



STUDY NOTE - 10

Export Promotion Schemes

This Study Note includes

- Background
- Duty Drawback
- EOU and Similar Schemes
- Special Economic Zones
- Advance Authorisation
- Duty Entitlement Pass Book Scheme (DEPB Scheme)
- Duty Free Import Authorisation
- EPCG Authorisation

10.1 BACKGROUND

- **Basic concept is that goods and services are to be exported, taxes are not to be exported.**
- **As per WTO stipulations, export incentives cannot be given, but exported goods can be made tax free.**
- **Various scheme have been devised to enable exporters to obtain inputs without payment of excise and customs duty and input services without payment of service tax. If tax paid, rebate can be obtained.**
- **Goods can be exported without payment of excise duty. If excise duty is paid, refund can be obtained.**

Broadly, the export incentives for manufacturers are -

- (a) Indigenous inputs without payment of excise duty or rebate if duty paid
- (b) No excise charged on final product or rebate if duty paid
- (c) Imported inputs without payment of customs duty, or rebate if duty paid
- (d) No export duty on export of final product
- (e) Bank finance on priority basis and at concessional rate of interest
- (f) Import of capital goods at concessional rate (under EPCG scheme)
- (g) Exemptions / relaxations from Income tax
- (h) Exemption from sales tax on final product (refund of CST paid on inputs in case of EOU. No CST for supply to SEZ and SEZ units)



- (i) Usance bills of exchange executed by an exporter in relation to export transaction are fully exempt from stamp duty – SO 804(E) dated 8-7-2004.

WTO stipulation - As per stipulation of World Trade Organisation (WTO), no country can give 'export incentives' as such. The reason is that WTO intends to encourage free competition among nations. If incentives are given for exports, there will not be free competition. That is the reason why income-tax incentives on export income are being phased out. However, goods can be made tax-free for export purposes, which is permissible under WTO stipulations. Hence, all our export promotion schemes are directed towards ensuring that inputs as well as final products are made 'tax free'.

10.1.1 Input duty relief schemes

Various schemes have been devised to obtain inputs free from duty or to grant refund of the same. In some schemes, the unit has to be isolated from domestic production units, while in some schemes, the units producing goods for domestic production are also entitled to get inputs free of cost.

Schemes where export production unit has to be isolated from domestic production units -

There are schemes where units producing goods for export purposes have to be isolated from domestic units. The schemes are - EOU, STP, EHTP, BTP and SEZ. [BTP – Bio-Technology Park]

Schemes where domestic production unit can get inputs free from taxes - The schemes of EOU, SEZ, STP, BTP and EHTP are suitable where the unit is exclusively or at least predominantly for export purposes. There are other schemes where a unit producing goods for domestic purposes is also entitled to get inputs / capital goods without payment of customs duty / excise duty. These can be broadly classified as follows.

Relief of excise duty on inputs – (a) Cenvat credit of duty paid on inputs can be utilised for payment of excise duty on other final products. Alternatively, refund of duty paid on inputs can be obtained (b) Same result can be achieved by paying duty on final product and claiming rebate. In this case, additional benefit is that duty paid on capital goods will also get refunded indirectly. In first case, only duty paid on inputs is refundable (c) Obtaining inputs without payment of excise duty under notification No. 43/2001-CE(NT). This is advisable when there are one or two major identifiable inputs (d) Rebate of duty paid on inputs under notification No. 41/2001-CE(NT) (e) Excise portion of Duty drawback.

Relief of customs duty on inputs – (a) Advance Authorisation (b) Duty Entitlement Pass Book scheme (DEPB) (c) DFIA (d) Customs portion of duty drawback.

Capital goods at concessional rate - Capital goods can also be obtained at concessional rate of customs duty under EPCG scheme.

It should be noted that an exporter can get relief only once. He cannot get double benefit.



10.1.2 Highlights of EOU/SEZ scheme

The highlights of EOU (Export Oriented Unit) and SEZ (Special Economic Zone) and distinctions are as follows –

Distinctions

- Supplies to SEZ from DTA are ‘exports’ while supplies to EOU from DTA are ‘deemed exports’.
- SEZ unit has to be located within the specified zones developed, while EOU unit can be set up at any of over 300 places all over India. [Similarly, STP/EHTP/BTP unit can be situated within the zone specifically developed or at any place where EOU can be set up]
- There is physical control over movement of goods in Special Economic Zone, but there is no such physical control over goods to individual EOU.
- Minimum investment in plant and machinery and building is Rs 100 lakhs for EOU. This should be before commencement of commercial production. There is no such limit for SEZ.
- Fast Track Clearance Scheme (FTCS) for clearances of imported consignments for EOU. In case of SEZ units, customs clearance for export and import is obtained within the zone itself.
- In case of EOU, sale within India should be on payment of excise duty. In certain cases, excise duty payable will be only 50% / 30% of normal customs duty payable on such goods if imported into India. In case of supplies from SEZ to Domestic Tariff Area, normal customs duty as payable on import of similar goods is payable.
- EOU unit can sale in DTA (Domestic Tariff Area) sale upto 50% of the FOB value of sales of preceding year, subject to fulfilment of positive NFE, on payment of concessional rate of duty. There is no such restriction in case of SE on percentage, but SEZ have to attain positive NFE.
- Restrictions under Companies Act on managerial remuneration are not applicable to SEZ units.
- The unit can exit (de-bond) with permission of Development Commissioner, on payment of applicable duties. However, in case of SEZ, the unit has to physically go out of SEZ. This is not the case of EOU.
- In case of EOU, Central Sales Tax (CST) paid on purchases is refundable (but not local tax), if goods are used for production (and not for services). In case of SEZ unit, supplier does not have to pay CST.
- Service tax is exempted in case of services provided with SEZ. In case of EOU, service tax exemption is not available but they can claim refund.
- 100% foreign equity is permissible in SEZ, except in a few cases. In case of EOU, restrictions of Foreign Direct Investment (FDI) are slightly more.



