

F.No. 460/20/2003 – Cus-V
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

OFFICE MEMORANDUM

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

In supersession of this Department's Office Memorandum F.No. 467/104/2001 – Cus-V dated 12th December, 2001, the Hon'ble Finance Minister has approved the following guidelines for consideration of requests for exemption from Customs duty under section 25(2) of the Customs Act, 1962, as amended by the Finance Act, 2003.

2. As per section 25(2) of the Customs Act, 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, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable. Thus, each case will be examined on merit, keeping in mind, the aspect of "public interest", "the exceptional nature of the circumstances" warranting duty exemption, and the general policy adopted in the past.

3. Accordingly, the imports mentioned in the following categories will be considered for Customs duty exemption, under Section 25(2) of the Customs Act.

- (a) Import of goods of secret or strategic nature by the Government in public interest.
- (b) Imports to meet country's defence needs, including the goods meant for DRDO for their R&D purposes.
- (c) Imports made by Central Police Organizations, State Police Organizations, and Para-military forces, for import of equipments required for anti-subversion, anti-terrorism, and intelligence work. It is clarified that the police forces are expected to make budgetary provisions for payment of customs duty along with the cost of the equipment. There is no scope to hold the view that payment of Customs duty is a dispensable expenditure, and there should be no need to seek ad-hoc exemption from payment of Customs duty on goods meant for the normal functional requirements of these organizations. Only in situations of exceptional nature, where, in view of the security considerations, the import of equipment could not be foreseen, and it could not be possible to make provision in the budget for payment of Customs duty, application for ad-hoc exemption from customs duty should be made. Such requests should be forwarded by the Joint Secretary to Government of India in the concerned administrative Ministry, clarifying as to why they could not provide budgetary allocation for payment of Customs duty.
- (d) Ad-hoc exemption from Customs duty will not be considered for import of goods made by Central/State Governments, autonomous bodies, Municipalities, and public sector undertakings as part of the schemes or projects implemented by them. However, goods meant for providing relief and rehabilitation, under unforeseen and exceptional circumstances such as flood, earthquake, epidemic, etc. will be considered on merits.

4. The imports by charitable institutions would be required to fulfill the following conditions to be eligible for ad-hoc exemption from customs duty:

(a) The imports should normally be received as donations or gifts from foreign countries. The applicant or exemption under this category should be a registered charitable organization. However, imports required by individuals for treatment or assistance to people who are suffering from life threatening diseases can be considered on case-to-case basis.

(b) Either there should be no payment involved for the imported goods or the payment should be made only out of the amount received as donation within India.

(c) The goods imported should be for use for charitable purposes without any distinction of caste, creed or religion; they should not be in the nature of or tend to promote/propagate any particular religion.

(d) It would be necessary that the institution is engaged in rendering charitable service to the society at large for availment of exemption e.g., running hospitals, educational institutions, etc. The service so rendered by the institution should be "free" or the institution should be running on "no profit no loss" basis. The applicant organization should furnish last 3 years' audited balance sheet, income and expenditure statement, and the exemption granted by the Income-tax authorities, if any. The activity of the institution should not be commercial in nature.

(e) The charitable nature of the institution, the fact that it is rendering services on 'free' or 'no loss no profit' basis, it's should have been in existence for not less than three years, and that it enjoys good reputation which should be certified by any of the following authorities as per the format in Annexure A:

(i) Concerned Secretary of the State Government (or)

(ii) Concerned Joint Secretary of the Central Government (or)

(iii) Jurisdictional Commissioner of Central Excise/Customs

(f) The institution should certify that the goods under import are for their own use and should furnish an undertaking to the effect that they would fulfill the conditions prescribed for availment of exemption.

5. **Monitoring of Ad-hoc Exemption Orders (AEO):** The charitable organization availing the exemption shall be required to intimate to the jurisdictional Commissioner within one month of their receiving the Ad-hoc Exemption Order (AEO), details of their address and the proposed site(s) of utilization of the exempted items. A report in this regard should then be sent by the jurisdictional Commissioner of Central Excise to the Commissioner of Customs of the port of clearance of the goods within 3 months of the import of the goods. 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 for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc. The action as indicated above, by the Commissioner of Customs of the port of import should be brought invariably to the notice of Board.

6. All 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 or parted by the importer in any manner whatsoever without prior permission of the Board. The imported goods should be available for inspection by jurisdictional Customs/Central Excise officers.

7. Import of goods that are not covered in any of the categories mentioned in paras (3) to(4) above will be considered for grant of ad-hoc exemption only in circumstances of exceptional nature. It may be mentioned that every applicant for ad-hoc exemption from customs duty would have to provide sufficient reasons to justify as to why his request should be treated as falling under exceptional category, and also why it could not be possible for him to make necessary arrangement for making payment of customs duty while making provisions for payments of the price of the imported goods.

8. Non-Governmental Organizations who seek to import goods meant for charitable purposes donated from a foreign country, may, henceforth submit the application for ad-hoc exemption to the Commissioner of Customs at the port of import. The Commissioner of Customs shall, in turn, forward the request along with the documents mentioned therein, after due verification of the conditions mentioned in para (4) above.

9. Ministries/Departments may please bring these guidelines to the notice of all concerned, as all future requests for ad-hoc exemption from Customs duty will be decided in accordance with the above mentioned guidelines.

N.J. Kumaresh
Under Secretary to the Government of India.

1. All Ministries/Departments of the Government of India.
2. UPSC/CVC/C&AG/Commissioner of Linguistic Minorities/Commissioner for SC/ST/Backward Classes Commission, Minority Commission, Prime Minister's Office, Lok Sabha Secretariat, Rajya Sabha Secretariat, President's Secretariat, Vice President's Secretariat, Supreme Court, High Court, Central Administrative Tribunal.
3. All Sections of C.B.E.C./C.B.D.T.& attached and subordinate offices of Ministry of Finance, Department of Revenue.
4. All Commissioners of Customs/Customs and Central Excise/Customs Preventive/CEIB/DRI.

N.J. Kumaesh
Under Secretary to the Government of India.

Annexure – A

CERTIFICATE

(In terms of para 4(e) of the guidelines issued under Section 25(2) of the Customs Act, 1962)

This is to certify that M/s. _____, registered as a charitable trust in the year _____, has been engaged in charitable activities for the last _____ years in the field of _____.

2. The charitable nature of the organization, the fact of it's rendering services on "free / no loss no profit" basis, 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.