Circular No.18 / 2010-Customs

F. No. 401/46/2008-Cus.III
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

159A, North Block,
New Delhi -110001
8th July, 2010.

To

All Chief Commissioners of Customs / Customs (Prev.).
All Chief Commissioners of Customs & Central Excise.
All Commissioners of Customs / Customs (Prev.).
All Commissioners of Customs & Central Excise.

IndiaCode

Subject: Refund of 4% Additional Duty of Customs (4% CVD) in pursuance of Notification No.102/2007-Customs dated 14.9.2007 - Special Drive for clearance of pending 4% SAD refund claims - reg.

***

Sir / Madam,

Your kind attention is invited to the Notification No.102/2007-Customs dated 14.9.2007 and Board's Circulars No.6/2008-Customs dated 28.4.2008 and No.16/2008-Customs dated 13.10.2008 regarding refund of 4% Additional Duty of Customs (4% CVD). Attention is also invited to the Board's Circulars No.24/2007-Customs dated 2.7.2007, No.22/2008-Customs dated 19.12.2008 and No.7/2008-Customs dated 28.5.2008 which relate to general refund cases.

2. In this regard, several representations from the trade and industry, associations continue to be received in the Board complaining about the delay in refund of 4% CVD or denial of the refund on one pretext or the other, causing them great hardship.

3. In view of the fact that all the doubts of the field formations had been clarified by the Board vide above mentioned Circulars, it is viewed that there may not be any difficulty in timely disposal of refund claims. However, on review of the pending refund claims as on 31.3.2010 at major Custom Houses, it has been noticed that more than 80% of pending claims relate to 4% CVD cases. Hence, the Board has decided to further simplify the procedure for claiming 4% CVD refund in the following manner.

4.1. In respect of Accredited Clients registered with Customs in terms of Circular No.42/2005-Customs dated 24.11.2005 (ACP clients), the amount of 4% CVD refund shall be sanctioned in full, on preliminary scrutiny of the following documents: (a) TR-6 Challans (in original) for CVD payment; (b) VAT/ST payment Challans (in original); (c) summary of sale invoices; and (d) certificate of statutory Auditor / Chartered Accountant, for correlating the payment of ST/VAT on the imported goods with the invoices of sale and also to the effect that the burden of 4% CVD has not been passed on by the importer to the buyer. The procedure for pre-audit for ACP clients shall be done away with and detailed scrutiny should be done only at the stage of post-audit. The refund claims shall be sanctioned within the maximum time period of 30 days in all such cases.

4.2. Submission of sale invoices shall be required only in electronic form (CD or other media) in respect of 4% CVD refund cases and submission of paper documents is accordingly dispensed with.

5. In order to enable timely payment of refund in case of 4% CVD, a system of optional facility of directly crediting the applicant's bank account, through RTGS (Real Time Gross Settlement) or NEFT (National Electronics Funds Transfer) System is being prescribed. This facility is already functioning in Mumbai Customs Zone-II and has been found useful for the trade. Hence, Board has decided to extend this facility on optional basis to all other Customs formations also. Necessary authorisation for payment of refund amount directly to Bank Account may be taken in such cases from the importer/ authorised signatory of the importer in the form annexed. (Annexure-I)

6. Some field formations have also raised certain doubts whether the audited Balance Sheet and Profit and Loss Account have to be examined in respect of the current financial year for scrutiny of unjust enrichment aspect. It is stated that a large number of refund claims relating to the current year were held up for want of such verification. In this regard, the issue has been examined by the Board and it has been decided that the field formations shall accept a certificate from Chartered Accountant for the purpose of satisfying the condition that the burden of 4% CVD has not been passed on by the importer to any other person. Further, the importer shall also make a self-declaration along with the refund claim to the effect that he has not passed on the incidence of 4% CVD to any other person. Hence, there is no need for insisting on production of audited Balance Sheet and Profit and Loss Account in these cases. It may also be noted that recently the Board has also notified the list of documents required to be filed by the applicant along with the refund claim (Annexure-II) which is also displayed in the departmental website. Hence, other than these aforesaid documents, no other document would be required in the normal course of granting 4% CVD refund.

