**Circular No. 4 /2008-Customs**

F. No. 467/34/2006-Cus.V
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

New Delhi, 12th February, 2008

To,

All Chief Commissioners of Customs,
All Chief Commissioners of Central Excise,
All Chief Commissioners of Customs & Central Excise,
All Directorate-Generals, Chief Departmental Representative,
All Commissioners of Customs,
All Commissioners of Central Excise, and
All Commissioners of Customs & Central Excise

Sir,

Subject: Valuation practice of second hand machinery to be adopted by all Custom Houses/ Customs Commissionerates-regarding/-

It has been noticed that the Custom Houses / Customs Commissionerates have been adopting different assessment practices with regard to valuation of imported Second Hand Machinery / Capital Goods. As this was resulting into diverse assessments the following guidelines are being issued so that assessments are done as far as possible on their basis.

2. A careful analysis of the Tribunal decisions and an Apex Court judgement on the issue of valuation of second-hand machinery reveal the following views of the judiciary:

i) If other parameters of Section 14 of the Customs Act, 1962 are satisfied, the transaction value method of Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 can also be applied to importation of second-hand machinery sold for export i.e. it was imported immediately after sale without any further usage abroad.

ii) However if transaction value of Rule 3 is rejected, valuation of second-hand machinery can be done under Rule 9, on the basis of value of new machine, as certified by the Chartered Engineer, and scaled down by allowing depreciation commensurate with the period of usage. Supreme Court judgement in the case of Gajra Bevel Gears [2000(115) ELT 612 (SC)] refers in this regard.

iii) However, transaction value of Rule 3 cannot be rejected by *ab initio* application of Rule 9, inasmuch as one cannot, before rejecting transaction value of Rule 3 with sufficient evidences, straightaway arrive at a notional value under Rule 9.

3. It may thus be seen from the judicial decisions that, before redetermination of value of second hand machinery under Rule 9, it is essential to reject the transaction value of Rule 3. There would be no difficulty in rejection of transaction value in those cases where the assessing officer is able to assail the documents like Chartered Engineer's Certificate, invoice, etc., as manipulated or fraudulently obtained. Similarly, there will also be no difficulty in rejection of transaction value in cases where the assessing officer proves that certain basic particulars like description, period of usage, extent of the re-conditioning, year of manufacture, model no., price when new, etc., are misdeclared either in the Chartered Engineer's Certificate or in the invoice. There will also be no difficulty in rejecting the transaction value in cases which are hit by the

provisions to Sub-Rule (2) of Rule 3. Difficulties may however be faced in situations other than those described above.

4. In this context, attention of the assessing officers is drawn to Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which provides for rejection of declared value under certain circumstances. Following views have emerged from various Tribunal decisions on the application of Rule 12:

i) Rule 12 empowers the Revenue not to determine the value of the imported goods on the basis of transaction value under Rule 3 (1) of the Valuation Rules. The Tribunal decision in the case of Chandni International [2003 (153) ELT 312] refers.
ii) Rule 12 provides that when the proper officer has reason to doubt the truth or accuracy of the value declared, he may ask the importer to furnish further information or other evidence. If he still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of the goods cannot be accepted. It is therefore required to determine whether the evidences constitute reasonable doubt for the assessing officer to doubt the value of the goods. The Tribunal decision in the case of Sunny Enterprises [2004 (175) ELT 420] refers.
iii) Rule 12 is a procedural provision, which is meant to act as an aid in determining as to whether Sub-Rule (1) or Sub-Rule (4) of Rule 3 would be applicable in a given case. This deeming provision contained in Rule 12 has necessarily to be pressed into service at the very initial stage under the sequential scheme. It has no role after the scheme has worked out. The Tribunal decision in the case of Venus Insulation Products Mfg. Co. [2002 (143) ELT 364] refers.

5. Thus in respect of valuation of second hand machineries as well, the assessing officers may apply Rule 12 in appropriate cases. As an illustration, if the declared value of a second hand machinery is found to be much below the value arrived at by the depreciation method on the basis of the certified price of the new machinery in the year of its manufacture, the assessing officer may have reason to doubt the truth or accuracy of the declared value, and ask the importer to furnish further information and explanation. If he is satisfied, he may accept the declared value. But, if he still has reasonable doubt about the truth or accuracy of the declared value, he can reject the declared value under Rule 12, and proceed to re-determine the value under Rule 9 by following the Board's circular No. F.No. 493/124/86-Cus VI dated 19.11.87 in respect of the depreciation to be extended to such second hand machinery.

6. In fact, for other imported goods as well, the method for acceptance or rejection of declared value, and then re-determination of value in case the declared value is rejected, would be similar to that in the case of second hand machinery, as explained hereinabove.

7. In cases where the declared value is rejected, and assessable value is re-determined, the assessing officer shall issue a detailed speaking order, giving the reasons for such rejection, by invoking the provisions of Rule 12 or Rule 3(2), as appropriate, and giving the reasons for re-determination of value under appropriate provision.

8. Guidelines in respect of some other issues related to valuation of second hand machinery are as follows:

(a) For valuation of second hand machinery / capital goods, the assessing officers must insist on importers submitting a certificate issued by an independent Chartered Engineer or any equivalent in the country of supply. The certificate should indicate *interalia*:-

i) Price of new machinery as in the year of its manufacture,
ii) Current CIF value of new machinery if purchased now,
iii) Year of the manufacture of machinery,
iv) Sale price of the supplier,
v) Present condition of machinery,

vi) Nature of reconditioning or repairs carried out, if any, and the cost (including the dismantling cost, if any) thereof,

vii) Expected life span.

