Circular No. 9/96- Cus.
dated 13/2/96

F.No. 528/4/96-Cus. (TU)

Government of India
Ministry of Finance
Department of Revenue, New Delhi

Subject : Applicability of exemption notification - Regarding.

Representations have been received by the Board that benefit of certain exemption notification are being denied by the Customs Houses / Commissionerates on the ground that the goods, wile being covered by the description specified under the notification, do not fall in the Capters/ Heading/ Subheading Nos. (herein after referred to as Tariff references) mentioned in the notification. In this regard it may be stated that exemption notifications where Tariff references and the description of goods may not entirely match, can broadly be grouped into two categories, namely:-

(i) Notifications in which the goods described are such as can never fall under the corresponding Tariff references specified therein. This may happen not only in those cases where the exempted articles are classifiable under a single Chapter / Heading / Sub-heading, but also in those cases where the goods are classifiable under more than one heading (like in cases where goods are described as a broad class - "parts of gas discharge tube").

(ii) Notification which cover goods classifiable under more than one Chapter/ Heading / Sub-heading and only one or some and not all the tariff references have been mentioned. For example, parts of 'gas discharged tube', depending on its nature, are classifiable under Chapter 70,73, or 85. However, in terms of Sr. No. 24 of List A, annexed to notification 64/95 Cus, dated 16.3.95., only such parts which are falling under chapter 85 have been exempted.

2. In respect of the notifications discussed under category (i) above, if the goods are squarely covered by the description but not by the chapter/ heading Nos. and the specified tariff references could never be linked to goods as they are described, then it could only be case of mention of incorrect Chapter No. / Heading No./or Sub-heading No. and may be due to inadvertence and therefore should not be a basis of the denial of exemption. In this regard, your attention is also invited to Board's Circular No. 60/95 dated 5th June, 1995 issued from F.No. 354/31/95-TRU, in the context of applicability of Sr. No. (ix) of Notifn. No. 28/94-Customs dated 1st March, 1994 to 'Ovaprim' imported prior to 16.3.1995. Vide the aforesaid circular it has been clarified that in view of the law laid down by the Supreme Court in matter of Jain Engineering v. Collector of Customs [1987 (32) E.L.T. 3 S.C.] concessional rate of Customs duty was available to Ovaprim even though it was classifiable in a Chapter other than that mentioned in the Notifn. No 28/94- Customs.

3. This clarification is equally applicable in all such cases and it is reiterated that the benefit of exemption will be available to these goods even though the articles mentioned in the notification are not covered by the Capters/ headings Nos./ Sub-heading Nos. mentioned in the notifications.

4. This, however, will not be the case in respect of the notifications mentioned under category (ii) above, where among the various tariff references that may be attracted by the broad description of the goods in the notification, only one or few tariff references have been mentioned. In such cases mention of duty selected tariff headings/ references should be treated as deliberate restriction of the scope of the exemption. Accordingly, the exemption

should be restricted only to those goods which would fall under the tariff references specified in the notification.

Sd/-
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