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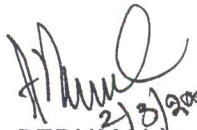
GOVERNMENT OF INDIA
MINISTRY OF FINANCE : DEPARTMENT OF REVENUE
OFFICE OF THE COMMISSIONER OF CUSTOMS
CUSTOM HOUSE : NEW HARBOUR ESTATE : TUTICORIN
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Public Notice No: 06 / 2009

The following Circulars 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.

S.No.	Circular No. & Date	Subject
01	CBEC Circular No.10/2009 Dated.25.02.2009 (F.No.DGEP/EOU/32/2007)	Certification of invoices for supply Of goods from DTA to EOUs for 'cla deemed export benefits.
02	CBEC Circular No.11/2009 Dated.25.02.2009 (F.No.605/109/2006-DBK)	DFIA Scheme - Availment of facility U/R 18 or sub-Rule (2) of Rule of 19 Of CER,2002 or Cenvat credit Rules 2004 under Notfn No.40/2006-Cus.

DATED: 02.03.2009
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.DGEP/EOU/32/2007
Govt. of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
Directorate General of Export Promotion

New Delhi, the 25th February, 2009

Sub: Certification of invoices for supply of goods from DTA to EOUs for claiming deemed export benefits – reg.

Supplies of goods manufactured in India from Domestic Tariff Area (DTA) to EOUs/STPs/EHTPs/BTPs are regarded as 'deemed export' and are eligible for the deemed export benefits specified under Para 8.3 of Foreign Trade Policy (FTP) [Para 6.11 (a) read with Para 8.2 (b) of the FTP]. DGFT has clarified that the scope of such supplies for deemed export benefits is only for those goods which are covered under para 6.6.1 of HandBook of Procedure (HBP) [DGFT's Policy circular No. 23/2008 dated 28.07.2008].

2. The goods specified in the annexures to notification 22/2003-CE dated 31.03.2003 read with para 6.6.1 of HBP are allowed to be procured without payment of duty against CT-3 form and following ARE-3 procedure. Goods received under ARE-3 are verified and certified by the jurisdictional Customs /Central Excise officer in terms of the Board's circular No. 851/9/2007-CX dated 03.05.2007 and 19/2007-Cus dated 03.05.2007 for the units under self bonding procedure. On many occasion, however, EOUs procure duty paid/exempted/non-excisable goods. These goods though not procured under CT-3/ARE-3, if otherwise eligible in terms of notification 22/2003-CE read with para 6.6.1 of HBP, are also to be endorsed as a proof of supplies made, by the officer-in-charge of EOU after verification and due accountal for deemed export benefits. The onus of satisfying whether the goods being received in the EOU/STP etc. have borne the applicable duties would be on the authority sanctioning deemed export benefits (Development Commissioner or Regional Authority of DGFT, as the case may be).

3. An EOU/STP/EHTP/BTP unit seeking endorsement of an invoice from Customs/Central Excise officer for such supplies shall, within one working day of arrival of goods, file intimation along with duplicate copy of invoice to the Superintendent-in-charge of the unit. On arrival of the goods at the premises of the EOU, the authorized person of the unit shall verify the number/quantity/weight/description/value/duty paid etc. with the particulars mentioned in the invoice. The authorized person of the unit shall make entry in the account/register containing information relating to details of invoice, date of receipt, description of goods including marks and number, quantity, value, rate and amount of duty and shall affix his/her signature. The unit is required to keep accounts of these goods for its consumption in the manufacture of goods for exports and DTA clearances, removal of these goods as such and closing balance. The Superintendent-in-charge shall depute a bond officer to examine the goods on the same day of receipt of intimation of arrival of goods. The bond officer shall conduct physical verification of the goods within one working day of receipt of intimation by the Superintendent-in-charge. The bond officer shall countersign entry in the account/register for the goods found to be eligible for procurement by the EOU in terms of notification No. 22/2003-CE read with para 6.6.1 of HBP. The bond officer shall submit a report to the Superintendent-in-charge who shall make an endorsement on the copy of the invoice as a proof of supply, its quantity and date of such receipt. A photo copy of this invoice will be kept in the Range office for records.

4. In respect of EOUs which are operating under self-bonding procedure, attestation of ARE-3 shall be done by the office-in-charge for claim of deemed export benefit, on the basis of verification and

warehousing by the EOU/STP/EHTP/BTP itself. However, in case of receipt of goods without following ARE-3, the procedure as prescribed above shall be followed.

