

CHAPTER V

Non- Compliance to provisions of various Export Promotion Schemes of Foreign Trade Policy

5.1 Introduction

The FTP provides a framework for increasing exports of goods and services with a focus on improving trade facilitation and ease of doing business. The FTP 2015-2020 has been notified by the Central Government in exercise of powers conferred under Section 5 of the FTDR Act 1992, as amended. DGFT, under MoCI is responsible for formulating the FTP which is implemented jointly by the DGFT and Department of Revenue.

The Export Promotion Schemes under FTP can be categorised as:

(i) Export from India Schemes: These aim to provide rewards to exporters to offset infrastructural inefficiencies and associated costs involved in exports of goods and to provide exporters a level playing field. The two main schemes under this category are Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS).

(ii) Duty Exemption and Remission Schemes: These enable duty free imports or imports at concessional rates, of capital goods and other inputs for export production or duty remission to provide relief of taxes and duties suffered by the exporters in course of producing exported goods. Advance Authorisation, Duty Free Import Authorisation and Duty Drawback are important schemes under this category. The EPCG scheme facilitates import of capital goods under zero/ concessional rates for producing export goods and services at competitive prices.

The DGFT issues scrips to exporters under various export promotion schemes and monitors their corresponding obligations through a network of 38 RAs. All 38 RAs are computerised and connected to the DGFT Central server. To regulate imports under scrips issued by DGFT, Customs notifications are issued by CBIC and these scrips have to be registered by the exporter concerned in the Customs house under the Commissionerates. Import of inputs and capital goods under export promotion schemes are exempt, wholly or partly from Customs duties. Importers of such exempted goods undertake to fulfil prescribed EO as well as to comply with specified conditions, failing which the duty exempted becomes recoverable by the Customs department under the Act. In addition to action by the Customs department, the licensee is liable to penal action by DGFT under FTDR Act 1992, for not fulfilling the conditions of the licence issued.

In respect of certain other schemes, under Chapter 3 of FTP there is a provision of providing incentives as a certain percentage of FOB value of exports as a reward to offset the infrastructural inefficiencies and associated costs.

5.2 Non-compliance to provisions of Export Promotion Schemes

During test check of records, Audit noticed irregularities regarding “Non-fulfillment of EO against advance authorization (EO period 18/24 months), Irregular discharge of EPCG Authorization (EO period 6 years) leading to non realization of customs duty and interest on imports, Non-recovery of duty drawback against pending BRCs, Clearance of products into Domestic Tariff Area (DTA) in excess of permitted limits, Non- payment of SAD on finished goods by EOU at the time of de-bonding, Non levy of duty on goods cleared from SEZ to DTA units and Excess grant of Replenishment Authorisation”.

Total revenue implication involved in these 27 cases was ₹27.74 crore where duty exemptions were availed of without fulfilling provisions of FTP and HBP. The Department accepted 23 cases involving ₹15.14 crore and reported recovery of ₹6.65 crore. Out of these, 10 cases are discussed in the following paragraphs. Remaining 17 cases involving ₹4.90 crore which have been accepted by the Department and recoveries made/recovery proceedings initiated are mentioned in **Annexure 12**.

5.2.1 Duty Drawback Scheme

(a) Non recovery of duty drawback against pending BRCs

Rule 16A of the Customs, Central Excise duties and Service tax Drawback (Amendment) Rules, 2006 provides following provisions for the recovery of amount of drawback, where export proceeds are not realised:

(i) In case the export proceeds are not received within nine months from the date of exports or any period extended by RBI under FEMA, drawback allowed in such SBs shall be recovered.

(ii) If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the FEMA, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner/Deputy Commissioner of Customs shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of 30 days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of 30 days, the Assistant Commissioner/Deputy Commissioner of Customs, shall pass an order to recover the amount of drawback paid and the exporter shall repay the amount so demanded within 30 days of the receipt of the said order.

Audit examined (December 2018) records of ICD Panki, Kanpur under Commissionerate of Customs (Preventive), Lucknow, pertaining to BRCs and duty drawback claims. Scrutiny revealed that out of 364 cases of SBs⁶⁹, in 321 cases, Let Export Orders (LEO) were issued between April 2015 and March 2018 and drawback benefits were availed. The exporters have not produced evidence to the Department in support of realisation of export proceeds even after the expiry of prescribed nine months. Audit noticed even after 30 months or more, the Department did not initiate any action to obtain the BRCs or to recover drawback sanctioned in these 321 SBs. Hence, the duty drawback to the extent of ₹9.05 crore which has been paid to exporters was recoverable.

