

F.No. 305/ 69/2003-FTT
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

Subject : Stock Transfer by an EOUs to DTA, Whether Covered under DTA sale of the EXIM Policy - Clarification regarding

I am directed to say that that cases have been brought to the notice of the Board that in case of 'stock transfer of goods to a DTA unit, EOUs were not being allowed the benefit of payment of concessional duty under notification No. 2/95-Central Excise, dated 4-1-1995 even though the EOU had a valid DTA sale permission and had earned the DTA sale entitlement as provided under paragraph 6.8 of The Exim Policy 2002-2007 (Paragraph 9.9 of the Exim Policy 1997-2002) and fulfill other conditions specified in aforesaid notification. The benefit of concessional rate of duty was being denied on the ground that stock transfer of goods is not a sale and thus, not eligible for concessional rate of duty in terms of the above notification.

2 The matter has been examined by the Board. Notification 2/95-CE dated 1.4.1995 provided for 50% exemption on **“goods allowed to be sold in India under and in accordance with the provisions of sub-paragraphs (a), (b), (d) and (h) of para 6.8 (earlier para 9.9) of the Exim Policy”**.... The notification, therefore, allowed concessional duty only when goods were sold into DTA in accordance with para 6.8(or 9.9) of the policy. What is covered in para 6.8 (or 9.9) of the policy has been clarified by Ministry of Commerce in Appendix 14-IH of the Handbook of Procedures, 2002-2007 (Appendix 42 of the Hand Book of Procedures Vol-I - 1997-2002) that it covers **any clearance** to another DTA unit. Thus it is not open to the Department to interpret the Exim Policy in any other manner than what has been mentioned in Appendix 14-IH (or 42). The word DTA sale has been loosely used in the Exim Policy and there is no definition of DTA Sale in the Policy. Appendix 14-IH (or 42) clarifies that it not only covers transfers through sales to DTA units but also through other means. It would be illogical to contend that the concession is available if the goods are transferred on sale to an independent unit but it would not be available when removed on stock transfer to another division/unit of the same company.

3. The only point that needs attention, in case of stock transfers, is the valuation of the goods. In the case of EOUs, the valuation of goods cleared to DTA is to be done as per the provisions of Section 14 of the Customs Act read with the Customs valuation Rules 1988. While determining value of goods under stock transfer, the fact that it is related person transaction, may also be taken into consideration.

4. It may be mentioned that this confusion should no longer remain for the future since notification No. 2/95 –CE dated 1.4.1995, has been superceded by notification No. 23/2003-CE dated 1.4.2003 and the expression “allowed to be sold in India” has been replaced by the expression “brought to any place in India”

5. Wide publicity may be given by issue of a Public Notice in this regard.

6. Kindly acknowledge receipt of this Circular.
7. Hindi version follows.

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