

OFFICE OF THE COMMISSIONER OF CUSTOMS (EXPORT)

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STANDING ORDER NO. 38 / 2007

SUB: CENVAT credit under DFIA Scheme Procedure to be followed by licence verification section for verifying non availment of Cenvat credit and the procedure to be followed by the DFIA section before cancellation of Bond / BG.- regarding.

Attention of all officers of this Custom House is drawn to the DFIA Scheme, which was introduced in the Foreign Trade Policy of 2006-2007, after discontinuance of the erstwhile DFRC scheme w.e.f. 30.04.2006. DFIA Scheme combined the positive aspects of Advance Licence scheme and the discontinued DFRC scheme. To operationalize the scheme in Customs, CBEC had issued notification No.40/2006-Customs, dated 01.05.2006.

2. Notification 40/2006 Cus., exempts the imported goods from the whole of Basic Customs Duty (BCD), CVD., Safeguard Duty and Anti-dumping Duty on the condition (Condition (v)) that the facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of Rule 19 of the Central Excise Rules, 2002 or CENVAT credit under CENVAT Credit Rules, 2004 in respect of materials imported/procured against the said authorization for manufacture of export products, has not been availed.

3. The Scheme provides for duty free imports, both before or after the fulfillment of Export Obligation. While in the case of prior imports, (where imports precede exports) availment of CENVAT on inputs, generally may not arise (as the inputs are duty free), the same cannot be said in the case of post-export imports.

4. It is noticed that certain exporters had exported manufactured goods under DFIA scheme after availing the benefits of CENVAT credit on the inputs used in the manufacture of the export products which is in contravention of condition No.(v) of notification No. 40/2006 Cus., dated 01.05.2006. This Department has to safeguard revenue from possible utilisation of DFI Authorisations obtained against exports of goods manufactured out of inputs on which CENVAT credit was taken.

5. The possible situations and the procedure to be followed in the case of DFI Authorisations issued before 19.04.2007 are enumerated below: -

(a) Prior Imports Cases (Pre Export cases where imports precede exports):

Goods are imported against the DFI Authorization and the exports are made subsequently after utilizing these imported inputs in the manufacture of export products. In such cases the licencees / exporters cannot avail CENVAT credit against the imported inputs used in the manufacture of the export products, since the Bill of Entry shows NIL duty payment, hence there should not be any problem in these cases. In this category, Authorization is utilized fully for importing duty free goods under the DFI Authorization before exports. For this, it is mandatory on the part of the Authorization holder to execute Bond / Bank Guarantee in the DFIA Section. After registration of Authorization only, imports can take place against the Authorization. Even if the Authorization holder availed the benefits of CENVAT credit for the inputs used for the manufacture of the export products in contravention of condition No. (v) of notification No. 40/2006, there are two controls. One is at the time of granting of EODC by licencing authorities and the second one when the licensee approaches the DFIA Section of JNCH for cancellation of Bond / Bank Guarantee. At the time of cancellation of the Bond / BG, the Customs Officers should reject those Shipping Bills against which the input stage CENVAT credit on the inputs used in the manufacture of export goods is availed by the licensee and should not cancel the Bond / BG unless proper Shipping Bills with non-availment of CENVAT credit are produced.

(b) **Post Export Imports Cases (where exports precede imports):-** Exports are completed before any importation has taken place against the said DFI Authorization. In these cases, the licensee / exporter procures the inputs from the indigenous sources by paying Central Excise duty. These duty paid inputs are used in the manufacture of products exported under DFIA. Since the licensee has already paid Central Excise duty, he may take CENVAT credit on the inputs. This is quite possible. The importer may get the Export Obligation Discharge Certificate (EODC) also and may get an endorsement with respect to transferability of the DFIA authorization from DGFT offices. The licensee may use the Authorization himself or he may transfer the Authorization. In such a scenario, at the time of verification of Shipping Bills and verification of Authorization, the licence verification section has to verify whether any violation of condition No.(v) of the Customs notification No.40/2006 Cus., has taken place or not and in case of violation, the licence verification section should not count such shipping bills of export goods on whose inputs CENVAT credit has been taken for verification and bond cancellation of the DFI Authorizations issued before 19.04.2007 for the purpose of fulfillment of export obligation. Therefore at the time of Authorization verification, it is required to insist for a certificate either from Central Excise authorities or self-declaration in case they are not registered with Central Excise, to the effect that they did not avail the facility of CENVAT credit in violation of condition No. (v) of Customs notification No.40/2006. Therefore, the DFIA Verification Section has to verify not only the genuineness of the FOB value and quantity of export but also the fulfillment of the conditions of the notification. To avoid this situation, Commerce Ministry has now amended the Para 4.4.6 of the Foreign Trade Policy w.e.f. 19.04.2007. After fulfillment of export obligation and at the time of transfer of the Authorization JDGFT offices will endorse on the face of the DFIAuthorization with the condition that the transferee has to pay CVD / ADC. This provision takes care of the apprehension that there may be undue double benefit under the DFIA scheme for those Authorizations issued after 19.04.2007.

(c) **Partial Pre Imports & balance Post Export Imports:** In this case, where the licensee gets the Authorization registered with the Custom House after execution of Bond / Bank Guarantee in the DFIA Section and thereafter imports partially against the Authorization and fulfills the Export Obligation without completing full imports. He submits the Shipping Bills for EODC and transferability to the licencing authorities. In such cases also, the Authorizations have to go

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