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Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)

Subject: Amendments in Exim Policy and Handbook of Procedures, 1997-2002 relating to Gem & Jewellery Sector and EOU/EPZ/ STP/ EHTP/SEZ Scheme- Issuance of Customs/ Central Excise notifications - reg.

I am directed to invite your attention to the changes made in Chapters 8, 9 and 9 A of the revised Exim Policy 1997-2002 and Handbook of Procedures, Vol. I, which were announced on 31-3-2001. These changes have necessitated amendments in notifications governing duty free import/procurement of goods by EOU/EPZ/ STP/EHTP/ SEZ units. The amendments have since been carried out vide notification Nos. 56/2001-Cus, and 29/2001-CE, both dated 18-5-2001. A fresh notification [No. 28/2001-CE, dated 16-5-2001] has also been issued for allowing clearance of goods manufactured by EOUs and units in EPZ/SEZ/EHTP against Advance Release Orders issued against Advance Licence/Duty Free Replenishment Certificate. Further, a Customs notification (No. 55/2001- Cus, dated 16-5-2001) has been issued to allow re-importation of cut & polished diamonds without payment of duty after certification/grading by specified laboratories / agencies. This facility is available to certain category of exporters. A copy each of the notifications is enclosed for reference. The revision of Exim Policy and HOP has also necessitated amendments in existing Circulars/instructions, and the same has been made wherever necessary.

The salient features of the changes are explained below:

A. Changes Relating to Gem&Jewellery Sector:

(i) Export of Cut & Polished Diamonds for Certification/Grading.

2. In the revised EXIM Policy, in para 8.13(b) a new provision has been made to allow gem & jewellery exporters with track records of at least three years and having an annual average turnover of Rs.5 crore and above during the preceding three licensing years to export cut & polished diamonds each weighing 0.50 of a carat and above for the purpose of certification/grading by specified laboratories/agencies as mentioned in the said para and for re-import thereof without payment of duty. This grading/ certification facility is expected to help our exporters to get better value when these are finally exported for sale. The diamonds exported for grading/ certification, shall be re-imported within three months of export. At the time of the export of the diamonds for certification/ grading purposes, all the essential particulars, which may be considered necessary by Jewellery experts for establishing identity of the diamonds at the time of re-import (such as height, circumference and weight of each piece, estimated value, etc.), shall be furnished by the exporters and duly checked by proper officer of Customs so that the same particulars can be rechecked to establish linkage & identity on re-importation.

3. To implement the aforesaid provision of the EXIM Policy, a new notification (No 55/2001-Cus, dated 16-5-2001) has been issued providing for re-import of diamonds, after certification/ grading, without payment of duty.

(ii) Export Against Supply by Foreign Buyer.

4. Paragraph 8.19 of the Policy read with paras 8.43 to 8.53 of HOP provides that when export orders are placed on the nominated agencies/status holders, the foreign buyer may supply to the nominated agencies/status holders, in advance and free of charge gold/silver/platinum, alloys, findings & mountings of gold/silver/platinum for manufacture and export. In the revised Policy, this facility of direct export against supply by foreign buyer has been extended to the exporters of three years standing having an annual average turnover of Rs.5 crores during the preceding three licensing years. Such importer under para 8.19 of the Policy shall be required to furnish a bank guarantee equivalent to one and a half times the customs duty leviable on the imported goods to safeguard revenue interests. It may be noted that the relevant paragraph of the Handbook also provides that in case of non-fulfilment of export obligation/non-achievement of stipulated value addition, the Customs shall recover the duty alongwith interest, which may include enforcement of bank guarantee.

