



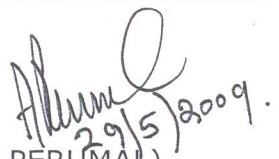
MINISTRY OF FINANCE :: DEPARTMENT OF REVENUE
OFFICE OF THE COMMISSIONER OF CUSTOMS
Custom House, New Harbour Estate, Tuticorin – 628 004
Tel: (0461) 2352655, 2352633 / Fax: 2352019

Public Notice No: 16 / 2009

The following Circular issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs is enclosed herewith for guidance of the officer / Importers / Exporters / Clearing Agents and Trading Public.

Sl.No.	Circular No. & Date	Subject
01	CBEC Circular No.16/2009 – Customs dated. 25.05.2009 (F.No.603/137/2007- DBK)	Grant of All Industry rate of duty Drawback to Merchant Exporters.
02	CBEC Circular No.17/2009 – Customs dated. 25.05.2009 (F.No.605/61/2007- DBK)	Norms for execution of Bank Guarantee under specified Export Promotion schemes – Modification in Circular No.58/04-Cus dt.21.10.04.

DATED: 29.05.2009
CUSTOM HOUSE, TUTICORIN


(A. PERUMAL)
Assistant Commissioner

(Issued from file C.No.VIII/48/11/2008- Cus. Pol)

To

As per Mailing List I & II

Copy for kind information to
The Chief Commissioner of Customs (Preventive), Chennai,

F.No.609/137/2007-DBK
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

New Delhi, the 25th May, 2009

Sub: - Grant of All Industry rate of duty drawback to merchant exporters– reg.

I am directed to refer to Para (vi) of Ministry's Circular No. 64/98-Cus dated 01.09.1998, where it was clarified that in the case of merchant exporter who procures the export goods from the open market, the benefit of All Industry Rates of Duty Drawback shall be restricted to the Customs allocation only, if any. Export goods purchased from the market shall be treated as having availed the Modvat facility and would not be entitled to the Central Excise allocation of the All Industry Rate of Drawback.

2. In this regard references have been received in the Board from the Directorate General of Foreign Trade (DGFT), Federation of Indian Export Organizations (FIEO) and exporters stating that some Custom Houses were insisting on non-availment of Cenvat declarations from merchant exporters of garments who were not purchasing their goods from manufacturers but were sourcing their export goods from traders. The Custom Houses were denying full All Industry rate of duty drawback (including the excise rate) in case exporters were not able to furnish such declarations. The FIEO/DGFT and the exporters have represented that the merchant exporters without supporting manufacturers cannot give non-Cenvat availment declarations as they are not aware of the manufacturers and can at best declare the names of traders from whom the goods have been purchased. Further, most of the garments are being manufactured by petty manufacturers/small scale cottage industries/largely unorganized sector outside the Cenvat chain and, therefore, the higher rate of drawback may be given on garments without insisting on any Cenvat non-availment declaration.

3. The matter was discussed with some field formations. A view was expressed that the proviso to Rule 3 of the Drawback Rules does not permit full drawback (both customs and central excise portions) if Cenvat has been taken on inputs used in the manufacture of export goods and therefore full drawback (including the excise portion) cannot be granted to such goods.

4. The matter was referred to the Committee constituted by the Government to formulate All Industry Rate of Duty Drawback for the year 2008-09. The Committee in its report for the year 2008-09 has recommended that the merchant exporters who source their export goods from the market should be given higher rate of drawback without any declarations as *"they have to purchase the products from the manufacturer after excise clearance i.e. after payment of excise duty. Therefore as far as merchant exporters are concerned, the full drawback rate has to be made available to him for neutralization of excise duty paid when clearing the goods from the manufacturer's premises"*. The Committee has further remarked that *"in case of manufacturer exporters there could be a possibility of double benefit if he were to claim both Cenvat benefit as well as full duty drawback. Therefore, the only cases for checking whether Cenvat has been availed or not, can conceivably pertain to manufacturer-exporters and not to merchant exporters"*.