7. Board also desires that the Commissioner of Customs shall personally monitor all cases of 4% CVD refund claims pending for more than 30 days so as to ensure that these are disposed of within the overall time limit of three months.

8. 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 this Circular may be brought to the notice of the Board at an early date.

IndiaCode

Yours faithfully,
Sd./-

(R. P. Singh)
Director (Customs)

Encl: As stated above.

Copy for internal circulation - As usual.

Annexure - I

Authorization for payment of refund amount directly to Bank Account

I.E.C. No. _____ PAN No. _____.

M/s _____

Address: _____

_____

_____

E-mail address:

Bank Account No.: _____

Bank Name: _____

Bank Address: _____

11 digit alphanumeric IFS Code : _____

I declare that the above particulars are correct. I authorize payment of refund amount for my refund claims filed at _____ Custom House to my above mentioned Bank Account through NEFT / RTGS after deduction of Bank's service charges at the rate of 0.09% and applicable NEFT / RTGS charges as per RBI guidelines.

IndiaCode

Name of the Authorised signatory /
Representative of the Importer

Signature :

Date:

Place:

Certified that the above details are correct.

Signature of Bank Branch Manager along with the official Seal

---

Annexure - II

Sl.No.	Type of refund claim	Section / notification under which filed	Illustrative list of documents to be filed by applicant along with Application for refund claim in prescribed form (Customs Series Form No.102 as given in Part 5 of Customs Manual)
3	Refund of 4% SAD	Notification No. 102/2007-Customs dated 14.9.2007	1. Document evidencing payment of the Special Additional Duty (SAD).

			2. Invoices of sale of the imported goods in respect of which refund of the said SAD is claimed. 3. Documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods. 4. Certificate from a statutory auditor / CA who certifies the final accounts in respect of correlation of VAT payment, payment of 4% SAD amount and unjust enrichment as prescribed in Board's circular No.6/2008-Customs dated 28.4.2008 and 16/2008-Customs dated 13.10.2008. 5. Copy of the Consignment Sale Agreement. (in case of sale through consignment agents / stockists). 6. Self-declaration / Affidavit (for e.g. in case of submission of invoice in soft form in lieu of paper documents, in case of fulfillment of the doctrine of unjust enrichment to the effect that the applicant has not passed on the incidence of 4% SAD to any other person). 7. Any other document considered necessary in support of the claim.

IndiaCode

Circular No.6 /2008-Customs

F. No. 401/104/2007-Cus.III

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise and Customs

North Block, New Delhi.

28th April, 2008.

To

All Chief Commissioners of Customs / Customs (Prev.).

All Chief Commissioners of Customs & Central Excise.

All Commissioners of Customs / Customs (Prev.).

All Commissioners of Customs & Central Excise.

Principal Chief Controller of Accounts (C&CE).

The Chief Departmental Representative, CESTAT.

All Directorates under CBEC.

IndiaCode

Subject: Procedure to be adopted for refund of 4% Additional Duty of Customs in pursuance of Notification No.102/2007-Customs dated 14.9.2007 - regarding.

***

Sir / Madam,

I am directed to state that various representations from importers, exporters, trade and industry associations and references from some of the Customs field formations have been received in the Board seeking clarification regarding refund of 4% Additional Duty of Customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act, 1975 in pursuance of Notification No.102/2007-Customs dated 14.9.2007.

2. The Board has examined this matter in consultation with the Customs field formations. The following procedure may be adopted by the field formations in order to settle expeditiously the refund claims arising out of the exemption provided vide Notification No.102/2007-Customs dated 14.9.2007.

3. **Manner of refund and its receipt**:

Your attention is invited to the instructions communicated vide F.No.354/129/2007-TRU dated 14.9.2007 at the time of issue of the Notification No.102/2007-Customs dated 14.9.2007. It is reiterated that the scheme of refund of 4% Additional Duty of Customs has been notified through an exemption notification, and hence, the conditions as prescribed only in the said notification will apply. All refund applications under the aforesaid notification

shall be received by the concerned field formations in their Centralized Refund Section, and the applicants would be given proper acknowledgement. The status of these refund claims shall also be displayed in the online database of customs duty refunds maintained by the respective Commissionerates.

