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(EXTRAORDINARY)]

GOVERNMENT OF INDIA

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification No.100 /2009-CUSTOMS

New Delhi, the 11 September, 2009

G.S.R. 666 (E) - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table annexed hereto, from,-

(i) so much of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as is in excess of the amount calculated at the rate of three percent ad-valorem, and

(ii) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, when specifically claimed by the importer.

2. The exemption under this notification shall be subject to the following conditions, namely :-

(1) that the goods imported are covered by a valid authorization issued under the Export Promotion Capital Goods (EPCG) Scheme to Common Service Providers(hereinafter referred to as CSP) designated by the Director General Of Foreign Trade (hereinafter referred to as DGFT), Department of Commerce(hereinafter referred to as DOC) or State Industrial Infrastructural Corporation in Towns Of Export Excellence (hereinafter referred to as TEE) in terms of Chapter 5 of the Foreign Trade Policy permitting import of goods at the rate of three percent duty and the said authorization is produced for debit by the proper officer of customs at the time of clearance :

Provided that for import of spare parts specified at Sr.No.4 of the said Table, the validity period of the authorization shall be deemed to be the period permitted for fulfillment of the export obligation in full ;

(2) that the authorization issued under the scheme shall have the details of the users of the said capital goods and the quantum of the Export Obligation(hereinafter referred to as EO) which each user would fulfil.

(3) that the goods imported shall not be disposed of or transferred by sale or lease or any other manner till export obligation is completed.

(4) that the Common Service provider and each of the specific users shall execute a bond in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs and a bank guarantee equivalent to their portion of duty foregone in terms of export obligation apportioned in the authorization binding themselves to fulfil export obligation on Free On Board (FOB) basis equivalent to eight times the duty saved on the goods imported as may be specified on the licence or authorization, or for such higher sum as may be fixed or endorsed by the Licensing Authority or Regional Authority in terms of Para 5.10 of the Handbook of Procedures Vol I, issued under para 2.4 of the Foreign Trade Policy, within a period of eight years from the date of issue of licence or authorization, in the following proportions, namely :-

S.No.	Period from the date of issue of Authorization	Pro
(1)	(2)	
1.	Block of 1 st to 6 th year	50%
2.	Block of 7 th to 8 th year	50%

Provided that where the duty saved is not less than Rupees one hundred crores, or where the authorization is issued to units in the agri export zone as may be notified by the licensing authority or Regional Authority, the export obligation shall be fulfilled within a period of twelve years from the date of issue of authorization in the following proportions, namely :-

S.No.	Period from the date of issue of Authorization	Pr
(1)	(2)	
1.	Block of 1 st to 10 th year	50
2.	Block of 11 th to 12 th year	50

Provided further that where a sick unit is notified by the Board for Industrial and Financial Reconstruction(BIFR) or where a rehabilitation scheme is announced by the concerned State Government in respect of sick unit for its revival, the export obligation may be fulfilled within time period allowed by the Licensing Authority or Regional Authority as per the rehabilitation package prepared by the operating agency and approved by BIFR or rehabilitation department of State Government . In cases where the time period is not specified in the rehabilitation package, the export obligation may be fulfilled within the time period allowed by the Licensing Authority or Regional Authority which shall not exceed twelve years.

Provided also that where the capital goods are imported by agro units and units in tiny and cottage sector, the export obligation shall be fixed equivalent to six times the duty saved on the goods imported as may be specified on the authorization, or for such higher sum as may be fixed by the licensing authority, within a period of twelve years from the date of issue of the authorization :

Provided also that where the capital goods are imported for technological upgradation as per conditions specified in Para 5.8 of the Foreign Trade Policy or by small scale industry units as defined in paragraph 5.2 of the Foreign Trade Policy, as the case may be, the export obligation

shall be fixed equivalent to six times the duty saved on the goods imported as may be specified on the authorization, or for such higher sum as may be fixed by the Licensing Authority or Regional Authority, within a period of eight years from the date of issue of authorization subject to the further condition that in the case of Small Scale Industry (SSI) units the landed Cost Insurance Freight (CIF) value of such imported capital goods under the scheme shall not exceed Rupees fifty lakhs and total investment in plant and machinery after such imports shall not exceed the SSI limit :

