



**OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-II),
MUMBAI ZONE-II, JAWAHARLAL NEHRU CUSTOM HOUSE,
NHAVA SHEVA, TALUKA: URAN, DISTRICT: RAIGAD,
MAHARASHTRA-400707.**

F.No-S/26-Misc-20/2018-19 DMC

Date:-27.12.2018

PUBLIC NOTICE NO: 163/2018

Subject:- Standard Operating Procedures regarding monitoring of Export obligation fulfilment under EPCG and Advance authorization scheme-reg

Attention is invited towards conditions of relevant Customs Notifications regarding implementation of EPCG and Advance authorization scheme. In this regard, attention is invited towards following Board's Circulars/Instructions/Standing Orders issued by JNCH.

- i. Board's Circular No: 05/2010-Customs, dated 16.03.2010.
- ii. Board's Instructions No: F.No-609/118/2010-DBK, dated 18.01.2011.
- iii. Board's Instruction No: F.No-605/71/2015-DBK, dated 14.10.2016.
- iv. Standing Order No: 70/2016, dated 25.11.2016 issued by JNCH.
- v. Public Notice No 140/2016, dated 25TH October 2016 issued by JNCH
- vi. Board's Instruction No: F.No-605/85/2016-DBK dated 02.05.2017.

2. Relevant Customs Notifications governing implementation of EPCG and Advance authorization scheme, provides that the exporter should discharge the export obligation within the specified time limit or with such extended period as may be permitted. Further, under EPCG scheme, the installation certificates are required to be submitted within six months of completion of imports/ three years in case of imports of spares, as stipulated in the corresponding Customs Notification. The Notification issued under the EPCG scheme also stipulates that in case of non-fulfilment of block-wise export obligation, the importer should pay the proportional duty of unfulfilled portion of export obligation along with specified interest from the date of clearance of the goods and such payments needs to be made within 03 months from the expiry of said block. It has been directed vide various Board's instructions / Circulars to put suitable system in place to initiate timely action in cases of default.

3. As per **Board's Instruction No: F.No-605/71/2015-DBK, dated 14.10.2016** as well as **Standing Order No 70/2016, dated 25.11.2016** issued by JNCH, it has been provided that as per provisions of Handbook of Procedures, "Where EO of the first block is not fulfilled in terms of the above proportions, except in cases where the EO prescribed for the first block is extended by the Regional Authority subject to payment of composition fee of 2% on duty saved amount proportionate to unfulfilled portion of EO pertaining to the block, the authorization holder shall, within 03 months from the expiry of the block, pay duties of Customs (along with applicable interest as notified by Department of Revenue) proportionate to duty saved amount on total unfulfilled EO of the first block".

4. In terms of **Board's Circular No 16/2017-Cus, dated 02.05.2017**, it has been provided that in view of time taken by DGFT in issuance of EODC, the practise of issuance of SCN at the 1st stage itself may be replaced by issuing of simple notice to defaulters. Accordingly, it has been prescribed that the filed formation may issue simple notice to the licence/authorization holders for submission of proof of discharge of

export obligation. In case where the licence/authorization holder submits proof of their application having been submitted to DGFT, the matter may be kept in abeyance till the same is decided by DGFT. Institutional mechanism set up in terms of Instruction No F.No-609/119/2010-DBK, dated 18.01.2011 for regular interaction with RA's of DGFT should be used to pursue such cases. However, in cases where the licence/authorization holder fails to submit the proof of their application for EODC/redemption certificate, extension/clubbing etc., action for recovery may be initiated by enforcement of Bond/BG.

5. In view of above, it is evident that only where the license holder submits evidence that there is no action pending on this part and the action is pending on the part of DGFT, should recovery action be kept in abeyance. In all other cases where either EODC is not submitted or evidence of having applied for EODC with DGFT office is not submitted, recovery action in terms of Bond is to be initiated as instructed vide Board's Circular No 16/2017-Cus, dated 02.05.2017.

