

## **CHAPTER VI**

### **NON-LEVY/SHORT LEVY OF ADDITIONAL DUTY**

According to section 3 of the Customs Tariff Act, 1975, any article which is imported into India will also be liable to additional duty equal to the central excise duty for the time being leviable on a same article produced in India.

A few cases of non-levy/short levy of additional duties totalling Rs. 2.52 crore, noticed in test check of goods imported by 52 importers are discussed in the following paragraphs. These observations were communicated to the Ministry through eight draft audit paragraphs. The Ministry/department had accepted (till January 2010), the audit observations in five draft audit paragraphs with revenue implication of Rs. 1.77 crore, of which Rs. 1.05 crore had been recovered.

#### **6.1 Incorrect exemption of additional duty**

Under notification no. 19/2006 dated 1 March 2006, an additional duty of customs to countervail all State taxes including value added tax (VAT) at the rate of 4 per cent of the value of all imported goods was imposed under section 3 (5) of the Customs Tariff Act, 1975. The goods specified with ‘free’ or ‘nil’ rates in the Customs Tariff and also exempt from additional duty of customs under notification no. 6/2006-CE dated 1 March 2006, are not liable to such additional duty under section 3 (5) of the Customs Tariff Act, 1975 (notification no. 20/2006-cus dated 1 March 2006).

##### **6.1.1 Garments, fabrics, Printing plates, Teak wood logs, waste papers and Rice processing/milling machineries**

Exemption from additional duty under notification no. 20/2006-cus is not applicable on goods which are exempt from the entire customs duty under notifications 26/2000-cus dated 1 March 2000, 85/2004-cus dated 31 August 2004 and 2/2007 dated 5 January 2007.

M/s Zodiac Clothing Co. Ltd. and twenty seven others imported (January 2008 to February 2009), 69 consignments of various goods namely “Garments, different kinds of fabrics, Printing plates, Plain particle boards, conveyor system, Gamma linolenic acid, Teak wood logs, waste papers (Sri Lanka origin), Margarine, and Rice processing/milling machineries” with a total value of Rs. 6.65 crore through Chennai (Sea) commissionerate. The department exempted these goods from levy of additional duty of Customs leviable under section 3 (5) of the Customs Tariff Act, 1975. Audit scrutiny, however, revealed that these goods were not eligible for grant of the exemption as the subheads under which the goods were classified were not included in the exemption notification no. 20/2000-cus or the exemptions were incorrectly allowed as these were covered under customs notification no. 26/2000 or no. 85/2004 or no. 2/2007. This resulted in short levy of duty of Rs. 30.22 lakh.

On this being pointed out (June/October 2008, January /March 2009), the department reported (August 2008, January/April 2009) recovery of Rs. 5.13 lakh alongwith interest of Rs.0.28 lakh in respect of 12 bills of entries.

Further progress on the remaining cases has not been intimated (January 2010).

The reply of the Ministry has not been received (January 2010).

**6.1.2 Manufactured cut rag tobacco, Hydrogen peroxide, Cotton knitted fabric and Acrylic –polyester high pile knitted fabric**

Serial no. 50 of the table annexed to notification 20/2006-cus, exempts those goods which are chargeable to duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957.

M/s Bommidala Enterprises Pvt. Ltd. and four others, imported (February 2008 to November 2008) 15 consignments of “Manufactured cut rag tobacco, Customs tariff heading (CTH) 2403”, Hydrogen peroxide (CTH 2847), Polyester polar fleece fabric, Cotton knitted fabric and Acrylic –polyester high pile knitted fabric, totalling to a value of Rs. 1.86 crore through Chennai (Sea) commissionerate. The imported goods were cleared at ‘nil’ rate of additional duty of customs under the above exemption notification (serial nos. 50 and 1).

Audit scrutiny revealed that these goods were not eligible for grant of exemption for the following reasons:-

(i) In the case of “Manufactured cut rag tobacco” (CTH 2403) valued at Rs. 42.06 lakh, exemptions were granted (Duty Rs. 4.11 lakh) under serial no. 50 of the above notification, even though these goods were deleted from the list of specified goods mentioned in the first schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 with effect from 1 April 2007.

(ii) The remaining goods valued at Rs. 1.44 crore which were cleared under the Target plus scheme (TPS) were exempted (duty Rs. 8.67 lakh) under serial no. 1 of the above notification, although the clearance under TPS is not covered under serial no.1 of the notification no. 20/2006-cus dated 1 March 2006.

Therefore, the total incorrect exemption of Rs.12.78 lakh granted was recoverable alongwith interest.

On this being pointed out (August 2008 and January 2009), the department reported (December 2008) that “Manufactured cut rag tobacco” are classifiable under heading 24039970 and these are covered under Additional Duties of Excise (Goods of Special Importance) Act, 1957 and hence the grant of exemption was in order.

The reply of the department is not tenable as CTH 2401, 2402, 2403 and the entries relating thereto were omitted from the first schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 vide Taxation Laws (Amendment) Act, 2007 {M.F. (D.R.) notification no. 1/2007-CST, dated 29 March 2007}. Reply in respect of the remaining consignments has not been received (January 2010).

