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PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification No. 05 / 2013-Customs

New Delhi, the 18th February, 2013

G.S.R. 99 (E).- 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 when imported into India against a Post Export EPCG duty credit scrip (0% EPCG variant) issued by the Regional Authority in accordance with paragraph 5.11 under Chapter 5 {Export Promotion Capital Goods (EPCG) Scheme} of the Foreign Trade Policy which provides for duty remission in proportion to export obligation fulfilled (hereinafter referred to as the said scrip) from,-

- (a) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975); and
- (b) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act.

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

(1) that the said scrip is granted against a valid authorisation issued on or before 31st March, 2013 under para 5.23 of the Handbook of Procedures Volume 1 (hereinafter referred to as the said authorisation) by the Regional Authority to an applicant (hereinafter referred as the authorisation holder) who opted for the scheme of Post Export EPCG Duty Credit Scrip (0% EPCG variant):

Provided that the said authorisation is not issued to an applicant who is currently availing any benefits under Technology Upgradation Fund Scheme (TUFS) administered by the Ministry of Textiles, Government of India. In the case of applicant who is Common Service Provider (hereinafter referred to as CSP), this bar shall apply when CSP or any of its specific users is currently availing any benefits under TUFS. This condition shall not apply where the benefit under TUFS has been obtained but the exact line of business in TUFS is different from the line of business under authorisations issued under para 5.23 of Handbook of Procedures Volume 1 or where benefits availed under TUFS are refunded, with applicable interest, before the said authorisation was issued:

Provided further that the applicant is not issued, in the year of issuance of the said authorisation, the duty credit scrips under Status Holders Incentive Scrip (SHIS) scheme under para 3.16 of the Foreign Trade Policy. In the case of applicant who is CSP, the CSP or any of its specific users should not be issued, in the year of issuance of the said authorisation, the duty credit scrips under SHIS. This condition shall not apply where already availed SHIS benefit that is unutilised is surrendered or where benefits availed under SHIS that is utilised is refunded, with applicable interest, before issue of the said authorisation. SHIS scrips which are surrendered or benefit refunded or not issued in a particular year for the reason the said authorisation has been issued in that year shall not be issued in future years also;

(2) that the said authorisation is not for import under duty exemption but for import of the goods specified in the Table 1 annexed hereto on full payment of applicable duties in cash;

(3) that the said authorisation is registered at the port of import specified in the said authorisation and the goods, which are specified in the Table 1 annexed hereto, are imported within nine months from the date of issue of the said authorisation on full payment of applicable duties in cash, and the said authorisation is produced before the proper officer of customs at the time of clearance of the goods for endorsement of the import particulars and in cases where the authorisation holder has opted that the Cenvat Credit under Cenvat Credit Rules, 2004 in

respect of the additional duty under section 3 of the Customs Tariff Act, 1975 (51 of 1975) paid (hereinafter referred to as additional duty of customs) shall not be taken, the proper officer endorses "Not valid for Cenvat Credit" on the bill of entry:

Provided that the goods specified in the Table 1 annexed hereto are imported for export of engineering and electronic products, basic chemicals and pharmaceuticals, apparels and textiles, plastics, handicrafts, chemicals and allied products, leather and leather products, paper and paperboard and articles thereof, ceramic products, refractories, glass and glassware, rubber and articles thereof, plywood and allied products, marine products, sports goods and toys and are other than those required for export of products covered under following chapters or headings of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), namely:-

Chapters 1, 2, 4, 5 (except handicrafts), 6 to 24, 25 to 27, 31, 43, 44 (except plywood and allied products), 45, 47, 68 (except handicrafts), 71, 81 (metals in primary and intermediate forms only), 89, 93, 97 (except handicrafts), 98; headings 4011 to 4013, 7401 to 7406, 7501 to 7504, 7601 to 7603, 7801, 7802, 7901 to 7903, 8001, 8002 and 8401:

Provided further that catalyst for one subsequent charge shall be allowed, under the authorisation in which plant, machinery or equipment and catalyst for initial charge have been imported, except in cases where the Regional Authority issues a separate authorisation for catalyst for one subsequent charge after the plant, machinery or equipment and catalyst for initial charge have already been imported:

Provided also that the import of the goods specified in the Table 1 annexed hereto are made upto the 31st December, 2013;

(4) that the goods imported under the said authorisation are installed and put to use, after their import, in the authorisation holder's factory or premises and at the time of registration of the said scrip a certificate, confirming such installation and use of the goods, from the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, which has been issued prior to the date of the first application filed by the authorisation holder for issuance of duty credit scrip against the said authorisation, is produced before the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be:

Provided that in the case of manufacturer authorisation holder and merchant authorisation holder having supporting manufacturer(s) or vendor(s), the capital goods may be installed at the factory or premises of such other person whose name and address is endorsed on the said authorisation and also on the shipping bills for fulfillment of the export obligation and the authorisation holder and such other person jointly and severally fulfill the export obligation and all other conditions. This shall not apply to a CSP:

Provided further that if the authorisation holder, including an authorisation holder who is a CSP, is not registered with the Central Excise he may produce the said certificate of installation and usage issued by an independent Chartered Engineer;

(5) that where the goods imported under the said authorisation are found defective or unfit for use, they may be re-exported back to the foreign supplier within three years from the date of payment of duty on the importation thereof subject to the condition that -

(a) 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, to be the same goods which were imported;

(b) when the re-export of the goods has been made under claim of duty drawback, no duty remission in the form of duty credit scrip for the duty paid at the time of import on the re-exported goods shall be allowed;

(c) after any duty remission in the form of duty credit scrip has been claimed in respect of the duty paid on the goods imported under the said authorisation, no duty drawback shall be allowed when the goods are re-exported and the export obligation shall also not be re-fixed;

(6) that goods imported under the said authorisation are not disposed of or transferred by sale or lease or any other manner by the authorisation holder till the date of last export against which the said scrip is issued;

(7) that the total export obligation to be fulfilled is equivalent to eighty five percent. (85%) of six times the amount which is the sum of applicable duty of customs under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) paid (hereinafter referred to as basic customs duty), additional duty of customs, Education Cess under section 94 of the Finance (No.2) Act, 2004 (23 of 2004) paid and Secondary and Higher Education Cess under section 136 of the Finance Act, 2007 (22 of 2007) paid on goods imported under the said authorisation, on Free On Board basis, which is to be fulfilled within an export obligation period of six years from the date of issue of the said authorisation:

Provided that additional duty of customs shall not be taken for computation for the purpose of fixation of export obligation when the Cenvat Credit in respect of additional duty of customs has not been taken:

Provided further that the export obligation shall be 75% of the export obligation specified above when fulfilled by export of following green technology products, namely, equipment for solar energy decentralised and grid connected products, bio-mass gassifier, bio-mass or waste boiler, vapour absorption chillers, waste heat boiler, waste heat recovery units, unfired heat recovery steam generators, wind turbine, solar collector and parts thereof, water treatment plants, wind mill and wind mill turbine or engine, other generating sets - wind powered, electrically operated vehicles - motor cars, electrically operated vehicles - lorries and trucks, electrically operated vehicles - motor cycle and mopeds, and solar cells:

Provided also that for units located in Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura, the export obligation shall be 25% of the export obligation specified above:

Provided also that where a sick unit is notified by the Board for Industrial and Financial Reconstruction (BIFR) 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 within the time period allowed by the Regional Authority as per the rehabilitation package prepared by the operating agency and approved by BIFR or rehabilitation department of State Government. In cases where the time period is not specified in the rehabilitation package, the export obligation may be fulfilled within the time period allowed by the Regional Authority which shall not exceed twelve years:

Provided also that the export obligation shall be 50% of the export obligation specified above to be fulfilled within a period of six years in the case of spares (including refurbished/reconditioned spares), moulds, dies, jigs, fixtures, tools and refractory for initial lining, for the existing plant and machinery (imported earlier, under para 5.23 of Handbook of Procedures Volume 1 or otherwise), subject to the condition that the CIF value of import of the above spares, etc is limited to 10% of the CIF value of the plant and machinery imported under the authorisation (para 5.23 of Handbook of Procedures Volume 1) or 10% of the book value of the plant and machinery imported earlier otherwise than under para 5.23 of Handbook of Procedures Volume 1, as the case may be;

(8) that the duty remission granted as duty credit in the said scrip bears the same proportion to the amount which is the basic customs duty on the goods imported under the said authorisation which were considered for fixation of export obligation, as the extent of export obligation fulfilled (over and above the average export obligation) bears to the total export obligation:

Explanation 1. - For the purpose of condition (8),-

(a) the amount of duty remission shall not include the duty paid, any portion of which has been rebated, including by way of duty drawback;

(b) the amount of duty remission shall not include the duty paid which are not assessed finally;

(c) extent of export obligation fulfilled shall be the export obligation fulfilled till the last export included in the said scrip less the export obligations fulfilled that have been counted towards the previously issued duty credit scrips against the said authorisation;

(d) in condition (c) above, the export obligation fulfilled till the last export included in the said scrip shall be taken as the total export obligation fulfilled in the following cases -

