Circular No.96/2002-Customs
27th December, 2002

F.NO.494/12A/2000-CUS.VI
Government of India
Ministry of Finance & Company Affairs
Department of Revenue
Central Board of Excise & Customs

Sub: Assessment of bulk liquid cargo - ship ullage survey report Vs shore tank receipt - Supreme Court's order dated 20.2.2002 in Civil Appeal No.6764/1999 in the case of Commissioner of Customs (Import), Mumbai Vs M/s. National Organic Chemical Industries Ltd.(NOCIL).

I am directed to invite your attention to the above mentioned subject. Attention is also invited to Board's Circular No.46 dated 17.5.2000 directing the Custom Houses to finalise the provisional assessments relating to bulk liquid cargo imports on the basis of ullage survey reports. However, pursuant to the Supreme Court order dated 20.2.2002 referred to above, the matter has been re-examined by the Board.

2. To briefly recapitulate the facts, for quite some time now, a dispute has been going on between the oil companies and Customs regarding the quantity that needs to be taken for levy of customs duty on bulk liquid cargo. The dispute essentially relates to the method of determining the quantity. The contention of oil companies all along has been that the quantity of oil should be determined on the basis of 'shore tank receipt', i.e., dip measurement in tanks on shore into which oil is pumped from the tanker. The Department, on the contrary, has been of the view that the quantity of import should be determined on the basis of ullage survey report, i.e., the ullage quantity at the port of discharge determined on the basis of survey carried on board the vessel by independent surveyors in the presence of customs officers, master of the vessel and the consignee's representative. The dispute has since been set at rest by the Supreme Court judgement dated 20.2.2002 in Civil Appeal No.6764/1999 in the case of Commissioner of Customs (Import), Mumbai Vs M/s. NOCIL. In this order, the apex court has upheld the CEGAT orders in the case of M/s. HPCL and NOCIL ruling that customs duty should be demanded on the quantity that is pumped into the shore tanks.

3. Following apex court's decisions in the case of Garden Silk Mills Ltd. Vs UOI, 1999 (113)ELT 358(SC),UOI Vs Apar Pvt. Ltd., 1999 (112) ELT 3 (S.C) and Kiran Spinning Mills Vs Collector of Customs, 1999 (113) ELT.753 (S.C), the CEGAT (WZB), Mumbai in its order No.2393/2000-WZB/C-1, dated 7.7.2000 in the case of Commissioner of Customs, Mumbai Vs HPCL has held that bulk liquid cargo would be "considered to have crossed the Customs barrier only when they are pumped into the shore tanks. That being the taxable event, it is that quantity of goods, which are liable to duty". The Tribunal has thus held that the customs duty should be demanded on the quantity that is pumped into the shore tanks.

4. The CEGAT order dated 7.7.2000 in the case of HPCL has been followed subsequently by the Tribunal in other cases as well. In the case of Collector of Customs, Visakhapatnam Vs HPCL, the CEGAT in its order No.483/2000-C dated 15.9.2000 has ordered finalization of provisional assessments on the basis of 'dip measurement in the shore tanks' as shown in the Cargo Intake Certificates attested by the Central Excise Authorities and not on the basis of quantity reported in the vessel's ullage reports taken prior to actual unloading of goods. In yet another order (No.2-4/2002) dated 1.1.2002, in the case of M/s. Mangalore Refinery and Petrochemicals Limited Vs. CCE, Bangalore, the CEGAT has held that crude oil imports are assessable to duty on the quantity determined as 'shore tank receipt' and not on the 'ship ullage survey report' since 'ship ullage survey report' would be only for quantities that have crossed the territorial waters and not the actual quantities imported into India. Now, with the pronouncement of Supreme Court judgement in the case of M/s. NOCIL referred to above, the controversy surrounding 'ullage survey report' Vs 'shore tank receipt' has come to an end, and the final position which emerges is that the quantification of bulk liquid cargo for the purposes of assessment should be done on the basis of shore tank receipt, i.e., dip measurement in tanks on shore into which such cargo is pumped from the tanker.

5. A related issue is the liability of the Master/Agent for penal action for shortages under section 116 of the Customs Act, 1962. With a view to minimising disputes and bringing uniformity in dealing with the Steamer Agent's liability under the said section, the Bombay High Court in Writ Petition Nos.1236 of 1981 and 1354 of 1984 (Shaw Wallace & Co. Ltd. Vs Assistant Collector of Customs & Others) had laid down certain guidelines in July, 1986. As per these guidelines, the liability of the ship's Master/Agent is to be determined by comparing the ship's ullage quantity at the port of discharge with the ship's load port ullage quantity or the Bill of Lading quantity if the former is not made available by the Master/Agent. As the order of the Bombay High Court is in the nature of a consent order, this has not been a subject matter of dispute insofar as the liability of the Master/Agent under section 116 of the Customs Act, 1962 is concerned. The Board is, therefore, of the view that the liability of the Master/Agent for penal action under section 116 should continue to be determined by comparing the ship's ullage quantity at the port of discharge with the ship's load port ullage quantity or the Bill of Lading quantity if the former is not made available by the Master/Agent.

6. Another issue of relevance pertains to assessment of bulk liquid cargo which is not discharged through regular pipelines and cleared directly on payment of duty under a white Bill of Entry, i.e., without the cargo being warehoused in a shore tank. The point raised is how to determine the quantity in such cases. It needs to be mentioned here that though the CEGAT order in case of M/s HPCL relates to a situation of bonded tanks in a warehousing scenario, it would nevertheless be applicable in a situation of home consumption shore tank discharge which is under custodial/customs control. In such situations, the port/custodian would be issuing reports for quantity actually received. In the light of the guidelines of CEGAT orders referred to above, it has been felt that it is this quantity which should be taken into account for the purposes of levy of duty. However, in a situation where there is no facility of measurement at the port, i.e., bulk liquid cargo which is not discharged through regular pipelines and cleared directly on payment of duty under a white Bill of Entry, i.e., without the cargo being warehoused in a shore tank, assessment may continue to be done as per ship's ullage survey report.

7. In the light of above, I am directed to convey that in case of all bulk liquid cargo imports, whether for home consumption or for warehousing, the shore tank receipt quantity should be taken as the basis for levy of customs duty. Pending provisional assessments may be finalised accordingly. In the case of bulk liquid cargo imports which are not discharged through regular pipelines and cleared directly on payment of duty under a white Bill of Entry, i.e., without the cargo being warehoused in a shore tank, assessment may continue to be done as per ship's ullage survey report. As for liability of the Master/Agent for penal action for shortages u/s 116 of the Customs Act, 1962, the same may continue to be fixed in terms of the guidelines laid down by the Bombay High Court in the case of M/s Shaw Wallace. The liability should be evaluated by comparing ship's ullage quantity at the port of discharge with the ship's load port ullage quantity or Bill of Lading quantity if the former is not made available by the Master/Agent.

8. Wide publicity may be given to the above instructions by issue of a suitable Public Notice/Standing Order in this regard. Difficulties, if any, faced in the implementation of above instructions may be brought to the notice of the Board at an early date.

Kindly acknowledge receipt of this Circular.

IndiaCode