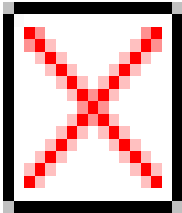


Mistakes to avoid while availing benefit of duty exemption schemes

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THIS

article is intended to caution exporters from making mistakes while availing export incentive schemes viz., Advance Authorization (AA) and Export Promotion Capital Goods (EPCG) Authorization. Such mistakes may lead to unnecessary long drawn litigation and nuisances in carrying out the business operations. Procedural lapses are often condoned but, on many occasions, it is observed that the assessee has to knock the doors of court to get relief.

Following is the list of common mistakes made by exporters:

1. Installation of capital goods at un-approved premises or non-submission of installation certificate:

The capital goods should be installed only in the factory premises of the authorization holder or his supporting manufacturer which is properly endorsed in the EPCG authorization ¹

. Further, the installation certificate is required to be submitted to RA concerned within 6 months from date of completion of import. The maximum extension allowed after payment of penalty is 12 months ².

In effect, the capital goods should be installed within said extended period. If the goods are installed at un-approved premises (for example, if the goods are installed at the premises of supporting manufacturer whose name and address is not mentioned in authorization) or not installed within prescribed time limit, the intervention of Policy Relaxation Committee (PRC) would be required which is a tedious process.

2. Non-mentioning of authorization number in shipping bill:

Exports made under free shipping bill, i.e. without reference of AA or EPCG authorization number are not counted by RA towards fulfilment of export obligation. Shipping Bills should be endorsed with Authorisation Number to establish co-relation of exports supplies with authorisation issued ³. Also, EPCG Customs Notification ⁴

provides that exports against only such shipping bills which mention the authorisation number and date of the authorisation shall be counted for the fulfilment of the export obligation. Hence, mention of authorization number on shipping bill is an important requirement for such exports to be counted towards EO. If the exporter has made a mistake of not mentioning the said licence number on shipping bill, one possible way forward is to approach the custom authorities to amend the said shipping bill in accordance with Section 149 of the Customs Act 1962. For such an amendment, the exporter has to prove the factum of export by way of supporting materials as held by the Hon'ble Madras High Court in the case of *YSI Automotive India Private Ltd.* ⁵.

Another possible way forward is to approach PRC to waive the requirement of mention of authorization number in shipping bills and consider for EODC without that requirement being fulfilled. However, it is often seen that PRC have rejected such an application for waiver.

4. Considering rupee exports against fulfilment of export obligation:

Export proceeds under AA as well as EPCG scheme shall be realized in freely convertible currency only except for deemed export supplies under Chapter 7 of FTP. Exports to Nepal and Bhutan are generally made against payment in Indian Rupees. Hence, it is to be taken care that such proceeds in INR for export to Nepal/Bhutan would not be counted towards fulfilment of export obligation. Even realization in case of supplies to SEZ units shall be from foreign currency account of the SEZ unit.

5. Non-filing of Bill of Export for supply to SEZ:

Like it was said earlier, some lapses are procedural, however, often assessee needs to knock on the doors of court to condone them. For considering exports made to SEZ against fulfilment of export obligation, the exporter has to file bill of export as a proof of export (like a

shipping bill). In many cases, wherein the exporter had not filed the bill of export but actually made supplies to SEZ, PRC has rejected application for waiver of said requirement. The courts had to step in to say that if factum of export can be proved by assessee by way of other documents, then substantive benefit cannot be denied due on non-filing of bill of export as held in the case of **Larsen & Toubro Limited** ⁶.

6. Export on payment of IGST after availing advance authorization:

If an assessee has imported inputs without payment of IGST under advance authorization, he is not allowed to export goods against fulfilment of said authorization **on payment of IGST and thereafter claiming refund of said IGST**

¹. After introduction of exemption of IGST under advance authorization in 2017, many exporters had violated this condition (pan-India investigation initiated by DRI Kolkata) and had to either surrender input IGST saved on imports of raw materials or output IGST paid on final goods. Even assessee who is availing advance authorization scheme and exporting goods without payment of IGST and thereafter claiming refund of unutilized input tax credit should be cautious of the formula used for claiming such refund in view of the recent decision of the Hon'ble Gujarat Court in the case of **Filatex India Ltd.** ⁷.

7. Sale in domestic market using inputs imported under advance authorization before completion of export obligation:

Advance authorization scheme provides that exporter will have option to dispose of product manufactured out of duty-free input once export obligation is completed ⁸

². This creates an ambiguity whether an exporter can use duty-free inputs for clearance of final goods for domestic sales before completion of export obligation while later completing export obligation by way of domestic inputs. The Hon'ble Bombay High Court in the case of **Unimark Remedies Ltd.** ⁹

has held that duty-free imported inputs cannot be used for domestic sales before completion of export obligation. The appeal filed by the department as well as individual promoters have been admitted in the Hon'ble Supreme Court ¹⁰ and the same is pending.

8. Use of excess inputs imported under advance authorization for effecting domestic sales:

Advance Authorization scheme provides that in case it is found that Authorisation holder has consumed lesser quantity of inputs than imported, Authorisation holder shall be liable to pay customs duty on unutilized value of imported material, along with interest thereon as notified, or affect additional exports within the EO period ¹¹

³. Thus, if an exporter, if efficient, and uses less inputs than actually imported (as per SION or ad-hoc norms) for completing the export obligation, then the scheme requires the exporter to either pay duty on such balance inputs or use them to effect additional exports. The said balance inputs cannot be used for effecting domestic sales. The said view has also been upheld in the judgment of **Unimark Remedies Ltd.** (supra).

9. Others:

There have been other mistakes like violation of pre-import condition (now removed from policy) in the case of advance authorization, non-submission of annual report in case of EPCG authorization, delay in submission of EODC, importing capital goods not having nexus with final goods, not making timely extension for EO period, considering CIF value of exports instead of FOB value for the purpose of EO fulfilment, not getting the bond discharged after submission of EODC and redemption letter etc.

[The views expressed are strictly personal.]

¹Para 2(9) of EPCG Notification No. [16/2015-Customs](#) dated 01.04.2015

²Para 5.04 of HBP 2015-2020

³ Para 4.27 of FTP 2015-2020

⁴Para 3 of EPCG Notification No. 16/2015-Customs dated 01.04.2015

⁵ YSI AUTOMOTIVE INDIA PVT. LTD. Vs CC Chennai reported at 2021 (377) E.L.T. 569 (Mad.) = [2021-TIOL-1043-HC-MAD-CUS](#)

⁶ LARSEN & TOUBRO LIMITED VS UNION OF INDIA REPORTED AT 2018 (360) E.L.T. 289 (BOM.) = [2017-TIOL-2291-HC-MUM-CUS](#)

⁷ M/S FILATEX INDIA LTD. VERSUS UNION OF INDIA REPORTED AT 2022 (2) TMI 1002 - GUJARAT HIGH COURT = [2022-TIOL-297-HC-AHM-GST](#)

⁸ Para 4.16 of FTP 2015-2020

⁹ UNIMARK REMEDIES LTD. Versus COMMR. OF CUS. (EXPORT PROMOTION), MUMBAI reported at 2017 (355) E.L.T. 193 (Bom.) = [2016-TIOL-2969-HC-MUM-CUS](#)

¹⁰ COMMISSIONER V. UNIMARK REMEDIES LIMITED - [2017-TIOL-261-SC-CUS](#)

¹¹ Para 4.49(f) of FTP 2015-2020

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