Circular No 112/2003
Dec 31, 2003

F.No. 528/121/2003-Cus(TU)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

Subject : Exemption under Central Excise Notification No. 6/2002-CE dated 1.3.2003, vide Sl. No. 181 for chargeability of CVD on Import of copper/brass from Nepal-reg.

I am directed to say that divergence of practice regarding the exemption under Central Excise Notification No. 6/2002-CE dated 1.3.2002, vide Sl. No. 181 for chargeability of CVD on import of copper/brass from Nepal, has been brought to the notice of the Board.

2. Notification No. 6/2002-CE exempts copper producers from additional customs duty only if the manufacturer of such goods produces or manufactures copper from raw material other than copper ore or copper concentrate. Board"s Circular 37/2001-Cus dated 18.6.2001 provides that if the condition of a notification is not verifiable, such exemption should not be extended. In the case of copper/brass sheets imported from Nepal, normally it would appear that the verification of the source/raw material is not possible in a foreign territory. However, in this particular case, by virtue of the Indo-Nepal Treaty (para 5 of the Article 5 of the Treaty), the verification can be done by the Indian Customs, Hence, the issue is whether the exemption should be extended.

3. This matter was discussed in the Tariff Conference of Chief Commissioner of Customs held at Visakhapatnam on 25th and 26th September, 2003 (Agenda Point A-25).

4. The Conference noted that the condition regarding the kind of raw materials used for manufacture of the copper/brass given in the above referred Central Excise notification would require physical verification of the raw materials used fro the production of export commodities made of copper/brass. Normally, such a condition would not be verifiable and therefore, the benefit of the Notification would not be extended. However, under the Indo-Nepal Treaty, Indian Customs authorities can visit the premises of the factories located in Nepal that are exporting goods to India. Hence, in a way the condition of the Notification can be verified.

5. The Conference came to the conclusion that the provisions under Indo-Nepal Treaty would override the conditions of the notification and hence, in the case of imports from nepal under claim of the said Central Excise Notification, benefit can be extended on the basis of a declaration by the manufacturing company in Nepal. The option to undertake some physical verification of the premises of the manufacturer in Nepal would always be available with the Indian Customs, in terms of the provisions of the Treaty. In the case of copper/brass sheets, such verification may be undertaken by the Customs stations where such imports are noticed in large measure and the results of such verification may be circulated to all other formations.

6. The Board has accepted the recommendation of the Conference that the provisions of the notification should be read with the provisions of the Indo-Nepal treaty. It is accordingly clarified that in the case of imports from Nepal under claim of Notification 6/2002-C.E., Sl. No. 181, benefit can be extended on the basis of a declaration by the manufacturing company in Nepal. In case, on verification undertaken.

7. Field formations may finalise the pending assessments, if any, accordingly.

H.K. Sharma
STO (TU)

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