



ADVANCE AUTHORISATION FOR DEEMED EXPORT UNDER FOREIGN TRADE POLICY

CMA Utpal Kumar Saha
AGM – Indirect Tax, McNally Bharat Engineering Co. Ltd.

Liability of payment of Customs duty is on import or export of goods. Customs duty on import of goods is paid at the time of filing of Bill of Entry (BoE) for home Consumption. However, as per the provision of section 25 of Customs Act, 1962 Central Government may exempt, either absolutely or subject to specified conditions, duty of customs on importation or exportation of goods.

Notification 21/2015 dated 01st April, 2015 – Central Government has given exemption from the Customs Duty including Additional Duty, Safeguard Duty, Anti-Dumping duty on the materials required for manufacturing of final product when imported into India subject to the various conditions. One of the conditions is –

“Importer has been granted Advance Authorisation for deemed export by the Regional Authority in terms of paragraph 4.05 (c) (iii) of the Foreign Trade Policy permitting import of the said materials”

Advance authorization is issued to allow duty free import of input which is physically incorporated in export product considering normal wastage. Here the word is used input which is indirectly defined in FTP 2015-20 under para 9.44 as “Raw material means input(s) needed for manufacturing of goods. These inputs may either be in a raw / natural/ unrefined/ unmanufactured or manufactured state”. Thus, input is simply raw materials (Input = Raw-Materials).

Advance Authorisation is issued to the Manufacturer Exporter or Merchant Exporter tied to supporting manufacturer. We may say that Advance Authorisation allows manufacturer to import duty free raw materials for manufacture of its product to be exported and also compete in the international market. This is a facility to the manufacture by Ministry of Commerce. Now, we are exploring the definition of two terms manufacturer exporter and merchant exporter.

Manufacturer Exporter means a person who exports goods manufactured by him or intends to export such goods. Para 9.32 of FTP 2015-20.

Merchant Exporter means a person engaged in trading activity and exporting or in tending to export goods. Para 9.33 of FTP 2015-20.

Further, as per para 4.05(c) of FTP 2015-20, Advance Authorisation is issued for -

1. Physical Export including export to SEZ;
2. Intermediate supply;
3. *Supply of goods to the category mentioned in paragraph 70.2 (b), (c), (e), (f) and (h) of the FTP;*
4. Supply of stores on board going vessel/ aircraft.

Third category of supply is known as deemed export under chapter 7 of FTP 2015-20. A manufacturer is entitled to import raw materials without payment of customs duty even he supplies product under deemed export category which is allowable. We are reiterated the categories of supply as per para 4.05(c) (iii) of FTP 2015-20 read with para 7.02 of FTP 2015-20.

7.02 (b) *Supply of goods to EOU / STP / EHTP /BTP;*

(c) *Supply of capital goods against EPCG Authorisation;*

(e) (i) Supply of goods to projects financed by multilateral or bilateral Agencies / Funds as notified by Department of Economic Affairs (DEA), MoF, where legal agreements provide for tender evaluation without including customs duty.

(ii) Supply and installation of goods and equipment (single responsibility of turnkey contracts) to projects financed by multilateral or bilateral Agencies/Funds as notified by Department of Economic Affairs (DEA), MoF, for which bids have been invited and evaluated on the basis of Delivered Duty Paid (DDP) prices for goods manufactured abroad.

(iii) Supplies covered in this paragraph shall be under International Competitive Bidding (ICB) in accordance with procedures of those Agencies /Funds.

(iv) A list of agencies, covered under this paragraph, for deemed export benefits, is given in Appendix 7A.

(f) (i) Supply of goods to any project or for any purpose in respect of which the Ministry of Finance, by erstwhile Notification No. 12/2012 –Customs dated 17.3.2012, as amended from time to time, had permitted import of such goods at zero customs duty (with exemption of both BCD and CVD) subject to conditions specified therein and which are continued under the Customs Notification No. 50/2017-Customs dated 30.6.2017 with exemption of zero basic customs duty and subject to conditions mentioned in the said new notification. Benefits of deemed exports shall be available only if the supply is made under procedure of ICB.

(ii) Supply of goods required for setting up of any mega power project, as specified in the list 31 at Sl. No. 598 of Department of Revenue Notification No. 50/2017-Customs dated 30.6.2017, as amended from time to time and subject to conditions mentioned therein, shall be eligible for deemed export benefits provided such mega power project conforms to the threshold generation capacity specified in the above said Notification.

(iii) For mega power projects, ICB condition would not be mandatory if the requisite quantum of power has been tied up through tariff based competitive bidding or if the project has been awarded through tariff based competitive bidding.

(g) Supply of goods to United Nations or International organization for their official use or supplied to the projects financed by the said United Nations or an International organization approved by Government of India in pursuance of section 3 of United Nations (Privileges and Immunities Act), 1947. List of such organization and conditions applicable to such supplies is given in the Customs notification no. 84/97-Customs dated 11.11.1997, as amended from time to time. A list of Agencies, covered under this paragraph, is given in Appendix-7B.

