

3. Further, duty free import of mandatory spares upto 10% of CIF value of licence, which are required to be exported / supplied with the resultant product are allowed to be imported under Advance Licencing Scheme. Advance Licences are issued on the basis of inputs and export items reflected under Standard Input Output Norms (SION). However, they can also be issued on the basis of adhoc norms or self declared norms as per Para 4.7 of Handbook of Procedure. Advance Licences are issued for duty free import of inputs as defined in Para 4.1.1 subject to actual user condition. 4.1.5 of the Policy mentions that an Advance Licence and / or material imported there under shall not be transferable even after completion of export obligation.

4. The period for fulfillment of export obligation under Advance Licence is prescribed in Handbook of Procedure (Vol. I) . Para 4.22 of the Handbook of Procedures stipulates the export obligation, its period and its extension. The period of fulfillment of export obligation under an Advance Licence shall commence from the date of issuance of licence. The export obligation shall be fulfilled within a period of 24 months except in the case of goods supplied under Advance Licence for Deemed Exports / Advance Licence to the projects / turnkey projects in India/abroad where the export obligation must be fulfilled during the contracted duration of execution of the project/turnkey project.

However, in case of Advance Licences for drugs, which have been issued against a specific export order and with pre-import condition the period of fulfillment of export obligation shall commence from the date of import of the first consignment and should be fulfilled within a period of 6 months.

5. Para 4.22.1 mentions that the request for extension in export obligation period may be made in the form given in Appendix-10G. The regional licensing authority shall grant one extension for a period of six months from the date of expiry of the original export obligation period to the licensee subject to payment of 2% of the duty saved on all the unutilized imported items as per licence; Request for a further extension of six months may be considered by the regional licensing authorities subject to payment of composition fee of 5% of the duty based on all the unutilized imported items as per licence. However, any further

extensions beyond 36 months upto a period of 48 months from the date of issue of the Advance Licence or the duration of the contracted project (in the case of Advance licence for Deemed Exports) or on the lapse of any other extension(s) granted by Licensing Authority is permitted on payment of the composition fee of 2% per month of duty saved. For all the three cases of export obligation extension specified above, the composition fee on the duty saved on all the unutilized imported items would be computed with reference to the actual exports and imports made by the licence holder. Within two months from the date of expiry of the period of obligation, the licence holder shall submit requisite evidence in discharge of the export obligation in accordance with paragraph 4.25 of the Handbook. However, in respect of shipments, where six months period for realization of foreign exchange has not become due, the licensing authority shall not take action for non submission of bank certificate of exports and realization provided the other document substantiating fulfillment of EO have been furnished.

6. Para 4.25 of Policy stipulates fulfillment of export obligation. The licence holder shall furnish following documents in support of having fulfilled the export obligation: -

For physical exports :-

i) Bank Certificate of Exports and Realization in the form given at Appendix 22 of Foreign Inward Remittance Certificate (FIRC) in the case of direct negotiation of documents or Appendix-22B in case of offsetting of export proceeds.

However, realization of export proceeds shall not be insisted, if the shipments are made against

a) confirmed irrevocable letter of credit or

b) bill of exchange is unconditionally Avalised/Co-Accepted/Guaranteed by a bank and the same is confirmed by the exporter bank.

The stipulations at (a) or (b) above must be certified by the bank in column 14/15 of Appendix-22.

ii) EP copy of the shipping bill(s) containing details of shipment effected.

iii) A statement of export giving details of shipping bill wise exports indicating the shipping bill number, date, FOB value as per shipping bill and description of export product.

iv) A statement of imports indicating bill of entry wise item of imports, quantity of imports and its CIF value.

For deemed exports

i) A copy of the invoice or a statement of invoices duly signed by the unit receiving the material and their jurisdictional excise authorities certifying the item of supply, its quantity, value and date of such supply.

However in case of supply of items which are non excisable or supply of excisable items to a unit producing non excisable product(s), a project authority certificate (PAC) certifying quantity, value and date of supply would be acceptable in lieu of excise certification.

However, in respect of supplies to EOU/EHTP/STP/BTP a copy of ARE-3 duly signed by the jurisdictional excise authorities certifying the items of supply, its quantity, value and date of such supply, can be furnished in lieu of the excise attested invoice(s) or statement of invoices as given above.

ii) Payment certificate from the project authority in the form given in Appendix-12A. In the case of Advance Licence for Intermediate Supplies / deemed exports, supplies to the EOUs/EHTPs/STPs/BTPs, documentary evidence from the bank substantiating the realization of proceeds from the Licence holder or EOUs/EHTPs/STPs/BTPs, as the case may be, through the normal banking channel, shall be furnished in the form given at Appendix-22A.

however, realization of proceeds shall not be insisted upon, if the shipments are made against:

- (a) **◆◆◆◆◆◆◆◆** confirmed irrevocable inland letter of credit or
- (b) **◆◆◆◆◆◆◆◆** inland bill of exchange is unconditionally Avalised /Co-Accepted/Guaranteed by a bank and the same is confirmed by the exporter's bank.

The stipulations at (a) or (b) above must be certified by the bank in column 5/6/7 of Appendix-22A.

- iii) **◆◆◆◆◆◆◆◆** A statement of supplies giving details of supply invoices and indicating the invoice number, date, FOR value as per invoices and description of product.
- iv) **◆◆◆◆◆◆◆◆** A statement of imports indicating bill of entry wise item of imports, quantity of imports and its CIF value.

