

Amicus Customs Alert : Trends in Levy of 'Extra Duty Deposit''

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RECENT TRENDS IN LEVY OF EXTRA DUTY DEPOSIT UNDER CUSTOMS REGULATIONS

The levy of Extra duty deposit (“EDD”) in case of Related Party Imports has been a bone of contention under Customs Regulations. Fundamentally EDD is a security deposit levied during pendency of investigation by Special Valuation Branch¹ (SVB). Goods are assessed and cleared provisionally subject to payment of EDD. Though, the Central Board of Indirect Tax and Customs (“CBIC”) has from time to time issued specific guidance on the levy of EDD, yet same has seldom been adhered to opening floodgates for litigation. This alert delves into the manner of imposition of the levy and the intricacies surrounding its rate, time period etc.

Administrative Circular on levy of EDD

The Central Government through Administrative Circular² brought substantial change in the manner EDD is levied, the snapshot of which is given below –

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1. In certain circumstances, SVB investigation is triggered at the time of import of goods from related party.
 2. Circular bearing No. 5/2016 – Customs dated February 9, 2016

S. No	Procedure prior to 2016	Procedure after 2016
Rate of EDD		
1	EDD @1% was levied at the time of provisional assessment of Goods	No EDD shall be levied at the time of provisional assessment of Goods
2	The EDD was increased to 5% if importer failed to provide documents/information required by SVB.	EDD @5% shall be levied only when importer fails to provide documents/information required by SVB.
Threshold period for levy of EDD		
3	EDD was levied for a period of 4 Months	EDD can be levied for maximum period of 3 Months
Mode of Deposit		
4	EDD could be deposited in cash only	Option given to deposit by way of cash or bank guarantee

Despite the law being fairly lucid, Customs Authorities have acted in a manner that is prejudicial for the importers. The authorities invariably overcharge EDD either in terms of rate or the time threshold prescribed for the levy. Thus, to curb the anomaly CBIC through another Administrative Circular³ clarified that the levy of EDD shall be discontinued in all pending SVB investigations where the importer has provided requisite information and documents. There also exists a catena of precedents wherein Courts have laid down the fundamental tenets governing the levy of EDD.

- The Hon'ble Madras High Court in the matter of **The Assistant Commissioner of Customs vs. Dalmia Cement (Bharat) Limited**⁴, held that Revenue should refund EDD along with interest where Customs Department retained EDD and failed to finalise the Provisional Assessment for period of 16 years.

- The Hon'ble High Court of Bombay in the matter of **E.I. Dupont India Pvt. Ltd. v. Union of India**⁵ held that *in any circumstances, Extra Duty Deposit shall not be levied beyond the period of Four Months, even though Customs Authorities failed to complete the provisional assessment within the time stipulated*. Similar viewpoint was again taken by Hon'ble Bombay High Court in the matter of **Beckhoff Automation Pvt. Ltd. v. Commissioner**⁶.

3. Circular No. 4 /2016-Customs dated February 9, 2016

4. W.A.No.1084 of 2020

5. 2014 (309) ELT 225 (Bom.)

6. 2015 (323) ELT 404 (Tri. – Mumbai)

- In **Commissioner of Customs (Exports) Vs Sayonara Exports Pvt. Ltd**⁷. the Hon'ble High Court of Madras held that no refund application (as envisaged under Section 27 of the Customs Act 1962) is required to be filed for refund of EDD. Since EDD is deposited to safeguard the interests of the Revenue, the requirement to file the refund application can be dispensed with.
- In **SKF Technologies (I) Pvt Ltd Vs. Commissioner of Cus. Bangalore**⁸, the Hon'ble CESTAT Bangalore held that EDD is in the form of security and the doctrine of '*unjust enrichment*' is not applicable. Similar view has earlier been adopted by Hon'ble Supreme Court in case of **Commissioner Vs. Oriental Exports**⁹.

7. C.M.A. NO. 961 OF 2008

8. 2017 (352) ELT 355 (Tri. Bang)

9. 2006 (200) ELT A138

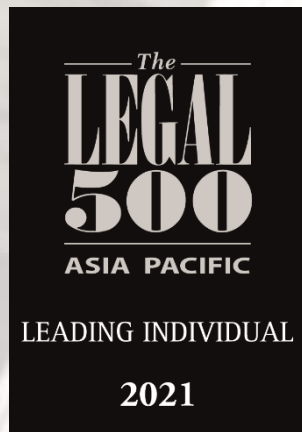
Conclusion -

The levy of EDD by the Central Government is to safeguard interests of the Revenue. The intention of the Government has never been to distress taxpayer with the extra burden of EDD. Yet practically it seems to be a distant vision as 'Proper Officers' are not adhering to procedure and guidelines laid down by the Central Government vide various circulars. Where deviation is observed between theory and practice, taxpayers can approach Courts for judicial remedy (via writ route) to safeguard legal rights guaranteed under the primary and subordinate customs legislation.

ABOUT AMICUS

Amicus is legal and tax consulting firm with focus on corporate finance, re- structuring, private equity, international taxation, transfer pricing and goods and services tax. The Firm's tax team also represents clients in assessments and litigation including Tax Tribunal and Higher Courts.

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