

Standard operating procedure for EOU, STPI and EHTP units

Public Notice No. 25/2021 dated May 27, 2021 issued by the Office of the Commissioner of Customs, Bangalore

The Customs Department has since the lockdown induced by the pandemic struck India taken various steps in the interest of trade facilitation. Steps such as faceless assessment, enabling submission of documents in soft-copy, re-export/re-import, etc. have gone a long way in facilitating trade. These measures have enabled faster processing of documents, enhanced transparency for importer and exporters in India.

The industry had represented various apprehensions concerning the procedural requirements in the functioning of Export Oriented Units, Electronics Hardware Technology Parks (EHTPs) and Software Technology Parks (STPs), especially since the implementation of GST. Therefore, as a trade facilitation measure, the office of Commissioner of Customs, Bangalore has issued Public Notice No. 25/2021 dated May 27, 2021, (Public Notice) setting out a standard operating procedure in order to resolve various issues faced by EOU/EHTP/STPI (collectively referred to as 'Units' or 'EOUs'). The clarifications issued in the Public Notice is set out below:

A. Procedure for import of goods

- It is clarified that EOUs/the Units intending to import goods without payment of customs duty and IGST are required to follow the procedures prescribed under Rule 5 of Customs (Import of Goods under Concessional Rate of Duty) Rules, 2017. This applies to Units entitled to import all types of goods without payment of customs duty leviable under the first schedule of the Customs Tariff Act, 1975 and additional duty that are leviable under sub-sections (1), (3) and (5) of Section 3 of Customs Tariff Act and IGST in terms of Notification No. 52/2003–Customs dated March 31, 2003.

B. B-17 Bond and surety /security

- In cases where B-17 bond is executed by the Units in the capacity of proprietorship or partnership firm, it is clarified that a surety (bank guarantee of 5% of bond amount) cannot be provided by proprietor / partner of the concerned proprietorship / partnership



EOU firm. The surety will have to be given by an independent legal entity other than the proprietor / partner of the concerned proprietorship / partnership EOU firm.

- An exemption from furnishing of bank guarantee along with B-17 bond is prescribed for following importers:
 - Authorized Economic Operators and Status Holders.
 - Units cumulatively fulfilling these conditions:
 - Positive Net Foreign Exchange
 - Unblemished track record with export turnover of at least 5 crore
 - Not having been issued with a show cause notice or a confirmed demand during the preceding 3 years on grounds other than procedural violations under penal provisions of Customs Act, 1962, the Central Excise Act, 1944, Foreign Trade (Development and Regulation) Act, 1992, the Finance Act, 1994 and the Foreign Exchange Management Act, 1999.

C. Import of goods

- EOUs that intend to import the goods need to give intimation to the officers of Export Promotion Council (EPC) about the estimated quantity and value of the goods to be imported and mention the duty foregone on such imports and the debit particulars in B-17 Bond.
- It is clarified that EOUs/the Units are required to enclose the statement in prescribed format containing details of opening balance of bond amount, credit taken, debit amount and closing balance of Bond amount.
- It is clarified that in cases involving import of inputs, EOUs need to debit an amount equal to duty foregone on such imports and 25% of duty foregone amount in case of capital goods.

- As EOUs are importing goods on a regular basis and face difficulty in furnishing intimations as well as other documents within 2 days on import of goods in EOU, it has been decided to do away with the requirement to submit the import documents, based on one time approval from Assistant Commissioner/ Deputy Commissioner. However, EOUs/the Units are required to maintain all the import related documents in digital file and furnish as and when the officers ask to produce the same for verification.

D. Procurement of indigenous goods - EOUs

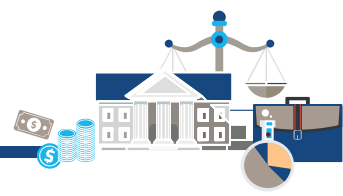
- EOUs will not receive *ab-initio* exemptions from CGST/SGST/UTGST/IGST on indigenous procurement of goods. It is clarified that supply of such indigenous goods to EOUs would be on payment of applicable GST which will be neutralized by ITC or by availing refund of tax paid on such supplies by the recipient or supplier.
- The EOUs will continue to get *ab-initio* exemptions from central excise duty on indigenous procurement of goods covered under the Fourth schedule of the Central Excise Act, 1944.

