

This column is compiled by Consultant [EXIM Policy] of EPCH. It contains recent Public Notices, Notifications and Circulars of DGFT, CBEC and Department of Revenue. If a handicraft exporter has question[s] to ask on Foreign Trade Policy, he/she may please write / e-mail to EPCH at policy@epch.com

Impex # 1

Custom provision relaxed for submission of EODC in EPCG Scheme

CBEC issues Circular relaxing the provisions in Customs about submission of EODC in EPCG Scheme to be in line with provisions in FTP

Though the EPCG authorisations are issued by DGFT offices, the authorization holders are required to give LUT/BG etc. to Customs as per Customs Circular No. 58/2004 dt. 21-10-2004 (as amended from time to time). This results in dual monitoring of discharge of export obligation by the licensing office & the Customs.

It has been seen in many cases that the authorisation holders receive SCN (Show Cause Notice) from Customs for production of EODCs (Export Obligation Discharge Certificate) issued by Customs at a time when the authorization holders have already applied to the licensing office for issue of EODC but the licensing office has not issued the same. In these situations the exporters have to plead to the Customs to keep the SCN in abeyance for adjudication process. However, the proceedings cannot be kept pending in 'Call Book' as they do not fulfill the criteria. This leads to confirmation of demand & further litigation. This is avoidable if the time period prescribed in Customs notification is aligned with the time period of issuance of EODC as per FTP/HBP. To take care of the situation as detailed above, CBEC has issued a Customs Circular No. 16 dt. 02-05-2017. In this above circular the SCN as detailed has been replaced by a 'simple notice.' Copy of Customs Circular dt. 02-05-2017 referred to above is reproduced below:

Copy of CBEC Circular No. 16 dated 2nd May 2017

I am directed to invite your attention to para 2(d) of Circular No. 5/2010-Cus dated 16.03.2010 directing initiation of action to safeguard revenue in case of non-submission of Export Obligation Discharge Certificate within the time period stipulated in the relevant Customs notifications. These directions have been reiterated in para 7 (iii) of Instruction dated 18th January, 2011.

2. Some field formations have expressed difficulty in implementing these instructions stating that when a notice issued (as per time lines prescribed in Customs notifications) to exporter for enforcement of Bond/BG is taken up for decision, the exporters plead that they have submitted documents to DGFT for issuance of EODC and that adjudication process of their SCN may be kept in abeyance till the time EODC is issued to them by DGFT. However, the proceedings cannot be kept pending in Call Book as they do not fulfill criteria prescribed in Circular No. 162/73/95-CX dated 14.12.1995. This leads to confirmation of demand and further litigation. This is avoidable if the time period prescribed in Customs notifications is aligned with time period for issuance of EODC as per FTP/HBP.

3. The matter has been examined. It is noted that during the Chief Commissioner's Conference dated 08-09/01/2016, it has been decided that a simple notice will suffice to the licence/authorization holder who does not submit the EODC/Redemption letter within the period prescribed in the relevant Customs notifications. In these cases also, the principles of natural justice should be followed. Further, this was reiterated during the Chief Commissioner's Conference dated 03.01.2017 wherein it was agreed that in view of time taken by DGFT in issuance of EODC, the practice of issuance of SCN at the first stage itself may be replaced by issuance of a simple notice to defaulters.

4. In all Advance Authorisation and EPCG notifications, the Deputy/Assistant Commissioners of Customs have power to extend the period to submit proof of fulfillment of EO without any limit. Thus there is inherent provision in Revenue notifications to keep action of Customs pending till EODC is issued by DGFT. Moreover, the process of issuance of EODC by DGFT itself is linked to submission of BRC by the licence holder. The BRC itself can be

submitted as per the period allowed by RBI in terms of the Foreign Exchange Management Act, 1999. The licence/ authorization is also subject to extension, if any, by DGFT. Hence, alignment of the time period given in Customs notifications with that given in FTP/HBP may not be required.

5. In view of the above, the field formations may issue simple notice to the licence/authorization holders for submission of proof of discharge of export obligation. In case where the licence/authorization holder submits proof of their application having been submitted to DGFT, the matter may be kept in abeyance till the same is decided by DGFT. Institutional mechanism set up in terms of Instruction F.No. 609/119/2010-DBK dated 18.1.2011 for regular interaction with RA's of DGFT should be used to pursue such cases. However, in cases where the licence/ authorization holder fails to submit proof of their application for EODC/Redemption Certificate, extension/ clubbing etc., action for recovery may be initiated by enforcement of Bond/Bank Guarantee. In cases of fraud, outright evasion, etc., field formations shall continue to take necessary action in terms of the relevant provisions.

