



CHAPTER III OBLIGATION OF EXPORTERS FOR AVAILING OF BENEFITS OF PROMOTIONAL MEASURES

3.1 In this and the subsequent chapters we have discussed compliance issues and their impact i.e. cases of non-compliance with the applicable Acts/rules/notifications/procedures by the executive authorities/traders.

3.2 The Government has introduced many promotional measures to increase our exports and enhance the foreign exchange earnings. The exporters are permitted to import items without paying duty or by paying reduced rates of duty. In return, they have to discharge certain obligations. Our observations in this chapter relate to cases where the exporters did not fulfil these obligations although they had imported duty free goods. Import duty is recoverable in these cases and these areas require close monitoring to ensure that importers honour their end of the bargain.

We must also remember that wherever an exporter imports duty free goods in excess of his entitlement, it gains an unfair advantage over the manufacturers who operate in the domestic market and pay duty on all imports.

3.3 Export obligation

3.3.1 In terms of paragraph 5.1 of FTP (2004-09) (as on 1 April 2005), an EPCG licence holder has to export goods which are equal to eight times the amount of duty saved on the import of capital goods. This is known as Export Obligation (EO). In case of small scale industrial (SSI) units, the EO is six times the amount of duty saved, provided the landed CIF value of imported capital goods does not exceed Rs. 25 lakh (Rs. 50 lakh w.e.f. 1 April 2008) and total investment in plant and machinery does not exceed the investment limit for SSI.

We found that the RLA at Surat had issued 150 EPCG licences with three per cent duty to 34 exporters who got total duty exemption of Rs. 12.83 crore. The three per cent duty rate was admissible to SSIs but the department was unable to show any records to confirm the SSI status of the exporters. The quantum of duty saved in these cases ranged from

Rs. 2.63 lakh to Rs. 1.43 crore. We used the figures of the duty saved to do reverse calculation and ascertain the probable value of the goods imported by these licencees. For the calculations, we used the effective rate of duty for 2005-06 to 2007-08 on goods under Chapter 84 which was five to ten per cent. We found that the value of the capital goods imported worked out between Rs. 52 lakh and Rs. 71.59 crore, which exceeded the SSI limit of Rs. 50 lakh. Therefore, these units did not qualify as SSI and should have discharged EO of eight times, instead of six times, the duty saved. Consequently, the EO discharged was lower than the minimum obligation by Rs. 23.98 crore. The department should verify the SSI status and refix the EO where necessary and intimate us accordingly.

3.3.2 Paragraph 4.78.1 of HBP, Volume-I (as on 1 September 2004) provides that an EOU having an advance licence has to fulfil the EO stipulated in the licence, within 120 days from the date of first import. He has to submit proof to the RLA within two months of completing the exports.

We scrutinised the records of the licensing authorities at Ahmedabad, Jaipur and DC, Cochin SEZ and found that three licences (Ahmedabad - two, Chennai-one and Jaipur-one) and two EOUs under

the Cochin SEZ had failed to achieve the prescribed export obligation. Accordingly, duty of Rs. 3.54 crore (determined in proportion of the shortfall in achieving export obligation) was recoverable from these units.

One case is illustrated below:

Five advance licences were issued (November 2004 to March 2005) to M/s Hinduja Export Pvt. Ltd. and M/s Intercontinental by the RLA at Ahmedabad for duty free import of gold bars with CIF value of US\$ 59.45 million (total weight 3,523.88 kg) and export of gold jewellery with FOB value of Rs. 236.56 crore (total weight 3,688.736 kg).

The licences completed the imports during the period December 2004 to February 2005. They neither submitted the export documents within the time limit nor sought any extension. The RLA also did not initiate any penal action under the Foreign Trade (Development and Regulation) Act, 1992. The total duty of Rs. 3.52 crore foregone on the import of duty free gold bars was recoverable.

On the matter being pointed out, RLA replied (September 2008) that necessary action would be taken for recovery of customs duty.

