



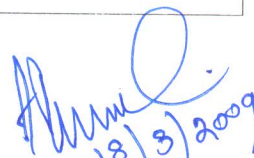
GOVERNMENT OF INDIA
MINISTRY OF FINANCE : DEPARTMENT OF REVENUE
OFFICE OF THE COMMISSIONER OF CUSTOMS
CUSTOM HOUSE : NEW HARBOUR ESTATE : TUTICORIN
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Public Notice No: 08 / 2009

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.05/2009 - Customs dated. 02-02-2009 (F.No.609/167/2003-DBK	Systems Alert for Monitoring Realization of Export Proceeds in EDI-regarding.

DATED: 18.03.2009
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,



CIRCULAR NO. 5 /2009-CUSTOMS

F.NO.609/167/2003-DBK
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE & CUSTOMS

NEW DELHI, THE 2ND FEBRUARY, 2009

To

All Chief Commissioners of Customs,
All Chief Commissioners of Customs & Central Excise,
All Commissioners of Customs/Customs (Preventive)/Customs & Central Excise/Central Excise,
DG, CEIB, New Delhi,
DGRI/DGCEI/DG (Systems & Data Management) /DG (Export Promotion)/DGI /DG, NACEN,
Chief Departmental Representative, Customs, Excise & Service Tax Appellate Tribunal, New
Delhi.

Sir/Madam,

Subject: Systems Alert for Monitoring Realization of Export Proceeds in EDI – reg.

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

2. In terms of the provisions of Section 75 (1) of the Customs Act, 1962 read with sub-rule 16A (1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, where an amount of drawback has been paid to an exporter but the sale proceeds in respect of such export goods have not been realized within the time allowed under the Foreign Exchange Management Act (FEMA), 1999, such drawback amount is to be recovered. Sub-rule 16A (2) stipulates that if the exporter fails to produce evidence in respect of realization of export proceeds within the period allowed under the FEMA, 1999 or as extended by the Reserve Bank of India (RBI), the Assistant/Deputy Commissioner of Customs shall issue a notice to the exporter for production of evidence of realization of export proceeds, failing which an order shall be passed to recover the amount of drawback paid to the claimant.

3. Hitherto, the action to recover drawback was being taken on the basis of Export Outstanding Statement (XOS) received from RBI. The XOS is a consolidated half-yearly Statement giving details of all export Bills outstanding beyond the period prescribed for realization within 15 days from the close of the half year i.e. June / December. However, following the issuance of RBI Circular No. 61 dated 31.1.2004 dispensing with submission of declarations for export of goods of value not exceeding US\$ 25,000, it is observed that a large number of the export consignments presently fall outside the purview of monitoring mechanism through XOS inasmuch as the shipment details of goods valued upto \$ 25,000 are no longer reported through this statement.

4. In view of this change, particularly considering that under the statute, the drawback payment is ultimately linked to the realization of export proceeds, it has become necessary for the Department to put in place an in-house monitoring mechanism to monitor the realization of such proceeds for exports made under the Drawback Scheme. Extensive consultations were held with field formations and trade & industry in this regard, and

subsequently, the matter was examined by the Board. For monitoring the realization of export proceeds for drawback purposes, the Board has decided that the exporters will submit a certificate from the authorized dealer (s) or chartered accountant providing details of shipment which remain outstanding beyond the prescribed time limit including the extended time, if any, allowed by the authorized dealer/RBI on a 6 monthly basis. Such certificate shall be furnished by the exporter,

authorised dealer wise for each port. In order to put the exporters on notice at the time of export itself, an endorsement on the exporter's copy of shipping bill would be made specifying the due date for realization of export proceeds.

5. In the light of decisions taken by the Board, the Directorate General of Systems has developed a BRC (Bank Realization Certificate) Software for ICES, the salient features of which are the following:-

(a) The exporters filing Shipping Bills (S/Bs) under drawback shall furnish a declaration to the Assistant Commissioner/Deputy Commissioner (Drawback) providing the details of all Authorized Dealers (AD), their codes and addresses through whom they intend to realize the export proceeds. Such a declaration shall be filed at each port of export through which the exporter exports his goods. In case, there is a new addition of AD, the same is to be intimated to the concerned Custom House at the port of export.

(b) The system would generate on all Drawback Shipping Bills, the due date for submission of BRCs.