(b) There is no need to specify the agencies whose certificates alone, issued at the port of loading, would be accepted. The number of such agencies should not be limited.

(c) In the absence of proper Load Port Certificate, a local Chartered Engineer's Certificate may be accepted. Each Custom House may consider issuing Public Notices giving names and addresses of Chartered Engineers, whom the trade can contact for issuance of CE Certificate.

(d) It is not essential to have the examination of the second hand machinery by a panel of officers, since in many Customs formations no machinery expert is posted. The routine examination of second hand machinery being done by the Docks staff shall continue.

9. The aforesaid guidelines regarding valuation of second-hand Machinery as contained in foregoing paragraphs 3 to 8 shall be strictly followed.

10. Any difficulty in the implementation of the foregoing guidelines may be brought to the notice of the Directorate General of Valuation, Mumbai with a copy to the Board.

(M. K. SINGH)
Director (International Customs)

NOTIFICATION New Delhi, the 1st March, 2008

No.27/2008-Customs 11 Phalguna, 1929 (Saka)

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 27/2002- Customs, dated the 1st March, 2002 which was published in the Gazette of India, Extraordinary, vide number G.S.R.124(E) of the same date, namely:-

In the said notification, for the TABLE, the following TABLE shall be substituted, namely:-

"TABLE

| Description of goods | Limitations and conditions | Extent of exemption |
|---|---|---|
| (1) | (2) | (3) |
| Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). | (1) the goods have been taken on lease by the importer for use after import;<br><br>(2) the importer makes a declaration at the time of import that the goods are being imported temporarily for execution of a contract;<br><br>(3) the said goods are re-exported within three months of the date of such import or within such extended period not exceeding 18 months from the date of said import, as the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, may allow;<br><br>(4) where the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, grants extension of the aforesaid period for re-export, the importer shall pay the difference between the duty payable under the relevant clause in column (3) and the | in the case of,-<br>(i) goods which are re-exported within three months of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of five per cent.;<br><br>(ii) goods which are re-exported after three months, but within six months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of fifteen per cent.;<br><br>(iii) goods which are re-exported after six months, but within nine months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of twenty five per cent.;<br><br>(iv) goods which are re-exported after nine months, but within twelve months, of the date of |

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|---|---|---|
| | duty already paid at the time of their import; and<br><br>(5) the importer executes a bond, with a bank guarantee, undertaking–<br><br>(a) to re-export the said goods within three months of the date of import or within the aforesaid extended period;<br><br>(b) to produce the goods before the Assistant Commissioner of Customs or the Deputy Commissioner of Customs for identification before re-export;<br><br>(c) to pay the balance of duty, along with interest, at the rate fixed by notification issued under section 28AB of the Customs Act, 1962, for the period starting from the date of import of the said goods and ending with the date on which the duty is paid in full, if the re-export does not take place within the stipulated period | import, so much of the duty of customs as is in excess of the amount calculated at the rate of thirty per cent.;<br><br>(v) goods which are re-exported after twelve months, but within fifteen months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of thirty five per cent.;<br><br>(vi) goods which are re-exported after fifteen months, but within eighteen months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of forty per cent.,of the aggregate of the duties of customs, which would be leviable under the Customs Act, 1962 or under any other law, read with any notification for the time being in force in respect of the duty so chargeable. |

(S. Bajaj)
Under Secretary to the Government of India

[F.No.334/1/2008-TRU]

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Note: The principal notification No. 27/2002-Customs, dated the 1st March, 2002 was published in the Gazette of India, Extraordinary, vide G.S.R. 124(E), dated the 1st March, 2002.

(TO BE PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY
PART-I-SECTION-1)

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE

PUBLIC NOTICE NO. 110 (RE: 2007)/2004-2009
NEW DELHI: DATED: 15/2/2008

In exercise of the powers conferred under Paragraph 2.4 of the Foreign Trade Policy, 2004-09 and Paragraph 1.1 of the Handbook of Procedures (Vol.1), the Director General of Foreign Trade hereby makes the following amendments in the Handbook of Procedures, Vol.2, 2004-2009, as amended from time to time.

2. The Last Paragraph to "General Note for Fuel" in HBP, Vol. 2 stands replaced by the following clause:

"For the purpose of import of fuel under Advance Authorisation, the applicant shall indicate the name of the specific fuel sought for import in their application. Import of fuel, however, shall not be permitted under Paragraph 4.7 of Handbook of Procedures, v1 or against Adhoc Norms. In case of DFIA and erstwhile DFRC, import entitlement for fuel as per SION may be transferred only to companies which have been granted licences to market fuel by the Ministry of Petroleum and Natural Gas. For the purpose of calculation of DEPB rates, fuel shall not be taken into account. However, exporter can apply for fixation of DEPB rate (Brand Rate) in ANF 4C for the component of customs duty on fuel under DEPB Scheme."

This issues in public interest.

Sd/-
(R.S. Gujral)
DIRECTOR GENERAL OF FOREIGN TRADE
Ex-Officio Additional Secretary to the Government of India

(Issued from F. No. 01/94/180/ PN/HBP v 2/Fuel /AM08/PC-IV)