4. **Time - Limit**:

4.1. In the Notification No.102/2007-Customs dated 14.9.2007, no specific time limit has been prescribed for filing a refund application. Under the circumstances, a doubt has been expressed that whether the normal time-limit of six months prescribed in section 27 of the Customs Act, would apply. In the absence of specific provision of section 27 being made applicable in the said notification, the time limit prescribed in this section would not be automatically applicable to refunds under the notification. Further, it was also represented that the goods imported may have to be despatched for sale to different parts of the country and that the importer may find it difficult to dispose of the imported goods and complete the requisite documentation within the normal period of six months. Taking into account various factors, it has been decided to permit importers to file claims under the above exemption upto a period of one year from the date of payment of duty. Necessary change in the notification is being made so as to incorporate a specific provision prescribing maximum time limit of one year from the date of payment of duty, within which the refund could be filed by any person. It is also clarified that the importers would be entitled to refund of duties only in respect of quantities for which the prescribed documents are made available and the claims submitted within the maximum prescribed time of one year. Unsold stocks would not be eligible for refunds.

4.2. It is also clarified that only a single claim against a particular Bill of Entry should be permitted to be filed within the maximum time period of one year. Filing of refund claim for a part quantity in a bill of entry shall not be allowed except when this is necessary at the end of the one year period. Further, since the Sales Tax (ST) / Value Added Tax (VAT) is being paid on periodical or monthly basis, even in case of bills of entry where the entire quantity of goods are sold within a month, all such cases shall be consolidated in a single refund claim and filed with the Customs authorities on a monthly basis. In other words, there would be a single refund claim in respect of one importer in a month irrespective of the number of Bills of Entry (B/Es) processed by the respective Commissionerate.

4.3. With the extension of time limit and the requirement to file claims on a monthly basis, Board feels that the number of refund claims should be manageable for disposal within the normal period of three months. Further, in the absence of specific provision for payment of interest being made applicable under the said notification, the payment of interest does not arise for these claims. However, Board directs that the field formations shall ensure disposal of all such refund claims under the said notification within the normal period not exceeding three months from the date of receipt.

5. **Documents to be enclosed with refund claim:**

5.1. Notification No.102/2007-Customs dated 14.9.2007 prescribes the documents that shall be enclosed along with the refund claim. In order to ensure sanction of refund properly, it is clarified that the document evidencing payment of ST/VAT (in original) duly issued by

or acknowledged by the concerned ST/VAT authorities shall be submitted by the importer. A certificate from a Chartered Accountant or any other independent authority certifying payment of ST/VAT would not be acceptable in lieu of the original documents. However, a certificate from the statutory auditor / Chartered Accountant, who certifies the importer's annual financial accounts under the Companies Act or any statute, correlating the payment of ST/VAT on the imported goods (in respect of which refund is claimed) with the invoices of sale, would be required along with the original tax / duty payment documents as proof of payment of appropriate ST/VAT for the purpose of para 2(d) & (e) of the said notification.

5.2. For the purpose of refund under this notification, it is reiterated that appropriate Sales Tax or VAT means Sales Tax or VAT in case of Intra-State sales and Central Sales Tax (CST) in case of Inter-State sales.

5.3. The exemption contained in the said notification envisages that the importer shall file a refund claim for 4% CVD ("said additional duty of Customs") paid on imported goods and shall pay on sale of the said goods "appropriate Sales Tax or VAT as the case may be". Hence, it is clear that there is no stipulation in the notification that the exemption is available only if the rate of ST/VAT is equal to or higher than the rate of additional duty of Customs; nor is there a condition that if the rate of ST/VAT happens to be lower than 4%, the refund would be restricted to the lower amount. As such, it is clarified that it will not be appropriate to reduce the refund amount in such a situation and the entire 4% CVD, if otherwise found eligible, shall be refunded.

