Circular No. 28/2006-Cus.

F.No.450/148/2006-CUS-IV
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

November 06, 2006

Subject: Application of PFA Act, 1954 for the clearance of consignments of food articles including Hydrogenated Vegetable Oil, Vanaspati Ghee - instructions - Regarding.

I am directed to invite your kind attention to the interim order of the High Court of Gujarat in a Special Civil Application No. 12386 of 2006 filed by M/s Teej Impex Pvt. Limited. The court has observed that in many cases reprocessing of the goods have been permitted by the Customs department while the petitioner has been denied the facility. Accordingly, CBEC has been directed to take a policy decision in consultation with the concerned Ministry as to in what circumstances the re-processing should be allowed if the goods are not found upto the mark as per laid down norms.

2. The matter was consulted with the Ministry of Health & Family Welfare. The said Ministry has informed that the Prevention of Food Adulteration Act, 1954 (PFA Act) and Rules framed there under do not make a distinction between indigenously manufactured food and imported food (in the relevant provisions defining "food" and stipulating "penalties"). The objective of the Act reads as "An Act to make provision for prevention of adulteration of the food." Further, under the penalties section (Section 16) no distinction has been made in respect of offences involving import of adulterated or misbranded food into India on the one hand and manufacture / sale/ store / distribution of adulterated or misbranded food within the country. According to Ministry of Health & Family Welfare, as per practice reprocessing has been permitted in following circumstances:

(i) A case under relevant provisions of PFA Act has been registered, the food article in question has been forfeited to the Government and the person concerned has been convicted by the appropriate court.

(ii) The Court is satisfied that the article of food in question can be made to conform prescribed standards for human consumption after reprocessing.

(iii) Having been so satisfied the court has to order for the article of food in question to be returned to the owner (on his executing a prescribed bond) for such reprocessing.

3. Ministry of Health & Family Welfare further observes that in the instant case food article in question, have been imported in the country and not found to be conforming to the prescribed standards. No order of release and reprocessing has been passed by the Court in the said interim order. The Customs Authority *suo moto* would not be in a position to release the food article for reprocessing.

4. The matter has been examined. The Board has already issued a Circular No. 58/2001 dated 25.10.2001 providing guidelines for examination, testing and clearance of food items prior to Customs clearance. The Circular provides that all the consignments of edible/food products which fail PHO testing shall be re-exported or destroyed. This instruction continues to be in force. However, it appears that in certain cases where the imported goods failed PFA testing, jurisdictional Commissioners have allowed re-processing. Such permission should not have been allowed by the Commissioners *suo motto*.

5. In view of the observation made by High Court of Gujarat and opinion of Ministry of Health & Family Welfare, henceforth, only the consignments of edible/food products which conform to the provisions of Prevention of Food Adulteration Act, 1954 and rules made there under should be allowed to be imported into India. Consignments which do not conform to the provisions of PFA Act or Rules made thereunder should be dealt with in the manner prescribed in the Circular No.58/2001-Customs dated 25.10.2001.

6. This circular is issued with the concurrence of the Ministry of Health & Family Welfare.

7. The above instructions may be brought to the notice of the Trade immediately through appropriate Public Notice.

8. Receipt of this Circular may kindly be acknowledged.

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