(c) The exporter shall submit a certificate from the Authorized Dealer(s) in respect of whom declaration has been filed containing details of the shipments which remain outstanding beyond the prescribed time limit, including the extended time, if any, allowed by AD/RBI. Such a certificate can also be provided by a Chartered accountant in his capacity as a statutory auditor of the exporter's account. A proforma for furnishing such negative statement is enclosed as Annexure. Further, the exporters also have the option of giving a BRC from the concerned authorized dealer(s).

(d) Such certificates shall be furnished by the exporters on a 6 monthly basis before the 7th day of January and July in respect of exports which have become due for realization in the previous 6 months. For example, for the six-monthly period of January- June 2008 (during which exports were effected), the statement/BRC needs to be submitted by the 7th July, 2009.

(e) Such certificates shall be filed by the exporter AD wise at each port. The relevant date for filing certificates shall be the date of let export order (LEO) which is the date when the export goods are in effect permitted to be exported.

(f) The software shall indicate list of the shipping bills under drawback where the BRC/negative statement has not been furnished by the exporter within the prescribed date. The Assistant Commissioner / Deputy Commissioner (Export) may peruse such lists either for the entire Customs port or for an individual exporter by entering the IE code of the exporter and accordingly initiate action to recover drawback.

(g) The BRC entry module gives three options for entering the details of foreign exchange realization

(i) If the exporter furnishes the BRCs as a proof of foreign exchange realization, the officer will choose option (1) and enter the specific Shipping Bill numbers and dates. Such Shipping Bills will be deleted by the system from the list of shipping bills pending for realization of export proceeds.

(ii) If the exporter produces a "negative statement" for a specified six monthly period from the AD/chartered accountant that no foreign exchange is pending realization for the exporter in the given period, the officer will choose option (2). The system will automatically display the S/Bs pertaining to the given period on screen and once the officer approves, all such shipping bills shall be deleted from the pendency list.

(iii) If the negative statement furnished by the exporter gives the list of S/Bs, for a particular six month period, for which foreign exchange has not been realized (and by implication foreign exchange has been realized for all other S/Bs) then, the officer will choose option (3). This will allow the officer to enter the S/Bs for which the BRCs are pending. Thereafter, all S/Bs except such pending S/Bs will be deleted from the list.

(iv) The BRC entry module also enables the Department to remove the list of S/Bs from the pendency list if drawback is recovered subsequently. In such cases, the officer may choose option (1) and enter the order no./challan no. and date and also the no. and date of all shipping Bills for which the drawback has been realized. Thereafter, all such S/Bs will be deleted from the pendency list.

6. Each Custom House shall create a special cell for management of declarations, amendments thereto, Annexure certificates, registers etc. The cell shall be responsible for keeping the Declarations and other relevant papers in a proper manner and tracking the remittance of export proceeds. Further, officers will be specially designated by the Commissioner to verify the BRC/negative statement and to make entries in the BRC module. Notices will be issued by Customs to recover drawback paid on export consignments in respect of which export proceeds have not been realized

7. The system will indicate to the Assistant Commissioner/Deputy Commissioner (Drawback) all cases of Drawback Shipping bills with LEO date falling on or after 1.1.2008 if the BRC/negative statement in the prescribed Annexure is not submitted by the exporter within the prescribed period. Further, the exporters are required to furnish the BRCs/negative statement in the prescribed Annexure in respect of all the Drawback Shipping Bills having LEO dates from 1.1.2004 to 31.12.2007 (separately for each six month period) within a period of four months from the date of issue of this circular.

8. In addition to the list of pending shipping bills (for which export realization has not been received) indicated by the system, the Commissioners shall also by way of audit, exercise special checks in case of first time exporters, exporters who have taken large amounts of drawback suddenly, sensitive destinations, sensitive products etc. so as to ensure that there is no misuse of the drawback facility. They shall also exercise random audit checks in respect of other exporters to ensure that all export proceeds are realized. During the course of audit, it may also be confirmed on a random basis whether the certificates given by the AD/CA are genuine or not by on the spot verification. A proper record of all such audit checks and the period of audit should be maintained.

9. A suitable Public Notice and Standing Order may be issued for the guidance of the trade and staff. Difficulties faced, if any, in implementation of the Circular may be brought to the notice of the Board at an early date.

Receipt of the Circular may kindly be acknowledged.

Yours faithfully,

(Pramod Kumar)
Technical Officer (DBK)