

EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

Ministry of Commerce & Industry, Government of India

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AnandGiri

Deputy Director

EPCES CIRCULAR NO. 222 DATED 10-2-2016

Subject : Closure of Advance Authorization licenses as per para 4.16(a) of [FTP 2009-14](#), pending for want of payment to be received from Foreign Currency Account of SEZ unit – Clarification from DGFT and Department of Commerce

EPCES has received a number of representations from various member EOUs and SEZs regarding difficulties being faced by them for closing the Advance Authorization issued under [FTP 2009-14](#) by the JDGFT offices.

Accordingly, EPCES had taken up this issue with the Ministry of Commerce & Industry and DGFT at different for a from time to time. EPCES submitted that para 4.1.6 of [FTP 2009-14](#) had not stipulated that DTA supplying goods under Advance Authorization to an SEZ unit has to realize payment from FCA of SEZ unit. Rather this para states that such supplies would be covered irrespective of currency of realization. Rule 30(8) of SEZ Rules 2006 refers to reimbursement of duty in lieu of drawback or DEPB credit against supply of goods by DTA supplier to SEZ developers. This rule does not refer to the supplies by DTA units supplying goods against Advance Authorizations or DFIA. The matter was also discussed in person with senior officials of Department of Commerce and DGFT on various occasions.

In view of the representations of EPCES the matter was again deliberated at length at Senior Officers Meeting in DGFT and Department of Commerce.

Accordingly, it has been decided to allow closure/redemption/EODC where the Advance Authorization holder or DFIA holder has made supplies to SEZ units and realized the proceeds in Indian Rupees as per the extant provisions laid in Para 4.1.6(a) of [FTP 2009-14](#). This is due to the reason that the Advance Authorization holders have not violated condition of [FTP 2009-14](#) by realizing the proceeds in Indian Rupees. Moreover, Rule 30(8) of SEZ Rules also did not mention that it is mandatory for SEZ unit to make payment to Advance Authorization holder from Foreign Currency Account (FCA).

DGFT has today issued Trade Notice No. 16/2016 dated 10.02.2016, clarifying that “closure/redemption /EODC may be allowed where the Advance Authorization holder or DFIA holder has made supplies to SEZ units and realized the proceeds in Indian Rupees as per the extant provisions laid in para 4.1.6(a) of [FTP 2009-14](#) by realizing the proceeds in Indian Rupees.

A copy of DGFT Trade Notice No.16 dated 10.2.2016 is attached along with for information and records of the members.

Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade
UdyogBhavan, New Delhi

Dated the 10th February, 2016

Trade Notice No. 16/2016

To,

All RAs of DGFT
Members of Trade

Subject : Closure of Advance Authorization licences as per para 4.1.6(a) of [FTP 2009-14](#), pending for want of payment to be received from Foreign Currency Account of SEZ Unit.

A number of representations have been received in this Directorate from Trade, Industry and Export Promotion Council for EOU & SEZ on the pending requests for allowing closure/redemption/EODC in cases where the Advance Authorisation holder had made supplies to SEZ units and realized the proceeds in Indian Rupees as per the extant provisions laid down in Para 4.1.6(a) of [FTP 2009-14](#).

2 The matter has been examined and it is clarified that Para 4.1.6(a) of [FTP 2009-14](#) had not stipulated that DTA supplying goods under Advance Authorisation to an SEZ unit has to realize payment from Foreign Currency Account of SEZ unit. Moreover, Rule 30(8) of SEZ Rules 2006 also do not mention that it is mandatory for SEZ unit to make payment to Advance Authorisation holder from Foreign Currency Account (FCA). The above condition was made application for Advance Authorisation in the FTP (2015-2020), as per para 4.21(iii) w.e.f. 1st April, 2015 only.

3 In the interest of trade facilitation it has been decided, in consultation with SEZ Division of Department of Commerce, that closure/redemption/EODC may be allowed where the Advance Authorization holder or DFIA holder has made supplies to SEZ units and realized the proceeds in Indian Rupees as per the extant provisions laid in para 4.1.6(a) of [FTP 2009-14](#) by realizing the proceeds in Indian Rupees. All the Regional Authorities may take necessary action as per clarification.

4 It is further clarified that in the new [FTP 2015-20](#), it has been stipulated in para 4.21(iii) that "Export to SEZ Unit shall be taken into account for discharge of export obligation provided payment is realized from Foreign Currency Account of the SEZ unit". Hence conditions of para 4.21(iii) of FTP will have to be complied in respect of the Advance Authorisation issued during [FTP 2015-20](#).

