

Ref. No.: PF/9
March 12, 2014

The Joint Secretary (TRU-I)
Tax Research Unit, Central Board of Excise & Customs
Department of Revenue, Ministry of Finance,
Government of India,
New Delhi

Kind Attn.: Shri P. K. Mohanty

Sub: Incidence of Double Duty Taxation on Auto Fuels from SEZ Refinery

Dear Sir,

The Oil Industry has been exploring options of increasing the availability of environmentally friendly transportation fuels in India. In this context, the availability of environmentally friendly transportation fuels manufactured by SEZ Refinery, i.e. Motor Spirit Grade BS IV & V and High Speed Diesel Grade IV & V, to meet the needs of domestic market has been engaging our attention.

It is observed that presently, environmentally friendly MS & HSD manufactured by a SEZ refinery, when cleared to domestic tariff area, suffer the incidence of double duty of additional duty of excise/special additional duty of excise (levied under Finance Acts), though such an additional incidence of duties, appears to be unintentional. Annexure-A, enclosed to this letter, brings out the incidence of duty on domestic clearances of unbranded MS/HSD by a DTA refinery & SEZ refinery and import of MS/HSD.

If the issue highlighted above is appropriately addressed, the availability of auto fuels of higher quality for domestic market can improve substantially.

In this regard, we enclose, as Annexure-B, a note on the subject for kind consideration. A representation in this regard had been made by us earlier vide our letter of even reference dated March 12, 2008 (copy enclosed).

We urge you to kindly resolve the matter expeditiously.

Thanking you,

Yours faithfully,


A. K. Arora
Director General

Encl.: as above

✓ cc: Secretary, Ministry of Petroleum & Natural Gas 
cc: Secretary, Dept. of Commerce, Ministry of Commerce

COMPARATIVE DUTY STRUCTURE - UNBRANDED HIGH SPEED DIESEL

Rs./Ltr

Sr. No	PARTICULARS	DTA	IMPORT	SEZ
1	CIF (assumed) ***		55.00	
2	Customs Duty @ 2.5%		1.38	
1A	RTP (incl. 3% Notional Education & SHE Cess)	56.42		56.42
2A	Customs Duty @ 2.5%			1.41
2B	Customs Duty (Additional Duty under Section 116 of the Finance Act 1999)		2.00	2.00
3	Sub total for CVD Calculations (1 + 1A + 2 + 2A + 2B)	56.42	58.38	59.83
4	Additional Customs Duty / CVD / Excise Duty (incl. Education Cess & SHE Cess only for DTA)			
	@ Rs. 1.46 /Ltr	1.50	1.46	1.46
	@ Rs. 2.00 /Ltr (exempt vide Notification 59/99 - Cus dt 11/05/99)	2.06	-	-
5	Sub total for Education Cess / SHE Cess Calculations (2 + 2A + 2B + 4)	3.56	4.84	4.87
6	Education Cess / SHE Cess on Customs Duty + Additional Customs Duty		0.15	0.15
7	Total Customs Duty payable for Import / equal to aggregate of duties of Customs U/s 3 of Central Excise Act (5 + 6)	3.56	4.98	5.02
8	Additional duty of Excise @ Rs. 2/Ltr			2.00
9	Education Cess / SHE Cess on total of duties (on 7 +8)		0.15	0.21
10	Total Duty payable for Import / Total Duty payable by DTA / SEZ (7 + 8 +9)	3.56	5.13	7.23
11	Total Cost for the Buyer (1 + 1A + 10)	59.98	60.13	63.64