5. Accountal, consumption and removal of goods received by EOU as prescribed above, is to ensure that (i) deemed export benefit already availed is refunded in terms of Board's circular No. 74/2001-Cus dated 1.12.2001 in case of transfer / sale back of goods by EOU into DTA; (ii) to pay customs duty on the goods sold in DTA by EOU which are manufactured out of goods on which deemed export benefits availed (notification No. 23/2003-CE as amended by notification No. 29/2007-CE dated 06.07.2007); and (iii) such supplies are considered for consumption in accordance with Standard Input Output Norms.

6. This issues with the approval of Central Board of Excise & Customs.

7. Wide publicity may please be given to these instructions by way of issuance of Public/Trade Notice. Difficulties, if any, in implementation of these instructions, may be brought to the notice of the Directorate General of Export Promotion.

8. Receipt of this circular may kindly be acknowledged.

Yours faithfully

(Y.S.Shahrawat)
Addl. Director General

DM

Circular: 11/2009 - Cus.

F.NO.605/109/2006-DBK
Government of India
Ministry of Finance
Department of Revenue

New Delhi, the 25th February, 2009.

Subject : Duty Free Import Authorization (DFIA) Scheme - availment of facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or Cenvat credit under CENVAT Credit Rules, 2004 under Notification number 40/06-Cus dated 1.5.06 - reg.

The undersigned is directed to invite your attention to the above mentioned subject and to say that doubts have been raised whether an exporter can avail the facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or Cenvat credit under CENVAT Credit Rules, 2004 (here in after referred to as the 'said facilities') in respect of raw materials used in the manufacture of goods exported towards fulfillment of export obligation (EO) under Duty Free Import Authorization (DFIA) scheme, as well as duty free imports against the Authorization so obtained in terms of the DFIA scheme, simultaneously.

2. The matter has been examined by the Ministry. The DFIA Scheme was introduced in the Foreign Trade Policy (FTP) in 2006 and it allowed, inter alia, duty free import of inputs for manufacture of export goods and transfer of the Authorization or the inputs imported against it after completion of the EO subject to fulfillment of certain conditions. One of the conditions stipulated in paragraph 4.4.7 of the FTP (2006) was that no Cenvat credit facility shall be available for inputs either imported or procured indigenously against the Authorization. Condition(v) of the corresponding customs notification No.40 / 2006- Cus dt 1.5.2006, issued to implement the DFIA scheme, accordingly provided that the EO would be discharged by exporting resultant products, manufactured in India which were specified in the said authorization and in respect of which the said facilities have not been availed of in respect of materials imported / procured against the said authorization.

3. Several reports were received in the Ministry which indicated that, some exporters taking advantage of the words "*against the Authorization*" in the Policy as well as the customs notification, followed post export route i.e. procured inputs on payment of duty from indigenous manufacturers, availed cenvat credit of duty paid on such inputs and then exported the finished products under the DFIA scheme. After completion of exports, the exporters approached the DGFT authorities for issue of transferable DFIA to enable them to import duty free materials. The DFIA's were then either sold in the market or used to import duty free material. Thus the exporters took Cenvat of duty paid on inputs used in the manufacture of goods exported under the DFIA scheme and also obtained DFIA / duty free imports against such DFIA's. It was contended that cenvat of duty paid on inputs was not being taken in respect of materials imported / procured locally against an authorization.

4. The issue was discussed with Department of Commerce (DOC), Directorate General of Foreign Trade (DGFT) and Ministry of Law. The DOC/DGFT were of the opinion that the Policy (para 4.4.7 of the FTP-06), did not prohibit taking Cenvat credit in case of duty paid inputs procured locally for manufacture of export products. It only prohibited Cenvat credit if the inputs were procured locally against authorisation. The Department of Revenue (DOR), on the other hand, was of the view that the Cenvat credit cannot be availed of in respect of inputs used in the manufacture of goods exported under the DFIA Scheme in terms of condition (v) of the notification 40/06-Cus. The contention that the Cenvat credit was restricted only in case of imports against authorization did not appear to be valid as imports under the DFIA scheme were permitted without payment of customs duties and therefore there was no possibility of taking credit on such imports. The words "against authorization" in condition (v) of the notification no 40/06-Cus, therefore, had to be read constructively keeping in mind the overall objectives of the scheme. Hence the practice adopted by exporters as elaborated in para 3 above may have resulted in double benefits. The Law Ministry clarified that from a perusal of the DFIA scheme and the conditions laid therein it appeared that the authorization holder cannot avail Cenvat credit on the inputs used in the manufacture of the goods exported under the DFIA scheme as well as duty free imports under the DFIA simultaneously as it amounts to double benefit and against the spirit and object of the scheme.

