

Levy and collection of Social Welfare Surcharge (SWS) on imports under various schemes such as MEIS, SEIS, etc.

Copy of Circular No. 02/2020-Customs

The undersigned is directed to invite your attention to the levy of Social Welfare Surcharge (SWS) on imports made and present practice regarding its debit through duty credit scrips such as MEIS, SEIS etc. of the Foreign Trade Policy (FTP).

2. C&AG at Chennai has pointed out that SWS should be paid in cash in respect of imports where duty is debited under MEIS scrips as the relevant Customs exemption notification exempts only Customs duty leviable under First Schedule of Customs Tariff Act, Further, representations have been received from the trade that as the goods cleared against MEIS scrips are exempted from Basic and Additional Duty of Customs, therefore SWS should also be zero. The levy of SWS has also been challenged in various High Courts by the trade on the said ground.

3. The matter has been As per Section 110 of the Finance Act, 2018, SWS is levied and collected, on the goods imported into India, as a duty of Customs on the goods specified in the First Schedule to the Customs Tariff Act, 1975. The SWS is calculated at the rate of ten per cent on the aggregate of duties, taxes and cesses which are levied and collected under section 12 of the Customs Act, 1962. This surcharge is in addition to any other duties of Customs or tax or cess chargeable on imported goods.

4. The duty credit scrips issued under schemes such as MEIS, SEIS, etc. are granted as rewards/incentives for exporters under the respective As per Para 3.02 of the Foreign Trade Policy 2015-20, these scrips can be used for payment of Basic Customs Duty and Additional Customs Duty specified under sections 3 (1), 3 (3) and 3 (5) of the Customs Tariff Act, 1975 for import of inputs or goods and for payment of Central Excise duties on domestic procurement of inputs or goods. The relevant Customs exemption notifications also allow debit of Basic Customs Duty and Additional Duties of Customs in the duty credit scrips. It is to mention that the debit of SWS through duty credit scrip is not envisaged in the FTP and the exemption notifications.

5. Further, as per para 15 of the FTP, Basic Customs Duty paid through debit in the duty credit scrip is allowed to be adjusted for duty drawback. Duties debited in duty credit scrip are taken into account while determining the All Industry Rates and Brand Rate of duty drawback. Similarly, Additional Customs Duty paid on imported goods and Central Excise duty paid on domestic procurement of goods is also allowed to be adjusted as CENVAT Credit or Duty Drawback. Hence abcaus.in duty credit scrips are only a mode of payment of duty and not an exemption from duty even though the use of the said scrip is governed by an exemption notification.

6. In this regard, attention is invited to the judgment dated 12.2019 of the Hon 'ble Supreme Court in the case of M/s Unicorn Industries Vs. Union of India and Others (Civil Appeal Nos. 9237 & 9238 of 2019) wherein it has inter-alia been held that "*A Notification has to be issued for providing exemption under the said source of power. In the absence of a notification containing an exemption to such additional duties in the nature of education cess and secondary and higher education cess, they cannot be said to have been exempted The proposition urged that simply because one kind of duty is exempted, other kind of duties automatically fall, cannot be accepted as there is no difficulty in making the computation of additional duties, which are payable under NCCD, education cess, secondary and higher education cess. Moreover, statutory notification must cover specifically the duty exempted. When a particular kind of duty is exempted, other types of duty or cess imposed by different legislation for a different purpose cannot be said to have been exempted*". The complete judgment may be seen at your end.

7. The ratio of the afore-cited judgment is seen to apply to the issue at hand of levy of SWS on imported goods when the Basic Customs Duty and Additional Duties of Customs are debited through duty credit scrips.

8. The matter was also referred to the Department of Legal Affairs for their legal opinion in light of the above-cited The Department of Legal Affairs has opined that since the Supreme Court has categorically held that a separate Notification has to be issued for providing exemption from additional duties in the nature of education cess and secondary and higher education cess, the same cannot be said to have been exempted and as per Article 141 of the Constitution, the law declared by the Supreme Court is binding on all Courts within the territory of India, the same occupies the field. It was further opined that therefore there appears to be no legal bar for levy and collection of SWS.

9. In view of above there appears no exemption from SWS in the FTP and the relevant Customs exemption Keeping in view the ratio laid down by Hon'ble Supreme Court in judgment dated 06.12.2019 (supra), it is clarified that SWS is not exempted and has to be levied and collected on the imported goods.

