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E-BOOK

On

Duty Exemption
In
Indirect Taxes

Duty Exemption In Indirect Taxes

Note:

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4. This e-book has been prepared with active assistance and contribution of Shri R. K. Shukla, Assistant Director, NACEN, RTI, Kanpur. We, at NACEN, appreciate his participation and willingness to prepare e-books so as to help fellow departmental officers in capacity building and upgrading their knowledge.
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Sd/-

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1. Introduction

- 1.1 The Central Excise Tariff Act, 1985 prescribes rate of duty which is called as **Tariff Rate or statutory rate of Duty**. Since this rate is fixed by an Act of the parliament, any change in the rate of duty upward or downward, which government may consider on any excisable goods to achieve varied socio economic objectives, shall require approval of parliament, by way of amendment in the Central Excise Tariff Act itself. Since this is not practically possible and is time taking exercise, Parliament has granted powers to the Central Government to reduce rate as per requirement, by issuing exemption notifications. From time to time, the Central Government issues exemption notification to amend or lower the rate of duty on excisable goods.
- 1.2 Such notification which has impact of reducing rate of duty payable on the goods manufactured /imported/exported are known as Tariff notification to distinguish it from other notifications (known as non-tariff notification) which is also issued by the Government for purposes, other than the impacting the rate of duty, as required under the provisions of Central Excise Act, 1944/Customs Act, 1962; and the Finance Act, 1994.
- 1.3 The rate of duty payable on any excisable goods after taking into consideration the exemption notification issued by the Government is called the “**effective rate of duty**”.
- 1.4 Similar, provisions exists under the Customs Act, 1962, which deals with import and export goods; and the Finance Act, 1994, which deals with tax on services.
- 1.5 To increase the rate of duty beyond statutory rate of duty prescribed under the Customs Tariff Act, 1975 or the Central Excise Tariff Act, 1985, or to impose fresh levies, the power lies with the Parliament. When the Government wants to impose fresh levy or to increase the existing tariff rate of duty, it can do so by including such proposals in the Finance Bill at the time of presenting budget. Such new levies or increased rate come into force on passing of Finance Bill by the Parliament.
- 1.6 However, at times, the Government wants to implement the proposed duty increase/ fresh imposition of duty with immediate effect i.e. from the mid-night of date of announcement i.e. the date of presentation of budget without waiting for the Finance Bill to become the Finance Act. To do so, the provisions contained in the Provisional Collection of Taxes Act, 1931 are invoked. This can be done only when such clause of Finance Bill are declared under section 3 of the Provisional Collection of Taxes Act, 1931. Such declaration made under section 3 of the provisional Collection of Taxes Act, 1931 in the Finance Bill itself empowers the Government to collect taxes at increased rate or as per proposed fresh levy. However this is possible only in case of Central Excise & Customs duties. For Service Tax one has to wait till Finance Bill is passed & becomes an Act.
- 1.7 There are three duties, namely, anti-dumping duty, safeguard duties and countervailing duties, which are imposed by the Government to prevent injuries domestic industry, can be imposed any time by issuing the notification under the relevant provision of the Customs Tariff Act, 1975.

2. Exempted Goods/Exempted services

- 2.1 If any exemption notification issued by government provides effective rate of duty as **NIL**, the goods are called “**Exempted Goods**”, whereas if the tariff rate itself provides “NIL” rate of duty, these are called “Chargeable to **Nil rate** of duty”.
- 2.2 As explained above if the notification issued provides effective rate of duty as NIL, the goods are called exempted goods. However, for the limited purpose of availment of CENVAT Credit, certain goods, though otherwise liable for payment of duty, are still treated as exempted goods. For example goods covered by exemption Notification No.01/2011-CE, dated 1.3.2011; or entry Nos. 67 and 128 of notification No.12/2012-CE, dated 1.3.12. These goods though are not fully exempted are considered as exempt for the purpose of grant of CENVAT and accordingly, no CENVAT credit is allowed to the buyer of the goods.
- 2.3 The Section 5A of the Central Excise Act, 1944, deals with powers to grant exemption from payment of duty. There are two types of exemptions- One is **general exemption** and another one is **ad-hoc exemption**. The exemptions could be for **whole or part of duty**. Thus, by exemption notification, excisable goods could be made wholly or partly exempt from payment of duty. The government while granting exemption may also impose certain conditions for availing the duty exemption and conditions, if any, are required to be mentioned in the notification itself. The condition may be of the type which needs to be fulfilled either prior to removal of the goods from the factory or post after removal of excisable goods.
- 2.4 While general exemptions are issued by the Government in public interest by notification in the official gazette, the ad-hoc exemptions are issued in public interest, but under circumstances of exceptional nature and by issuing an order and such orders are not required to be published in the official Gazette. Ad-hoc exemptions orders are issued in rather exceptional circumstances. The Government has issued detailed guidelines for issuance of ad-hoc exemptions in Customs *vide* CBEC Instruction F. No. 460/04/2014 - Cus-V, dated 19.08.2014. No separate guidelines have been issued in Central Excise and Service Tax matters, but as per CBEC Circular issued by Central Excise wing, the guidelines issued by Customs wing are also applicable for issuance of adhoc exemption under Central Excise Act, 1944.