Indiacode

6. **Unjust enrichment:**

6.1. The 4% CVD exemption under the said notification is operated through a refund mechanism, wherein the importer would have to first pay the said 4% CVD at the time of importation and, thereafter, can claim refund of 4% CVD on production of documents showing that the appropriate ST/VAT has been paid. Hence, the purpose of granting this exemption is to ensure that the importer pays either 4% CVD or the appropriate ST/VAT and not both. It is not the intention of the Government to allow the importer to recover the 4% CVD from the buyer as well as to claim refund of this amount from Customs. Hence, the principle of unjust enrichment needs to be examined in each case before sanction of refund under this notification. However, considering the voluminous transactions and the documents involved in the cycle, from import to sale, it was felt that it would be expedient to allow the importer to submit a certificate from the statutory auditor / Chartered Accountant who certifies the annual accounts of the importer, that the burden of 4% CVD has not been passed on by the importer to the buyer and to fulfill the requirement of unjust enrichment.

6.2. In view of the above, it is clarified that the doctrine of unjust enrichment will apply to 4% CVD refunds Scheme under the said exemption notification issued in terms of Section 25(1) of the Customs Act, 1962. However, importers may produce a certificate from the statutory auditor/Chartered Accountant who certifies the importer's annual financial accounts under the Companies Act or any statute, explaining how the burden of 4% CVD has not been passed on by the importer and to fulfill the requirement of unjust enrichment. In addition to the aforesaid the importer shall also make a self-declaration along with the refund claim to the effect that he has not passed on the incidence of 4% CVD to any other person.

7. Other miscellaneous issues:

7.1. As regards the other doubt expressed by certain field formations on the effective date of the operation of refund scheme, it is stated that the said notification No.102/2007-Customs was issued on 14.9.2007. Accordingly, it is clarified that only those cases where 4% CVD was paid on or subsequent to 14.9.2007, will qualify for refunds under this scheme subject to fulfillment of prescribed conditions.

7.2. In respect of the doubt that whether the stamping or hand-writing of declaration in the invoice would be acceptable for the purpose of fulfilling the condition as mentioned in para 2(b) of the said notification, it is clarified that a stamp on the invoice (to state that no CENVAT Credit is admissible) should suffice for the purpose of para 2 (b) of the said notification.

7.3. On the issue that in case of 4% CVD having been paid through DEPB Scrip, whether refund could be paid by cash, it is clarified that instead of refunding the duty in cash, the amount eligible for refund should be re-credited on the relevant DEPB Scrip.

indiacode

8. In view of the above clarifications, you are requested to kindly take further necessary action in the matter. The above instructions are being issued so that necessary administrative arrangements are made to deal with 4% CVD refund claims and the refund claims are sanctioned properly. Accordingly, all the concerned Commissioners of Customs / Central Excise may kindly 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.

10. Hindi version will follow.

Yours faithfully,

(Aseem Kumar)
Under Secretary (Customs)
Tel. 2309 4182
Fax: 2309 2173

Internal circulation - As usual.

Circular No.16/2008-Customs

F. No. 401/104/2007-Cus.III
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

159A, North Block,
New Delhi -110 001.
13th October, 2008.

To

All Chief Commissioners of Customs / Customs (Prev.).
All Chief Commissioners of Customs & Central Excise.
All Commissioners of Customs / Customs (Prev.).
All Commissioners of Customs & Central Excise.
All Directors General under CBEC.
Principal Chief Controller of Accounts (Cus & CX).

IndiaCode

Subject: Clarification on refund of 4% Additional Duty of Customs (4% CVD) in pursuance of Notification No.102/2007-Customs dated 14.09.2007 - regarding.

***

Sir / Madam,

Your kind attention is invited to the Board's Circular No.6/2008-Customs dated 28.4.2008 containing instructions on the procedure to be followed by the Customs field formations while making 4% CVD refund in terms of Notification No.102/2007-Customs dt.14.9.2007.

