



Bangalore Chamber of Industry and Commerce

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Taxation (Customs)

Circular No.104

26.07.2010

All Members

Dear Sirs,

We enclose herewith the following Circulars issued from Government of India, Ministry of Finance and Department of Revenue – for your reference and record.

1. Circular No. 17/2010-Cus., dated 6th July, 2010 - F.No. 354/99/2010-TRU - Applicability of customs duty exemption on import of television content – regarding
2. Circular No.18 / 2010-Customs, dated 8th July, 2010 - F. No. 401/46/2008-Cus.III - Refund of 4% Additional Duty of Customs (4% CVD) in pursuance of Notification No.102/2007-Customs dated 14.9.2007 – Special Drive for clearance of pending 4% SAD refund claims - reg.

Thanking you,

Yours faithfully

T.S. Sampath Kumar
Secretary General

Circular No. 17/2010-Cus., dated 6th July, 2010 - F.No. 354/99/2010-TRU

Applicability of customs duty exemption on import of television content – regarding

Notification No. 27/2010-Customs dated 27.2.2010 provides exemption to motion pictures, music, gaming software (for use on gaming consoles), printed or recorded on media falling under headings 3706 or 8523, from so much of basic customs duty, additional duty and special additional duty of customs as

in access of duties that would be leviable of the value of the goods were equal to the aggregate of the cost of the carrier medium and freight and insurance

2. A doubt has been raised by certain importers whether the aforesaid exemption applies to import of content by a television broadcaster on a medium covered under Chapter heading nos. 3706 and 8523 owing to the use of expression "motion pictures".

3. The issue has been examined. The term "motion pictures" is a generic term for making a distinction between moving pictures and still photograph and does not refer to the end use of the content captured on a medium.

4. As such, the reference to motion pictures in Notification No. 27/2010-Customs dated 27th February 2010 is not limited to "movies" or feature films alone and extends to any audio visual content recorded on cinematographic films, Betacam /U-matic tapes, Masters, Stampers, VCDs and DVDs. It is therefore clarified that the term motion pictures referred to in Notification No. 27/2010-Customs dated 27th February 2010 includes audio visual content of all kinds like feature films, advertising films, documentaries, television content, news films etc. and is not restricted to feature films or movies alone

5. These instructions may be brought to the notice of the trade / exporters by issuing suitable Trade / Public Notices. Suitable Standing orders/instructions may be issued for the guidance of the assessing officers. Difficulties faced, if any, in implementation of the Circular may please be brought to the notice of the Board at an early date.

Sd/-
(Yogendra Garg)
Director (TRU)

Circular No.18 / 2010-Customs, dated 8th July, 2010 - F. No. 401/46/2008-Cus.III

Refund of 4% Additional Duty of Customs (4% CVD) in pursuance of Notification No.102/2007-Customs dated 14.9.2007 – Special Drive for clearance of pending 4% SAD refund claims - reg.

Your kind attention is invited to the Notification No.102/2007-Customs dated 14.9.2007 and Board's Circulars No.6/2008-Customs dated 28.4.2008 and No.16/2008-Customs dated 13.10.2008 regarding refund of 4% Additional Duty of Customs (4% CVD). Attention is also invited to the Board's Circulars No.24/2007-Customs dated 2.7.2007, No.22/2008-Customs dated 19.12.2008 and No.7/2008-Customs dated 28.5.2008 which relate to general refund cases.

2. In this regard, several representations from the trade and industry, associations continue to be received in the Board complaining about the delay in refund of 4% CVD or denial of the refund on one pretext or the other, causing them great hardship.

3. In view of the fact that all the doubts of the field formations had been clarified by the Board vide above mentioned Circulars, it is viewed that there may not be any difficulty in timely disposal of refund claims. However, on review of the pending refund claims as on 31.3.2010 at major Custom Houses, it has been noticed that more than 80% of pending claims relate to 4% CVD cases. Hence, the Board has decided to further simplify the procedure for claiming 4% CVD refund in the following manner.

4.1. In respect of Accredited Clients registered with Customs in terms of Circular No.42/2005-Customs dated 24.11.2005 (ACP clients), the amount of 4% CVD refund shall be sanctioned in full, on preliminary scrutiny of the following documents: (a) TR-6 Challans (in original) for CVD payment; (b) VAT/ST payment Challans (in original); (c) summary of sale invoices; and (d) certificate of statutory Auditor / Chartered Accountant, for correlating the payment of ST/VAT on the imported goods with the invoices of sale and also to the effect that the burden of 4% CVD has not been passed on by the importer to the buyer. The procedure for pre-audit for ACP clients shall be done away with and detailed scrutiny should be done only at the stage of post-audit. The refund claims shall be sanctioned within the maximum time period of 30 days in all such cases.