5 This issues with the approval of DGFT.

Sd/-
(S. Latha)
Deputy Director General of Foreign Trade

No. D.6/9/2015-SEZ
GOVERNMENT OF INDIA
Ministry of Commerce & Industry
Department of Commerce
(SEZ Division)

UdyogBhawan, New Delhi
Dated the 4th February, 2016

To

All Zonal Development Commissioners
Special Economic Zones

Subject : Closure of Advance Authorization licenses as per para 4.16(a) of [FTP 2009-14](#), pending for want of payment to be received from Foreign Currency Account of SEZ unit.

Madam/Sir,

I am directed to forward herewith a copy each of Directorate General of Foreign Trade O.M. No. 01/94/180/12/AM16/PC4/641 dated 18.12.2015 and this Department's OM of even number dated 28.1.2016 on the above subject for information and further necessary action.

Yours faithfully,

Sd/-

(G. Srinivasan)

Under Secretary to the Government of India

Tel No. 23062496

e-mail : srinivasan.g@nic.in

Encl : as above

Copy for information to :-

ShriDarshan Singh
Addl. DGFT, UdyogBhawan
New Delhi.

File No. 01/94/180/12/AM16/PC4/641
Government of India
Ministry of Commerce & Industry
Directorate General of Foreign Trade
Policy Section – 4
UdyogBhawan, New Delhi

18th December, 2015

Office Memorandum

Subject : Closure of Advance Authorization licenses as per para 4.16(a) of [FTP 2009-14](#), pending for want of payment to be received from Foreign Currency Account of SEZ unit.

This has reference to the circular dated 5.08.2015 by SEZ Section of DoC addressed to all Development Commissioners SEZ on the subject above after an OM of even number dated 15.07.2015 was sent by this Directorate to SEZ Section. [Copies enclosed as Annexure 1 and 2].

It may be recalled that the OM dated 15.07.2015 from DGFT had conveyed decision taken in SOM held in this Directorate, which was also attended by JS (GPM), SEZ Division of Department of Commerce. The decision was to the effect that the SEZ units are required to make payments from their Foreign Currency Account (FCA) when they procure goods from an Advance Authorization holder due to Rule 30(8) of SEZ Rules.

Hence it was conveyed that all Development Commissioners may be directed to advise concerned SEZ units to make payments from their FCA to the suppliers in respect of such cases failing which SEZ units will be liable to action under FT(DR) Act 1992.

2 After sending OM to SEZ Division of DoC, this Directorate informed the decision to various Advance Authorisation holders (whose cases were pending for redemption/Export Obligation Discharge Certificate) advising them to approach the SEZ units to make payment from FCA of the unit failing which action would be taken against the Advance Authorization Holder due to realization of payments in Indian Rupees instead of FCA of the SEZ unit. While doing so, copies of OM dated 15.07.2015 as well as Circular dated 5.08.2015 were sent to the exporters.

3 After receiving communication as mentioned in para 2 above, various Advance Authorization holders as well as Export Promotion Council for EOU and SEZ have sent representations once again (some of which have been routed through the PMO also) wherein they have represented that:

- (a) In the earlier [FTP 2009-14](#) in the provisions of para 4.1.6 of [FTP 2009-14](#) it was stated "...Exports to SEZ units/supplies to Developers/Co-developers, irrespective of currency of realization, would also be covered".
- (b) As per Rule 30(8) of SEZ Rules, the SEZ units are required to make the payments from their Foreign Currency Account (FCA) against the supply of goods under Drawback or Duty Entitlement Passbook Scheme. Such condition was not there in case of supply under Advance Authorization.
- (c) In line with the SEZ Rules, the earlier Foreign Trade Policy, 2009-14 stipulated that for claiming Duty Drawback and DEPB, the payment should have been made from the Foreign Currency Account of the SEZ units. This restriction was not there in case of Advance Authorization Scheme.
- (d) The condition of making payments in Indian Rupees from the Foreign Currency Account of the SEZ unit has been made applicable for Advance Authorization in the new FTP (2015-20), as per Para 4.21(iii) with effect from 1st April, 2015 only. (However, the fact remains that the onus for this and action on violation must be on the SEZ unit, as the paying party, as the recipient is not in a position to know the account from which the payer is paying).
- (e) Neither in the [FTp 2009-14](#) nor in the SEZ Rules, there was any such condition of payment from Foreign Currency Account from SEZ unit for supply under Advance Authorization.
- (f) All the representations made by exporting community are related to Advance Authorization issued under the [FTP 2009-14](#) and not under the new Foreign Trade Policy 2015-20. Since, the payments were received long back in Indian Rupees by the DTA supplier from SEZ unit, it is not possible for them to get the payments reversed and re-issued from the Foreign Currency Account of SEZ Unit now.