- Supplies made to EOU by Indian supplier are 'deemed exports' and supplier is entitled to benefits of 'deemed export' in form of refund of terminal excise duty and duty drawback. Supplies to SEZ are 'exports' and all export benefits i.e. DEPB and duty drawback are available.
- Restrictions on External Commercial Borrowings are less in case of SEZ, compared to restrictions on EOU.
- No exemption from labour laws, but State Government can relax certain provisions of labour laws in case of SEZ.
- SEZ are in specific locations where infrastructure is generally better.
- SEZ have more freedom of operations within zone compared to EOU.

Similarities

- The unit can import capital goods, raw materials, consumables, packing material, spares etc. without payment of customs duty. Similarly, these can be procured indigenously without payment of excise duty. Second hand capital goods can also be imported.
- They have to achieve positive NFE (Net Foreign Exchange Earnings).
- A bond in prescribed form has to be executed. [B-17 in case of EOU and form prescribed in Special Economic Zone Rules, 2003 in case of SEZ]. There is no physical supervision of customs / excise authorities over production and clearances, but prescribed records are required to be maintained.
- Generally, all final production should be exported, except rejects upto prescribed limit.
- Sub-contracting of production outside on job work basis is permissible after obtaining necessary permission on annual basis
- Job work for exports is permitted
- Samples can be sold / given free within prescribed limit
- Unutilised raw material can be disposed of on payment of applicable duties
- all foreign exchange earnings can be retained in EEFC account in foreign exchange.

STP/EHTP/BTP unit – Concept of STP/EHTP/BTP is similar to EOU. The STP/EHTP scheme is administered by Ministry of Information Technology, while BTP scheme is monitored by Department of Biotechnology. The STP/EHTP/BTP unit can be at a place specifically developed for the purpose or it can be located at any place where EOU can be set up. Thus, a STP/EHTP/BTP unit can be set up as an EOU unit anywhere in India or as a SEZ unit at specified developed locations in India.



10.1.3 Pros and cons of various schemes

It is true that no one scheme can be suitable to all. Each manufacturer has to weigh *pros* and *cons* of each scheme and determine which scheme is most beneficial to him.

Generally, if major production of the company is towards sale in DTA (Domestic Tariff Area) and only partly towards export, schemes like DEPB or DFRC or advance authorisation are suitable. Other things being equal, scheme of duty drawback is simple and easy to operate particularly when All Industry Rate fixed is good.

Schemes like EOU (Export Oriented Unit)/SEZ (Special Economic Zones) are suitable (a) when the undertaking is predominantly export oriented (b) Requirement of imported capital goods and imported raw material is high. EOU has lost most of its attractive features and recently, EOUs are getting step-motherly treatment from Government, while SEZ is 'favoured baby'.

10.2 DUTY DRAWBACK

- Duty drawback is rebate of excise duty and customs duty paid on inputs used in exported final product u/s 75 of Customs Act.
- All Industry drawback rate is fixed on industry average basis for various products. Incidence of service tax is also taken into account while fixing drawback rate.
- An individual exporter can get brand rate fixed for his product.
- Drawback rate is fixed by Commissioner of Central Excise.
- Duty drawback is available on re-export u/s 74 of Customs Act.

Drawback of customs and excise duty paid on inputs and service tax paid on input services – As per rule 2(a) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, Drawback, in relation to any goods manufactured in India and exported, means the rebate of duty or tax, as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services in manufacture of such goods [reference to service tax was inserted w.e.f. 13-7-2006]. 'Input service' has same meaning as assigned to it in Cenvat Credit Rules, 2004 [rule 2(da) of Drawback Rules, 1995].

As per para 9.22 of FTP, Drawback, in relation to any goods manufactured in India and exported, means the rebate of duty chargeable on any imported materials or excisable material used in manufacture of such goods in India. The goods include imported spares, if supplied with capital goods manufactured in India.

Duty Drawback even if CVD paid through DEPB – Duty drawback of CVD is available even when CVD is paid through DEPB credit – MF(DR) circular No. 41 / 2005-Cus dated 28-10-2005.

10.2.1 Drawback – When not eligible

Section 75 of Customs Act, 1962 provide some disallowances or cases when drawback allowed can be recovered. Further, section 76(2) of Customs Act, 1962 authorises Central Government



to issue notifications prohibiting drawback if the goods are likely to be smuggled back to India after export. Drawback Rules also provide for some disallowances. These are summarised below :

- If sale proceeds of export goods are not received within time stipulated by RBI [This provision does not apply to goods supplied from DTA unit to SEZ unit]
- If no customs / excise duty is paid on the inputs or service tax is not paid on input services
- If imported inputs were obtained under Advance License (DEEC scheme) without payment of duty
- If importer avails DEPB or DFRC
- Goods manufactured under Customs Bond or Excise Bond where inputs were obtained without payment of duty
- Goods manufactured by EOU or a unit in Special Economic Zone (as they obtain inputs without payment of duty)
- If Cenvat was claimed on indigenous inputs. [In such case, excise portion of duty drawback will not be available].
- In case of negative value addition – i.e. selling price of exported goods is less than value of imported goods i.e. foreign exchange spent on import of raw material is more than FOB Value of exports.
- Jute batching oil used in manufacture of jute yarn, twist, twine etc.
- Packing materials used in relation to export of jute yarn, jute fabrics and jute manufacture.
- Where specific rates are provided, drawback will not be paid if it is less than 1% of FOB Value of the product, unless drawback claim per shipment is over Rs. 500 – para 11 of Notification No. 81/2006-Cus(NT) dated 13-7-2006 [earlier Notification No. 36/2005-Cus(NT) dated 2-5-2005].
- If wholesale market price of goods in India is less than the amount of drawback due.
- Exports to Nepal/Bhutan. However, exports to Nepal are eligible if payment is received under hard currency i.e. dollars, euro, Yen British pounds etc.
- No drawback of sales tax, octroi or other taxes – drawback is of customs and Central Excise duties *only*.
- Export of alcoholic liquor, cigarettes, cigar and pipe tobacco; *as stores*; to foreign going vessel of less than 200 tons.
- If goods exported by vessel of less than 1,000 tons; unless certificate is submitted that sale



proceeds in foreign currency have been received and goods have landed at destination within three months.