COMPARATIVE DUTY STRUCTURE - UNBRANDED MOTOR SPIRIT

Rs./Ltr

Sr. No	PARTICULARS	DTA	IMPORT	SEZ
1	CIF (assumed) ***		55.00	
2	Customs Duty @ 2.5%		1.38	
1A	RTP (incl. 3% Notional Education & SHE Cess)	56.42		56.42
2A	Customs Duty @ 2.5%			1.41
2B	Customs Duty (Additional Duty under Section 103 of the Finance Act 1998)		2.00	2.00
3	Sub total for CVD Calculations (1 + 1A + 2 + 2A + 2B)	56.42	58.38	59.83
4	Additional Customs Duty / CVD / Excise Duty (incl. Education Cess & SHE Cess only for DTA)			
	@ Rs. 1.20 /Ltr	1.24	1.20	1.20
	@ Rs. 2.00 /Ltr (exempt vide Notification 57/98 - Cus dt 01/08/98)	2.06	-	-
	@ Rs. 6.00/Ltr	6.18	6.00	6.00
5	Sub total for Education Cess / SHE Cess Calculations (2 + 2A + 2B + 4)	9.48	10.58	10.61
6	Education Cess / SHE Cess on Customs Duty + Additional Customs Duty		0.32	0.32
7	Total Customs Duty payable for Import / equal to aggregate of duties of Customs U/s 3 of Central Excise Act (5 + 6)	9.48	10.89	10.93
8	Additional duty of Excise @ Rs. 2/Ltr			2.00
9	Special Additional duty of Excise @ Rs. 6/Ltr			6.00
10	Education Cess / SHE Cess on total of duties (on 7 +8 +9)		0.33	0.57
11	Total Duty payable for Import / Total Duty payable by DTA / SEZ (7 + 8 +9 + 10)	9.48	11.22	19.50
12	Total Cost for the Buyer (1 + 1A + 11)	65.89	66.22	75.91

*** Notional CIF Value for purposes of illustration

Annexure-B

Clearances from SEZ to the domestic area (DTA) are deemed to be imports. Therefore DTA clearance from SEZ refinery needs to be placed on par with actual imports. At the least MS / HSD manufactured by a SEZ refinery in India shall not be subjected to an incidence of duties higher than what is applicable if MS / HSD were to be imported

General Principle:

- Goods manufactured by SEZ are exempted from levy under the Central Excise Act (refer Sec 3(a) of the Central Excise Act, which states that there would be "no levy" on goods manufactured in SEZ.)
- Sec 30 of the SEZ Act, 2005 deals with domestic clearances by an SEZ Unit and the said Sec 30 currently reads as under:
 - 30. Subject to the conditions specified in the rules made by the Central Government in this behalf:-
 - (a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported; and
 - (b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.
- Thus the goods manufactured by SEZ, when cleared for consumption in the domestic area are to be subjected to duties of customs, as would be leviable on such goods when imported.
- As per Customs Act, imports have to suffer basic customs duty (BCD) and additional customs duty (ACD). ACD by definition is basic excise duty (BED) plus any additional excise duty (AED) and special additional excise duty (SAED).

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MS & HSD manufactured by a DTA refinery in India / imported from outside into India

- *Motor Spirit (MS) & High Speed Diesel (HSD), intended for use without a brand name, are currently subjected to the following basic duties:*

	MS	HSD
<i>Basic Excise Duty under Central Excise Tariff Act</i>	<i>Rs. 1.20 per Litre</i>	<i>Rs. 1.46 per Litre</i>
<i>Basic Customs Duty under Customs Tariff Act</i>	<i>2.5% advalorem</i>	<i>2.5% advalorem</i>

- *In addition to the basic duties levied under the respective tariff Acts, as mentioned above, the following additional duties levied under various Finance Acts, apply to MS & HSD:*

	MS	HSD
<i>Additional duty of excise u/s 111 of Finance Act, 1998*</i>	<i>Rs. 2.00 per Litre</i>	
<i>Additional duty of excise u/s 133 of Finance Act, 1999*</i>		<i>Rs. 2.00 per Litre</i>
<i>Additional duty of customs u/s 103 of Finance Act, 1998</i>	<i>Rs. 2.00 per Litre</i>	
<i>Additional duty of customs u/s 116 of Finance Act, 1999</i>		<i>Rs. 2.00 per Litre</i>
<i>Special additional duty of excise u/s 147 of Finance Act, 2002</i>	<i>Rs. 6.00 per Litre</i>	