Exempted services?

- 2.5 In case of service tax, which is a tax on rendering of services, in a normal course exempted services are those services which are exempt from whole of the service tax leviable thereon under a notification issued under either section 93(1) or 93(2) of the Finance Act, 1994. However for the limited purpose of CENVAT Credit Rules, services on which no service tax is leviable under section 66B of the Finance Act 1994 and also those taxable services whose part of value is exempted on the condition that no CENVAT credit of inputs and input services used for providing such taxable services has been taken, are also considered as exempted services.

3. Summary of Relevant Legal Provisions at a Glance

The various relevant legal provisions dealing with duty exemptions are given in the Table-1 below:-

Table-1

Sr. No.	Nature of powers	Customs Act, 1962	Central Excise Act, 1944	Service Tax (Finance Act, 1994)
1.	Power to issue General Exemption notification	Section 25(1)	Section 5A (1)	Section 93 (1)
2.	Power to issue Ad-hoc Exemption	Section 25(2)	Section 5A (2)	Section 93 (2)
3.	Power to add explanation to notification explaining scope of notification [note: This power can be exercised only within one year from the date of issuance of notification]	Section 25(2A)	Section 5A (2A)	No such powers
4.	Power, not to recover duty and short levy, as a general prevalent practices	Section 28A	Section 11C	No such powers
5.	Guidelines for considering request for Ad-hoc exemption	Circular No. 460/04/2014- Cust V, dated 19.08.2014	The guidelines issued for Customs are used for issuing ad hoc exemption under central Excise tax law.	No such guidelines issued by so far.

Note: Text of legal provisions mentioned above may be seen at the end of this e-book.

4. Other Important Points

Non-applicability of exemptions of Central Excise in certain matters

4.1 The Section 5A (1) of the Central Excise Act, 1944 contains a proviso providing that “**Unless specifically**” provided in such notification, notification issued under Section 5A (1) shall not apply to excisable goods produced or manufactured in EOU, FTZ and SEZ (please note that SEZ are now considered as deemed foreign territory and goods manufactured in SEZ are not subjected to levy of Central Excise duty under Central Excise Act, 1965), cleared for the home consumption. In other words, while calculating the central excise duty payable for the goods manufactured by EOUs and cleared in domestic tariff area (DTA), exemptions are to be applied only if the notification specifically provides that this will also apply in case of excisable goods cleared by EOU etc.

Goods exported Under Bond:

4.2 The exemption for payment of duty is granted by the Central Government issuing a notification under Section 5A. Thus exempted goods are not same as excisable goods **exported without payment of duty**. The goods are exported without payment of duty under Rule 19, although the same goods if cleared into DTA are charged to effective rate of duty, or cleared as exempted goods, depending upon the notification, granting full or part exemption. The goods exported under Bond can also be not named as ‘**Non-duty paid**’ as Non duty paid are those cleared clandestinely without invoice. These are not equal to exempted goods or where duty payable is ‘**NIL**’.

Method or Form of Exemption can be different from that of levy.

4.3 While granting exemption under Section 5A (1) or (2), or under section 25(1) or (2) of the Customs Act, the form and method (ad valorem, specific etc.) of duty exemption could be different than form of statutory duty. "Form or method", in relation to a rate of duty of excise means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable. For example, even if when statutory duty is ad valorem, exemption can be granted based on weight, value or other factors. The only condition is that effective duty chargeable on such good should in no case exceed the statutory duty.