Impex # 2

DGFT rescinds its two notifications of 2006 on 'Target Plus Scheme' of 2004 on Supreme Court Orders dt. 27.10.15

DGFT issues notification dt. 08-05-2017 on Supreme Court Order that the two notifications issued in 2006 on 'Target Plus Scheme' cannot be applied retrospectively & would be effectively from the dates they were issued.

a. Background: Target Plus Scheme as a part of Foreign Trade Policy was announced on 31.08.2004 w.e.f. 01.04.2004. The objective was to accelerate growth in exports by rewarding Star Export Houses with minimum threshold export turnover of Rs.10 Crore in the previous year. The Scheme provided for three slabs of entitlement of duty credit scrips: 5/10/15% based on the percentage incremental growth of exports: 25%/25-<100%/100% and above respectively. The Scheme was in operation for the years 2004-05 and 2005-06.

b. Litigation & Judgment: In the TPS for 2005-06, Directorate General of Foreign Trade (DGFT), vide Notification No.48 dated February 20, 2006 had made certain products ineligible for claiming the benefit under Target Plus Scheme (TPS) and

vide Notification No.8 dated June 12, 2006 had reduced rates of entitlement to 5% from earlier 5, 10 and 15% w.e.f 01.04.2005 respectively. Both these Notifications dated 20.02.2006 & 12.06.2006 were challenged in various High Courts and finally in the Supreme Court. Hon'ble Supreme Court on 27.10.2015 at Para 134 of the Judgement held that Notification No.48/2005 dated February 20, 2006 and Notification No.8/2006 dated June 12, 2006 cannot be applied retrospectively and they would be effective only from the dates they were issued.

c. Accordingly, the Government has approved implementation of TPS for 2005-06 as per the Judgment of the Hon'ble Supreme Court. Notification No.06/2015-2020 dated 8th May, 2017 has been issued in this regard. Accordingly, all RAs are directed to re-examine all the eligible claims/applications pending for TPS 2005-06 for issue of the balance claim/recovery of wrong claims as applicable after ensuring due diligence and ensuring genuineness of the exports. Copy of DGFT Notification No. 06 dt. 08-05-2017 referred to above is reproduced :

Copy of DGFT Notification No. 06 dated 8th May 2017

Effect of this Notification: The Target Plus Scheme is implemented as per the decision of the Hon'ble Supreme Court dated 27.10.2015 in CA No.554 of 2006.

In exercise of the powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, as amended, read with Para 1.02 of the Foreign Trade Policy, 2015-2020 and in consequent to the decision of the Hon'ble Supreme Court dated 27.10.2015 in CA No.5 54 of 2006 the Central Government hereby makes the following amendments in the Target Plus Scheme for the exports effected during 01.04.2005 to 31.03.2006, of the

Foreign Trade Policy (FTP) 2004-09 as amended from time to time:

1. The Clause 7 of Notification No.48 (RE 2005)/2004-2009 dated 20.02.2006 is amended to read as below:

"This will take effect for exports from 20.02.2006"

The Notification No.08 (RE 2006)/2004-2009 dated 12th June 2006 and Notification No. 20 (RE 2006)/2004-2009 dated 13th July 2006 are hereby rescinded ab-initio.

Also please see DGFT Trade Notice No.06 dt. 08-05-2017 and 07 dt. 08-05-2017 on the above subject.

Impex # 3

Questions & Answers

Question : Imports are presently subject to basic, additional, special additional duty and cess on imports. How will imports be charged under GST?

Answer : Basic Customs duty on imports will continue as it is not part of GST. Rest of duties will be integrated in the GST. Imports of Goods and Services will be treated as inter-state supplies and IGST will be levied on import of goods and services into the country. The incidence of tax will follow the destination principle and the tax revenue in case of SGST will accrue to the State where the imported goods and services are consumed. Full and complete setoff will be available on the GST paid on import on goods and services.

Question : In case of ITC refund for exports, whether e-BRC is necessary for granting refund?

Answer : In case of refund on export of goods, the refund rules do not require e-BRC as a necessary document for filing of refund claim. However, for export of services, details of e-BRC is required to be submitted along with the application for refund.

Question : Currently, exporters are allowed to obtain duty paid inputs, avail credit on it and export goods upon payment of duty after utilising the credit and thereafter claim refund of the duty paid on exports. Will the same continue in GST?

Answer : In terms of Section 16 of the IGST Act, a registered taxable person will have the option either to export goods/services without payment of IGST under bond or letter of undertaking and claim refund of ITC or he can export goods/services on payment of IGST and claim refund of IGST paid.

Question : What is the transitory period for REX-GSP for consignment of above Euro 6000 and less than Euro 6000 per consignment?

Answer : From 1.1.2017 until issue certificates of origin at the request of exporters who are not registered in the REX system. At the end of this period, i.e. from 1.1.2018 onwards, the consignments above the value of Euro 6000 will be entitled to GSP preferential tariff treatment, only if accompanied by a statement on origin made out by a registered exporter. Exporters of consigning low value goods (i.e. less than Euro 6000 per consignment) are however entitled to make out statements on origin without being registered in REX from 1.1.2017 itself which will be done when EU operationalises the system and gives access to the system to competent authorities in India. Exporters may submit their applications to the competent authorities who will receive such applications, verify the details therein and if accepted, these applications will be registered on the REX once their access to REX is permitted. Upon registration with REX, they will intimate the REX registration number and its validity date to the exporters through email and a communication at the address indicated in the application form.

Question : What is the difference in the "Statement on Origin" for consignments below Euro 6000 and those above Euro 6000?

Answer : The main difference is that the REX number is not required on the "Statement on Origin" for consignments which are below Euro 6000. Else, the format of the "Statement on Origin" is the same and has to be made out on a commercial document such as commercial invoice, packing list of delivery notice.