** exempted when imported [refer notification no. 57/98-Cus for MS & notification no. 59/99-Cus for HSD]*

- *In short, Rs. 2.00 per Litre is payable only once either as 'additional duty of excise' on MS / HSD manufactured by a DTA refinery in India or as 'additional duty of customs' on MS / HSD when imported into India. Similarly Rs. 6.00 per Litre is payable only once either as 'special additional duty of excise' on MS manufactured by a DTA refinery or as 'addition duty of customs' on MS imported into India.*

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MS & HSD manufactured by a SEZ unit in India and cleared to DTA:

- While the Central Excise Act specifically states that "levy" under Central Excise Tariff Act shall not apply to goods manufactured in SEZ, the Finance Acts referred to above do not explicitly state that such additional duties will not be leviable on goods manufactured in SEZ.
- In the above circumstances, as the levy of additional duty of excise/ special additional duty of excise have been made applicable to goods manufactured in India and since a SEZ Refinery is located in India and goods manufactured by the said SEZ unit are goods manufactured in India, there is an apprehension that the Department may contend that when a SEZ unit clears MS & HSD to DTA, in addition to payment of 'additional duty of excise' on MS & HSD and 'Special additional duty of excise' on MS as "Additional Customs Duty (ACD)" [as is applicable when MS & HSD is imported into India], additional duty / special additional duty, mentioned above, are further payable, as is applicable to all other goods manufactured in India.

In short the apprehension is that department could demand that **following duties are payable twice** when MS & HSD manufactured by SEZ is cleared into DTA

- Additional duty of Rs. 2/- per ltr on both MS & HSD, once as 'additional customs duty' (as applicable to imported goods) and one more time as 'additional duty of excise' (as applicable to goods manufactured in India); and
- Special Additional Duty of Rs. 6/- per ltr on MS, once as 'additional customs duty' (as applicable to imported goods) and one more time as 'special additional duty of excise' (as applicable to goods manufactured in India).
- The above apprehension arises primarily because, on clearances by a 100 % EOU to domestic area, where duty payable on such clearances shall be equal to the 'aggregate of the duties of customs' on like goods if imported into India, litigations arose because the view of the Department was that in addition to the 'aggregate duties of customs', education cess & secondary education cess levied under the Finance Acts, being leviable on goods manufactured in India, would be payable on the clearances by EOU as is applicable to all goods manufactured in India and the fact that such cess has already been considered in arriving at the additional duty of customs (CVD) as well as on the aggregate duties of customs is not relevant.

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- *In view above, the duty payable on MS and HSD cleared from a SEZ refinery to domestic tariff area would be even higher than the duty payable on MS and HSD when imported and thus placing the buyer at a disadvantage of sourcing MS / HSD from a SEZ refinery in India as compared to actual imports.*
- *In order to allay the above apprehensions and to give necessary clarity on the liability to duty on MS and HSD cleared to domestic tariff area from a SEZ refinery, the Government may consider issuing an appropriate exemption notification, to exempt the unintended double duty payable on above clearances.*
 - *The Finance Acts imposing the aforementioned levies of additional excise duty and special additional excise duty clearly state that the provisions of the Central Excise Act, 1944 and the rules made thereunder, including those relating to refunds and exemptions shall apply in relation to the levy and collection of the Additional Excise Duty / Special Additional Excise Duty leviable under these Acts; .*
 - *Thus for the purposes of exempting the goods from additional excise duty, the Central Govt could invoke the powers for granting exemption as available under the Central Excise Act, 1944 and the rules made thereunder;*
 - *In fact, by invoking such powers the Central Government has already issued an exemption notification no.33/2010-CE dt. 19.10.2010, granting exemption of additional excise duty & special additional excise duty on MS / HSD supplied to UN or International organisations for their official use ;*
 - *On similar lines, the Central Government may consider issuing an exemption notification granting exemption of additional excise duty & special additional excise duty on MS/ HSD manufactured by SEZ unit when cleared to DTA.*
 - *A suggested draft of the proposed notification is enclosed. As per the suggested draft,*
 - *the whole of additional excise duty payable on MS & HSD will need to be exempted, so that the duty payable on MS and HSD sourced from a SEZ refinery is almost on par with the duty payable on MS and HSD when imported ;*

