



Customs and Trade Newsletter

June 2024



Policy updates, notifications and instructions

1. Bill of export for supplies to (SEZ): DGFT extends relaxation¹

Director General of Foreign Trade (DGFT) has issued a Policy circular with the following parameters –

- For supplies to special economic zone (SEZ) (developer or unit) against Advance Authorisation or duty-free import authorisation (DFIA), as a proof of export, the authorisation holder is required to file and furnish a bill of export in terms of SEZ regulations and foreign trade policy (FTP) provisions. However, in practice, the domestic supplier used to miss this at times, leading to the delayed closure of authorisation or dispute including denial. The only recourse was approaching the Policy Relaxation Committee, which also generally denied the relief by citing the provision of FTP.
- Based on the examination of representation received from trade, DGFT, as a trade facilitation measure, has now relaxed the requirement to submit bill of export on supplies made against Advance Authorisation or DFIA on supplies made to SEZ (developer, co-developer or unit).
- The relaxation will be applicable for supplies or exports made prior to 1 July 2017 only.
- Additionally, in lieu of the bill of export, exporters are now permitted to provide alternative documents establishing such supplies which are –
 - ARE-1 with authorisation or DFIA reference duly attested by the jurisdictional Central Excise, or GST authorities of the authorisation holder or DFIA;
 - Documentation confirming the receipt of supplies by the SEZ recipient; and
 - Proof of payment by the SEZ unit to the exporter in terms of the FTP provisions on export proceed realisation.

2. Simplifying document requirements to obtain EODC – Deemed Exports²

The documentation requirement for seeking export obligation discharge certificate (EODC) has been eased for deemed exports under the Advance Authorisation scheme in terms of –

- System copies of system generated GST e-invoices and corresponding e-way bills. Alternatively, if the same cannot be furnished for the reasons to be stated, a certified copy of the invoices or statement thereof, authenticated by the GST authorities of either the supplier or recipient.
- Supplies by the intermediate supplier to the port for direct export by the ultimate exporter, which is the authorisation or DFIA holder, a copy of the shipping bill with the intermediate supplier's name endorsed on it along with the file or authorisation number of the ultimate exporter and intermediate supplier.
- electronic-Bank Realisation Certificates (e-BRCs).
- A certified statement documenting the supplies or exports, imports, and the actual utilisation of inputs in the exported items to meet export obligations, prepared and endorsed by an independent Chartered Accountant.

3. Inclusion of ministries or departments for exemption from application of quality control order for exports by export-oriented unit and Advance Authorisation holder³

In March 2024, as a trade facilitation measure for exports, a new Appendix 2Y was notified listing the ministries or departments whose quality control orders will be exempted on the goods used or consumed in the manufacturing of export products.

Currently, this exemption was applicable to quality control orders issued by the following –

- Ministry of Steel
- Department of Promotion of Industry & Internal Trade
- Ministry of Mines

¹ Policy Circular No. 04/2024-Cus. dated 3 June 2024

² Public Notice No. 09/2024 dated 6 June 2024

³ Public Notice No. 10/2024-25 dated 6 June 2024

- Ministry of Textiles

Now, this has been extended to include the Department of Chemicals and Petrochemicals.

4. EEPC INDIA to issue Registration-cum-membership Certificate (RCMC) for medical devices⁴

DGFT has authorised EEPC INDIA (formerly, Engineering Export Promotion Council) and any other concerned Export Promotion Council (EPC) to issue the RCMC for certain listed medical devices.

Previously, certain products were notified under the jurisdiction of the EPC for medical devices, with the responsibility for RCMC issuance delegated through Public Notice No. 18/2023 dated 23 June 2023. Having an RCMC from the concerned EPC is stipulated as a mandatory requirement for availing benefits under the Remission of Duties and Taxes on Export Products (RoDTEP) of medical devices.

However, the EPC for medical devices could not be onboarded on the Common Digital platform of DGFT for the issuance of the RCMC. This resulted in difficulties in obtaining RCMC and the clearance of their goods at customs point against claiming RoDTEP and other export benefits.

Consequently, *via* the said Trade Notice, DGFT has again authorised EEPC INDIA and any other concerned EPC for medical devices to issue RCMC till EPC is fully operational. DGFT has also requested customs authorities to recognise and accept the RCMCs issued by the said entity until further directives are issued.

