

GENERAL EXEMPTION NO. 39

Concessional duty of 5% on Capital goods, components and spares imported under the EPCG Scheme - EXIM Policy 2002-07 - duty saved criteria

[Notfn. No. 55/03-Cus. dt. 1.4.2003 as amended by Notfn. Nos. 84/03, 97/03, 134/03, 140/03, 29/04, 63/04, 46/05, 77/05, 97/05, 41/06, 63/07, 116/07, 65/08, 125/08, 19/09, 46/13, 26/17].

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 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 five percent ad- valorem** and from the **whole of the additional duty and special additional duty** leviable thereon respectively under sub-sections (1), (3) and (5) of section 3 and 3A of the said Customs Tariff Act.

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

(1) that the goods imported are covered by a **valid licence** issued under the **Export Promotion Capital Goods (EPCG) Scheme** in terms of Chapter 5 of the Export and Import Policy permitting import of goods at the rate of five percent duty and the said licence 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 licence shall be deemed to be the period permitted for fulfilment of the export obligation in full;

(2) that the importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs binding himself to fulfil **export obligation on FOB basis equivalent to eight times the duty saved** on the goods imported as may be specified on the licence, or for such higher sum as may be fixed by the Licensing Authority, within a **period of eight years** from the date of issue of licence, in the following proportions, namely:-

S.No.	Period from the date of issue of licence	Proportion of total export obligation
1	2	3
1.	Block of 1st and 2nd year	Nil
2.	Block of 3rd and 4th year	15%
3.	Block of 5th and 6th year	35%
4.	Block of 7th and 8th year	50%

Provided that where the **duty saved is not less than Rs.100 crores**, or where the licence is issued to units in the **agri export zone** as may be notified by the licensing authority, the export obligation shall be fulfilled with in a period of **twelve years** from the date of issue of licence in the following proportions, namely:-

S.No.	Period from the date of licence	Proportion of total export obligation
1	2	3
1.	Block of 1st, 2nd, 3rd, 4th and 5th year	Nil
2.	Block of 6th, 7th and 8th year	15%
3.	Block of 9th and 10th year	35%
4.	Block of 11th and 12th year	50%

Provided further that where a sick unit is notified by the Board for Industrial and Financial Reconstruction 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 in terms of Paragraphs 5.5.1 of the Export and Import Policy.

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

(3) that the importer produces within 30 days from the expiry of each block from the date of issue of licence 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 of an equal amount equal to that portion of duties leviable on the goods but for the exemption contained herein which bears the same proportion as 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;

(4) that the capital goods imported, assembled or manufactured are installed in the importer's factory or premises and a certificate from the Assistant Commissioner of Customs or Deputy Commissioner of Customs having jurisdiction over the importer's factory or premises, as the case may be, is produced confirming installation and use of the capital goods in the importer's factory or premises, within six months from the date of completion of imports or within such extended period as the said Assistant Commissioner of Customs or Deputy Commissioner of Customs referred to in condition (2) above may allow:

Provided that in the case of ,-

- (i) manufacturer exporter and merchant exporter having supporting manufacturer (s) or vendor(s);
- (ii) import of irrigation equipment for use in contract farming for export of agricultural products; and
- (iii) importer rendering services;

the capital goods may be installed at the factory or premises of such other person whose name and address are endorsed on the licence referred to in condition (1) and where the bond for full difference of duty, if necessary, in terms of condition (2), with a **bank guarantee** is executed by the importer and such other person binding themselves jointly and severally to fulfil the export obligation and all other conditions of this notification and to pay duty with interest at the rate of 15% per annum in case of default;