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- o *whereas special additional excise duty leviable thereon under section 147 of Finance Act, 2002 as is in excess of Rupees Three per litre will need to be exempted, so that the duty payable on MS and HSD sourced from a SEZ refinery is almost on par with the duty payable on MS and HSD when imported*
 - *In case, the Board is of the considered view that a notification as suggested above is not necessary, the Board may kindly consider issuing a circular clarifying that since the purpose of Sec 30 of the SEZ Act is to treat the goods manufactured by SEZ and cleared for consumption in the domestic area on par with imports, goods cleared from SEZ to DTA are intended to be subjected only to such duties of customs as would be applicable when like goods are imported into India and that apart from the duties of customs payable on such goods if it were to be imported, no other duty or levy imposed by Finance Act or under any other Act is payable.*
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PROPOSED NOTIFICATION - EXEMPTING MS / HSD
CLEARED FROM A SEZ UNIT TO DTA
FROM ADDITIONAL DUTY OF EXCISE / SPECIAL ADDITION DUTY OF
EXCISE
LEVIED UNDER FINANCE ACTS

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,
SECTION 3,
SUB-SECTION (i)]

Government of India
Ministry of Finance
(Department of Revenue)

Notification No. XXXXXX -Central Excise

New Delhi, the XXXXXX

G.S.R. XXXXX – In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) read with sub-section (3) of section 111 of Finance(No.2) Act, 1998 (21 of 1998), sub-section (3) of section 133 of Finance Act,1999 (27 of 1999) and sub-section (3) of section 147 of Finance Act, 2002(20 of 2002), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all goods falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the said goods) produced or manufactured in special economic zones, and brought to any other place in India, from -

- (i) the whole of the additional duty of the excise leviable thereon under section 111 of Finance (No.2) Act,1998 and section 133 of Finance Act,1999; and
- (ii) the special additional excise duty leviable thereon under section 147 of Finance Act, 2002 as is in excess of Rupees Three per litre.

[F.No. XXXXXXXXXXXXXXXXXXXX]

(XXXX)
Under Secretary to the
Government of India



PETROFED

Ref. No. PF/9
March 12, 2008

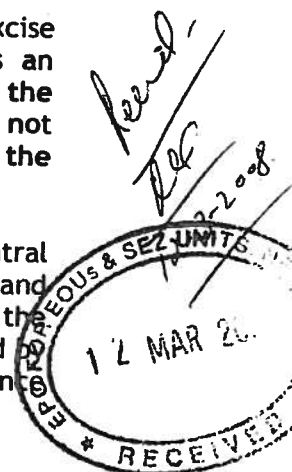
To
The Director General
Export Promotion Council for EOU's & SEZ Units
705, Bhikaiji Cama Place, Bhikaiji Cama Bhavan,
New Delhi - 110 066

Kind attention: Shri L B Singhal

Sir,

Sub: Goods manufactured and removed from SEZs - request for provision in SEZ Act 2005 for avoidance of imposition of levies of various duties of Excise .

