

F. No.267/18/2015-CX.8

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise and Customs

New Delhi, the 28th April, 2015

To,

Principal Chief Commissioners/Chief Commissioners of Central Excise (All),

Principal Chief Commissioners/Chief Commissioners of Service Tax (All),

Principal Chief Commissioners/Chief Commissioners of Customs (All),

Director General, Directorate General of Central Excise Intelligence,

Web-master, CBEC

Madam/Sir,

Sub: Clarification on rebate of duty on goods cleared from DTA to SEZ - reg.

Kind attention is invited to Notifications No. 6/2015-CE (NT) and 8/2015-CE (NT), both dated 01.03.2015, vide which the meaning of export has been elaborated in both rule 5 of CENVAT Credit Rules, 2004 and rule 18 of Central Excise Rules, 2002. Post these amendments, apprehensions have been expressed by the trade as to whether the following benefits would be available after these amendments:

i. Benefit of rebate of duty on goods cleared from DTA to SEZ.

ii. Refund of accumulated CENVAT credit when goods are cleared from DTA to SEZ.

2. It is seen that:

i. Section 2 (m) (ii) of the SEZ Act, 2005 defines export to, inter-alia, mean "supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer".

ii. Section 26 (1) (d) of SEZ Act, 2005 mentions that subject to the provisions of the sub-section (2), every Developer and entrepreneur shall be entitled to drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the Domestic Tariff Area into Special Economic Zone or Unit or services provided in a Special Economic Zone or Unit by the service providers located outside India to carry on the authorized operations by the Developer or entrepreneur.

iii. Section 51 (1) of the SEZ Act mandates that "The Provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act".

iv. Section 53 (1) of the SEZ Act mentions that "A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations".

v. Rule 30 (1) of the SEZ Rules, 2006 reads as under-

"The Domestic Tariff Area supplier supplying goods to a Unit or Developer shall clear the goods, as in the case of exports, either under bond or as duty paid goods under claim of rebate on the cover of ARE-1 referred to in Notification number 42/2001-Central Excise (NT) dated the 26th June, 2001 in quintuplicate bearing running serial number beginning from the first day of the financial year".

3. It can thus be seen that according to the SEZ Act, supply of goods from DTA to the SEZ constitutes export. Further, as per section 51 of the SEZ Act, the provisions of the SEZ Act shall have overriding effect over provisions of any other law in case of any inconsistency. Section 53 of the SEZ Act makes an SEZ a territory outside the customs territory of India. It is in line of these provisions that rule 30 (1) of the SEZ rules, 2006 provides that the DTA supplier supplying goods to the SEZ shall clear the goods either under bond or as duty paid goods under claim of rebate on the cover of ARE-1.

4. It was in view of these provisions that the DGEP vide circulars No. 29/2006-customs dated 27/12/2006 and No. 6/2010 dated 19/03/2010 clarified that rebate under rule 18 of the Central Excise Rules, 2002 is admissible for supply of goods made

from DTA to SEZ. The position as explained in there circulars does not change after amendments made vide Notification No. 6/2015-CE (NT) and 8/2015-CE (NT) both dated 01.03.2015, since the definition of export, already given in rule 18 of Central Excise Rules, 2002 has only been made more explicit by incorporating the definition of export as given in the Customs Act, 1962. Since SEZ is deemed to be outside the Customs territory of India, any licit clearances of goods to an SEZ from the DTA will continue to be export and therefore be entitled to the benefit of rebate under rule 18 of CER, 2002 and of refund of accumulated CENVAT credit under rule 5 of CCR, 2004, as the case may be.

5. Any difficulty in the implementation of this circular may be brought to the notice of the Board. Hindi version will follow.

(Shankar Prasad Sarma)

Under Secretary to the Government of India