

F.N.305/192/ 2003-FTT
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

Subject : Withdrawal of Board's Circular No.618/9/2002-CX, dated 13-2-2002- Removal of Goods by 100% EOU to DTA-Clarification Regarding Levy of duty on Removal of Goods by 100% EOU to DTA

I am directed to draw your attention to Board's Circular No. 618/9/2002-CX dated 13-2-2002 on the above subject wherein it was clarified that prior to 11-5-2001, the clearances from EOUs if not allowed to be sold in India, shall continue to be chargeable to duty under main section 3(1) of Central Excise Act, 1944. This was based on an interpretation of Appex Court's decision in the case of SIV Industries Ltd[2000(117) ELT 28 (SC)].

2. However, attention is now invited to the decision of larger Bench of CESTAT in the case of M/s Himalayan International Ltd Vs Commissioner of Central Excise, Chandigarh, reported in the 2003(154) E.L.T. 580(Tri.-LB) , wherein it has been held that **“Rate of duty as per the proviso to section 3(1) of the Central Excise Act, 1944 would be applicable for assessing all the excisable goods, which were cleared by 100% EOU to DTA whether in terms of permission granted or in excess of permission granted.”** In view of the said judgment of the CESTAT, it is now clear that all the goods manufactured by EOU and cleared into DTA before final debonding of the EOU shall be chargeable to duty under proviso to Section 3(1) of the Central Excise Act, 1944 and under no condition, goods produced in 100% EOU can be charged under main section 3(1) of Central Excise Act, 1944.

3. In view of the above judgment of the CESTAT, the matter has been re-considered by the Board and it has been decided to withdraw the Board's Circular No. 618/9/2002-CX dated 13-2-2002. The above-mentioned judgment of CESTAT, which has been accepted by Board, may kindly be taken into consideration in deciding similar pending cases.

4. It may also be kept in mind that the duty on the finished goods, at the rate applicable under the proviso to section 3(1) of the Central Excise Act, 1944 as also appropriate duty on the bonded capital goods and raw material is paid before the unit is allowed to be debonded.

5. Difficulty, if any, faced in implementation of the above said instruction, may please be brought to the notice of the Board at the earliest.

6.. Wide publicity may please be given to the above said instruction by way of issuance of public notice.

6. Please acknowledge receipt.

7. Hindi version follows.

A.K. Sinha
Technical Officer (FTT)
Phone: 011-23093859