2. Subsequent to the issue of the above circular, the trade and industry associations have raised some more issues needing clarifications and in some cases relaxations of the procedural requirement for expeditious sanction of refund claims. Further, certain field formations have also made references on some of the issues raised by the trade. The various issues raised in the above references have been examined in the Board and the following clarifications are issued on each of points raised:

(i) **Time-limit for filing of refund claim**: It was already clarified by the Board that importers will be permitted to file 4% CVD claims upto a period of one year from the date of payment of duty. As stated in para 4.1 of the Circular No.6/2008-Customs, an amending

notification to this effect specifically providing for one year period from the date of payment of the additional duty of customs (4% CVD) was issued vide Notification No.93/2008-Customs dated 1.8.2008 amending para 2(c) of the above-said notification. This may be taken note of and pending refund claims involving more than six months period, if any, may be disposed of accordingly.

(ii) **Early processing of refund claims**: There have been a number of requests from the trade that the 4% CVD refund claims should be processed within the prescribed period of three months time. This aspect has been explained in detail in para 4.3 of the Board's Circular No.6/2008-Customs. Hence, the jurisdictional Commissioners and Chief Commissioners at respective Custom Houses / zones may ensure that there is no delay in the disposal of the 4% CVD refund claims in terms of Notification No.102/2007-Customs. Further, the status of the refund claims should be placed on the website of the Commissionerate and updated periodically for monitoring of timely disposal of refund claims. Wherever refund claims are sanctioned necessary defacement of the original bill of entry may be carried out in order to ensure that in no case refund is entertained on the same grounds for same goods covered under a bill of entry again. In case of refund claim not being disposed of in three months, the matter should be reported to the Board within a fortnight mentioning the reason for delay and any area of doubt which needs to be clarified.

(iii) **Sale invoices to be submitted in soft form for claiming refund**: It has also been represented that number of copies of sale invoices are required to be produced in view of the Condition No.2 (e) (ii) of the Notification No.102/2007-Customs dated 14.9.2007. As these are voluminous, it is difficult for the importers as well as the Department to handle such invoices in hard copy. This issue was examined in specific reference to Section 4 of the Information Technology (I.T.) Act, 2000 which provides that any information or any other matter, which is required under any Law to be made in writing or printed form, could be submitted in an electronic form provided it is accessible for use or subsequent reference. In view of the fact that this provision applies notwithstanding anything contained in any other law, the legal requirement of submission of copies of sale invoices would be fulfilled if the same is provided in electronic form. In the I.T. Act, 2000, 'electronic form' has been defined and it includes information stored in optical or magnetic media.

Therefore, it is clarified that the importers could submit the copy of invoices in electronic form (including the form of CD) as prescribed in Information Technology Act, 2000, for the purpose of fulfillment of the condition in para 2 (e) (ii) of the Notification No.102/2007-Customs dated 14.9.2007. The electronic media containing the information about sale invoices should, however, be submitted along with a paper declaration by the applicant indicating the invoice numbers contained in the media and subscribing to their truthfulness.

(iv) **Declaration for non-admission of Cenvat Credit:** In terms of condition 2 (b) of the Notification No.102/2007-Customs, the importer who wishes to avail the refund of 4% CVD, is also required to make a specific declaration in the sale invoice that no Cenvat credit would be admissible in respect of 4% CVD. This ensures that there is no double benefit on account of refund to the importer and Cenvat Credit to the purchaser. Hence, the request for dispensation of such declaration by certain importers who are not registered with Central

Excise authorities and to allow 4% CVD refund to these importers on the basis of their status of registration with Central Excise, as non-registered dealer is not found to be acceptable.

(v) **Payment of ST/VAT by cash or input tax credit:** It has been brought to the notice of the Board that the ST/VAT credit is available with the importer due to credit of ST/VAT paid on local purchase of other products. In such cases, although the imported goods are sold and ST/VAT is being paid on such sale, instead of cash payment, the input tax credit is used. Hence, it was represented that payment of ST/VAT by input tax credit adjustment should be acceptable in lieu of ST/VAT paid challan.