5. Finally, the position that emerged after the discussions between the DOC / DGFT and the DOR was that unintended benefits may have occurred in cases where the duty free inputs, imported / procured subsequent to completion of EO using indigenously procured inputs and on which Cenvat credit has been availed of by the exporter, are transferred or used in the manufacture of non excisable /exempted /nil duty goods. The transferee in such cases obtains the duty free raw materials and escapes the levy of excise duty on finished products in domestic market sale. The position holds good even under actual user imports if the replenished materials are utilized in the manufacture of non-excisable/exempted/nil-duty products.

6. The DOC/ DGFT therefore modified the provisions of the DFIA Scheme in FTP 2007 and 2008. Para 4.4.2 of the FTP-2008 now states that where Cenvat credit facility on inputs used in the manufacture of goods exported under the DFIA scheme has been availed, even after completion of EO, the imported goods shall be utilized in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer). Further, Para 4.4.6 of the FTP and 4.72 of the Hand Book of Procedures (HBP) Vol I also state that, in case where EO has been fulfilled after availment of cenvat credit facility on the inputs, transferability of DFIA or transfer of imported /domestically procured inputs against the Authorization shall be subject to payment of applicable additional duty of customs (in case of imports) / excise duty (in case of domestically procured goods). However, in cases where the Cenvat facility has not been availed, exemption from additional duty of customs / excise duty would be available even after endorsement of transferability on DFIA.

7. To put the matter beyond doubt, it has been decided to amend notification No. 40/06-Cus dated 1.5.06 vide notification No.17/09-Cus dated 19.2.09 to incorporate the features of FTP 2007 and 2008. The salient features of the amending notification are as under:-

(a) The restriction imposed vide condition No. (v) of the notification No. 40/06-Cus has been deleted; thus the 'said facilities' can now be availed by the exporter. However, in respect of imports made after the discharge of export obligation in full, if the 'said facilities' have been availed, then,-

(i) the importer at the time of clearance of the imported materials shall execute a bond that he shall use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture of dutiable goods. Further, he shall submit a certificate from the jurisdictional Central Excise officer within 6 months from the date of clearance of the said materials, that the imported materials have been so used. It may be noted that in case this condition is violated, then the importer would be required to pay all duties of customs which have been exempted under notification No. 40/06-Cus dated 1.5.06. These duties are duties of Customs leviable as specified in the First Schedule to the Customs Tariff Act, 1975, the additional duty, safeguard duty and anti-dumping duty specified under sections 3,8 and 9A of the said Customs Tariff Act respectively and cess as applicable. The term 'dutiable goods' has been defined in the explanation to the notification and would mean all excisable goods which are not exempt from Central Excise duty and which are not chargeable to 'nil' rate of central excise duty;

(ii) if the materials are imported against an authorisation transferred by the Regional Authority, or the imported materials are transferred with the permission of Regional Authority, then the importer has to pay an amount equal to the additional duty of customs. In case, the duty is not paid then interest @ 15% from the date of clearance of the said materials till the date of payment has to be paid;

(iii) the importer also has an option to pay additional duty of customs on the imported materials and clear his goods without furnishing any bond as specified in condition No. (iiia) of the notification number 17/09-Cus dated 19.2.09. This additional duty of customs so paid shall be eligible for availing CENVAT Credit under CENVAT Credit Rules, 2004.

(b) In respect of imports made after the discharge of export obligation in full, and if 'said facilities' have not been availed, then the imported materials can be cleared without furnishing a bond specified in condition (iiia) *ibid*. However, the importer will have to furnish a proof to the assessing officer to the effect that the 'said facilities' have not been availed.

(c) In case of imports made before the discharge of export obligation in full, the importer has to execute a bond, at the time of clearance, binding himself to the conditions specified in the notification No. 40/06-Cus dated 1.5.06 and to pay the leviable customs duties alongwith interest @15% in case the conditions of the notification are not complied with. This condition was also present earlier before the amendment of the notification No. 40/06-Cus.

