

F. No.305/70/2004-FTT(Pt –II)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

Sub: Foreign Trade Policy (FTP) announced on 31.8.2004- Amendment of notifications relating to EOU and Gems and Jewellery Export Promotion Schemes- Reg.

I am directed to invite your attention to the new Foreign Trade Policy (FTP), 1st September, 2004- 31st March, 2009, brought into effect from 1.9.2004. The New Foreign Trade Policy and Handbook of Procedures (HOP) Vol I, 2004-2009, replace the old Exim Policy and Handbook of Procedures 2002-2007. In the new Foreign Trade Policy and HOP certain changes have been introduced relating to EOU/EHTP/STP Schemes and Gem and Jewellery Export Promotion Scheme. To implement the changes amendments have been made in the notifications governing duty free import/ procurement of goods and DTA sale of goods by EOU/EHTP/STP. Amendments have also been made in the notifications relating to Gem and Jewellery Schemes. In this regard notification **Nos 87/2004-Cus and 46/2004-CE**, both dated 6-9-2004, may please be referred to. Important features of the amendments are discussed below:

(i) Procurement & Supplies of Spares and consumables

2. In the notification No. 52/2003 – Customs, dated 31st March, 2003, governing duty free import of goods by EOU/EHTP/STP, there was a provision allowing duty free import of spares and consumables by the unit for the purpose of supplying the same along with the capital goods manufactured by the unit (Ref: para 10 of the notification). This import was restricted to 1.5 % of the ex-factory value of the goods manufactured for export during the preceding year. In the new FTP, [Ref: para 6.2 (h)], the unit has been allowed to procure spares and consumables upto 1.5% of FOB value of exports. The value of such spares and consumables will not to be considered towards calculation of NFE (Net Foreign Exchange) for computation of DTA sale entitlement. To implement this provision, notification No 52/2003-Custom, dated 31.3.2003, has been amended suitably.

3. In the notification governing duty free procurement of goods by EOUs from indigenous sources, there was no provision for procurement of such spares and consumables from domestic sources. Notification No. **22/2003-CE dated 31-3-2003**, governing duty free procurement of goods by EOUs from indigenous sources, has accordingly been amended so that units can procure these spares etc from indigenous sources also.

(ii) Extension of CENVAT credit to EOUs.

4. At present, EOUs (including STP/EHTP units) are allowed to import as well as procure goods from domestic tariff area without payment of duty. Therefore, there was no necessity for extending CENVAT credit facility to them. However, some EOU's have to procure their raw materials on payment of duty also. As a trade facilitation measure, it has been decided to allow EOUs (including STP/EHTP units) an option either to procure the goods from DTA without payment of duty under CT-3 procedure or to procure the goods on payment of duty and avail CENVAT credit. The credit could be utilized by them as per the Cenvat Credit Rules, 2004, including payment of duty on their DTA sales.

5. The EOU's can also take credit of the **Service Tax** borne by them which will in effect provide them relief from Service Tax [para 6.1© of the FTP].

6. For availing CENVAT Credit, the procedure and provisions as specified in **CENVAT Credit Rules, 2004**, will apply. However, as regards job work, the EOU/EHTP/STP shall not be allowed to send the goods directly to the job worker without bringing the goods to the units (as the goods will then not acquire the status of EOU goods) and will be governed by Board's existing Circulars on this issue relating to EOU/EHTP/STP

7. Rule 17 of the Central Excise Rules, 2002, has been amended suitably by notfn no 18/2004-CE(NT) dated 6.9.2004, to allow EOU/EHTP/STP units to pay duty through Cenvat credit.

(iii) DTA Sale by EOU/EHTP/STP Units.

8. Under the present dispensation, in case of DTA sale of goods manufactured by EOU/EHTP/STP, if basic customs duty and CVD are both 'nil' on similar goods when imported, no duty is payable by the EOU as per proviso to section 3(1) of the Central Excise Act, 1944. Similar goods manufactured in DTA suffer duty on inputs (as CENVAT Credit is not available in such cases) whereas the EOU/EHTP/STP avail the facility of duty free inputs. This puts the DTA units manufacturing similar goods at a comparative disadvantage. In order to remove this anomaly, a new provision, i.e paragraph **6.8 (i)**, has been introduced in the FTP providing that in case of DTA sale of goods manufactured by EOU/EHTP/STP, where basic duty and CVD, both, are 'nil' [either tariff rate or effective rate], such goods would be treated in the same manner as non-excisable goods manufactured by an EOU. In other words, when such goods are cleared into DTA, duty foregone on inputs utilized for production of such goods will have to be paid (as in the case of non-excisable goods vide para 6 of notfn no 22/2003-CE dated 31.3.2003 and para 3 of notfn no 52/2003-Cus dated 31.3.2003)

9. For implementation of the said provision, notification Nos. 22/2003-CE dated 31.3.2003 and 52/2003-Cus dated 31.3.2003, governing duty free domestic procurement and import of goods, respectively, by EOUs and EHTP/STP units, have been amended.

(iv) Supply from one EOU/EHTP/STP to another EOU/EHTP/STP

10. In the new FTP, a new provision, by way of paragraph **6.13(c)**, has been introduced providing that the goods supplied by one EOU/EHTP/STP to another EOU/EHTP/STP shall be treated as 'imported goods' for the receiving unit for the purpose of payment of duty on DTA sale.

