

E-BOOK

on

100% Export Oriented Unit Scheme

[PART - I]

FOREWORD

The E-learning book on 100% Export Oriented Unit Scheme is a step towards making available learning material to all the Departmental officers. This will enable them to learn the work at leisure by making use of modern communication technologies.

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Abbreviations Used

ACES: Automation in Central Excise and Service Tax.
BOA: Board of Approval
BTP: Bio Technology Park Unit
CBDT: Central Board of Direct Taxes
CBEC: Central Board of Excise & Customs
CENVAT: Central Value Added Tax
DC: Development Commissioner
DFIA: Duty Free Import Authorisation (Scheme)
DGFT: Directorate General of Foreign Trade
DTA: Domestic Tariff Area
EEFC Account: Exchange Earner's Foreign Currency Account.
EHTP: Electronic Hardware Technology Park
EOU: Export Oriented Unit
FT (D &R) Act: Foreign Trade (Development & Regulation) Act,1992
FTP: Foreign Trade Policy
HOP: Handbook of Procedure, Vol.I
ITA-IA: Information Technology Agreement-IA
LOP: Letter of Permission
LTU: Large Taxpayer's Unit
LUT: Letter of Undertaking
MOT: Merchant Over Time
NFE: Net Foreign Exchange
RBI: Reserve Bank of India
SEZ: Special Economic Zone
SOFTEX Form: Software Export Form
STP: Software Technology Park
UAC: Unit Approval Committee

Part-I

Background

Export Oriented Unit Scheme or EOU scheme is one of the export promotion schemes of the Government of India and is in existence since 1980. Sector Specific EOU scheme are also known as Software Technology Park (STP) scheme for export of software; or Electronic Hardware Technology (EHTP) Park Scheme for export of electronic Hardware; or Bio-technology Park (BTP) Scheme for export of Bio Technology Products.

Under EOU Scheme, manufacturing or service sector units are allowed to be set up with the objective of exporting entire production of goods manufactured or services except limited sale in Domestic Tariff Area (DTA) as provided under the Foreign Trade Policy (FTP).

The EOU scheme is formulated by Government of India in the Ministry of Commerce & Industry. The provisions of EOU scheme are contained in [Chapter 6 of the Foreign Trade Policy \(FTP\); Chapter 6 of Handbook of Procedures \(HOP\), Vol. I](#) and Public Notices /Circulars issued by the Department of Commerce. Establishment of units and their performance is monitored by the jurisdictional Development Commissioner (DC) in accordance with the FTP provisions.

Since Customs bonding is mandatory for EOUs, the Scheme envisages important role for Customs & Central Excise Department. Corresponding notifications enabling duty exemption have been issued by the CBEC under Customs Act, 1962 and Central Excise Act, 1944. Similarly other agencies like Reserve Bank of India (RBI), Central Board of Direct Taxes (CBDT), Directorate General of Foreign Trade (DGFT) etc. have issued notifications /Circulars for proper implementation of the scheme including laying down procedures thereof.

Main notifications issued by the CBEC in the Department of Revenue providing duty exemption to EOUs are as under:-

Sr. No.	Notification No. and Date	Subject
1.	22/2003-Central Excise, dated 31.3.2003	Fully exempts goods procured by EOUs from DTA units from payment of Central Excise Duty,
2.	52/2003-Customs, dated 31.03.2003	Fully exempts goods imported by EOUs from payment of Customs Duty.
3.	23/2003-CE, dated 31.3.2003	Provide partial exemption to goods manufactured by EOUs and sold in DTA from payment of Central Excise duty.

Objectives of EOU Scheme

Main objectives of EOU Scheme are as under:-

- (a) Boosting exports;
- (b) Earning foreign exchange;
- (c) Attracting foreign investment;
- (d) Generating employment;
- (e) Backward and forward linkage by way of sourcing of raw material from and supply of finished goods to DTA;
- (f) Attracting latest technology into the country;
- (g) Upgrading the skill and creating source of skilled man-power;
- (h) Development of backward area.

Incentives/facilities available to EOUs:-

Various incentives/facilities available to EOUs, in brief, are as under:-

- (i) Duty free imports or procurement from Bonded Warehouse /International Exhibitions of inputs, consumables, office or other capital goods (including second-hand Capital goods) etc. [\[vide notification No. 52/2003-Customs, dated 31.03.2003\]](#).
- (ii) Procurement of goods from Domestic Tariff Area without payment of Central Excise duty [\[vide notification No. 22/2003-Central Excise, dated 31.03.2003\]](#).
- (iii) Supplies by DTA manufacturer are eligible for deemed export benefits under [Chapter 8 of FTP](#), which include drawback, refund of Terminal Excise Duty and Issuance of Advance Authorisation enabling duty free import to the DTA supplier.
- (iv) Full reimbursement of Central Sales Tax on goods purchased from DTA against C-Form for manufacture of goods for export.
- (v) Export Income exempted from payment of Income Tax (upto 31.3.11).
- (vi) DTA Sale (including advance DTA sale) upto 50% of F.O.B value of exports (i.e. Physical Exports) permitted on payment of Concessional rate of Central Excise duty [\[vide notification No. 23/2003-Central Excise, dated 31.03.2003\]](#).
- (vii) Only positive net foreign exchange earnings (NFE) to be achieved over a period of five years.