(h) Supply of goods to nuclear power projects provided:

(i) Such goods are required for setting up of any Nuclear Power Project as specified in the list 32 at Sl. No. 602, Customs notification no. 50/2017-Customs dated 30.6.2017, as amended from time to time and subject to conditions mentioned therein.

(ii) The project should have a capacity of 440 MW or more.

(iii) A certificate to the effect is required to be issued by an officer not below the rank of Joint Secretary to Government of India, in Department of Atomic Energy.

(iv) Tender is invited through National competitive bidding (NCB) or through ICB.

Validity of Advance Authorisation and Revalidation thereof:

In case of deemed export the validity of Advance Authorisation is co-terminus with the duration of the project. However, the concerned RA may consider revalidation for six months from expiry date. The

application of revalidation is in form ANF 4D - Para 4.41 of HBP 2015-20 to be submitted before the concerned RA.

Enhancement/ Reduction of CIF or FOB value in the Authorisation:

RA can enhance the CIF value, quantity of inputs and FOB value, quantity of export of an Authorisation. Application shall be in ANF 4D. However, value addition after enhancement does not fall below the minimum value addition as stipulated in FTP. Para 4.39 of HBP 2015-20.

Registration of Authorisation at the customs port:

Authorisation holder shall register the authorization at the port specified in the authorization and thereafter all the import under said authorization shall be made through only that port. If there is a change of port then the authorization holder shall get permission from the customs authority. However, export can be made any of the port. Authorisation holder at the time of registration of authorization shall furnish a Bond at the Customs port, where import is made before discharge of export obligation.

Documents to be submitted at the time of Export Obligation Discharge Certificate (EODC)

Authorisation holder shall fulfill the export obligation with the specified time period. The export obligation period in case of project in India under category of 7 of FTP shall be co-terminus with the duration of contract or 18 months whichever is more. At the time of filing application of EODC, the following documents are to be submitted before the RA

- i. Application in ANF 4F duly signed by the authorized person;
- ii. Import statement indicating Bill of Entry, Quantity and CIF value duly signed by CMA/CA; (suggested format is given separately)
- iii. Statement of supplies giving details of supply invoices, FOR Value, description of product duly signed by CMA/CA; (suggested format is given separately)
- iv. Consumption statement duly signed by CMA/CA in Appendix 4H;
- v. Payment certificate by the project authority in form Appendix 7D;
- vi. Bank Statement of payment details;
- vii. Customs ledger of import of goods;
- viii. Copy of Bill of entry;
- ix. Statement of Invoices or copy of invoices duly signed by project authority in case of supply of item to a unit producing non-excisable product;
- x. Copy of original Advance Authorisation;
- xi. Statement of Invoices or copy of invoices duly signed by unit receiving materials as well as their jurisdictional central excise authority. **(Note)**

Cancellation or collection of Bond from Customs Authority:

After issuing EODC by the concerned RA, the exporter shall intimate the same before the customs authority where the authorization was registered before importation of inputs. Exporter shall cancel and collect the Bond from customs authority.

Standard Operation Procedure (SOP) for EODC monitoring of both Advance Authorisation and EPCG has been issued vide Policy Circular No 06/2015-20 Dt. 09-01-2019.

Note: Through this article, I request the concerned Directorate General of Foreign Trade (DGFT), New Delhi to waive off the requirement of counter sign by the central excise authority in case of receiving unit producing excisable goods. In practical, the authorization holder is getting harassed from the central excise authority to sign the documents. With the introduction of GST w.e.f. 01-07-2017, instead of central excise authority, a certification from practicing Cost Accountant (CMA) may be included for attestation of quantity, value and date of supply.

Suggested Format of Import and Export Statement for deemed export to be submitted before the office of DGFT is given below:

a. Statement of Import of goods

Sl No	HSN Code	Bill of Entry No	Date	Quantity of Import	Description of Goods	Unit of Measurement	CIF Value (Foreign Currency)	CIF (in Indian Currency)

b. Statement of Export of goods (Deemed Export)

Sl No	Description of Goods	Quantity of supply	Unit of Measurement	Invoice No	Date of Invoice	Value of Goods (FOB)	Payment received

Role of CMA: Foreign Trade Policy 2015-20 has authorized a Cost Accountant to certify all the documents to be submitted before DGFT. In addition to certification work, there are lots of areas like:

- Obtaining different authorizations from the office of DGFT;
- Obtaining of Export Obligation Discharge Certificate (EODC);
- Processing of Refund of Terminal Excise Duty or Duty Drawback;
- Matter relating to EPCG, Advance Authorisation;
- Filing of Appeal before the Appellate Authority of the concerned RA;
- Filing of Review petition before the Directorate General of Foreign Trade (DGFT), New Delhi;
- Acting as an authorized representative (AR).

In addition to the above, there are ample opportunities of cost accountants in DGFT as well as EXIM. The existing Foreign Trade Policy 2015-20 will be expired on 31st March, 2020 and the new policy is coming up with effect from 01st April, 2020. CMA should grab the opportunities as India's export business is growing up many folds.