

F.No.336/4/2015-TRU
Government of India
Ministry of Finance
(Department of Revenue)
Tax Research Unit

New Delhi, the 21st July, 2015

To,

Principal Chief Commissioners / Chief Commissioners of Central Excise (All)
Principal Chief Commissioners / Chief Commissioners of Central Excise & Service Tax (All)
Principal Chief Commissioners / Chief Commissioners of Customs (All)

Sir / Madam,

Subject: Judgment of the Supreme Court in the case of M/s SRF Ltd. versus Commissioner of Customs, Chennai – Clarification relating to notifications No.30/2004-Central Excise dated 09.07.2004, No.1/2011-Central Excise dated 01.03.2011 and No.12/2012-Central Excise dated 17.03.2012, as amended – Regarding.

It may recalled that the Hon'ble Supreme Court, in the case of M/s SRF Ltd. versus Commissioner of Customs, Chennai and M/s ITC Ltd. v/s Commissioner of Customs (I&G), New Delhi relating to CVD exemption, has held that the benefit of excise duty exemption [available to final products manufactured by the domestic manufacturer, subject to the condition of non-availment of CENVAT credit of duty on inputs or capital goods used by such manufacturer for manufacture of such final products] will also be available to the importers of such final products for the purposes of CVD on the ground that the importer was not availing the credit of duty on inputs or capital goods.

2. The implication of the Hon'ble Supreme Court judgment was that all such final products when imported by manufacturer importer would have attracted concessional excise duty as CVD, while the domestic manufacturer of such final products had to forgo input tax credit to be eligible for such concessional rate. This would put the domestic manufacturers at a disadvantage vis-a-vis imports and would adversely impact the Make in India Policy of the Government.

3. The Judgment of the Hon'ble Supreme Court was examined in CBEC and it was found that there were certain errors apparent on record / interpretational issues and, with the concurrence of the Ld. Attorney General, a Review Petition / Revision Application has been filed against the same.

4. However, keeping in view the adverse implications of the aforesaid judgment on the domestic industry, legal opinion was sought from the Ministry of Law & Justice as to whether pending the aforesaid Review Petition / Revision Application, such conditions in the relevant notifications be suitably amended so as to make the intention abundantly clear (that these conditions are to be satisfied by the manufacturers of such goods and not the buyer / importer of such goods).

5. In this context, opinion of the Ministry of Law & Justice was also sought. With the concurrence of the Ld. Attorney General, notifications No.34/2015-CE, No.35/2015-CE and No.36/2015-CE all dated 17.7.2015 were issued amending the conditions in notifications No.30/2004-CE dated 09.07.2004, No.1/2011-CE dated 01.03.2011 and No.12/2012-CE dated 17.03.2012, respectively.

6. In the above context, apprehensions have been raised about the use of the phrase of "appropriate duty". In this regard, Explanations have been inserted in the notifications No.30/2004-CE dated 09.07.2004, No.1/2011-CE dated 01.03.2011 and No.12/2012-CE dated 17.03.2012 so as to clarify that the appropriate duty or appropriate additional duty or appropriate service tax for the purposes of the said notifications / entries includes nil duty or tax or concessional duty or tax, whether or not read with any relevant exemption notification for the time being in force.

7. It may, therefore, be noted that the domestically manufactured goods covered under these notifications / entries continue to be exempt from excise duty or subject to concessional rate of excise duty, as the case may be, as they were prior to 17th July, 2015.

8. Trade Notice/Public Notice may be issued to the field formations and taxpayers.

9. Difficulties faced, if any, in implementation of this Circular may be brought to the notice of the Board.



(Alok Shukla)
Joint Secretary (TRU)