5. The report of the Drawback Committee has been examined in the Board. The goods available in the market are deemed to be duty paid goods. Hence they bear an element of central excise duty, which needs to be reimbursed, if such goods are exported. Ideally, the terminal central excise duty paid at the time of clearance from factory should be refunded. However, that is not possible in case of export of goods purchased from the market as the trader exporter doesn't have duty paying documents. The next best option is to grant All Industry Rate (AIR) of duty drawback as AIR drawback represents average incidence of taxes suffered by inputs used in the export product. Granting this rate on the condition that the exporter would furnish Cenvat non availment declaration may not be proper as such goods may have changed several hands before exports and the final exporter may not be aware of the actual manufacturer and whether Cenvat credit was availed on such goods.

6. As regards the proviso to Rule 3 of the Drawback Rules, it is viewed that the interpretation that this proviso permits only customs portion of drawback to goods exported by merchant exporters, unless they have a supporting manufacturer, is not correct. As mentioned earlier, the goods available in the market are deemed to be duty paid. Even if it is assumed that such goods had availed Cenvat, then such Cenvat would have been used to pay the duty on final products cleared for home market. The Cenvat availed has therefore been 'given back' to the Government when such goods were cleared for local market. The only possibility of double benefit would arise only when the exporter is able to take the drawback of the central excise portion and also the rebate of terminal excise duty paid on goods at the time of their clearance to the local market. Such rebate is presently not possible in terms of No.19/04- CE (NT) and 20/04-CE (NT) as the rebate is granted only if goods are exported directly from the factory/ warehouse and not from the market. However, as an abundant precaution, the merchant exporters sourcing their goods from the market and claiming central excise portion of duty drawback may be asked to specifically declare, at the time of export, that no rebate (both input rebate and final product rebate) shall be taken against the exports made against these shipping bills.

7. In view of the above, the Board has decided to accept the recommendation of the Drawback Committee in this regard. Thus merchant exporters who purchase goods from the local market for export shall henceforth be entitled to full rate of duty drawback (including the excise portion). However, such merchant exporters shall have to declare at the time of export, the name and address of the trader from whom they have purchased the goods. They shall also have to declare that no rebate (input rebate and also the final product rebate) shall be taken against the Shipping bills under which they are exporting the goods. The merchant exporters who purchase goods from traders may therefore furnish the declaration, at the time of export, in the format annexed with this circular. This is issued in supersession of para (vi) of Circular No. 64/98-Cus dated 01.09.1998.

8. The Custom Houses shall get the veracity of such declarations verified at random and recover excess drawback in case the verification reveals that the declaration filed by the exporter was false or double benefit has been availed of.

9. Suitable public notice for information of the trade and standing order for the guidance of staff may be issued accordingly. Difficulties if any, noticed in implementation of this circular may be brought to the notice of the Board.

10. Receipt of this Circular may kindly be acknowledged.

Yours faithfully,
(Sanjay Kumar Roy)
Technical Officer (Drawback)

Annexure

Declaration to be submitted by merchant exporters who purchase goods from traders for export

1. Shipping bill no. and date
2. Description of goods
3. Export Invoice no. and date
4. Name and complete address of the trader from whom export goods have been purchased.

Declaration

I, _____, hereby declare that I am not the manufacturer of the export goods and am not registered with central excise. I have purchased these goods from a trader who is also not registered with the central excise. I declare that no rebate (input rebate or/and final product rebate) shall be taken against the export (s) made against this shipping bill.

Merchant exporter's signature and seal

F.NO.605/61/2007-DBK
Government of India
Ministry of Finance
Department of Revenue

New Delhi, the 25th May , 2009.

Sub: Norms for execution of Bank Guarantee under specified export promotion schemes-
Modifications in Circular No.58/04-Cus dt.21.10.04-reg.

