

## **11. EPCG schemes for authorizations issued prior to 18.4.2013:**

- 11.1 The Zero duty EPCG Scheme implemented through Notification no. 101/2009-Customs and 102/2009-Customs and 3% EPCG scheme implemented through notification No. 100/2009- Customs and 103/2009-Cus all dated 11-9-2009 apply to authorizations issued prior to 18.4.2013. These provide for import of capital goods specified in EPCG Authorization at 0% or concessional 3% rate of basic customs duty and optional exemption from the additional duty of customs.
- 11.2 Under this Zero duty scheme, there is export obligation (EO) equivalent to 6 times of the duty saved amount on the capital goods imported to be completed within 6 years (extendable by 2 years) from the date of issue of Authorization. Under the 3% scheme, the EO is 8 times the duty saved to be fulfilled in 8/12 years (extendable by 2+2 years). There are more favorable dispensations permitted for EO fulfilled by export of specified green technology products, units located in North Eastern States, Sikkim. Further, under the 3% scheme there are certain more liberal dispensations for tiny, agro, cottage and SSI units. A block wise EO is also specified. The EPCG Customs notifications stipulate fulfilment of at least 50% of export obligation within the first block. The RA can grant extension of block-wise period or overall period of fulfilment subject to specified conditions.
- 11.3 EO under the scheme is to be over and above the average level of exports achieved in the preceding three licensing years for the same and similar products. However, certain sectors are not required to maintain average level of exports.
- 11.4 EPCG Authorizations are issued to manufacturer exporters and merchant exporter with or without supporting manufacturer, and service providers. EPCG scheme is also available to a service provider who is designated or certified as a Common Service Provider (CSP).
- 11.5 EPCG authorizations specify the value/quantity of the export product to be exported it. In the case of manufacturer/merchant/service exporters, the EO is required to be fulfilled by exporting goods manufactured or capable of being manufactured or services rendered by the use of capital goods imported under the scheme. Up to 50% of the EO may also be fulfilled by export of other goods manufactured or service(s) provided by the importer or his group company or managed hotel, which has the EPCG Authorization, subject to certain conditions.
- 11.6 In order to ensure fulfilment of EO as also to secure interest of Revenue, the EPCG Authorization holder is required to file bond with or without bank guarantee with the Customs prior to commencement of import of capital goods. Bank guarantee equal to 100% of the

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differential duty in case of merchant exporters and 25% in case of manufacturer exporters is required to be submitted except in case of exempted categories. [Refer Circulars No. 58/2004-Cus dated 21-10-2004, No.17/2009-Cus., dated 25-5-2009, No.32/2009-Cus., dated 25-11-2009, No. 06/2011-Cus., dated 18-1-2011 and No. 8/2013-cus dated 04.03.2013]

- 11.7 EPCG Authorization may also be obtained for annual requirement with a specific duty saved amount and corresponding EO. It indicates the export products through which EO shall be fulfilled.
- 11.8 Import of Capital goods (CG) under the scheme have to be made within 9 / 36 months. The Regional Authority of DGFT has certain powers to revalidate the validity of import. The CG imported are subject to actual user condition and the goods imported cannot be transferred or sold, etc till the fulfillment of EO. Installation and use of the imported capital goods is provided for in the Customs notifications for which certificates have to be produced.
- 11.9 In order to ensure proper account of fulfilment of EO, the EPCG Authorization holder is required to indicate the EPCG Authorization No./date on the body of the Shipping Bill/ invoice (in case of deemed exports). After fulfilment of specified EO, relevant export documents are to be submitted to Regional Authority for obtaining EODC which is to be produced to the Customs for redemption of bond/BG filed.
- 11.10 Exports in discharge of EO under the EPCG scheme are entitled to duty neutralization schemes like Drawback, Advance Authorization, DFIA etc. as well as benefits of reward schemes such as FPS, FMS, VKGUY, etc. in accordance with the terms and conditions of those scheme(s). However, benefits of TUFs and SHIS will not be available in the year in which the zero duty authorization has been issued, except on fulfilment of certain conditions.

