

**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLE 18.5 OF THE AGREEMENT**

INDIA

The following communication, dated 29 February 2012, is being circulated at the request of the Delegation of India.

**Notification of Laws and Regulations under Article 18.5 of the Agreement on Implementation of
Article VI of the General Agreement on Tariffs and Trade 1994**

Pursuant to Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, India notifies the Rules, namely, **"Refund of Anti-Dumping Duty (Paid in Excess of Actual Margin of Dumping) Rules, 2012"** and the amendment to the *Custom Tariff (Identification Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995* by the **"The Custom Tariff (Identification Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Amendment Rules, 2012"**. These Amendment Rules were notified vide Ministry of Finance, Department of Revenue Notification Nos.05/2012 – Customs (N.T) dated 19 January 2012 and No.6/2012 – Customs (N.T.) dated 19 January 2012, respectively.

With regard to **"Refund of Anti-Dumping Duty (Paid in Excess of Actual Margin of Dumping) Rules, 2012"**, Department of Revenue has notified rules setting out the procedures for claiming refund of excess payment of Anti-Dumping Duty.

In **"The Custom Tariff (Identification Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Amendment Rules, 2012"**, the Department of Revenue has made amendments in the said Rules relating, *inter-alia*, to the following :

- (i) after Rule 21, Rule 21A has been inserted which relates to the procedures to be followed for the application for determination of amount paid in excess of actual margin of dumping and the procedures to be followed by the Investigating Authority in this regard;
- (ii) after Rule 24, Rule 25 to 28 have been inserted which relate to:
 - (a) Circumvention of anti-dumping duty - (Rule 25)
 - (b) Initiation of investigation to determine circumvention - (Rule 26)
 - (c) Determination of circumvention - (Rule 27)
 - (d) Review of circumvention - (Rule 28)

Copies of the above mentioned notifications are annexed herewith.

Annexure

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. 5/2012-Customs (N.T.)

New Delhi, the 19th January, 2012

G.S.R. (E). - In exercise of the powers conferred by sub-section (2) of section 9 AA of the Customs Tariff Act 1975 (51 of 1975), the Central Government hereby makes the following rules, namely:-

1. Short title, extent and commencement.- (1) These rules may be called the Refund of Anti-Dumping Duty (Paid in Excess of Actual Margin of Dumping) Rules, 2012.

(2) They extend to the whole of India.

(3) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Customs Tariff Act, 1975 (51 of 1975);

(b) "designated authority", in relation to these rules, means any person who is appointed as the designated authority by the Central Government by notification in the Official Gazette in accordance with rule 3 of the Customs Tariff (Identification, Assessment and Collection of Anti dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995;

(c) "duty" means the anti- dumping duty imposed under sub-section (1) or sub- section (1A) of section 9A of the Act;

(d) "Fund" means the Consumer Welfare Fund established under section 12C of the Central Excise Act, 1944 (1 of 1944);

(e) "importer" means any person who has filed bill of entry for clearance of goods and while discharging duty liability on such goods has paid anti dumping duty in excess of the actual margin of dumping.

(f) Words and expressions used and not defined in these rules shall have the meanings respectively assigned to them in the Act.

3. Procedure for claiming refund of excess payment of Anti- dumping duty.- (1) Where an importer has paid any anti-dumping duty in excess of the actual margin of dumping in relation to any imported goods, he may submit an application as per format specified for refund of such excess duty to the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, at the port of importation.

(2) The application referred to in sub-rule (1) shall be accompanied by documents evidencing payment of anti dumping duty in respect of which refund has been claimed.

4. Time limit for filing refund.- (1) Every application under these rules shall be filed within three months from the date of publication of notification, issued by the Central Government under sub-section (1) of section 9AA of the Act, in the Official Gazette.

(2) Where such duty becomes refundable as a consequence of judgment, decree, order or direction of the Court, Appellate Tribunal or Authority, the limitation of three months shall be computed from the date of such judgment, decree, order or direction.