Provided also that spares (including refurbished or reconditioned spares), moulds, dies, jigs, fixtures, tools, refractory for initial lining and catalyst for initial charge, for the existing plant and machinery (imported earlier, under EPCG or otherwise), shall be allowed to be imported under the EPCG scheme subject to an export obligation equivalent to 50% of the normal export obligation prescribed above, to be fulfilled in 8 years reckoned from the date of issue of the Authorization, subject to the condition that the CIF value of import of the said spares etc. will be limited to 10% of the CIF value of the plant and machinery imported under the EPCG authorization or 10% of the book value of the plant and machinery imported earlier otherwise than under EPCG Scheme, as the case may be.

Provided also that export obligation of a particular block may be set off against the excess exports made in the said preceding block(s);

(5) that if the authorisation holder does not claim exemption from the additional duty leviable under section 3 of the Customs Tariff Act, 1975, the additional duty so paid by him shall not be taken for computation of the net duty saved for the purpose of fixation of export obligation provided the Cenvat credit of additional duty paid has not been taken;

(6) that the Authorization Holder and the other specific users produce within 30 days from the expiry of each block from the date of issue of authorization or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, evidence to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs showing the extent of export obligation fulfilled, and where the export obligation of any particular block is not fulfilled in terms of the preceding condition, the importer shall within three months from the expiry of the said block pay duties of customs equal to an amount which bears the same proportion to the duties leviable on the goods, but for the exemption contained herein, which the unfulfilled portion of the export obligation bears to the total export obligation, together with interest at the rate of 15% per annum from the date of clearance of the goods;

(7) where the Authorization Holder fulfills 75% or more of the export obligation as specified in condition (4) (over and above 100% of the average export obligation) within half of the period specified for export obligation as mentioned in condition (4), his balance export obligation shall be condoned and he shall be treated to have fulfilled the entire export obligation;

(8) that the capital goods imported, assembled or manufactured are installed in the Common Service Provider's factory or premises and a certificate from the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, is produced confirming installation and use of capital goods in the Common Service Provider's factory or premises, within six months from the date of completion of imports or within such extended period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow :

Provided that in case of import of spares, the installation certificate shall be produced within three years from the date of import :

Provided further that if the Authorization Holder is not registered with central excise or if he is a service provider, as the case may be, he may produce the said certificate of installation and usage issued by an independent Chartered Engineer :

Provided also that agro units located in Agri Export Zones or service providers in Agri export Zones may move the capital goods within the Agri Export Zones under intimation to the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, subject to the condition that the importer shall maintain accurate record of such movement;

(9) that the imports and exports are undertaken through sea ports at Bedi (including Rozi-Jamnagar), Chennai, Cochin, Dahej, Dharamtar, Haldia (Haldia Dock complex of Kolkata port) Kakinada, Kandla, Kolkata, Krishnapatnam, Magdalla, Mangalore, Marmagoa, Muldwarka, Mumbai, Mundhra, Nagapattinam, Nhava Sheva, Okha, Paradeep, Pipavav, Porbander, Sikka, Tuticorin, Visakhapatnam and Vadinar or through any of the airports at Ahmedabad, Bangalore, Bhubaneswar, Chennai, Cochin, Coimbatore, Dabolim (Goa), Delhi, Hyderabad, Indore, Jaipur, Kolkata, Lucknow (Amausi), Mumbai, Nagpur, Rajasansi (Amritsar), Srinagar, Trivandrum and Varanasi or through any of the Inland Container Depots at Agra, Ahmedabad, Anaparthi (Andhra Pradesh), Babarpur, Bangalore, Bhadohi, Bhatinda, Bhilwara, Bhiwadi, Bhusawal, Chheharata (Amritsar), Coimbatore, Dadri, Dappar (Dera Bassi), Daulatabad (Wanjarwadi and Maliwada), Delhi, Dighi (Pune), Durgapur (Export Promotion Industrial Park), Faridabad, Garhi Harsaru, Gauhati, Guntur, Hyderabad, Jaipur, Jallandhar, Jamshedpur, Jodhpur, Kanpur, Karur, Kota, Kundli, Loni (District Ghaziabad), Ludhiana, Madurai, Malanpur, Mandideep (District Raisen), Miraj, Moradabad, Nagpur, Nasik, Pimpri (Pune), Pitampur (Indore), Pondicherry, Raipur, Rewari, Rudrapur (Nainital), Salem, Singanalur, Surat, Surajpur, Tirupur, Tuticorin, Udaipur, Vadodara, Varanasi, , Waluj (Aurangabad) or through the Land Customs Station at Agartala, Amritsar Rail Cargo, Attari Road, Changrabandha, Dawki, Ghojadanga, Hilli, Jogbani, Mahadipur, Nepalganj Road, Nautanva (Sonauli), Petrapole, Ranaghat, Raxaul, Singhabad and Sutarkhandi or a Special Economic Zone notified under section 4 of the Special Economic Zones Act, 2005 (28 of 2005):