Option of Non-Availment or Compulsory Availment of Exemption notification

4.4 In Central Excise law, explanation has been added to Section 5(1) of the Central Excise Act, 1944 w.e.f. 13.05.2005. It provides that whenever exemption for duty of Central Excise has been granted absolutely, it must be availed of by the manufacturer and he cannot pay duty on such goods.

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4.5 The said explanation to the Section 5(1) of the Central Excise Act, 1944 reads as under:-

(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods.

4.6 It must be borne in mind that in certain circumstances, assessee may prefer to pay duty instead of availing exemption. For example, if the duty is not payable on final product, the final product become costlier as CENVAT Credit chain is lost and manufacturer is not able to pass on the incidence of input credit duty to its buyer. Likewise buyer, if he is manufacturer, may not be able to avail CENVAT Credit, as he may not be having duty paid document. It may also be possible that 'amount' as provided in CENVAT Credit Rules may become due if the manufacturer is producing both dutiable & exempted products. Thus, in certain situation, assessee may prefer to pay duty instead of availing exemption. Thus in case of absolute exemption on any excisable goods, availment of such exemption by the manufacturer shall be compulsory whereas in other cases of exemption, it would be optional for the assessee to avail or not avail benefit of exemption. No parallel provisions exist in the Customs Act as well as in Service Tax law

Burden of proof

4.7 A party claiming duty exemption has to prove that it is eligible for the duty exemption contained in the notification. Thus, the burden of proof is upon the person claiming the benefit of exemption notification.

Effective date of exemption notification

4.8 As per provision contained in Sub-section (5) of Section 5A of the Central Excise Act, 1944, every notification issued under sub-section (1) or sub-section 2(A) shall come into force on the date of its issue by the Central Government for publication in the Official Gazette unless otherwise provided in the notification itself.

4.9 Further, such notification are also required to be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations, Customs and Central Excise, New Delhi, under the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963). However, this provision of the law has become rather redundant as the Directorate of Publicity and public relation no longer publish and offer to sell the notification. Further, the Government has started issuing E-gazette and making it available for free download and use by any one ([website:www.egazette.nic.in](http://www.egazette.nic.in)).

Power to add explanation in the Excise Exemption notification

4.10 Section 5 A (3) of the Central Excise Act, 1944 and Section 25(3) of the Customs Act, 1962 empowers Central Government to add an explanation in the notification issued by Government so as to clarify **the scope or applicability** of the notification. This EXPLANATION will have retrospective effect from the date of notification itself. No parallel provision exists in Service Tax law. However, such explanation can be added only within one year from the date of issuance of notification.

Exemption from payment of short levies arising as a result of general practice in Central Excise matters/Customs matters.

4.11 At times, it is noted that tax payers are not paying duty on goods manufactured or imported/exported or paying higher duty than actually payable, as per their interpretation of law. Suddenly, the Government and assessee both find that particularly activity is either taxable or duty is payable or the duty is payable at lower rate than the rate they are presently paying. This happens particularly on account of judicial pronouncement by the Highest Court of the Country i.e. High Court or Supreme Court.

4.12 In the event of such situation, the law empowers Government to issue notification in the official gazette directing that such duty is not required to be paid. This provision is rather a trade friendly provision, the absence of which may, otherwise put trade to an unnecessary hardship, if the Government decides to go ahead and collect duty for the past period within normal limitation time.

4.13 Similarly, refunds may also arise consequent upon issue of such notification in a situation when some taxpayers were paying duty treating that activity to be taxable event. However, refunds granted under this provision shall also be subject to concept of **undue enrichment**. In other words, it should be ensured that incidence of tax has not been transferred to buyers of such goods.

4.14 Such exemptions by its very circumstances and nature are retrospective in nature without any prospective effect. Section 11 C of the Central Excise Act, 1944 and Section 28 A of the Customs Act, 1962 contain provision which caters to the above said situation.