5. Deficiency in application for refund.- (1) On receipt of the application, it shall be scrutinized for its completeness by the Assistant Commissioner of Customs or Deputy Commissioner of Customs and where the application is found to be deficient in any material particulars, it shall be returned to the importer within one month pointing out the deficiencies.

(2) The importer may re-submit the application after making good the deficiencies to the Assistant Commissioner of Customs or Deputy Commissioner of Customs within one month of receipt thereof.

6. Disposal of refund claim. – If, on receipt of any such refund application, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, is satisfied that the whole or part of the anti dumping duty, as notified by the Central Government, is refundable, he may make an order accordingly and the amount so determined shall be refunded to the importer within 90 days of the receipt of the application or application resubmitted after rectification of deficiency, as the case may be, under rule 5:

Provided that the amount of duty refundable under this rule shall, instead of being refunded to the importer be credited to the fund, if he had passed on the incidence of such duty to any other person.

[F.No.354/126/2010 –TRU]

(Sanjeev Kumar Singh)
Under Secretary to the Government of India

Annexure

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification No. 6 /2012-Customs (N.T.)

New Delhi, the 19th January, 2012

G.S. R. (E).- In exercise of the powers conferred by sub-section (6) of Section 9A and sub-section (2) of section 9AA of the Customs Tariff Act, 1975 (51 of 1975), the Central Government hereby makes the following rules further to amend the Custom Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, namely :-

1. (1) These rules may be called the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Amendment Rules, 2012.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995,-

(i) after rule 21, the following shall be inserted, namely:-

"21A Determination of amount paid in excess of actual margin of dumping. - (1) Where an importer is of the opinion that he has paid any anti-dumping duty imposed under sub- sections (1) or sub-section (1A) of section 9A of the Act on any imported goods, in excess of the actual margin of dumping in relation to such goods, he may file an application for determination of the actual margin of dumping in relation to such goods before the designated authority in such form and accompanied by such documents as the said authority may specify in this behalf.

(2) Where the application referred to in sub-rule (1) is found to be deficient in any material particulars, the same shall be returned to the importer pointing out deficiencies within one month of the receipt thereof and the importer may, after making good the deficiencies, resubmit the application to the designated authority within one month thereafter.

(3) On receipt of the application with complete information, the designated authority shall initiate an investigation to determine the actual margin of dumping in relation to such goods.

(4) In determining the actual margin of dumping, when the export price is constructed in accordance with these rules, the designated authority shall take into account any change in normal value, costs incurred between importation and resale and any movement in the sale price which is duly reflected in the subsequent selling price.

(5) While calculating constructed export price, referred to in sub-rule (4), no deduction shall be made for the amount of anti-dumping duties paid when conclusive evidence of the same is provided.

(6) Where the designated authority finds that there is change in,-
a) costs incurred between importation and resale, and

(b) movement in the sale price which is duly reflected in the subsequent selling price, the actual margin of dumping may be determined in accordance with the provisions of sub-rules (4) and (5).

(7) The designated authority shall, after investigation under sub-rule (3), determine the actual margin of dumping for the goods and if the anti-dumping paid on the goods is in excess of the margin of dumping so determined, the authority shall make recommendation to the Central Government within nine months and in no case more than 12 months, from the date of receipt of the application, complete in all respects, to refund the difference between the two to the importer.

(ii) after rule 24, the following shall be inserted, namely:-

"25. Circumvention of anti dumping duty. - (1) Where an article subject to anti dumping duty is imported into India from any country including the country of origin or country of export notified for the purposes of levy of anti dumping duty, in an unassembled, unfinished or incomplete form and is assembled, finished or completed in India or in such country, such assembly, finishing or completion shall be considered to circumvent the anti dumping duty in force if,-

(a) the operation started or increased after, or just prior to, the anti dumping investigations and the parts and components are imported from the country of origin or country of export notified for purposes of levy of anti-dumping duty; and

(b) the value consequent to assembly, finishing or completion operation is less than thirty-five percent of the cost of assembled, finished or complete article.

