

MINUTES OF PTFC MEETING (EXPORT) HELD ON 30.07.2015

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (N.S.-II)
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA
TAL: URAN, DIST-RAIGAD, MAHARASTRA-400707.

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Date:19.08.2015

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The monthly meeting of Permanent Trade Facilitation Committee (PTFC) (Export) was held on 30.07.2015 at 11.30 AM in the Conference Hall at the 7th floor of the Custom House. The meeting was conducted by Shri S.H. Hasan, Principal Commissioner of Customs (General & N.S- II), JNCH.

The following members of trade attended the meeting:

Sr. No.	Name and Designation	Sr.	Name and Designation
01	Shri Mohan Nihlani, AIIEA	14	Shri Paresh Shah, BCHAA
02	Shri Milan Desai.	15	Shri D.L. Thakkar, BCHAA
03	Shri Suresh Dalvi, BCHAA	16	Shri Ashwin Tachok, GDL/Punjab
04	Shri Subhash Rajkumar, MANSA.	17	Shri Ganpat P. Korade, BCHAA
05	Shri V.K. Agarwal GM (Onida)	18	Shri Bhuneshwar Dwivedi, CWC
06.	Shri Raja Sekhar. R, UPL Ltd.	19	Shri Jude Fernandes, INDEV CFS
07.	Shri Arun Yadav, CWCD	20	Shri R.K. Rubin, Hon'ble Treasurer
08	Shri Manish Kumar, MANSA	21	Shri Victor Fernandes, MANSA
09	Shri Yash Vardhan, Vaisho	22	Shri Nimish Desai, WISA
10	Ms. Philomena Pereira	23	Shri Paresh K. Thakkar, BCHAA

11	Ms. Shyamali Banerjee, FIEO	24	Shri Vikrant More, FIEO
12	Shri K.M. Tope, CFS MSWC	25	Shri Saurabh Bhagat, ULA, MICT
13	Shri James Joseph	26	Shri Nana Zaware, CFS Navkar

2. The following officers of the Department attended the meeting:-

Sr. No.	Name and Designation
01	Shri Subhash Agrawal, Commissioner of Customs (N.S.- IV),
02	Shri A.K. Goel, Additional Commissioner of Customs.
03	Shri Rajesh Kumar Agarwal, Additional Commissioner of Customs
04	Shri Rakesh Goel, Additional Commissioner of Customs
05	Shri Alok Agarwal, Joint Commissioner of Customs
06	Shri Siddalingesh, Deputy Commissioner of Customs
07	Shri Amit Kumar Sharma, Assistant. Commissioner of Customs
08	Shri Ashok Thaker, Assistant Commissioner of Customs

3. The Principal Commissioner welcomed all the members and the meeting commenced. The Minutes of the PTFC meeting held on 25.06.2015 was confirmed.

4. The following points came up for discussion in the present PTFC meeting:

4.1: Shri Mohan Nihalani, President of All India Importers & Exporters Association, raised the Agenda Points which were e-mailed by him as Agenda Points for the PTFC Meeting scheduled on 25.06.2015. Though the points were already discussed and incorporated in the Minutes of the PTFC Meeting held on 25.06.2015, on his request the same were again taken up for discussion. The points are as under:

4.1.1 When duty Drawback given is less than the Drawback applied for, is any detailed Calculation alongwith reasons given to the exporter ? This is required both from the point of good order and also from the point of the audit requirements of the Exporters.

Earlier Reply : The duty drawback claimed by the exporter is scrutinised as per the exporter's declaration made in the Shipping Bill, examination report, sample test result and departmental comments entered by the shed officers. In respect of the Shipping Bills wherein the drawback claimed appears to be higher/in-admissible, specific and detailed queries are raised to the exporter for modifying the drawback amount and the query text is available on the <http://icegate.gov.in> website. Further, based on the submission/reply made by the exporter/CHA, the admissible drawback is released thereby ensuring that the principles of natural justice are followed.

Additional Reply: Sanctioning of DBK claim in itself is also a speaking order. Any reduction in the DBK claimed is done only after the acceptance by the Exporter in the form of reply to the query and thereby ensuring that the principles of natural justice are followed.

(Point Closed)

4.1.2 If any deficiency is found in the Duty Drawback application, is any proper written communication made to the Exporter? Communication on the customs website is not legal communication. We have been agitating about the aspect for a long time but the ball is lobbed in the court of your systems directorate. Any progress in this matter?