5. Issuance of Ad hoc Exemption under Customs Act, 1962

5.1 Section 25(2) of the Customs Act, 1962, Section 5 A (2) of the Central Excise Act, 1944 and Section 93 (2) of the Finance Act, 1994 empowers government to issue ad hoc exemption from payment of Customs duty, Central Excise Duty and Service Tax respectively. Ad hoc exemption can be issued by the Central Excise in the public interest in circumstances of exceptional nature.

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5.2 Ad hoc exemptions can be granted by the Central Government by way of issue of an order instead of a notification. This order need not to be published in the Official Gazette and accordingly, need not be tabled in the parliament. Further, such exemptions are very specific in nature and issued in exceptional circumstances. For example, adhoc exemption may be issued for the purpose of

- (i) Import made for furthering India's foreign relations
- (ii) Re-import of artifacts and memorabilia representing India's historical, cultural and art heritage intended for public exhibition;
- (iii) Import required for treatment of individuals, who are suffering from life threatening diseases
- (iv) Import of goods meant for relief and rehabilitation of people affected by natural disasters and epidemics;
- (v) Import of medical or surgical instruments and apparatus by charitable hospitals
- (vi) Import of goods for free distribution by charitable institutions/organizations
- (vii) Imports made by Central/ State Governments, Municipalities, public sector undertakings and autonomous bodies where such agencies are recipients of imported goods as grants from foreign Governments/foreign organizations

5.3 No separate guidelines have been issued in Central Excise and Service Tax matters. However, guidelines issued *vide* Board's instructions dated 19.08.2014 are also used for the purposes of ad hoc exemption from payment of Central Excise duty and service tax under Central Excise Act, 1944 and Finance Act, 1994 respectively.

5.4 General exemption is different from Ad hoc exemption in the sense that general exemption is granted by notification in the official gazette and is general in nature, while in case of ad hoc exemption, an order is issued for a specific purpose/ circumstances of special nature which is mentioned in the order itself. This order need not be published in the official gazette. The difference between General exemptions vs. ad hoc exemptions has been explained in **Table-2** below.

Table-2

Parameter	General Exemption	Ad-Hoc Exemption
Circumstances when issued?	Public Interest	Public interest but under circumstances of exceptional nature
How Issued?	By notification in the official Gazette	By special Order in each case
Whether required to be laid in Parliament?	Yes. except in cases relating to goods of strategic, secret, individual or personal nature	Yes except in relating to goods of strategic, secret, individual or personal nature
Whether available in public domain	Yes. Available on CBEC website.	No. Not available in public domain
Whether mandatorily required to be published in Official Gazette	Yes	No.

5.5 *Vide* Instruction F. No. 460/04/2014-Cus-V, dated 19.08.2014, the Government has laid down detailed guidelines for issuance of ad hoc exemption from payment of Customs duty under Section 25 (2) of the Customs Act, 1962. Salient features of the guidelines issued by the Board are as under:-

- Ad-hoc exemption can be issued for the purposes mentioned in para 5.2 above.
- Ad-hoc exemption orders to be issued subject to the conditions that the imported goods will not be put to any commercial use and will not be sold, gifted, disposed of or used in any manner other than that specified in order granting exemption, without prior permission of the Central Board of Excise and Customs.
- The imported goods should be available for inspection by jurisdictional Customs/Central Excise officers as and when required.
- If any other conditions are considered necessary to ensure that goods are used in public interest, the same shall be specified in the Ad-Hoc Exemption Order for compliance.

6. *Text of Relevant Section/Circulars*

6.1 **Text of Section 5A of the Central Excise Act, 1944**

Section 5A:

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette exempt **generally either absolutely or subject to such conditions (to be fulfilled before or after removal)** as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon:-

Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured –

- (i) in a free trade zone or a special economic zone and brought to any other place in India; or
- (ii) by a hundred per cent export-oriented undertaking and brought to any place in India.

Explanation - In this proviso, "free trade zone", "special economic zone" and "hundred per cent export-oriented undertaking" shall have the same meanings as in *Explanation 2* to sub-section (1) of section 3.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, **by special order in each case**, exempt from payment of duty of excise, **under circumstances of an exceptional nature** to be stated in such order, any excisable goods on which duty of excise is leviable.

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(2A) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(3) An exemption under sub-section (1) or sub-section (2) in respect of any excisable goods from any part of the duty of excise leviable thereon (the duty of excise leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any excisable goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of excise chargeable on such goods shall in no case exceed the statutory duty.