Provided that the Commissioner of Customs may, by special order or a public notice and subject to such conditions as may be specified by him, permit import and export through any other sea-port, airport, inland container depot or through a land customs station within his jurisdiction.

(10) notwithstanding anything contained in condition (6) above, where the Licensing Authority or Regional Authority grants extension of block-wise period for any block(s) or overall period of fulfilment of export obligation upto a period of two years or regularization of shortfall in export obligation, not exceeding five percent of such export obligation, the said block-wise period or overall period of export obligation shall be extended or condoned by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be :

Provided that in respect of sick units referred to in the second proviso to condition (4) extension of overall period of export obligation shall not be allowed :

Provided further that the Regional Authority may grant further extension in the overall period of export obligation upto a period of further two years if the authorization holder pays fifty percent of duty payable in proportion to the unfulfilled portion of export obligation and agrees to fulfill other conditions as may be specified by the Regional Authority for this purpose;

Provided further that the Export Obligation period shall not be extended beyond 12 years including the original Export Obligation period of 8 years or 12 years as the case may be.

3. Where the goods specified in the said Table are found defective or unfit for use, the said goods may be re-exported back to the foreign supplier within three years from the date of payment of duty on the importation thereof:

Provided that at the time of re-export, the goods are identified to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to be the same as the goods which were imported.

Explanation – For the purpose of this notification,-

1. “Capital goods” has the same meaning as assigned to it in Paragraph 9.12 of the Foreign Trade Policy;

2. "Common Service Provider (CSP)" means a service provider who is designated or certified as a Common Service Provider by the DGFT, Department of Commerce or State Industrial Infrastructural Corporation in a Town of Export Excellence.

3. "Export obligation", -

(1) means obligation on the Common Service provider and each of the specific users to export to a place outside India, goods manufactured or capable of being manufactured or services rendered by the use of capital goods imported in terms of this notification. The export obligation shall be over and above the average level of exports achieved by the Common Service provider or the specific user in the preceding three licensing years for the same and similar products within the overall export obligation period including the extended period, if any. Such average shall be the arithmetic mean of export performance in the last 3 years for the same and similar products.

Provided that upto 50% of the export obligation may also be fulfilled by export of other good(s) manufactured or service(s) provided by the Common Service provider / the specific user or his group company or managed hotel, which has the EPCG authorization subject to the condition that in such cases, additional export obligation imposed shall be over and above the average exports achieved by the Common Service provider / the specific user or his group company or managed hotel in preceding three years for both the original and the substitute product(s) or service(s) :

Provided further that in case of export of goods relating to handicraft, handlooms, cottage, tiny sector, agriculture, animal husbandry, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture, the Common Service provider or the specific user shall not be required to maintain the average level of exports :

Provided further that in case of export of goods relating to aquaculture(including fisheries), the Common Service provider or the specific user shall not be required to maintain the average level of exports subject to the condition that EPCG authorization has been obtained for goods other than fishing trawlers, boats, ships and other similar items.

