

Impex # 1

## One time relaxation and condonation of delay in the submission of installation certificate of EPCG without payment of penalty

DGFT issues Public Notice permitting the RAs to accept the installation certificate issued upto 31.03.2015 without insisting for penalty as long as installation has happened within eighteen months from the date of import.

There are a number of conditions attached to an EPCG authorisation. One of them is the submission of installation certificate in the prescribed time period. In the case of EPCG it is six months from the date of completion of import (para 5.04 of H.B. of Procedure) and three years from the date of import of spares of EPCG.

As a measure of facilitation DGFT issued two public notices dt. 25.10.2017 and 26.04.2018 giving one time exception (relaxation) for condonation of time period upto 30.9.18 on payment of penalty of Rs. 5000.

Now DGFT has issued a Public Notice No. 30/2015-20 dt. 14th August, 2018 giving one time relaxation and condonation of delay in submission of installation certificate to RAs under EPCG Scheme for authorisations issued upto 31.03.2015 without payment of any penalty.

Copy of DGFT Public Notice dt. 14th August, 2018 referred to above is reproduced below:

(Copy)

DGFT Public Notice No.3D/2015-20, Dated the 14th August, 2018

**Subject: Acceptance of installation certificate under EPCG Scheme by the RAs, wherein installation certificate is submitted beyond 18 months, without penalty**

In exercise of powers conferred under Paragraph 2.04 of FTP (2015-20) read with Paragraph 2.58 of FTP (2015-20), the Director General of Foreign Trade in public interest hereby makes the one time relaxation in procedure in respect of acceptance of installation certificate under the EPCG Scheme.

1. Under the EPCG Scheme, the authorisation holders are required to submit the installation certificate showing installation of the capital goods to the RA within the prescribed time period.
2. Sometimes, the submission of installation certificate to the RAs was not within the time prescribed on account of various reasons, including delay in installation of the machinery/delay in issuance of installation certificate etc. The EPCG Committee was receiving requests for condonation of time period of submission of installation certificate to the Regional authorities. Some of such requests for condonation were considered by the EPCG Committee on payment of composition fee of Rs.5,000/-
3. As a facilitative measure, Public Notice No.37/2015-20 dated 25.10.2017 was issued permitting one time relaxation for condonation of time period up to 31.03.2018 condoning the delay in submission of installation certificate on payment of penalty of Rs.5000/- per authorisation (provided the installation has happened within the period of 18 months). The benefit of said Public Notice was further extended upto 30.09.2018 vide Public Notice No.01/2015-20 dated 26.04.2018.
4. There have been representations from the Trade for accepting the submission of installation certificate without insisting on penalty, if the installation has happened within the specified time prescribed. The contention in the representations is that as per their understanding, of the para 5.3.1 of HBP (2009-14), there was no time limit for submission of the installation certificate and the time limit was only for the installation of machinery. It has also been pointed out that in the past, some RAs have accepted the installation certificate even at the time of redemption. Therefore, it has been requested not to impose any penalty for these authorisations.

5. The issue has been considered. The submission of installation certificate is an important aspect of monitoring of the EPCG Scheme which cannot be postponed till the completion of the EO period. The intent of the para of the HBP was clearly that the capital goods were to be imported, the installation certificate obtained and presented to the RAs within the time period in the said para. The reading of the relevant custom notification for the EPCG Scheme also makes it clear that the installation certificate was to be produced within the period specified. However, it is contended by some that they could interpret the para under the HBP (2009-14) that the period applies only for installation/obtaining the certificate and they can provide the same to the RAs anytime even at the time of redemption.
6. Taking into account the representations in this regard and to facilitate the ease of doing business for the purpose, it has been decided to permit the RAs to accept the installation certificate without insisting for penalty in respect of authorisation issued upto 31.03.2015 as long as the installation has happened within 15 months from the date of import, provided the EPCG authorisation is not under any investigation adjudicated by RA/ customs authority/ any other investigative agency. This relaxation will be available upto 31.03.2019. There will not be any refund of the penalty already paid under the Public Notice No.37/2015-20 dated 25.10.2017.
7. The other terms and conditions in the Public Notice No.37/2015-20 dated 25.10.2017 and Public Notice No.01/2015-20 dated 26.04.2015 consistent with this Public Notice will continue to be applicable.