This was referred to the Ministry in December 2019, their response was awaited (July 2020).

(b) Non recovery of duty drawback for non-realisation of export proceeds

(i) In Commissionerate of Customs (ACC), Bengaluru, drawback amount of ₹123.89 crore was claimed in 59,241 SBs with FOB of ₹4,333.47 crore for the period 2015 to 2018. Cross-verification of RBI's XOS statement (July 2018) with DGFT' e-BRC data in 1,377 SBs involving an FOB value of ₹128.11 crore and drawback claimed of ₹4.57 crore, revealed that export proceeds of ₹36.40 crore were not realized within the stipulated time in respect of 609 SBs involving drawback claimed of ₹1.67 crore. However, no action was initiated by the Department in recovering the drawback involved amounting to ₹1.67 crore.

The Department replied (March 2019) that in respect of 62 SBs involving drawback of ₹0.15 crore and unrealized export proceeds of ₹6.75 crore, the Bank Reconciliation certificates had been received. They added further that SCNs had been issued in respect of 528 SBs (71 exporters) involving drawback of ₹1.46 crore and unrealized export proceeds of ₹27.76 crore. The Department did not furnish any reply on the remaining 19 SBs involving drawback of ₹0.06 crore and unrealized export proceeds of ₹1.89 crore.

(ii) Similarly in Commissionerate of Customs (City), Bengaluru, export proceeds of ₹80.21 crore were not realized within the stipulated time in respect of 373 SBs involving drawback of ₹3.29 crore.

⁶⁹ As per report generated by ICES 1.5 on 26.12.2018 at ICD, Panki, Kanpur

Thus, total drawback amount of ₹4.82 crore claimed in respect of 920⁷⁰ SBs wherein corresponding export proceeds of ₹109.85 crore could not be realized within the stipulated period, needs to be recovered along with applicable interest.

Ministry's response was awaited (July 2020).

5.2.2 Export Oriented Units/ Special Economic Zone

(a) Clearance of products into DTA in excess of permitted limits

As per Paragraph 6.8 (a) of FTP, units, other than gems and jewellery, may sell goods up to 50 *per cent* of FOB value of exports, subject to fulfillment of positive NFE, on payment of concessional duties. Within entitlement of DTA sale, unit may sell in DTA, its products similar to goods which are exported or expected to be exported from units. Units which are manufacturing and exporting more than one product can sell any of these products into DTA, up to 90 *per cent* of FOB value of export of the specific products, subject to the condition that total DTA sale does not exceed overall entitlement of 50 *per cent* of FOB value of export made during the period. The DTA sales entitlement shall be availed of within three years of the accrual of entitlement (Appendix G of HBP Vol.I).

Out of 222 EOUs under SEEPZ, Mumbai, DTA clearance was made in 150 EOUs during 2012-13 to 2016-17. Audit test checked two units, and noticed short levy of duty on excess DTA clearance in one EOU.

M/s 'A' Industries Pvt Ltd, a 100 % EOU, exported six types of manufactured goods made from the Poly Tetra Fluoro Ethylene (PTFE) in its two units. PTFE nozzle was one of the products manufactured and exported. Audit scrutiny revealed that during period 2009-10 to 2013-14, its two units exported PTFE nozzle worth ₹5.64 crore. Against entitlement of PTFE nozzle worth ₹5.08 crore (90 *per cent* of ₹5.64 crore), the unit cleared in DTA, PTFE nozzle valued Rs 33.87 crore at concessional rate of duty. Thus, for excess clearance of PTFE nozzle more than entitlement the unit was liable to pay duty of ₹1.24 crore

This was referred to the Ministry in May 2020, their response was awaited. (July 2020).

