

OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
NO.1, WILLIAMS ROAD, CANTONMENT, TRICHY-1.

TRADE NOTICE: 10/2005

DATED: 04.03.2005.

Sub: Communication of Ministry's Circular's No. 807/4/2005 – CX dated
10.02.2005 - Regarding.

Copy of Ministry's Circular's No. 807/4/2005 –CX dated 10.02.2005 [F.No.
209/41/2004 –CX -6 (Pt. II) regarding Payment of Additional Excise Duty and Special
Additional Excise Duty on Motor Spirit and High Speed Diesel exported under Bond
is communicated herewith.

The contents of the Trade Notice may be brought to the knowledge of all constituent
members of Trade Associations / Chambers of Commerce

(Issued from file C.No.IV/16/2/2005 – C.Ex.Pol.)

//ATTESTED//

Sd./xxxx
(V. JAYARAMAN)
JOINT COMMISSIONER (TECH)

SUPERINTENDENT (TECH.)

To
As per mailing list II / III / All Section in Hqrs., Trichy.

Copy of Ministry's Circular's No. 807/4/2005 – CX dated 10.02.2005

I am directed to state that a point has been raised whether the Additional duty of
Excise (AED) and Special Additional Excise Duty (SAED) are payable on Motor
Spirit and High Speed Diesel exported under Bond. The issue has been raised in
respect of following duties:

- (a) AED on Motor Spirit levied under section 111 of the Finance Act, 1998 read
with section 167 of the Finance Act, 2003
- (b) AED on High Speed Diesel (w.e.f. 1.3.1999) under section 133 of the Finance
Act, 1999 read with section 168 of the Finance Act, 2003.
- (c) SAED on Motor Spirit under section 147 of the Finance Act, 2002.

2. Board's attention has been drawn to objections raised by C&AG over non-payment/non-collection of such duties on the Motor Spirit and High Speed Diesel exported under Bond. Board has also observed that there is non-uniformity of practice in so far as levy and collection of said duties is concerned. In some cases, show cause notices have been raised demanding these duties for a period ranging from 1998 till date on the grounds:

(i) The term "duty" has not been defined under rule 13 of erstwhile Central Excise Rules, 1944 or under rule 19 of the Central Excise Rules, 2002. Therefore, the term "duty" for the purpose of rule 13 or rule 19 of the respective Central Excise Rules, should be the same as defined in rule 2(e) of the Central Excise Rules, 2002 which refers only to "duty" payable under section 3 of the Central Excise Act, 1944.

(ii) There is no notification governing the conditions and procedures for goods to be exported under Bond which does not require payment of additional duty of excise or Special Additional Excise Duty for the purpose of exports.

(iii) Hon'ble Supreme Court in the case of Union of India v. Modi Rubber Ltd. [1986 (25) ELT 849 (SC)] held that exemption under erstwhile rule 8(1) of Central Excise Rules, 1944 {now under section 5A of Central Excise Act, 1944 } is applicable to duty of excise leviable under Section 3 of the Central Excise Act, 1944 and is not applicable to any other duty leviable under Finance Act.

3. The matter has been examined. According to Note 2/Note 3 (as the case may be) of the charging sections of the respective Finance Acts, the provisions of Central Excise Act, 1944 and the rules made there under including those relating to refunds and exemption from duties are applicable in relation to the levy and collection of the duties of excise leviable under the respective Finance Acts. Therefore, by virtue of this provision, rule 19 of Central Excise Rules, 2002 or rule 13 of erstwhile Central Excise Rules, 1944 has been applicable to even to the aforementioned duties of excise namely AED and SAED levied under respective Finance Acts.

4. Further, the issue before Supreme Court in Modi Rubber case (supra) was relating to exemption from payment of special duty of excise. Since, clearances under bond are not synonymous to clearances under exemption, the aforesaid judgment of Hon'ble Supreme Court may not be relevant to the present case.

5. Board has also observed that it is the policy of the Government to grant relief from element of domestic taxes on goods which are exported. Therefore, the notification governing conditions and procedures for export of excisable goods without payment of duty issued under rule 19 shall include the aforementioned duties, namely AED and SAED levied as duty of excise.

6. In view of above, it is clarified that AED or SAED levied on Motor Spirit and High Speed Diesel under respective sections of Finance Acts are not required to be paid for goods exported under bond.

7. The reply to objections raised by C&AG on the issue may be given in the light of the legal position given above. Pending show cause notices except, in cases where they were issued on receipt of objections raised by C&AG, may be finalized accordingly. Protective demands raised consequent to objections raised by C&AG may be transferred to Call Book as per the existing instructions.

8. Trade and field formations may be informed suitably.

9. Receipt of the circular may be acknowledged.

10. Hindi version will follow.

Yours faithfully,

(Neerav Kumar Mallick)
Under Secretary to the Govt. of India