5. At present, notification No. 56/2000-Cus, dated 5-5-2000 allows duty free import of gold/silver platinum, alloys, findings & mountings of gold/silver/platinum and plain semi-finished gold/silver/platinum jewellery to nominated agencies/status holder exporters under the scheme "Export Against Supply by Foreign Buyers". To implement the above said change in the Policy provision, notification No.56/2000-Cus, dated 5-5-2000 has been suitably amended vide notification No. 56/2001-Cus, dated 18-5-2001 so as to include exporters having an annual average turnover of Rs.5 crore and above during the preceding three licensing years within its ambit subject to condition mentioned about bond and bank guarantee etc, which already applies to status holders.

(iii) Personal Carriage of Jewellery/Precious, Semi-Precious Stones/Beads/Articles as Samples for Export Promotion Tours.

6. The notifications governing duty free imports by gem&jewellery units in EOU/EPZ & Jhandewalan Special Export Oriented Complex, allow personal carriage of precious metal jewellery or precious or semi-precious stones or beads as samples upto US\$ 1,00,000 for export promotion tours on approval of Gem and Jewellery Export Promotion Council. In the revised Handbook of Procedures, in Paragraph 9.41 (c), the condition of approval by Gem and Jewellery Export Promotion Council has been substituted by approval of Development Commissioner. To align the Customs notifications with revised provision of the HOP, suitable amendment has been carried out in notification Nos. 3/88-Cus, dated 14-1-1988, 177/94-Cus, dated 21-10-94 and 277/90-Cus, dated 12-12-90, vide notification No. 56/2001-Cus, dated 18-5-2001.

(iv) Sale of Jewellery through Retail Outlet/ Showroom in the Departure Lounge at International Airports

7. Under the present dispensation, the units in EPZ and Jhandewalan Jewellery Complex are allowed to supply gem and jewellery manufactured by them to the retail outlets or showrooms set up in the departure lounge at international airports in Delhi and Mumbai for sale to the tourists leaving India. A request was received from MMTC to notify Chennai, Thiruvananthapuram airports for sale of Jewellery from duty free shops. Presently export of gem and Jewellery in respect of EPZs is allowed through specific airports as specified in Annexure -II to the notification No. 177/94-Cus, dated 21-10-1994. These specified airports are Sahar (now Chatrapati Shivaji International Airport), Thiruvanthapuram, Calicut, Cochin, Delhi, Calcutta (Kolkata), Chennai, Visakhapatnam and Hyderabad. In view of the fact that at all these international airports retail outlets/ showrooms are either in existence or are likely to be set up in future, it has been decided to allow sale of jewellery through the retail outlet/ showroom in departure lounge at all these international airports. To implement the decision, notification Nos. 177/94-Cus, dated 21-10-1994 and 3/88-Cus, dated 14-1-1988 have been suitably amended vide notification No. 56/2001-Cus, dated 18-5-2001.

(iv) Import of Raw Material/Consumables/Gold & Export of Gold Jewellery by Export Oriented Units through Bangalore Airport.

8. At present, notification No.277/90-Cus, dt. 12-12-90 allows import and export of specified goods (other than capital goods) for manufacture of jewellery for export by airfreight through the Customs airports at Bombay, Calcutta, Chennai, Thiruvananthapuram and Delhi. It has been brought to our notice by trade as also the Department of Commerce (DOC) that Bangalore has now become a major export centre for jewellery and therefore, the EOUs should be allowed to import raw materials and export finished products through Bangalore Airport. The matter was considered and it has been decided to allow this facility. Notification No.277/90-Cus, dt.12-12-90 governing duty free import by gem & jewellery EOUs has been suitably amended vide notification No. 56/2001-Cus, dated 18-5-2001 to allow import of gold and export of gem & jewellery by air-freight through the Bangalore airport.

(v)Deletion of Condition from Notification No.277/90-Cus, dt.12-12-90, Governing Duty Free Import by Gems&Jewellery Units in EOU.

9. Presently, one of the conditions [condition No.(ii)] of notification No.277/90-Cus, for allowing duty free import of goods by Export Oriented units in gem and jewellery sector is that "the importer is covered, wherever required, by a general or specific permit issued in this behalf by the Reserve Bank of India". It has been brought to our notice by the trade as well as DOC that under the EOU scheme, no permission from RBI is required for import of raw material and as such, imports should be allowed without insisting on RBI permission.