4.2. Submission of sale invoices shall be required only in electronic form (CD or other media) in respect of 4% CVD refund cases and submission of paper documents is accordingly dispensed with.

5. In order to enable timely payment of refund in case of 4% CVD, a system of optional facility of directly crediting the applicant's bank account, through RTGS (Real Time Gross Settlement) or NEFT (National Electronics Funds Transfer) System is being prescribed. This facility is already functioning in Mumbai Customs Zone-II and has been found useful for the trade. Hence, Board has decided to extend this facility on optional basis to all other Customs formations also. Necessary authorisation for payment of refund amount directly to Bank Account may be taken in such cases from the importer/ authorised signatory of the importer in the form annexed. (Annexure-I)

Some field formations have also raised certain doubts whether the audited Balance Sheet and Profit and Loss Account have to be examined in respect of the current financial year for scrutiny of unjust enrichment aspect. It is stated that a large number of refund claims relating to the current year were held up for want of such verification. In this regard, the issue has been examined by the Board and it has been decided that the field formations shall accept a certificate from Chartered Accountant for the purpose of satisfying the condition that the burden of 4% CVD has not been passed on by the importer to any other person. Further, the importer shall also make a self-declaration along with the refund claim to the

effect that he has not passed on the incidence of 4% CVD to any other person. Hence, there is no need for insisting on production of audited Balance Sheet and Profit and Loss Account in these cases. It may also be noted that recently the Board has also notified the list of documents required to be filed by the applicant along with the refund claim (Annexure-II) which is also displayed in the departmental website. Hence, other than these aforesaid documents, no other document would be required in the normal course of granting 4% CVD refund.

7. Board also desires that the Commissioner of Customs shall personally monitor all cases of 4% CVD refund claims pending for more than 30 days so as to ensure that these are disposed of within the overall time limit of three months.

8. A suitable Public Notice and Standing Order may be issued for the guidance of the trade and staff. Difficulties faced, if any, in implementation of this Circular may be brought to the notice of the Board at an early date.

Yours faithfully,

Sd./-
(R. P. Singh)
Director (Customs)

Annexure - I

Authorization for payment of refund amount directly to Bank Account

I.E.C. No. _____ PAN No. _____.

M/s _____

Address: _____

E-mail address:

Bank Account No.: _____

Bank Name: _____

Bank Address: _____

11 digit alphanumeric IFS Code : _____

I declare that the above particulars are correct. I authorize payment of refund amount for my refund claims filed at _____ Custom House to my above mentioned Bank Account through NEFT / RTGS after deduction of Bank's service charges at the rate of 0.09% and applicable NEFT / RTGS charges as per RBI guidelines.

Name of the Authorised signatory /
Representative of the Importer

Signature :

Date:

Place:

Certified that the above details are correct.

Signature of Bank Branch Manager along with the official Seal

Annexure - II

| Sl.No. | Type of refund claim | Section / notification under which filed | Illustrative list of documents to be filed by applicant along with Application for refund claim in prescribed form (Customs Series Form No.102 as given in Part 5 of Customs Manual) |
|--------|----------------------|--|--|
| 3 | Refund of 4% SAD | Notification No. 102/2007- Customs dated 14.9.2007 | <ol style="list-style-type: none">1. Document evidencing payment of the Special Additional Duty (SAD).2. Invoices of sale of the imported goods in respect of which refund of the said SAD is claimed.3. Documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.4. Certificate from a statutory auditor / CA who certifies the final accounts in respect of correlation of VAT payment, payment of 4% SAD amount and unjust enrichment as prescribed in Board's circular No.6/2008- Customs dated 28.4.2008 and 16/2008- |

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| | | | <p>Customs dated 13.10.2008.</p> <p>5. Copy of the Consignment Sale Agreement. (in case of sale through consignment agents / stockists).</p> <p>6. Self-declaration / Affidavit (for e.g. in case of submission of invoice in soft form in lieu of paper documents, in case of fulfillment of the doctrine of unjust enrichment to the effect that the applicant has not passed on the incidence of 4% SAD to any other person).</p> <p>7. Any other document considered necessary in support of the claim.</p> |
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