

L. EPCG SCHEME:**GENERAL EXEMPTION NO. 38**

Exemption to Capital goods, their components and Spares when imported against on EPCG Licence. [Notfn. No. 97/04-Cus. dt. 17.9.2004 as amended by 27/05, 46/05, 77/05, 97/05, 43/06, 63/07, 72/07, 116/07, 65/08, 125/08,19/09, 123/09, 93/10, 37/12, 40/12, 50/12, 4/13, 20/13, 46/13, 5/15, 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,-

(i) 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 per cent ad- valorem , and

(ii) the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3 of the said Customs Tariff Act, when specifically claimed by the importer.

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 or a valid authorisation issued under the Export Promotion Capital Goods Scheme in terms of Chapter 5 of the Foreign Trade 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 S.No.4 of the said Table, the validity period of the licence or authorisation shall be deemed to be the period permitted for fulfillment 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 authorisation, or for such higher sum as may be fixed by the Licensing Authority or Regional Authority, within a period of eight years from the date of issue of licence or authorisation, 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 1 st to 6 th year	50%
2.	Block of 7 th to 8 th year	50%

Provided that where the duty saved is not less than Rs.100 crores, or where the licence or authorisation is issued to units in the agri export zone as may be notified by the licensing authority or Regional Authority, the export obligation shall be fulfilled within 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 1 st to 10 th year	50%
2.	Block of 11 th and 12 th 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 Paragraph 5.5.1 of the Foreign Trade Policy:

Provided also that where the capital goods are imported by agro units and units in tiny and cottage sector, the export obligation shall be fixed equivalent to 6 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 12 years from the date of issue of the licence.

Provided also that where the capital goods are imported for technological upgradation, or by small scale industry units as defined in paragraph 5.1 of the Foreign Trade Policy, as the case may be, the export obligation shall be fixed equivalent to six 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;

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

(3) that if the importer does not claim exemption from the additional duty leviable under sub-sections (1), (3) and (5) of section 3 of the Customs Tariff Act, 1975, the additional duty so paid by him shall not be taken for computation of the net duty saved for the purpose of fixation of export obligation provided the Cenvat credit of additional duty paid has not been taken;

(4) that the importer produces within 30 days from the expiry of each block from the date of issue of licence or authorisation 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 cent per annum from the date of clearance of the goods;

(4A) where the importer fulfils 75% or more of the export obligation as specified in condition (2) within half of the period specified for export obligation as mentioned in condition (2), his balance export obligation shall be condoned and he shall be treated to have fulfilled the entire export obligation.

(5) 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 at the port of registration may allow :

Provided that if the importer is not registered with central excise or if he is a service provider, as the case may be, he may produce said certificate of installation and usage issued by an independent chartered engineer:

Provided further 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 or without a bank guarantee, as the case may be, 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 cent per annum in case of default;

Provided also that agro units located in Agri Export Zones or service providers in Agri export Zones may move the capital goods within the Agri Export Zones under intimation to the jurisdictional Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, subject to the condition that the importer shall maintain accurate record of such movement.

(6) that the imports and exports undertaken through seaports at Mumbai, Kolkata , Cochin, Magdalla, Kakinada , Kandla Mangalore, Mormogoa, Chennai, 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), Krishnapatnam and Ennore (Tamil Nadu), Karaikal (Union territory of Puducherry) and Kattupalli (Tamil Nadu) or through any of the airports at Ahmedabad , Bangalore, Bhubaneswar, Mumbai, Kolkata, Coimbatore, Delhi, Hyderabad, Jaipur, Chennai, Srinagar, Trivandrum , Varanasi , Nagpur, Cochin, Rajasansi (Amritsar), Lucknow (Amausi), Indore and Dabolim (Goa), Visakhapatnam and Calicut 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, Daulatabad (Wanjarwadi and Maliwada), Waluj (Aurangabad), Talegoan(District Pune), Dhannad Rau (District Indore),Kheda (Pithampur, District Dhar), Patli (Gurgaon), Irugur Village (Tamil Nadu), Thudiyalur (Tamil Nadu), Chettipalayam (Tamil Nadu) and Veerapandi (Tamil Nadu) Mrippalem Village in Taluk of Edlapadu, District Guntur and Tondiarpet (TNPM), Chennai and Irungattukottai, SIPCOT IndustrialPark, Kattrambakkam Village, Sriperumbudur Taluk, Kanchipuram District, Tamil Nadu, 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, Loni (District Gaziabad) and Melapakkam Village (Arakkonam Taluk, Vellore District) 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, Ghoadanga and Changrabandha or Special Economic Zone as specified in the notification issued under section 76A of the Customs Act, 1962 (52 of 1962).

Provided that the Commissioner of Customs may by special order or a public notice and subject to such conditions as may be specified by him, permit import and export through any other sea-port, airport inland container depot or through a land customs station.

(7) notwithstanding anything contained in condition (4), where the Licensing Authority or Regional Authority grants 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 per cent of such export obligation, the said block-wise period or overall period of export obligation shall be extended or condoned by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be :

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

Provided further that the Regional Authority may grant further extension in the overall period of export obligation upto a period of further two years if the authorisation holder pays fifty per cent differential duty on the unfulfilled portion of the export obligation and agrees to fulfill other conditions as may be specified by the Regional Authority for this purpose.

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 case may be, as the goods which were imported.

TABLE

S.No.	Description of goods
1	2
1.	Capital goods for pre-production, production and post production including second hand capital goods.
2.	Capital goods in SKD/CKD conditions to be assembled into capital goods by the importer.
3.	Omitted
4.	Spare parts of goods specified at Serial Nos.1 and 2 as actually imported and required for maintenance of capital goods so imported, assembled, or manufactured.
5.	Spare parts for the existing plant and machinery of the licence holder.
4.	Waiver of Export Obligation may be considered where, because of force majeure or other unforeseen circumstances/reasons, exporter is unable to fulfill export obligation. Such requests shall be considered by a Committee comprising representative(s) of Department of Commerce and Department of

Revenue under Directorate General of Foreign Trade. Decision of this Committee shall be notified by Department of Revenue for implementation.

5. 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”;
6. 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 – For the purposes of this notification,-

- (1) “Capital goods” has the same meaning as assigned to it in Paragraph of 9.12 of the Foreign Trade Policy;
- (2) “Foreign Trade Policy” means the Foreign Trade Policy 2004-2009 published vide notification of the Government of India in the Ministry of Commerce and Industry, No. 1/2004 dated the 31st August, 2004 as amended from time to time;
- (3) “Licensing Authority or Regional 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 authorized by him to grant a licence or authorisation 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 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 manufactured product in terms of paragraph 5.4 of the Foreign Trade 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 licence or authorisation both as manufacturer exporter and service provider, the export obligation may be fulfilled either by export of products specified in sub-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 Company as defined in paragraph 9.28 of the Foreign Trade policy where licence has been issued to any one of such Group Company, the export obligation may also be fulfilled by export of manufactured goods by any other company(s) belonging to such Group Company:

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:

Provided also that in respect for hotels the export obligation may also be fulfilled by Managed Hotels as defined in paragraph 9.36 of the Foreign Trade Policy.

(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