In terms of the requirement under para 2(d) of the said notification, it is stated that appropriate ST/ VAT is to be paid by the importer on sale of goods. The importer can then claim the refund of 4% CVD paid at the time of import. It is noticed that most of the ST/VAT legislations provide for payment of ST/VAT by utilizing the input tax credit. If the Sales Tax Authorities accept payment of ST/VAT through cash or adjustment of input tax credit, the same shall be treated as effective discharge of ST/VAT payment on imported goods. Further, Board had provided in its earlier Circular that a certificate from statutory auditor/Chartered Accountant correlating the payment of ST/VAT on the imported goods with the invoices of sale, along with supporting documents of proof of payment of appropriate ST/VAT is acceptable for the purpose of 4% CVD refund. Hence, it is clarified that discharge of ST/VAT liability by the importer, through cash or other authorised form of payment to the concerned ST/VAT authority or input tax credit adjustment, could be accepted by Customs field formations for the purpose of fulfillment of the condition in para 2 (d) considering sanction of refund of 4% CVD.

(vi) **Submission of original copy of ST/VAT Challan:** The difficulties expressed by the importers in submission of original Tax paid challans for evidencing payment of ST/VAT at more than one port was examined. Importers pay the appropriate ST/VAT to the concerned State Government where the sale of imported goods is effected. There is a genuine difficulty in case of importers selling the goods through various States or those importing goods at various ports and subsequently, selling in different States to obtain the original copy of ST/VAT challan evidencing payment of appropriate ST/VAT for the purpose of claiming 4% CVD refund with various Customs Commissionerates at different ports Further, payment of ST/VAT after adjusting input tax credit is made through different forms such as deposit of cash, cheque, demand draft or other authorised mode of payment through banking channel or payment directly to the ST/VAT Department. In some States, even e-payment is also accepted.

The aforesaid request of the trade has been considered and keeping in view the difficulties faced in submitting original challans, it has been decided that alternatively, the importers may submit copies of ST/VAT challan or copies of ST/VAT payment document in different forms evidencing payment made to the bank or ST/VAT Department towards ST/VAT along with a certificate from the Chartered Accountant, who either certifies the importer's financial records under the Companies Act, 1956 or any ST/VAT Act of the State Government or the Income Tax Act, 1961, confirming the payment against the aforesaid documents. This would be considered sufficient to fulfill the requirement in terms of para 2(e)(iii) of the Notification No.102/2007-Customs dated 14.9.2007. Hence, the Customs field formations shall accept the copies of ST/VAT challans/documents along with the certificate

of the said Chartered Accountant, while receiving the 4% CVD refund claim. However, the importers may be required to submit the original ST/VAT payment challans or other similar documents, in doubtful cases for verification by Customs authorities, which shall be returned to the importer after verification.

(vii) **Unjust enrichment and its Certification by Chartered Accountants:** It is represented by the trade that for the purpose of satisfying the condition that burden of 4% CVD has not been passed on by the importer to any other person, a certification from an independent Chartered Accountant may be accepted by the Customs authorities.

In this regard, it is stated that the intention of the Government is not to allow the importer to recover 4% CVD from the buyer and to claim the refund from Customs as well. The only method to ensure this is to make it conditional to satisfy the principle of unjust enrichment. In this regard, in the earlier circular, it has been provided that the importer may produce a certificate from the statutory auditor/CA who certifies that Annual Accounts of the importer (under the Companies Act, 1956 or any statute) to the effect that the burden of 4% CVD has not been passed on by the importer to the buyer. The provisions contained in the various Sales Tax Laws prevailing in various States provide for Audit of the books and accounts for the purpose of ascertaining the correctness of ST/VAT payment / Input Tax Credit. Further, Section 44AB of the Income Tax Act, 1961 provides that certain persons carrying on business or profession exceeding the prescribed limit are required to get their accounts audited by "an Accountant" explained therein.