(i) where the authorisation holder fulfills seventy five percent. (75%) or more of the export obligation as specified in condition (7) [over and above hundred percent. (100%) of the average export obligation], within half of the period specified for export obligation as mentioned in said condition (7), in which case the balance export obligation shall stand condoned;

(ii) where the Regional Authority regularises shortfall, in the export obligation as specified in condition (7), not exceeding five per cent. (5%) of such export obligation, in which case the said shortfall shall be condoned;

(e) the *Explanation 2* to this notification relating to 'Export obligation' shall apply severally to each duty credit scrip, including the said scrip, issued against the said authorisation;

(f) the exports and supplies made within the export obligation period specified in condition (7) shall count towards fulfillment of export obligation;

(g) for fulfillment of export obligation, the payments against exports/supplies should have been realised.

(9) that where the first proviso to condition (7) is applied, the Cenvat Credit in respect of additional duty of customs shall not been taken and at the time of registration of the said scrip a certificate, from the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, to the effect that Cenvat Credit in respect of additional duty of customs on goods imported under the said authorisation has not been taken, is produced by the authorisation holder before the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be:

Provided that when the authorisation holder is not registered with Central Excise, he may produce the said certificate on self-certification basis;

(10) that the duty remission in the said scrip does not relate to duties paid on the imports made under the said authorisation which have not been installed and put to use;

(11) that the duty remission in the said scrip has not been obtained as a consequence of indigenous sourcing of capital goods;

(12) that the said scrip is issued, on request of the authorisation holder in form ANF5B for duty remission, by the Regional Authority specifying the same port of registration as mentioned in the said authorisation and it indicates details of the said authorisation, total export obligation fixed and its calculation, details of previous duty credit scrips issued against the said authorisation and the calculation of duty credit;

(13) that the imports under the said authorisation, the exports for fulfilling the export obligations and import of goods against the said scrip are undertaken through the seaports, airports or through the Inland Container Depots or through the Land Customs Stations as mentioned in the Table 2 annexed hereto or a Special Economic Zone notified under section 4 of the Special Economic Zones Act, 2005 (28 of 2005):

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 seaport, airport, inland container depot or through a land customs station within his jurisdiction;

(14) that for the purposes of registration, the said scrip is produced by the authorisation holder at the specified port of registration before the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, along with -

- (a) the said authorisation and the bill(s) of entry under which the imports under the said authorisation were made on payment of applicable duties in cash;
- (b) evidence showing the extent of export obligation fulfilled within the export obligation period;
- (c) certificate confirming installation and use as prescribed in condition (4) above;
- (d) certificate that Cenvat Credit has not been taken as prescribed in condition (9) above, where applicable;
- (e) undertaking from the authorisation holder to the effect that,-
 - (i) the goods imported under the said authorisation have not been disposed of or transferred by sale or lease or any other manner till the date of last export against which the said scrip is issued;
 - (ii) the duty remission in the said scrip does not include the duty paid, any portion of which has been rebated, including by way of duty drawback; and
 - (iii) all the conditions have been complied with respect to the duty credit in the said scrip,
 and the said Deputy Commissioner or Assistant Commissioner, as the case may be, upon being satisfied, allows the said scrip to be registered and the Customs authority endorses details of the said scrip and the remark "Drawback not available on re-export" on the bill(s) of entry, and registers the said scrip;
- (15) that the said scrip and goods imported against it shall be freely transferable;
- (16) that the said scrip is produced before the proper officer of customs at the time of clearance for debit of the duties leviable on the goods and the proper officer taking into account the debits already made under this exemption debits the duties leviable on the goods, but for this exemption;
- (17) that the validity of the said scrip shall be eighteen months from the date of issue and the said scrip shall be valid on the date on which actual debit of duty is made;
- (18) that where the importer, under this notification, does not claim exemption from the additional duty of customs leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975) he shall be deemed not to have availed the benefit under this notification for the purpose of calculation of the said additional duty of customs;
- (19) that the benefit under this notification shall not be available to the items listed in Appendix 37B of the Handbook of Procedures Volume 1;
- (20) that the importer shall be entitled to avail of the drawback or Cenvat credit of additional duty leviable under section 3 of the said Customs Tariff Act against the amount debited in the said scrip.

