

# Anomalies/absurdities' in RoSTCL Scheme

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## Anomalies/absurdities' in Rebate of State and Central Taxes and Levies (RoSTCL) Scheme



1. Notification No. 14/26/2016-IT (Vol. II) dated 07.03.2019, Notification No. 14/26/2016-IT (Vol.II) (Part II) dated 02.05.2019 and Notification No. 14/26/2016-IT (Vol. II) (Part II) dated 04.06.2019 issued by the Ministry of Textiles (hereinafter referred to as "**M/o Textiles**") pertain to the Scheme for Rebate of State and Central Taxes and Levies ("**RoSCTL**"). These notifications provide the scheme of incentives by way of duty credit scrip (like MEIS) on the export of garments and made-ups falling under the Chapter 61, 62 and 63 of ITC HS 2017 (apparel and made-ups sector).
  2. The said scheme was initially notified by the M/o Textiles vide notification no 14/26/2016-IT (Vol. II) dated 07.03.2019 in supersession of the erstwhile Rebate of State Levies ("**RoSL**") scheme. Rosl benefit was allowed to the exporters of these sectors in cash through the customs authorities. The exporters of these goods were eligible to claim the incentive of **drawback + Rosl + MEIS** against the same consignment. IN the alternative, the exporters were eligible to claim the benefit of advance authorization + MEIS. Likewise, the EOUs/SEZ units were eligible to get the benefit of the MEIS in addition to duty free imports on the basis of LOP/LOA.
  3. However, the above-mentioned notifications dated 02.05.2019 and 04.06.2019 have created ambiguity, anomaly and absurdity regarding the availability of the benefit of RoSCTL scheme with respect to exports made by an Advance Authorization holder, exports made by 100% Export Oriented Units (EOUs), Special Economic Zone (SEZ) Units and Free Trade Zones (FTZs), etc. This is for the reason that not only the ROSL scheme has been withdrawn but also the MEIS scheme benefit available to these sectors has been withdrawn. The succeeding paragraphs explain the factual situations and legal provisions which give rise to the said ambiguity, anomaly and absurdity.
- Background:**
4. The M/o textiles, in accordance with the recognized international economic principle of zero rating of export products, introduced the scheme of ROSCTL to reimburse the state and central taxes which are not taken in account in the Duty Drawback Scheme.

The said scheme was introduced to provide the rebate of certain state and central taxes and levies that were embedded in the cost of exports of garments and made ups falling under Chapters 61, 62 and 63 of the ITC (HS).

5. The scheme was introduced to provide rebate of various taxes levied by the Central and State governments such as central excise duty/VAT on fuel used in transportation, captive power, farm sector, mandi tax, duty on electricity, stamp duty on export documents, embedded CGST/SGST paid on inputs such as pesticides, fertilizer, etc. used in production of raw cotton, purchases from unregistered dealers, inputs for transport sector and embedded CGST/SGST and Compensation Cess on coal used in production of electricity. These taxes are inbuilt in the cost of exports and were not compensated in drawback or under advance authorization/EOU/SEZ and therefore, to provide compensation for the same to the exporters the scheme of RoSCTL has been announced by M/o textiles.

6. It is pertinent to mention here that an exporter was eligible to claim the benefit of the MEIS in addition to the benefit of the duty drawback, advance authorization, EOU, SEZ etc whatsoever applicable to the exporters. But the MEIS scheme was an additional benefits in addition to any the benefits under any of these schemes. In essence, the ROSCTL scheme has been introduced **in lieu of MEIS+ ROSL** scheme which is also clear from the ROSCTL scheme itself.

### **Legal Provisions**

7. The M/o Textiles has notified the RoSTCL scheme vide Notification No. 14/26/2016-IT (Vol.II) dated 07.03.2019 which has substituted the erstwhile RoSL scheme with existing RoSTCL scheme. The new scheme would not only compensate the exporter of garments and made-ups from the taxes levied by the state but also, from taxes levied by the Centre. As per the said notification, the benefit of RoSCTL scheme would be available to all exporters of garments and made-ups falling under Chapter 61, 62 and 63. **As per the notification dated 7.3.2019, the categories of Advance Authorization holders, 100% EOUs, SEZs, FTZ etc. were not excluded from the scheme.**

8. However, subsequently another notification dated 02.05.2019 was issued by the M/o Textiles wherein specified category of exporters were not eligible to avail the benefits under the RoSTCL scheme. The relevant part of the said notification has been reproduced below for ready reference:

*“(e) The rates of RoSCTL specified in the Schedules would not apply if:*

*(i) Manufactured partly or wholly in a warehouse under section 65 of the Customs Act, 1962 (52 of 1962);*

*(ii) Manufactured or exported in discharge of export obligation against an **Advance Authorisation** or Duty-Free Import Authorisation issued under the Duty Exemption Scheme of the relevant Foreign Trade Policy;*

*Provided that where exports are made against Special Advance Authorisation issued under Paragraph 4.04A of the Foreign Trade Policy 2015-20 in discharge of export obligations in terms of Notification No. 45/2016-Customs, dated 13th August, 2016, the rates of RoSCTL specified in the said Schedule shall apply.*

*(iii) Manufactured or exported by a unit licensed as **hundred per cent Export Oriented Unit** in terms of the provisions of the relevant Foreign Trade Policy;*

*(iv) Manufactured or exported by any of the units situated in Free Trade Zones or Export Processing Zones or **Special Economic Zones**;*

*(v) Manufactured or exported availing the benefit of the Notification No. 32/1997-Customs dated 1st April, 1997.”*

9. Upon reading of the above paragraph, it can be understood that the RoSCTL benefits shall not be applicable to export of goods made under an Advance Authorisation or Duty Free Import Authorisation, as well as exports made by 100% EOUs, SEZ units, among others, whereas, in case of exports made against Special Advance Authorisation issued under para 4.04A of the FTP 2015-20, specified rates of the RoSCTL scheme shall be applicable.

