**Circular No. 12/2008-Customs**

F. No. DGEP/FTP/13/2008-EOU & G&J
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
Directorate General of Export Promotion

New Delhi, the 24th July, 2008

To,
All Chief Commissioner of Customs/Central Excise,
All Commissioner of Customs/Central Excise.

Sir/Madam,

**Sub: Changes/amendments in the EOU/EHTP/STP and Gems and Jewellery Export Promotion Schemes-reg.**

In the recent past, many changes/amendments have been made in the Foreign Trade Policy, 1st September, 2004- 31st March, 2009 (FTP) and Hand Book of Procedure, Volume 1 (HBP) relating to EOU/EHTP/STP/BTP units under Export Oriented Undertaking scheme and Gem & Jewellery Export Promotions Scheme. To effect these changes, the relevant notifications have been suitably amended from time to time, wherever necessary. Further, a few procedural changes have also been made in order to simplify procedures and to bring about uniformity in their implementation. The various changes effected are briefly explained as follows:

## EXPORT ORIENTED UNDERTAKING SCHEMES

### 1. Net Foreign Exchange Earnings (NFE)

In terms of Para 6.5 of FTP, a unit shall have to be positive net foreign exchange earner except for the sector specific provision of Appendix 14-I-C of HBP. The manner of computation of NFE is defined under Para 6.10.1 of HBP and the manner of calculation is explained in Annexure-I to Appendix 14-I-G of HBP. The unit has to achieve positive NFE in the block of five years starting from the date of commencement of production. The term NFE has been defined for the purpose of notifications No. 52/2003-Customs and No. 22/2003-Central Excise, both dated 31.03.2003 (EOU notifications) on the same lines as defined in FTP. The changes to this effect have been made in the EOU notifications vide notifications No. 76/2007-Customs and 26/2007-C.E. both dated 06.06.2007.

### 2. Rationalization of calculation of NFE with rate of depreciation allowed on the capital goods

Under para 6.10.4 of HBP, the value of imported capital goods and payment of foreign technical know-how fee is amortized at the rate of 10% per year. The NFE earnings are calculated cumulatively in the block of five years in terms of Para 6.5 of FTP. Accordingly, the unit was able to achieve a positive NFE only by exporting 50% of value of the imported capital goods.

Under Para 6.36.1 of HBP (read with Para 6.36.2 and Para 6.36.3 of HBP), 100% depreciation for computer and computer peripherals and 60% for other capital goods have been allowed in the period of five years. It means that a unit was achieving positive net foreign exchange earning only for the 50% of the value of capital goods in a period of five year though 100% depreciation on the value of computers and 60% depreciation on the value of other capital goods is allowed.

Keeping this in view, para 6.10.4 of HBP has been amended so that for a unit exiting prior to expiry of 10 years, the NFE will be calculated on the value of capital goods and payment of foreign technical know-how fee based on the rate of deprecation allowable on the goods.

Before issuing No-dues certificate for exit from the EOU scheme, it has to be ensured that the unit has achieved positive NFE taking into consideration the rate of depreciation allowable on the goods as explained above.

**3. Clearance or debonding of capital goods in the event of non achievement of positive NFE**

Para 6.15(b) and para 6.18(e) of FTP have been amended to allow clearance or debonding of capital goods for disposal in DTA and exit from the scheme respectively only when the unit has achieved positive NFE taking into consideration of depreciation allowed.

The EOU notifications have been suitably amended by notifications No. 60/2008-Cus and No. 26/2008-C.E., both dated 05.05.2008 so as to allow clearance/ debonding of capital goods on the depreciated value proportionate to the NFE achieved by the unit which is arrived at after taking into consideration the rate of depreciation allowable on such capital goods. In case the unit has not achieved positive NFE in the above manner, the duty foregone at the time of import shall be paid on such value of goods in proportion to the non-achieved portion of NFE.

**4. Exit from EOU scheme to EPCG scheme**

Para 6.18 (d) of FTP has been amended to allow exit from EOU scheme to Export Promotion Capital Goods scheme only when EOU has fulfilled positive NFE criteria on the date it wishes to de-bond or migrate to EPCG scheme.

