Circular No. 61/2002-CUS.
20th September, 2002

F.NO.437/9/98-CUS.IV
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

Subject: Levy of penalty under section 114A of Customs Act, 1962 - Clarification-regarding.

It has been reported that a number of show cause notices were issued proposing the demand of not only duty, but also interest payable in terms of provisions of para 128 of the Hand Book of Procedures (1st April, 1993 - 31st March, 1997). While the Show Cause Notices have quantified/specified the amount of duty, the interest to be demanded has not been specified, although demands have been raised. It has been reported that in all such cases, penalty under section 114A is being imposed equivalent to the amount of duty which stands determined on the date of adjudication order. The Board has been requested to clarify as to whether mandatory penalty imposed under section 114A of the Customs Act, 1962 would be equal to the amount of duty or it would be equal to duty plus interest. Section 114A provides for levy of penalty equal to the duty or interest payable by a person in cases involving collusion or any willful mis-statement, or suppression of facts by the said person. Conjunction **"or"** in section 114A seems to be creating confusion at the field level.

2. The matter has been examined in consultation with the Ministry of Law. The Ministry of Law, has stated that Maxwell's Interpretation of Statutes (p-229) while dealing with conjunctions **"or"** and **"and"** provides that -

"To carry out the intention of the legislature, it is occasionally found necessary to read conjunctions "or" and "and" one for the other."

The Hon'ble Supreme Court in a case reported AIR 1957 SC p.699 State of Bombay vs. R.M.D.Chamarbougwala also read the word **"or"** as **"and"** to give effect to the clear intention of the legislature. In view of this, the Ministry of Law is of the view that to carry out the intentions of the legislature, it is occasionally found necessary to read the conjunction **"or"** and **"and"** one for the other. A Constitutional Bench of the Hon'ble Supreme Court in a case reported in AIR 1963 SC p.1638 T.S.Govindlalji Maharaj vs. State of Rajasthan has also observed that sometimes **"or"** must mean **"and"** as has been mentioned vide para 39 of the said judgment. A copy of the Ministry of Law's opinion is enclosed.

3. In view of the above, it is clarified that penalty under section 114A of the Customs Act, 1962 should be equivalent to duty and interest. The above-said clarification may kindly be kept in mind while imposing the penalty under section 114A of the Customs Act, 1962.

4. The contents of the Circular may be brought to the notice of all concerned by way of issuing suitable Standing Orders. Kindly acknowledge receipt of the Circular.