⁷⁰ Remaining 547 SBs pertain to ACC- Bengaluru, and 373 SBs pertain to ICD- Bengaluru

(b) Non-payment of SAD on finished goods by EOU at the time of de-bonding

Paragraph 6.18 (a) of FTP stipulated that an EOU may opt out of the scheme subject to payment of applicable excise and customs duties. Further, Section 3 (1) of the Central Excise Act, 1944 provided that the duty of excise leviable on any excisable goods produced or manufactured by an EOU and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs leviable under the Act. Further, Section 3 (5) of the Customs Tariff Act, 1975 provided for levy of SAD on imports in lieu of sales tax/VAT.

Audit test checked all the four statements (raw materials, packing materials, work-in-progress and finished goods) related to de-bonding for checking duty assessed and pointed out irregularity regarding short levy of duty on de-bonded finished goods.

M/s 'B' Limited, an EOU falling under CGST, Vadodara–I Commissionerate got de-bonded in March 2016. Audit verified the entire duty of ₹8.08 crore paid by it on its de-bonded raw materials, packing materials, work in progress and finished goods and pointed out irregularity regarding short levy of duty of ₹98.34 lakh on its finished goods.

The unit had cleared its finished goods worth ₹20.22 crore on de-bonding and paid duty of ₹4.36 crore including applicable BCD, CVD and education cess but did not pay the amount of SAD leviable at the rate of four *per cent* under Section 3 (5) above. This resulted in short levy of duty of ₹98.34 lakh which was required to be recovered along with applicable interest.

The CGST, Vadodara–I Commissionerate accepting the observation (June 2018/March 2019) issued an SCN to the unit. Further progress was awaited (July 2020).

(c) Non levy of duty on goods cleared from SEZ to DTA unit

As per Rule 47 of SEZ Rules, 2006 a unit in SEZ may sell goods and services in the DTA on payment of custom duties.

In Office of the DC, Bantala SEZ, it was observed from BE Register that there were 11 cases of DTA clearances during 2018-19, of goods worth ₹2.44 crore. Audit of related records revealed that in all the 11 cases, M/s. 'C' Solutions India Private Limited cleared goods like industrial air filter, scraps, etc. to

different DTA units, but did not pay applicable customs duty. This resulted in non levy of duty of ₹68.67 lakh which was recoverable along with applicable interest. However, the Department did not initiate any action to recover the same.

On this being pointed, the Department intimated (December 2018) recovery of the entire duty amount of ₹68.67 lakh.

(d) Non-payment of customs duty on clearance of reusable packing materials in DTA

As per paragraph 6.01 (d) of FTP 2015-20, an EOU may import/procure from DTA, without payment of duty, all types of goods required for its activities. As per condition no.4(b) and (c) of notification no.52/2003-Cus dated 31 March 2003, used packing materials suitable for repeated use may be cleared on payment of duty while used packing materials unsuitable for repeated use such as cardboard boxes, polythene bags may be cleared without payment of duty. Further, paragraph 6.15 (d) of the FTP states that disposal of used packing material will be allowed on payment of duty on transaction value.

M/s 'D' Enterprises Limited, an EOU under Hyderabad GST Commissionerate, is engaged in manufacture of bulk drugs and chemicals. The EOU cleared used packing materials like drums and barrels amounting to ₹1.53 crore into DTA during April 2015 to June 2017 without payment of customs duty amounting to ₹35.78 lakh.

On this being pointed out (January/April 2019), the Department stated (August 2019) that the "used drums/barrels" are nothing but scrap and sold to scrap dealers and other buyers who are neither manufacturer of similar imported goods nor seller of similar goods hence unsuitable for repeated use i.e. packing the same chemicals which were received originally in these drums. The Department citing CESTAT – South Zone, Chennai Bench decision in the case of XYZ Vs. Commissioner of Central Excise & Service tax, Puducherry (2018-TIOL-1956-CESTAT-Madras) further stated that there was no duty liability on these clearances.

The Department reply is not tenable because CESTAT, Ahmedabad in the case of M/s 'E' Colour Private Limited Vs. C.C.E & S.T – Surat II (Appeal No.E/1063/2010-DB dated 13 November 2018) considering CESTAT – South Zone, Chennai Branch decision cited by the Department in their reply and

other similar cases held that empty drums/barrels arising out of the inputs packed therein are durable in nature and re-usable, therefore the clearances of such empty drums are liable for payment of duty as per notification no.22/2003 dated 31 March 2003 and 52/2003-Cus dated 31 March 2003.