The EOU notifications have been suitably amended by notifications No. 47/2008-Cus and No. 24/2008-C.E. both dated 11.04.2008 so as to allow clearance or debonding of capital goods in event of exit from the EOU scheme to the EPCG scheme provided the EOU has fulfilled the positive NFE criteria. Thus, if a unit has not achieved NFE taking into consideration rate of depreciation allowable, it cannot exit to the EPCG scheme.

**5. Exit from EOU scheme to Advance Authorization Scheme**

A new Para 6.18 (g) has been inserted in the FTP to allow a unit to exit to Advance Authorization scheme as a one time option subject to fulfillment of positive NFE criteria.

The EOU notifications have been suitably amended by notifications No. 76/2007-Customs and No. 26/2007-C.E, both dated 06.06.2007 so as to allow clearance or debonding of goods other than capital goods at the time of exit from EOU as a one time option provided the unit has fulfilled NFE criteria. Thus, if a unit has not achieved positive NFE taking into consideration rate of depreciation allowable on capital goods, it cannot exit to the Advance Authorization scheme.

**6. Recovery of duty in event of non fulfillment of export obligation in the block period of 5 years**

In terms of Board's circular No. 21/95-Cus dated 10.03.1995 (F.No. 307/2/91-FTT), demand of duty can be confirmed only after a definite conclusion regarding non-fulfillment of export obligation is arrived at by the Development Commissioner.

The requirement of a definite conclusion by the Development Commissioner before Customs/Central Excise authorities can initiate action, at times, causes inordinate delay in effecting duty recovery from a unit in the event of non fulfillment of export obligation as no action can be initiated till a conclusion is arrived at by the Development Commissioner. C & AG in Chapter I of Audit Report No. 7 of 2007 (Indirect Taxes-Performance Audit) on 'Hundred percent Export Oriented Units' has observed adversely on the delay in recovery of duty from the defaulting EOUs.

This issue has been reviewed in consultation with the Department of Commerce. It has been decided that after the block of 5 years, final decision would be taken by the Development Commissioner with respect to fulfillment of export obligation as far as possible within 6 months but positively within one year. An amendment to this effect has also been made in Para 3 (ii) of Part (A) of Appendix 14-I-G to HBP.

Thus, duty, if any, may be demanded in the event of default in achieving NFE from a unit after a block of 5 years in accordance with the conclusion arrived at by the Development Commissioner/ Director STPI within a period of six months after the expiry of 5 years block period. In the cases where no such final decision is received from the Development Commissioner/Director STPI within a period of six months, the matter may be taken up immediately by the jurisdictional Customs /Central Excise Authorities with these

authorities so that a decision regarding status of achievement of positive NFE is not delayed beyond one year and action could be initiated for recovery of duty from the defaulting units without any further delay. The Board's circular No. 21/95-Cus dated 10.03.1995 stands modified to the above extent.

**7. Accountal of inputs in accordance with Standard Inputs-Output Norms (SION)**

In terms of para 6.8 (e) of FTP as existing prior to its amendment made on 11.04.2008 while issuing Annual Supplement, 2008 to FTP, only scrap/ waste/ remnants arising out of production process or in connection therewith was required to be sold in the DTA as per the Standard Input-Output Norms (SION) notified under the Duty Exemption Scheme.

It was viewed that SION should be applicable not only for waste cleared in DTA on payment of duty but also for accounting of input consumption for manufacture of export products. Inputs consumed in excess of SION cannot be taken as duly accounted for and consequential action is to be initialed.

To implement this, notifications No. 84/2007-Cus and No. 29/2007-C.E., both dated 06.07. 2007 have been issued to amend EOU notifications so as to introduce a system of accounting of inputs/raw material based on the SION. Items which are not covered under SION can be used subject to generation of upto 2% waste, scrap or remnants of the input quantity.