Explanation - "Form or method", in relation to a rate of duty of excise means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable:-

(4) Every notification issued under sub-rule (1), and every order made under sub-rule (2), of rule 8 of the Central Excise Rules, 1944, and in force immediately before the commencement of the Customs and Central Excises Laws (Amendment) Act, 1988 (29 of 1988) shall be deemed to have been issued or made under the provisions of this section and shall continue to have the same force and effect after such commencement until it is amended, varied, rescinded or superseded under the provisions of this section.

(5) Every notification issued under sub-section (1) or sub-section 2(A) shall,-

- (a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;
- (b) also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations, Customs and Central Excise, New Delhi, under the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963).

(6) Notwithstanding anything contained in sub-section (5), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force.

6.2 Text of Section 25 of the Customs Act, 1962

Section 25: Power to grant exemption from duty.

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in

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the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, **by special order in each case**, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

(2A) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette, at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(3) An exemption under sub-section (1) or sub-section (2) in respect of any goods from any part of the duty of customs leviable thereon (the duty of customs leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty.

Explanation - "Form or method", in relation to a rate of duty of customs, means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.

(4) Every notification issued under sub-section (1) or sub-section (2A) shall,-

- (a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;
- (b) also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi.

(5) Notwithstanding anything contained in sub-section (4), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force.

(6) Notwithstanding anything contained in this Act, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees.

6.3 Text of Section 93 of the Finance Act, 1994

93. Power to grant exemption from service tax.

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, **exempt generally or subject to such**

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conditions as may be specified in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt any taxable service of any specified description from the payment of whole or any part of the service tax leviable thereon, under circumstances of exceptional nature to be stated in such order.

6.4 Text of Section 11C of Central Excise Act, 1944

11C. Power not to recover duty of excise not levied or short-levied as a result of general practice. -

(1) Notwithstanding anything contained in this Act, if the Central Government is satisfied -

- (a) that a practice was, or is, generally prevalent regarding levy of duty of excise (including non-levy thereof) on any excisable goods; and
- (b) that such goods were, or are, liable –
 - (i) to duty of excise, in cases where according to the said practice the duty was not, or is not being, levied, or
 - (ii) to a higher amount of duty of excise than what was, or is being, levied, according to the said practice

then, the Central Government may, by notification in the Official Gazette, direct that the whole of the duty of excise payable on such goods, or as the case may be, the duty of excise in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty of excise was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.

(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty of excise paid on such goods or, as the case may be, the duty of excise paid in excess of that payable on such goods, which would not have been paid if the said notification had been in force, shall be dealt with in accordance with the provisions of sub-section (2) of section 11B:

Provided that the person claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, in the form referred to in sub-section (1) of section 11B, before the expiry of six months from the date of issue of the said notification.

6.5 Text of Section 28 A of the Customs Act, 1962

Section 28A- Power not to recover duties not levied or short-levied as a result of general practice:-

Notwithstanding anything contained in this Act, if the Central Government is satisfied -

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- (a) that a practice was, or is, generally prevalent regarding levy of duty (including non-levy thereof) on any goods imported into, or exported from, India; and
- (b) That such goods were, or are, liable -
 - (i) to duty, in cases where according to the said practice the duty was not, or is not being, levied, or
 - (ii) to a higher amount of duty than what was, or is being, levied, according to the said practice,

then, the Central Government may, by notification in the Official Gazette, direct that the whole of the duty payable on such goods, or, as the case may be, the duty in excess of that payable on such goods, but for the said practice, shall not be required to be paid in respect of the goods on which the duty was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.

(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty paid on such goods, or, as the case may be, the duty paid in excess of that payable on such goods, which would not have been paid if the said notification had been in force, shall be dealt with in accordance with the provisions of sub-section (2) of section 27:

Provided that the person claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, in the form referred to in sub-section (1) of section 27, before the expiry of six months from the date of issue of the said notification.

CBEC Guidelines for Grant of Ad hoc exemptions under Customs Act

Instruction F. No. 460/04/2014 - Cus-V, dated 19.08.2014

Subject: Guidelines for considering request for exemption from payment of Customs Duty under Section 25(2) of Customs Act, 1962.

