Circular No.24/2007-Cus

F. No. 401/229/2006-Cus.III
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

North Block, New Delhi.
02 July , 2007.

To
All Chief Commissioners of Customs.
All Chief Commissioners of Central Excise.
Principal Chief Controller of Accounts, CBEC.
Chief Departmental Representative, CESTAT.
All Commissioners of Central Excise.
All Commissioners of Customs.
Webmaster@icegate.gov.in.

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Sir,

Subject: Delay in payment of customs duty refunds - reg.

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I am directed to state that various representations from importers, exporters, trade and industry associations have been received in the Board regarding delay in payment of Customs duty refunds and the hardships faced in obtaining refunds from Customs field formations. Further, in a number of cases it has also come to the notice that the Courts and higher judicial authorities have taken adverse note of the delay caused in refund of duty.

2. Refund of customs duty involves acknowledgement and processing of refund application for sanction or rejection of refund in terms of section 27 of the Customs Act, 1962 and the Customs Refund Application (Form) Regulations, 1985. Further, Board have also issued instructions from time to time clarifying the doubts raised by field formations in dealing with the refund claims. (Board's circular No. 59/95-Cus dated 5.6.1995). Needless to say that if these procedures are followed properly, normally refund applications should be disposed off within the interest free time limit of three months.

3. However, it is noticed that the aspect of timely refund of Customs duty has not been given due importance by the field formations. Therefore, Board desires that in order to ensure expeditious disposal of Customs duty refund applications and to enhance transparency in refund disbursement as well as bring alertness among the officers, the following procedure should be followed:

4.1. **System for receipt and acknowledgement of all Customs duty refund applications:** All refund applications made by any person under section 27 of the Customs Act, whether by post or courier or personal delivery, shall be received by the department and a simple receipt, for having received the application that is said to have been filed as 'refund application' shall be issued immediately. At this stage the receipt should make it clear that the application has not been scrutinized for its completeness. These applications are required to be scrutinized for their completeness within ten working days of their receipt, for giving acknowledgement by the proper officer as per the Customs Refund Application (Form) Regulations, 1995. Hence, if any deficiency is found in the application or any document is required by the department, the same shall be informed at this stage of initial scrutiny itself within ten working days of the initial receipt. This will avoid any chance for raising repeated queries to the applicant, in a piece-meal manner and bring certainty in dealing with refund applications.

4.2. **Processing of refund applications and their disposal**: Application of refund found to be complete in all respects by Customs, after scrutiny as above, shall be processed on 'first-come-first served' basis so as to decide whether the whole or any part of the duty and interest paid by the applicant is refundable. If refund is due in such case, an order for refund is required to be passed in terms of sub-section (2) to section 27 or where the claim for refund is found liable to be rejected, as the case may be, a speaking order shall be passed giving complete reasons for the order. Further, in respect of the provisions of unjust enrichment, the order should indicate that this aspect has been examined based on the guidelines, if any, applicable; the order should also contain the findings of adjudicating authority on the documents produced in support of the claim and the basis for determining the amount as either refundable to the claimant or payable to the Consumer Welfare Fund or the claim not being admissible.

4.3. **Issue of Cheque**: Where the refund application has been admitted, whether in part or in full, and claimant is eligible for refund, the Deputy / Assistant Commissioner of Customs may ensure that payment is made to the party within 3 days of the order passed after due audit, if any. In all such cases refund of amount shall be paid to the applicant by a cheque on the authorised bank with which the sanctioning authority maintains account. After the cheque has been signed, it shall either be delivered to the claimant or his authorised representative personally when he next calls for it or sent to him by Registered Post 'Acknowledgement Due' at Government cost, on the basis of pre-receipt already obtained from the claimant.

4.4. **Audit system**: Existing instructions on audit scrutiny of refunds shall continue. Accordingly, all applications involving a refund of duty and/or interest of Rs. 5 lakhs or more shall be subjected to pre-audit as per the existing practice. The applications of refund of amount below Rs.50,000/- may be post-audited on the basis of the random selection by Deputy/Assistant Commissioner (Audit). The selection can be made in such a way that 25 per cent of the refund applications are post-audited. The applications of refund for amount between Rs.50,000/- and Rs. 5 lakhs should be compulsorily post audited. This audit system has been prescribed with a view to check improper sanction and payment of refunds. However, this does not dispense with the verification of the refund vouchers and the re-conciliation of refunds, which shall continue to be done by the Chief Account Officers. However, it may be ensured that where pre-audit is involved the action is completed at the earliest so that the disposal of refund applications is not unduly delayed.