5. CBIC further clarifies the ‘display assembly’ of mobile phones for customs duty benefit⁵

To promote the manufacturing of cellular mobile phones in India, the exemption or concessional customs duty benefit is extended to parts and components of the cellular mobile phones, including sub-parts and inputs used in the manufacturing of such parts and components, subject to compliance with the condition laid down in the Customs Notification No. 57/2017-Cus dated 30 June 2017 (Notification).

One such benefit, subject to condition, in terms of the exemption or concessional basic customs duty (BCD) in the Notification was provided under Serial No. 5D to the display assembly for use in the manufacturing of cellular mobile phones, and inputs or sub-parts used for the manufacturing of the display assembly or its parts.

However, instances of misdeclaration or incorrect claim of the exemption of the display assembly as parts came to the notice of the customs authorities. Hence, on request, the Ministry of Electronics and Information Technology (MeitY) shared technical guidance on the constituents of a display assembly in 2020. The same was shared with field formation for ease of reference to assess these goods for the payment of applicable duty.

However, the misdeclaration continued, leading to investigations and issuances of demand notice by the customs authorities. Given the dispute and trade disruption, trade sought MeitY’s intervention to further examine and provide guidance considering the impact on the industry. Based on the representation by trade, MeitY reiterated their earlier technical guidance while providing additional inputs to the Central Board of Indirect Taxes (CBIC). Based on this, in August 2022, CBIC notified the detailed clarification along with MeitY’s guidance on the matter.

Thereafter, MeitY again highlighted that the matter is still unresolved and benefit is still being denied to trade due to the varied interpretation of the display assembly based on the past guidance and clarification. Additionally, the MeitY mentioned that the clarification extended the prospective benefit and the issue for the past period prevails. Meanwhile, in early 2024, on MeitY’s request, the concessional BCD benefit under the Notification was extended to specified parts like mechanics, die-cut parts, and other parts of cellular mobile phone covered under tariff item 8517 79 90 for the use in manufacturing of a cellular mobile phone.

Citing the issue of ambiguity in the interpretations of the clarification issued in August 2022, MeitY requested the Department of Revenue to examine the interpretation by considering a revised list of items that are now included or excluded from the display assembly of a cellular mobile phone. The same was examined by a Committee comprising of the MeitY and CBIC officials, who recommended the principle for interpretation and determining a display assembly for the purpose of concessional BCD benefit under the Notification.

Consequently, CBIC partially modified the clarification issued in 2022 *via* further clarifications.

⁴ Trade Notice No. 05/2024-25 dated 12 June 2024

⁵ Circular No. 06/2024 – Customs dated 7 June 2024

The key modifications covered in the clarification are outlined below.

- The display assembly of a cellular mobile phone comprises a combination of the following parts or components –
 - Touch panel
 - Cover glass
 - Brightness enhancement film
 - Indicator guide light
 - Reflector
 - Light emitting diode (LED) backlight
 - Polarisers
 - Mounted Organic light-emitting diodes (OLED) or liquid crystal display (LCD) driver integrated circuit (IC) for display.
 - Flexible printed circuit (FPC) or FPC assemblies (FPCA) fabricated, embedded, fitted or attached to the display.
 - Liquid crystal module or LCD module (LCM) [which consists of LCD cell or pure cell, or FPC on Glass (FOG) or Chip on Glass (COG)] or OLED module.
 - Sensor(s) which are integral parts of the display, such as fingerprint and touch sensors, which have been fabricated, embedded, fitted, or attached in the display assembly at the time of assembly or manufacturing of display assembly.
- In case the display assembly is imported with the following items or components which are fabricated, embedded, fitted, or attached with the assembly, the whole integrated assembly is to be treated as a display assembly of a cellular mobile phone attracting concessional BCD benefit.
 - Frame or support structure including front, back or side in any form or material. Support frame may include hooks, fangs and integrated sockets.
 - Receiver mesh and speaker net
 - Foam, sticker, protective film, mylar and conductive cloth
 - Subscriber Identity Module (SIM) socket
 - SIM tray
 - Antenna pin
 - Side keys, like power key, slider switch or volume button

The display assembly may be imported with or without these items. These are not essential for the display and may perform certain auxiliary function, such as providing strength, support, or protection from dust. However, their attachment or presence does not alter the essential characteristic of display in any manner, and the assembly will continue to be treated as a display assembly.