The Central Government has provided exemptions from payment of duty of customs for import of specified goods for charitable purposes and for specified organizations engaged in relief & rehabilitation under notification no. 148/94 - Cus., dated 13.7.1994. Import of goods to meet specific needs relating to the country's defense have been exempted from customs duty under notification no. 39/96-Cus dated 23.7.96 and 50/96-Cus dated 23.7.96. The Central Government also considers specific requests for exemption from customs duty under section 25(2) of the Customs Act, 1962 **in cases involving circumstances of an exceptional nature**. For this purpose, guidelines have been laid down in Circular no. 49/2003-Customs dated 10th June, 2003 and Circular no. 10/2007-Customs dated 13th February, 2007. In view of the requests received seeking grant of exemption from time to time and after due consideration to the existing general exemptions, the following revised guidelines are issued for considering the pending and

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future requests for exemption under Section 25(2) of the Customs Act, 1962, in supersession of the guidelines under Circular no. 49/2003-Customs dated 10th June, 2003 and Circular no. 10/2007-Customs dated 13th February, 2007.

2. **Imports made by Central/State Governments, Municipalities, public sector undertakings and autonomous bodies will not be considered for ad-hoc exemption.** All such agencies are expected to make budgetary provisions for payment of customs duty along with the cost of the imported goods. However, an exception could be considered in cases where such agencies are recipients of imported goods as grants from foreign Governments/foreign organizations. Such requests should be forwarded with the approval of the Secretary to Government of India in the administrative Ministry concerned, stating the circumstances under which the imports are taking place and the public interest sought to be served for which duty exemption should be considered.

3. Exemptions could also be considered in respect of cases recommended by the Secretary, Ministry of External Affairs for reasons of furthering India's foreign relations. While recommending any such case, Ministry of External Affairs shall state why the exemption is in national interest.

4. Cases of re-import of artifacts and memorabilia representing India's historical, cultural and art heritage intended for public exhibition, could also be considered for exemption, subject to recommendation for duty exemption by the Secretary, Ministry of Culture, Government of India.

5. Cases of import required for treatment of individuals, who are suffering from life threatening diseases, could be considered on case-to-case basis. Such cases will be examined from the point of view of the nature of the medical condition and financial circumstances of the applicant.

6. Import of goods meant for relief and rehabilitation of people affected by natural disasters and epidemics could be considered for exemption subject to fulfilling the following conditions:

- a. The goods imported for charitable use should be distributed free of cost in a manner so as not to restrict access to their benefits on the basis of factors like caste, creed, language, race or religion.
- b. The goods should not be in the nature of or tend to promote/propagate any religious or spiritual activity.
- c. The distribution of the goods to the affected people shall be certified by the authorities of the State Government concerned not below the rank of the District Magistrate/Collector.

6.1 Applications for ad-hoc exemption on import of goods meant for relief and rehabilitation must contain the information/ documents listed below, along with self-certified copies of supporting documents:-

- a. Details of goods sought to be imported, the Customs Station(s) at which they are to be imported and the location(s) where they are intended to be

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- used/distributed. The description, quantity and value of goods shall be evidenced through a commercial document such as an invoice, contract, etc.
- b. The applicant should furnish copies of last 3 years' audited balance sheets.
 - c. If the applicant had been granted any ad-hoc exemptions in the past, details of the same, along with proof of fulfillment of the conditions of such orders must be submitted.
 - d. The applicant should furnish an undertaking to the effect that he/she would fulfill the conditions prescribed for grant of exemption.
 - e. In cases where exemption is sought for goods where a Bill of Entry has been filed with Indian Customs, a copy of the Bill of Entry must be provided.
 - f. A certificate in the proforma at Annex A must be submitted, issued by any of the authorities specified therein.
7. Import of medical or surgical instruments and apparatus by charitable hospitals could be considered for exemption of duty subject to fulfilling the following conditions:
- a. The hospital should not charge any fee for medical services from any class of patients.
 - b. The goods should be used in a manner so as not to restrict access to their benefits on the basis of factors like caste, creed, language, race or religion.
 - c. The hospital should be registered with the Income Tax authorities as a charitable organization/institution.
- 7.1 Import of goods for free distribution by charitable institutions/organizations could also be considered for exemption of duty subject to fulfilling the following conditions:
- a. The import should be received as donation or gift by the institution/organization.
 - b. The institution/organization should not be engaged in any commercial activity.
 - c. The goods should be for distribution, free of cost, in a manner so as not to restrict access to their benefits on the basis of factors like caste, creed, language, race or religion.
 - d. The goods should not be in the nature of or tend to promote/propagate any religious or spiritual activity.
 - e. The Institution/organization should be registered with the Income Tax authorities as a charitable organization/institution.