7. **◆◆◆◆◆◆◆◆** 5.1 EPCG Scheme

The scheme allows import of capital goods for pre production, production and post production (including CKD/SKD thereof as well as compute software systems) at 5% Customs duty subject to an export obligation and equivalent to 8 times of duty saved on capital goods imported under EPCG scheme to be fulfilled over a period of 8 years reckoned from the date of issuance of licence. ◆ Capital goods would be allowed ◆ 5% of duty for exports of agricultural products subject to fulfillment of export obligation equivalent to 6 times of duty saved over a period of 12 years from the date³ of issue of licence.

However, in respect of ◆ EPCG licence with a duty saved of Rs 100 Crores or more, the same export obligation shall be required to be fulfilled over a period of 12 years.

In case ◆ CVD is paid in cash on imports under EPCG, the incidence of CVD would not be taken for computation of net duty saved provided the same is not ◆ CENVATTed.

The capital goods shall include spares (including refurbished/reconditioned spares), tools, jigs, fixtures, dies and moulds. ◆ EPCG licence may also be issued for import of components of such capital goods required for assembly or manufacture of ◆ capital goods by the licence holder.

The import of capital goods for creating storage and distribution facilities for products manufactured or services rendered by the EPCG license holder would be permitted under the EPCG scheme.

The export obligation under the scheme shall be, over and above, the average level of exports achieved by him in the preceding three licensing years for same and similar products except for categories mentioned in Handbook (Vol. 1).

Alternatively, export obligation may also be fulfilled by exports of other good(s) manufactured or service(s) provided by the same firm/company or group company/ managed hotel which has the EPCG license.

However, in such cases, the additional export obligation imposed under EPCG scheme shall be over and above the average exports achieved by the unit/company/group company/ managed hotel in preceding three licensing years for both the original and the substitute product(s)/service(s) even in cases, where the average is exempt for the substitute product(s)/service(s) as given in para 5.7.6 of the Handbook (Vol 1).

The incremental exports to be fulfilled by the license holder for fulfilling the remaining export obligation can include any combination of exports of the original product/service and the substitute product(s)/service(s). The exporter of goods can opt to get the export obligation re-fixed for the export of services and vice versa.

The licensee can also opt for the re-fixation of the balance export obligation based on 8 times of the duty saved amount for the CIF value in proportion to the balance Export obligation under the scheme. The guidelines for the re-fixation of export obligation is given in Para 5.19 of the Handbook (Vol. 1).

The aforesaid facilities shall only be available to manufacture exporters/service provider on all the licences where export obligation period including extended export obligation period valid on the date of application. In this regard, exports made only on or after submission of application for alternate item and / or re-fixation of the export obligation based on duty saved amount will be taken into account for fulfillment of export obligation.

(ii) The export obligation under the scheme shall be, in addition to any other export

obligation under taken by the importer, except the export obligation for the same product under Advance Licence, DFRC, DEPB or Drawback scheme.

(iii) The export obligation can also be fulfilled by the supply of ITA-1 items to the DTA, provided the realization is in free foreign exchange.

(iv) Exports shall be physical exports. However, deemed exports as specified in paragraph 8.2 (a), (b) , (d), (f), (g) & (j) of Policy shall also be counted towards fulfillment of export obligation along with the usual benefits under paragraph 8.3 of the Policy.

Royalty payments received in freely convertible currency and foreign exchange received for R&D services shall also be counted for discharge under the EPCG scheme. Payment received in rupee terms for the port handling services, in terms of Chapter 9 of the Foreign Trade Policy shall also be counted for export obligation discharge under the Scheme.

5.9.1 Monitoring of Export obligation.

The licence holder shall submit to the licensing authority, report on the progress made in fulfillment of export obligation against the licence issued to him. The report shall be submitted in the form given in Appendix-9A. The periodicity of the report shall be year wise. Licensing authorities shall issue Export Obligation Discharge Certificate. The licensing authority may issue partial EO fulfillment certificate to the extent of EO fulfilled in a particular year.

9. Changes brought out in EPCG Scheme under Foreign Trade Policy 2004-2009 :- A number of amendments has been made in the EPCG Scheme. These amendments, inter alias, are as follows:

An option has been allowed to the importer to pay CVD in cash. Para 5.1 of the new Policy provides that in case CVD is paid in cash, the incidence of

Group shall issue the demand-cum-show cause notice interalia demanding duty and interest. The export obligation in respect of all the licences shall be regularly monitored.

13. ❖❖❖❖❖❖ The bank guarantees being executed with the deptt. contain automatic renewal clause having clear commitment from the bank to renew the same from time to time at their own till the case is finally decided by the Customs. Despite above conditions, the bank guarantees invariably mention a time limit for validity/expiry❖ of the bank guarantee, therefore, a letter should be sent to the bank one month in advance from the date of expiry period to extend the bank guarantee.

14. ❖❖❖❖❖❖ Export Obligation Discharge Certificate (EODC) received from the licensing authorities shall be placed in the file and if the export obligation as specified in the licence, Foreign Trade Policy and respective Customs notifications is fulfilled, the bond/bank

The officers shall follow above instructions scrupulously without fail.

Sd/-

(NAJIB SHAH)

COMMISSIONER OF CUSTOMS

(IMPORT)

Attested by :

(S.A. USMANI)

JOINT COMMISSIONER OF CUSTOMS

APPRAISING MAIN