OFFICE OF THE COMMISSIONER OF CUSTOMS (EXPORT)

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F.No.S/6-DFIA(VFN)/12/2008 EXP JNCH Date :16.04.09

PUBLIC NOTICE NO. 21 /2009

Subject : Duty Free Import Authorization (DFIA) Scheme - availment of facility under rule 18/ 19(2) of the Central Excise Rules, 2002 or Cenvat credit under CENVAT Credit Rules, 2004 amendment of Notification number 40/06-Cus dated 1.5.06 by Notification No. 17 /2009-CUSTOMS dated 19th February, 2009 and issuance of Circular No. 11 /2009-Cus. dated 25th February, 2009 reg.

Attention of all the exporters, trade, industry, CHAs and all concerned is invited to the Boards circular No. 11 /2009-Cus. dated 25th February, 2009 issued from F.NO.605/109/2006-DBK.

2. The DFIA Scheme was introduced in the Foreign Trade Policy (FTP) in 2006 and it allowed, inter alia, duty free import of inputs for manufacture of export goods and transfer of the Authorization or the inputs imported against it after completion of the EO subject to fulfillment of certain conditions. One of the conditions stipulated in paragraph 4.4.7 of the FTP (2006) was that no Cenvat credit facility shall be available for inputs either imported or procured indigenously against the Authorization. Condition(v) of the corresponding customs notification No.40 / 2006- Cus dt 1.5.2006, issued to implement the DFIA scheme, accordingly provided that the EO would be discharged by exporting

resultant products, manufactured in India which were specified in the said authorization and in respect of which the said facilities have not been availed of in respect of materials imported / procured against the said authorization.

3. Several reports were received in the Ministry which indicated that, some exporters taking advantage of the words against the Authorization in the Policy as well as the customs notification, followed post export route i.e. procured inputs on payment of duty from indigenous manufacturers, availed cenvat credit of duty paid on such inputs and then exported the finished products under the DFIA scheme. After completion of exports, the exporters approached the DGFT authorities for issue of transferable DFIA to enable them to import duty free materials. The DFIAs were then either sold in the market or used to import duty free material. Thus the exporters took Cenvat of duty paid on inputs used in the manufacture of goods exported under the DFIA scheme and also obtained DFIA / duty free imports against such DFIAs. It was contended that cenvat of duty paid on inputs was not being taken in respect of materials imported / procured locally against an authorization.

4. The issue was discussed with Department of Commerce (DOC),Directorate General of Foreign Trade (DGFT) and Ministry of Law. The DOC/DGFT were of the opinion that the Policy (para 4.4.7 of the FTP-06), did not prohibit taking Cenvat credit in case of duty paid inputs procured locally for manufacture of export products. It only prohibited Cenvat credit if the inputs were procured locally against authorisation. The Department of Revenue (DOR), on the other hand, was of the view that the Cenvat credit cannot be availed of in respect of inputs used in the manufacture of goods exported under the DFIA Scheme in terms of condition (v) of the notification 40/06-Cus. The contention that the Cenvat credit was restricted only in case of imports against authorization did not appear to be valid as imports under the DFIA scheme were permitted without payment of customs duties and therefore there was no possibility of

taking credit on such imports. The words against authorization in condition (v) of the notification no 40/06-Cus, therefore, had to be read constructively keeping in mind the overall objectives of the scheme. Hence the practice adopted by exporters as elaborated in para 3 above may have resulted in double benefits. The Law Ministry clarified that from a perusal of the DFIA scheme and the conditions laid therein it appeared that the authorization holder cannot avail Cenvat credit on the inputs used in the manufacture of the goods exported under the DFIA scheme as well as duty free imports under the DFIA simultaneously as it amounts to double benefit and against the spirit and object of the scheme.

5. Finally, the position that emerged after the discussions between the DOC / DGFT and the DOR was that unintended benefits may have occured in cases where the duty free inputs, imported / procured subsequent to completion of EO using indigenously procured inputs and on which Cenvat credit has been availed of by the exporter, are transferred or used in the manufacture of non excisable /exempted /nil duty goods. The transferee in such cases obtains the duty free raw materials and escapes the levy of excise duty on finished products in domestic market sale. The position holds good even under actual user imports if the replenished materials are utilized in the manufacture of non-excisable/exempted/nil-duty products.