10. In fact, DGFT has issued a Public Notice No. 58/2015-2020 dated 29.1.2020 whereby the benefit of MEIS has been withdrawn from all exporters of goods covered under chapter 61,62,63 of the ITC (HS).

11. Thus, the RoSCTL scheme introduced in lieu of the erstwhile MEIS+RoSL scheme, would result in loss to the exporters exporting their goods under the advance authorization/EOU/SEZ etc schemes as they would not be eligible to get the MEIS which they were getting previously and would also not be eligible to get the benefit of ROSCTL as they have been specifically debarred from claiming the said benefit.

12. Subsequently, the M/o Textiles issued another notification dated 04.06.2019 wherein it was categorically mentioned that the **as per para 4.95 (m) of Handbook of Procedures, all exporters are eligible for making a claim under RoSCTL except entities/IECs under the Denied Entity List of the DGFT**. Based on this notification it can be clearly understood that the intention of the government is to provide the benefit of the RoSCTL scheme to all exporters including the exporters who are exporting the eligible goods under an advance authorization or through a 100% EOU/ SEZ unit, etc, other than entities that are under the Denied Entity List of the DGFT, which appears to be just and lawful.

13. Reliance in this regard is also placed on public notice No 58/2015-2020 dated 29.01.2020, issued by the DGFT, which seeks to amend para 4.95 of the Handbook of Procedures, 2015-20 and revise ANF 4R for implementation of the RoSCTL Scheme. The said public notice has clearly mentioned that **all the exporters shall be eligible** for making claim under the RoSCTL, except the entities/IEC which are in the Denied Entity List of the DGFT. It has been nowhere specified in the said notice that the benefit shall

not be available to Advance Authorisation holders, 100% EOU, SEZ units, etc as specified in the notification no 14/26/2016-IT (Vol.II) (Part II) dated 02.05.2019. Moreover, no specific column/ declaration has been mentioned in the revised ANF 4R where in any Advance Authorisation holders/ 100% EOUs/ SEZ units, etc have been prevented for applying the benefits under the RoSTCL scheme.

14. As the RoSCTL scheme has been introduced in lieu of the MEIS +RoSL scheme, then all exporters of garments and made up should be eligible to avail the benefit under the RoSCTL scheme. It would be unjust if the Advance Authorization Holders / Duty-Free Import Authorization Holders/ 100% Export Oriented Unit (EOUs)/ Free Trade Zones (FTZs)/ Special Economic Zones (SEZs) are denied the benefit of RoSCTL scheme as they have suffered the equivalent amount of taxes and levies in comparison with other exporters.

15. It is pertinent to note that under the RoSL scheme, M/o Textile was providing the benefits to exporter even if they were exporting the said goods under the claim for duty drawback. There was no such restriction in the RoSL scheme but they had specified the schedule with lower rates for the exporters who were exporting the goods in the combination of Advance Authorization and Duty Drawback.

16. The benefits under the RoSL scheme was provided in addition to the MEIS and Duty Drawback. Therefore, it is understood that if there was no such restriction earlier, the same should not be there under the RoSTCL scheme. Needless to say, that the scheme was introduced in order to remit the exporters for all other embedded taxes levied by state and central.

17. With the issuance of the above notification a state of confusion has been created with respect to the eligibility of the said scheme to certain categories of exporters. Looking at the above facts and submissions, it is safe to say that the benefits of the RoSCTL scheme should be available to all exporters whether or not exporter has claimed the benefits under duty drawback/ Advance Authorization or exporter is registered as EOUs/FTZs/SEZs units. However, the same requires a clarity as both the notifications are contradictory to each other and create an ambiguity regarding the correct legal position on this matter.

18. The concept paper provides that the ROSCTL is available to compensate some state and central levies and taxes which are not taken care of in the drawback scheme. The same logic holds good in case the inputs have been imported under the advance authorization or by an EOU/SEZ. In these categories also, transportation cost are incurred for the inputs from the port to their premises and the export product from the manufacturing premises to the port. The transport cost embeds in it the VAT and excise duty costs. Hence it defies the basic logic that the benefit of ROSCL is given to one category of exporters and denied to other category of exporters.

**In Nutshell:**

19. The class of ineligible exporters specified under the above-mentioned notifications is unjust and contrary to the objective behind it.

20. In view of the above factual and legal submissions, it is of utmost importance for the office of DGFT and M/o textiles to provide the benefit of ROSCTL to **all exporters** of goods falling under chapter 61,62, 63 irrespective of whether the goods are being exported by EOU or SEZ units or by an advance authorization holder or under the duty drawback scheme. It is reiterated that the concept paper provides to compensate the exporters of these sectors from duties and state taxes which are not compensated by other mode of compensation. The said compensation by way of ROSCTL is equally true and applicable to all exporters of goods falling under chapter 61,62 and 63 irrespective of the scheme.

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