Now, for accounting of inputs as per SION, suitable provisions have been incorporated under para 6.7 (e) of HBP and para 6.8 (e) of FTP has also been suitably amended. To have uniformity in approach by field formations, the relevant provisions in the EOU notifications have been suitably amended to bring them in tune with the changes made in FTP/HBP. As per amending notifications No. 60/2008-Cus and No. 26/2008-C.E, both 05.05.2008, inputs imported or procured duty free are required to be accounted for in accordance with SION. For the items having no SION, consumption of inputs shall be allowed subject to generation of waste, scrap and remnants upto 2% of input quantity. However, if any item in addition to those given in SION are required as input or where generation of waste, scrap and remnants is beyond 2% of the input quantity, consumption shall be allowed on the basis of self-declared norms for a period of three months till the jurisdictional Development Commissioner fixes *ad hoc* norms subject to an undertaking by the unit that the self-declared/ *ad hoc* norms shall be adjusted in accordance with norms as finally fixed by the Norms Committee in DGFT for the unit. Further, a provision has also been made to consider such cases by the Board of Approval for appropriate decision in case of difficulty in fixation of SION by the Norms Committee. The norms fixed by the Norms Committee shall be applicable to the specific unit.

**8. Flexibility for DTA sale for the units manufacturing and exporting multiple products**

Under the EOU scheme, a unit is permitted to sell upto 50% the goods which are 'similar' to the goods exported or expected to be exported at concessional rate of duty. 'Similar' goods have been defined in Board's circular No. 07/2006-Cus dated 13.01.2006 as goods which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, reputation and the existence of a trade mark are among the factors to be considered in determining whether goods are similar.

The above restriction posed difficulty to units which are manufacturing multiple products as they can only sell the specific goods in DTA upto 50% of value of export of that specific product. In order to obviate this difficulty, flexibility is provided by allowing DTA sale of a specific product upto 75% of the FOB value of export of the specific product within the overall total entitlement of 50% of total FOB value of exports which can be cleared at concessional rate of duties. Accordingly, para 6.8 (a) of FTP has been amended suitably.

To exemplify, if a unit manufactures products 'A' and 'B' and exports product 'A' worth Rs 10 lakh and product 'B' worth Rs 15 laks, the unit was earlier allowed to sell goods worth of Rs 12.5 lakh (i.e 50% of the FOB value of exports of Rs 25 laks) into the DTA. Within this entitlement, the unit could sell into DTA products in proportion to the value of export of individual products i.e. for product 'A' worth Rs 5 lakhs and for product 'B' worth Rs 7.5 lakhs. In terms of amendment now carried out in para 6.8 (a) of FTP, the unit would be able to sell into DTA, the product 'A' upto a value of Rs 7.5 lakhs or product 'B' upto a value of Rs 11.25 lakhs provided the total value of sale by the unit (of A&B together) into DTA under concessional duty rate does not exceed Rs 12.5 lakhs.

**9. Payment of duty on DTA clearances on monthly basis.**

In terms of Rule 17 of the Central Excise Rules, 2002, units are presently required to pay duty on the goods manufactured and cleared into DTA on consignment basis before each removal. As a measure of trade facilitation and keeping in view that domestic manufacturer is already extended the facility of monthly payment of duty, the EOU/STP/EHTP/BTP units are also allowed to pay duty on the goods removed into DTA on a monthly basis.

A new clause (h) in para 6.12 of FTP has been inserted to this effect. Suitable amendment has been made in Rule 17 of the Central Excise Rules, 2002 vide notification No. 23/2003-C.E. (NT) dated 23.05.2008. Accordingly, such units shall pay monthly duty on the goods cleared into DTA in the month in the same manner as specified under Rule 8 ibid.

Duty paid shall be verified and scrutinized by the proper officer with the help of the returns E.R-2 filed by the units. Documents and records can be asked for verification by the scrutinizing officer. For the purpose of scrutiny, the Board's circular No. 818/15/2005-CX dated 15.07.2005 prescribing the manner of scrutiny of the return ER-1 and ER-3 shall also be followed for the return E.R.-2. New sub rules have been added in Rule 17 for this purpose.

A new modified version of E.R.-2 has been prescribed by the Board in place of the existing return E.R.-2 vide notification No. 24/2008-C.E. (N.T.) dated 23.05.2008. Besides the details of clearance into DTA/export, a detailed account of duty free imported/indigenous inputs is also to be furnished. This return is required to be filed for clearances done in the month of June, 2008 and onwards in terms of Rule 17 (3). For filing this return, detailed instructions have been provided at the end of the E.R-2 return which should be carefully studied by the field officers. Since, the duty is to be paid monthly, this return should be properly scrutinized to ensure that duty as due has been paid.

