



All industry Duty Drawback for Deemed Supplies under FTP

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Major retrospective benefit for exporters, EOUs etc. in the form of duty drawback availability for past supplies from 5th December 2017. Claims for 2 years can be made by the suppliers to EOUs or EOU itself and others.

Ministry of commerce implements and monitors the Foreign Trade Policy (FTP) framed for export and import transactions. FTP provides the basic framework of policy and strategy to be followed for promoting exports and trade. The policy is periodically reviewed to incorporate changes necessary or to amend policy to take care of emerging economic scenarios both in the domestic and international markets. In this regard, DGFT has been entrusted with promotion and facilitation of exports/imports, keeping in view the interests of the country.

In recent years, there have been different types of export and import benefits notified for the exporters. In the present policy, the physical exports wherein goods move out of India are eligible for drawback and MEIS benefits. The deemed exports such as removal of goods to advance license holders / EOUs are eligible for duty drawback, refund of terminal excise duty for specified excisable goods and for advance license on annual basis.

In terms of para 7.1 of FTP, deemed exports for the purpose of this FTP refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. As per para 7.02 of FTP, the following supplies would be considered as deemed exports:

- 1) By manufacturer to
 - Supply of goods against Advance Authorisation / Advance Authorisation for annual requirement /DFIA
 - Supply of goods to EOU / STP / EHTP /BTP
 - Supply of capital goods against EPCG Authorisation
- 2) By Main or sub-contractor to
 - The 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.



- 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.
- 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
- Nuclear power projects

For the above specified supplies, the benefit of drawback was allowed in the form of brand rate with the condition of payment of custom duties. Now, vide notification no 28/2015-2020 dated 31st October 2019, these supplies have been provided with option of claiming even all industry drawback with a condition of non-availment of CENVAT credit on excisable inputs. This notification has been given effect from 5th December 2017. In other words, all deemed exports made with effect from 5th December 2017 would be eligible for all industry drawback.

With the introduction of GST from July 2017, the Central Excise Act was repealed except in respect of goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution. New CENVAT credit rules 2017 also notified in respect of such goods. Entry 84 of the union list covers petroleum crude, high speed diesel, motor spirit (commonly known as spirit), natural gas, aviation turbine fuel and tobacco and tobacco products for levy of Central excise duty. In terms of new CENVAT rules, manufacturer or producer of these products would be allowed to take CENVAT credit on the following:

- The duty of excise specified in the Fourth Schedule to the Excise Act, as leviable under the said Act,
- The National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);
- The additional duty leviable under Section 3 of the Customs Tariff Act, equivalent to the duty of excise as specified under clauses (a) and (b);



- The additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act;
- The additional duty of excise leviable under Section 85 of Finance Act, 2005 (18 of 2005)

After introduction of GST, the concept of CENVAT has limited application as limited goods are liable for excise duty. The intention of amendment made in the policy giving all industry drawback benefit with condition of no CENVAT credit could be to give benefit to all goods covered and liable for GST except petroleum and tobacco goods. Earlier before this amendment, as it was restricted to brand rate, to claim benefit BCD was to be actually incurred on procurements to claim drawback. After this amendment, all manufacturers would get the drawback benefit for deemed exports made from 5th December 2017 irrespective of whether BCD cost was actually incurred or not.

The manufacturers who have made deemed exports from 5th December 2017 can ascertain the all industry drawback schedule notified by ministry of revenue from time to time and make ANF-7A application to respective DGFT chapter to claim the benefit.

For any further queries/comments please write to venkat@hiregnage.com.

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