

EXPORT ORIENTED UNIT SCHEME

The purpose of the scheme was basically to boost exports by creating additional production capacity. Under this scheme, the units undertaking to export their entire production of goods are allowed to be set up. These units may be engaged in the manufacture, services, development of software, trading, repair, remaking, reconditioning, re-engineering including making of gold/silver/platinum jewellery and articles thereof, agriculture including agro-processing, aquaculture, animal husbandry, bio-technology, floriculture, horticulture, pisciculture, viticulture, poultry, sericulture and granites. **The EOUs can export all products except prohibited items of exports in ITC (HS).**

Under the EOU scheme, **the units are allowed to import or procure locally without payment of duty all types of goods including capital goods, raw materials, components, packing materials, consumables, spares and various other specified categories of equipments including material handling equipments, required for export production or in connection therewith.** Even the goods appearing in the restricted list of the EXIM Policy (1997-02) are permitted to be imported. However, the goods prohibited for import are not permitted. In the case of EOUs engaged in agriculture, animal husbandry, floriculture, horticulture, pisciculture, viticulture, poultry, sericulture and granite quarrying, only specified categories of goods mentioned in the relevant notification have been permitted to be imported duty-free.

The EOUs are licensed to manufacture goods within the bonded premises for the purpose of export. As per the policy, the period of bonding is initially for five years, which is extendable to another five years by the Development Commissioner. On completion of the bonding period, it is for the unit to decide whether to continue under, or to opt out, of the scheme. The imported capital goods are allowed to be warehoused for a period of 5 years. For other goods, the warehousing period is one year, which can be extended further by the Commissioner / Chief Commissioner of Customs. On an application being made by the unit, extension of the time limit is granted in all cases unless there is malafide and diversion of duty free materials.

General Conditions of Duty free Import:

The facility of duty free import (extending exemption both from basic & countervailing duty) is subject to certain general conditions in accordance with the EXIM Policy and these are summed up as follows:

- (i) The goods are required to be imported into the EOU premises directly. However, Granite Quarrying units, agriculture and allied sector units are allowed to supply / transfer the capital goods and the inputs in the farms/fields with prior permission of Customs.
- (ii) Prior to undertaking import / local procurement duty free, the unit is required to get

their premises customs bonded. The unit is also required to execute a B-17 bond with surety/ security with jurisdictional Customs/ Central Excise officers and take out a licence under section 58 of the Customs Act, 1962.

- (iii) The goods, except capital goods and spares, are required to be utilised within a period of one year or within such period as may be extended by the Customs authorities.
- (iv) The importer is required to maintain a proper account of the import, consumption and utilisation of all imported/locally procured materials and exports made and submit them periodically to the Development Commissioner/ Customs.
- (v) The importer is required to achieve minimum NFEP/export performance as per the provisions of EXIM Policy.
- (vi) The importer is required to abide by the terms and conditions of the Letter of Permission
/Letter of Intent /Industrial Licence issued to the unit.

However, the sector specific customs / excise duty exemption notification(s) have certain additional conditions, which are also required to be followed by the units

B-17 Bond :

- ❖ All the EOUs are required to execute a single all purpose bond i.e B-17 bond undertaking themselves to fulfill the conditions stipulated in the exemption notification of EOU scheme. This bond is taken to take care of the interests of revenue arising out of goods lost in transit, goods taken into Domestic Tariff Area for job work/ repair/ display etc but not brought back etc.
- ❖ The bond is executed with the jurisdictional Assistant Commissioner of Customs/Central Excise in charge of the unit. The format of the bond is prescribed vide notification No. 6/98-CE (NT) dated 2-3-1998. **The bond covers the activities which include, inter alia, transshipment of import /export goods between port of import/export and units' premises; duty-free import/procurement from the indigenous sources as per relevant notification and warehousing/storage in the unit; movement of duty-free goods for job work and return; temporary clearance for repair and display in exhibitions, testing/approvals etc.; and movement of goods against AR-4, AR-3A and CT-3 etc. and transfer from one warehouse to another.**
- ❖ However, it does not cover the differential duty amount against advance DTA sale for which a separate bond is to be executed. The bond is taken for an amount equal to 25% of the duty forgone on the sanctioned requirement of capital goods plus the duty forgone on raw materials required for 3 months.
- ❖ Surety or security equivalent 5% of the bond amount in the form of bank guarantee is required to be given by the EOUs.

