



**F. No. 473/07/2005-LC
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi**

Circular No. 10/2006-Customs

Dated 14th February, 2006

Warehousing – Waiver of Interest on Customs Duty on Warehoused Goods – consolidated instructions - regarding

Attention is invited to the guidelines/instructions contained in Board's letters/Circulars F. No. 475/82/92-LC, dated 27.12.1993, Circular No. 57/2000-Customs, dated 07.07.2000 (F. No. 475/6/99-LC), Circular No. 62/2004-Cus., dated 29.10.2004 (F. No. 473/07/2004-LC), Circular No. 38/2005-Customs, dated 28.09.2005 (F. No. 473/07/2005-LC) in the matter relating to waiver of interest on Customs Duty on warehoused goods.

2. A need was felt in the Board to combine all these instructions into one consolidated Circular on the aforesaid matter to ensure uniformity to consider the request for waiver of interest on Customs Duty on any warehoused goods u/s 61 of the Customs Act, 1962. Accordingly, in supersession of these previous guidelines and Circulars on the aforesaid matter, the instructions have been consolidated in this Circular.

3. Notification No. 122/2004-Customs(NT), dated 25.10.2004 was issued, delegating powers of the Central Board of Excise and Customs relating to waiver of interest charged on Customs Duty on warehoused goods, to the Chief Commissioners of Customs and Central Excise enhancing the monetary limit from Rs. 15 lakhs to Rs. 2 Crores under Section 61 of the Customs Act, 1962. However, all requests for waiver of interest on Customs Duty on warehoused goods first be received at the Commissionerates who should examine the request. Such cases, where amount of interest is within the delegated powers of Chief Commissioner of Customs, need not be referred to the Board, and the same may be decided on merits and in accordance with the following guidelines and existent instructions. However, in case, the request falls beyond the delegated powers of the Chief Commissioner of Customs, the same may be forwarded to the Board with comments for consideration. It is desirable that the following guidelines are kept in mind while deciding or recommending the cases for waiver of interest, to ensure certain amount of uniformity in approach.

4. The guidelines where the interest would generally be waived have been framed keeping in mind the fact that for certain specified categories of imports such as ship stores and others, the Import Duty is finally not payable. In certain other cases, it was considered that in view of the production programme or nature of activity of the importers such as Ship Building Industry, Power Generating Project, the imported goods have to be generally retained for a longer period of time. Charging of interest would escalate the costs unnecessarily. In essence the guidelines cover the following cases. This would however be subject to the individual merits of a case :-

- (i) Goods supplied as ship stores/aircraft stores
- (ii) Goods supplied to diplomats
- (iii) Goods used in the units operating under manufacture-in-bond scheme
- (iv) Goods imported by 100% EOUs
- (v) Goods warehoused and sold through Duty free shops
- (vi) Machinery, equipment and raw materials imported for building and fitment to ships
- (vii) Petroleum products
- (viii) Plant and machinery imported for projects
- (ix) Machinery, equipment and raw-materials imported for manufacture and installation of power generation units
- (x) Goods imported under OGL and warehoused for subsequent clearance against valid advance licences/Import-Export Pass Book Scheme or any similar scheme
- (xi) Goods imported in bulk by canalizing agencies/public sector trading or service agencies and warehoused for subsequent release for export production
- (xii) Imports under EPCG Scheme
- (xiii) Import of Capital Goods by Public Sector Undertakings

5. In respect of cases at 4 (i) and (ii) above, the waiver of interest is normally to be considered only after ex-bond clearance of goods for the said purpose. For cases at 4 (iv), the waiver of interest shall be considered on completion of the export obligation period and for cases at 4 (vi), the waiver of interest shall be considered only after the imported goods have indeed been cleared from the warehouse for actual use for building and fitment to ships.

6. The issue as to whether interest in case of export of warehoused goods under Section 69 of the Customs Act, 1962 is payable in terms of the guidelines contained in Board's letter F. No. 475/82/92-LC, dated 27.12.1993 OR whether the same is not required as per Hon'ble Supreme Court's judgement in the case of M/s. Pratibha Processors Vs. U.O.I., as reported in 1996 (88) E.L.T. 12 (SC), has also been examined in the Board. It has now been decided by the Board to adopt the ratio of Hon'ble Supreme Court's judgement in the case of M/s. Pratibha Processors Vs. U.O.I. [(1996 (88) E.L.T. 12 (SC)], wherein the Apex Court has held that the interest on warehoused goods is merely an accessory of the principal and, if the principal is not recovered/payable, so is the interest on it. The interest under Section 61 (2) of the Customs Act, 1962 has, thus, no independent or separate existence.

7. In all cases, which have been discussed in the para 4 above, the demand for interest are to be raised when due. The same are, however, not to be enforced, and on fulfillment of the purpose of import, the waiver of interest is to be decided within six months. In other words, the activity of the importers is to be allowed to continue, which includes clearance of the goods from the warehouse for the purpose of use, and only at the last stage after the goods have been cleared or at the time of de-bonding in cases of 100% EOUs, the waiver of interest issue is to be decided. This approach is necessary since, by and large, the interest demanded may finally merit waiver and the importer should be spared the hardship of first paying the interest and then, on waiver, seeking refund.

8. Cases which are not covered by the guidelines mentioned in para 4 above should be referred to the Board for decision. Similarly, cases relating to interest accrued on scrap generated during the manufacturing activity of 100% EOU should not be decided by the Chief Commissioners. These should be referred to the Board for decision.

Sd/-
(T. K. BANDYOPADHYAY)
Under Secretary (LC)