**Effect of this Public Notice:** One time relaxation and condonation of delay in submission of installation certificate to RAs under EPCG Scheme for authorisations issued upto 31.03.2015, without payment of any penalty.

## Impex # 2 Henceforth IEC will be system generated without requirement of digital signature

DGFT issues Public Notice containing revised procedure for filing online application for IEC/ modification of IEC. It will be system generated and without requirement of digital signature.

One way to reduce transaction cost and to ensure ease of doing business is to do things online. DGFT has done a lot and doing a lot in this direction. One more step in this direction has been taken by DGFT by making the issue of IEC online and that too without the requirement of digital signature.

The above has been done by DGFT by issue of Public Notice No. 27/ 2015-20 dt 8th August, 2018 in which the existing para 2.08 of current Handbook of Procedure (Vol. 1) has been revised. Para 2.14 of Handbook

relating to modification of IEC has also been revised in this Public Notice (Copy reproduced below):

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DGFT Public Notice No. 27/2015-2020, New Delhi, Dated: 08 August, 2018

Subject: **Amendment in Para 2.08 of the Handbook of Procedure 2015-2020.**

S.O. (F): In exercise of powers conferred under paragraph 2.4 of the Foreign Trade Policy (2015-2020), the Director General of Foreign Trade hereby amends the following provision in Para 2.08 and 2.14 of the Handbook of Procedure (2015-20) on Importer-Exporter Code (IEC) as under:

Existing Para	Revised Para
<p><b>2.08 Application for TEC</b></p> <p>(a) Exporters / Importers shall file an online application in ANF 2A format for grant of e-IEC</p>	<p><b>2.08 Application for IEC</b></p> <p>(a) Exporters / Importers shall file online application in ANF 2A format with and requisite documents.</p>

with digital signatures along with requisite documents and paying the applicable fee. The facility of filing online application for IEC is also available through e-biz portal of DIPP.

(b) Deficiency in the application form has to be removed by re-logging onto the "Online IEC application" on DGFT website and resubmitting the form along with the requisite documents.

(b) IEC will be system auto generated and applicant will be informed through e-mail and sms that a computer generated e-IEC is available on its registered email id. Applicant can also view and print its e-IEC after completion of the submission process of application by logging into the IEC module.

(c) The applicant is required to submit an application with the following details/documents (scanned copies to be submitted/uploaded) along with the IEC application:

(i) Cancelled cheque hearing entity's pre-printed name or Bank certificate in prescribed format ANF-2,A(1);

(ii) Address proof of the applicant entity as detailed in the application.

(d) RAs would conduct post-verification of online IECs as per the guidelines.

### 2.14 Modification of IEC

(a) Modifications in e-IEC's/ IEC's can be done online only. Applicants seeking modification in their IEC's may log on to dgft.nic.in and click on Importer Exporter Code (IEC) under Quick Links and select "Modify your IEC" to amend their e-IEC's and IEC's in physical format by paying requisite fees and submitting requisite documents to the concerned jurisdictional RA, from where IEC was originally issued. List of RAs, along with their jurisdiction is given in Appendix IA.

(c) RAs shall consider applications seeking modification in IEC involving change in PAN, by ensuring that liabilities of the previous applicant/ applicant firm are transferred to the new applicant/ applicant firm whose PAN will be reflecting in the modified IEC. RAs must also share the modified IEC, with the changed PAN incorporated in it, with all concerned authorities.

(d) RAs shall also take cognizance of the applications digitally signed by power of attorney holders/authorised signatories.