Import and Export Procedure :

With regard to clearance of import cargo, the EOUs are placed in a special category, eligible for fast track or green channel clearance through the Customs. Clearance of import consignments is allowed at the gateway port/ Air cargo Complexes on the strength of procurement certificate issued to the EOU by the jurisdictional Assistant Commissioner/Deputy Commissioner. In general, the EOU cargo is not examined at the gateway port. In case of loose cargo, marks & numbers on the packages are verified. As for sealed containers, the seal number and container number are verified with the Bill of Lading. If the seal is found intact, the container is allowed clearance. The imported cargo so cleared and brought into the unit's premises are examined by the jurisdictional Customs/Central Excise officials. After examination (percentage check only), the goods are allowed to be used for export production. Re-warehousing certificate is to be submitted to the Assistant Commissioner/Deputy Commissioner in charge of the port of import within 90 days of the issue of procurement certificate.

On the export side, the units having status of a Super Star Trading House, Star Trading House, Trading House, and Export House are allowed the facility of self-sealing of their export containers.

Goods Imported /Exported and Found Defective:

Subject to grant of GR Waiver by the RBI the EOUs are allowed to make free replacement of the goods exported by them earlier and found defective, damaged or otherwise unfit by the overseas buyer. However, such defective, damaged or otherwise unfit for use goods are required to be brought back subsequently, to the country. The units are also allowed to re-import part consignment/full consignment in case of failure of the foreign buyer to take delivery.

The EOUs are also allowed to receive free replacement of the goods imported and found defective, damaged or otherwise unfit for use prior to re-export of the same. However, such damaged, defective goods are required to be re-exported subsequently. In case the supplier of such goods does not insist for re-exportation, such goods are required to be either destroyed or cleared into DTA on payment of full customs duty.

Procurement of Goods Indigenously under CT-3 Procedure :

- ❖ **The EOUs can procure goods from DTA without payment of Central Excise duty subject to following of the Chapter X procedure of erstwhile Central Excise Rules, 1944. Such procurement from DTA is against CT-3, which is issued by the Superintendent of Customs/Central Excise in charge of the EOU.**
- ❖ Such goods are required to be brought directly from the manufacturer /warehouse into the unit's premises under AR3A and examined by the designated officer. After

examination of such goods, one copy of AR-3A is sent by registered post to the jurisdictional Central Excise authorities as a Re-warehousing Certificate in token of receipt of the goods in the unit.

- ❖ To avoid separate permission every time, the EOUs are issued pre-authenticated CT-3 in booklet form and against such pre-authenticated CT-3, the EOUs are allowed to procure capital goods, raw materials, consumables etc. Goods procured from DTA and found to be defective can be returned to the manufacturer under Chapter X procedure of erstwhile Central Excise Rules, 1944.

DTA sale :

The EOUs (other than gems & jewellery units) are allowed to sell goods (including rejects and byproducts) manufactured by them in DTA up to 50% of FOB value of exports on payment of concessional duty subject to achievement of prescribed NFEP. However, the DTA sale facility is not available for certain products such as motor car, alcoholic liquor, tea (except instant tea), books etc. The EOUs are allowed to remove the goods into DTA on a invoice. The invoice is used both as a transport document and also as a document for determining the assessable value. The EOUs can pay the duty by depositing the same in an authorized bank or the duty can also be debited from the Personal Ledger Account if an account current is maintained.

Valuation of Goods Sold in DTA :

Section 3 of the Central Excise Act, 1944 provides that the valuation of goods manufactured in the EOU and cleared into DTA is to be done in accordance with the provisions of the Customs law. Thus, when the invoice price of the goods under assessment is in the nature of transaction value, such invoice value can be accepted.