- If drawback is less than Rs. 50.

Broadly, drawback is not allowed if excise/customs duty or service tax has not been paid on inputs or manufacturer has availed some other benefit in respect of duty paid on inputs or input services. Principle is that there cannot be double benefit.

10.2.2 Type of Drawback Rates

Duty drawback rates are of following types – (a) All Industry Rate (b) Brand Rate and (c) Special Brand Rate.

All Industry Drawback Rates - All Industry Drawback rates are fixed by Directorate of Drawback, Dept. of Revenue, Ministry of Finance, Govt. of India, Jeevan Deep, Parliament Street, New Delhi – 110 001. The rates are periodically revised – normally on 1st June every year. Data from industry is collected for this purpose.

Whenever specific rates are provided, drawback shall be payable only if amount is more than 1% of FOB value, except when the drawback claim per shipment exceeds Rs 500. Revised rates have been announced vide Notification No. 68/2007-Cus(NT) dated 16-7-2007 [earlier Notification No. 81/2006-Cus(NT) dated 13-7-2006].

The all industry drawback rates are given in two ways – (a) when Cenvat facility has been availed and (b) when Cenvat facility not availed. The difference between the two is central excise portion of duty drawback. If rate indicated in both is same, it means that it pertains to only customs portion and is available irrespective of whether exporter has availed Cenvat or not – Condition No 5 to Notification No. 68/2007-Cus(NT) dated 16-7-2007 [earlier No. 81/2006-Cus(NT) dated 13-7-2006].

Duty drawback rate shall not exceed 33% of market price of export goods (Rule 8A w.e.f. 15-2-2006).

In case of some cases, value cap has been fixed. In such cases, maximum drawback allowable per unit of quantity has been specified (This is to avoid misuse by over-valuation of export goods).

Brand Rate of duty drawback – It is possible to fix All Industry Rate only for some standard products. It cannot be fixed for special type of products. In such cases, *brand rate* is fixed under rule 6. The manufacturer has to submit application with all details to Commissioner, Central Excise. Such application must be made within 60 days of export. This period can be extended by Central Government by further 30 days. Further extension can be granted even upto one year in if delay was due to abnormal situations as explained in MF(DR) circular No. 82/98-Cus dated 29-10-1998.

Duty drawback rate shall not exceed 33% of market price of export goods (Rule 8A w.e.f. 15-2-2006).



Special Brand Rate of duty drawback – All Industry rate is fixed on average basis. Thus, a particular manufacturer or exporter may find that the actual excise/customs duty paid on inputs or input services is higher than All Industry Rate fixed for his product. In such case, he can apply under rule 7 of Drawback Rules for fixation of Special Brand Rate, within 30 days from export. The conditions of eligibility are (a) the All Industry Rate fixed should be less than 80% of the duties paid by him (b) rate should not be less than 1% of FOB value of product except when amount of drawback per shipment is more than Rs. 500 (c) export value is not less than the value of imported material used in them – i.e. there should not be ‘negative value addition’.

10.2.3 Drawback Rate Fixation

Forms and procedures have been prescribed for submitting details to jurisdictional Commissioner of Central Excise, who will fix the rate of duty drawback. [Earlier, it was done by Director of Drawback, New Delhi, upto 31-3-2003]. Manufacturer has to make application for fixation of duty drawback rate. Application for fixation of rate has to be filed to Commissioner of Central Excise within 30/60 days of export. [60 days in case of brand rate and 30 days in case of special brand rate]. This period can be extended by him upto further 30 days in exceptional and genuine cases, for which a special request should be made.

10.2.4 Drawback claim procedure

At the time of export, exporter shall endorse on the ‘shipping bill’ the description, quantity and other details to decide whether goods are eligible for duty drawback. He should submit one extra copy of shipping bill for drawback purposes. Copy of Invoice should be submitted.

If shipping bill under drawback is submitted electronically, that itself will be treated as claim for drawback [rule 13(5) of Drawback Rules amended w.e.f. 13-7-2006].

Declaration by Exporter – A declaration should be made rule 12(1)(a)(ii) of Duty Drawback Rules, on shipping bill or bill of export that claim of drawback. Further declarations are also required when brand rate or special brand rate has been fixed. These declarations have to be signed by exporter.

Forms of declarations for claiming All Industry Rates have been given in CC, Mumbai PN 10/2005-Cus dated 16-3-2005 [182 ELT T12].

Triplicate copy of Shipping Bill is the drawback copy and should be marked as ‘Drawback Claim Copy’. It should be submitted with pre-receipt on reverse side with revenue stamp.

Declaration for non-availment of Cenvat – (a) If the manufacturer-exporter or supporting manufacturer of merchant exporter is registered with Central Excise, fact of non-availment of Cenvat credit can be verified from ARE-1 form furnished (b) If the manufacturer-exporter or supporting manufacturer of merchant exporter is not registered with Central Excise, they have to submit self-declaration about non-availment of Cenvat in prescribed form. – MF(DR) circular No. 8/2003-Cus dated 17-2-2003.



10.2.5 Duty drawback on Re-export

Section 74 of Customs Act, 1962 provide for drawback if the goods are re-exported as such or after use. This may happen in cases like import for exhibitions, goods rejected or wrong shipment etc. The re-exported goods should be identifiable as having been imported and should be re-exported within two years from date of payment of duty when they were imported. This period (of two years) can be extended by CBE&C on sufficient cause being shown. These should be declared and inspected by Customs Officer. Original shipping bill under which the goods were imported should be produced. The goods can be exported as cargo by air or sea, or as baggage or by post. - . - . – After inspection, export and submission of application with full details, 98% of the customs duty paid while importing the goods is repaid as drawback.