6. The DOC/ DGFT therefore modified the provisions of the DFIA Scheme in FTP 2007 and 2008. Para 4.4.2 of the FTP-2008 now states that where Cenvat credit facility on inputs used in the manufacture of goods exported under the DFIA scheme has been availed, even after completion of EO, the imported goods shall be utilized in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer). Further, Para 4.4.6 of the FTP and 4.72 of the Hand Book of Procedures (HBP) Vol I also state that, in case where EO has been fulfilled after availment of cenvat credit facility on the inputs, transferability of DFIA or transfer of

imported /domestically procured inputs against the Authorization shall be subject to payment of applicable additional duty of customs (in case of imports) / excise duty (in case of domestically procured goods). However, in cases where the Cenvat facility has not been availed, exemption from additional duty of customs / excise duty would be available even after endorsement of transferability on DFIA.

7. To put the matter beyond doubt, has amended notification No. 40/06-Cus dated 1.5.06 vide notification No.17/09-Cus dated 19.2.09 to incorporate the features of FTP 2007 and 2008. The salient features of the amending notification are as under:-

(a) The restriction imposed vide condition No. (v) of the notification No. 40/06-Cus has been deleted; thus the said facilities can now be availed by the exporter. However, in respect of imports made after the discharge of export obligation in full, if the said facilities have been availed, then,-

(i) the importer at the time of clearance of the imported materials shall execute a bond that he shall use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture of dutiable goods. Further, he shall submit a certificate from the jurisdictional Central Excise officer within 6 months from the date of clearance of the said materials, that the imported materials have been so used. It may be noted that in case this condition is violated, then the importer would be required to pay all duties of customs which have been exempted under notification No. 40/06-Cus dated 1.5.06. These duties are duties of Customs leviable as specified in the First Schedule to the Customs Tariff Act, 1975, the additional duty, safeguard duty and anti-dumping duty specified under sections 3,8 and 9A of the said Customs Tariff Act respectively and cess as applicable. The term dutiable goods has been defined in the explanation to the notification and would mean all excisable goods which are not

exempt from Central Excise duty and which are not chargeable to nil rate of central excise duty;

(ii) if the materials are imported against an authorisation transferred by the Regional Authority, or the imported materials are transferred with the permission of Regional Authority, then the importer has to pay an amount equal to the additional duty of customs. In case, the duty is not paid then interest @ 15% from the date of clearance of the said materials till the date of payment has to be paid;

(iii) the importer also has an option to pay additional duty of customs on the imported materials and clear his goods without furnishing any bond as specified in condition No. (iiia) of the notification number 17/09-Cus dated 19.2.09. This additional duty of customs so paid shall be eligible for availing CENVAT Credit under CENVAT Credit Rules, 2004.

(b) In respect of imports made after the discharge of export obligation in full, and if said facilities have not been availed, then the imported materials can be cleared without furnishing a bond specified in condition (iiia) ibid. However, the importer will have to furnish a proof to the assessing officer to the effect that the said facilities have not been availed.

(c) In case of imports made before the discharge of export obligation in full, the importer has to execute a bond, at the time of clearance, binding himself to the conditions specified in the notification No. 40/06-Cus dated 1.5.06 and to pay the leviable customs duties alongwith interest @15% in case the conditions of the notification are not complied with. This condition was also present earlier before the amendment of the notification No. 40/06-Cus.

8. As regards the period prior to the issue of the notification No.17 dated 19.2.09, double benefits may have taken place in case the exporters have availed the said facilities and also duty free replenishments in view of the Law Ministrys advice mentioned in Para 4 above. Further, the discussions with the DOC / DGFT have revealed that unintended benefits may have occurred in cases where the duty free inputs, imported / procured subsequent to completion of EO using indigenously procured inputs and on which Cenvat credit has been availed of by the exporter, are transferred or used in the manufacture of non excisable /exempted /nil-duty goods. The action to recover revenue shall, therefore, be limited only to such cases. This would ensure uniformity for all the three years. This would mean that in case an exporter has availed the said facilities during the period 1.4.05 to 18.2.09, the action to recover revenue shall be taken in case the duty free replenishments (imported / procured locally) have been used in the manufacture of non-dutiable goods. Further, the importer will have to pay an amount equal to the additional duty of customs if the materials are imported against an Authorisation transferred by the Regional Authority, or the imported materials are transferred with the permission of Regional Authority.

