Circular No. 11/2016-Customs

F.No.450/190/2015-CusIV
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

227B, North Block
New Delhi, dated the 15th March, 2016

To,

Principal Director General/ Director General, DRI
All Principal Chief Commissioners/Chief Commissioners of Customs/Customs (Preventive)
All Principal Chief Commissioners/Chief Commissioners of Customs & Central Excise
All Principal Commissioners/Commissioners of Customs/Customs (Preventive)
All Principal Commissioners/Commissioners of Customs & Central Excise

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Sir/Madam,

Subject: - Clarification regarding *other persons* (co-noticees) used in sub-section (2) & sub-section (6) of the Section 28 of the Customs Act, 1962-reg.

Vide section 22 of the Taxation Laws (Amendment) Act, 2006 (29 of 2006) a provision was inserted in the Section 28 of the Customs Act, 1962 to provide for deemed conclusion of proceedings once the person to whom a demand of duty notice has been issued has paid all dues. Subsequently vide Finance Act, 2011, section 28 was substituted with a new Section 28. The quantum of penalty amount to be paid under the said deemed conclusion proceedings was retained at 25% of the duty amount. However, vide Finance Act, 2015 the penalty payable under Section 28 was reduced to 15%.

(2) The provisions governing deemed conclusion of proceedings are stated in proviso to sub-section (2) and in clause (i) of sub-section (6) respectively of the present Section 28.

The text of the two provisions is reproduced below:

Proviso to sub-section (2)

"Provided that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded."

Clause (i) of sub-section (6)

"*that the duty with interest and penalty has been paid in full, then, proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein*"

(3) References have been received from the field as regards scope and interpretation of *other persons* in the above context.

(4) The matter has been examined in the Board. Provision of deemed conclusion of proceedings was introduced in the Section 28 so as to bring about closure to the cases where the dues to the Government could be realized without going through the process of adjudication on one hand and to cut the protracted litigation which generally follows the adjudication on the other.

(5) The provision of deemed conclusion is contingent upon the person to whom a SCN has been issued under sub-section (1) or sub-section (4) paying up all the dues of duty, interest and penalty as the case may be. Only in such a circumstance of compliance, shall closure of proceedings against *other persons* come into effect. Therefore, as a corollary, *other persons* implies person(s) to whom **no demand of duty** is envisaged with notice served under sub-section (1) or sub-section (4) as the case may be. *Other persons* who happen to be co-noticees in the SCN for their acts of commission or omission other than demand of duty would be benefitted by the deemed closure in cases where the compliance of conditions mentioned in proviso to sub-section (2) or clause (i) of sub-section (6), as the case may be, by the main noticee to whom inter-alia a demand of duty has been issued has been fulfilled. Further, all such cases where proceedings reach closure stage under the provisions of Section 28, an order to the effect must be invariably issued by the concerned adjudicating authority.

(6) Section 28 primarily deals with the recovery of duty or erroneous refund. While introducing the facility of deemed conclusion, enabling provision was made for payment of interest and/ or penalty. Therefore, all such SCNs or cases which involve duty, interest and/ or payment of penalty shall be covered by the above clarification. Further, it may be noted that the cases involving seizure of goods under Section 110 of the Customs Act, or cases where confiscation provisions under sections 111, 113, 115, 118, 119, 120 and 121 are invoked, would be out of purview of this Circular.

(7) Difficulties, if any, faced in the implementation of this Circular may be brought to the notice of the Board.

Yours faithfully,

(Zubair Riaz)
Director (Customs)