### 2.14 Modification/Cancellation of IEC

(a) Modifications in IECs / e-IEC's can be done online only. Applicants seeking modification in their IECs / e-IEC's may log on to dgft.nic.in and click on Importer Exporter Code (IEC) under Quick Links and select "Modify your IEC" to amend their e-IECs and IECs in physical format with applicable fees and requisite documents.

Applicant shall upload relevant document/s to substantiate the changes sought to be made, besides uploading the signed copy of the modification application. The modification application has to be signed by Proprietor/ Managing Partner/ Designated Partner /Director / Company Secretary in case of companies or Chief Executive of the Society/ Managing Trustee / Karta as the case may be, before uploading/submitting the online application.

However, request for (i) Cancellation of existing numeric IEC and (ii) PAN change in existing numeric IECs has to be made to the concerned jurisdictional Regional Authority. Once RAs have changed the PAN and the change is reflected on central server, such applicant can seek further modifications online, if any so desired.

RAs shall consider applications seeking modification in IEC (all numeric), involving change in PAN, by ensuring that liabilities of the previous applicant/applicant firm are transferred to the new applicant/applicant firm whose PAN will be reflecting in the modified IEC.

(d) Deleted.

**Effect of the Notification:** Procedure for filling online application for IEC/ modification in IEC/e-IEC is laid down. IEC will henceforth be system generated and application will have the facility of taking a print out of IEC. Further, requirement of Digital Signature for submitting IEC applications is done away.

Further para 2.05 of the current FTP relating to IEC has also been revised so that the provision in the Handbook and Policy are in tune with each other. The revision in FTP has been done by issue of Notification No. 24/2015-20 dt 8th August, 2018. (Copy reproduced):

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DGFT Public Notice No. 24/2015-2020, New Delhi, Dated: 08 August, 2018

Subject: **Amendment in Para 2.05 of Foreign Trade Policy 2015-2020.**

S.O. (E): In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends and revises the provision in Para 2.05 of the Foreign Trade policy (2015-20) on Importer-Exporter Code (IEC) as under:

**2.05 Importer-Exporter Code (IEC)**

Existing Para	Revised Para
<p>(I)</p> <p>(a) Application for obtaining IEC may be filed online in ANF 2A with applicable fees and submitted with digital signature.</p> <p>(b) When an e-IEC is approved by the competent authority, applicant is informed through e-mail that a computer generated e-IEC is available on the DGFT website. By clicking on "Application Status" after having filled and submitted the requisite details in "Online IEC Application" webpage, applicant can view and print his e-IEC.</p> <p>(c) The applicant may submit online application with the following details /documents (scanned copies to be submitted/ uploaded) along with the IEC application:</p> <p>(i) Digital photograph of the signatory applicant;</p> <p>(ii) Copy of the PAN card of the business entity in whose name Import/Export would be done (Applicant individual in case of Proprietorship firms);</p> <p>(iii) Cancelled cheque bearing entity's pre-printed name or Bank certificate in prescribed format ANF-2A(I) (d) For modification in IEC, applicants may submit online application through digital signature (Class-II or Class-III), by paying applicable fees and uploading requisite documents, corresponding to the changes sought.</p> <p>(e) Detailed guidelines for applying for e-IEC is available at <a href="http://dgft.gov.in/exim/2000/iec_anf/iecanf.htm">http://dgft.gov.in/exim/2000/iec_anf/iecanf.htm</a></p> <p>(II) No Export/Import without IEC:</p> <p>(i) No export or import shall be made by any person without obtaining an IEC number unless specifically exempted.</p> <p>(ii) Exempt categories and corresponding permanent IEC numbers are given in Para 2.07 of Handbook of Procedures.</p>	<p>(a) No export or import shall be made by any person without obtaining an IEC number unless specifically exempted. For services exports, IEC shall be necessary as per the provisions in Chapter 3 only when the service provider is taking benefits under the Foreign Trade Policy.</p> <p>(b) Exempt categories and corresponding permanent IEC numbers are given in Para 2.07 of Handbook of Procedures.</p> <p>(c) Application process for IEC is completely online and IEC can be generated by the applicant as per the procedure detailed in the Handbook of Procedure.</p>

**Effect of the Notification:** Para 2.05 on IEC is revised and details on the procedure is shifted to para 2.08 of Handbook of Procedures.