Moreover, it is clarified that these items, such as SIM socket or SIM tray, are not part of the display assembly of mobile phone. These may or may not come (fabricated, embedded, fitted or attached) with the display assembly depending upon its design. However, if these items or components are imported as an integrated part (already fabricated, embedded, fitted or attached to the assembly), it continues to be a display assembly of a cellular mobile phone eligible for concessional BCD benefit as a whole integrated assembly. In case, if these items or components are imported individually, they will attract the BCD rate as applicable.

However, if the below items are fabricated, embedded, fitted or attached with the display assembly of a cellular mobile phone, the concessional benefit of BCD will not be available to such assembly as the same will be treated as a general part of the cellular mobile phone attracting BCD as applicable:

- Printed circuit board assembly of mobile phone [except mounted OLED or LCD driver IC for display, and FPCs or FPCAs for the purpose of display]
- Main lens for feature phones

- Housing of mobile phone (excluding frame or support structure, including front, back, or side in any form or material for display assembly)
- Speakers
- Charger or adapter
- Battery pack
- Wired headset
- Microphone and receiver
- Camera module
- Vibrator motor or ringer
- Keypad of feature phone
- USB cable

6. CBIC clarifies interunit transfer of finished goods – MOOWR⁶

The permissibility of the movement of goods between one bonded manufacturing unit to another under Manufacturing and Other Operations in Warehouse Regulations (MOOWR) for further processing or use, including the applicability of continued duty deferment on such goods was creating challenges for the trade. The trade in their representation highlighted the lack of clarity and varied interpretation or ambiguity in the practices in the implementation of section 65 of the Customs Act, 1962 (Customs Act), and MOOWR read with the circulars issued on this aspect.

Based on the examination of the representations received from trade and evaluation of the relevant provisions of the warehousing provisions under the Customs Act read with MOOWR and issued circulars, the CBIC has issued instruction no. 16/2024-Customs dated 25 June 2024 on the permissibility of transfer of goods from bonded manufacturing unit to another including applicability of duty deferment in such cases.

The key aspects discussed in the clarification are outlined below.

- In terms of MOOWR, the deferred customs duty needs on warehoused goods is to be paid on the removal of resultant goods for home consumption. The regulations further provide the extent of deferred customs duty payable and manner of its payment on the removal of finished goods for home consumption by filing ex-bond Bill of Entry (BoE) under section 68 of the Customs Act.
- Additionally, the procedure and process for inter unit transfer of goods from another warehouse, including a bonded manufacturing warehouse, is laid down in the MOOWR in terms of the disclosure in the prescribed format, intimation to be filed with the bond officer, etc. apart from debiting or recrediting the triple duty bond and taking a transit risk insurance.
- Circular No. 34/2019-Cus dated 1 October 2019 also clarifies the permissibility of the transfer of resultant goods from one bonded manufacturing unit to another is allowed subject to disclosures, documentation and intimation to the bond officer as laid down in the MOOWR.

Given the above, it was clarified that the transfer of goods is permitted to another warehouse or bonded manufacturing unit in terms of MOOWR and warehousing provisions of the Customs Act. The same will be subject to the adherence of procedure as laid down in the MOOWR in terms of documentation, disclosure and filing of intimation (no prior permission is needed for the same), and maintenance of records and account, including of the customs duty deferred amount involving such transactions.

7. Extension of exemption period for defence equipment imports⁷

CBIC has issued a Notification No. 26/2024-Customs dated 27 June 2024 extending the exemption period for specified defence equipment and their parts imported in India by the Ministry of Defence, Government of India, or the defence forces as outlined in Notification No. 19/2919-Customs dated 6 July 2019.

The extended duration now covers the period from 1 July 2024 to 1 July 2029.

⁶ Instruction No. 16/2024 – Customs dated 25 June 2024

⁷ Notification No. 26/2024 – Customs dated 27 June 2024

8. Nhava Sheva Customs provides clarification over third party invoicing under FTA⁸

In March 2024, Public Notice was issued by Nhava Sheva Customs on third party invoicing issue and validation regarding free trade agreement (FTA) benefit. The same triggered an industry issue as consignments were not allowed clearances on the availment of benefit. Moreover, no provisional assessment or duty under protest request was being considered, including for the issuance of speaking order.