Section 74 is applicable when imported goods are re-exported as it is and article is easily identifiable, while section 75 is applicable when imported materials are used in the manufacture of goods which are then exported – *ABC India Ltd. v. UOI* 1992(61) ELT 205 (Del HC).

10.3 EOU AND SIMILAR SCHEMES

Key Points

- EOU scheme enables a manufacturer to import inputs without payment of customs duty and export final products.
- EOU should have positive NFE (Net Foreign Exchange Earning).
- They have to execute B-17 bond. Indigenous goods can be obtained without payment of excise duty by submitting CT-3 certificate.
- EOU can sale in DTA (Domestic Tariff Area) upto 50% of FOB value of their previous year's exports.
- Scheme of STP (Software technology Park), EHTP (Electronic Hardware Technology Park and BTP (Bio Technology Park) are similar to EOU.
- EOUs are presently getting step motherly treatment from Government.

10.4 SPECIAL ECONOMIC ZONES (SEZ)

SEZ is as if it is a separate island as if outside India, where inputs, capital goods and input services can be obtained without duty and service tax. SEZ are governed by Special Economic Zones Act and SEZ Rules. Supplies to SEZ from India is 'exports' and supplies from SEZ to DTA (Domestic Tariff Area) is 'import'.

SEZ are like a separate island within country. These are treated as if they are outside India for customs purposes. Goods can be brought in SEZ without payment of customs duty or excise duty. Supplies to SEZ from other parts of India are treated as 'exports' and are entitled to all export benefits. On the other hand, supplies from SEZ unit to any person outside SEZ is treated as 'import' by that person and normal customs duty is payable.



SEZ have full freedom of operations within SEZ and all facilities of import and export are provided within the zone itself.

SEZ units may be set up for manufacture of goods and rendering services. Trading units are also permitted.

Exemption from all taxes - SEZ and SEZ units will be exempt from all taxes like customs duty, excise duty, Central sales tax, State Vat, Income tax etc.

Types of SEZ - Multi-product SEZs should have an area of 1,000 hectares or more. Minimum 35% area shall be earmarked for processing. Remaining 65%/75% area will be available for developing residential and commercial areas. Sector specific SEZ can be as small as 10 hectares, out of which 50% should be for processing and balance can be for residential and commercial areas. SEZ for Free Trade and Warehousing (FTW) shall have an area of 40 hectares or more with a built up area of not less than one lakh square meters.

Integrated township plus manufacturing facilities - SEZ can be set up in public, private, joint sector or by Central Government or State Government, jointly or severally SEZ will be developed by Developers.. The Developer can allocate fully developed plots to entrepreneurs on purely commercial basis.

Developer of SEZ can provide services like water, electricity, security, restaurants, recreation etc. He can also develop township adjacent to SEZ. Proposal to establish a SEZ will be approved by Board of Approvals (BOA).

Trading in SEZ - Trading in imported goods as well as indigenous goods is permitted. However, benefit of section 10AA of Income Tax will not be applicable to such trading, other than trading in nature of re-export of imported goods – MC&I (DC) Instruction No. 4/2006 F No. 5/1/2006-EPZ) dated 24-5-2006 [210 ELT E12]. In case of trading, income tax benefits are available only in case of re-exports [see *explanation* to rule 76].

10.4.1 Special Economic Zones Act and Rules

Special Economic Zones Act, 2005 was passed by Parliament in May 2005. Basic purpose of the Act is smooth and hassle free operations in SEZ and a 'Single Window Clearance' for setting up an SEZ or a unit in SEZ. Major provisions of the Act have been made effective w.e.f. 10-2-2006. Sections 20 to 24 (dealing with offences in SEZ and civil suits arising in SEZ) and sections 31 to 41 (Establishment of SEZ Authority) have not been brought into force.

SEZ Act and Rules provide complete policy towards SEZ

The SEZ Act provides for the following -

- **Establishment of SEZ with approval from Board of Approvals (section 3 of SEZ Act).**
- **Notifying an area as SEZ by Central Government (sections 4 and 5 of SEZ Act).**
- **Board of Approval to approve establishment of SEZ (Sections 8 to 10 of SEZ Act).**



- **Development Commissioner for one or more SEZ as administrative authority for the SEZ (sections 11 and 12 of SEZ Act).**
- **Approval Committee to approve setting up an unit in SEZ (sections 13 and 14 of SEZ Act).**
- **Single window clearance by Approval committee for setting up unit in SEZ, OBU (Offshore Banking Unit) or International Finances Service Centre (sections 15 to 20 of SEZ Act).**
- **Appeal against decision of Approval Committee to Board of Approval [section 16(4) of SEZ Act and rules 55 to 69 of SEZ Rules]**
- **Enforcement Agency or Enforcement Officer in respect of notified offences committed in SEZ (sections 21 and 22 of SEZ Act - Not brought into effect).**
- **Special Civil Courts for SEZ and criminal courts to try notified offences in SEZ and appeal to High Court [sections 23 and 24- Not brought into force].**
- **Reliefs from Income Tax, customs duty, service tax, central sales tax and excise duty and duty drawback on goods brought or services provided from DTA to SEZ developer or SEZ Unit (sections 26 to 29 of SEZ Act).**
- **Exemption from taxes as specified in First Schedule to SEZ Act (sections 7 and 26 of SEZ Act).**
- **Customs duty on goods supplied from SEZ unit to DTA (section 30 of SEZ Act).**
- **Establishment of SEZ Authority (sections 31 to 41 - these sections have not been brought into force).**
- **Compulsory reference of dispute to arbitration (sections 42 and 43 of SEZ Act).**
- **Exemptions and relaxations from provisions of certain Central Acts (sections 49 and 54 of SEZ Act).**

10.4.2 Highlights of SEZ Rules

SEZ Rules, 2006 provide for the following -

- **Procedure for establishment of SEZ (Rules 3 to 16).**
- **Procedure for establishment of a Unit in SEZ (Rules 17 to 21).**
- **Terms and conditions for entitlement of exemptions, drawbacks and concessions (Rules 22 to 46 - Chapter IV).**
- **Conditions for removal of goods from SEZ to DTA (Chapter V - Rules 47 to 50).**



