Circular No. 35/2002-Customs
27th June, 2002

F.NO.528/1/2001-CUS (TU)
Government of India
Ministry of Finance
Department of Revenue
(Tariff Unit)

Sub: Levy of Special Additional Duty (SAD) on goods chargeable to duty under Additional Duties of Excise (Goods of Special Importance) Act, 1957.

I am directed to refer to the subject mentioned above and say that a doubt has been raised as to whether the goods which are subjected to `nil" rate of duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 would be leviable to SAD or otherwise.

2. Sub-section (1) of Section 3A of the Customs Tariff Act, 1975 (51 of 1975) states that any article imported into India shall be leviable to SAD at a rate to be specified by the Central Government. Sub-section (5) of this Section states that nothing contained in the section shall apply to any article, which is chargeable to additional duties levied under sub-section (1) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957). In a representation received in Board"s office, it has been pointed out that the goods, namely, Narrow Woven Fabrics are not liable to SAD as they are chargeable to duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, though the duty payable is `Nil".

3. The matter has been examined. In the constitution bench judgement of the Supreme Court in the case of Collector of Central Excise, Vadodara Vs. Dhiren Chemical Industries [2002 (139) ELT 3 (SC)] the issue under consideration was whether exemption to specified iron or steel products made from fresh unused re-rollable scrap (raw material) on which the appropriate amount of duty of excise has already been paid, would be available if the said raw material attracts `Nil" duty. It was held by the Supreme Court that

"For the purposes of getting the benefit of the exemption under the notification, the goods must be made from raw material on which excise duty has, as a matter of fact, been paid, and has been paid at the appropriate or correct rate. Unless the manufacturer has paid the correct amount of excise duty, he is not entitled to the benefit of the exemption notification. Where the raw material is not liable to excise duty or such duty is Nil, no excise duty is, as a matter of fact, paid upon it. To goods made out of such material the notification will not apply. The notification is intended to give relief against the cascading of excise duty on the raw material and again on the goods made therefrom. There is no cascading effect when no excise duty is payable upon the raw material and the hardship that the notification seeks to alleviate does not arise".

4. The ratio of the above judgement of the constitution bench of the Supreme Court is squarely applicable in the present case. As in the instant case, the subject goods have not suffered any Additional Excise Duty leviable under the Additional Excise Duty (Goods of Special Importance) Act, 1957, they would be leviable to SAD.

5. The Custom Houses may kindly take note of the above clarification while levying SAD on goods which have not suffered any Additional Excise Duty under Additional Excise Duty (Goods of Special Importance) Act, 1957.

6. Difficulties, if any faced in the implementation of above instructions may be brought to the notice of the Board.

7. Kindly acknowledge receipt of this Circular.