

**OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT)
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,
TAL: URAN, DIST: RAIGAD; PIN- 400 707 (M.S.)**

F.No. S/26-Misc-06/2009 JNCH

Date: 16 .07.2009

STANDING ORDER NO. 33 /2009

Sub : Disposal of refund claims of 4% ADC (SAD) in respect of goods assessed on

**Provisional basis , before finalization of assessment in pursuance of
Nfn.No: 102/2007-Cus. Dtd: 14.09.2007 r/w Nfn.No: 93/2008-Cus. Dtd:
01.08.2008- Reg.**

Attention of all the concerned officers of this Custom House is invited to the above cited notifications and the refund claims for ADC(SAD) of 4% claimed by various importers , while the provisional assessments are still pending finalization.

2. The matter has been examined and it has been decided that such refund claims for SAD can be entertained / decided on merits, notwithstanding the assessment continuing to be provisional, because:

(1) The Board vide Circular No. 6/2008-Cus. Dt. 28.4.2008 clarified that time limit for SAD refunds is not governed by Section 27 of the Customs Act, 1962 and the same should be decided within three months from the date of receipt. It was also clarified that the payment of interest on such refunds does not arise. The Board vide Circular No. 16/2008 dtd. 13/10/2008 had reiterated that the SAD refund claims should be decided within a period of three months from the date of filing. Therefore, if the sanction of the refund claim has to wait for finalization of the assessment, it will be beyond the period of three months time limit prescribed under the said Circulars.

(2) Moreover, on the presumption that the relevant date for reckoning the period of one year is the date of finalization of the provisional assessment as per the Sec.27, if one files a claim after the period of one year from the date of payment of SAD, such claims would have to be rejected on the ground of time bar in terms of the Nfn: No: 102/2007-cus dtd: 14.09.2007 as amended

vide Nfn.No: 93/2008-Cus dt. 1.8.2008, which prescribed time period as one year from the date of payment of SAD.

(3) There is no expressed provision, either in Section 27 or in the Notification that provisional assessment is a bar to sanction refund.

(4) It would be highly inequitable to hold on to the SAD refund claims for an indefinite period of time, more so when interest is not payable on such delayed payments, in terms of para 4.3 of the said Circular dtd: 28.04.2008. There is no direct conflict between the equity and law, as aforesaid.

(5) In the event of final assessment requiring some more amount of SAD to be paid by the importer, he may file subsequent claim for the additional SAD amount paid and the same may be decided on merits. In the event it is other way round and the importer is entitled to get some SAD refund on finalization of assessment, there is an in-built check in the refund/CAO section to prevent double payment, as it will be specifically checked for any previous payments / refund whenever any claim for SAD refund on finalization of provisional assessment comes to their consideration for payment (Non-payment Certificate).

3. Accordingly, SAD refund claims shall be processed / decided on merits despite the fact that the assessment continues to be provisional for one reason or the other.

4. All concerned are directed to comply with the above decision.

(A. K. DAS)
COMMISSIONER OF CUSTOMS (IMPORT)
JNCH, NHAVA SHEVA.

To
All the Concerned

Copy to:

1. The Chief Commissioner of Customs, JNCH, Sheva.
2. The Commissioner of Customs (EP), JNCH, Sheva.
3. The Commissioner of Customs (Appeals), JNCH Sheva.