Thereafter, based on industry representation, *via* communication dated 8 June 2024, CBIC issued clarification on the manner of validation *via* third party invoicing within the parameters laid down in the Rules of Origin read with Customs (Administration of Rules of Origin under Trade Agreements) Rules (CAROTAR) regulations. The communication also directed to allow clearances of shipment under CAROTAR regulations.

Subsequently, some relief or consideration was extended by Nhava Sheva Customs as trade was advised to either obtain a revised Certificate of Origin (CoO) (where break up is not available or CoO is issued based on a third-party invoice value) and clear goods on provisional assessment against a bank guarantee, or re-assessment will be performed and clearance can be under duty under the protest to be appealed later.

The Nhava Sheva Authorities also indicated the issuance of a revised public notice on this. Pursuant to this, Nhava Sheva Customs (NS III) has issued a revised Public Notice⁸ on the matter.

The key aspects of the revised Public Notice are as below.

- The importer now needs to submit a CoO indicating the free on board (FOB) value in the relevant column along with third country invoice details, and amount of insurance and freight (either in the third country invoice, or as a freight certificate and insurance receipt). This will not apply to CoO's where the FOB column is not provided.
- In case the International Commercial (INCO) term of the third country invoice is FOB and the same value is indicated in the CoO as well then, the importer needs to provide the rationale of the same as this is contrary to the guidance of the concerned rules of origin at the time of filing the BoE.
- In case the Bill of Lading is 'Freight Prepaid' issued for country of export, the importer is required to submit a freight certificate for the freight paid by any other person other than the exporter in the country of export.
- When the CoO is issued based on the FOB value of third country invoice, this CoO and the third country invoice needs to be in the same currency.
- In case of variance in the classification adopted in the third country invoice compared with the CoO while the product description is the same, it will be verified and assessed in terms of law or regulations as applicable. However, the importer needs to adopt the preferred classification.
- Moreover, the importer will be given the option to clear the goods against bond and bank guarantee if time is needed to submit the required documents in terms of CAROTAR regulations. In case a verification is needed in terms of CAROTAR, the concerned officer needs to send the request in the prescribed format to the Directorate of International Customs, CBIC.

⁸ Public Notice No. 55/2024 dated 24 June 2024

Key judgments

1. **ICON 82 Outdoor LCD with accessories are classifiable under CTH 9013 8010⁹**

In this case, the importer imported ICON 82 Outdoor LCD with accessories. The importer classified them under Customs Tariff Head (CTH) 9013 8010. However, the authorities, relying on the Central Board of Excise and Customs circular no. 33/2007 dated 10 September 2007, concluded that the subject goods are rightly classifiable under CTH 8528 7390. Aggrieved by the order, an appeal was filed before the Commissioner of Customs (Appeals), who was of the view that CTH 8528 7390 is applicable to television (TV) sets and the impugned goods are not TV sets, but LCD panel and accessories used for outdoor display of advertisements. Accordingly, it concluded the classification of the imported goods as claimed by the importer under 9013 8010. Aggrieved, Revenue filed an appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT) against the order.

In their counter submission against the appeal, the importer relied on various past judicial pronouncements in the matter of M/s Samsung India Electronics Private Limited versus CESTAT Chennai¹⁰ and M/s Samsung India Electronics Private Limited versus CC (Air) Chennai, M/s Moser Baer India versus Commissioner of Customs Noida¹¹ to substantiate their claim. Based on the submission and citing the ratio of the Supreme Court decision in the case of M/s. Videocon Industries Limited¹² on an identical matter, wherein relying on the relevant Section Notes and Chapter Notes, and its explanation the Supreme Court upheld the classification under Heading 9013, the contention of the importer was upheld.

Additionally, the CESTAT also cited the earlier CESTAT ruling in the case of M/s. Samsung India Electronics Private Limited¹³, which was upheld by the Supreme court, to support their conclusion. In accordance with the principles established in the aforementioned judgments of the Supreme Court and CESTAT, the classification of LCD panels was concluded to be under Chapter Heading 9013 8010.