Explanation 2. - For the purpose of this notification, -

(A) "Capital goods" has the same meaning as assigned to it in Paragraph of 9.12 of the Foreign Trade Policy;

(B) "Common Service Provider" (CSP) means a service provider who is designated or certified as a Common Service Provider by the DGFT, Department of Commerce or State Industrial Infrastructural Corporation in a Town of Export Excellence;

(C) "Export obligation",-

(I) means obligation on the authorisation holder to export to a place outside India, goods manufactured or capable of being manufactured or services rendered by the use of goods imported under the said authorisation and the export obligation shall be over and above the average level of exports achieved by the authorisation holder in the preceding three licensing years for the same and similar products within the export obligation period and such average shall be the arithmetic mean of export performance in the last three years for the same and similar products:

Provided that up to fifty percent. (50%) of the export obligation may also be fulfilled by export of other good(s) manufactured or service(s) provided by the authorisation holder or his group company or managed hotel, which has the said authorisation under which imports were made subject to the condition that in such cases, additional export obligation imposed shall be over and above the average exports achieved by the authorisation holder or his group company or managed hotel in preceding three years for both the original and the substitute product(s) / service(s):

Provided further that in case of export of goods relating to handicraft, handlooms, cottage, tiny sector, agriculture, animal husbandry, floriculture, horticulture, pisciculture, viticulture, poultry, sericulture, carpet, coir and jute, the authorisation holder shall not be required to maintain the average level of exports:

Provided also that in case of export of goods relating to aquaculture (including fisheries), the authorisation holder shall not be required to maintain the average level of exports subject to the condition that said authorisation has been obtained for goods other than fishing trawlers, boats, ships and other similar items:

Provided also that the goods, excepting tools, imported under said authorisation by the aforesaid sectors, shall not be allowed to be transferred for a period of five years from the date of imports even in cases where export obligation has been fulfilled. Transfer of capital goods would, however, be permitted within the group companies, after fulfillment of export obligation but before five years from the date of imports, under intimation to Regional Authority and jurisdictional Central Excise Authority:

Provided also that exports made to such countries as notified by Director General of Foreign Trade, shall not be counted for fixing the average level of exports:

Provided also that exports against only such shipping bills which mention the authorisation number and date of the said authorisation shall be counted for the fulfillment of the export obligation;

Provided also that in the case of authorisation issued to a CSP, -

(a) the reference to 'authorisation holder' in this Explanation shall be taken to mean a reference to 'CSP and specific users whose details are informed prior to export by CSP to the Regional Authority';

(b) for the exports by users of the common service to be counted towards fulfilment of export obligation of CSP, the respective shipping bills of the users of common service shall contain the authorisation details of the CSP and the concerned Regional Authority shall be informed about the details of the users prior to such export; and

(c) the exports counted against the authorisation shall not be counted towards fulfilment of other specific export obligations against all other authorisations issued under Chapter 5 of the Foreign Trade Policy, including para 5.23 of Handbook of Procedures Volume 1;

(II) shall be fulfilled through physical exports and the export proceeds realised in freely convertible currency. However the following categories of supplies, shall also be counted towards fulfilment of export obligation:

(a) deemed exports, namely:

(i) supply of goods against Advance Authorisation/Advance Authorisation for Annual Requirement/ Duty Free Import Authorisation (DFIA);

(ii) supply of goods to Export Oriented Units (EOUs) or Software Technology Parks (STPs) or Electronics Hardware Technology Parks (EHTPs) or Bio-Technology Parks (BTPs);

(iii) supply of goods to projects financed by multilateral or bilateral agencies or Funds as notified by the Department of Economic Affairs (DEA), the Ministry of Finance (MOF) under International Competitive Bidding (ICB) in accordance with procedures of those agencies or Funds, where legal agreements provide for tender evaluation without including customs duty; supply and installation of goods and equipments (single responsibility of turnkey contracts) to projects financed by multilateral or bilateral agencies or Funds as notified by DEA, MOF under ICB, in accordance with procedures of those agencies/Funds, where bids may have been invited and evaluated on the basis of Delivery Duty Paid (DDP) prices for goods manufactured abroad;

(iv) supply of goods to any project or purpose in respect of which the Ministry of Finance, by a notification, permits import of such goods at zero customs duty and the supply is made under ICB procedure;

(v) supply of goods to mega power projects as provided in sub-clause (ii) of clause (f) of para 8.2 of Foreign Trade Policy;

(vi) supply of goods to nuclear power projects through competitive bidding as provided in clause (j) of para 8.2 of Foreign Trade Policy;

(b) supply of ITA-1 items to Domestic Tariff Area, provided realization is in free foreign exchange;

(c) royalty payments received in freely convertible currency and foreign exchange received for Research and Development (R&D) services; and

(d) payments received in rupee terms for port handling services in terms of chapter 9 of the Foreign Trade Policy.