This was reported to the Ministry in October 2009; their reply has not been received (January 2010).

### **6.1.3 High speed diesel (HSD)**

High speed diesel (HSD) is classifiable under CTH 27101930 and notification no. 21/2002- cus dated 1 March 2002 (serial no. 214) exempts goods imported in connection with petroleum operations, from the levy of Basic customs duty (BCD) and additional duty of customs (CVD). An additional duty of customs at the rate of Rs. 2 per litre was levied under section 116 of the Finance Act, 1999. The Central Board of Excise & Customs (Board) in its circular No. 305/148/2004-FTT dated 11 October 2004 had clarified that additional duty of customs imposed under section 116 of the Finance Act, 1999 is neither specified in the first schedule to the Customs Tariff Act (CTA), 1975 nor levied under section 3 of the CTA, 1975. Accordingly, additional duty of customs at the rate of Rs. 2 per litre was leviable on HSD oil.

M/s National Petroleum Construction Company and one other importer imported (January/April 2008) six consignments of ‘Marine gas oil (MGO)’ and other capital machineries for oil exploration activities through Custom House, Gujarat Pipavav Port Ltd. (GPPL) Pipavav under Jamnagar Commissionerate. The department classified ‘MGO’ under CTH 27101930 and exempted it from levy of additional duty; thus, allowing the benefit of custom notification no. 21/2002 in contravention to the above Board circular of October 2004. This resulted in non-levy of additional duty/education cess amounting to Rs. 62.54 lakh.

On this being pointed out (July/August 2008), the department stated (July/August/October 2008) that the ‘MGO’ is one of the residual fuels having different specification under “BIS:1460:2000” and used by vessels, while HSD is an automotive diesel fuel having different specifications under “IS:1460:2005”. Accordingly, additional duty is not leviable on MGO imports under the Finance Act, 1999. The department further stated that the additional duty was exempted under notification no. 21/2002-cus, as provisions of the Customs Act and the rules and regulations made thereunder including refunds/exemptions should also apply in relation to levy of additional duty as prescribed under sub-section 3 of section 116 of the Finance Act, 1999. However, the department issued three show cause notices (July 2008) for Rs. 62.54 lakh, as a protective demand.

The reply of the department is not tenable for the following reasons:-

- The Board’s clarificatory letter dated 11 October 2004 categorically specified that additional duty levied under section 116 of the Finance Act, 1999 was neither specified under the first schedule of the CTA, 1975 nor levied under section 3 of the CTA, 1975.
- The item imported although mentioned as MGO in BEs, but was assessed under CTH 27101930 which corresponds to the entry for the item HSD in the Customs tariff.
- Also, the department had levied additional duty in two other cases of similar imports made by another importer in BE No. 03/08-09 dated 4 April 2008 and BE No. 25/08-09 dated 10 May 2008.

The case was reported (August 2009) to the Ministry; its reply has not been received (January 2010).

## **6.2 Short levy of additional duty due to incorrect computation of assessable value**

**6.2.1** As per proviso to section 3(2) of the CTA, 1975, the value to be taken for the purpose of calculation of CVD, in the case of imported goods for which provisions of the Standard Weights and Measures Act, 1976 applies is the declared retail sales price (RSP) less the amount of abatement. The notification no. 14/2008 -CE (NT) dated 1 March 2008 specified the rate of abatement as a percentage of RSP on various goods.

In the Chief Commissioners of Customs conference held on 25/26 March 2003 at Visakhapatnam, it was decided that duty may be levied on the basis of transaction value ignoring the RSP, wherever there was evidence that the RSP has been deliberately mis-declared.

M/s Hewlett Packard India Sales Pvt. Ltd. imported (July 2008) 200 'Compaq Presario Note Book' computers through Chennai airport in two consignments for a total assessable value of Rs. 3.74 crore and cleared them by paying a duty of Rs. 21.37 lakh. The importer had declared the RSP as Rs. 32,274 per 'Note Book' for the purpose of assessment of the additional duty. Audit scrutiny, however, revealed that at this rate, the total sale value of the goods imported would be Rs. 64.55 lakh as against the import cost of Rs. 3.95 crore.

Thus, it was evident that the RSP declared was much below the actual cost and, therefore, attracted the decision taken at the conference of Chief Commissioners of Customs cited above. Non-adoption of the normal transaction value against the deliberate mis-declaration by the importer thus, resulted in short collection of duty of Rs. 41.59 lakh.

On this being pointed out (December 2008), the department, while accepting that the RSP declared was less than the transaction value, stated (February 2009) that a demand notice had been issued (February 2009). Further progress has not been intimated (January 2010).

This was reported (September 2009) to the Ministry; its reply has not been received (January 2010).

**6.3 Other cases**

In three other cases of non-levy/short levy of additional duty of Rs. 1.05 crore, the department had accepted (till January 2010), the entire short levy of Rs. 1.05 crore and recovered Rs. 99.40 lakh.

**New Delhi**  
**Dated :**

**(SUBIR MALLICK)**  
**Principal Director (Indirect Taxes)**

**Countersigned**

**New Delhi**  
**Dated :**

**(VINOD RAI)**  
**Comptroller and Auditor General of India**