10. As per the paragraph 9.5 of the Handbook of Procedures (HOP), Vol. I, the Letter of Permission (LOP) / Letter of Intent (LOI) issued to EOU/EPZ/EHTP/STP units by the concerned authority would be construed as a license for all purposes including for procurement of raw materials and consumables either directly or through designated canalizing agency. Thus, once LOP is issued to a unit, it serves the purpose of license for import of raw material etc. In view of this, the condition No. (ii) of the notification No. 277/90-Cus, dated 12-12-1990 appears to be redundant. The matter was considered and it has been decided to delete this condition. [In this connection, amendment carried out vide notification No. 56/2001-Cus, dated 18-5-2001 refers.]

B. Changes Relating to EOU/EPZ/STP/EHTP/SEZ Scheme.

(i) DTA Sale of Finished Products Including Rejects by EOU/EPZ/STP/EHTP Units.

11. Para 9.9(a) of the EXIM Policy (pre-revised) allowed EOU/EPZ units to sell rejects in DTA (within overall limit of 50% of FOB value of exports) subject to achievement of NFEP prescribed in Appendix-I of the said Policy. The notification (No. 2/95-CE, dated 4-1-95) issued in this behalf provides that rejects within the overall limit of 50% of FOB value of exports may be sold in DTA on payment of excise duty equivalent to 50% of customs duty. This is subject to achievement of minimum NFEP.

12. The revised provision of the Policy provides that sale of rejects upto 5% of FOB value of exports shall not be subject to achievement of NFEP. This change has been made on the ground that in the new units, the initial production may not be upto export standards and in such a situation, the units would not have any option but to clear the goods in DTA as rejects. To implement the change, an amendment has been carried out in notification No.2/95-CE, dated 4-1-95, vide notification No. 29/2001-CE, dated 18-5-2001 providing inter alia, for sale of rejects upto 5% of value of exports at a concessional rate of duty without achievement of NFEP.

(iii) DTA Sale of By-Products by EOUs/EPZ Units.

13. Before revision of the Policy, by-products included in the LOP/LOI were allowed to be sold in DTA on payment of applicable duty. The revised para 9.9(h) of the Policy provides that within the overall limit of 50% of FOB value of exports, by-products can also be cleared for sale in DTA (subject to achievement of NFEP) on payment of concessional duty i.e. 50% customs duty. Suitable amendment in notification No.2/95-CE, dated 4-1-95 has been carried out for implementation of this provision. Notification No. 29/2001-CE, dated 18-5-2001 may be seen for details.

(iv) Disposal of Waste/Scrap/Remnants by EOU/EPZ/STP/EHTP Units in DTA

14. Prior to revision of the EXIM Policy, scrap/waste/remnants arising out of production process or in connection therewith, within overall limit of 50% of FOB value of exports were allowed to be sold in DTA on payment of concessional rate of duty subject to achievement of minimum NFEP. In paragraph 9.20 of the revised Policy, for DTA sale of scrap /waste/remnants within the overall limit of 50% of FOB value of exports on payment of concessional rate of duty, linkage with achievement of NFEP has been removed. Notification No.2/95-CE, dated 4-1-95, has been suitably amended, vide notification No. 29/2001-CE, dated 18-5-2001, in order to implement this change.

(v) Items Permitted for Duty free Import by EOU/EPZ/STP/EHTP Units.

15. Para 9.8 of the Handbook of Procedures provides the list of items which are permitted for import by EOU/EPZ units. In the revised edition of HOP, two additional items viz. (i) raw materials for making capital goods for use within the unit, and (ii) any other item with the prior approval of Board of Approval, have been incorporated. To give effect to this change, suitable amendments have been made in the notifications governing duty free import/procurement from domestic market by EOU/EPZ/EHTP/STP units. Notification Nos. 56/2001-Cus and 29/2001-CE, both dated 18-5-2001 may be referred to for details.