**Impex # 3**

**Scope of utilisation of 'Duty Credit Scrips' enlarged**

DGFT issues Public Notice removing all items from Appendix 3A of Handbook of Procedure 2015-20.

Appendix-3A of current H.B. of Procedure (Vol. 1) contains a large number of items which are not allowed for import under "Export from India Scheme under Chapter 3 of the Handbook".

The above restriction has been deleted by DGFT by issue of his Public Notice No.24/2015-20 dt 26th July 2018 (Copy reproduced).The liberalisation will increase

the sale value of duty credit scrip because of greater scope of utility of the scrip.

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DGFT Public Notice No.24/2015-2020 Dated 26th July, 2018

**Removal of all items from the Appendix 3A of the Handbook of Procedures, 2015-20.**

In exercise of powers conferred under paragraph 1.03 of the Foreign Trade Policy 2015-2020, the Director General of Foreign Trade hereby makes the following amendments in the Appendix 3A of MEIS, issued earlier by this Directorate, vide Public Notice 01/2015-20 dated 01.04.2015.

2. The items Serial no.01 to 07 in the list specified under Appendix 3A are deleted with immediate effect.

**Effect of Public Notice:** Chapter 3 duty credit scrips are allowed for debit for import of items which were earlier not permitted.

Impex # 4

**Bank guarantee not applicable to EOUs**

**CBIC issues circular clarifying that no separate bank guarantee is to be executed by an EOU.**

EOU Scheme has many facilitation measures. One of them is that the EOU unit will not be required to executed bank guarantee at the time of import or for going for job work in DTA (para 6.12 of FTP).

The issue of Custom Circular No. 48/2017 dt 08.12.2017 relating to execution of bank guarantee created impression in some custom houses that the bank guarantee is to be executed by EOUs also.

To clear the above impression in Customs, CBIC has issued a Circular No. 27/2018 dt 14th August, 2018 stating therein that the Custom Circular dt 08.12.2018 referred to above did not mention 'EOU' at any place in it and that the said Circular is not applicable to EOUs. It has further stated that B-17 bond is serving the purpose of continuity bond.

Copy of Custom Circular dt 14.08.2018 referred to above is reproduced below:

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Circular No.27/2018-Customs Dated 14th August, 2018

**Clarification regarding bank guarantee requirement for bond executed by EOUs-reg.**

Various representations have been received regarding difficulties faced by EOUs with respect to requirements of bank guarantees in view of Circular no.48/2017- Customs dated 08.12.2017 issued by CBIC. The matter has been examined.

2. Clarification issued vide Circular no. 48/2017-Customs dated 08.12.2017 is with respect to Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 notified vide Notification no. 68/2017-Customs (NT) dated 30.06.2017. Vide the said Circular, various norms have been prescribed with respect to requirement of bank guarantee/ cash security/ surety for various categories of importers which is required to be furnished for the bond to be executed as per sub-rule (2) of Rule 5 Customs (import of goods at concessional rate of duty) Rules, 2017. No specific reference has been made to EOUs in these norms.

3. The confusion is arising on account of the requirement of EOUs to follow Rule 5 of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 to be eligible for claiming exemption of duties/ taxes on the import of goods under Notification no. 52/ 2003 dated 31.03.2003. As the EOUs have already been executing B-17 bond, hence it was clarified vide Circular no. 29/2017- Customs dated 17.07.2017 that the said B-17 bond will serve the requirement of continuity bond as required under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 and there is no requirement to submit a separate continuity bond by EOUs. As B-17 bond is serving the purpose of continuity bond for EOUs, hence various circulars issued by the Board extending the facility of exemption from furnishing bank guarantee/ surety by EOUs namely Circular no. 54/2004-Customs dated 13.10.2004 and circular no. 36/2011- Customs dated 12.08.2011 will continue to hold good, as these circulars are in line with the Para 6.12 of the Foreign Trade Policy which lays down the conditions for EOUs to be exempted from furnishing of bank guarantee.