**10. Anti dumping duty foregone to be paid by the units on DTA clearances**

In terms of sub-section (2A) of section 9A of the Customs Tariff Act, 1975, anti dumping duty is not levied on EOUs. The intention of non-levy of anti dumping unit on EOUs is that the goods imported are eventually exported after being used in the manufacture or production. However, where the goods are not exported and are cleared into DTA, the purpose of non levy of anti dumping duty gets defeated.

In order to provide a level playing field, an amendment has been made under sub-section (2A) ibid vide section 77 of the Finance Act, 2008 which has been enacted on 10.05.2008. The relevant portion of the amendment is reproduced as below:

**"77. Amendment of Act 51 of 1975.** - In the Customs Tariff Act, 1975 (hereinafter referred to as the Custom Tariff Act),-

(i) in the section 9A, for sub-section (2A), the following sub-section shall be substituted, namely:-

(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2), shall not apply to articles imported by a hundred per cent, export-oriented undertaking unless,-

(i) specifically made applicable in such notifications or such impositions, as the case may be; or

(ii) the article imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, and in such cases anti-dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India."

Accordingly, an amount equal to anti dumping duty foregone on the goods at the time of import shall also be paid on the equivalent quantity of goods used for manufacture of any goods which are cleared into DTA or on such quantity of goods which are cleared as such into DTA.

**11. New optional scheme of payment of excise duty only on DTA clearances for EOUs in textile/granite sector**

A unit manufacturing goods wholly out of indigenous raw materials is allowed to clear these goods into DTA on payment of excise duty only. It has been represented that units in textile and granite sector are denied the benefits of payment of excise duty because these units use very minimal imported inputs and therefore are required to pay applicable customs duty. This makes them economically unviable.

In order to address difficulties of such units, a new optional scheme has been introduced under para 6.8 (l) of FTP. Similarly, a new entry has been made in the notification No. 23/2003-CE dated 31.03.2003 by notification No. 26/2008-C.E. dated 05.05.2008 so as to provide an option to the EOUs in the Textile and Granite sectors for payment of excise duty on DTA sale of goods manufactured by such

units wholly from the indigenous raw material and also by use of duty paid imported inputs upto 3% of the FOB value of exports in the preceding financial year. Once such option is exercised, the unit would not be allowed to use duty free imported inputs for any purpose.

The 3% duty paid imported inputs allowed under this scheme has wider scope than just raw material. The term 'input' would cover raw materials, intermediates, components, consumable, parts and packing materials.

**12. Supply of goods from DTA under benefit of deemed export are to be treated as imported goods**

The goods manufactured in India, when supplied from DTA to an EOU/STP/EHTP/BTP unit are regarded as 'deemed exports' under Para 6.11 read with Para 8.2 of the FTP. For such supplies, the DTA supplier is eligible for any/all of the benefits such as Advance Authorization / Advance Authorization for annual requirement / DFIA/ Deemed Export Drawback/ exemption from terminal excise duty in case of supplies made against International Competitive Bidding/refund of terminal excise duty besides discharge of export obligation, if any, on the supplier. On disclaiming of such benefits by the DTA supplier, these benefits can be claimed by an EOU/STP/EHTP/BTP unit.

Keeping in view the fact that the goods supplied by one EOU/STP/EHTP/BTP to another have already been treated as imported goods for the purpose of payment of duty on DTA sale by second unit under para 6.13 (c) of FTP, it has been decided with the concurrence of Deptt. of Commerce that the goods supplied to EOU/STP/EHTP/BTP unit under claim of deemed export benefits are also to be treated as imported goods for the purpose of payment of duty on DTA sale.

Accordingly, notification No. 23/2003-C.E. dated 31.03.2003 has been amended by notification No. 29/2007-C.E. dated 06.07.2007 and goods supplied to EOU/STP/EHTP/BTP unit from Domestic Tariff Area under claim of deemed export benefits are regarded as imported goods. As a result, goods manufactured out of such goods by EOU/STP/EHTP/BTP unit cannot be considered as goods manufactured wholly out of indigenous raw material to be eligible to avail benefits on clearances into DTA by payment of only central excise duty.