9. It is therefore clarified that for the past cases, i.e duty free imports for the period 1.5.06 to 18.2.09,-

(a) appropriate action to safeguard revenue may be taken against the actual users, if they have availed the said facilities on the inputs used in the manufacture of the goods exported under the DFIA scheme, and thereafter used the imported/ locally procured duty free replenishments in the manufacture of non dutiable goods. This would mean collection of all duties of customs which were exempted in the notification no. 40/06-Cus while permitting duty free imports. Further, this action shall be taken in respect of all duty free imports affected during the years 2006-07, 2007-08 and 2008-09;

(b) appropriate action to safeguard revenue may be taken in case imports /domestic procurement against Authorizations have been transferred. As per para 4.4.6 of the FTP (2007), this transfer should have taken place after payment of additional duty of customs / excise duty, as the case may be. It needs to be verified whether the practice as specified in the FTP was actually followed for the years 2007-08 and 08-09. If not, action to recover revenue needs to be taken accordingly;

(c) appropriate action to safeguard revenue may be taken in case the Authorization itself has been transferred. As per para 4.4.6 of the FTP(2007) and para 4.72 of the HBP, this transfer should have taken place after payment of additional duty of customs / excise duty, as the case may be. It needs to be verified whether the practice as enjoined in the FTP has actually been followed for the years 2007-08 and 08-09. If not, action to recover revenue needs to be taken;

(d) as regards the authorizations issued prior to 1.4.2007, the DOC in para 4.4.6 of the FTP(2008) has provided that, exemption from payment of additional duty of customs /excise duty shall continue to be available, even after endorsement of transferability. In view of this, it has been decided with approval of the Competent Authority that no action need be taken to recover revenue in such cases.

10. In this background it has been decided to review all cases of such exports and take appropriate measures to recover duties wherever required in terms of above instructions. A questionnaire has been appended to this Public Notice to get requisite information from the exporters. all the exporters/ CHAs who have made

exports under DFIA scheme prior to issuance of the notification No.17/09-Cus dated 19.2.09 are requested to provide the requisite information as per the questionnaire.

11. Para 12 of the Circular provides that as regards future cases, the same will be governed by the provisions of the notification No.17 dated 19.2.09. Special attention is invited to the following conditions in the said notification,-

(iiia) 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 CENVAT Credit under 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 use 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 within six months from the date of clearance of the said materials, that the imported materials have been so used:

Provided that, in case,

(a) materials are imported against an authorisation transferred by the Regional Authority, or

(b) the imported materials are transferred with the permission of Regional Authority,

then the importer shall pay an amount equal to the additional duty of customs leviable on the materials so imported or transferred, but for the exemption contained herein, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials:

Provided further 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;

(iiib) that in respect of imports made after the discharge of export obligation in full, and 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 CENVAT credit under CENVAT Credit Rules, 2004 has not been availed and the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs as the case may be, then the imported materials may be cleared without furnishing a bond specified in condition (iiia);

12. Difficulties faced, if any, in implementation of the above instructions may please be brought to the notice of the undersigned at an early date.

(K.L. GOYAL)

Commissioner of Customs (Export)

To

All the Concerned.

Copy to:-

1. The Chief Commissioner of Customs, Mumbai Zone II.,
2. The Commissioner of Customs (Import), JNCH

3. All the Addl./Jt. Commissioner of Customs, JNCH
4. All the Trade Associations.
5. The Bombay Custom House Agents Association.

Questionnaire in terms of Circular No. 11 /2009-Cus dated 25th February, 2009

1. Whether the inputs used in the manufacture of the goods exported under the DFIA scheme were imported or procured indigenously?

2. If the goods were procured indigenously, whether 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 was availed in respect of such inputs?

3. The details of the shipping bills under which the above exports took place and the details of the authorizations issued against the said exports and the port of registration.

4. Whether the DFIAs so obtained have been used to import / procure duty free replenishments?

5. If so, whether the said replenishments have been used in the manufacture of dutiable goods. If yes, a certificate from the jurisdictional Central Excise Superintendent to this effect may be furnished. If not, then the proof of payment of all duties of customs on replenishments used in the manufacture of non dutiable goods may be furnished.

6. If the replenishments have been transferred, whether applicable additional customs duty/ excise duty has been paid in terms of Para 4.72 of the Hand Book of Procedures. The proof of payment i.e the copy of TR-6 Challan may be furnished.

7. Whether the DFIA so obtained has been transferred? If yes, the details i.e. the name, address and IEC number of the transferee may be furnished.

8. Any other information as deemed fit.