4. In view of above, it is reiterated that waiver of bank guarantee/ surety to EOUs would continue to be governed by various circular issued from time to time by CBIC with regard to B-17 bonds executed by EOUs and will not be guided by the Circular no. 48/2017-Customs dated 08.12.2017 which governs the general importers and not the EOUs.

**Question :** I have only one office in Maharashtra. Is it mandatory for me to have another office or a branch office in Tamil Nadu to handle shipments from Chennai?

**Answer :** It is not mandatory to have a separate or branch office in Tamil Nadu to handle shipments from Chennai. From your Maharashtra office, you are free to handle shipments out of any location in India. If the shipment is from Chennai but your customer is located in the same state where you are located, i.e. Maharashtra, then you have to charge SGST/CGST. If the shipment is from Chennai and your customer is located in Tamil Nadu and you are located in Maharashtra, then you have to charge IGST.

**Question :** For import shipments, if CFS raises an invoice on customs broker instead of importer and the customs broker or the importer makes payment to the CFS, will the importer be allowed to claim ITC? Is there a concept of pure agent/disbursement under GST regime?

**Answer :** The importer will not be allowed to claim ITC in this situation. If the CFS raises an invoice on the customs broker, then the customs broker, in turn, must raise an invoice on the importer for the same service.

Yes, there is pure agent concept in GST. Customs broker must ask the CFS, shipping line, etc. to make the invoice in the name of the importer. Customs broker can pay on behalf of the importer and the importer will be able to use the ITC. Since the invoice of the CFS, shipping line, etc., is in the name of the importer, the customs broker cannot claim ITC on this transaction.

It is advisable that you obtain a letter from your customer (once every year) authorising you for customs clearance, transport, pay shipping lines, etc., on his behalf.

**Question :** Are cash expenses, sundry expenses, operations vouchers, conveyance vouchers sundries paid to operations staff on per job basis, etc. taxable? Is ITC available on these expenses?

**Answer :** Every transaction is taxable. Cash expenses, customs sundries, operations sundries, labour charges, loading/unloading expenses, operations conveyance, etc. are taxable. If the conveyance you give to your staff is a part of salary (appears as a break-up of salary) then they are not taxable but if - they are not part of the salary, then all such expenses are taxable. Every company has to maintain an inward supply register for all transactions with unregistered vendors including for cash expenses, sundries, operations sundries, etc.

**Question :** What is consignment note?

**Answer :** Consignment note is a document issued by a goods transportation agency against the receipt of goods for the purpose of transporting the goods by road in a goods carriage. If a consignment note is not issued by the transporter, then the service provider will not fall within the ambit of goods transport agency. If a consignment note is issued, then it means that the lien on the goods has been transferred to the transporter. Now the transporter is responsible for the goods till its safe delivery to the consignee.

A consignment note is serially numbered and contains Name of consignor, Name of consignee, Registration number of the goods carriage in which the goods are transported, Details of the goods, Place of origin, Place of destination, Person liable to pay GST - consignor, consignee, or the GTA.

**Question :** Is the freight charged on import from foreign customer by shipping companies liable to GST?

**Answer :** Yes, import freight in case of foreign customer is liable to GST because it does not satisfy the condition of "export" as defined u/s 2(6) of the IGST Act, 2017.

**Question :** Is the freight charged by shipping companies on import from a customer not registered under GST liable to tax?

**Answer :** Yes, it is liable to tax as it satisfies the requirements of section 7(5)(a) of the IGST Act, 2017.

**Question :** Is the freight charged from SEZ unit taxable?

**Answer :** Transportation services provided to an SEZ customer falls under the category of zero-rated supply under 16(1) (b) of the IGST Act, 2017.