Application for Ad-Hoc Exemption

8. Requests for ad-hoc exemption by charitable institutions / Organizations must contain the information/ documents listed below, along with self-certified copies of supporting documents:-

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- a. Details of goods sought to be imported, the Customs Station(s) at which they are to be imported and the location(s) where they are intended to be used/distributed. The description, quantity and value of goods must be evidenced through a commercial document such as an invoice, contract, etc.
- b. A certificate from the donor of the goods must be furnished evidencing the fact of donation and the absence of payment for the goods.
- c. The applicant should furnish copies of last 3 years' audited balance sheets, income and expenditure statement, income tax returns and details of exemption granted by the Income-tax authorities etc.
- d. If the applicant had been granted any ad-hoc exemptions in the past, details of the same, along with proof of fulfillment of the conditions of such orders must be submitted.
- e. Where applicable, a copy of the memorandum of association, trust deed, certificate of registration or other similar document evidencing the setting up and the overall objectives and activities of the applicant institution must be submitted.
- f. The applicant should furnish an undertaking to the effect that they would fulfill the conditions prescribed for grant of exemption.
- g. In cases where exemption is sought for goods where a Bill of Entry has been filed with Indian Customs, a copy of the Bill of Entry must be provided.
- h. A certificate in the proforma in the Annex B must be submitted, issued by any of the authorities specified therein.

8.1 Applicants may submit the application for ad-hoc exemption, complete in all respects, addressed to Member (Customs), Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, North Block, New Delhi.

Examination of Requests For Ad-Hoc Exemption

9. Ad-hoc exemption orders will be issued subject to the conditions that the imported goods will not be put to any commercial use and will not be sold, gifted, disposed of or used in any manner other than that specified in order granting exemption, without prior permission of the Central Board of Excise and Customs. The imported goods should be available for inspection by jurisdictional Customs/Central Excise officers as and when required.

10. If any other conditions are considered necessary to ensure that goods are used in public interest, or if any of the above conditions are modified in a given case, the same shall be specified in the Ad-Hoc Exemption Order for compliance.

Monitoring Of Ad-Hoc Exemption Orders (AEO)

11. An undertaking to comply with the conditions mentioned in the AEO shall be given by the applicant before the Commissioner of Customs at the port of import for

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claiming benefit of exemption under the order at the time of clearance. The said Commissioner of Customs shall send copies of documents pertaining to the import, such as the Bills of Entry, Invoices, etc. along with a copy of the said undertaking to the Commissioner of Central Excise having jurisdiction over the site of utilization of the goods or the location of the applicant, as specified in the AEO, within fifteen days of the clearance of the items exempted by the order.

12. The applicant shall intimate the said jurisdictional Commissioner of Central Excise, as soon as possible, and not later than seven days from the date of Customs clearance of the goods, of the site of utilization of the exempted items, and also furnish any other information that the said Commissioner may require for verifying the compliance of the conditions of the order. The Commissioner of Central Excise shall, within three months of the clearance of the items exempted by the order, verify the compliance with the conditions of the order and send a report to the Commissioner of Customs of the port of import. The verification report shall be sent so as to reach the Commissioner of Customs not later than six months of the issuance of the order.

13. Since the conditions of the AEO are binding on the importer in perpetuity, any infringement of conditions of the AEO should be brought to the notice of the Commissioner of Customs of the port of import by the concerned Commissioner of Central Excise for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc. The action taken as indicated above by the Commissioner of Customs of the port of import should be immediately brought to the notice of the Central Board of Excise & Customs.

14. The importation of goods exempted by an Order issued under Section 25 (2) of the Customs Act 1962 shall be completed within six months of the date of the said order. Under exceptional circumstances if the applicant requests in writing for extending the validity of the order, the Central Board of Excise and Customs may extend the said period of six months by a further period not exceeding six months. The AEO will be void and no exemption will be granted to that quantity of goods covered in the AEO but not imported within the expiration of the permitted period.

