

## GENERAL EXEMPTION NO. 40

**Concessional duty of 5% on Capital goods, components and spares imported under the (EPCG) Scheme EXIM Policy 2002-2007.**

[Notfn. No. 44/02-Cus. dt. 19.4.2002 as amended by Notfn. No. 113/02, 116/02, 44/03, 29/04, 65/04, 65/08, 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 section 3A of the said Customs Tariff Act.

2. The exemption contained in above paragraph, shall be subject to the following conditions namely:-

(1) 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 the customs at the time of clearance;

Provided that for the import of spare parts, the validity period of the licence shall be deemed to be the period permitted for fulfilment of the export obligation in full;

(2) The importer executes a bond in such form and for such sum and with such surety or security as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs binding himself to fulfil **export obligation equivalent to five times the CIF value** of the goods imported on FOB basis, as specified in the licence, or for such higher amount as may be fixed by the Licensing Authority or for such amount as may be fixed by the Licensing Authority in terms of clause (i) of Paragraph 5.4 of the Export and Import Policy, 2002-2007, 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 CIF value of licence is **not less than Rs.100 crores**, or where the license is issued to Units in the **agri export zones** as may be notified by the Director General of Foreign Trade in the Ministry of Commerce and Industry, the export obligation shall be fulfilled within a period of **12 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 , 2nd, 3rd, 4th & 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 notified by the Board for Industrial and Financial Reconstruction (BIFR) is subsequently taken over by another unit for revival, the export obligation may be fulfilled within a period of 12 years from the date of issue of license:

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

(3) the importer produces within 30days from the expiry of each block from the date of issue of licence or within such extended period as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may allow, evidence to the satisfaction of the Assistant Commissioner of Customs or Deputy 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) the capital goods imported, assembled or manufactured are installed in the importer's factory or premise and a certificate from the Assistant Commissioner of Customs or Deputy Commissioner of Customs having jurisdiction over the importer's factory or premise or any independent Chartered Engineer, as the case may be, is produced confirming installation and use of the capital goods in the importer's factory or premise, 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 (i) and where the bond for full difference of duty, if necessary, in terms of conditions (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 in case of default;

(5) notwithstanding anything contained in condition (3) where the Licensing Authority grants an extension of block – wise period for any block(s) or overall period of fulfilment 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 may be extended and the said shortfall in export obligation be condoned by the Assistant Commissioner of Customs or Deputy Commissioner of Customs:

Provided that in respect of licence holder units affected by the earthquake in the State of Gujarat in the month of January 2001, the Licensing Authority may grant extension in the overall period of export obligation up to one more year:

Provided further that in case of a license holder unit referred to in the first proviso, having overall export obligation period of 13 years and in case of other licence having export obligation period of 12 years, extension of overall period of export obligation shall not be allowed.

3. where the goods 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 Assistant Commissioner of Customs or Deputy 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.

**TABLE**

| <b>S.NO.</b> | <b>Description of goods</b>   |
|--------------|---|
| <b>1</b>     | <b>2</b>  |
| 1.           | Capital goods.  |
| 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 not exceeding twenty percent of the value 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. 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.

Explanation - In this notification,-

- (1) “Capital Goods” means any plant, machinery, equipment and accessories required for-
- (a) manufacture or production of other goods, including packaging machinery and equipments, refractories, refrigeration equipment, power generating sets, machine tools, catalysts for initial charge, and equipment and instruments for testing, research and development, quality and pollution control;
  - (b) use in manufacturing, mining, agriculture, marine, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, viticulture and sericulture;
  - (c) rendering services;
- (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, No.1/2002-2007 dated the 31<sup>st</sup> March, 2002;
- (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 of being manufactured with the use of said capital goods; or
    - (b) export of same product 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- paras (a) (b) (d) (e) (f) (g) (h) (i) and (j) of paragraph 8.2 of the Export and Import Policy;
  - (ii) in relation to importers rendering services; means, receiving payments in freely convertible foreign currency for services rendered through the use of such capital goods.
  - (iii) means, export of goods in terms of the notification of the Government of India in the Ministry of Commerce and Industry (Department of Commerce) No.28(RE-2003)/2002-2007 dt. 28th January. 2004.
  - (iv) 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.