Levy of Central Excise Duty on Goods Produced or Manufactured by EOUs and Cleared into Domestic Tariff Area :

In terms of section 3 of the Central Excise Act, 1944, the excise duty leviable on goods manufactured in an EOU/EPZ unit and cleared into Domestic Tariff Area is the amount equal to the customs duty leviable under section 12 of the Customs Act, 1962 or under any other law for the time being in force on like goods produced or manufactured outside India, if imported into India. Thus, the measure of excise duty leviable on goods manufactured in EOU/ EPZs is worked out exactly in the same manner as applicable to imported goods.

On fulfillment of NFEP (Net Foreign Exchange Earnings as Percentage of Exports) the EOUs other than gem and jewellery units, are allowed to sell goods including rejects (upto 5% of FOB value of exports), waste, scrap, byproducts and services in DTA upto 50% of FOB value of exports at a concessional rate of duty in an amount equal to 50% of Customs duties. Sales beyond 50% attract full duties. It may be noted that the words "FOB value of exports" refers to physical exports only. Therefore, the value of deemed exports made by the unit is not considered while determining the FOB value of exports.

Goods Manufactured from Indigenous Materials in 100% EOUs

A concessional duty has been prescribed for goods sold in DTA which are manufactured entirely out of indigenous materials. In such cases, the duty charged is the effective rate of excise duty which is leviable on like goods manufactured & cleared by DTA units. However, if such goods manufactured by a DTA unit are fully exempt from excise duty or are chargeable to 'nil' rate of duty, the EOUs are required to pay 30% of each of duties of customs leviable on similar imported goods.

Clearance of Byproducts, Rejects, Waste and Scrap, Non-excisable Goods, etc.

The DTA clearance of by-products and rejects on concessional rate duty is not allowed to the EOUs, which have failed to achieve the prescribed NFEP. In such cases, the EOUs are liable to pay full duty. Further, in case of these units, DTA clearance of finished goods is not allowed even on payment of full duty. In case of waste/scrap/remnants, the same are allowed to be sold in DTA on payment of concessional rate of duty within overall limit of 50% of FOB value of exports without insisting on achievement of prescribed NFEP.

In case of sale of scrap/waste/remnants beyond this limit, it is allowed on payment of full duty. As for DTA clearance of goods manufactured by the EOUs which are not excisable (e.g. cut flowers) the duty on inputs and consumables etc. procured/imported duty free under exemption notifications, which have gone into production of such non-excisable goods cleared into DTA, is recovered.

Special Concessions for Certain Waste products and Other Goods Cleared from 100% EOUs :

Apart from the above general concessions, special concessions are available for certain products. **As per instance, under notification No.103/93-CE, dated 27.12.93 rags, trimmings and tailor cuttings arising in the course of manufacture of readymade garments are fully exempt from excise duty when cleared into DTA by EOUs. This is subject to the condition that the percentage of waste material in the form of rags, trimmings and tailor cuttings does not exceed the percentage fixed in this regard by the Board of Approval.**

Further the waste of fish or crustaceans, mollusks or other aquatic invertebrates falling in chapter heading 05.01, castor oil cake manufactured from the indigenous castor oil seeds on indigenous plant and machinery falling under chapter heading 23.02, guar meal manufactured wholly from indigenous guar seeds falling under chapter heading 23.01 and yarn of jute and goods of jute, manufactured from wholly indigenous raw materials headings 53.07, 53.10, 5702.12, 5703.20, 58.01, 58.02, 58.06 or 6305.10 are fully exempt from payment of duty if manufactured by EOUs and cleared into DTA. Also, cotton waste falling under heading 52.02 are fully exempted if produced or manufactured by EOU and allowed to be sold in India.

In case of *Gems and Jewellery EOUs*, the units are allowed to sell upto 10% of FOB value of exports of the preceding year in DTA subject to fulfillment of NFEP as prescribed under the Export and Import Policy. In case of sale of plain gold jewellery, plain silver jewellery, studded gold jewellery, unsuitable/broken cut and polished diamonds, rough diamonds, precious and semi precious stones or dead stock in DTA, the units are allowed to pay concessional rate of duty.