4 In view of the representations received and averments mentioned in Para 3 above, the matter was again deliberated at length in Senior Officers Meeting held on 17.11.2015 in this Directorate particularly in light of provisions of para 4.1.6(a) of [FTP 2009-14](#) and Rule 30(8) of SEZ Rules. These provisions are as below:

- (i) The last sentence of the Para 4.1.6(a) of [FTP 2009-14](#) state that "...Exports to SEZ units/supplies to Developers/Co-developers, irrespective of currency of realization, would also be covered".
- (ii) Rule 30(8) of SEZ Rules 2006, reads as : Drawback or Duty Entitlement Pass Book credit against supply of goods by Domestic Tariff Area supplier shall be admissible provided payments for the supply are made from the Foreign Currency Account of the Unit.

Provided that the reimbursement of duty in lieu of drawback or Duty Entitlement Pass Book credit against supply of goods by Domestic Tariff Area supplier to Special Economic zone developers shall be admissible even if payment is made in Indian Rupees. Reimbursement of duty in lieu of drawback against supply of goods to Special Economic Zone developer shall be made as per the procedure prescribed by the Central Government.

A perusal of the above provisions reveals that :

- (i) Para 4.1.6(a) of [FTP 2009-14](#) had not stipulated that DTA supplying goods under Advance Authorization to an SEZ unit has to realize payment from Foreign Currency Account of SEZ unit. Rather this para states that such supplies would be covered irrespective of currency of realization.
- (ii) Rule 30(8) of SEZ Rules 2006 refers to reimbursement of duty in lieu of drawback or Duty Entitlement Pass Book credit against supply of goods by Domestic Tariff Area supplier to Special Economic Zone developers. This rule does not refer to the supplies by DTA units supplying goods against Advance Authorization or DFIA.

5 In view of the provisions stated in paragraphs 3 and 4 above and in the interest of trade facilitation and give relief to aggrieved exporters, it was decided to review the earlier decision taken in SOM dated 24.04.2015 and it was decided in SOM in DGFT held on 17.11.2015 that it would be incorrect to apply the new FTP provisions [stated in para 4.21(iii) of [FTP 2015-20](#)] of making payments in Indian Rupees from the Foreign Currency Account of the SEZ unit for Advance Authorization supplies retrospectively in the absence of any particular provision in [FTP 2009-14](#) or Rule 30(8) of SEZ Rules 2006.

Accordingly, it has been decided to allow closure/redemption/EODC where the Advance Authorization holder or DFIA holder has made supplies to SEZ units and realized the proceeds in Indian Rupees as per the extant provisions laid in Para 4.1.6(a) of FTP, 2009-14. This is due to the reason that the Advance Authorization holders have not violated conditions of [FTP 2009-14](#) by realizing the proceeds in Indian Rupees. Moreover, Rule 30(8) of SEZ Rules also did not mention that it is mandatory for SEZ unit to make payment to Advance Authorization holder from Foreign Currency Account (FCA).

6 This is for kind information of SEZ Division of DOC with a request to give concurrence to the fresh proposal as stated in para 5 above. In any event, the onus for making payment from the right account is on the paying party i.e. the SEZ unit. The recipient would not know whether the Rupee payment is from the Foreign Currency Account or another account. The Development Commissioners may be requested to sensitize all the SEZ units and in case any SEZ unit has acted in contravention of SEZ Rules 2006 by making payment to DTA suppliers from the wrong account, which could result in an undue NFE advantage, then necessary action may be initiated

against the SEZ unit by directing them to get such matters regularized along with other warranted action, failing which action under FT(D&R) Act 1992 as amended and SEZ Rules 2006 as amended may be taken against such SEZ units, rather than penalizing the recipient.

In so far as the Advance Authorization holders are concerned all cases, where Advance Authorizations were issued during FTP 200914, the cases will be redeemed and EODC issued as realizing proceeds from Foreign Currency Account (FCA) of SEZ unit was not mandatory in para 4.1.6(a) of [FTP 2009-14](#) and the said para permitted payment irrespective of the currency of realization.

7 This issues with approval of DGFT.

Sd/-
(S. Latha)
Dy. Director General of Foreign Trade
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Encl: copy of earlier OM dated 15.07.2015 by DGFT and circular dated 5.08.2015 by SEZ Section (2 pages)

Shri G.P. Mahapatra
Joint Secretary (SEZ)
Department of Commerce
UdyogBhawan, New Delhi
