or by challenging the original assessment orders-reg

I am directed to say that the issue whether the refund can be claimed under Section 27 of the Customs Act, 1962 directly without challenging assessment as done in the Bill of Entry by assessing officer, was in consideration of the Board.

2. The attention of all concerned is invited to the decision of the Hon'ble Supreme Court in the case of M/s Super Cassette Industries vs Commissioner Customs (reported in 2003(58) RLT F9), M/s Motilal Dulichand vs Commissioner Customs, New Delhi (reported in 2003(157) ELT A 265) and M/s HCL Perot Systems Ltd vs Commissioner Customs, New Delhi (decision dated 6.10.2003 in CA D.No.13751/2003) wherein the appeals filed by assessees against the orders of the Tribunal were dismissed. The Tribunal had held that even in Customs cases, the ratio of the Supreme Court decision in **Commissioner of Central Excise Vs Flock India 2000(120) ELT 285 SC ,** would apply . Accordingly, a refund claim is not maintainable, when the assessee did not challenge the assessment order which became final.

3. In the light of the above, all concerned are, hereby, directed to follow the said decision of Hon'ble Supreme Court in this regard.

4 . Kindly bring the above instructions to the knowledge of all concerned .

5. Hindi version will follow.

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