**Circular No. 41/2013-Customs**

F.No.354/58/2013-TRU

Government of India

Ministry of Finance

Department of Revenue

Tax Research Unit

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R.No.146 I, North Block

New Delhi, dated the 21st October, 2013

To

The Chief Commissioner of Customs (All)

The Chief Commissioner of Customs & Central Excise (All)

The Director General (All)

Sir/Madam,

**Subject:  Applicable CVD on Steam Coal imported from Indonesia under FTA notification No. 46/2011-Customs-reg.**

             I am directed to invite your attention to the above mentioned subject.

**2.**         Under notification No. 12/2012-Customs, dated 17-03-2012 (S. No. 123 of the Table), Steam Coal falling under sub-heading 27011920 attracts basic customs duty (BCD) at 2% and countervailing duty (CVD) at 2%.  Steam Coal imported from Indonesia enjoys preferential BCD @ 0% under S. No. 207 of notification No. 46/2011-Customs, dated 1st June 2011 (India-ASEAN FTA). In this connection, a doubt has been raised whether an importer, while availing of the BCD exemption @ 0% under FTA (notification No. 46/2011-Customs), can simultaneously avail of the concessional CVD @ 2% as per notification No.12/2012-Customs, or he has to pay the CVD at 6%, which is the rate of excise duty applicable on Steam Coal when Cenvat facility has  been availed of.

**3.**         The matter has been examined by the Ministry. Under the Free Trade Agreement (FTA), the preference / concession is extended only in respect of BCD. All other duties, including CVD are charged as applicable to similar imports from other countries. The CVD on an imported article is levied at a rate equal to the excise duty leviable on a like article, if produced or manufactured in India. However, at times, under a notification issued under section 25(1) of the Customs Act, 1962, CVD is levied at a rate which is lower than the rate of excise duty leviable on the like domestic article.

**4.**         In the present case, the excise duty applicable on Steam Coal is 6%, if CENVAT benefit is availed of and 1% if the CENVAT benefit is not availed of.  Normally, Steam Coal will suffer 6% CVD, as the condition of non-availment of cenvat benefit cannot be satisfied in respect of imported goods. However, in the Budget 2013-14, as a conscious policy decision, it was decided to levy 2% CVD both on steam coal and bituminous coal. This is the general applied rate of CVD on all imports of steam coal and bituminous coal regardless of the excise duty leviable on like domestic coal.  No such condition has been laid down that an importer cannot avail of this concessional CVD of 2% if he has availed of the concessional BCD on steam coal under another notification.

**5.**         It is therefore clarified that an importer while availing of BCD exemption on steam coal under FTA notification No. 46/2011-Cus can simultaneously avail of concessional CVD at 2% under notification No. 12/2012-Cus.

**6.**         Difficulties, if any, faced in the implementation of above instructions may be brought to the notice of the Ministry at an early date.

  Yours faithfully,

(P. K. Mohanty)

Joint Secretary (TRU)

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