

F. No. 465/6/2010-Cus.V
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
Customs-V Section

New Delhi, June 3, 2010

To,
All Chief Commissioners of Customs,
All Chief Commissioners of Central Excise,
All Director Generals/Chief Departmental Representatives (CESTAT),
All Commissioners of Customs,
All Commissioners of Central Excise and
All Commissioners of Central Excise & Customs

Sir,

**Subject: Determination of value under Section 14 of the Customs Act, 1962
in respect of sale of warehoused goods – clarification regarding.**

The prevalence of divergent practices in field formations with respect to the determination of assessable value of imported goods that are warehoused under Section 58/59 of the Customs Act, 1962 and sold before being cleared for home consumption has been brought to the notice of the Board. While one view is that the sale of imported goods after warehousing does not affect the valuation of imported goods, the other view is that the price at which the original importer has sold the goods, before a Bill of Entry for home consumption is filed, should be taken as the assessable value of the imported goods under Section 14 of the Act, *ibid*.

2. The matter has been examined by the Board in the light of provisions of Section 14 (1) of the Customs Act, 1962 as well as the relevant pronouncements of Hon'ble Supreme Court. Section 14, at present, reads as:

“For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf.”

2.1 The current Section 14 states that the value of the imported goods shall be the transaction value of goods, that is to say, the price actually paid or payable for the goods *when sold for export to India* for delivery at the time and place of importation. The sale of goods after warehousing them in India cannot be considered a *sale for export to India*. It cannot be stated that the export of goods is not complete even after the imported goods were cleared for warehousing in the country of import. Thus, the price at which the imported goods were sold after warehousing them in India does not qualify as the price actually paid or payable for the goods *when sold for export to India* for delivery at the time and place of importation and, hence, the value at which such transaction takes place will not qualify as the transaction value, as per Section 14.

3. For the period prior to October 2007, Section 14 read as:

“For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law

for the time being in force, where-under a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, or as the case may be, in the course of international trade ---”.

3.1 The sale of imported goods made after warehousing cannot be considered to have been made *in the course of international trade* and hence, the price at which such sale takes place is not a price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation, in the course of international trade, in terms of Section 14.

4. The CBEC manual also states at Para 15 of Chapter 10 that:

“The rate of duty applicable is as per provisions of Section 15 of the Customs Act i.e. on the date on which the goods are actually removed from the warehouse. However, when the warehousing period or the extended warehousing period has expired, the duty payable is with respect to the date when the warehousing/extended warehousing period expired and not the actual date of removal. In so far as value for assessment of duty for warehoused goods is concerned, it is not required to be re-determined and it is the original value as determined at the time of filing of Into-Bond Bill of Entry and assessments done before warehousing.”

5. In this connection, the decision of Hon’ble Supreme Court in the case of Garden Silk Mills [1999 113 ELT 358 SC] was also examined. Hon’ble Supreme Court had held in the case of Garden Silk Mills that “-- the value has to be determined with relation to time when physical delivery to the importer can take place. Physical delivery can take place only after Bill of Entry, inter alia, for home consumption is filed and it is the value at that point of time which would be relevant --”. However, in the case of Garden Silk Mills, the Court was considering the issue of includibility of landing charges in the assessable value of imported goods. The goods in that case were cleared for home consumption after import and no warehousing or sale was involved before clearance of the imported goods. The issue of whether sale of imported goods after warehousing would constitute a sale in the course of international trade was not an issue before the Hon’ble Court. Thus, the main issue involved as well as the facts and circumstances of the present case are not identical to those of Garden Silk Mills case. Hence, the rationale of the said case cannot be applied to the present case.

6. Further, Board had examined the valuation of goods sold on “high-seas-sales” basis and had issued Circular 32/2004 Customs dated May 11, 2004 stating that in such case, the actual high-seas-sale-contract price paid by the last buyer would constitute the transaction value under Rule 4 of Customs Valuation Rules, 1988 and inclusion of commission on notional basis may not be appropriate and that, however, the responsibility to prove that the high-seas-sales-transaction constituted an international transfer of goods lies with the importer. The facts and circumstances of a sale of warehoused goods are not similar to the case of “high-seas-sales” since the sale/transfer of imported goods after warehousing cannot be considered to have been made in the course of international trade. Further, the above-referred circular had clarified that the inclusion of commission on notional basis may not be appropriate even in case of “high-seas-sales”. Therefore, the question of adding any amount on notional basis in the case of goods already warehoused in India and sold subsequently would not arise.

7. Thus, in the case of sale of imported goods after they are warehoused on Indian territory, the value at which such transaction took place will not qualify as the transaction value, as per Section 14.

8. Pending assessments on the issue, if any, should be finalized accordingly.

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

10. Please acknowledge receipt.

11. Hindi version follows.

Yours faithfully,

(Abhinav Gupta)

Under Secretary to the Government of India