E. Time limit for utilization of imported capital goods and inputs

- The period of utilization of goods, including capital goods, procured/imported by EOUs shall be co-terminus with the validity of Letter of Permission (LOP), subject to the exceptions provided in Foreign Trade Policy (FTP) and Notification No. 52/2003–Customs dated March 31, 2003.

F. Domestic Tariff Area (DTA) Sale

- The EOUs are entitled to sell finished goods (subject to restrictions in FTP) in the DTA subject to reversal of customs duty.



- An importer who has cleared the goods in DTA is required to give an intimation to Assistant Commissioner /Deputy Commissioner of EPC in the prescribed format.
- Reversal of customs duty shall have to be remitted under TR-6 challans duly countersigned by the Superintendent/Inspector at the jurisdictional EPC. On a case-to-case basis, the Superintendent/Inspector may allow importers, intimation by way of, sending the scanned copies of TR-6 Challans (with bank seal) along with the copies of Demand Draft/ Cheque by mail.
- EOUs which are facing difficulties to make the duty payment (reversal on account of DTA Sales) on consignment basis have the option to deposit the duty amount in advance, based on estimate of DTA sales for a certain period and such advance amount may be utilized for DTA sales by debiting the advance deposited.

G. Inter-unit transfer

- Inter-unit transfer can be done under the cover of a tax invoice or delivery challan along with payment of GST. It is clarified that no IGST is payable on such inter-unit transfer.
- The supplier unit will endorse documents with the amount of custom duty, availed as exemption, if any, on the goods intended to be transferred and the recipient Unit would be responsible for paying such basic customs duty.
- Units making inter-unit transfer or supplier are required to furnish prior intimations to the jurisdictional EPC.

H. Clearance of by-products/ rejects/ waste/ scraps, etc.

- Scrap/ waste/remnants arising out of production process or in connection therewith are allowed to be sold in DTA, as per

Standard Input Output Norms (SION) notified by the Directorate General of Foreign Trade (DGFT).

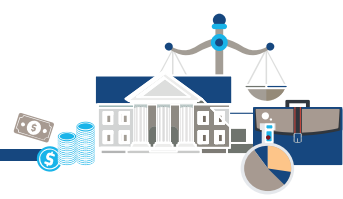
- In case where SION norms are not fixed, scrap clearance up to 2% of the input quantity is allowed.
- Sale of waste/scrap/remnants by units beyond the above said norms or beyond 2% of the input quantity (in applicable cases), shall be on payment of full duties and subject to restrictions in Para 6.08 FTP. However, there will be no duties/ taxes on scrap/ waste/ remnants in case same are destroyed with permission of Customs authorities.
- EOUs are required to give intimation for clearance of waste/scrap to the Customs officer along with the letter of approval given by the CSEZ/ Software Technology Parks of India (STPI).

I. Procedure for re-export

- Imported goods which are found defective or unfit for use maybe returned and replaced or destroyed.
- In the event of replacement, goods may be brought back from foreign suppliers or their authorized agents in India.
- 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 with payment of full Customs duties.
- In all cases of re-export, the Units shall take prior approval from the jurisdictional EPC.

J. Sub-contracting

- EOUs may sub-contract part of their production process to DTA through job work based on annual permission from Customs authorities and can also sub-contract part of the production process abroad and export from there.



- EOUs can send the imported goods for job-work by giving due intimation to the Deputy Commissioner (DC)/ Assistant Commissioner (AC) of EPC.
- EOUs are required to follow the process for job work as outlined under CGST Act, CGST Rules and relevant notifications/circulars.
- Units are advised to endorse the copy of the intimation/return, required to be filed, under the above said statutes with the GST Authorities, to export promotion cells also in mail. This condition can be waived on case-to-case basis by Assistant Commissioner/ Deputy Commissioner, EPC based on the track record of the EOUs.

K. De-bonding of capital goods

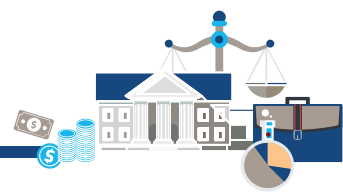
- EOUs can clear any capital goods to any other place in India or de-bond in accordance with FTP with the permission of the Development Commissioner and on payment of duties on the depreciated value at the time of imports.
- Clearance/ debonding of capital goods on the depreciated value proportionate to the Net Foreign Exchange (NFE) achieved by the unit is allowed.
- In the event the Units have not achieved positive NFE in the above manner, the duty foregone at the time of import shall be paid on such value of goods in proportion to the non - achieved portion of NFE.
- The depreciation of computers and capital goods shall be allowed and the Importer seeking the permission for de-bonding the capital goods should submit the request with AC/DC of EPC along with the documents mentioned in. (Reference: para 6.15 of FTP, Notification No. 12/2008 – Customs dated 24 July 2008 and Notification No. 50/2018 – Customs dated 6 December 2018.)