6. As per the conditions of the said Notifications, the importer is legally bound to produce evidence of fulfilment of export obligation against the said Licence within 30 days of the date of Expiry of the Export Obligation Period. Therefore, the importer is liable to pay duty along with interest at the applicable rate in respect of the goods (imported under such export promotion schemes) in terms of the conditions of the said Notification read with conditions of the Bond executed by the importer in terms of Section 143 of the Customs Act read with condition of such Advance Authorisations / EPCG Licences. Section 143(3) of the Customs Act provides that if the thing is not done within the time specified in the bond, the AC or DC of Customs shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law. Accordingly, it is evident that in case of default, the amount of duty along with interest is payable immediately by the license holder. For this purpose, if such amount is not paid immediately on demand by customs, the same is to be recovered in terms of section 142 of the Customs Act 1962 which also includes that such amount can be recovered by detaining and selling any goods which are under the control of officer of Customs.

7. It is a settled law that in case of non-fulfilment of post import conditions, the goods are liable for confiscation u/s 111(o) of the Customs act 1962 and penalty is leviable u/s 112(a) of the said act. Accordingly, in cases where goods appear liable for confiscation or license holder / concerned person appear liable to penalty, SCNs may be issued for the purpose of determining said aspects i.e. liability to confiscation or imposition of penalty. The amount of redemption fine and penalty imposed vide order of the adjudicating authority, if any, is recoverable subject to appellate procedure / decisions.

However, as mentioned in para above, recovery of duty along with interest is payable in terms of condition of bond and accordingly, the same is recoverable without the need for issuance of such SCNs.

8. In this regard, Public Notice No 64/2018, dated 20.04.2018 and Public Notice No 80/2018, dated 16.05.2018 have been issued by JNCH, which are available on www.jawaharcustoms.gov.in. Details of such licenses/ authorizations for subsequent period where EODC not submitted and export obligation period is over, shall also be informed to importer / exporter / Customs Brokers at the earliest.

9.1 Considering the large no of pendency of authorisations / licenses, all the license holders are advised to pay duty forgone alongwith interest immediately where the

export obligation discharge certificate (EODC) not submitted to Customs even after expiry of period allowed under respective exemption notifications (except in cases where the license holder submits the evidence that they have already applied to DGFT office for issuance of EODC and no action is pending on their part but their application is being processed by DGFT office).

9.2. If such amount is not paid, action as required under Section 142 of the Customs Act will be taken including enforcing / encashing Bonds / BG/ Corporate guarantee submitted at the time of registration of authorisation / license, detaining and selling any goods which are under the control of officer of Customs. In order to avoid detention/demurrage charges as well as to avoid delay, the license holders should suo-moto come forward and pay the dues immediately in fulfilment of the condition of the exemption notification for which they have legally bound themselves when importing the goods and clearing them through customs.

10. It is reiterated that only where the licence/authorization holder could not submit proof of their application having been submitted to DGFT and declaration that no action is pending on behalf of license holder, the recovery action as mentioned in paras above should be pursued.

11. Difficulties faced, if any, in implementation of these instructions may be brought to the notice of the Additional/ Joint Commissioner of Customs, NS-II, JNCH.

12. Action to be taken in terms of decisions taken in this Public Notice should be considered as standing order for the purpose of officers and staff.

(SUBHASH AGRAWAL)

COMMISSIONER OF CUSTOMS (NS-II).

To:

1. The Chief Commissioner of Customs, Mumbai Zone-II, JNCH for information.
2. The Commissioner of Customs, NS-G/ NS-I / NS-II / NS-III/ NS-IV / NS-V, JNCH
3. All Additional / Joint Commissioner of Customs, JNCH
4. All Deputy / Assistant Commissioner of Customs, JNCH
5. All Sections / Groups of NS-G, NS-I, NS-II / NS-III/ NS-IV / NS-V, JNCH
6. AC/DC, EDI for uploading on JNCH website immediately.
7. Representative of BCBA / FIEO / Members of PTFC for information and circulation among their members and other importers / exporters for information.