8. As regards the period prior to the issue of the notification No.17 dated 19.2.09, double benefits may have taken place in case the exporters have availed the 'said facilities' and also duty free replenishments in view of the Law Ministry's advice mentioned in Para 4 above. Further, the discussions with the DOC / DGFT have revealed that unintended benefits may have occurred in cases where the duty free inputs, imported / procured subsequent to completion of EO using indigenously procured inputs and on which Cenvat credit has been availed of by the exporter, are transferred or used in the manufacture of non excisable /exempted /nil-duty goods. The action to recover revenue shall, therefore, be limited only to such cases. This would ensure uniformity for all the three years. This would mean that in case an exporter has availed the 'said facilities' during the period 1.4.05 to 18.2.09, the action to recover revenue shall be taken in case the duty free replenishments (imported / procured locally) have been used in the manufacture of non-dutiable goods. Further, the importer will have to pay an amount equal to the additional duty of customs if the materials are imported against an Authorisation transferred by the Regional Authority, or the imported materials are transferred with the permission of Regional Authority.

9. It is therefore clarified that for the past cases, i.e duty free imports for the period 1.5.06 to 18.2.09,-

(a) appropriate action to safeguard revenue may be taken against the actual users, if they have availed the 'said facilities' on the inputs used in the manufacture of the goods exported under the DFIA scheme, and thereafter used the imported/ locally procured duty free replenishments in the manufacture of non dutiable goods. This would mean collection of all duties of customs which were exempted in the notification no. 40/06-Cus while permitting duty free imports. Further, this action shall be taken in respect of all duty free imports affected during the years 2006-07, 2007-08 and 2008-09;

(b) appropriate action to safeguard revenue may be taken in case imports /domestic procurement against Authorizations have been transferred. As per para 4.4.6 of the FTP (2007), this transfer should have taken place after payment of additional duty of customs / excise duty, as the case may be. It needs to be verified whether the practice as specified in the FTP was actually followed for the years 2007-08 and 08-09. If not, action to recover revenue needs to be taken accordingly;

(c) appropriate action to safeguard revenue may be taken in case the Authorization itself has been transferred. As per para 4.4.6 of the FTP(2007) and para 4.72 of the HBP, this transfer should have taken place after payment of additional duty of customs / excise duty, as the case

may be. It needs to be verified whether the practice as enjoined in the FTP has actually been followed for the years 2007-08 and 08-09. If not, action to recover revenue needs to be taken;

(d) as regards the authorizations issued prior to 1.4.2007, the DOC in para 4.4.6 of the FTP(2008) has provided that, exemption from payment of additional duty of customs /excise duty shall continue to be available, even after endorsement of transferability. In view of this, no action need be taken to recover revenue in such cases.

This has the approval of the Competent Authority.

10. In this background the Commissioners of Customs/Customs & Central Excise, through whose jurisdiction exports under DFIA scheme have taken place, shall review all cases of such exports and take appropriate measures to recover duties wherever required in terms of these instructions. The Commissioners will accordingly device suitable procedures in this regard. A suggested questionnaire has been appended to this circular which may be used to get requisite information from the exporters. The recovery action may thereafter be initiated after following the due procedure of law.

11. The jurisdictional Chief Commissioner of Customs/Customs & Central Excise as the case may be, may supervise the above process and send a factual report to the Board on or before 31st May, 2009. The report may inter-alia contain the duties, which need to be recovered and the status of such recoveries, year wise.

12. As regards, future cases, the Commissioners may kindly go through the provisions of the notification No.17 dated 19.2.09 and take action accordingly.

13. 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.

14. These instructions are being issued in terms of section 151A of the Customs Act, 1962.

15. Receipt of this Circular may kindly be acknowledged.

Yours faithfully,
Sd/-
(P.V.K. Rajasekhar)
OSD(DBK)

Questionnaire

1. Whether the inputs used in the manufacture of the goods exported under the DFIA scheme were imported or procured indigenously?
2. If the goods were procured indigenously, whether the facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or Cenvat credit under CENVAT Credit Rules, 2004 was availed in respect of such inputs?
3. The details of the shipping bills under which the above exports took place and the details of the authorizations issued against the said exports and the port of registration.
4. Whether the DFIA's so obtained have been used to import / procure duty free replenishments?
5. If so, whether the said replenishments have been used in the manufacture of dutiable goods. If yes, a certificate from the jurisdictional Central Excise Superintendent to this effect may be furnished. If not, then the proof of payment of all duties of customs on replenishments used in the manufacture of non dutiable goods may be furnished.
6. If the replenishments have been transferred, whether applicable additional customs duty/ excise duty has been paid in terms of Para 4.72 of the Hand Book of Procedures. The proof of payment i.e the copy of TR-6 Challan may be furnished.
7. Whether the DFIA so obtained has been transferred? If yes, the details i.e. the name, address and IEC number of the transferee may be furnished.
8. Any other information as deemed fit.