**13. Supplies of accessories like tags, labels, printed bags, stickers, belts, buttons or hangers to DTA unit for export by EOUs**

Trade has expressed difficulties in executing export orders for supply of goods along with accessories which are not manufactured by the garment exporter. In order to facilitate such exports, EOUs have been allowed to supply tags, labels, printed bags, stickers, belts, buttons or hangers without payment of duty to a unit in DTA for use of these items in the manufacture or processing of goods which are to be ultimately exported. Since the specified goods supplied by EOU have to be ultimately exported and payment of goods along with these items have to be received in free foreign exchange, such supplies by EOUs are considered for fulfillment of positive NFE. Accordingly, a new para 6.9 (h) has been inserted in the FTP. The above provision has been implemented by notification No. 31/2007-C.E. (N.T.) dated 02.08.2007 prescribing conditions, safeguards and procedures for supply of specified items produced or manufactured in an EOU without payment of duty to a unit in Domestic Tariff Area for use in the manufacture or processing of goods which are exported and thereupon such supplies shall be counted towards fulfillment of positive NFE of EOU.

**14. Goods procured on High Sea Sale basis in Indian rupee to be counted towards NFE obligation**

In terms of para 6.10.1 of HBP, all imported inputs and capital goods and value of all payments made in foreign exchange by way of commission, royalty, fees, dividends, interest on external borrowing/high seas sales are considered towards NFE obligation and are to be calculated as per formula prescribed therein.

However, imported goods purchased on high seas sales basis for which payment has been made in Indian Rupees were not included towards NFE obligation. To include such sales also for NFE purpose, suitable amendment has been made in para 6.10.1 of HBP.

**15. Setting up service unit under EOU/STP/EHTP/BTP scheme**

A provision was made under para 6.9 (f) of FTP to allow supply of services (by service units) relating to exports paid for in free foreign exchange or for such services rendered in Indian Rupees which are otherwise considered as having been paid for in free foreign exchange by RBI.
This provision was not implemented by the Department of Revenue. DOR only permits setting up an EOU for export of services out of India and for which payment is received in freely convertible foreign currency in view of Export of Services Rules, 2005 (Refer para 11 of notification No. 52/2003-Cus dated 31.03.2003).
Now, this provision under para 6.9 (f) of FTP has been deleted and the FTP has been aligned with the legal provisions governing Service Tax. A service unit under EOU/STP/EHTP/BTP scheme can be set up for the services which are produced in India for export out of India in terms of Export of Service Rules, 2005.

**16. Exemption for the goods required for production of services within the unit**

A unit under EOU/STP/EHTP/BTP scheme is allowed duty free import/procurement of goods specified in the Annexure-I to the EOU notifications. Apart from the specified goods, if these units require any other item for production of goods for export within the unit, the import or procurement of such items is allowed with the prior approval of the Board of Approval. However, there was no parallel provision to allow non-specified items required for production of services. This put service units in a disadvantageous position and increased the cost of exported services.
This issue has been considered by this Department and service units are also allowed similar benefits. Amendment to this effect has been incorporated in the EOU notifications by notifications No. 47/2008-Cus and 24/2008-C.E. both dated 11.04.2008.

**17. Duty free re-import of goods by EOU/STP/EHTP/BTP unit from exhibition**

Representations were received from the Export Promotion Council for EOUs and SEZs that the goods allowed for display in the international exhibitions under para 6.21 of FTP read with Para 6.23 of the HBP were being charged duty on their re-imports.
The issue was examined and it was found that there was no provision for goods other than gems & jewellery enabling unit to re-import goods duty free which were exported temporarily for display in exhibition. This causes hardship to exporters and they are made to pay duty which is not otherwise required to be paid.

Notification No. 52/2003-Cus dated 31.03.2003 has been suitably amended by inserting a new entry vide serial number 15A in the Annexure-I by notification No. 84/2007-Cus dated 06.07.2007 allowing duty free re-import of goods within 60 days of close of exhibition for which these goods were exported.

The procedure as mentioned under para 6.23 of HBP shall be followed while allowing export of goods for exhibition and identity of goods at the time of re-imports should be established with the goods exported through photographs. The procedure of re-warehousing should also be ensured.