1. It has been a consistent policy of the Government of India not to export any taxes along with the goods when manufactured products are exported out of the Country. This is also a stated objective that in the SEZ Act, 2005 (the Act), no levy of any duties of Excise would apply in respect of goods produced or manufactured in SEZ's and that the duty to be levied on goods removed from the SEZ to the Domestic Tariff Area shall be equal to the duty leviable on such goods when imported.
2. For SEZ Units, neutralization of Excise duties and capping of duties in respect of goods removed from SEZ to Domestic Tariff Area(DTA) is governed by Section 7 of the Act (in respect of 21 enactments listed in First Schedule thereto), Section 3 of the Central Excise Act 1944 and Section 30 of the Act.
3. Yet, there are several enactments under various Finance Acts and independent Acts over and above the 21 enactments mentioned in the First Schedule referred to in Section 7 of the Act which brings about levies, inter alia, for goods produced or manufactured and/or exported from the SEZ. An illustrative list of such enactments totalling 37 (21 + 16) is summarized in Annexure I.
4. In respect of enactments in *Annexure I* where it is levied as a duty of excise under various Finance Acts or by various independent Acts, there is an inadvertent omission of not providing for neutralization mechanism in the Act. This is leading to an apprehension that these levies may be attracted not only on export but also as a double levy in case of clearance to the Domestic Tariff area from the SEZs.
5. In summary, while there is complete exemption from the levy of Central Excise Duties under the Central Excise Act, 1944 for manufacture (and thereby export) and from the 21 Acts specified in the First Schedule to the SEZ Act 2005 for export, there are no provisions to neutralize duties levied other 16 enactments for export and all the 37 enactments for DTA clearance in so far as they apply as a duty of excise.



Petroleum Federation of India

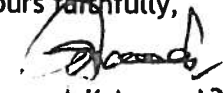
IndianOil Bhavan, 1st Floor, 1 Sri Aurobindo Marg, Yusuf Sarai, New Delhi-110 016 Tel : +91-11-65664067, 26537483, 26535216, 26537062, 26537069, 26535697
Fax : +91-11-26964840 E-mail : petrofed@petrofed.org Website : www.petrofed.org

6. In view of the position that emerges, appropriate neutralization provision would be required to avoid:
- i. Levies in the nature of Central Excise Duties as per the various Acts totaling to 37 Acts (16 in addition to 21 Acts already listed in First Schedule to the SEZ Act) which will get attracted when goods manufactured by SEZ units are exported;
 - ii. Anomalous situation, whereby the duty levied on the goods cleared from SEZ to DTA will be higher than the import duty leviable on such goods when imported from outside India by DTA units. This anomaly would arise as there would be double charging of duties leviable under various other enactments, once as a component of CVD (part of import duty on such imported goods under Section 30 of the Act) and then independently under the respective enactments as duty of Excise.
 - iii. Duties leviable under the various enactments will also attract Education Cess and Secondary and Higher Secondary Education Cess leviable under the Provisions of the Finance (No.2) Act, 2004 (23 of 2004) and the Finance Act, 2007 (22 of 2007) respectively.
7. This Federation views that this can not be the intention or the objective of the Government under the SEZ Act 2005 to levy more duties when goods are produced or manufactured in the SEZ and exported therefrom or removed to DTA compared to normal export or import into the country.
8. In the light of the position emerging, as above, the followings step may kindly be considered for amendment in the Act so as to make export of goods free from various duties and also removal of goods from SEZ to DTA free from double duties:
Section 26 of the Act may be amended to incorporate *"exemption from any duty of excise by any other law for the time being in force on goods produced or manufactured by a Unit in the SEZ"*
9. It is requested that necessary steps may kindly be initiated for an appropriate amendment to the SEZ Act so that unintended levies are not levied by default. This is in the interest of proper implementation of the SEZ Scheme. We shall be grateful for an early resolution of this matter.

It is accordingly requested that the matter may be suitably taken up with the Department of Commerce, Ministry of Commerce and Industry for resolution.

Thanking you in anticipation.

