

# Export/Deemed export incentives not availed by Exporters due to ignorance

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Supplies of goods to the industrial units or projects specified under paragraph 7.2 of the **Foreign Trade Policy, 2015-2020 (FTP)** within India tantamount to '**Deemed Exports**' supplies. Such Deemed exports supplies are eligible to various incentives specified under paragraph 7.3 of the FTP. However, it has been observed that a large number of industry players do not avail these benefits primarily due to the ignorance of law. Consequently, the said ignorance causes loss to the company. The various benefits not being availed by a vast number of persons are discussed in the succeeding paragraphs.

## All Industry Rate (AIR) of Duty Drawback:

1. It is noteworthy that the various supplies made as 'deemed export' in terms of paragraph 7.2 of the FTP are also eligible for duty drawback. Previously, such duty drawback claim was eligible only in the nature of brand rate of drawback which had to be proven with the documentary evidence about the actual custom duty suffered by the supplier of the goods on the inputs used by him for manufacture of 'deemed export' supplies. Obviously, it was not practically possible in majority of the cases. As a result, hardly any person was claiming the brand rate of duty drawback in respect of the goods supplied by him as deemed export under chapter 7 of the FTP as it was practically impossible or very difficult.
2. However, recently, the DGFT office has liberalized the provisions and has also allowed the AIR rate of duty drawback at the rates notified by the Ministry of Finance. Hence, now no evidence has to be submitted for claiming the benefit of AIR rate of duty drawback. The said benefit can be claimed **either by the supplier of the goods or by the recipient of goods**. The benefit would be given in cash through the RTGS in the account of the claimant by the office of the DGFT.

3. All EOUs, AA holders, DFIA holders, EPCG holders, and other projects specified under chapter 7 of the FTP (or supplier of goods against such situations) can avail the said benefit without any problem now.
4. Likewise, the goods supplied to SEZ units are eligible for AIR rate of duty drawback provided the payment is received from the SEZ unit in the freely convertible currency.
5. However, it has been seen that a vast number of persons do not avail the said benefit probably due to ignorance of law or lack of knowledge or negligence. The said benefit in my considered view is very lucrative and must be availed by all persons against all supplies which are considered as deemed export/SEZ supplies. The said benefit is particularly more beneficial to SEZ units, EOUs and Advance authorization holders, EPCG authorization holders as they can take a huge benefit over period of time on account of drawback as now it has become very simple to claim it from the office of the DGFT. The benefit of duty drawback by SEZ units/EOUs/AA holders can be claimed not only against the supplies of inputs but also against the supplies of the packing materials without any problem.

## **Excise duty paid on HSD**

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6. There are lot of EOUs in the country which are engaged in the manufacture and export of goods. Almost all big sized EOUs have captive power plant / DG sets to generate the power to cater to their needs in case the normal electricity is not available. The said HSD is purchased by the EOUs either directly from the refinery or from the depots of refinery. All of us know that the HSD is still liable to central excise duty. Further, rates of excise duty **are very hefty**. Recently, the said excise duty has been further enhanced by INR 13 per litre. More than 50% of the value of the HSD consist of the excise duties (basic excise duty, special excise duty, additional excise duty, infra cess etc) alone.
7. The HSD can be still procured **by the EOUs either without payment of excise duty** by availing the upfront exemption from excise duty in terms of **Notification No. 22/2003-CE dated 31.3.2003** or can be taken as reimbursement by way of TED refund from the office of the DGFT for the reason that the supplies to EOU amounts to 'deemed export' supplies under paragraph 7.2 of the FTP and is therefore eligible to refund of TED.
8. It has been noted that only a very few EOUs are availing the said facility whereas a large number of EOUs are not availing the benefit of this benevolent provision of FTP. Further, in case the HSD is supplied by the refinery without payment of excise duty, it will result in saving in VAT/CST also as the VAT/CST is calculated on the amount of excise duty as well. The benefit is available irrespective of the fact that the goods manufactured by EOU are under the GST regime and are not chargeable to excise duty.

9. The said benefit of excise duty on HSD can also be availed by the Advance Authorization (“AA”) holders who have captive power plant / DG sets to generate the power. In order to get the said benefit, HSD has to be declared as one of the inputs (fuel) while getting the AA. ARO needs to be taken for getting the supplies of the HSD from the refinery. In the case of AA, the refinery would clear the HSD on payment of excise duty to the AA holder. AA holder in turn can get the refund of the TED paid by the refinery / depot from the office of the DGFT by following the prescribed procedure.

10. Likewise, the **supplies of HSD to SEZ** are eligible for exemption from excise duty for the simple reason that such supplies are considered as export under the SEZ law read with the Central Excise law. Such supply of HSD to SEZ can be made either on payment of excise duty under claim of rebate or without payment of excise duty under LUT.

## **The benefit of advance authorization/EPCG authorization**

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11. The supplier of goods to the various categories of persons which qualify to be deemed exports are eligible to take the benefit of the advance authorization scheme. It means that the supplier can import his inputs without payment of customs duty against the AA. Simultaneously, such deemed export supplies are counted towards fulfilment of export obligation against the EPCG as well.

12. It is clarified that these benefits can be availed only by the supplier of the goods unlike the duty drawback which can be availed either by the supplier or recipient. Further, the benefit of drawback and the AA are **mutually exclusive** as only either of the benefit can be availed against the supplies made as deemed exports.

13. However, in order to get the benefit of the AA/EPCG to the SEZ unit it is necessary that the payment is received in freely convertible currency. A number of persons supplying the goods to SEZ units receive the payment in INR as a result they are deprived of the benefit of the AA or EPCG or duty drawback because in order to claim any of these benefits it is mandatory requirement for the DTA supplier to receive the payment in foreign exchange. But again, due to ignorance or negligence the said benefit is not being availed by a large number of persons.

### **In Nutshell:**

The persons who are not availing the benefit of duty drawback, duty free import against advance authorization/ EPCG scheme, excise duty benefit on HSD etc due to any reason must start availing these benefits as these would benefit them in a big way over a period of time.

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