3.3.3 As per paragraph 5.4 of FTP (2004-09) (as on 1 April 2005), EO under the EPCG scheme is to be fulfilled by the export of goods capable of being manufactured by the use of the capital goods imported under the scheme. This EO is over and above the average level of exports achieved by the exporter in the preceding three years for the same and similar products. HBP, Volume-I (2004-2009), provides that in case the exporter has supporting manufacturers, the capital goods may be installed at their premises provided their names and addresses are endorsed on the EPCG licence. The name of the supporting manufacturer should also be endorsed in the shipping bill for reckoning the exports towards the discharge of EO.

M/s. Surana Industries Ltd., Chennai, an exporter under RLA, Chennai, imported (between November 2005 and August 2007) eight wind turbine generators and accessories valued Rs. 25.59 crore. The matching EO was Rs. 21.41 crore. The licensee availed of duty exemption of

Rs. 2.67 crore on the imports and exported gold medallions worth Rs. 21.78 crore through four shipments (February and March 2007). The exported items were manufactured by a supporting manufacturer. The licence was redeemed on 4 August 2008 by the RLA.

Our scrutiny revealed the following:

(a) The EO was Rs. 21.41 crore over and above Rs. 44.16 crore which was the annual average exports of the past three years, as per CA certificate dated 12 January 2008. Therefore, the total export of Rs. 21.78 crore in 2006-07 was substantially lower than the EO.

(b) M/s Surana Industries Limited, SIPCOT Industrial Complex, Gummidipoond, Chennai was mentioned as the supporting manufacturer in the EPCG licence. However, the wind turbine generators were installed at Tirunelveli although no amendment was made in the licence by the RLA for change of place of installation. Therefore, the installation of capital goods was irregular.

(c) Verification of export documents revealed that the supporting manufacturer's name was not endorsed on the shipping bills. Thus, EO reckoned for redemption of the licence was irregular.

In view of these irregularities, the duty exemption of Rs. 2.67 crore availed of by the licensee was recoverable along with interest of Rs. 1.34 crore.

3.4 Obligation to achieve value addition

In terms of paragraph 4.56 of HBP, Volume-I (as on 1 September 2004), value addition (VA) of 15 per cent in case of studded gold/ silver jewellery and seven per cent in case of plain gold/silver jewellery is essential for getting duty exemption/remission.

Paragraph 4.4.17 of FTP 2004-2009 (as on 1 September 2004) provides that public/private bonded warehouses may be set up in SEZ/DTA for import and re-export of cut and polished diamonds, subject to achievement of minimum value addition of five per cent.

We found that the prescribed percentages of value addition could not be achieved by five SEZ units, six EOUs and 11 licences of exemption schemes operating under the RLAs at Ahmedabad and Bangalore; Development Commissioners (DC) at Chennai, Noida, Mumbai; and customs commissionerate at ACC, Jaipur. This resulted in grant of ineligible duty concession of Rs. 4.24 crore

which is recoverable from the licencees/EOU/SEZ units.

A few illustrative cases are given below:

(i) RLA Ahmedabad issued (December 2004 to February 2006) eight advance authorisations to M/s Intercontinental (India) and M/s Adani Export Ltd. for import of gold bar, which were to be used for export of studded gold jewellery. The licencees imported 4,138 kg of gold bars and exported studded gold jewellery through 41 consignments during the period 2004-05 and 2005-06.

We observed that the licencees had done value addition ranging from 1.59 per cent to 3.17 per cent instead of the prescribed 15 per cent. The duty concession of Rs. 39.24 lakh is recoverable.

On the cases being pointed out (August 2008 and April 2009), RLA Ahmedabad agreed (August 2008) to take action in one case and stated (July 2009) that in the remaining cases the goods exported were medallions and coins and not studded jewellery. Reply of the RLA was not in consonance with the export obligation discharge certificates issued by him, which were available in the concerned case files and clearly mentioned that the goods exported were studded gold jewellery and not coins and medallions.

(ii) Four SEZ units falling under the jurisdiction of DC, MSEZ, Chennai imported 25,90,622.86 carats of cut and polished diamonds valued at Rs. 988.43 crore during the period 2004-05 to 2008-09. They exported processed goods valued at Rs. 1,041.71 crore. The exports included 36 consignments during the period August 2004 to March 2007 where the value addition was below the prescribed five per cent. Consequently, the duty concession of Rs. 3.50 crore on the imports used for these consignments was recoverable.