10. It is further noted that as per past practice, SWS is being allowed to be debited in the duty credit scrips along with Basic Customs Duty and Additional Duties of However, keeping in view the position explained hereinabove, it emerges that SWS cannot be debited through duty credit scrips and therefore has to be paid by the importer in cash. Directorate General of Systems has been requested to make the relevant System level changes in this regard.

11. With regard to the past cases of debits of SWS already made in duty credit scrips, it has been decided by the Board that for ensuring ease of doing business, such past cases should not be disturbed and the payments made though debit in duty credit scrips may be accepted as revenue duly collected and recoveries in cash not be insisted for these cases.

12. A suitable Trade Notice and Standing Order may be issued for the guidance of the trade and Difficulties faced, if any, in implementation of the Circular may be immediately brought to the notice of the Board.

Yours faithfully,

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Withdrawal of MEIS for items in the Apparel and Made-ups from 07.03.2019

Copy of DGFT Public Notice No. 58/2015-2020, dated 29th January 2020

Withdrawal of MEIS for items in the Apparel and Made-ups sector (Chapter 61, 62 and 63 of ITC HS 2017) from 07.03.2019, Amendment in the para 4.95 of the Handbook of Procedures, 2015-20 and revision of the ANF 4R for Implementation of RoSCTL Scheme

In exercise of powers conferred under paragraphs 1.03 and 3.13 (a) and (b) of the Foreign Trade Policy (2015-2020), the Director General of Foreign Trade hereby makes the following amendments:

1. In the Appendix 3B, Table 2 of the Handbook of Procedures (HBP) applicable for MEIS, following is inserted:

“No MEIS benefits shall be available for items under chapter 61, 62 and 63 of ITC I-IS 2017 (apparel and made-ups sectors) for exports made with effect from 07.03.2019”.

2. The revised paragraphs 4.95 and 4.96 of the III3P are as under:

4.95 Procedure to apply for the Scheme for Rebate of State and Central Levies and Taxes (RoSCTL) and Additional Ad hoc incentive under RoSCTL

(...contd. on next page)

a. The para 4.01 (c) of the FTP is about the RoSCTL. **The Gazette notifications of the Ministry of Textiles on the RoSCTL scheme and the Additional ad-hoc incentive under RoSCTL issued from time to time may be referred to.**

b. An application for claiming rebate under RoSCTL and Additional Ad hoc incentive, shall be filed online, using digital signature, on DGFT website at <http://dgft.gov.in> with RA concerned in ANF4 R. The relevant shipping bills shall be linked with the on-line application by the exporter/ applicant online. There would be no requirement of linking e BRCS for applying for RoSCTL. A maximum of 50 shipping bills would be allowed to be attached in one single application by the exporter in the online module.

c. Separate online applications for claims under RoSCTL for shipping bills with Let Export date in the period 07.03.2019 to 31.12.2019 and with Let Export date on or after 01.01.2020 shall be made.

d. Facility of Split Scrips: Provisions of para 3.09 of the HBP shall apply mutatis mutandis.

e. The Jurisdictional RA for application of the RoSCTL, would be as per the para 3.06 (b) of the HBP. The applicants shall ensure that they are applying only to the concerned Jurisdictional RA, as per para 3.06 (b) of the Handbook of Procedures for getting the scrip and shall submit a declaration to that effect while applying for the scrip online. However, the limitation imposed in para 3.06 (a) regarding choosing a RA at the beginning of financial year and maintaining the same RA for all applications in that Financial year shall not apply.

f. Choice of Port of Registration for RoSCTL Scrips: While making an online application

i. Shipments from EDI Ports and Non-EDI Ports cannot be clubbed in one application.

ii. The applicant can choose the Port of registration for EDI enabled ports from any one of the ports from where export is made.

iii. In case of exports through non-EDI port, the port of registration shall be the relevant non-EDI port of exports. Accordingly, separate application shall be filed for each non-EDI port

g. For applications in the period 07.03.2019 to 31.12.2019, the DGFT online system shall electronically populate the entitlement per shipping bill including the additional ad-hoc incentive and reduce/adjust METS wherever already granted.

h. After system based approval of the final entitlement, scrips will be issued by RAs, in a paperless mode. However, RAs shall scrutinize 2% percent of issued RoSCTL applications, under a Risk Management System (RMS), every week. The RMS cases will be randomly generated by the DGFT system online.