5.2.3 Advance Authorisation Scheme

(a) Excess grant of Gem Replenishment Authorisation

As per paragraph 4.35 of FTP, 2015-20, an exporter may obtain Replenishment authorization for Gems from RA for plain or studded gold/silver/platinum jewellery and articles. The value of such authorization shall be determined with reference to realisation in excess of prescribed minimum value addition of 7 *per cent* (paragraph 4.60 of HBP, Vol-I). Paragraph 4.38 of the HBP, Vol.I stipulates that for determining value addition the value of inputs to be computed including domestically procured by considering value of gold/silver/platinum content in export product plus admissible wastage along with value of other items such as gemstone etc. The authorization entitlement is to be calculated on 50 *per cent* of remaining FOB value of exports (Appendix 4F of HBP Vol.I).

Audit scrutiny of records of office of the JDGFT, Jaipur revealed that 22 authorizations of value of ₹34.71 crore were issued during the period 2017-18. All 22 authorizations were audited and it was observed that 19 authorizations of value of ₹30.96 crore were granted against 549 SBs for export of gold and silver jewellery studded with precious and semi precious stones and diamonds etc. JDGFT while granting authorization, calculated value addition of seven *per cent* on cost of gold/silver only without taking into consideration cost of other inputs. Whereas, as per aforesaid provision, value addition of seven *per cent* was required to be made on value of inputs including cost of gold/silver/platinum content in export product plus admissible wastage along with value of other items such as gemstone etc. Accordingly, against the entitlement of ₹28.55 crore exporters were granted authorizations of ₹30.96 crore. This resulted in excess grant of authorization of ₹2.41 crore.

The JDGFT, Jaipur reported (June 2018 to January 2019) recovery of the entire amount of ₹2.41 crore along with interest of ₹50 lakh.

(b) Non fulfilment of export obligation against Advance Authorization

FTP, 2015-20 (Paragraph 4.22) read with HBP, Vol. I, 2015-20 (Paragraph 4.20) stipulates that any failure to fulfil the EO against AA within the prescribed time and to submit evidence of export within two months thereafter will attract recovery of customs duty foregone on the imported material along with interest.

The RA, Bengaluru issued an AA dated 16 September 2016 to M/s 'F' Timbers, Mangaluru for import of "Raw Cashew Nuts" with CIF value of ₹14.04 crore with duty saved amounting to ₹1.17 crore, with the stipulation to fulfil EO of ₹17.30 crore within 18 months (March 2018) from the date of issue of licence. The RA further extended the validity period for six months (up to 15 September 2018).

Audit observed (February 2019) that the licensee imported goods (September 2016 to June 2017) through NCH, Mangaluru, but failed to fulfil EO so far (April 2019) by furnishing the required documents. Thus, the duty foregone amount of ₹1.17 crore plus applicable interest was to be recovered from the licensee.

Ministry of Finance, DoR of stated (June 2020) that an amount of ₹40 lakh has been recovered (till February 2020) from the importer and SCN has been issued (March 2020) to recover the balance with interest.

5.2.4 Export Promotion Capital Goods Scheme

(a) Irregular discharge of EPCG Authorization led to non realization of customs duty and interest on imports

As per chapter 5 of the FTP 2009-14, the EPCG scheme allows import of capital goods for pre production, production and post production at zero customs duty. This is subject to an EO equivalent to 6 times of duty saved on capital goods imported under the scheme, to be fulfilled in 6 years reckoned from Authorization issue date. Paragraph 5.9 of FTP (2009-14) stipulates that with a view to accelerate exports, in cases where Authorization holder has fulfilled 75 *per cent* or more of specific EO and 100 *per cent* of Average EO till date, if any, in half, or less than half the original EO period specified, remaining EO shall be condoned. Paragraph 9.12 of HBP, Vol. I specifies date to be reckoned as the date of shipment/dispatch for exports in case of different modes of dispatch of cargo, such as by sea, by air, by road etc.