I am directed to invite your attention to Circular No.58/2004-Cus. dated 21.10.2004 (herein after referred to as 'the said circular') vide which revised norms for execution of Bond / Bank Guarantee (BG) in respect of imports made under the Advance Licence and EPCG Schemes were notified and to say that, representations suggesting the following amendments in the said circular have been received,-

- i. to consider the service exports at par with the physical exports and to extend the benefit of exemption from BG to the service providers who fulfill the criteria laid down in the circular ;
- ii. to extend the benefits of the said circular to the imports under DFIA scheme;
- iii. to consider the cumulative turnover of all the units of a manufacturer for the purpose of eligibility for exemption under the circular if all the units are operated under the same Importer Exporter Code (IE-Code).

2 The above representations have been examined by the Board. As regards extending benefits provided under para 3.1 of the circular to the service exporters on par with the exporters who are doing physical exports, it is observed that the service providers with foreign exchange earnings of Rs.50 lakhs or more during the preceding financial year and having a clean track record have already been allowed the facility of 15% BG vide Circular No.30/2005-Cus. dated 12.7.2005. Further, the service providers in the port handling sector who have been appointed as Custodians have been allowed to furnish BG @ 25% vide Circular No.49/2005-Cus. dated 29.11.2005. It has now been decided to extend the facility of nil / reduced rate of bank guarantee as provided under para 3.1 (a), (d),(e) & (f) of the said circular to all the service providers who meet the criteria prescribed in the said paragraph and other criteria of the said circular as amended.

2.1. In view of the modifications proposed at para-2 above, the table in para-3.1 of the circular No.58/2004-Cus shall be replaced with the following table and the note.

Table

Category of Importer	Quantum of BG/cash security
(a) All exporters who have an export turnover of Rs 5 crores of goods exported physically or of services in current or preceding financial year and having a good track record of three years of exports	Nil
(b) Public Sector Undertaking	Nil
(c) Star Export House	Nil
(d) Manufacturer exporters / Service Providers registered with Central Excise or the Service Tax authorities, as the case may be, who have been exporting during the previous two financial years and have minimum export of Rs. 1 crore or more during the preceding financial year.	Nil
(e) Manufacturer exporter / Service Provider registered with Central Excise or the Service Tax authorities, who has paid central excise duty/ Service Tax of Rs.1 crore or more, as the case may be, during the preceding financial year.	Nil
(f) (1) Manufacturer exporters who are not covered under (a), (b),(c),(d) & (e) above. (2) Units in Agri Export Zones (AEZs), (3) Established Service Providers who have free foreign Exchange earnings of Rs.50 lakhs or more during the	15%

preceding financial year and have a clean track record.	
(g) service providers in the port handling sector who are appointed as Custodians by the jurisdictional Customs / Central Excise authorities	25%
(h) Others	100%

Note: The exemption provided at para (g) above shall be applicable only in respect of import of capital goods under EPCG scheme.

3. As regards extending the benefits of the above mentioned circular to the imports under the DFIA scheme, it is observed that the DFIA scheme is akin to the Advance Authorization scheme; both the schemes are operated more or less with the same set of provisions under the Foreign Trade Policy / Hand Book of Procedures. Since the Advance authorization scheme is already covered by the said circular, it has been decided that the benefits of the said circular may also be extended to the imports under DFIA scheme provided they have fulfilled the other criteria of the said circular as amended.

4. As regards considering the combined export performance / duty payment of all the units of a manufacturer operating under single Importer exporter code (IE code) for the purposes of deciding the eligibility of the said importer for benefits under the said circular, it has been felt that the exporter operating under one IE code and having different units is basically one legal entity. Accordingly it has been decided that the combined export performance / duty payment of all the units of a manufacturer exporter operating under a single IE-Code shall be considered for extending the benefits of the said circular provided all such individual units are separately registered with the Central Excise department and they have fulfilled the other criteria of the said circular.

5. These instructions may be brought to the notice of the trade / exporters by issuing suitable Trade / Public Notices. Suitable Standing orders/instructions may be issued for the guidance of the assessing officers. Difficulties faced, if any, in implementation of the Circular may please be brought to the notice of the Board at an early date.

Receipt of this Circular may kindly be acknowledged.

Yours faithfully,
(P.V.K. Rajasekhar)
OSD(Drawback)