Provided also that the goods, excepting tools, imported under this notification by the aforesaid sectors, shall not be allowed to be transferred for a period of five years from the date of imports even in cases where export obligation has been fulfilled. Transfer of capital goods would, however, be permitted within the group companies, after fulfillment of export obligation but before five years from the date of imports, under intimation to Regional Authority and jurisdictional Central Excise Authority :

Provided also that exports made to former USSR, or to such countries as notified by Director General of Foreign Trade as on 31.3.08, shall not be counted for fixing the average level of exports :

Provided also that exports against only such shipping bills which mention the EPCG authorization No. and date shall be counted for the discharge of the export obligation;

Provided also that exports counted against the authorization issued under this notification shall not be counted towards fulfilment of other specific Export Obligations against other EPCG authorizations;

(2) shall be fulfilled through physical exports and the export proceeds shall be realized in freely convertible currency. However the following categories of supplies, shall also be counted towards fulfillment of export obligation:

(a) deemed exports, namely:

(i) supply of goods against Advance Authorization/Advance Authorization for Annual Requirement/ Duty Free Import Authorization (DFIA);

(ii) supply of goods to Export Oriented Units (EOUs) or Software Technology Parks (STPs) or Electronics Hardware Technology Parks (EHTPs) or Bio-Technology Parks (BTPs);

(iii) supply of goods to projects financed by multilateral or bilateral agencies or Funds as notified by Department of Economic Affairs (DEA), Ministry of Finance (MOF) under International Competitive Bidding (ICB) in accordance with procedures of those agencies or Funds, where legal agreements provide for tender evaluation without including customs duty; supply and installation of goods and equipments (single responsibility of turnkey contracts) to projects financed by multilateral or bilateral agencies or Funds as notified by DEA, MOF under ICB, in accordance with procedures of those agencies/Funds, where bids may have been invited and evaluated on the basis of Delivery Duty Paid (DDP) prices for goods manufactured abroad;

(iv) supply of goods to any project or purpose in respect of which the Ministry of Finance, by a notification, permits import of such goods at zero customs duty and the supply is made under ICB procedure;

(v) supply of goods to power projects and refineries not covered in (iv) above under ICB procedure;

(vi) Supply of goods to nuclear power projects through competitive bidding as opposed to ICB;

(b) Supply of ITA-1 items to Domestic Tariff Area, provided realization is in free foreign exchange;

(c) Royalty payments received in freely convertible currency and foreign exchange received for Research and Development (R and D) services; and

(d) Payments received in rupee terms for port handling services in terms of chapter 9 of the Foreign Trade Policy.

4. "Foreign Trade Policy" means the Foreign Trade Policy 2009-2014 published in the gazette of India, Part II, Section 3, Sub-section (ii) vide notification of the Government of India in the Ministry of Commerce and Industry, No.1/2009-2014 dated the 27th August, 2009 as amended from time to time;

5. "Licensing Authority or Regional Authority" means the Director General of Foreign Trade appointed under section 6 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) or an officer authorized by him to grant an authorization under the said Act;

6. "Manufacture" has the same meaning as defined in clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944).

7. "Towns of Export Excellence(TEE)" means a selected town producing goods of Rs.750 Crores or more based on potential for growth in exports. However for TEE in Handloom, Handicraft, Agriculture and fisheries sector the threshold limit would be Rs.150 Crores.

Table

S.No.	Description of goods
(1)	(2)
1.	Capital goods for pre-production, production and post production including second hand capital goods.
2.	Capital goods in Semi Knocked Down (SKD) / Completely Knocked Down (CKD) conditions to be assembled into capital goods by the importer.
3.	Spare parts of CIF value upto 10% of the CIF value of goods specified at Serial Nos.1 and 2 as actually imported and required for maintenance of capital goods so imported, assembled, or manufactured.
4.	Spare parts of CIF value upto 10% of the book value of the existing plant and machinery of the authorization holder.

[F. No.605/58/2009-DBK]

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