(vi) Sub-Contracting Abroad by EOU/EPZ/SEZ units

16. Under paragraphs 9.17(a) & 9-A.12(a) of the revised EXIM Policy, EOU/EPZ/EHTP/STP/SEZ units have been permitted to sub-contract part of their production process abroad with the approval of Board of Approval. In order to implement this provision suitable amendments have been made in the notifications governing duty free import by EOU/EPZ/EHTP/STP/SEZ units. Notification No. 56/2001-Cus, dated 18-5-2001 may be referred to for details.

17. The goods sent for jobwork abroad shall be returned to the unit for final processing/manufacturing before export. The jobwork abroad shall be permitted subject to execution of suitable bond and following the procedure for accountal of goods sent including waste/rejects etc as may be prescribed by the Commissioner of Customs & Central Excise in this behalf. The goods shall be allowed to be sent abroad only for specialized type of jobwork which are not available in the country.

(vii) Debonding of Capital Goods Imported under EOU/EPZ Scheme into EPCG Scheme.

18. The notifications governing duty free import and procurement by EOU/EPZ/EHTP/STP units provide that capital goods, material handling equipment, office equipment & captive power plants imported/procured duty free under the said schemes are allowed to be debonded in DTA on payment of customs duty leviable on depreciated value of such goods. Further, these goods may also be debonded under the EPCG scheme on payment of duty of 10% ad valorem or at zero rate of duty.

19. Since 1st April 2000, for imports under EPCG scheme, a single duty regime i.e. 5% duty has been introduced and zero rate/10% duty regime has been done away with. In other words the supplies to EPCG License holders on debonding from April 2000 should be at 5% rate. The notifications relating to EOU/EPZ/EHTP/STP schemes including gem & jewellery sectors have been suitably amended to align them with the provision of the Policy. Notification No. 56/2001-Cus, dated 18-5-2001 may be referred to for details.

(viii) Clearance of Goods Manufactured by EOU/EPZ/EHTP/STP/SEZ Units against Advance Release Order or Back to Back Inland Letter of Credit Issued against an Advance Licence.

20. The EXIM Policy provides that EOU/EPZ/EHTP/STP/SEZ units may supply goods against Advance Release Order or Back to Back Inland Letter of Credit issued against Advance Licence (except Advance Licence for intermediate supply) and Duty Free Replenishment Certificate (DFRC). The notification No.82/92-CE, dated 27-8-92, provides for clearance of the goods against ARO or Back to Back Inland Letter of Credit issued against Advance Licence by EOU/EPZ units without payment of Central Excise duty. However, the notification provides that where the goods are cleared against Advance Licence issued on or after 1-4-95, the exemption is restricted to basic customs duty. Also in the notification, there is no provision to clear goods against ARO or Back to Back Inland Letter of Credit issued against DFRC. Further, there is no provision in the notification allowing advance licence holder to procure goods from SEZ units.

21. The EXIM Policy as revised upto 31-3-2000, provides that import of inputs under Advance Licence including Advance Licence for deemed export are exempted from payment of basic customs duty, surcharge, and additional customs duty [para 7.3]. Prior to 1-4-2000, imports of inputs under Advance Licence were exempted only from payment of basic customs duty. Moreover, there was no DFRC scheme prior to 1-4-2000. Thus, the existing notification No.82/92-CE is not aligned with the revised provision of EXIM Policy, which has given rise to a dichotomy between direct imports of inputs by Advance Licence holders vis-à-vis inputs sourced from EOU/EPZ/EHTP/STP/SEZ against ARO and therefore, direct imports are being effected even though supplies can be made by EOU/EPZ etc.