Considering these provisions, it is clarified by the Board that the 'statutory auditor / Chartered Accountant' mentioned in para 6 of the earlier Board's circular refers to "Chartered Accountant" within the meaning of section 2(1)(b) of the Chartered Accountants Act, 1949. However, it is clarified that the Customs field formations shall accept the certificate given only by such a Chartered Accountant who either certifies the importer's financial records under the Companies Act, 1956 or any ST/VAT Act of the State Government or the Income Tax Act, 1961, in order to fulfill the requirement of the condition that the incidence of duty burden has not been passed on by the importer to any other person for the purpose of refund of 4% CVD. A certificate by any other independent Chartered Accountant would not be acceptable for this purpose.

(viii) **Consignment Agents:** It is represented by certain importers who operate through consignment agents / stockists, that the imported goods are held by these agents / stockists in the capacity of bailee. The goods are sold by them on behalf of the importer and the payment for the sale is made to the importer. These agents also pay the appropriate ST/VAT on behalf of the importer and get the same reimbursed from the principal i.e. importer. Unlike in other transactions, while the bill of entry for imported goods under consignment sale is filed by the importer and the bill of entry will be in the name of the importer, the sale invoices are issued by the said consignment agents / stockists in their own names. Hence, it has been requested by these importers that refund of 4% CVD in such cases should be allowed to them based on the correlating documents evidencing payment of ST/VAT by their agents / stockists.

It is observed that in 'consignment sale' transaction, goods are dispatched to Consignment agents by importer as Principal; and the imported goods remain the property of

the importer. Similarly, the responsibility of Stockist is confined to stocking of goods and forwarding such goods to persons and places as instructed by the importer. Hence Consignment agent/stockist sells goods on behalf of the importer. The said agent collects sales proceeds and remits the same to importer; however he may recover his commission, godown charges, insurance charges etc., from the importer. In terms of the various State ST/VAT laws, 'sale' is defined to mean transfer of property in goods for a valuable consideration. For the purpose of ST/VAT, transfer of property involved in the sale of imported goods, through an agent, by whatever name called, whether for cash or for deferred payment or other valuable consideration, shall be deemed to be a sale, by such agent.

Further, consignment agent/stockist who has the authority to sell the goods belonging to the importer/ principal on their behalf is also included in the scope of the term 'dealer' under the ST/VAT Act, and the said agent/stockist are required to pay appropriate ST/VAT on sale of such goods. In these transactions, normally, an Agreement is entered into between the importer and agent, which provides for the terms and conditions of sale and offers a commission for the work done by the agent / stockist. Payment of ST/VAT on behalf of the importer may also be specified as one of the arrangement as per such agreement. Since such sale is an accepted form of commercial transaction, payment of ST/VAT made by such agents and submission of ST/VAT challan by the agents on behalf of principal (Importer) is permitted by ST/VAT authorities.

In view of the above, it is clarified that in case of sale of imported goods by importer through consignment agent/stockist, refund of 4% CVD shall be granted by Customs field formations, subject to the condition that the Consignment agent/ stockist has been authorised to sell the imported goods in terms of the agreement entered into between the importer and consignment agent/stockist and that each of the sale invoices issued by the consignment agent/stockist indicates that the sale is made by him on behalf of the importer in the capacity of consignment agent/stockist. These conditions shall be verified by the Customs officers before sanction of 4% CVD refund claims in these cases. Further, in such cases, it is also required that the applicant submits a certificate from a Chartered Accountant appointed by the importer, who either certifies the importer's financial records under the Companies Act, 1956 or any ST/VAT Act of the State Government or the Income Tax Act, 1961, to the effect that appropriate ST/VAT has been paid by consignment agent/stockist on behalf of importer and that the importer, in turn, has paid or reimbursed the ST/VAT to his consignment agent/stockist along with the correlation of ST/VAT payment with 4% CVD paid on imported goods.