L. Re-Credit

- Units may seek re-credit of the amount debited at the time of import of goods since the B-17 Bond is a running Bond Account.
- EOUs after consumption of the imported raw materials and clearance/ export of resultant products, shall give information regarding the amount of re-credit subject to the condition that the Unit shall furnish the consumption statement of raw materials along with the export/ clearance duly certified by the Chartered Accountant.
- The correlation between bill of entries and clearances, even if not reproduced in the consumption statement, should be maintained in digital format.
- Units can also seek re-credit on account of disposal of capital goods, permanent re-export of capital goods, destruction of capital goods subject to condition that the Units must furnish the copy of necessary permission obtained from the Development Commissioner or STPI authorities along with proof of disposal/ destruction/ re-export on permanent basis.

M. Replacement/repair of imported /indigenous goods

- EOUs may send capital goods abroad for repair with permission of Customs authorities and such permission is not required when goods sent for repair within the country.
- Removal of capital goods by all units irrespective of status within the country for the purpose of test, repair, calibration and refining on the basis of prior intimation to the proper officer will be subject to maintenance of proper accounts of removal and receipts of goods.



N. Third-party exports

- In case of third-party exports, the export documents such as shipping bills shall indicate the names of both manufacturer and third-party exporter.
- The Bank Realization Certificate, Self-Declaration Form, export orders and Invoice should be in the name of third-party exporter.
- If the EOUs fail to fulfil the conditions that are prescribed under Para 6.19 of Handbook of Procedures, 2015-20, such exports shall be treated as DTA sales and Units will accordingly need to reverse the customs duty involved in the manufacture of such finished goods.

O. Records and returns

- The Units must maintain records of imported goods, in digital form, based upon data elements contained in Form A (as prescribed).
- A digital copy of Form A, containing transactions for the month, shall be provided to the proper officer, by the 10th of every month in a CD or pen drive. Penal action will be initiated for non-submission of the same within the due date.
- EOUs should also submit the Quarterly Performance Report and Annual Performance Reports.

P. Exit from the Scheme (debonding)

- The Units shall pay the GST and reverse the Customs duty on the raw materials, semi-finished and finished goods lying in stock, capital goods (duty at depreciated rate subject to achievement of positive NFE) at the time of debonding.
- Units seeking exit from the scheme are required to file a legal undertaking to the effect that all duties of Customs including GST has been fully paid and in the event of

any dues that may accrue in future on account of audit, verification etc., the same will be remitted to the Government account.

- Units can exit from EOU Scheme subject to approval of the DC.

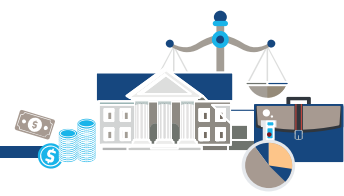
Q. Strict compliance to the provisions of Customs Act and Rules

- It is clarified that penal action will be initiated under the Customs Act, 1962 and the Rules made thereunder if the Units working under the jurisdiction of Bengaluru City Customs Commissionerate fail to comply with this Trade Notice.
- A provisional period of three months is given for all the stake-holders to submit a declaration about compliance to this Public Notice particularly regarding the payment of Customs duty on DTA clearances for the period July 2017 onwards in the given form Annexure I.

Dhruva Comments:

The Public Notice issued by Commissioner of Customs, Bengaluru is applicable to Units falling in the jurisdiction of Bengaluru. The apprehensions of Units on various issues have been common across jurisdictions and so, the Public Notice will be a referencer for Units operating in other jurisdictions and enable uniformity across India.

Clarifications relating to various aspects *inter alia* procurement of indigenous goods, the requirement to furnish B-17 bond and surety, non-liability of customs duty on inter unit transfer, DTA sale, time-limit of utilization of capital goods etc. have been issues of confusion especially following the advent of GST. The Public Notice has painstakingly described and clarified on variety of issues.





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