(D) "Foreign Trade Policy" means the Foreign Trade Policy 2009-2014 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) *vide* notification of the Government of India in the Ministry of Commerce and Industry, No.1 (RE - 2012) /2009-2014 dated the 5th June 2012, as amended from time to time;

(E) "Handbook of Procedures Volume 1" means the Handbook of Procedures Volume 1, 2009-14, published in the Gazette of India, Extraordinary, Part I, Section 1 *vide* public notice of the Government of India in the Ministry of Commerce and Industry, Department of Commerce, No.01 (RE - 2012)/2009-2014, dated the 5th June, 2012, as amended from time to time;

(F) "Manufacture" has the same meaning as defined in clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944);

(G) "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 authorised by him to grant an authorisation including a duty credit scrip under the said Act;

(H) "Town of Export Excellence" (TEE) means a selected town producing goods of Rs. 750 Crore or more based on potential of growth in exports. However, for TEE in handloom, handicraft, agriculture and fisheries sector the threshold limit would be Rs.150 Crore.

Table 1

S. No.	Description of goods
1.	Capital goods for pre-production, production and post-production including second hand capital goods.

2.	Capital goods in Semi Knocked Down (SKD)/Completely Knocked Down (CKD) conditions to be assembled into capital goods by the authorisation holder.
3.	Spare parts of CIF value upto 10% of the CIF value of goods specified at Serial Nos.1 and 2 as actually imported and required for maintenance of capital goods so imported, assembled, or manufactured.
4.	Spare parts of CIF value upto 10% of the book value of the existing plant and machinery of the authorisation holder.

Table 2

S.No.	Port, ICD, LCS	Located at
1.	Seaports	Bedi (including Rozi-Jamnagar), Chennai, Cochin, Dahej, Dharamtar, Haldia (Haldia Dock complex of Kolkata port) Kakinada, Kandla, Kolkata, Krishnapatnam, Ennore (Tamilnadu) and Karaikal (Union territory of Puducherry), Magdalla, Mangalore, Marmagoa, Muldwarka, Mumbai, Mundhra, Nagapattinam, Nhava Sheva, Okha, Paradeep, Pipavav, Porbander, Sikka, Tuticorin, Visakhapatnam and Vadinar.
2.	Airports	Ahmedabad, Bangalore, Bhubaneswar, Chennai, Cochin, Coimbatore, Dabolim (Goa), Delhi, Hyderabad, Indore, Jaipur, Kolkata, Lucknow (Amausi), Mumbai, Nagpur, Rajasansi (Amritsar), Srinagar, Trivandrum, Varanasi and Visakhapatnam.
3.	Inland Container Depots	Agra, Ahmedabad, Anaparthi (Andhra Pradesh), Babarpur, Bangalore, Bhadohi, Bhatinda, Bhilwara, Bhiwadi, Bhusawal, Chettipalayam (Tamilnadu), Chheharata (Amritsar), Coimbatore, Dadri, Dappar (Dera Bassi), Daulatabad (Wanjarwadi and Maliwada), Delhi, Dhannad Rau (District Indore), Dighi (Pune), Durgapur (Export Promotion Industrial Park), Faridabad, Garhi Harsaru, Gauhati, Guntur, Hyderabad, Irugur Village (Tamilnadu), Irungattukottai (SIPCOT Industrial Park, Kattrambakkam Village, Sriperumbudur Taluk, Kanchipuram District, Tamilnadu), Jaipur, Jalandhar, Jamshedpur, Jodhpur, Kanpur, Karur, Kheda (Pithampur, District Dhar), Kota, Kundli, Loni (District Ghaziabad), Ludhiana, Madurai, Malanpur, Mandideep (District Raisen), Marripalem Village (in Edlapadu Taluk of District Guntur), Miraj, Moradabad, Nagpur, Nasik, Patli (Gurgaon), Pimpri (Pune), Pitampur (Indore), Pondicherry, Raipur, Rewari, Rudrapur (Nainital), Salem, Singanalur, Surat, Surajpur, Talegaon (District Pune), Thudiyalur (Tamilnadu), Tirupur, Tondiarpet (TNPM) in Chennai, Tuticorin, Udaipur, Vadodara, Varanasi, Veerapandi (Tamilnadu) and Waluj (Aurangabad).
4.	Land Customs Stations	Agartala, Amritsar Rail Cargo, Attari Road, Changrabandha, Dawki, Ghojadanga, Hilli, Jogbani, Mahadipur, Nepalganj Road, Nautanva (Sonauli), Petrapole, Ranaghat, Raxaul, Singhabad and Sutarkhandi.

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(Rajiv Talwar)

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