22. In view of this, a notification (No. 28/2001-CE, dated 16-5-2001) has been issued in supersession of notification No. 82/92-CE dated 27-8-1992 so as to allow sourcing of goods from EOU/EPZ/EHTP/SEZ units against Advance Release Order and Back to Back Inland Letter of Credit issued against Advance Licence (except Advance Licence for intermediate supply) without payment of basic and additional duty of customs. In case the goods are supplied against ARO and Back to Back Inland Letter of Credit issued against DFRC, the duty equal to the additional duty of customs leviable on like goods produced or manufactured outside India, if imported into India would be leviable and exemption will be available only from basic custom duty and special additional duty of customs.

(ix) DTA Clearance to Bonded Warehouses set up under Paragraph 11.14 of the Policy or under section 65 of the Customs Act.

23. As per paragraph 9-A. 8(b) of the revised EXIM Policy, units in SEZ are allowed to clear goods manufactured by them including by-products and services to bonded warehouses set up under para 11.14 of the Policy and/or under section 65 of the Customs Act. As EXIM Policy allows SEZ units to make supplies to bonded warehouses set up under para 11.14 of the Policy and/or under section 65 of the Customs Act, 1962, notification Nos. 137/2000-Cus, & 52/2000-CE, both dated 19-10-2000, governing duty free import/procurement of goods by units in SEZ have been amended so as to align them with the Policy. It may be noted that such provisions already exist for clearances from EOU/EPZs without payment of duty.

(x) Extension of benefit under notification No. 6/97-CE, dated 1-3-1997 to SEZ unit manufacturing castor oil cake from fully indigenous castor oil seed on indigenous plant & machinery.

24. Under the SEZ scheme, the units are liable to pay excise duty equal in amount to aggregate of customs duty leviable on like imported goods on their DTA sale. With effect from 1-11-2000, four Export Processing Zones (EPZ) have been converted into Special Economic Zones. Due to this sudden conversion from EPZ to SEZ, some units producing Castor oil, working in the Zone prior to 1-11-2000, have started facing serious problem with regard to clearance of their by-product viz. Castor Oil Cake in DTA. These goods are stated to be manufactured wholly from indigenously procured Castor Oil Seeds using indigenous plant and machinery. Prior to 1-11-2000, such units were eligible for clearance of Castor Oil Cake on payment of Nil rate of duty under notification No.6/97-CE, dated 1-3-97. Now, suddenly due to conversion from EPZ to SEZ after 1-11-2000, the good viz. Castor Oil Cake has become liable for payment of full rate of import duty. As major part of this Castor Oil production is already in domestic area and they are not suffering any excise duty on waste oil cake, the Castor Oil producing units located in SEZs (erstwhile EPZs) have been seriously affected and are unable to market waste oil cake being in disadvantageous position vis-a-viz EPZ units and DTA units. Notification No. 6/97-CE, dated 1-3-1997 has been amended (vide notification no. 29/2001-CE, dated 18-5-2001) so as to allow the benefit of this notification to castor oil units in Special Economic Zone which were in existence and functioning in Export Processing Zones before conversion of the said Export Processing Zones into Special Economic Zone with effect from 1-11-2000.

(xi) Duty on DTA Clearance of Non-Excisable Goods;

25. At present, the EOUs and units operating under EPZ/STP/EHTP Schemes are allowed to sell finished products (including rejects, waste & scrap) in the Domestic Tariff Area (DTA) on payment of applicable excise duty as per proviso to section 3 of the Central Excise Act, 1944. However, the same is applicable if the goods being cleared into DTA are excisable goods. Under the present dispensation, the notifications providing duty free import of goods under the above said Schemes stipulate that where the finished products (including rejects, wastes & scrap) sought to be cleared in DTA are not excisable, such products are allowed to be cleared on payment of customs duty on the inputs used for the purpose of production, manufacture, processing or packaging such products in an amount equal to the customs duty leviable on such products as if imported as such.

