

F. No. 268/01/2016-CX.8
Government of India
Ministry of Finance
Department of Revenue)
(Central Board of Excise & Customs)

New Delhi, the 16th September, 2016

To

The Chief Commissioners of Customs Central Excise & Service Tax (All);
The Chief Commissioners of Customs (All);
The Director Generals/Directors of Customs, Central Excise & Service Tax (All);
Webmaster, CBEC.

Subject: Supply of goods manufactured by EOUs without payment of Central Excise Duty against Advance Licence/Authorisation- reg.

Madam/Sir,

Representations have been received from trade and field formations regarding applicability of second proviso to para 6 of notification no. 22/2003-CE dated 31.03.2003 as amended, when goods manufactured by EOU are supplied to Advance Licence /Authorisation holder in DTA. The said proviso seeks to deny the exemption from central excise duty on inputs, in cases where goods cleared into DTA are either non-excisable or in case of imports attract NIL rate of Customs duty and additional Customs duty. Identical proviso exists under para 3 of notification 52/3003-Cus dated 31.03.2003 as amended to deny exemption from customs duties on similar grounds. The said proviso reads as under,

“ Provided further that where such articles (including rejects, waste, scrap and remnants), are either non excisable or such articles (including rejects, waste, scrap and remnants), if imported, are leviable to nil rate of duty of customs specified under First Schedule to the Customs Tariff Act, 1975 and nil additional duty leviable under section 3 of the said Customs Tariff Act, read with exemption notification in this regard, if any, no exemption in respect of inputs utilized for the purpose of processing, manufacture, production or packaging of such articles (including rejects, waste, scrap and remnants) shall be available under this notification ”

2. The issue was discussed in the last Central Excise Tariff Conference wherein it was decided that the same is required to be clarified by the Board.

3. The issue has been examined. It is seen that s.no. 22 of notification no. 23/2003-CE dated 31.03.2003 as amended, issued in respect of goods manufactured by EOUs and cleared in DTA, specifically exempts Central Excise duty when such manufactured goods are supplied to an Advance Licence/Authorisation Holder. In fact, clearance from EOU or DTA unit to Advance Licence/Authorisation holder has been allowed without payment of Central Excise duty, as both the cases are of “Import substitution.” In case of supply of goods to Advance Licence/Authorisation holder, the export obligation is cast upon person holding Advance Licence/Authorisation and in case of default in export obligation recovery from the person holding Advance Licence/Authorisation is provided for in law.

4. Further, if the EOUs are made liable to pay back the amount availed as exemption on the inputs in case of supplies to Advance Licence/ Authorisation Holder, with reference to the said proviso under notification no. 22/2003-CE dated 31.03.2003, then the EOUs would be placed in a disadvantageous position when compared to a DTA unit which supply manufactured goods to Advance Licence Holder without payment of Central Excise duty in terms of notification no 44/2001-CE(N.T.) dated 26.06.2001 and without reversal of the CENVAT credit availed on inputs. This position has been clarified by Board vide circular no. 785/18/2004-CX dated 17.05.2004.

5. Accordingly, it is clarified that the second proviso to para 6 of the notification no. 22/2003-CE dated 31.03.2003 and the proviso to para 3 of notification no. 52/2003-Cus dated 31.03.2003 (refer para 1 of the circular) would not be applicable, in case of supply of manufactured goods by EOU to Advance Licence/Authorisation holder in DTA, without payment of Central Excise duty.

6. Hindi version of the circular would follow. Difficulty, if any, in implementation of the circular may be brought to the notice of the Board.


16.9.16

(Rohan)

Under Secretary to the Govt. of India