

Executive Summary

Background

The Export Oriented Unit Scheme (EOU) was launched in December 1980, eighteen years after the first export processing zone (EPZ) was formed in Kandla and twenty years before SEZs came into being. Over the years the scheme has undergone various changes and its scope also expanded substantially. The scheme was introduced with the objective of boosting exports by generating additional production capacity. It was primarily designed for the promotion and growth of manufacture and export of value added products.

The functioning of EOUs is governed by three tier administrative set up. The Board of Approval (BoA) is the apex body and is headed by the Secretary, Department of Commerce. The Unit Approval Committee (UAC) at the Zone level deals with the approval of the units within the jurisdiction of Development Commissioner (DC), who is ex officio chairperson of UAC.

The provisions of the Custom and Central Excise law in respect of the EOUs are administered by the Commissioner of Custom and Central Excise under the control of Central Board of Excise and Custom (CBEC), Ministry of Finance (MoF).

Chapter 6 of FTP 2009-14 and HBP 2009-14 govern the scheme. In addition relevant provisions of Central Excise Act 1944, the Customs Act, 1961 and rules made there under and the notifications issued there under provisions of Finance Act 1994 relating to applicability of Service Tax and provision of Foreign Exchange Management Act, 1999 etc. are also applicable.

Monitoring achievement of Net Foreign Exchange (NFE) and in cases of default, levy of penalty under section 11(2) of Foreign Trade (Development and Regulation) Act, 1992 (FTD&R Act) are within the jurisdiction of the DC functioning under the Department of Commerce (DoC).

The long-term vision of the DoC is to make India a major player in the world trade by 2020. *The aspiration of the Department is to achieve an average annual growth of exports of 25 per cent over the next six years.* Working on this aspiration, the Department aims to double its merchandise exports from US \$225 billion in 2010-11 (expected level) to US \$450 Billion in 2013-14 and then to US \$750 Billion.

EOU/DTA units can be established anywhere in India EOU units are entitled for DTA sale after payment of applicable duties on the basis of exports made.

On the taxation front, EOUs are exempted from payment of any duty on imports and exported goods, however, EoUs are not entitled to claim duty drawback for the exported goods and Chapter 3 (Promotional Measures) benefits under FTP. Service tax is refundable on export of services by EOUs. VAT was leviable to service units in EOU. EOUs are exempted from excise duty on inputs.

EOUs have to bear the apportioned infrastructure cost and cost recovery charges for Custom official posted at EOUs and related warehousing charges.

The EOU is working under supervision of Central Excise and Custom department. The process of de-bonding and exit from the scheme is cumbersome.

A review of the scheme was conducted in 2007. The audit findings were included in Audit Report No. 7 of 2007 (Indirect Taxes). Out of the nine recommendations made in the report, DoC accepted two recommendations. Specific replies to other recommendations were not been furnished.

Neither DGFT nor DCs have put up year wise details in their websites, regarding number of EOUs functioning, number of new entrants, number of units opting out of the scheme, their exports/imports etc consequently this data is not available in the website of Ministry of commerce/DGFT.

In the dedicated website of EOU (eouindia.gov.in) some data is available only up to the financial year 2007-08. DoC in the exit conference stated that (January 2015) website 'eouindia.gov.in' become non-functional and the data now being captured in www.epces.in maintained by Export Promotion Council for EOUs and SEZs. Audit observed that only export performance of EOUs upto December 2013 is available in the website.

DCs do not have a data base relating to EOUs falling under its jurisdiction.

Performance of EOUs

The total number of EOUs has gone down from 3109 in 2009-10 to 2608 in 2013-14. While the number of functional units has come down from 2279 to 2095 during the same period, the percentage of functional units to total units has declined from 83 per cent in 2010-11 to 80 per cent in 2013-14 with corresponding increase in percentage of non-functional and deboned units. There has been a gradual reduction in EOUs after the SEZ Act came into force in 2006-07.

The main reason for opting out by the EOUs from the scheme are unavailability of benefits of DEPB, Drawback, DFRC and Target Plus Scheme, etc, discontinuation of income-tax benefits under Section 10B of IT Act effective from assessment year April 1, 2011, (previous year 2010-11) etc.

Government of India had forgone significant customs revenue amounting to ₹ 32,932 crore during 2009-10 to 2013-14 on EOU/EHTP/STP schemes.

Government has fallen short by almost 33 per cent (US\$ 150 billion) of its export target in 2013-14 vis-a-vis its Strategic Plan (DoC). FTP (2009-14) is being operated beyond its tenure and EOU scheme is neither able to attract Entrepreneurs nor contribute to the growth as envisaged while forgoing substantial duty.

Internal control and monitoring

No impact assessment was done before implementing EOU scheme by the DoC/DoR. Neither was any midterm evaluation done while implementing the SEZ Act in direct competition to the EOU scheme. Though the EOU Scheme was introduced several years ago and considerable concessions have been extended to the EOUs, there is no structured internal audit mechanism in the MOC&I to assist in oversight of the functioning of EOUs.

Annual monitoring of functioning and performance of units are carried out by DCs through the Quarterly/Half yearly/Annual returns furnished by the units. Based on such review, DC's inform/suggest to DoC corrective measures to enable defaulting units to fulfil their obligation. However, cases of irregular monitoring of the performance of EOUs have been noticed.

Neither the Controller of Aid, Accounts and Audit (DEA) nor Chief Controller of Accounts (DoC) has audited the EOU scheme. System of regular internal audit of the EOU scheme has not been institutionalized by DoC.

DoC may take steps to collect, collate and make available updated data on the dedicated website.

Cases of non compliance and policy mis representation

Cases of non compliance and policy misinterpretations have been observed which included, DTA sales, short levy of duty at the time of exit from EOU scheme, applicability of central excise exemption notification, incorrect availing of Cenvat credit, non levy of Service tax etc.,

Apart from the systemic issues highlighted in the report, specific cases of operational malfunction led to short/non levy of duty of ₹ 317.06 crore.

Recommendations

1. Ministry may initiate necessary corrective measures to arrest the decline with specific timelines and measurable outcomes so that the basic objective for export growth is achieved utilising the uniqueness of the scheme.
2. DoC may institutionalise a system of regular internal audit of the EOU scheme and may take steps to collect, clean, collate and communicate updated data on the dedicated website.
3. DoC may take steps to ensure that APRs are submitted in time and these reports which are meant for monitoring the performance of EOUs may contain all relevant data not only of exports but also about duty foregone, DTA sale by the government for facilitating the exports.
4. Department may strengthen the internal control in case of DTA clearances by EOUs, by way of improving the prescribed mechanism of joint monitoring by Development Commissioners and Central Excise authorities as well as by fixing accountability for any serious non compliance as per the FTDR/Customs/Central Excise/Service Tax Act.
5. Department may consider suitable amendment to remove the ambiguity created due to contradictory provisions of Section 5A and Section 3 of the Central Excise Act, 1944 relating to duty leviable on domestic clearances made by EOUs.
6. The department may word the relevant provision of FT (D&R) Act to regulate the process/procedures in EOU linked to the objectives envisaged.
7. DoC may consider amendments to the applicable provisions in order to avoid the ambiguity between FTP and the Central Excise notification regarding DTA sales entitlement of EOUs.

**Performance of
100% Export Oriented Unit (EOU)
scheme**