Earlier Reply: It may be noted that the electronic drawback shipping bill is itself considered as claim for the duty drawback. Thus, if any deficiency is found in the duty drawback claimed by the exporter, specific and detailed queries are raised to the exporter and communicated in electronic mode to the exporter. Further, the query text is available on the <http://icegate.gov.in> website. As a measure of trade facilitation, the details of Drawback Shipping Bills wherein query has been raised is also made available in the JNCH website (<http://164.100.155.199/>).

Additional reply: It was decided that a query report on fortnightly basis will be made available at the JNCH website (<http://164.100.155.199/>) and same will be mailed to AIIEA, FIEO for pursuing the query reply with the exporters.

(Point Closed)

4.1.3 As promised in various fora, is any study made about the delay in certain specific cases in the matter of delay in passing of documents and subsequent procedures for export.

Earlier Reply: The point appears to be pertaining to procedures involved in clearance of exports and M/s AIIEA was requested to make the agenda point more clear and specific.

Additional reply: It was decided that a time release study for export consignments will be conducted and specific instances involving substantial delay (ie from registration of goods to LEO) in clearance of export consignments for the first Quarter of financial year 2015-16 would be taken up for detailed analysis.

(Point Closed)

4.2: An e-mail was received from Shri Jacob George, M/s Thermax Limited on 25.06.2015 as Agenda Point for the PTFC Meeting scheduled on 25.06.2015. But the same was neither presented nor discussed by the members during the meeting. Accordingly, the same were taken as Agenda Points for the PTFC Meeting scheduled on 30.07.2015 at 11.30 hrs. Vide the e-mail he submitted the following points:

4.2.1 Delay in registering Advance licences. Exporters face tremendous delays in registering advance licences resulting into delay in clearance of consignments, incurring heavy detention/demurrage charges. Even after submitting all the documents Custom authorities asks for genuineness certificates from Central Excise Authorities, banks for the authenticity of the BGs, etc.

We suggest that once the documents (licence, BGs/LUTs) are submitted, the licence should get registered with 48 hours. This will help the exporters to execute the export project in time, and avoid unnecessary expenses and delays.

Reply:

1. Advance Authorisations are registered by DEEC Monitoring Cell in terms of Circular No. 58/2004-Cus. dated 21.10.2014, as amended. Most of the licences are registered on LUT/BOND.

2. The Licence holder can avail BG exemption, as specified in Para 3.1 of Circular No. 58/2004-Cus. subject to the conditions laid down in Para 3.2 of said Circular. As per Para 3.2 (c), **the License holder should not have been penalized** under the provisions of the Customs Act, 1962, the Central Excise Act, 1944, the Foreign Exchange Management Act (FEMA), 1999 or the Foreign Trade (Development and Regulation) Act, 1992 during the previous three financial years. In such cases, it is mandatory to confirm from the jurisdictional C. Excise Authorities that the parties are not penalized for the last three years.

3. Whenever, all the requisite documents are submitted, licences are registered on the same day. Any specific case of delay should be brought to the notice of ADC/JC, DEEC Monitoring Cell.

(Point Closed)

4.2.2 Delay in clearance of Export goods: Project/Capital goods exporters, make shipments against particular order/project in various lots, depends upon the readiness and site requirement. Some of the items are procured from the various vendors and dispatched directly to the port for shipment. Since ARE-1 and the shipping bill, which is prepared as per our invoice customs raise objections due to value difference, and delays the clearance of the cargo which delays the shipment. In fact, there is a Board Circular to this effect, which allows drawback upto 150% of the ARE-1 value.

Reply: As far as this point is concerned, no such delay has been brought to the notice of the DC/Export Docks w.r.t. export of Project/capital goods. However, when these project/capital goods are not exported in CBU (complete Built Unit) at one time but are exported in CKD/SDK condition at different sets of time, the exporter/CHA classifying these goods individually under

respective CTH and also declares their **value individually** and claims Export incentive on these goods based on these individual prices. However, the contract price between the exporter and consignee is based on total completion of the project and not on individual item price. The Rule 3 of 'Customs Valuation (Determination of Value of Export Goods) Rules 2007' clearly states that the value of export goods shall be the transaction value. The transaction value in such cases is the contract price. The CHA/representative never produces contract copy at the time of examination nor they register/produce before the department the list of the goods to be exported under the project. In few cases, the CHA has shown reluctance when asked for CE certificate. However, shipments are allowed immediately after putting specific remark in system i.e. restricting Drawback upto 150% of the ARE 1 value if there is any difference in value, as per the condition no. 6 of Notfn. No.110/2014-Cus (NT) dated 17.11.2014 and as per para 2(d) of CBEC Circular No. 13/2014-Cus dtd. 18.11.2014.

