



CUSTOMS CIRCULAR

-COPY OF-
CIRCULAR NO.21/2007-CUS
Dated 8th May, 2007

F.NO.605/66/2006-DBK
Government of India
Ministry of Finance
Department of Revenue
New Delhi

To,

All Chief Commissioners of Customs,
All Chief Commissioners of Customs & Central Excise,
All Commissioners of Customs/Customs (Prev.)/Customs &
Central Excise/Central Excise,
DG, CEIB, New Delhi.
DG, Central Excise Intelligence/DGRI/DG (Export Promotion)/
DGI/DG, NACEN/DG (Systems & Data Management),
Chief Departmental Representative, Customs, Excise & Service Tax
Appellate Tribunal, N. Delhi

Scope and coverage of goods imported under
Target Plus Scheme – clarification reg.

I am directed to invite your attention to the above mentioned subject. The Target Plus Scheme (TPS) for the Star Export Houses was introduced in the Foreign Trade Policy (FTP) which came into force on 01.9.2004. Under the scheme the exporter gets entitled to rewards in the form of duty free credit based on incremental exports. In terms of para 3.7.6 of the FTP the duty credit may be used for import of any inputs, capital goods including spares, office equipment, professional equipment and office furniture provided the same is freely importable, for their own use or that of the supporting manufacturer(s). In terms of para 3.2.5 (II) of the Handbook of Procedures, Vol 1 (2005 edition), goods imported under this scheme shall have a 'broad nexus' with the products exported. In terms of condition No. 3 of Notification Nos. 32/2005-Cus dt, 8.4.2005 and 73/2006-Cus. dated 10.7.2006 the certificate and the goods imported against it shall not be transferred or sold.

2. It has been brought to the notice of the Ministry by the trade that some exporters had obtained duty credit certificates against exports of rice and using these certificates they have imported almonds which, after removal of the shells, have been sold in the market without payment of duty. As dry fruits/almonds cannot be used in the processing/manufacture of rice, it is alleged that the condition of 'broad nexus' stipulated in the Handbook is not fulfilled. The 'actual-user' condition specified in the Policy and the Customs notification is also violated because almonds, after removal of shells, are being sold in the open market. It has been alleged that the act of importation of almonds which are neither inputs nor capital goods in relation to rice is nothing but misuse of the TPS.

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3. The matter has been examined in consultation with the Ministry of Law (MOL). After examination of the provisions of Para 3.7.6 of the FTP and Para 3.2.5 (II) of the HBP, the MOL has opined that the FTP does not use the expression “broad nexus” and, therefore, the same cannot be dissociated from the words “input” and “use” mentioned in the Policy. The MOL has categorically stated that the addition in Para 3.2.5 (II) of the HBP is to facilitate the search for “inputs” and “use” and any interpretation so as to dissociate the import from the “inputs” and “use” in the export goods would make it *ultra vires* the FTP. The MOL has further stated that the words “inputs” and “use” can not be brushed aside and have to be in focus for the intended import. Together these words indicate that the item sought to be imported should be an “input” in the manufacture of the exported items which is required for “use” by the exporter or the supporting manufacturer, as the case may be. For this purpose, the intended input must have a relationship with the export product. Whereas SION will act as a prima facie evidence of the inputs, the exporter is not debarred from satisfying the authorities that there is a broad nexus between the intended import item as an input with the export product, both falling within the same product group. Ignoring to give effect to the words “inputs” in the beginning and “own use” towards the end in Para 3.7.6 of the FTP would mean to render a part of it redundant and would not be in keeping with the objective and framework of the scheme.

4. In the light of this, the Ministry of Law has clarified that the holder of TPS certificate is permitted to import an item under the TPS and get the same processed into possible resultant products only if the same has a ‘broad nexus’ with the product group as an input in the export product and is required to be used as an input in the product exported for which TPS benefit is sought. The Ministry of Law has also clarified that the term ‘broad nexus’ with the product group is in addition to and not in substitution of the words “inputs” and “own use” in Para 3.7.6 of the Scheme.

5. The Ministry has accepted the aforesaid opinion of the Ministry of Law. Accordingly, import of goods against TPS certificates may be allowed keeping in view the said opinion discussed in paragraphs 3 and 4 above.

6. These instructions may be brought to the notice of the trade by issuing suitable Trade/Public Notices. Suitable Standing orders/instructions may be issued for the guidance of the assessing officers. Difficulties faced, if any in implementation of the Circular may please be brought to the notice of the Board at an early date.

Receipt of this Circular may kindly be acknowledged.

Sd/-
(Anurag Bakshi)
S.T.O. (DBK)

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