15. These guidelines may be given wide publicity.

Director (ICD)

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Annexure-A

C E R T I F I C A T E

(In terms of para 6 of the Circular 09/2014-Customs dated 19th August, 2014)

This is to certify that _____ (*applicant*) _____ proposes to undertake free distribution of goods to the people of _____ (name of District and State) in wake of _____ (event)

It is further certified that the organization enjoys a good reputation.

(Signature)

(Official Seal)

Place:

Date:

N.B.: The following officers alone are entitled to issue this certificate, namely,

1. Concerned Secretary of the State Government.
2. Concerned Joint Secretary of the Central Government.

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Annexure-B

C E R T I F I C A T E

(In terms of para 7 and 7.1 of the Circular 09/2014-Customs dated 19th August, 2014)

This is to certify that _____ (*applicant*) _____ has been engaged in activities in the field of _____ for the last _____ years.

2. The charitable nature of the organization and it's having been in existence for not less than three years has been duly verified and found to be correct. It is further certified that the organization enjoys a good reputation.

(Signature)

(Official Seal)

Place:

Date:

N.B.: The following officers alone are entitled to issue this certificate, namely,

1. Concerned Secretary of the State Government.
2. Concerned Joint Secretary of the Central Government.
3. Concerned Jurisdictional Commissioner of Central Excise/Customs.

Circular No. 707/23/2003-CX, dated 16.04.2003

[Issued from F. No. 167/33/2003-CX-4)

Sub:- Procedure to be followed for availing Ad-hoc exemption under Section 5A(2) of the Central Excise Act, 1944.

For the purpose of processing application for ad-hoc exemption to an institution/organisation under Central Excise Act, guidelines issued *vides* CBEC Circular No.33 issued vide F.No. 467/43/99-Cus-V dated 13th June 1999 has been made applicable. In order to bring uniformity and simplicity in processing such applications for ad-hoc exemption, the procedure detailed as following is required to be observed.

1. The application for ad-hoc exemption will be filed along with the following documents:

- a) The document indicating that the institution is registered as a charitable organisation and rendering service on "free" or "no profit" basis.
- b) A certificate issued by the concerned district authorities certifying the charitable nature of the organisation and the fact of rendering services on "free or no loss no profit" basis.
- c) A certificate indicating the details of equipments sought to be procured along with the price and duty amount sought to be foregone.
- d) Nature and details of funding along with the name and other details of institutional donor donating the equipments to the charitable organisation.
- e) Any other details deemed fit by applicant for processing of his application in terms of circular cited above.

2. If ad-hoc exemption is granted to an institution/organisation, monitoring will be done by the Jurisdictional Commissioner of Central Excise on yearly basis in terms of circular no. 33 dated 18th June, 1999 issued from the F.No. 467/41/99-Cus-V.

3. Ministries/Departments may please bring these guidelines to the notice of all concerned, and direct them to submit their requests for Central Excise Duty exemption in accordance with above mentioned procedural requirements.

P.S: The guidelines issued by CBEC for issuance of ad-hoc exemption vide Circular No. 33, dated 18.06.1999 (issued from F. No. 467/41/99-Cus. V) have been revised and superseded several times in the past. First it was superceded by Circular No. 49/2003-Customs dated 10.06.2003, then by Circular No. 10/2007-Customs dated 13.02. 2007. Now, the latest guidelines have been issued *vide* Instruction F. No. 460/04/2014 -Cus-V, dated 19.08.2014.

Circular No. 743/59/2003-CX, dated 11.09.2003

[F.No. 167/33/2002-CX-4]

CORRIGENDUM

Subject: Procedure to be followed for availing ad-hoc exemption under Section 5A (2) of the Central Excise Act, 1944

I am directed to invite your attention to Board's Circular No. 707/23/2003-CX dated April 16, 2003 regarding availing of ad-hoc exemption duty by Institutions/Organisations under Central Excise Act. In partial modification to this circular, I am directed to say that in para 1 (b) of the circular words as mentioned "concerned district authorities" should be considered replaced by words "jurisdictional Commissioner of Central Excise".

The other requirements as envisaged by the above referred circular remain to be the same.
