

June 3, 2013

Smt. Praveen Mahajan
Chairperson,
The Central Board of Excise & Customs,
Ministry of Finance
Department of Revenue
Room No.158-B, North Block
New Delhi - 110 001

Sub: Difficulties being faced by the Contractors while demobilization of Plants & Equipment from project site (on completion) procured with Duty Exemption under notification no. 84/97 Customs and 108/95 CE necessary for execution of eligible Infrastructure projects (funded by International agencies).

Madam,

On behalf of Construction Federation of India (CFI), we are writing this to bring to your kind attention the difficulties being faced by the Contractors while demobilization of Plants & Equipment from project site (on completion) procured with Duty Exemption under notification no. 84/97 Customs and 108/95 CE necessary for execution of eligible Infrastructure projects (funded by International agencies).

CFI is the representative body of leading engineering firms of the country engaged in the construction of critically important infrastructure development projects such as dams, power stations, highways, ports and similar works. They have been integral part of the nation building process over several decades and are today playing a critical role towards achieving the highly ambitious infrastructure creation targets.

Some of these infrastructure projects are funded by International Funding Agency and includes Road projects, Water supply projects, Hydro Power projects etc. and their construction contracts were awarded after due diligence and process of "International Competitive Bidding".

The Federation would like to submit the following on the subject matter for your consideration:

- 1) To execute the aforesaid contracts, our members either import or procure locally manufactured equipment/machinery without payment of duties of customs and CENVAT duty under Notification No. 84/97-Cus dated 11.11.1997 and Notification No. 108/95-CE dated 28.08.1995 respectively, in the prescribed manner, viz. Project Authority Certificate issued by the Project Authority and duly countersigned by the Joint Secretary to the GOI with bonafide belief as permissible.
- 2) Some of the equipments/machinery may have been purchased prior to March 2008 and some of them were procured after the said date. Most of the equipment/machinery are now more than 5 years old and they require either refurbishment or to be scraped.
- 3) In some cases, the Projects are either complete or on the verge of completion and as such various machinery/equipment will become idle at the Project Site. Our members are also under the contractual obligation to clear off the project site within stipulated period after execution/completion of the project.

.....2/-

: 2 :

- 4) It should be appreciated that the original Notification for Excise and Custom were issued in the year 1995 viz. 108/1995 and 84/1997 respectively, but it's amendment to the same was effected in the year 2008 vide notification 13/2008 and trade clarification in year 2008 vide F.NO.101/7/2008-CX-3 dated 12th June 2008 respectively i.e. after lapse of more than 15 years giving an impression that goods brought to the project site cannot be taken out of the site even after the completion of the project.
- 5) It is to be appreciated that our members, who have imported capital goods for use in the project, have invested substantial capital for procurement of such goods (except element of custom or excise duty) and apportioned the cost with bonafide belief as permissible and for further utilization in other project work. If, the said capital goods, which are brought to the project, cannot be taken out after the completion of the project, it will render these capital goods either idle or worn out, which would be a national waste of resources meant for infrastructure development.
- 6) The owners of the Project are also not interested in using the said equipment after the completion of the Project and are insisting our members to shift the equipment and clear off the project site.
- 7) In the background of the foregoing facts, our members are in dilemma and facing problems. Therefore, CFI would like to make the following suggestions for your favourable consideration.

Option 'A': To allow/permit shifting of said plant and machinery for use at other Projects sites which are eligible/funded by notified International Funding agency like World Bank, ADB, JICA etc.

In this connection, we draw your attention to Circular no. 21/2013 – Customs dated 16/05/2013 issued by TRU, Department of Revenue, relating to Oil Exploration Sector. In the similar situation, the affected Contractors/Licencees are allowed to shift the equipment to other similar projects.

Thus, applying the same principle a guideline circular may kindly be issued, by allowing the Contractors to shift such said plant and machinery to other project sites funded by notified International Funding Agency under International Competitive Bidding process.

Option 'B': To pay customs duty/central excise on the depreciated value of the equipment procured for these projects and be allowed to shift these equipment from the project site for use at other project sites or for disposal.

In this connection, we draw your attention to Notification No. 12/2012 – Custom, Sr. No. 368 read with condition no. 9, issued by the Dept. of Revenue, wherein equipments purchased for execution of Road Projects with Nil Customs Duty are allowed to be shifted to other Road Projects or “allowed to sell/dispose/use the equipments after payment of Customs Duty at depreciated value 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.

.....3/-

: 3 :

On the similar line/principle, we request that our members be allowed to shift the equipments purchased at Nil Duty under Notification Nos. 84/97-Cus and 108/95-CE by paying Customs Duty / Central Excise Duty on the depreciated value to be calculated as per provision under Customs Notification No. 12/2012.

Option 'C': To export such plant and machinery out of India including Nepal, Bhutan without payment of duty for the projects under execution by the said Contractors.

Nepal and Bhutan are our friendly neighboring countries and Govt of India is funding and also providing the assistance in development of various infrastructure projects in their territory. Some of these projects, especially hydro power projects are being built having 'Power Purchase Agreement' with GOI.

For execution of these projects, the contractors are allowed to procure and import the goods / equipment at 'nil' Custom duty or Excise duty. Therefore, the contractors executing the projects in the said neighboring countries having financial assistance from GOI or other international agencies may please be allowed to opt for Option 'C'.

In view of the difficulties faced by our members as explained above, the Federation earnestly requests you to consider the above cited suggestions/options favorably and issue suitable instructions accordingly at the earliest.

We also be thankful to have an opportunity for explaining our submissions in person to your goodself if so required.

With kind regards,

Yours sincerely,

(Siddharth Singh)
Secretary General