- **Requirements and monitoring of Foreign Exchange Earnings (Chapter VI - Rules 53 to 54).**
- **Procedures for appeal to Board of Approval from order of Approval Committee (Chapter VII - Rules 55 to 69).**
- **Provisions relating to Identity Card, foreign exchange remittances, revival of sick unit, exit of unit and self declaration.**
- **Prescribed Forms A to K**

SEZ Rules provide for-

- **Simplification of procedures for development, operation, and maintenance of the Special Economic Zones and for setting up and conducting business in SEZs.**
- **Single window clearance for setting up of an SEZ.**
- **Single window clearance for setting up a unit in a Special Economic Zone.**
- **Single Window clearance on matters relating to Central as well as State Governments.**
- **Simplified compliance procedures and documentation with an emphasis on self certification; and**
- **A wide range of services can be rendered from SEZs.**
- **Documentation for various activities of the units has been reduced to the barest minimum with an emphasis on self-certification.**
- **No requirement for providing bank guarantees, thereby reducing transaction costs.**
- **Contract manufacturing for foreign principals allowed.**
- **Option to obtain sub-contracting permission at the initial approval stage.**
- **Import - Export of all items, through personal baggage has been allowed.**

10.4.3 Policy to set up SEZ

Central Government has liberal policy for setting up such zones. SEZ can be set up in public, private, joint sector or by Central Government or State Government, jointly or severally [section 3(1) of Act]. Developer of such SEZ can allocate fully developed plots to entrepreneurs on purely commercial basis. Developer of SEZ can provide services like water, electricity, security, restaurants, recreation etc. He can also develop township adjacent to SEZ.

Proposal to establish a SEZ will be approved by Board of Approvals (BOA). Procedure to be followed for establishment of SEZ is given in Rules 3 to 16 of SEZ Rules, 2006.



10.4.4 Conditions relating to area and its utilisation

SEZ should have minimum specified area. In respect of non-processing areas, developer cannot lease vacant lands.

Area requirements of SEZ - Minimum area of land and other terms and conditions of approval shall be prescribed by Central Government [section 3(8) of SEZ Act]. Minimum area requirements stipulated for various categories of SEZs are as follows.

As per press report dated 5-4-2007, maximum area of SEZ can be 5,000 hectares. Minimum processing area shall be 50%. State Government shall not undertake any compulsory acquisition of land for such SEZ. Comprehensive resettlement and rehabilitation policy will be worked out ensuring livelihood of displaced persons.

Multi-product SEZ - Multi-product SEZs should have an area of 1,000 hectares or more [rule 5(2)(a) of SEZ Rules]. “Special Economic Zone for multi-product” means a Special Economic Zone where Units may be set up for manufacture of two or more goods in a sector or goods falling in two or more sectors or for trading and warehousing or rendering of two or more services in a sector or rendering of services falling in two or more sectors [rule 2(za) of SEZ Rules]

Minimum 35% area shall be earmarked for processing. This can be relaxed to 25% by Central Government on recommendation from Board of Approvals. Thus, remaining 65%/75% area will be available for developing residential and commercial areas.

Service Sector SEZ - Services-Sector SEZs should have an area of 100 hectares or more [first proviso to rule 5(2)(a) of SEZ Rules].

Minimum 35% area shall be earmarked for processing. This can be relaxed to 25% by Central Government on recommendation from Board of Approvals. Thus, remaining 65%/75% area will be available for developing residential and commercial areas.

SEZ in port or airport - In case of SEZ in port or airport, the area must be at least 100 hectares [rule 5(2)(b) of SEZ Rules]. “Special Economic Zone in a port or airport” means a Special Economic Zone in an existing port or airport for manufacture of goods in two or more goods in a sector or goods falling in two or more sectors or for trading and warehousing or rendering of services [rule 2(zc) of SEZ Rules].

Sector Specific SEZ - In some sectors where India has a competitive advantage, such as gems and jewellery, information technology, electronic hardware and software, bio-technology, sector-Specific SEZs can be set up over an area of 10 hectares or more. Similarly, in case of SEZ in non-conventional energy, solar energy, the area shall be 10 hectares or more [first and second proviso to rule 5(2)(b) of SEZ Rules]

In case of SEZ for specific sectors, at least 50% of the area shall be earmarked for developing processing area. Thus, remaining 50% area will be available for developing residential and commercial areas.



10.5 ADVANCE AUTHORISATION

Inputs required to manufacture export products can be imported without payment of customs duty under Advance Authorisation. Advance Authorisation can be granted to merchant exporter or manufacturer exporter to import raw materials. Since the raw materials can be imported before exports of final products, the authorisation issued for this purpose is called '**advance Authorisation**'. [This was termed as 'Advance License' upto 1-4-2006]. Paras 4.1.3 to 4.1.14 of FTP and paras 4.4 to 4.30 of HOP (Vol. 1) make provisions in respect of 'advance authorisation'.

Advance authorisation is issued to allow duty free import of inputs with normal allowance for wastage. In addition, fuel, oil, energy, catalysts etc. required can also be allowed. Duty free import of mandatory spares upto 10% of CIF Value of Authorisation, which are required to be exported with resultant products may also be allowed. However, prohibited items of imports cannot be imported [paras 4.1.3 of FTP].

Advance authorisation will indicate name and description and of items to be imported and exported / supplied, aggregate CIF value of imports, FOB / FOR value and quantity of exports / supplies. If quantity cannot be indicated, value shall be indicated. Goods can be exported in anticipation of advance authorisation, after submission of application to licensing authority.

The advance authorisation will be for Actual User only. It is not transferable. The material imported under advance authorisation is also not transferable even after completion of export obligation. However, goods manufactured out of such imported material can be disposed of, after export obligation is fulfilled [para 4.1.5 of FTP].

There must be positive value addition [para 4.1.6].