(ix) **Submission of refund claim for part of goods in a consignment:** Several importers have represented that the refund claim should be sanctioned even prior to the said one year period in cases of part sale where a significant part is already sold and an undertaking is furnished by the importer that no more refund claim would be filed for the remaining part. Moreover, in some cases, there may be short landing or part of the consignment is unlikely to be sold due to some defects, damage etc. In such cases too, the importers may prefer to claim refund for such part of consignment that were actually sold. In the earlier circular issued, it was clarified that 4% CVD refund claims shall be filed on a monthly basis. Further, it was stated that filing of refund claim for part quantity covered in a bill of entry shall not be allowed except when this is necessary at the end of the one year period prescribed.

It is needless to specifically mention that where certain quantity of goods were lost or short-landed or damaged resulting in sale of part quantity and the importer submitting a refund claim for the quantity that was sold along with the declaration that for the remaining quantity they would not claim refund, the claims shall be entertained even for part quantity by the Customs. However, since some Customs field formations have raised this doubt, it is hereby clarified that in such cases as stated above, the filing of refund claim for part quantity shall be accepted by the Customs field formations during the same month and such cases need not await till the end of the one year period.

3. In view of the above clarifications, you are required to take further necessary action in the matter without any delay. All pending 4% CVD refund claims must be attended to and the refund claims sanctioned within the prescribed time limit. In view of the resentment in the trade on this matter, the Chief Commissioners should ensure that prompt action is taken to dispose of the claims. A status report about the disposal of claims filed till 30.06.2008 may please be sent to the Board by 15.11.2008.

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

IndiaCode

Yours faithfully,

(M.M. Parthiban)
Director (Customs)

*****

IndiaCode

Circular No 01/ 2012-Customs

F.No.401/46/2008-Cus.III
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

North Block, Room No. 253-A,
New Delhi, the 5th January 2012.

To,
All Chief Commissioners of Customs / Customs (Prev.).
All Chief Commissioners of Customs & Central Excise.
All Commissioners of Customs / Customs (Prev.).
All Commissioners of Customs & Central Excise.

IndiaCode

Subject: Refund of 4% Additional Duty of Customs (4% CVD) in terms of Notification No. 102/2007-Customs dated 14.09.2001-regarding.

Sir / Madam,

Your kind attention is invited to the Circular No. 18/2010-Customs dated 8th July, 2010), vide which Board has simplified procedure for sanction of refund of 4% SAD in case of ACP importers. Vide Para 4.1 (d) of the Circular No.18/2010-Customs, dated 08.07.2010 it was provided that the amount of 4% CVD refund shall be sanctioned in full, on preliminary scrutiny of the documents and certificate of statutory auditor/Chartered Accountant, for correlating the payment of ST/VAT on the imported goods with the invoices of sale and also to the effect that the burden of 4% CVD has not been passed on by the importer to the buyer. However, as Para 6 of the said Circular only Charted Accountant can issue a certificate that incidence of burden of 4% CVD has not been passed on by the importer to the buyer.

2. Representations have been received in the Board for amending Para 6 of the said Circular to make it in consonance to Para 4.1 (d) ibid to enable Cost Accountants to issue the Certificates as statutory auditors for the purpose of refund of 4% CVD.

3. The matter has been examined in the Board. Board noted that the Circular No.18/2010-Customs dated 08.07.2010 disentitles Cost Accountants in regard to issue of requisite certificate though they may be statutory auditors of the importer. Board also observed that several States currently recognize Cost Accountants for purpose of VAT audit and it would be a hardship to trade already using statutory auditors/Cost Accountants to get required certificate for amount of 4% refund from Chartered Accountants. Therefore, as a measure to facilitate the trade Board has approved the amendment of the Circular No.18/2010 Customs dated 08.07.2010 so as to authorize Statutory Auditors/ Cost Accountants/ Chartered Accountants to issue a certificate, certifying that burden of 4% CVD has not been passed on by the importers to any other person.

4. Accordingly, para 4.1(d) and Para 6 of Board Circular No.18/2011-Customs, dated 08.07.2010, stands modified to above extent.

5. Suitable Public Notices or standing orders may be issued to guide the trade / industry and officers.

(Vikas)

Under Secretary (Customs-III/VI)

IndiaCode