**18. Limit increased for duty free procurement and export of spares/components**

Representations were received from the units that present limit of allowing duty free import/procurement of spares/components upto 1.5% of the FOB value of export of manufactured articles was inadequate. It was also represented that restriction of supply of spares/components within the warranty period of exported articles creates difficulties as supplies had to be provided for after sales services even after the warranty period.
The matter has been considered and the limit of import/procurement of spares/components has been increased upto 5% from 1.5%. Further, the condition of export within warranty period has been waived. Now, a unit can procure spares and components upto 5% of FOB value of manufactured articles exported by the unit in the preceding year for the purpose of supply of such spares/components to the same consignor or buyer to whom manufactured articles were exported. The export value of such spares and components shall not be considered for fulfillment of NFE but the CIF value of imported spares/components shall be counted towards NFE obligation.
Amendments to above effect have been made under para 6.2 (h) of FTP and in the EOU notifications by notifications No. 47/2008-Cus and 24/2008-C.E., both dated 11.04.2008.

**19. Direct supply of goods to buyer from sub-contractor abroad**

It was represented that the existing provisions of sub contracting abroad under EOU notifications require permission from the Board of Approval. This facility was available only for the processes which were not available in India. Another requirement was that the goods so processed abroad to be returned to the unit before being exported. Fulfilling these requirements was time consuming and also increased the transaction cost for exports.

The matter has been considered. In order to obviate difficulties of the units, it has been decided that the unit need not take permission from the Board of Approval for sub-contracting abroad if the processed goods are exported from the foreign location itself after job work provided the intermediate goods sent to subcontractor abroad are included in the Letter of permission by the Development Commissioner. An amendment to this effect has been made under Para 6.14 (b) (iv) of FTP.

A new para has been inserted in the EOU notifications by notifications No. 47/2008-Cus and 24/2008-C.E., both dated 11.04.2008. There is no change in the existing provision for subcontracting abroad when goods are not to be exported from sub contractor's premises abroad and permission of Board of Approval is required in such cases.

The unit wanting to avail this new procedure can apply for permission to the jurisdictional Asstt./Dy. Commissioner of Customs/Central Excise. This provision shall be applicable only for the goods partially processed or manufactured or packaged therefrom in the unit and the goods imported or procured as such cannot be sent as it would be treated as trading of the goods. The intermediate goods so removed to sub contractor abroad shall be allowed to be cleared under export documents and the value of such goods shall be assessed in terms of Section 14 of Customs Act, 1962 and the value shall be accepted on the basis of declaration of charges of job work abroad in the declaration forms, invoices and full repatriation of foreign exchange.

**20. Sale and lease back of capital goods by EOU/EHTP/BTP/STP unit scheme**

Representations were received from Trade Associations to allow sale and lease back of assets of a unit with a Non Banking Financial Company (NBFC) in the DTA. The sale and lease back transaction would involve sale of assets belonging to a unit to NBFC and then leasing the same back to the unit on operating lease basis. Further, before and after this transaction, the goods will remain under the custody of the unit under bond at all times and there will not be any physical movement of these assets from the unit's premises to that of NBFC either at the time of sale or at the time of lease back. This would improve the financial viability of a unit.

This proposal has been considered. An amendment to this effect and conditions to be followed for this scheme has been incorporated under para 6.4 (b) of the FTP.

To implement the above provision, following conditions, safeguards and procedures are required to be observed by the unit undertaking sale and lease back of assets:

i. The unit should obtain permission from the jurisdictional Dy/Asstt. Commissioner of Customs or Central Excise for entering into transaction of 'Sale and Lease Back of Assets' and submit full details of the goods to be sold and leased back and the details of NBFC;

ii. the unit should be positive NFE at the time when it enters into sale and lease back transaction with NBFC;

iii. the unit should undertake to pay duty on the goods in case of violation or contravention of any provision of the notification No. 52/2003-Cus or 22/2003-CE read with the Customs Act, 1962 or the Central Excise Act, 1944 or the Finance Act, 1994 covering Service Tax, as the case may be;

iv. the unit and NBFC should undertake jointly that the lien on the goods shall remain with the Customs/ Central Excise Department, which will have the first charge in order to enable recovery of sum due to Government under provision of Section 142 (b) of the Customs Act, 1962 read with the Customs (Attachment of Property of Defaulters for Recovery of Govt. Dues) Rules, 1995.