26. It has been brought to notice of the Board that in some Commissionerates, the floriculture units under the EOU Scheme are being asked to pay duty equivalent to the customs duty leviable on finished goods as if imported as such, for clearance of cut-flowers, which is not an excisable commodity. It has also been stated that the DTA units are not required to pay any duty for sale of cut flowers, as the same are not excisable. This is stated to have placed the floriculture units in EOUs at a serious disadvantageous position vis-a-vis DTA units.

27. The matter has been examined. In the central excise notifications governing duty free procurement by EOUs and units under EPZ/STP/EHTP Schemes, there is a provision to recover duty on the inputs & consumables procured duty free under exemption notification, which have gone into production of non-excisable goods cleared into DTA. In the notifications governing duty free import by EOUs and the EPZ/STP/EHTP units, the anomaly, however, exists in as much as the notifications talk about payment of customs duty on the inputs used in the manufacture of articles in an amount equal to the customs duty leviable on such articles as if imported as such. In order to remove this anomaly, all the notifications governing duty free import of goods by STP/EHTP/EPZ units and EOUs including those in Aquaculture and Agriculture sector have been amended so as to bring the provisions of these notifications in harmony with the provisions of corresponding Central Excise notifications. Notification No. 56/2001-Cus, dated 18-5-2001 may be seen for details.

(xii) Destruction of Flower/Floriculture Products Without Payment of Duty

28. A number of requests has been received from the Trade for allowing destruction of flowers and floriculture products without payment of duty as, in the notifications governing duty free import/procurement by agriculture units in EOU there is no enabling provision for destruction of finished products like flowers and vegetables, which are grown/processed in the EOU, without payment of duty.

29. Flowers, Vegetables and agricultural products have a very short shelf life and are prone to malformation, injury, damage, infection etc. These products cannot be preserved for a longer period. There are circumstances (especially in case of floriculture units) when the units do not find the goods exportable/marketable for various reasons such as malformation, injury, damage, infection by pest and diseases etc. and the units have to resort to forced destruction of flowers, vegetables etc. But in absence of any enabling provision, such units cannot destroy the same without payment of duty. In notification No.53/97-Cus, dt. 3-6-97, governing duty free import of goods by EOU, there is a provision for destruction of rejects, waste, scrap without payment of duty.

30. Considering the genuine problem of the EOUs in agriculture sector and keeping in mind the perishable nature of goods these units produce, there is a case for allowing agriculture units in EOUs also to destroy rejects & waste (finished goods) without payment of duty. Accordingly, the notifications Nos. 126/94-Cus dt. 3-6-94 and 136/94-CE, dt.10-11-94, governing duty free import/procurement by agricultural EOU have been amended suitably to provide for destruction of rejects and waste without payment of duty.

31. It has been brought to the notice of the Board that sometimes exporters even after depositing the goods in the warehouse of the airlines at the International Airports, fail to export the goods in time owing to various reasons such as delay in flights, cancellation of flights etc. beyond the control of exporters. In such circumstances, the agricultural products such as flowers etc having a short shell life tends to degenerate very fast & thus the exporters do not find the consignment fit for export and are forced to withdraw. However, the exporters do not find it cost effective to take the consignment back to the unit for destruction / DTA sale, as the case may be.

32. In order to help remove the difficulties of exporters, it has been decided to allow DTA sale of such flowers and floricultural products on payment of applicable duty, provided the unit is entitled to such DTA sale. The unit shall bring permission from the Development Commissioner for such DTA sale and clear the goods on payment of duty assessed by Assistant Commissioner/ Deputy Commissioner in charge of export cargo against the documents as used for DTA sale by EOU/EPZ in the manner as if the goods cleared from the unit itself.

33. Wide publicity may be given to the above changes by issue of a Public Notice in this regard.

34. Difficulties, if any, faced in implementation of the above changes, may be brought to the notice of the Board at an early date. Kindly acknowledge receipt of this Circular.