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वित्त मंत्रालय
राजस्व विभाग

MINISTRY OF FINANCE
DEPARTMENT OF
REVENUE

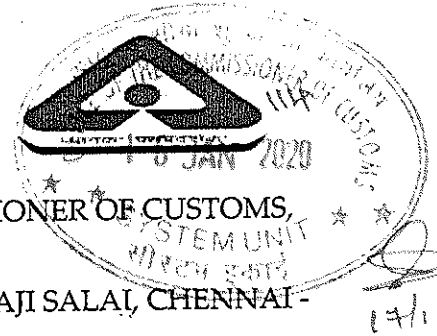
आयुक्त सीमाशुल्क का कार्यालय, चेन्नई –
आयात

OFFICE OF THE COMMISSIONER OF CUSTOMS,
CHENNAI – IMPORT

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F.No. S.Misc. 02/2018-19-AM-CH-II

Date: 16.01.2020

PUBLIC NOTICE NO. 03/2020

Sub: Levy and Collection of Social Welfare Surcharge(SWS) on imports under various schemes such as Merchandise Exports from India Scheme(MEIS), Services Exports from India Scheme (SEIS), etc – reg.

Attention of the Importers, Exporters, General Trade, Custom Brokers and all other stakeholders in the jurisdiction of Chennai Customs Zone, Chennai is invited to the Board Circular Nos. 02/2020-Customs dated 10.01.2020 on the above mentioned subject. Levy of Social Welfare Surcharge (SWS) on imports made and present practice regarding its debit through duty credit scrips such as MEIS, SEIS etc. of the Foreign Trade Policy (FTP).

2. C&AG at Chennai has pointed out that SWS should be paid in cash in respect of imports where duty is debited under MEIS scrips as the relevant Customs exemption notification exempts only Customs duty leviable under First Schedule of Customs Tariff Act, 1975. Further, representations have been received from the trade that as the goods cleared against MEIS scrips are exempted from Basic and Additional Duty of Customs, therefore SWS should also be zero. The levy of SWS has also been challenged in various High Courts by the trade on the said ground.

3. The matter has been examined. As per Section 110 of the Finance Act, 2018, SWS is levied and collected, on the goods imported into India, as a duty of Customs on the goods specified in the First Schedule to the Customs Tariff Act, 1975. The SWS is calculated at the rate of ten per cent on the aggregate of duties, taxes and cesses which are levied and collected under section 12 of the Customs Act, 1962. This surcharge is in addition to any other duties of Customs or tax or cess chargeable on imported goods.

4. The duty credit scrips issued under schemes such as MEIS, SETS, etc. are granted as rewards/incentives for exporters under the respective FTP. As per Para 3.02 of the Foreign Trade Policy 2015-20, these scrips can be used for payment of Basic Customs Duty and Additional Customs Duty specified under sections 3 (1), 3 (3) and 3 (5) of the Customs Tariff Act, 1975 for import of inputs or goods and for payment of Central Excise duties on domestic procurement of inputs or goods. The relevant Customs exemption notifications also allow debit of Basic Customs Duty and additional Duties of Customs in the duty credit scrips. It is inform that the debit of SWS through duty credit scrip is not envisaged in the FTP and the exemption notifications.

5. Further, as per para 3.15 of the FTP, Basic Customs Duty paid through debit in the duty credit scrip is allowed to be adjusted for duty drawback. Duties debited in duty credit scrip are

taken into account while determining the All Industry Rates and Brand Rate of duty drawback. Similarly, Additional Customs Duty paid on imported goods and Central Excise duty paid on domestic procurement of goods is also allowed to be adjusted as CENVAT Credit or Duty Drawback. Hence duty credit scrips are only a mode of payment of duty and not an exemption from duty even though the use of the said scrip is governed by an exemption notification.

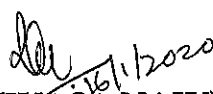
6. The matter was also referred to the Department of Legal Affairs for their legal opinion in light of the Hon'ble Supreme Court judgement in the case of M/s Unicorn Industries Vs. Union of India and Others (Civil Appeal Nos. 9237 & 9238 of 2019). The Department of Legal Affairs has opined that since the Supreme Court has categorically held that a separate Notification has to be issued for Providing exemption from additional duties in the nature of education cess and secondary and higher education cess, the same cannot be said to have been exempted and as per Article 141 or the constitution, the law declared by the Supreme Court is binding on all Courts within the territory of India, the same occupies the field. It was further opined that therefore there appears to be no legal bar for levy and collection of SWS.

7. In view of above it was opined that no exemption from SWS in the FTP and the relevant Customs exemption notifications. Keeping in view the ratio laid down by Hon'ble Supreme Court in judgement dated 06.12.2019(supra), it is clarified that SWS is not exempted and has to be levied and collected on the imported goods.

8. It is further noted that as per past practice, SWS is being allowed to be debited in the duty credit scrips along with Basic and Additional Duty of Customs. However, keeping in view the position explained herein above, it emerges that SWS cannot be debited through duty credit scrips and therefore has to be paid by the importer in cash. Directorate General of Systems has been requested to make the relevant System level changes in this regard.

9. With regard to the past cases of debits of SWS already made in the duty credit scrips, it has been decided by the Board that for ensuring ease of doing business, such past cases should not be disturbed and the payments made through debit in duty credit scrips may be accepted as revenue duly collected and recoveries in cash not be insisted for these cases.

10. Difficulties faced, if any, may be brought to the notice of the Asst. Commissioner of Customs (Appg-Main), for necessary action.


(R. SRINIVASA NAIK)
COMMISSIONER OF CUSTOMS
CHENNAI – IMPORT

To

All Concerned

Copy to:

1. The Chief Commissioner of Customs, Chennai Customs Zone, for kind information.
2. The Commissioner of Customs, Chennai I, II III, IV, VIII and Audit Commissionerate, Chennai Customs Zone.
3. The Jt./Addl. Commissioner of Customs, Chennai – II.
4. The Dy. Commissioner of Customs, Docks Admin, Chennai – IV.
5. All the Asst. Commissioners of Customs, Assessment Groups, Chennai - II.
6. The EDI, for publication in Chennai Customs Website.
7. The CHS, for displaying on Notice Board.