### **12. Post Export EPCG Duty Credit Scrip Scheme prior to 18.4.2013:**

- 12.1 The scheme envisages that the duty credit in these scrips shall be a duty remission computed based on the basic customs duty paid on capital goods which had been imported on payment of all applicable duties of customs in cash. Subject to installation and use of the imported capital goods, and other conditions including non-disposal of the capital goods till the date of last export, the duty remission may be granted by the Regional Authority in proportion to export obligation fulfilled within a fixed export obligation period. For this purpose, the export obligation would be fixed (over and above average export obligation) at 85% of applicable specific export obligation, computed as if the duty paid imports had taken benefit of duty exemption (i.e. like the EPCG duty exemption schemes, either zero duty or concessional 3% duty). As in the EPCG duty exemption scheme, if it is opted to not take the Cenvat credit of additional duty of customs paid, a lower export obligation would be fixed. There is no provision for extension of export obligation period in this scheme.
- 12.2 In the Scheme the duty remission is envisaged in proportion to export obligation fulfilled within a fixed export obligation period. Unlike the EPCG duty exemption schemes, the block obligation periods or their related proportions of export obligation fulfilment are not pre-defined in the new scheme. More than one duty credit scrip may issue (against the duty paid import of capital goods) based on the progressive fulfilment, during the specified export obligation period, of larger extents of the total export obligation. The meaning of 'export obligation' would apply individually to each duty credit scrip. Further, scrip issuance is akin to a discharge (or partial discharge) of the export obligation and is a remission

by the DGFT of duty collected by the CBEC. Therefore, it is necessary that the Deputy/ Assistant Commissioner of Customs satisfies himself of the compliance of the conditions of the notification (including fulfilment of export obligation, the quantum of duty remission in the duty credit scrip, the cumulative duty credits issued against imported duty paid capital goods) before allowing a duty credit scrip, issued under the Scheme, to be registered.

- 12.3 A sequential monitoring should be followed. This begins from registration of authorization (for importing capital goods) at the port of registration and is followed by import on payment of full applicable duties of customs in cash, endorsement of import particulars on authorization at time of clearance, making specified endorsements on bill(s) of entry at time of import, ensuring registration or installation/use of all imports under authorization before any scrip issues, registration of scrip at the same port, keeping cumulative record of duty credit scrips issued against an authorization, and making the indicated endorsements on documents at the time of registration. Moreover, the assessment Group which handles the authorization to import capital goods on payment of duty under this variant of the EPCG scheme would need to allow the registration of this duty credit scrip. The genuineness of the post export EPCG duty credit scrip should be verified.
- 12.4 Safeguards are provided in the notifications relating to making endorsements on the documents. The option for not availing Cenvat Credit on capital goods imported under authorization and thereby enjoying a lower export obligation is to be backed by a certification. Jurisdictional Central Excise authority should ensure that certificate on non-availment of Cenvat Credit is issued expeditiously and normally within two weeks but not later than four weeks under all circumstances. Where the goods imported against an authorization are found defective or unfit for use and are re-exported back to the foreign supplier, if claim of duty drawback is made, no duty remission for the duty paid at the time of import on the re-exported goods is to be allowed. Further, after any duty remission in the form of duty credit scrip has been claimed in respect of the duty paid on the goods imported against an authorization, no duty drawback shall be allowed when the goods are re-exported and the export obligation is also not to be re-fixed. Indigenous sourcing of capital goods (referred to as invalidation procedure of import authorization) on payment of duty is not permitted in this scheme.
- 12.5 The post export EPCG duty credit scrip cannot be issued as a refund on the premise that duty was paid but a situation arose where there was no export obligation to be fulfilled. The Commissioners of Customs are also to exercise special checks so as to ensure that there is no misuse of the scheme and a proper record of all such checks is maintained. These shall include random verifications of the address shown on the authorizations (for import of capital goods) during their validity period in at least 10% of authorizations, random verifications of the certificates produced (not issued by central excise authorities) and of the declarations submitted with respect to Condition No. 14 (e)(i) of the Customs notifications in at least 10% cases. These verifications should be made through the Commissioners of Central Excise. The central excise authorities should include, in their verification, a check of the periodical utility bills (containing the address) as one of the means enabling verification of installation/ operation/ authorization holder premises. The Commissioners are expected to exercise due diligence to prevent misuse. If any other measure or safeguard is considered necessary it may be informed to the Board for appropriate action. Moreover, relevant aspects should also be incorporated

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in the monthly report of “Monitoring of Export/Imports under various Export Promotion Schemes” sent to the Board in terms of letter No. 605/64/2008-DBK dated 20.11.2008.

- 12.6 The notification Nos.5/2013-Customs and 6/2013-Customs both dated 18.2.13 permit imports through debit of the customs duties in the said duty credit scrip. The notifications are for scrip variants where export obligation is fixed like the zero duty or concessional 3% duty EPCG scheme, respectively. The mechanisms of fixing the export obligation, and of granting the remission, are explained in the notifications. Further, notification Nos.2/2013-Central Excise and 3/2013-Central Excise both dated 18.2.13 have been issued to permit domestic procurement.