(iii) In another case of similar nature, RLA, Bangalore issued (October 2005 to October 2006) six DFRC licences to M/s Rajesh Exports for import of gold which was to be used for exporting gold jewellery. We observed that the licensee exported both plain and studded jewellery but value addition norm was uniformly applied at seven per cent. Since the norm of 15 per cent was not applied for studded jewellery, excess import entitlement of Rs. 1.74 crore was allowed. Against this, the licensee actually imported duty free gold worth Rs. 77.04 lakh on which duty of Rs. 6.61 lakh was foregone, which is recoverable.

3.5 Obligations in Letters of Permission and Letters of Approval

In terms of paragraphs 6.6 of FTP (2004-09) and rule 19 of the SEZ Rules 2006, the DC/designated officer authorises the setting up of an EOU through a letter of permission (LOP) and setting up of an unit in the SEZ through a letter of approval (LOA). Thereafter, the authorized unit executes a legal undertaking (LUT) with the DC concerned.

Our scrutiny of the records of the DCs at SEZ, Noida, Mumbai and Chennai revealed that three EOUs and four SEZ units had not fulfilled the terms and conditions of their LOP/LOA. Total duty of Rs. 7.41 crore is recoverable in addition to

penal action under Foreign Trade (Development and Regulation), Act 1992.

Two cases are illustrated below:-

(i) M/s Agra Products Pvt. Ltd., a unit in SEZ, Noida was issued LOA (18 March 2002) for manufacture and export of gold/silver and imitation jewellery. As per the LOA, the unit was authorised to import capital goods with CIF value of Rs. 90 lakh which was subsequently amended (6 May 2005) to Rs. 2.50 crore. The limit was further increased to rupees three crore w.e.f. 1 August 2008.

Scrutiny of the stock register of the unit revealed that it imported capital goods worth Rs. 5.46 crore upto 2008-09, which exceeded the sanctioned limit by

Rs. 2.46 crore. Duty of Rs. 71.34 lakh foregone on the excess import of capital goods is recoverable and penal action can also be initiated.

On the matter being pointed out (July 2009), the department replied (July 2009) that requirement of capital goods was subject to enhancement/reduction as the unit is not bound to import the exact quantity as mentioned in the LOA.

The reply is not tenable because in this case the excess is very large. If the department can accept an excess import of 82 per cent, then, in our opinion, the LOA becomes a redundant document.

(ii) M/s Hope (India) Polishing, an EOU under SEZ, Mumbai was granted a LOP to import rough diamonds and thereafter manufacture and export cut and polished diamonds and it executed a LUT with DC.

Our scrutiny revealed that the unit imported cut and polished diamonds valued at Rs. 20 crore during 2005-06 to 2007-08 which were not authorised items of import as per LOP/LUT. The unit was, therefore, liable to pay duty of Rs. one crore on the import of cut and polished diamonds.

On the matter being pointed out (September 2008), the department issued (October 2009) a demand notice for the recovery of customs duty.

3.6 Obligations on the use of imported capital goods

In terms of paragraph 5.3.2 of HBP, Volume-I (2004-2009), an importer of duty free capital goods must obtain a certificate of installation and usage from the central excise authorities or an independent chartered engineer and submit to the licensing authority within six months from the date of import.

RLAs at Surat and Jaipur issued 406 EPCG licences to exporters of 'gems and jewellery' during the period 2004-05 to 2008-09 and duty of Rs. 28.13 crore was foregone.

Our scrutiny revealed that the requisite installation certificates for the capital goods were not furnished by the importers. Therefore, the department was required to recover the differential duty from the importers.

One case is illustrated below:

M/s Om Royal Jewellery (India) Pvt. Ltd., under the RLA, Jaipur, was issued an EPCG licence in December 2004 for import of capital goods valued at Rs. 32.71 lakh at concessional rate of duty. The licensee imported machinery worth Rs. 26.30 lakh in November 2005 and availed of duty exemption of Rs. 7.79 lakh. The licence was redeemed after export of gems and jewellery during February and March 2007. We found that the importer had not produced the required installation certificate within six months of import. The duty exemption of Rs. 7.79 lakh is recoverable.