11. The rationale behind this proposal is that the supply of goods from one EOU/EHTP/STP to another EOU/EHTP/STP amounts to fulfillment of export obligation for the supplying unit. Thus, it is considered as 'deemed export' for the supplying unit and 'deemed import' (para 6.10.2 of the HOP) for the receiving unit. Normally, EOU effecting DTA sale are required to pay duty in terms of proviso to section 3(1) of Central Excise Act, 1944, which is equivalent to aggregates of duties of customs leviable on similar imported goods. However, under notification No. 23/2003-Central Excise, dated 31.3.2003, it has been provided that the units, manufacturing goods out of wholly indigenous material, are allowed to clear such goods in DTA on payment of normal excise duty i.e. the duty which any manufacturer located in DTA pays on similar goods. If supplies from EOU unit 'A' to EOU unit 'B' is 'deemed export' for 'A', then it should be 'deemed import' for 'B' and 'B' should not be entitled to exemption notification which is based on use of only **indigenous** raw materials.

12. To implement this provision, notification No. 23/2003-CE dated 31.3.2003, governing DTA sale of goods on payment of concessional rate of duty by EOUs and EHTP/STP units, has been suitably amended by inserting an '**Explanation II**' in the notification.

(v) Disposal of Left Over Material /Fabrics into DTA on Payment of Duty on Transaction Value instead of Value Declared at the Time of Import

13. In the new FTP, in paragraph **6.15 (c)**, it has been provided that in the case of **textile sector**, disposal of **leftover material/fabrics** up to 2% of CIF value or quantity of import, whichever is lower, shall be allowed on payment of duty on value determined as per customs valuation rules, subject to the certification of Central excise/Customs Officers that these are leftovers.

14. To implement this, notification No. 52/2003-Cus, dated 31.3.2003 and 22/2003-CE dated 31-3-2003, governing duty free import and procurement, respectively, by EOU/EHTP/STP, have been suitably amended providing that the prescribed percentage of **textile materials or textile fabrics** shall be treated as goods manufactured in the EOUs and duty shall be charged accordingly i.e on 'transactional value' as per Customs Valuation Rules. Earlier, inputs or raw materials, cleared as such (whether leftover or not) were required to pay duty foregone on them (i.e. at the original cif value, for imports, and purchase price for domestic procurements). Now a limited quantity of leftovers can be cleared at **transaction value**. It may be noted that the exemption is limited to the specified quantity of **textile materials and textile fabrics** only. In other words, concession would not be available to, say, zip fasteners, though used in the textile sector.

(vi) Rate of Depreciation Applicable to Capital Good

15. Hitherto, EOUs (including EHTP/STP units) were allowed to clear /debond capital goods in DTA on payment of duty at the depreciated value. The rate of depreciation for computer and computer peripheral was 20% per annum and for other capital goods, it was 10% per annum. However, there was no upper limit of depreciation and depreciation upto 100% was allowed.

16. In case of SEZ units, different graded rates of depreciation have been prescribed. The **SEZ Rules, 2003**, provide for graded rate of depreciation. It has been decided to allow depreciation to EOU/EHTP/STP on the lines of SEZ units.

17. To implement this, notification Nos. 52/2003-Cus, and 22/2003-CE, both dated 31.3.2003 have been suitably amended

(vii) Duty free import of consumables by Gem and Jewellery units.

18. Earlier, notification No. 41/99-Customs, dated 28.4.1999 provided for duty free import of specified consumables, when imported against Replenishment Licence referred to in paragraph 8.88 of the earlier Hand Book of Procedures, upto 1% of FOB value of preceding financial year of exports of Gem and Jewellery or cut and polished diamonds. In the new FTP [**para 1B.1(iv)(c)**], a provision has been incorporated for enhancing this duty free import entitlement of consumables for metals other than gold/ platinum from 1% to 2% of FOB value of exports during the previous financial year. To implement this the provisions of notification No. 41/99-Cus dated 28.4.1999 have been amended so as to increase the duty free entitlement from 1% of FOB to 2% of **FOB in case of export of silver jewellery**, while keeping the entitlements same for gold/platinum jewellery and cut and polished diamonds.

(ix) Waiver from Bank Guarantee

19. The EOU/EHTP/STP are required to execute B-17 bond and furnish surety or security along with the B-17 bond. The units are also required to furnish bank guarantee for sending goods for job-work. It has been decided to exempt units, which are in existence for last three years with unblemished track record and have **export** turnover of Rs 5 crore or above, from furnishing bank guarantee or surety along with B-17 Bond or for sending goods for job work [also refer para 6.12(f) of the FTP].

(x) Free Trade and Warehousing Zones

20. Chapter 7A of the Foreign Trade Policy has introduced a concept of Free Trade and Warehousing Zones. Since these Zones will operate on the same lines as Special Economic Zones (SEZs), no separate instructions are being issued for their implementation.

(xi) Other provisions of the FTP relating to EOU and Gem and Jewellery Schemes

21. Amendment to Para 4.4.2 relating to reduction in carat from 0.50 to 0.25 under the Gem and Jewellery Scheme and paras 6.39.1 to 6.39.13 of the HOP relating to Fast Track clearances for EOU's, are under review and its implementation may be deferred till a final view is communicated by this Ministry.

22. Wide publicity may please be given to these instructions by way of issuance of Public Notice.

23. Hindi version will follow.

Ranjit Kumar
Sr. Technical Officer (FTT)