(Point Closed)

4.2.3. Delays in clearance of Project Import consignments. We experience tremendous delays in clearing (more than 30 days) incurring heavy demurrage and detention. Even after submitting the documents (certificates, BGs) customs authorities are insisting for checking the authenticity of the documents, which is delaying the clearance and ultimately the project is not getting completed on time.

Reply: The issue relates to the project import. The matter has been referred to Appraising Main (Import). This point/issue may be raised in PTFC meeting conducted by Appraising Main (I).

(Point Closed)

4.2.4 Delay in settlement of drawback: As per the requirement of Customs exporters submit negative statement to the customs in support of drawback claims. Even after submitting the negative statement, customs comes out with XOS statement as per RBI, and asks for BRCs, even cases pertaining to 2003, 2004 which are very old, and puts the exporters into alert, thereby, denying the drawback claims. Suggest, customs must follow one procedure for settlement of claims (say BRCs, rather than asking for negative statements, certificates etc.)

Reply: In terms of the provisions of **Section 75 (1)** of the Customs Act, 1962 read with sub-rule 16A (1) of the Customs, Central excise duties and Service Tax Drawback Rules, 1995, where an amount of drawback has been paid to an exporter but the sale proceeds in respect of such export goods have not been realised within the time allowed under the Foreign Exchange Management Act (FEMA), 1999, such drawback amount is to be recovered. The **sub-rule 16A (2)** stipulates that if the exporter fails to produce evidence in respect of realization of export proceeds within the period allowed under the FEMA, 1999 or as extended by the Reserve Bank of India (RBI), the Assistant/Deputy Commissioner of Customs shall issue a notice to the exporter for production of evidence of realization of export proceeds, failing which an order shall be passed to recover the amount of drawback paid to the claimant. Thus, the drawback payment is ultimately linked to the realization of export proceeds.

As per the **CBEC Circular no.05/2009 dated 02.01.2009**, the exporters are required to furnish the BRCs/negative statement in the prescribed Annexure in respect of all the Drawback Shipping Bills. Once the exporter submits the negative statements/certificates issued by the Authorised Dealers/Chartered Accountants, the BRC section scrutinizes /verifies the negative certificates and updates the system using the BRC entry module. **Upon updating the system, if any BRC pendency is noticed in respect of any Drawback Shipping Bill upto 30.06.2014, the IEC alert is not revoked until the BRC pendency is cleared.**

Presently, the BRC entry module gives three options for entering the details of foreign exchange realization:

i.If the exporter furnishes the **BRCs** as a proof of foreign exchange realization, the officer chooses option (1) and enters the specific shipping bill numbers and dates. Such shipping bills are deleted by the system from the list of shipping bills pending for realization of export proceeds.

ii.If the exporter produces a “**negative statement**” for a specified period from the AD/Chartered accountant that no **foreign exchange is pending realization** from the exporter in the given period, the officer chooses option (2). The system automatically displays the S/Bs pertaining to the given period on screen and once the officer approves, all such shipping bills are deleted from the pendency list.

iii.If the **negative statement** furnished by the exporter gives the list of S/Bs, for a particular period, for which **foreign exchange has not been realized** (and by implication foreign exchange has been realized for all other S/Bs), then the officer chooses option (3). This option allows the officer to enter the S/Bs for which the BRCs are pending. Thereafter, all S/Bs except such pending S/Bs are deleted from the list.

From the above, it is clear that the exporter has the option to submit the BRC (Shipping Bill wise)/Negative statements from the Authorised Dealers/Chartered Accountants and both are being considered by the BRC section for updating the BRC pendency. Updating the BRC details as per the Negative Statements is much faster as compared to the shipping bill-wise updation (as per the BRCs) which can at times be very time consuming.

Thus the **suggestion** from the trade that the Customs must follow one procedure for settlement of claims by way of BRCs is **already made available to the exporters**. In fact, the concept of submission of negative statements was brought out as a measure of simplification and trade facilitation as expecting the exporters to submit the Drawback shipping bill-wise BRCs would sometimes result in delays and hardships.