In addition to the above, under notification No. 20/98-CE, dated 18-7-1998, certain specified textile items are allowed to pay concessional duty in case of DTA sales of such items by EOUs.

Sale of Surplus/ Unutilized Goods :

The EOUs are allowed to sell surplus/unutilized goods, imported or procured duty free in DTA on payment of duty on the value at the time of import/procurement and at rates in force on the date of payment of such duty, in case the unit is unable for valid reasons to utilize the goods. The permission for such DTA sale is given by the jurisdictional Assistant Commissioner /Deputy Commissioner of Customs/ Central Excise as the case may be. Likewise, obsolete/surplus capital goods and spares can either be exported or disposed of in the DTA on payment of applicable duties. The benefit of depreciation, as applicable, is allowed in such cases. **Duty is not charged if the goods are destroyed with the permission of Customs.**

Clearance of Goods Manufactured by EOUs against Advance Release Order (ARO) or Back-to-Back Inland Letter of Credit issued against an Advance Licence or Duty Free Replenishment Certificate (DFRC).

The goods manufactured by EOUs are allowed to be cleared against ARO & Back-to-Back Inland Letter of Credit issued against Advance License (except Advance License for intermediate supply) without payment of basic and additional duty of customs subject to following the provisions of EXIM Policy & HOP Vol.-1, 1997-2002 & conditions of notification 28/2001-CE dated 16-5-2001. The goods may also be cleared to a person holding an ARO issued by the Licensing Authority against a DFRC or Back-to-Back Inland Letter of Credit issued by a bank on the payment of additional duty of customs subject to following of the provisions of EXIM Policy and HOP Vol.1 Vol.-1, 1997-2002 & conditions of notification No. 28/2001-CE dated 16-5-2001.

Sub-Contracting

The EOUs, other than Gem & Jewellery units, are allowed to sub-contract part of their production process in DTA. These units may also sub-contract up-to 50% of production for job-work in DTA. Sub-contracting of both production and production process are also allowed to be undertaken through other EOU/EPZ/EHTP/STP/SEZ units on the basis of records maintained by the unit.

For sub-contractual work performed outside, the units are required to take annual permission from the Customs authorities and are required to furnish information, such as, processes to be carried out on sub-contract basis and the name, address of the subcontractor etc.

After getting the permission, the unit is required to follow the Receipt Challan/ Despatch Challan (RCDC) procedure. Under this procedure, at the time of removal of goods, the unit prepares Despatch Challan giving information, such as, value of the goods, name & address of job worker, duty forgone on the goods and the period within which the goods will be received back.

Similarly, the goods after completion of sub contractual work are received back in the unit on the basis of Receipt Challan. The scrap/waste/remnants generated at the job worker's premises can be either cleared from the job worker's premises on payment of duty or returned to the supplying unit. Exports from job worker's premises are allowed in cases where the job workers are registered with the Central Excise department. A sample of goods exported is sent to the EOU for checking whether the goods supplied by it are utilised by the job worker in the export product.

The EOUs are also allowed to remove moulds, jigs, tools, fixtures, tackles, instruments, hangers and patterns and drawings to the premises of sub-contractors subject to the condition that they are brought back to the bonded premises of EOU on completion of the job work within a stipulated period.

The EOUs are allowed to sub-contract part of the production process abroad. The approval for sub-contracting abroad is accorded by the Board of Approval. The goods sent for job-work abroad are required to be returned to the unit for final processing/manufacturing before exports. The unit is required to execute a suitable bond for sub-contracting of goods abroad and is required to account for the goods including waste/rejects in the manner as prescribed by the Commissioner of Customs/ Central Excise in this behalf.

To help utilize the idle capacity, the EOUs are allowed to undertake job work for export on behalf of DTA units. This is subject to the condition that the finished goods are exported directly from the EOU and export documents are made in the name of the DTA unit. On export of such goods manufactured by EOUs on behalf of the DTA unit, the DTA unit is entitled to refund of duty paid on the inputs by way of brand rate of duty drawback.

