

September 7, 2012

Shri M.S. Badhan

Member

(Customs, RI&I, Exports & Safeguards),
Ministry of Finance,
Department of Revenue,
Central Board of Excise & Customs,
Room No.158-B, North Block,
New Delhi – 110 001

Sir,

Sub : Eligibility of assessment of construction equipment under Project Imports Regulations (PIR), 1986 – Instructions – regarding.

Ref : Custom Circular No. 49/2011 dated 4th November, 2011 issued under F.No. 528/14/2008-Cus (TU).

Please refer to our previous representation submitted to your goodself regarding Custom Circular No. 49/2011 dated 4th November, 2011 issued under F.No. 528/14/2008-Cus (TU).

The construction Industry is not clear on the above circular and are in dilemma whether to consider duty exemption accrued to be passed on to the project authority or not. If Industry gets clear picture on this, all the benefit accrued may be passed on to the project authority and cost of the projects initiated by the Government may drastically come down.

Therefore, the Federation on behalf of Indian construction industry, requests you to make suitable amendments to the above Circular

A copy of CFI representation submitted to you is attached for your kind consideration please.

With kind regards,

Yours sincerely,

(Siddharth Singh)
Secretary General

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Ref : HC/MM/PI

July 5, 2012

Shri M.S.Badhan,
Member
(Customs, RI&I, Exports & Safeguards),
Ministry of Finance,
Department of Revenue,
Central Board of Excise & Customs,
Room No.158-B, North Block,
New Delhi – 110 001

Sub : Eligibility of assessment of construction equipment under Project Imports Regulations (PIR), 1986 – Instructions – regarding.

Ref : Custom Circular No. 49/2011 dated 4th November, 2011 issued under F.No. 528/14/2008-Cus (TU).

Construction Federation of India (CFI) is the representative body of the leading engineering construction firms of the country engaged in building dams, power stations, roads etc. and other basic infrastructure of national importance.

We have been represented by our members that there are certain practical difficulties apprehended on the above circular. We reproduce below the gist of the representations received from them for your kind consideration:

- 1) The above circular was issued pursuant to the decision of Hon'ble Supreme Court in the case of M/s. Toyo Engineering India Ltd. vs. CC, Mumbai, wherein the said Hon'ble Supreme Court upheld the following observation made by the Tribunal.

“The mere possibility of its being used subsequently for other project would not debar the respondent from availing the facility of project imports”.

In view of the above decision, construction equipment (also known as auxiliary equipment) initially imported for Registered Project under CTH 9801 may also be subsequently used by other projects not necessarily falling under CTH 9801. Subsequent use of such construction equipment in other projects should not debar the Contractor from availing Project Import benefit.

- 2) Condition No. 4 of the above circular - *“Further it is clarified that the construction equipment may be permitted to be transferred to other registered project under CTH 9801, after completion of its intended use, on recommendations of sponsoring authority”.*

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Condition No. 4 of the circular is not clear on the following issues:

- i) If the Contractor do not get similar registered project under CTH 9801, what would be the fate of Construction Equipment? If kept idle for longer period at site, it would be exposed to deterioration.
 - ii) Once the use of the construction equipment is complete, Contractor will have to remove it immediately from the project site as it would hamper project activities. Even if allowed, Project Authority may impose substantial penalty without safeguarding the equipment from various risks.
 - iii) Few projects require specialized equipment on temporary basis which will be hired by the contractors. After completion of work it has to be exported. In such case, what are the modalities to get project import benefits?
 - iv) Circular is not clear as to how long this construction equipment is to be used in the project registered under CTH 9801. Kindly note that Construction equipment is having its own economic life span depending on at what condition and environment it works.
- 3) Condition No. 5 of the above circular – *“It is also clarified that ‘Plant Site Verification Certificate’ (PSVC) required to be submitted for finalization of project as per Circular No. 14/2006-Cus. F.No. 528/9/2006-Cus (TU) shall also incorporate the details of construction equipments imported and used for the project, to ensure proper utilization of goods imported.*

This certificate is required in the case of embedded equipments which will remain at project site permanently. Construction equipment will not remain at site permanently and the same will have to be withdrawn from site soon after completion of its intended use. We suggest instead of Plant Site Verification Certificate, Contractor may be allowed to provide a certificate from the PROJECT AUTHORITY.

As of date Construction Industry is not clear on the above circular. They are in dilemma whether to consider duty exemption accrued to be passed on to the project authority or not. If Industry gets clear picture on this, all the benefit accrued may be passed on to the project authority and cost of the projects initiated by the Government may drastically come down.

We suggest that since the contractor is allowed to import and use the auxiliary equipment for a particular project, the Contractor may be allowed to withdraw the equipment from the site on production of project completion certificate from the Project Authority and the contractor should be free to utilize such equipment in any other projects.

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Notwithstanding anything stated above, if it is not feasible to accept Member's suggestion, alternatively the contractor may be allowed to pay customs duty on the depreciated value of the goods to be calculated @ 5% on straight line method for each completed quarter starting from the date of importation of the said goods till the date of withdrawal from the Project.

In view of the practical difficulties as explained above and the suggestions made by the member's, we earnestly request you to issue suitable amendments to the above circular at the earliest.

With kind regards,

Yours sincerely,

(Siddharth Singh)
Secretary General

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