(Point Closed)

4.2.5 Cess 2% + 1%) on customs duty is being calculated on both customs as well as on CVD. However, edu .cess is applicable only on basic duty and not on CVD. Suggest, necessary system correction for calculating cess only on Customs duty and not on CVD.

Reply: The issue has already been discussed by EDI Section with DG (Systems) authorities long back and as per feedback provided by them, the system is calculating the Cess correctly.

(Point Closed)

4.2.6 Project Import finalization, once the documents are submitted, files are getting misplaced and we have to re-construct the file with copy of the documents. Thus is delaying finalization process.

Reply: The issue relates to the project import. The matter has been referred to Appraising Main (Import). This point/issue may be raised in PTFC meeting conducted by Appraising Main(I).

(Point Closed)

4.2.7 Carbon steel tubes and pipes cleared under the Advance Licence reflects with the safeguard duty amount in customs system which is removed subsequently at the time of passing the Bill of Entry in many cases, it so happens that removing activity is missed out by either party & ultimately the importer incurs the demurrages arising out of the process flaw. For the goods cleared under Advance Licence Scheme, Safeguard Duty should not appear. Necessary Correction should be made in the system.

Reply: The safe guard duty amount is reflected in the Bills of Entry filed for clearance of Carbon steel tubes & pipes cleared under the Advance Licence is removed subsequently at the time of assessment of the Bill of Entry and amount of safe guard duty is debited in bond. The matter has been referred by Group 7D to EDI for resolving the issue.

(Point Closed)

4.3 : Further another e-mail dated 24.07.2015 was received on 27.07.2015 from BCHAA, wherein, they have submitted combined Agenda Points for the PTFC Meeting scheduled on 30.07.2015, to be conducted by Appraising Main (Import: NS-I, NS-III & NS-V) and Appraising Main (Export: NS-II, NS-IV & General). Vide the e-mail, they have submitted the following Agenda Points:

4.3.1 Simplification of procedure for Bonds to be submitted to Customs:

There is facility to give yearly Bonds to Customs, however, practically not getting implemented. We give different bonds:

i.End use bonds for Advance licence (Exports).

For advance licence with EODC, for 1 licence if 20 imports take place, we give 20 bonds for post imports, whereas, for new licence registration for prior import, we give only one time bond for all imports.

Our request to give One Time Bond licence wise for post import also.

Reply: In this connection, it is to inform that for import under Advance Authorization, wherein, EODG has been issued by DGFT, the requirement of executing End use bond for each import at the time of importation has been prescribed under Exemption Notification itself. As in case of clearance under Advance Authorization as per Notification 18/2015 Cus dated 01.04.2015, it is prescribed as under -

“that in respect of imports made after the discharge of export obligation in full, if 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 of CENVAT Credit Rules, 2004 has been availed, then the Importer shall, at the time of clearance of the imported materials furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to sue the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture of dutiable goods and to submit a certificate, from the jurisdictional Central Excise officer or from a specified chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used:

Provided that if the importer pays additional duty of customs leviable on the imported materials but for the exemption contained herein, then the imported materials may be cleared without furnishing a bond specified in this condition and the additional duty of customs so paid shall be eligible for availing CENVAT Credit under the CENVAT Credit Rules, 2004.”

However, regarding execution of single continuity End Use Bond, as advised by the trade, its modalities with respect to ICES System and further monitoring thereof are being examined by the group. Once such a system is finalized, it will be properly enforced & communicated by way of suitable Public Notice/Facility Notice.

(Point Closed)

ii. Sec. 59 bond to Bond Section. (Imports).

Yearly Bond by the Importer would ease procedural part. Steps may be taken to encourage regular Importers to submit one time Bond, who are utilizing this facility.

Reply: This is a common agenda point from BCHAA for PTFC meeting held by Appraising Main (Export) and Appraising Main (Import). Matter pertaining to Bond is dealt by NS-I Commissionerate. Hence, the PTFC meeting conducted by Appraising Main (Import) is the proper forum to discuss this issue.

(Point closed)

iii. ADC (Additional Drug Controller) Bonds for dual use items, etc. (Imports).

ADC Bonds: Yearly bond may be given for one company. Problem here is ADC wants

Indent/sale contract. Whereas, importer can give yearly bond stating item name and expected quantity. It is not possible for a importer to get Yearly Indent/Sale contract and there is no possibility to fix supply details.