Yours faithfully,


A K Arora 12/3/08
Director General

Encl: *Annexure I*

- cc: The Secretary, Department of Commerce, Ministry of Commerce and Industry,
Udyog Bhavan, New Delhi
cc: The Secretary, Ministry of Petroleum & Natural Gas, Shastri Bhavan, New Delhi

Annexure I

Sr.No	ENACTMENTS	Remarks
1	The Agriculture Produce Cess Act, 1940 (27 of 1940)	First Schedule
2	Coffee Act, 1942	First Schedule
3	The Mica Mines Labour Welfare Fund Act, 1946 (22 of 1946)	First Schedule
4	The Rubber Act, 1947 (24 of 1947)	First Schedule
5	Tea Act, 1953	First Schedule
6	Salt Cess Act, 1953	First Schedule
7	Medicinal and Toliect Preparations (Excise Duties) Act, 1955	First Schedule
8	Additional Duties of Excise (Goods of Special Importance) Act, 1957	First Schedule
9	The Sugar (Regulation of Production) Act, 1961 (55 of 1961)	First Schedule
10	Textile Committee Act, 1963	First Schedule
11	The Produce Cess Act, 1966 (15 of 1966)	First Schedule
12	The Marine Products Export Development Authority Act, 1972 (13 Of 1972)	First Schedule
13	The Coal Mines (Conversation and Development) Act, 1974 (28 of 1974)	First Schedule
14	Oil Industry (Development) Act, 1974	First Schedule
15	Tobacco Cess Act, 1975	First Schedule
16	Additional duty of excise (Textile & Textile Articles) Act, 1978	First Schedule
17	Suger Cess Act, 1982	First Schedule
18	Jute Manufacturers Cess Act, 1983	First Schedule
19	The Agricultural and Processed Food Products Export Cess Act, 1985 (3 of 1986)	First Schedule
20	The Spices Cess Act, 1986 (11 of 1986)	First Schedule
21	The Research and Development Cess Act, 1986 (32 of 1986)	First Schedule
22	Industries (Development and Regulation) Act, 1981	Not covered
23	Coir Industries Act, 1953	Not covered
24	Sugar Export Promotion Act, 1958	Not covered
25	Lime Stone and Dolomite Mines Labour Welfare Fund Act, 1972	Not covered
26	Beedies Workers' Welfare Cess Act, 1976 (56 of 1976)	Not covered
27	Iron Ore Mines, Manganese Ore Mines and ChromeOre Mines Labour Welfare Cess Act, 1976	Not covered
28	Copra Cess Act, 1979	Not covered
29	Cine Workers Welfare Cess Act, 1981	Not covered
30	Automobile Cess Rules 1984	Not covered
31	Additional Duties of Excise as levied vide Section 111 of the Finance (No.2) Act,1998 (21 of 1998) as amended by Section 167 of the Finance Act, 2003 (32 of 2003) and Section 119 of the Finance Act, 2005 (18 of 2005)	Not covered
32	Additional Duties of Excise as levied vide Section 133 of the Finance (No.2) Act,1999 (27 of 1999) as amended by Section 168 of the Finance Act, 2003 (32 of 2003) and Section 120 of the Finance Act, 2005 (18 of 2005)	Not covered
33	National Calamity Contingent Duty leviable under Section 136 of the Finance Act, 2001 (14 of 2001), as amended by Section 169 of the Finance Act, 2003 (32 of 2003) which was amended by Section 3 of the Finance Act, 2004 (13 of 2004) and Section 123 of Finance Act, 2005 (18 of 2005)	Not covered
34	Special Additional Excise Duties of Excise as levied vide section 147 of the Finance Act, 2002 (20 of 2002) read with Notification No. 28/2002-CE dated 13.5.2002 as amended by Notification No. 62/2002-CE dated 31.12.2002, No. 16/2003-CE dated 1.3.2003, No. 12/2004-CE dated 4.2.2004 and No. 40/2004-CE dated 4.8.2004	Not covered
35	Education Cess under Section 91,92,93 of Finance Act, 2004 (No.2)	Not covered
36	Additional duty on Pan Masala and Tobacco Products vide Section 85 of the Finance Act, (No 18) 2005	Not covered
37	Secondary and Higher Education Cess under Section 136,137 and 138 of Finance Act(No. 22) , 2007	Not covered