Explanation I. – 'Value' means the cost of assembled, complete or finished article less value of imported parts or components

Explanation II. - For the purposes of calculating the 'value', expenses on account of payments relating to intellectual property rights, royalty, technical know-how fees and consultancy charges, shall not be taken into account.

(2) Where an article subject to anti dumping duty is imported into India from country of origin or country of export notified for the levy of anti-dumping duty after being subjected to any process involving alteration of the description, name or composition of an article, such alteration shall be considered to circumvent the anti dumping duty in force if the alteration of the description or name or composition of the article subject to anti dumping duty results in the article being altered in form or appearance even in minor forms regardless of the variation of tariff classification, if any.

(3) Where an article subject to anti dumping duty is imported into India through exporters or producers or country not subject to anti dumping duty, such exports shall be considered to circumvent the anti dumping duty in force if the exporters or producers notified for the levy of anti-dumping duty change their trade practice, pattern of trade or channels of sales of the article in order to have their products exported to India through exporters or producers or country not subject to anti dumping duty.

Explanation.- For the purposes of this sub-rule, it shall be established that there has been a change in trade practice, pattern of trade or channels of sales if the following conditions are satisfied, namely:-

- (a) absence of a justification, economic or otherwise, other than imposition of anti-dumping duty;
- (b) evidence that the remedial effects of the anti-dumping duties are undermined in terms of the price and or the quality of like products.

26. Initiation of investigation to determine circumvention.- (1) Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the anti dumping duty levied under section 9A of the Act , upon receipt of a written application by or on behalf of the domestic industry.

(2) The application shall, inter-alia, contain sufficient evidence as regards the existence of the circumstances to justify initiation of an anti-circumvention investigation.

(3) Notwithstanding anything contained in sub-rule(1), the designated authority may initiate an investigation suo motu if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or any other source that sufficient evidence exists as to the existence of the circumstances pointing to circumvention of anti dumping duty in force.

(4) The designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the anti-dumping duty in force where it is satisfied that imports of the article circumventing an anti dumping duty in force are found to be dumped:

Provided that, the designated authority shall notify the government of the exporting country before proceeding to initiate such an investigation.

(5) The provisions regarding evidence and procedures under rule 6 shall apply mutatis mutandis to any investigation carried out under this rule.

(6) Any such investigation shall be concluded within 12 months and in no case more than 18 months of the date of initiation of investigation for reasons to be recorded in writing by the designated authority.

27. Determination of circumvention.- (1) The designated authority, upon determination that circumvention of anti dumping duty exists, may recommend imposition of anti dumping duty to imports of articles found to be circumventing an existing anti dumping duty or to imports of article originating in or exported from countries other than those which are already notified for the purpose of levy of the anti-dumping duty and such levy may apply retrospectively from the date of initiation of the investigation under rule 26.

(2) The designated authority shall issue a public notice recording its findings.

(3) The Central Government may, pursuant to the recommendations made by the designated authority, extend the anti dumping duty to imports of article including imports of such article from the date of initiation of the investigation under rule 26 or such date as may be recommended by the designated authority.

28. Review of circumvention.- (1) The designated authority may review the need for the continued imposition of the duty, where warranted, on its own initiative or provided that a reasonable period of time has elapsed since the imposition of the measures, upon request by any interested party which submits positive information substantiating the need for the review.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of review.

[F.No.354/126/2010 –TRU]

(Sanjeev Kumar Singh)
Under Secretary to the Government of India

Note.- The principal rule were notified vide Notification No.2/1995-Customs (N.T), dated the 1st January, 1995, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1(E), dated the 1st January,1995 and was last amended by Notification Gazette No.86/2011-Customs (N.T), dated the 1st December,2011, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 855(E), dated the 1st December, 2001.