**21. Replacement of imported or indigenously procured goods**

Paragraph 6.17(c) of FTP provides for replacement of imported goods by foreign suppliers or by their authorized agents in India. It is pointed out that no such procedure has been prescribed by the Department of Revenue.

The issue has been examined. It is pointed out that there is no provision to supply goods duty free to the EOU/STP/EHTP/BTP unit by the authorized agents in India except from the bonded warehouse. However, the unit can procure duty paid replacement against the defective goods from the authorized

agent in India and re-export/return or destroy the defective goods. Amendment to this effect has been made under para 6.17 (c) of FTP.

**22. Time bound disposal of application for re-export of goods**

The Department of Commerce proposed for doing away with the requirement of prior permission for re-export of goods for test, repairs, calibration, replacement etc. This proposal has been examined in consultation with some of the Chief Commissioners of Customs and Central Excise. It was expressed that any changes in the practice of obtaining permission may endanger revenue through various malpractices. Keeping in view of the above, the provision of seeking prior permission for re-export has been retained but as a trade facilitation measure, it is decided to reduce the time limit prescribed under the Board's circular No. 02/2007-Cus dated 09.01.2007 from two days to one day for permission to be granted for re-export of rejected raw material/capital goods/consumables.

The time limit prescribed should be strictly observed by the field formations and its adherance need be monitored by the senior officers.

**23. Change of location of an EOU/STP/EHTP/BTP unit**

As per existing provision under para 6.34 (7) of HBP, change of location of a unit from a place mentioned in the letter of Permission to another or to include additional location can be considered only if the new location falls within the territorial jurisdiction of the original Development Commissioner/Designated officer.

In order to obviate difficulties of trade, the cases of change of location and/ or additional location of EOU/STP/EHTP/BTP unit outside the territorial jurisdiction of the original Development Commissioner/Designated officer shall be considered by the Board of Approval. A new provision to this effect has been inserted under para 6.34 A of HBP.

**24. Parameter for 'unblemished track record' to be observed for EOU/STP/EHTP/BTP unit**

Many facilities like waiver of Bank guarantee, permission for self bonding, issue of pre-authenticated procurement certificate/CT-3, etc. have been extended to units who have unblemished track record. It has been brought to the notice of the Board that different parameters have been adopted by the field formations in determining whether a unit has an unblemished track record.

In order to adopt a uniform practice in this regard, following parameters are being laid down to determine whether a unit has an unblemished track record.

The unit should have:

(i) achieved NFE/ export obligation wherever applicable;

(ii) not been issued a show cause notice or a demand confirmed, during the preceding 3 years, on grounds other than procedural violations, invoking penal provision and/or on account of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of the Customs Act,1962, the Central Excise Act, 1944, the Finance Act, 1994 covering Service Tax, the Foreign Trade (Development & Regulation) Act, 1992, the Foreign Exchange Management Act,1999 or any allied Acts or the rules made thereunder.

The above parameters have also been incorporated under para 6.12(f) (iii) of the FTP.

## GEMS & JEWELLERY EXPORT PROMOTION SCHEME

**25. Replenishment Authorization for import of Consumables**.

Duty free import of specified consumables upto 1% of FOB value of plain or studded jewellery made of gold and platinum and of cut and polished diamonds and upto 2% of FOB value of jewellery made of silver has been allowed against the replenishment authorization issued based on these goods exported during the preceding financial year under the notification No. 41/99-Cus dated 28.04.1999.

A new category of rhodium finished silver jewellery has been created to allow duty free import of specified consumables upto 3% of FOB value of rhodium finish jewellery made of silver exported during the

preceding financial year. Accordingly, notification No. 41/1999-Cus dated 28.04.1999 has been amended by notification No. 76/2007-Cus dated 06.06.2007 for this purpose. The exporter would be required to distinguish between export of silver jewellery and rhodium-finish silver jewellery to get additional 1% entitlement for replenishment authorization as compared to export of only silver jewellery.

**26. Re-import of plain/studded precious metal jewellery**

Re-import of rejected jewellery is allowed upto 2% of the FOB value of the exports in the preceding licensing year under the Board' circular No.07/2006-Cus dated 13.01.1996. These re-imports are allowed under notification No. 94/96-Cus dated 16.12.2006 subject to reversal of benefits availed of while exporting these goods. However, a new provision was inserted under Para 4A.32.1 of HBP to allow re-import of plain/studded precious metal jewellery against a bond for re-export. This provision for allowing re-import under bond was not implemented by DOR on account of risk to revenue.