(5) that the imports and exports are undertaken through sea ports at Mumbai, Kolkata, Cochin, Magdalla, Kakinada, Kandla, Mangalore, Mormagoa, Madras, Nhava Sheva, Paradeep, Pipavav, Sikka, Tuticorin, Visakhapatnam, Dahej, Mundhra, Nagapattinam, Okha, Bedi (including Rozi-Jamnagar), Muldwarka, Porbander, Dharamtar, Vadimar and Haldia (Halida Dock Complex of Kolkata Port) and Krishnapatnam or through any of the airports at Ahmedabad, Bangalore, Bhubaneswar, Mumbai, Kolkata, Coimbatore, Delhi, Hyderabad, Jaipur, Madras, Srinagar, Trivandrum, Varanasi, Nagpur, Cochin, Rajasansi (Amritsar), Lucknow (Amausi), Indore and Dabolim (Goa) or through any of the Inland Container Depots at Agra, Bangalore, Coimbatore, Delhi, Faridabad, Gauhati, Guntur, Hyderabad, Jaipur, Jalandhar, Kanpur, Ludhiana, Moradabad, Nagpur, Pimpri (Pune), Pitampur (Indore), Surat, Tirupur, Varanasi, Nasik, Rudrapur (Nainital), Dighi (Pune), Vadodara, Dauladtabad, (Wanjarwadi and Maliwada), Waluj (Aurangabad), Anaparthi (Andhra Pradesh), Salem, Malanpur, Singanalur, Jodhpur, Kota, Udaipur, Ahmedabad, Bhiwadi, Madurai, Bhilwara, Pondicherry, Garhi Harsaru, Bhatinda, Dappar (Dera Bassi), Chheharata (Amritsar), Karur, Miraj, Rewari, Bhusawal, Jamshedpur, Surajpur, Dadri, Tuticorin, Kundli, Bhadohi, Raipur, Mandideep (District Raisen), Durgapur (Export Promotion Industrial Park), Babarpur and Loni (District Gaziabad) or through the Land Customs Station at Ranaghat, Singhabad, Raxaul, Jogbani, Nautanva (Sonauli), Petrapole, Mahadipur, Nepalganj Road, Dawki, Agartala, Sutarkhandi, Amritsar Rail Cargo, Attari Road, Hilli, Ghojadanga and Changrabandha or Special Economic Zone as specified in the notification issued under section 76A of the Customs Act, 1962 (52 of 1962).

(6) notwithstanding anything contained in condition (3) above, where the Licensing Authority grants extension of block – wise period for any block(s) or overall period of fulfillment 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/ condoned by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be:

Provided that in respect of sick units as specified in the second proviso to condition (2) above, extension of overall period of export obligation shall not be allowed.

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 3 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 goods which were imported.

4. where the total exports of a sector or product group during the year 2007-08 has declined by more than 5% as compared to the year 2006-07, the average export obligation of the licensee for 2007-08 may be reduced proportionate to the reduction in exports of that particular sector /product group during 2007-08 as against 2006-07.

5. In a case of default in export obligation, when the duty on goods is paid to regularise the default, the amount of interest paid by the importer shall not exceed the amount of duty if such regularisation has been dealt in terms of Public Notice of the Government of India in the Ministry of Commerce No. 22 (RE-2013)/ 2009-2014 dated the 12th August, 2013.

TABLE

S.NO.	Description of goods
1	2
1.	Capital goods for pre production, production and post production including second hand capital goods upto 10 years old.
2.	Capital goods in SKD/CKD conditions to be assembled into capital goods by the importer.
3.	Components of capital goods required for assembly or manufacture of capital goods by the importer.
4.	Spare parts of goods specified at Serial Nos.1,2,and 3 as actually imported and required for maintenance of capital goods so imported, assembled, or manufactured.
5	Spares for the existing plant and machinery of the licence holder.

Explanation - In this notification,-

- (1) "Capital Goods" has the same meaning as assigned to it in Paragraph 9.10 of the Export and Import Policy;
- (2) "Export and Import Policy" means the Export and Import Policy 2002-2007 published vide notification of the Government of India in the Ministry of Commerce and Industry, No.1/2003 dated the 31st March, 2003 as amended from time to time;
- (3) "Licensing 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 authorised by him to grant a licence under the said Act;
- (4) "export obligation", -
 - (i) in relation to importers other than those rendering services, means exports, to a place outside India, of products manufactured with the use of capital goods imported, assembled or manufactured in terms of this notification:

Provided that export obligation may also be fulfilled by ,-

- (a) export of same products capable or being manufactured with the use of said capital goods; or
- (b) export of same products manufactured in different units of the licence holder; or
- (c) through third party exports made by an exporter or manufacturer on behalf of the licence holder by exporting the same product and in such cases, inter-alia the Shipping bills shall indicate name of both the third party and the licence holder; or
- (d) making supplies of same product in terms of sub- paragraphs (a) (b) (d) (e) (f) (g) (h) (i) and (j) of paragraph 8.2 of the Export and Import Policy; or
- (e) export of other goods manufactured by the importer;
- (ii) in relation to importers rendering services, means, receiving payments in freely convertible foreign currency for services rendered through the use of capital goods.

Provided that in respect of units holding license both as manufacturer exporter and service provider, the export obligation may be fulfilled either by export of products specified in clause (i) or by receiving payments in freely convertible foreign currency for services rendered through the use of such capital goods.

Provided further that in respect of group companies as defined in the Companies Act, 1956 (1 of

1956), where licence has been issued to any one of the group company, the export obligation may also be fulfilled by export of any goods/services by any other company(s) belonging to the said group:

Provided also that in respect of service providers in the Port Handling sector, the export obligation may be fulfilled by earning service charges in Indian rupees which are otherwise considered as free foreign exchange by the Reserve Bank of India.

(iii) shall be, over and above, the average level of exports achieved by the licensee in the preceding three licencing years for same and similar products.