

No CVD on MRP where Price is Declared by Foreign Manufacturer

01-CBEC I am directed to state that doubts have been raised
05.01.2000 about the method to be followed with regard to calculating
the additional duty of Customs equal to Excise (CVD) in

respect of imported Colour Television Receiver Sets which have the MRP affixed on the packages containing the sets.

2. It has been brought to the notice of the Board that at many ports where imports of Colour Television Receiver Sets are taking place, different methods are being adopted to calculate the CVD leviable on such imports. In some cases the CVD is being calculated by extending the benefit of Notification No: 5/99-CE (S.No. 225 sub-clause (i), i.e. 16%. In some cases CVD is being calculated at 16% of a deemed value, which is arrived at after giving an abatement of 30% from a declared MRP value. In some cases the CVD is being calculated as per specific rates as provided in sub-clause (ii) of S.No. 225 of Notification No. 5/99-CE dated 28/2/99.

3. The matter has been examined. Sub-clause (i) of S.No. 225 of Notification No: 5/99-CE dated 28/2/99 stipulates that where the retail sale price is declared on the package, at the time of clearance from the factory of production, and forms the sole consideration for sale to the ultimate consumer the rate of duty applicable is 16%. Sub-clause (ii) of the same Notification specifies specific rates of duty for specified screen sizes for all the other cases.

4. It is hereby clarified that the provisions of sub-clause (i) of S.No. 225 of Notification No: 5/99-CE dated 28/02/99 will not be applicable to the imports of Colour Television Sets, having the MRP affixed on the package containing these sets, for the following reasons.

(a) The provisions of Rule 33 sub-clause (ii) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 stipulate that the responsibility for making the requisite mandatory declarations including affixing the Retail Price on the items imported, rest with the importer. In cases where the Retail Price has been affixed by the supplier abroad and not the importer the procedure is not in consonance with the provisions of the said Rule.

(b) It is also to be noted that the provisions under Rule 33 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 would apply only after the importation has taken place and will not be applicable to situations where the fixation of the Retail Sale Price has been done prior to the actual act of importation.

5. Furthermore, to the extent that Rule 33 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 incorporate provisions which are applicable to packaged commodities imported into India, it can be construed that there is no specific bar on the applicability of Notification No: 5/99-CE dated 28/02/99 (S.No: 225, sub-clause (i)) with regard to the imported goods. However, the provisions of the said Notification will have to be read with provisions contained in Rule 33 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 and has to be consistent with the stipulations laid down.

6. The specific wordings in the Notification namely, "Retail Sale Price declared on the Package at the time of clearance from the factory of production" has to be understood to mean a factory of production in the country of import and not the factory of production situated in the supplier's country abroad.

7. The Additional Duty of Customs equal to Excise Duty or CVD to be levied in respect of imported Colour Television Receiver Sets will have to be calculated in accordance with the provisions of Section 3(1) of the Customs Tariff Act, 1975. The Explanation to Section 3(1) of the Customs Tariff Act, 1975 makes it amply clear that where like goods are manufactured in India and are subject to different rates of Excise Duty the levy of Additional Duty equal to Excise shall be at the highest rate.

8. Therefore, in cases where Colour Television Sets are imported carrying the Retail Price affixed on the outer package containing these sets, for the purposes of calculating the CVD, the provisions under sub-clause (i) of S.No. 225 of Notification 5/99-CE dated 28/2/99, will not be applicable. The CVD in such cases will have to necessarily be calculated in accordance with the provisions of sub-clause (ii), S.No. 225 of Notification No. 5/99-CE dated 28/2/99, which specify specific rates of duty according to the size/dimensions of the CTV sets mentioned therein.

9. The Board desires that the calculation of CVD in respect of imported Colour Television sets, where the MRP is affixed on the package containing these sets, be carried out in accordance with the clarifications issued above and immediate steps be initiated to recover Government dues in respect of similar cases in the past where the aforesaid methodology of calculating the CVD has not been adopted.

10. All Trade and filed formations may be suitably informed.