This matter has been taken up with the Department of Commerce. As a result, this provision under para 4A.32.1 of HBP has been deleted.

It has been brought to the notice of the Board that there is a difficulty in arriving at the export turnover in the preceding year for the purpose of allowing 2% rejected jewellery. In order to resolve this difficulty, it is decided to accept Chartered Accountant's certificate for export performance of preceding year.

Amendment to this effect has also been made in para 4A.32 of HBP.

**27. Monitoring the foreign exchange realization/remittance in respect of export made out of the duty free gold/silver/platinum**

Exporters of gold/ silver /platinum jewellery and articles thereof were submitting proof of exports by furnishing EP copy of shipping bill, Customs attested invoice and Bank certificate of export as in Appendix 22A showing that documents have been sent for negotiation/collection in terms of para 4A.8 of HBP. This caused difficulties in monitoring the export realization for the exports. Accordingly, an amendment has been made under para 4A.8 of HBP for furnishing Bank certificate of realization in Appendix 22A instead of Bank certificate of export showing that documents have been sent for negotiation/collection.

The scheme for import of gold, silver and platinum by the Nominated Agencies under various gold, silver and platinum jewellery export promotion scheme is governed under the Board's circular No. 24/98-Cus dated 20.04.2008. In order to ensure realization for export proceeds of jewellery or articles thereof made out of duty free gold, silver and platinum, the exporter shall furnish the EP copy of the shipping bill and Bank certificate of realization in Appendix 22A to the nominated agencies as a proof of having exported the jewellery made from the duty free goods released to them within a period prescribed in the FTP.

The para (xii) of circular No. 24/98-Cus dated 20.04.2008 stands modified to the above extent.

**28. Time Period for re-import of unsold stock of branded jewellery**

Export of branded jewellery is permitted with the approval of Gem & Jewellery Export Promotion Council for display/sale in the permitted shops set up abroad or in the showroom of their distributors/agents. The items not sold abroad within 180 days were required to be re-imported within 45 days.

Keeping in view the period of one year for re-import under notification 94/96-Cus dated 16.12.1996, the total period for re-import of unsold stock of branded jeweler has been increased from 180 days to 365 days under para 4A.18 (a) (iii) of HBP.

**29. Export on consignment basis**

Export and re-import of diamonds and jewellery has been allowed on consignment basis under para 4A.23 of FTP. For implementation of this provision, this office has issued Departmental's instructions under letter No. DGEP/G&J/428/2007 dated 02.07.2007 to all Chief Commissioner of Customs and Central Excise. It is decided to extend similar facility for export and re-import of gemstones too.

Thus, the procedure prescribed in order to allow export and re-import of diamonds and jewellery may also be extended for gemstones in view of amendment made in para 4A.23 of FTP and para 4A.35 of HBP.

**30. Export and re-import of cut and polished diamonds for certification and grading**

Export and re-import of cut and polished diamonds for certification and grading was governed under the notification No. 55/2001-Cus dated 16.05.2001. Now, the rough or non-industrial diamonds do not attract any duty. In view of this, the control on export and re-import for certification and grading of cut and polished diamonds under this notification has been dispensed with by rescinding notification No.

55/2001-Cus dated 16.05.2001 through notification No. 59/2008-Customs dated 05.05.2008. The provisions governing this scheme under para 4A.2 and 4A.2.1 of FTP have also been deleted.

**31. Export by Post**

In view of increase in gold prices, the value limit for exports of jewellery parcels through Foreign Post Office (including via Speed Post) has been increased to $ 75,000 from $ 50,000 but without any change in the weight of 20 Kgs. by amending para 4A.17 of FTP.

2. Wide publicity may please be given to these instructions by way of issuance of Trade/ Public Notice. Difficulties, if any, in implementation of these instructions, may be brought to the notice of the Directorate General of Export Promotion, New Delhi.

3. This issues with the approval of CBEC.

4. Receipt of this circular may kindly be acknowledged.

Yours faithfully
(Y.S. Shahrawat)
Addl. Director General