We need to simplify procedure and allow importer to submit yearly bond with item description and quantity.

Reply: This is a common agenda point from BCHAA for PTFC meeting held by Appraising Main (Export) and Appraising Main (Import). Hence, the PTFC meeting conducted by Appraising Main (Import) is the proper forum to discuss this issue

(Point closed)

4.3.2 Bond department to be digitalized (Imports)

There is acute shortage of space with Bond department. Existing process of manual registers needs to be replaced with computers to cover up this statistical data requirement. Entering data to manual register is causing lot of hardship to members and department. Cancellation of bonds, such as Transit bonds and other post clearance formalities are too time consuming with current set up.

Suggestion: Local computer software may be developed for simplification of process and to cover data entries as being done in the register, maintenance of record and post clearance work becomes easy.

Reply: This is a common agenda point from BCHAA for PTFC meeting held by Appraising Main (Export) and Appraising Main (Import). Hence, the PTFC meeting conducted by Appraising Main (Import) is the proper forum to discuss this issue

(Point closed)

4.3.3: Monitoring cell and Bond acceptance in group VII (Exports)

Acceptance of bonds and closing of files for Advance authorization is complex and lengthy process. It is observed that the existing staff and the Joint Commissioner is putting their best effort on this. However, procedure takes time and needs to be simplified.

Letters submitted by Exporters or EODC received online are not getting registered in file hence closeures are getting delayed resulting in live consignments held up.

Reply: This point was not discussed in the PTFC Meeting held on 30.07.2015. The said point will be taken up for discussion in the next PTFC meeting.

(Point Open)

4.3.4 ADC (Additional Drug Controller) Formalities (Imports)

Trade and Custom Brokers are required to take NOC for various consignments which includes NOT A DRUG items etc. In the past NOCs were being granted by the ADC deptt. on the check list, whereas now it is issued only against Bill of Entry which is resulting in delay.

Matter may please be discussed and NOC to such items shall be granted on check list, to avoid the delay in import.

Reply: This is a common agenda point from BCHAA for PTFC meeting held by Appraising Main (Export) and Appraising Main (Import). The issue relates to the items pertaining to Group II. Hence, the PTFC meeting conducted by Appraising Main (Import) is the proper forum to discuss this issue.

(Point Closed)

4.4 An e-mail 28.07.2015 was received from BCHAA, wherein, they have submitted an Additional combined Agenda Point for the PTFC Meeting scheduled on 30.07.2015, to be conducted by Appraising Main (Import: NS-I, NS-III & NS-V) and Appraising Main (Export: NS-II, NS-IV & General). Vide the e-mail they submitted the following point

4.4.1 Irrational Container Scanning charges levied by CFS Scanning of container should be as per the list provided by the department.

It is reported by our members that many CFSs are recovering charges for scanning of the container. When we request them to provide detail about actual scanning is carried out or not, they are not providing details and at times, charges are collected for non-scanned containers also.

Reply: No specific CFS has been mentioned in the grievance in the Agenda Point. Members were requested to provide the specific name of the CFS so that matter can be taken up with that CFS. However, CFS Management Cell & Container Scanning Division have been directed to co-ordinate and resolve the issue.

(Point Closed)

5. The next PTFC Meeting is scheduled to be held on **Thursday, 27.08.2015 at 11.30 AM** in Conference Hall, 7th Floor, JNCH. The PTFC members/trade representatives are requested to forward their agenda points, if any, well in advance, latest by 24.08.2015 on Fax No. 022-27243245 or by e-mail to Appraising Main (Export) Section on amx24082012nhavasheva@gmail.com for taking up the issue in the upcoming PTFC Meeting.

6. The meeting ended with thanks to the Chair.

7. This issues with the approval of Principal Commissioner of Customs (N.S.-II), JNCH.

(ALOK AGARWAL)
Joint Commissioner of Customs
Appraising Main (Export),
JNCH

To,

All the Members of PTFC by e-mail

Copy to:-

- 1.The Chief Commissioner of Customs, Mumbai Zone-II, JNCH, Sheva.
- 2.The Commissioner of Customs (N.S.-Gen, II & IV), JNCH, Sheva
- 3.All ADC/JC, DC/AC of Customs (N.S.-Gen, II & IV), JNCH, Sheva.
- 4.AC/EDI for uploading on JNCH website.
- 5.Office Copy.