

OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT)
JAWAHARLAL NEHRU CUSTOM LHOUSE, NHAVA SHEVA,
TALUKA:URAN, DISTT: RAIGAD, MAHARASHTRA-400 707

F.No. S/22-Gen-207/2007 AM(I) Date:- 14.01.2008

PUBLIC NOTICE 08 /2008

Sub: - Imports made against DEPB licences issued with endorsement of Notfn.

No. 34/97-Cus dated 7.4.1997- exemption from special additional duty-

Clarification- clarification issued vide [Circular NO. 36/2007-Cus.](#), dated 03.10.2007-reg.

Attention of importers/exporters , CHAs and general trade is invited to the [CBECs Circular No. 36/2007](#)-Cus dated 03.10.2007 on the above subject. The Circular is reproduced below:

I am directed to invite your attention to the above mentioned subject and to say that a doubt has been raised as to whether exemption from special additional duty can be allowed to the goods imported under the DEPB Scheme against licences issued in pursuance of the Supreme Court judgement dated 23.8.2005 in the case of Government of India & Ors. Dian Tobacco Association in Civil Appeal No. 5196 of 2005 (arising out of SLP (Civil) No. 15844 of 2004) in respect of export of tobacco from ICD, Guntur that took place during the period from 7.4.1997 to 26.11.1997

2. In 1997, pursuant to introduction of the DEPB Scheme, the Government had issued notification No. 34/97-Cus dated 7.4.1997 exempting the goods

from payment of basic and additional duties of customs subject to the condition that these duties are debited from DEPB scrips/licences. The DEPB was valid for imports and exports made at specified ports/airports/ICDs only. Initially, ICD, Guntur was not a specified port under notification No. 34/97-Cus. Subsequently, vide notification No. 87/97-Cus dated 27.11.1997, ICD, Guntur was included in notification no. 34/97-Cus as an eligible port under the DEPB Scheme. In a Writ Petition (No. 21674 of 2002) filed by the Indian Tobacco Association, Guntur the High Court of Andhra Pradesh in its order dated 30.1.2004 held that the Customs notification dated 27.11.1997 would operate retrospectively since the word Guntur was introduced by way of substitution and therefore the members of the petitioner Association would get the benefit of incentive from lout of the exports carried from Guntur from the date of original notification. The Supreme Court in its judgement cited above has upheld the order of the High Court of Andhra Pradesh stating that in this case the Central Government only intended to rectify a mistake and, thus the same will have retrospective effect and retro-active operation.

3. In pursuance of the aforesaid Supreme Court judgement, the DEPB licences were issued by DGFT some time in September, 2006 in respect of tobacco exports made from ICD, Guntur during the period 7.4.1997 to 26.11.1997. These licences are reportedly issued with an endorsement that This notification, as mentioned above, initially provided exemption from customs duties including additional duty subject to debit of these duties from DEPB licences. Later on , a new section 3A was inserted in the Customs Tariff Act. 1975 vide Finance Act, 1998 by which 4% special additional duty (SAD) was levied. However, vide notification No. 34/98-Cus dated 13.6.1998 as amended by notification no. 48/98-Cus dated 17..7.1998 imports under notification No. 34/97-Cus were exempted from this duty. Thus, the 4% SAD was not required to be debited or paid in the case of goods imported under DEPB Scheme under notification no. 34/97-Cus.

4. The said section 3A was omitted from the CTA, 1975 w.e.f. 13.5.2005 vide FinanceAct,2005. Consequently, there is no duty levied as SAD now. Presently, the goods

imported under DEPB Scheme are exempted from basic customs duty as well as additional duty including special additional duty (leviable under section 3(5) of CTA, 1975) under [notification No. 89/2005-Cus](#) dated 4.10.2005 subject to the condition that these duties are debited from the DEPB scrip. In this connection, a doubt has been raised as to whether exemption from the special additional duty leviable under section 3(5) of CTA, 1975 can be allowed for the goods imported under DEPB Scheme against licences issued in pursuance of the Supreme Court judgement in respect of tobacco exports made from ICD,

Guntur during the period 7.4.1997 to 26.11.1997 or the said duty is required to be debited from the DEPB scrip / licence.

5. The matter has been examined in consultation with the Ministry of Law & Justice. The Ministry of Law has observed that in the instant case, the exports were made way back in 1997 and the appropriate DEPB script were not provided to the importer at the appropriate time to enable him to avail of the benefit of notification No. 34/98-Cus dated 13.6.1998 due to the pendency of the case before the High Court and the Supreme Court. Now, admittedly, the said DEPB clearance has been provided for the exports made during the period 1997. Therefore, the exporter is entitled for the benefit of notification No. 34/98-Cus.

6. The aforesaid opinion of the Ministry of Law has been accepted by the Ministry. Accordingly, it is clarified that exemption from special additional duty may be allowed for the goods imported under the DEPB Scheme against licences issued in pursuance of Supreme Court judgement in Civil Appeal No. 5196 of 2005 (arising out of SLP (Civil) No. 15844 of 2004) in respect of exports of tobacco made from ICD, Guntur during the period from 7..4.1997 to 26.11.1997 and that this duty is not required to be debited from the DEPB licence / scrip.

Any problems faced by the Trade/Importers/Exporters/CHAs in implementation this Public Notice may be brought to the notice of the undersigned immediately

Sd/-

(SANJEEV BEHARI)

COMMISSIONER OF CUSTOMS (IMPORT)

JNCH

To

i) All Trade Associations

ii) Bombay Custom House Agents Association, Mumbai

iii) Notice Boards

Copy to:

- 1 Chief Commissioner of Customs, Zone-II
- 2 Commissioner of Customs, (Import), JNCH
- 3 Commissioner of Customs (Export), JNCH
- 4 All Addl. Commissioner of Customs, (Imports), JNCH
- 5 All AC/DC of Import Commissionerate, JNCH
- 6 Office Copy