Audit noticed that 755 EPCG authorizations were discharged by the office of the ADGFT, Kolkata during December 2015 to March 2017 involving duty saved amount of ₹4,003 crore. Out of the 755 discharged EPCG Authorizations, audit test checked 27 authorizations involving duty of ₹1.61 crore. Out of the test checked discharged EPCG Authorizations, audit found irregularity in case of one authorization dated 29.09.2009 with duty saved amount of ₹1.50 crore as discussed below:-

Audit scrutiny of the office of the ADGFT, Kolkata revealed that a zero duty EPCG licence was issued (September 2009) to M/s 'G' Manufacturing Limited Kolkata for import of capital goods for textile industry for a duty saved amount of ₹1.50 crore. The licence was issued with an obligation to export cotton textiles valuing ₹9 crore up to 28 September 2015. The firm had actually imported capital goods worth duty saved amount of ₹1.52 crore and consequently the actual specific EO stood revised to ₹9.10 crore. The licence was discharged on 14 February 2017 by the RA, Kolkata under paragraph 5.9 of FTP (2009-14), as a case of 75 *per cent* or more of the specific EO being fulfilled within half or less than half the original EO period specified (i.e up to September 2012). Further scrutiny, however, revealed that all the exports were made in November 2012, that is, after half of the original EO period of the EPCG Authorization which had expired in September 2012. Accordingly, the provision of paragraph 5.9 of FTP (2009-14) was not applicable in the instant case. This resulted in irregular discharge of the EPCG authorization for which customs duty and interest totalling ₹73.78 lakh was recoverable.

On this being pointed out (April 2017), the ADGFT, Kolkata issued (July 2017) a SCN under FTDR Act 1992 and subsequently intimated (April 2019) that the discharge letter issued on 14 February 2017 has been withdrawn. Further progress was awaited (July 2020).

5.2.5 Served from India Scheme (SFIS)

(a) Incorrect grant of SFIS duty credit

In terms of paragraph 3.12.1 of the FTP, 2009-14, the objective of the SFIS is to accelerate growth in export of services from India which creates a powerful and unique 'Served from India' brand instantly recognized and respected worldwide. Service Providers of services listed in Appendix 41 of HBP, Vol.I, are entitled to Duty scrip equivalent to 10 *per cent* of free foreign exchange earned during the current financial year under the SFIS. "Accounting services" and "Engineering services" are eligible for SFIS benefits (serial no.1 A (b &c) OF Appendix 41 of HBP, Vol-I).

The Policy Interpretation Committee (PIC), of DGFT in their meeting (December 2011) held that the FTP did not intend to incentivize any brand which is created outside India. The aforesaid PIC decision was subsequently upheld in the case of XYZ Private Limited (in writ petition no.33 of 2015) by Bombay High Court in judgments dated 17 August 2015/16 September 2015.

Thirteen SFIS licences were issued with a value of ₹1.40 crore during the year 2017-18 by Office of the JDGFT, Coimbatore and it was observed that all the 13 licences were issued to M/s 'H' Technologies Pvt. Limited for "Engineering Services" and "Accounting Service". Audit examined all the 13 licences and noticed that duty credit scrips in all the 13 licences were incorrectly granted.

It was observed that M/s 'H' Technologies Pvt. Limited was a subsidiary of foreign company M/s 'I', USA. Hence they were ineligible for grant of SFIS credit scrips. Accordingly, the incorrect grant of duty credit scrips under SFIS to the tune of ₹1.40 crore was recoverable with interest.


Ministry's response was awaited (July 2020).

5.3 Conclusion

The test audit of 28 RAs revealed instances of violations of prescribed rules, procedures framed to give effect to the provisions of the FTP and procedures regarding fulfilment of export obligations and awarding export incentives.

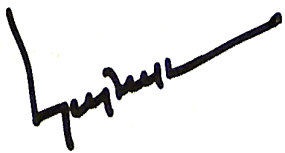
The cases pointed out in above paragraphs are illustrative based on test check by audit and similar violation of rules and procedures and errors of omission and commission cannot be ruled out. Department is advised to review all cases of non-fulfilment of conditions of EPCG and other schemes and take necessary action. Appropriate action to recover the duty saved in cases pointed in Audit also needs to be taken.

New Delhi
Dated: 24 November 2020


(Sandeep Lall)
Director General (Customs)

Countersigned

New Delhi
Dated: 02 December 2020


(Girish Chandra Murmu)
Comptroller and Auditor General of India