Export Obligation - Export should be within 24 months from date of issuance of authorisation. In case of projects, export obligation shall be fulfilled within duration of execution of project. In case of Advance Authorisation for drugs issued against specific order, export obligation shall be fulfilled within 6 months from date of import of first consignment (para 4.22 of HOP Vol. I).

Advance authorisation can be revalidated for 6 months if export obligation was fulfilled, on payment of composition fee of 2% of duty saved on all unutilised imported items, by submitting application in 'Aayat Niryat Form'. Further extension of 6 months can be obtained on payment of 5% of duty saved on all unutilised imported items as composition fee (para 4.22.1 of HOP Vol. 1).

There is no extension beyond 36 months (24+12 months) – MF(DR) circular N. 16/2006-Cus dated 9-5-2006.

If it is not possible to fulfil export obligation in time, extension has to be obtained from licensing authority (i.e. DGFT). If there is marginal shortfall upto 5%, it can be regularised. If shortfall is higher (upto 50%), extension upto one year can be obtained on submission of bank guarantee of full amount of duty saved. Shortfall in exports can be regularised on payment of duty along with interest @ 15%.



Application for advance authorisation - Application for authorisation shall be made in duplicate in 'Aayat Niryat Form' given in Handbook of Procedures (HOP) [para 4.4 of HOP (Vol. 1).

SION - The imports of raw materials is on the basis of standard input-output norms (SION). The SION are finalised and quantity allowed to be imported will be based on quantity exported. The price of inputs will be as declared by applicant. However, there must be positive value addition.

SION is fixed by 'Norms Committee'. Advance authorisation can be issued on basis of self declaration, subject to final adjustment as per SION fixed by NC (Norms Committee). (para 4.7 of HOP Vol. 1).

Exports in anticipation of authorisation – Exports in anticipation of Advance Authorisation is permissible, if procedure as specified in para 4.12 of HOP (Vol. 1) is followed. Advance authorisation after exports can be issued on basis of actual proof of exports. In such case, BG / LUT [Bank Guarantee / Letter of Undertaking] is not necessary (para 4.18(a) of HOP Vol. 1). In *CC v. Hindustan Tobacco* 2006 (193) ELT 190 (CESTAT), it was confirmed that export can be made in anticipation of license (now authorisation w.e.f. 1-4-2006).

EOU/SEZ/EHTP/BTP/STP can supply goods against advance authorisation – EOU/SEZ / EHTP / DTP / STP units can supply goods against advance authorisation. It is not necessary to convert advance authorisation into advance release order. The supplier will be entitled to benefits of deemed exports [amendment dated 17-5-2005 to FTP.].

Advance release order - Goods can be procured from indigenous manufacturer against advance release order (ARO) to be issued by RA (Regional Authority) (earlier known as Regional Licensing Authority upto 31-3-2006). The ARO can be denominated in foreign exchange / Indian Rupees [para 4.1.11 of FTP]. Alternatively, exporter can obtain goods from indigenous sources on basis of back to back Inland Letter of Credit (LC) from bank [para 4.1.12 of FTP and para 4.15 of HOP (Vol. 1)]. The value of Advance Authorisation will be reduced to that extent. - - Goods can be obtained from EOU/EHTP/SEZ/STP/BTP unit on basis of Advance Authorisation or DFRC. It is not necessary to convert Advance Authorisation into ARO (Advance Release Order) [para 4.1.11 of FTP].

Advance authorisation for intermediate supplies - In respect of supplies made against advance authorisation / DFRC / DFIA against 'deemed export', the supplier is entitled to Advance Authorisation / DFRC / DFIA for intermediate supplies – para 8.4.1(i) of FTP.

Import and Export from specified port – Export and import under advance authorisation can be through sea ports, airports, ICDs and LCS specified in para 4.19 of HOP Volume I. Export shipments can be effected from any of SEZs.

Advance authorisation for annual requirements to exporters – Annual Advance authorisation would be issued to exporters having past export performance to enable them to import their requirements of inputs on annual basis. Annual Advance Authorisation will be granted upto 300% of FOB value of exports in preceding financial year. There should be positive value addition [para 4.1.10 of FTP]. Customs Notification No. 94/2004-Cus dated 10-9-2004 make provisions for such annual authorisation.



10.6 DUTY ENTITLEMENT PASS BOOK SCHEME (DEPB SCHEME)

The scheme is easy to administer and more transparent. The scheme is similar to Cenvat credit scheme. The exporter gets credit when he exports the goods. The credit is on basis of rates prescribed. This credit can be utilised for payment of customs duty on imported goods.

As per para 4.3 of FTP, DEPB scheme will continue to be in operation until it is replaced by a new scheme, which will be drawn up in consultation with exporters. DEPB scheme has been extended upto 31-3-2008 by customs notification No. 48/2007-Cus dated 29-3-2007. Same provision in amendment to Foreign Trade Policy, announced on 18-4-2007.

The scheme is proposed to be replaced by a new scheme, since it is said that existing scheme is not WTO compliant.

The objective of the scheme is to neutralise incidence of customs duty on the import content of export product. The neutralisation shall be provided by way of grant of duty credit against the export product [para 4.3 of FTP].

Exporter can have either DEPB or duty drawback and not both.

Exports under DEPB scheme are allowed only when DEPB rate for the concerned export product is finalised.

Under this scheme, exporters will be granted duty credit on the basis of notified entitlement rates. The entitlement rates will be notified by DGFT. The entitlement rates will be a percentage of FOB made in free foreign currency. The entitlement rate will be fixed on basis of SION (Standard Input Output Norms) and deemed import content. Value addition achieved in export product will also be taken into account [para 4.3.1 of FTP].

DEPB is a post export duty remission scheme, which allows neutralization of deemed import duty charges on inputs used in the export product as per SION and the basic customs duty payable on such deemed imports. Value addition is also taken into account – para 4.37 of HOP (Vol. 1).

Credit can be utilised for payment of customs duty on *any item* which is freely importable [para 4.3.1 of FTP and para 4.42 of HOP Vol. 1]. [Till 1-4-2006, the credit could not be used for payment of customs duty on capital goods].