i. Registration of Scrips: Port of Registration of Scrips issued under RoSCTL would be as follows:

ii. Duty Credit Scrip (including splits) shall be issued with a single port of registration which shall be any one of the EDI ports from where export is made. In case of shipments from Non EDI ports, the Duty Credit Scrip (including splits) under RoSCTL shall be issued with a single port of registration which shall be the port of export.

ii. Duty credit scrip needs to be registered at the port mentioned on the scrip. This is to be done prior to allowing usage of duty credit. Once registered at EDI port, scrip can be automatically used at any EDI port for import and at any manual port under Telegraphic Release Advise (TRA) procedure.

iii. In case port of registration is a manual port, TRA shall be required for imports at any other port.

j. Validity period and Revalidation: Duty Credit Scrip shall be valid for a period of 24 months from the date of issue and must be valid on the date on which actual debit of duty is made. Revalidation of Duty Credit Scrip shall not be permitted unless covered under paragraph 2.20(c) of HBP.

k. Last date of filing of application for Duty Credit Scrips: The applications for shipping bills

a. For shipping bills with LEO date from 07.03.2019 to 31.12.2019, the last date for filing online claims will be 30.06.2020.

b. For shipping bills with LEO date on or after 01.01.2020, the last date for filing online applications will be within one year from the date of LEO.

After these deadlines, no application can be filed and the shipping bills would be time barred. There is no provision of late cut under RoSCTL.

l. Processing of Non EDI Shipping bills at RA: In case of Non EDI shipping bills concerned RA shall verify the details entered by the exporter from the original shipping bills before grant of scrip.

m. A duplicate scrip may be issued under the RoSCTL, under the provisions of the para 2.24 of the Handbook of Procedures 2015-20.

n. All exporters are eligible for making a claim under the RoSCTL, except the entities/IEC which are in the Denied Entity List of the DGFT.

4.96 Recovery Mechanism

a. The record of shipping bills and other documents related to export, is required to be maintained by the applicant for a period of 3 years from the date of issuance of scrip for post issue scrutiny and recovery purposes. Licensing Authority may call such documents in original at anytime within 3 years. In case the applicant fails to submit the original documents on demand by Licensing Authority, the applicant shall be liable to refund the rebate granted along with interest at the rate prescribed under Section 28AA of Customs Act, 1962, from the date of issuance of scrip.

b. Also, there can be instances, where based on the application of the exporter, amount more than the eligible amount has been issued under RoSCTL, **while adjusting for MEIS or otherwise**. In such cases, concerned RA will examine the relevant scrip's electronic records and in case, an excess claim/excess disbursement is noted by the RA, the applicant shall refund the excess claim with interest as prescribed in paragraph 3.19 of FTP.

c. In case the applicant fails to refund the excess claim as stipulated above or does not respond to any communication by RA within 30 days of receipt of such communication, RA will initiate action as per FT (D&R) Act, 1992 and Rules.

d. The rebate allowed is subject to the receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999 failing which such rebate shall be deemed never to have been allowed. Action under the FT (D&R) Act, 1992 may be taken by the Regional Authorities for repayment of erroneous or excess paid RoSCTL. Further, the exporter is required to return any over-payment of rebate issued through the scrips arising from miscalculation. Where-ever recovery of such excess paid is due, interest shall also be paid by exporter at the rate of fifteen percent per annum calculated from the date of debit of the scrip till the date of repayment. In case the exporter returns the un-utilized scrips, no interest will be charged, however, penalty may be imposed under an Adjudication order on the grounds of tins-declaration or fraudulent practice.

3. The ANF 4 R is revised, and is at Annexure to this Public Notice.

4. The following para is added in the chapter 3 of HBP:

“3.01 (1) The excess/undue claims paid to the exporters under MEIS, for exports with Let Export date between the period 07.03.2019 to 31.12.2019, relating to apparel and made-ups (chapter 61, 62 and 63) will be suitably adjusted against RoSCTL and recoveries made, wherever due.”

Effect of this Public Notice: Based on notifications for Scheme for Rebate of State and Central Taxes and Levies (RoSTCI,) by the Ministry of Textiles procedure in paragraphs 4.95 and 4.96 has been revised and Aayat Niryat Form (ANF 4R) has been revised. On account of introduction of RoSCTL, MEIS for items of the apparel and made-ups sector (chapter 61, 62 and 63) for exports made w.e.f.07.03.2019 stands withdrawn.

Sd/-

(Amit Yadav)

DGFT,

Ex-officio Additional Secretary to Government of India