5. **CVC's instructions**: Your attention is also invited to the instructions issued by the Central Vigilance Commission (CVC) under section 8(1)(h) of the CVC Act, 2003 to bring about greater transparency and accountability in the discharge of regulatory, enforcement and other public dealings of the Government organisations vide their Circular No.40/11/06 dated 22.11.2006. (Refer CVC website **http://www.cvc.nic.in/**under 'Improving Vigilance administration by leveraging technology). These instructions, *interalia*, require that status of individual applications / matters should be made available on the organisation's website and should be updated from time to time so that the applicants remain duly informed about the status of their applications. It is further stated that the manual records maintained presently for various purposes may continue.

6.1. **System of maintaining online database on Customs duty refunds:** In pursuance of the instructions of CVC, all Commissioners of Customs shall establish a mechanism for maintenance of a comprehensive database in their respective website, indicating the receipt, acknowledgement, action taken for disposal (either payment or rejection) of refund applications and those pending at the end of the month. This shall be implemented with in a period of three months time and a report of the same may be sent to the Board and DG (Inspection).

The details of refund application such as name of the claimant, file number, date of application, amount of refund claimed, date of its acknowledgement shall be indicated in chronological order by the date of its receipt. The applications may be serially numbered for each year and shall be shown in a single list indicating their respective status distinctly. The illustrative status that could be mentioned for easy understanding of any applicant may include the following: (i) refund application received but pending for scrutiny and acknowledgement (ii)(a) refund application acknowledged for its completeness (ii)(b) refund application found incomplete and returned for rectification of deficiency (iii)(a) refund application rejected by passing a speaking order (iii)(b) refund application sanctioned, pending verification by audit (iv) cheques issued for refunds sanctioned and paid to applicant/ credited to consumer welfare fund. This is not exhaustive and if any other stage of processing of refund application is involved the same may be indicated. An abstract at the end of the month about the total number of refund applications received, acknowledged, disposed and pending may also be indicated.

This online data base would enable any person who had applied for refund with Customs, to check the status of his refund application by reference to the date of his refund application having been received by Customs. This data will be accessible to the trade and public as well as by all Customs officers to enhance transparency. Further, the status of individual applications for refund of customs duty shall be updated from time to time, at least daily, so that the applicants remain duly informed about the status of their applications. The data may be allowed for display in the website for three months period from the date of its final disposal and there after it can be moved to the history data base.

7.1. **Monitoring Mechanism:** Chief Commissioners/ Directorate General of Inspection (DGI) is requested to review the position of refunds in their respective zones/select zones, to check on the timely sanction of refund applications. If any refund application is pending for long period, the reasons for the same may be identified by the concerned Chief Commissioner and action initiated for their disposal by reference to the concerned Commissionerate. DGI may also access the data base of such refund applications and maintain the data in respect of those refund applications pending for long period and action taken thereon, for reporting to the Board.

8. The above instructions are being issued so that an administrative arrangement is made on a permanent basis to deal with refund of customs duty, an important aspect of tax administration which needs to be given due importance in view of the prompt disposal as per legal provisions and their revenue implications. Accordingly, the Commissioners of Customs and Chief Commissioners of Customs concerned may ensure for proper implementation of these instructions of the Board.

9. A suitable Public Notice and Standing Order may be issued for the guidance of the trade and staff. Difficulties faced, if any, in implementation of the Circular may be brought to the notice of the Board at an early date.

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Yours faithfully,

(Aseem Kumar)
Under Secretary (Customs)

Copy to:

1. PS to Chairman (E&C),

2. All Members, CBEC

3. Principal CCA, CBEC - with the request to instruct PAOs to ensure timely issuance of Cheque (for the refund amount) after the refund order is passed by the Proper Officer (Para 4.3 refers).

4. Additional Director General, Directorate of Data Management - Board desires that on the basis of the monthly abstracts or data available on website of the Commissionerates a comprehensive report shall be prepared and their review shall be put up to Member (Customs) by the ADG, Data Management for periodical monitoring.

5.Director General, Directorate General of Inspection - Based on the request by ADG, Directorate of Data Management, necessary inspection may be conducted of the refund section in select Customs Houses where the pendencies are high and the disposal action has not resulted in the desired action for specific action.

6. All Directorates, CBEC

7. All Joint Secretaries/ Commissioners, CBEC

8. All Directors/Deputy Secretaries, CBEC

9. All Under Secretaries/STOs/TOs, CBEC

10. Guard file.

(Aseem Kumar)
Under Secretary (Customs)