Credit can be used for payment of basic customs duty as well as CVD. The importer has option to pay CVD by cash [para 4.3.2 of FTP].

The credit can also be used for payment of special CVD of 4%. If the CVD is paid by debit to DEPB, Cenvat credit/brand rate of duty drawback is available - MF(DR) circular No. 18/2006-Cus dated 5-6-2006.

The credit can be transferred to another person, but the transfer will be valid for imports within the same port from where exports were made. Import from other port will be available under TRA facility [para 4.3.4 of FTP].



DEPB is valid for 24 months for import [para 2.12 of HOP Vol. 1]. The DEPB and / or the items imported are freely transferable. However, DEPB can be transferred only after realisation of export proceeds.

The scheme is available to both manufacturer exporters as well as merchant exporters. DEPB has to be registered with customs house.

Application for DEPB - Filing of applications for DEPB and Advance Authorisation through DGFT website is compulsory w.e.f. 16-1-2006. The application should be digitally signed and fees shall be paid electronically. The procedure is prescribed in DGFT policy circular No. 44 (RE-2005)/2004-09 dated 10-1-2006.

Actual import content in export product not required – DEPB credit to be granted is not related to actual content of imported goods in export products, but deemed import content – *Anjani International v. CC 2005 (186) ELT 512 (CESTAT)*.

No All India rate of duty drawback if goods exported under DEPB – If goods are exported under DEPB, All Industry Rate of duty drawback will not be available - para 2(g) of customs Notification No. 8/2005-Cus(NT) dated 18-1-2005.

Duty drawback and CVD credit available even if duty paid through DEPB, w.e.f. 17-9-2004 – Earlier, it was clarified that Cenvat of CVD can be availed only if CVD is paid in cash. Similarly, duty drawback was allowed only if CVD was paid in cash. However, para (vi) of notification No. 96/2004-Cus dated 17-9-2004 now specifically provides that drawback or Cenvat credit of CVD can be availed against amount debited in DEPB. The benefit is available only in respect of DEPB issued under Foreign Trade Policy i.e. on or after 1-9-2004 – confirmed in MF(DR) circular No. 59/2004-Cus dated 21-10-2004.

Para 4.3.5 of Foreign Trade Policy (FTP) reads as follows – ‘Normally, the exports made under the DEPB scheme shall not be entitled for drawback. However, the additional customs duty / excise duty paid in cash or through debit under DEPB shall be adjusted as Cenvat credit or duty drawback as per rules framed by Department of Revenue’. Thus, Cenvat credit is available whether CVD is paid in cash or by debit to DEPB.

Duty drawback of CVD is available even when CVD is paid through DEPB credit – MF(DR) circular No. 41/2005-Cus dated 28-10-2005.

Customs can check PMV – In *Om Prakash Bhatia v. CC 2003 AIR SCW 3452 = 155 ELT 423 (SC)*, it was held that over invoicing is an offence. To such goods, section 113(d) would apply and they can be confiscated. - - If margin of profit appears unreasonable, it is for the exporter to establish that it was a true export value stated in the shipping bill. [view held in *Om Prakash Bhatia v. CC 2001(127) ELT 81 (CEGAT 5 member bench)* confirmed].

Who cannot avail DEPB ? – Following cannot avail DEPB – (a) Goods manufactured in customs bonded warehouse (b) Goods exported against discharge of export obligation under Advance Authorisation (c) EOU, SEZ, STP, BTP or EHTP units (d) Export of goods of foreign origin, unless there is manufacture or processing (e) Exports made under specified paras of FTP.



Sales tax on sale of DEPB – DEPB (Duty Entitlement Passbook Scheme) is freely tradable. It is right to claim back credit. It is freely tradable and is ‘goods’. It is taxable under sales tax. It is not actionable claim. – *Philco Exports v. STO* (2001) 124 STC 503 (Del HC DB). However, Haryana Tax Tribunal in case of *Sadhu Overseas*, has held that DEPB is a sort of money which can be used either by dealer or anybody else. Hence it is not ‘goods’ [CS September 2004 – page 1333].

10.7 DUTY FREE IMPORT AUTHORISATION (DFIA)

‘Duty Free Import Authorisation’ (DFIA) has been introduced w.e.f. 1-5-2006 as per para 4.4 of Foreign Trade Policy. Corresponding customs notification No. 40/2006-Cus dated 1-5-2006 has been issued. The scheme is said to contain features of Advance Authorisation and DFRC scheme.

‘Advance Authorisation’ is not transferable, while material imported under DFIA will be transferable after fulfillment of export obligation. In case of Advance Authorisation, positive value addition is sufficient, while in case of DFIA, 20% value addition is required, except in case of gem and jewellery sector.

DFIA is issued to allow duty free import of inputs used in manufacture of export product (with normal allowances for wastages), and fuel, energy, catalyst etc. Duty free import of mandatory spares upto 10% value of authorisation, which are required to be exported / supplied with resultant product is also allowed.

DFIA is issued on basis of SION. Import Authorisation will be limited to quantity mentioned in SION. DFIA is issued to manufacturer-exporter or merchant-exporter for following – (i) Physical exports including supplies to SEZ (b) Intermediate supplies and (c) Main contractors for supply of goods under Deemed Exports (except supply against Advance Authorisation and marine containers). In case of some deemed exports, DFIA is available to sub-contractors also [para 4.4.2 of FTP].

DFIA is initially issued with ‘actual user condition’. Imports will be exempted from payment of basic customs duty, additional customs duty, education cess, anti-dumping duty and safeguard duty, if any [para 4.4.2 of FTP]. After export obligation is fulfilled, the scrip can be made transferable by Regional Authority. After endorsement of transferability, duty free inputs (except fuel) can be transferred. However, where SION is subject to ‘actual user’ norm, transferability is not allowed. In case of fuel, import entitlement can be transferred only to companies which have been granted authorisation to market fuel by Ministry of Petroleum and Natural Gas [para 4.4.6].