2. **Customs duty will not be leviable on goods destroyed in a fire accident at an SEZ unit in compliance with SEZ Rules¹⁴**

The appellant, a unit located in an SEZ engaged in the manufacturing agrochemicals, suffered a fire in their own premises, resulting in the destruction of duty-free procured raw materials and semi-finished goods valued initially at INR165.47m. They promptly informed SEZ authorities and subsequently valued the loss at INR79.57m. Stock verification was subsequently conducted, covering various materials including raw materials, packing materials, and both indigenous and imported goods in process.

In 2020, a show cause notice was issued demanding customs duty for the entire quantity of goods lost in the fire, contending that these goods were neither utilised in authorised operations nor properly accounted for as per rule 22 of the SEZ Rules. The Principal Commissioner upheld this demand in 2021.

Aggrieved, the appellant filed an appeal before the CESTAT. The appellant argued that they are not liable to pay customs duty and entitled to the remission of customs duty on the grounds. As per rule 22 (2) of SEZ Rules, they have maintained proper and regular accounts by financial year clearly indicating the value of goods imported procured or Domestic Tariff Area. The appellant also argued that the material lost in the fire accident was duly explained and should be treated as material accounted for. In these circumstances, no demand of customs duty should be invoked.

Reliance was also placed on the CESTAT ruling in the case of ONGC Petro Additions Limited¹⁵. Here, it was concluded that the appellant is entitled for the remission of customs duty for the goods destroyed in the fire incident at their SEZ unit as no indication of negligence was observed on the part of the appellant, and the fire broke out suddenly and was beyond their control.

⁹ 2024 (6) TMI 453 – CESTAT Bangalore

¹⁰ M/s Samsung India Electronics Private Limited v. CESTAT Chennai (2016 (3) TMI 252 – CESTAT Chennai)

¹¹ M/s Moser Baer (2015 326 ELT 161 (Tri. Del.))

¹² CCE, Aurangabad v. M/s. Videocon Industries Limited [2023 (3) TMI – SC]

¹³ M/s. Samsung India Electronics Private Limited v. CESTAT Chennai (2016 (3) TMI 252 – CESTAT Chennai)

¹⁴ 2024 (6) TMI 2023 – CESTAT Ahmedabad

¹⁵ ONGC Petro Additions Limited [2023 (12) TMI 530 (Tri. Amd)]

Additionally, reliance was also placed in the ruling of Satguru Polyfab Pvt. Limited¹⁶, wherein it was highlighted that rule 8 of the SEZ Rules 2003 and Notification No. 52/2003-N.T. dated 22 July 2003, which dictate that duty must be paid if SEZ goods are used for unauthorised purposes or if they are not properly accounted for. It was clarified that in cases of accidental destruction by fire, as reported promptly to customs authorities, rule 8's provisions regarding the misuse or failure to account for goods did not apply. Drawing from the Supreme Court's reasoning, the CESTAT concluded that since the destruction of goods due to fire did not violate rule 8 of the SEZ Rules, the goods were deemed to remain within the fictional foreign territory status of the SEZ. Therefore, no customs duty could be levied on the goods destroyed under such circumstances.

Based on this, the CESTAT, in the said order, concluded the principle of legal fiction in interpreting customs duty exemptions for goods in SEZs, emphasising compliance with applicable notifications and rules while exempting goods destroyed by accidental fire from duty liability under SEZ provisions.

Accordingly, the CESTAT, in their conclusion, referenced rule 22 of the SEZ Rules 2006, which mandates the proper utilisation or procedure for availing exemptions. It contended that a loss due to fire does not constitute valid utilisation or accountability under rule 8 of the SEZ Rules 2003 and drew parallels with Satguru Polyfab Private Limited¹⁶, citing that since the goods were destroyed within the SEZ, which is considered a foreign territory, no customs duty could be imposed.

Moreover, the CESTAT found Revenue's demand for duty on the entire stock of goods destroyed in the fire unjustified, citing the absence of evidence supporting the destruction of all raw materials, in-process goods and finished products.

Consequently, the CESTAT set aside the impugned order, ruling in favour of the appellant and rejecting the duty demand based on the destruction of goods in the SEZ due to fire.

¹⁶ Satguru Polyfab Private Limited [2011 (267) ELT 273(Tri.)]

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