[Refer Circular No.10/2013-Cus dated 6.3.2013]

### 13. EPCG Scheme on or after 18.4.2013:

- 13.1 Only a single Zero duty EPCG scheme applicable to all sectors is available and implemented by Notification No.22/2013 - Customs dated 18.4.2013 with optional exemption from the additional duty of customs. The EO is equivalent to 6 times of the duty saved amount on the capital goods imported with EO period 6 years (extendable by 2 years) from the date of issue of Authorization. There are more favorable dispensations permitted for EO fulfilled by export of specified green technology products, units located in North Eastern States, Sikkim and Jammu and Kashmir. EO of 50% each is to be fulfilled in two blocks, of 4 years and then 2 years. The RA can grant extension of block-wise period or overall period of fulfilment subject to specified conditions. In the case of manufacturer/merchant/service exporters, the EO is required to be fulfilled by exporting goods manufactured or capable of being manufactured or services rendered by the use of capital goods imported under the scheme. The provision that up to 50% of the EO may also be fulfilled by export of other goods manufactured or service(s) provided by the importer or his group company or managed hotel is not available. Thus, the provisions are stricter. The import of capital goods has to be made within 18 months, with the Regional Authority of DGFT having certain powers to revalidate the validity of import. The single zero duty EPCG scheme is not available to exporters, who avail in that year, the benefit of SHIS. The import of cars, etc as commercially registered tourist vehicles is not permitted under this single Zero duty EPCG scheme.
- 13.2 However, as before, EO is to be over and above the average level of exports achieved in the preceding three licensing years for the same and similar products. Certain sectors are not required to maintain average level of exports. The Authorizations are issued to manufacturer exporters and merchant exporter with or without supporting manufacturer, and service providers and also available to Common Service Provider (CSP). The authorizations specify the value/quantity of the export product to be exported against it. The Authorization holder is required to file bond with or without bank guarantee with the Customs prior to commencement of import of capital goods. Bank guarantee exemptions are available in terms of the Circular No. 58/2004-Cus dated 21-10-2004, No.17/2009-Cus dated 25-5-2009, No.32/2009-Cus dated 25-11-2009, No. 06/2011-Cus dated 18-1-2011 and No. 8/2013-Cus dated 04.03.2013. The Authorization may also be obtained for annual requirement with a specific duty saved amount and corresponding EO with indication of the export products through which EO shall be fulfilled. The CG imported are subject to actual user condition and the goods imported cannot be transferred or sold, etc till the fulfillment of EO. Installation and use of the imported capital goods is provided for

in the Customs notifications for which certificates have to be produced. To ensure proper account of fulfillment of EO, the EPCG Authorization holder is required to indicate the EPCG Authorization No./date on the body of the Shipping Bill/invoice (in case of deemed exports). After fulfillment of specified EO, relevant export documents are to be submitted to Regional Authority for obtaining EODC which is to be produced to the Customs for redemption of bond/BG filed. Exports in discharge of EO under the EPCG scheme are entitled to duty neutralization schemes like Drawback, Advance Authorization, DFIA etc. as well as benefits of reward schemes such as FPS, FMS, VKGUY, etc. in accordance with the terms and conditions of those scheme(s).

**14. Post Export EPCG Duty Credit Scrip Scheme on or after 18.4.2013:**

- 14.1 Consequent to there being a single Zero duty EPCG scheme from 2013-14, a single Post Export EPCG Duty Credit Scrip Scheme has been notified vide Notification No. 23/2013-Cus and 2/2013-Central Excise both dated 18.02.2013 to enable the use of Zero duty post EPCG Duty Credit Scheme Scrip subject to conditions specified in the notifications. The Circular No.10/2013-Cus dated 6.3.2013 continues to be relevant in this regard.

**15. Certain issues relating to AA, DFIA, EPCG schemes:**

- 15.1 The jurisdictional Commissioners of Customs are required to take action to monitor fulfillment of export obligation. They also have to put in place an institutional mechanism for periodical meetings with Regional Authorities to exchange intelligence, check misuse and pursue issues such as EO fulfillment status in cases where Export Obligation period has expired in that quarter/ previous quarter so that concerted action can be taken against the defaulters. Further, timely action in all cases of default is required to be initiated to safeguard revenue.
- 15.2 Apart from the prescribed checks, the jurisdictional Commissioners of Customs are also to cause random verification for some of the authorizations issued under EPCG / DFIA / Advance Authorization schemes to check correctness of address on the Authorizations. Such verification is to be preferably through the Central Excise divisions. Similarly, the correctness of installation certificates issued by the Chartered Engineers is required to be verified on a random basis through Central Excise divisions. When address verifications or Installation Certificate verifications are requested by the Customs authorities in respect of EPCG authorizations, the Central Excise authorities should include, in their verification, a check of the periodical utility bills (containing the address) as one of the means enabling verification of installation/operation/ licensee premises.