Cenvat credit will not be available in respect of inputs [para 4.4.7]. Drawback will be available only in respect of duty paid material used in goods exported as per drawback rate fixed by Ministry of Finance [para 4.4.8 of FTP].

Duty free procurement from domestic market is permissible against ARO / invalidation letter / back to back inland LC [para 4.4.3 of FTP]

Value addition should be minimum 20%, except in case of gem and jewellery sector and items



for which higher value addition has been prescribed under Advance Authorisation Scheme [para 4.4.4 of FTP].

In respect of supplies made against advance authorisation / DFRC / DFIA against 'deemed export', the supplier is entitled to Advance Authorisation / DFRC / DFIA for intermediate supplies – para 8.4.1(i) of FTP.

In respect of sensitive items mentioned in para 4.55.3 of Handbook, exporter will have to furnish declaration with regard to technical characteristics, quality and specification in shipping bill – MF(DR) circular No. 16/2006-Cus dated 9-5-2006.

Customs procedures as prescribed in customs notification No. 40/2006-Cus dated 1-5-2006.

10.8 EPCG AUTHORISATION

Under Export Promotion Capital Goods (EPCG) scheme, an authorisation holder can import capital goods (i.e. plant, machinery, equipment, components and spare parts of the machinery) at concessional rate of customs duty of 5%. Capital goods can be imported for pre-production, production and post production (including CKD/SKD of capital goods and computer software systems) – para 5.1 of FTP.

Capital goods which can be imported under 'project imports' can be imported under EPCG scheme. The export obligation will be 8 times the duty saved i.e. difference between concessional rate under project imports and rate applicable under EPCG – para 5.1B of FTP.

Capital goods required for retailers having minimum area of 1,000n SqM is permissible – para 5.1C of FTP.

Importer will be issued 'EPCG Authorisation' for this purpose.

Conditions for EPCG are contained in chapter 5 of FTP.

Importer can either claim exemption of CVD or pay CVD in cash. If he pays CVD in cash, that amount will not be considered for purpose of fixation of export obligation. However, in that case, he cannot avail Cenvat credit of the CVD paid (Amendment w.e.f. 2-3-2005. Till now, importer could pay CVD in cash and avail Cenvat credit. Now, if he pays CVD in cash, his export obligation will get correspondingly reduced, but he cannot avail Cenvat of CVD paid in cash).

Computer software systems are also eligible. Import of spares of capital goods is permitted, without any limit. Jigs, fixtures, dies, moulds will be allowed to the extent of 100% of CIF value of authorisation. Spares for existing plant and machinery can also be imported. Second hand capital goods can also be imported under EPCG scheme

However, second hand capital goods of Indian origin are not permitted under EPCG scheme – DGFT Policy circular No. 16 (RE-2005)/2004-09 dated 15-7-2005.

Hotel equipment (window cleaning equipment in this case) can be imported under EPCG scheme – *CC v. Hotel Leela Venture Ltd.* 2003 (158) ELT 777 (CESTAT).



Authorisation will be issued on the basis of certificate of Chartered Engineer in respect of imported capital goods and exported final product.

Merchant Exporters can also import capital goods under EPCG scheme, if the capital goods are installed in the factory of their supporting manufacturer. The name and address of supporting manufacturer should be endorsed on EPCG authorisation and bond with Bank guarantee has to be executed jointly and severally by merchant exporter and his supporting manufacturer.

The import is permitted only through specified port of registration. If EPCG is registered at one place but import is from other customs house, the import shall be permitted against TRA (Telegraphic Release Order) which will be issued by customs house at port of registration – MF(DR) circular No. 88/2003-Cus dated 6-10-2003.

Clubbing of EPCG authorisations - All EPCG authorisations issued under one notification in one financial year and for export of same product/s or services will be clubbed for reducing paper work and easy monitoring – para 5.18 of HOP.

Export obligation - Importer has to fulfil export obligation equal to eight times duty saved on imported capital goods to be fulfilled over a period of 8 years. In respect of capital goods imported for technological upgradation, export obligation will be six times the duty saved. 50% export obligation should be fulfilled in first block of 6 years and balance 50% in next block of two years. SSI units will have export obligation equal to 6 times duty saved on capital goods imported, to be fulfilled over a period of 8 years. Agro units will have export obligation of 6 times the duty saved, to be fulfilled over period of 12 years [para 5.1 of FTP]

Extension of export obligation beyond 8+2 years can be considered for a further period of two years with condition that 50% of duty payable in proportion to unfulfilled export obligation is paid to customs – para 5.11 of HOP – MF(DR) circular No. 16/2006-Cus dated 9-5-2006.

In respect of EPCG authorisation for Rs 100 crore or more, the export obligation shall be required to be fulfilled over a period of 12 years. Similarly, sick companies under BIFR and units in Agri Export Zones can fulfil export obligation in 12 years. Export obligation for every block has been specified. Extension for fulfilling export obligation upto two years can be obtained. – MF(DR) circular No. 25/2003-Cus dated 1-4-2003 [para 5.1 of FTP].

If 75% export obligation is completed in half or less than half the prescribed period, companies can be freed from their obligations in remaining period (para 5.11 of FTP).

The export obligation shall be fulfilled by export of goods capable of being manufactured or produced by the capital goods imported under the scheme. However, goods can be manufactured in other unit of authorisation holder also. The export obligation will be over and above the average level of exports achieved during preceding three licensing years. - - Export obligation can also be fulfilled by export of other goods manufactured by the importer. Exports of goods/services by group companies will also be considered towards fulfilment of export obligation. However, in such case, additional export obligation will be over and above the average exports achieved by unit/group company/managed hotel in preceding three years – para 5.4(i) of FTP.

EXPORT PROMOTION SCHEMES



Exports shall be physical exports, but some deemed exports are eligible. Royalty payments and payments for R&D services received in free foreign exchange will be considered towards fulfilment of export obligation – para 5.4(iv) of FTP.

EPCG authorisations can be clubbed for discharge of export obligation.