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F. No. S/12-Misc-63/2018-19/CRC-I/ NS-III/JNCH

Date: 04.07.2022

STANDING ORDER NO. 06/2022

(Modification of S.O 27/2019)

Sub: Re-assessment of Bills of Entry involving Refund Claim of Excess Duty paid-Reg.

Kind attention is invited to the Order passed by the Hon'ble Supreme Court in the matter of M/s ITC Ltd. Vs C.C.E, Kolkata-IV in Civil Appeal Nos.293 & 294 of 2009 dated 18.09.2019 wherein it was held that the claim of refund cannot be entertained unless the order of assessment or self- assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self- assessment and reassess the duty for making refund; and in case any person is aggrieved by any order (including self-assessment), he has to get the order modified under Sec.128 or under other relevant provisions of the Customs Act, 1962. Thus, the re-assessment is to be done subject to outcome of an appellate order i.e. the assessment order has to be challenged by the importer in appellate forum and re-assessment be done afterwards commensurate with the order of the Appellate Authority.

2. In the light of the aforesaid judgement, SO 27/2019 was issued prescribing that section 27 can be invoked subject to final outcome of section 17 (3), (4) and (5). In such cases, the claim of refund cannot be entertained without the outcome of the appellate order and consequent re-assessment. In view of the above, AC/DC of the concerned Groups are to re- assess any Bill of Entry as a consequence of the order of the appellate authority. *Suo-motu* re-assessment is not to be resorted to by the Group.

2.1 This practice continues and after re-assessment, the consequential refund is to be granted by the Refund Section.

3. In case of refund claims, where reassessment has already been done after 'Out of Charge' without an appellate order, such claims would be rejected by Refund Section provided assessment, re-assessment and out of charge dates are in pre-ITC judgement period. In cases where dates of reassessment pertain to period post-ITC, irrespective of date of assessment and out of charge, such claims would be sanctioned by CRC Section provided all other issues/documents are in order. The relevant date for such refund claims remain the date of reassessment by the assessment group.

4. However, Bills of Entry of the following nature are excluded and not covered by the above:

- Where goods have not been given out of charge and are recalled by the Group on account of any reasons viz. notification benefit, duty, typographical mistakes, etc. Such Bills of Entry can be re-assessed as per present practice;
- Bills of Entry where the importer is invoking section 149 or section 154 of the Customs Act, 1962 (after out of charge) for reassessment;
- in cases where there is no revenue implication, concerned Group can re-assess such Bills of Entry.

5. In this regard, attention is invited to the judgement of Hon'ble High Court of Bombay in the matter of Dimension Data India Private Limited, which was subsequently upheld by the Hon'ble Supreme Court of India vide order dated 08.11.2021 in Special Leave to Appeal(C) No(s) 15777/2021.

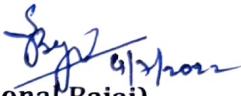
5.1 As per the above judgement, apart from section 128 of the Customs Act, 1962, the Bill of Entry [or Shipping Bill] can also be amended or modified under the provisions of Section 149 or Section 154 of the Customs Act, 1962. Such amendments/modifications may be carried out after out-of-charge has been given [or LEO has been granted] and may alter the initial assessment made. Refunds may accrue under section 27 of the Customs Act 1962, as a consequence. Needless to mention that such refund claims would be guided by section 27 of the Customs Act, 1962 for limitation as well.

5.2 In cases where amendments are sought after Out of Charge (OOC), the approval of concerned ADC/JC for cancellation of Out of Charge is required [S.O 16/2020 dated 16.06.2020 refers]. The proper officer carrying out the amendment/ modification under section 149 or 154, while deciding the eligibility of the amendment sought, is expected to examine the documents and make a reasoned decision within the scope of the abovementioned sections, and to enter all the required details along with relied upon documents (if any), file number etc. in the departmental comments of the bill of Entry being amended. This would assist the refund section while processing the consequential refund claims.

5.3 In case of bill of entry where OOC was granted by the RMSFC and amendment is sought by the importer under section 149 or 154 of the Customs Act 1962, the cancellation of OOC for consequential amendment would be made by the Group to which the BE would otherwise pertain to.

5.4 Cases in progress where the amendment under section 149 or 154 of Customs Act, 1962 has already been allowed or where refund has already been filed after such amendment as on date, would be processed on merits by the Refund section.

6. All AC/DC (Groups) and AC/DC (CRC) and other concerned are to comply with the directions as mentioned in this Standing Order. Difficulties, if any, faced in implementation of this Standing Order may be brought to the notice of the Joint / Additional Commissioner in-charge of "Centralized Refund Section".


(Sonal Bajaj)
Commissioner of Customs
NS-III, JNCH

To

1. The Chief Commissioner of Customs, Mumbai Zone-II, JNCH for information.
2. The Pr. Commissioner/Commissioner of Customs, NS-G/ NS-I/NS-II/ NS-IV / NS-V, JNCH
3. All Additional / Joint Commissioner of Customs, JNCH
4. All Deputy / Assistant Commissioner of Customs, JNCH
5. All Sections / Groups of NS-G/NS-I/ NS-II / NS-III/ NS-IV / NS-V, JNCH
6. The BCBA / Other Trade Associations.
7. The AC/DC, EDI for uploading on JNCH website immediately