Temporary Removal of Goods :

The EOUs, Software Technology Park Units or Electronic Hardware Technology Park Units engaged in development of software are allowed to remove imported laptop computers and video projection system out of the bonded premises temporarily without payment of duty subject to following the prescribed procedures.

Inter-unit transfer

An EOU is allowed to transfer imported or manufactured goods to another EOU/EPZ/STP/EHTP/SEZ unit. The officers in charge of the EOU supplying the material and the EOU receiving the material are expected to keep a watch on the movement of material between the EOUs. The re-warehousing certificate on transfer of the goods from one EOU to another is obtained by post and is crosschecked occasionally with the Superintendent in charge of the other unit to see whether the goods have been actually received in the unit or not. In case of non-receipt of re-warehousing certificate and similarly, non-receipt of proof of export from the proper officer within 90/180 days, the duty is demanded from the sending unit.

Repair, Reconditioning etc.:

The EOUs are permitted to import goods of any origin to carry on re-conditioning, repair, testing, calibration, quality improvement, up gradation of technology and re-engineering activities for export in freely convertible foreign currency provided such repairs, reconditioning, reengineering etc. are carried out in Customs bonded premises and the final goods are not sold within the country.

Recovery of Duty Forgone under EOU Scheme and Penal Action for Abuse/ Diversion etc.

Under EOU Scheme, the units are required to achieve minimum NFEP and Export Performance as stipulated in the Exim Policy. In case of failure to achieve the minimum NFEP and EP, the duty forgone under the EOU scheme along with interest is recoverable from the units. Further, the duty is recoverable from the units in case of non receipt of imported/ indigenously procured goods in the factory premises after import/procurement, loss of goods in transit, non accountal of imported/ indigenously procured goods, unauthorized DTA sale, clandestine removal etc. Duty can also be demanded in case of failure to utilize duty free imported/indigenously procured goods including capital goods within the prescribed time limit. The duty is also recoverable on goods removed for job working/ display/ testing/ quality testing, but not received back in the unit within the specified period of time.

Apart from recovery of duty forgone, the law also provides for taking penal action where any 100% EOU is found to have indulged into any fraudulent activities eg. clandestine removal of production into DTA without payment of duties, diversion of duty free materials in transit to the unit after customs clearance or after receipt etc., not only the offending goods can be seized and confiscated, but even units penalized heavily/ prosecuted.

De-Bonding :

An EOU may debond into a normal DTA unit subject to the approval of the Development Commissioner and following of prescribed procedure & fulfilling the laid down conditions. Such de-bonding is subject to penalty, if any, that may be imposed and payment of duties of

customs and excise applicable at the time of de-bonding. The standard conditions of de-bonding, as indicated in the Handbook of Procedures provide, amongst other conditions, that the applicable customs and central excise duty would be paid on imported and indigenous capital goods, finished goods, raw materials, consumables, components etc. in stock. Further, the unit in question continues to be treated as an EOU till the date of final de-bonding order.

The duty payable in terms of the relevant notifications by the units seeking de-bonding is as under:

- Semi-finished and finished goods lying in stock at the time of de-bonding can be
- (a) cleared on payment of the excise duty equal to aggregate duties of Customs payable on similar imported goods.
 - (b) Capital goods, material handling equipment, office equipment and captive power plants can be cleared on payment of an amount equal to the customs duty leviable on such goods on the depreciated value thereof and at the rates in force on the date of payment of such duty.
 - (c) Goods including containers suitable for repeated use other than those at (b) above can be allowed clearance on payment of customs duty on their value at the time of import and at the rate of duty in force on the date of payment of such duty.
 - (d) Used packing materials such as cardboard boxes, polyethylene bags of a kind unsuitable for repeated use can be cleared without payment of duty.

At the time of de-bonding, the EOUs are entitled for depreciation on imported/indigenous capital goods. The rates of depreciation on capital goods have been specified and in case of the computers and computer peripherals, accelerated rate of depreciation have been provided for.