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- (viii) Duty free goods (except Capital Goods) to be utilized over a period of 3 years.
- (ix) Export proceeds to be realized within a period of 12 months. Retention allowed upto 100% of export earnings in EEFC Account.
- (x) Supplies made in DTA under [Paragraph 6.9 of FTP](#) & Supplies to other exporting units/Bonded Warehouse are counted for the purpose of fulfillment of positive NFE.
- (xi) Goods allowed to be supplied duty free in DTA against Advance Authorization/ DFIA issued by DGFT.
- (xii) Job-work/sub-contracting for or from DTA permitted subject to fulfillment of certain conditions.
- (xiii) Import/export of goods including precious goods permitted through personal carriage & Foreign Post Office.
- (xiii) FDI upto 100% permitted as per the guidelines of Department of Industrial Policy and Promotion.
- (xiv) Exemption from Industrial Licensing for manufacture of items reserved for SSI sector.
- (xv) Software Units allowed to use computer systems for training purposes (including commercial training).
- (xvi) EOUs allowed to install one fax machine and two computers outside the bonded area of the unit.
- (xvii) Depreciation upto 100% permissible on capital goods. On debonding, the duty to be paid on the depreciated value of the capital goods.

Part-II

EOU Scheme & it's Working

Setting up of EOU [\[Ref: Paragraph 6.1 of FTP\]](#)

The units undertaking to export their entire production of goods and services (except permissible Sales in DTA under the FTP) are allowed to be set up under EOU Scheme for manufacture of goods including repair, re-making, re-conditioning, re-engineering or rendering of services. **The trading unit/trading activity is, however, not permitted under the scheme.**

Under EOU scheme, Gems & Jewellery units for making plain/ studded jewellery, or for cutting/polishing of diamonds or semi-precious stones, floriculture, horticulture or other agricultural products units including agro processing, aquaculture, animal husbandry, Pisciculture, Viticulture, Poultry, Sericulture, bio-technology and quarrying of granites or cutting of marbles can also be set up.

Minimum Investment Criterion

Only projects with investment of Rs.1 crore and above (except in cases of certain specified sectors such as EHTP/STP/BTP, Handicrafts/agriculture/floriculture /aquaculture /animal husbandry /information technology, services, Brass Hardware and Handmade Jewellery sectors, and such other sectors as decided by BOA) in plant & machinery are considered. All goods and services except items that are prohibited in ITC (HS) are allowed to be imported or exported by the EOUs for their authorized operations subject to the condition that the provisions of any law in force would be applicable in such cases as well.

Letter of Permission (LOP) to set up EOU or for conversion of existing DTA unit into EOU is given by the jurisdictional Development Commissioner with whom LUT under the FTP is required to be executed. EOUs basically function under the administrative control of the Development Commissioner of SEZ concerned whose jurisdiction is notified by the Department of Commerce and is given at [Appendix 14-I-K of HOP, Vol. I.](#)

Application for setting up an EHTP/STP unit is required to be submitted to the office designated by the Department of Information Technology. Application for setting up BTP unit is required to be submitted to the officer designated by the Department of Bio-Technology.

Provisions of Customs Act, 1962 & Central Excise Act, 1944, which are applicable to EOUs are administered by the staff of jurisdictional Central Excise Commissionerate.

Unit Approval Committee (UAC)

For setting up a unit under EOU Scheme, approvals are given by the Unit Approval Committee, which is headed by the jurisdictional Development Commissioner and consists of SEZ officers, officers of the State Govt., and officer of jurisdictional Central Excise Commissionerate as members (please see [Appendix 14-II of HOP, Vol. I](#) for notification issued by DOC for setting up UAC).

Powers of the Unit Approval Committee, in brief, are as under:-

- ❖ To consider application for setting up an EOU under the automatic route.
- ❖ To consider and permit conversion of EOU to SEZ unit.
- ❖ To monitor the performance of EOUs.
- ❖ To grant all approvals and clearances relating to the establishment, changes in constitution or activity, operation of EOU and take action for violations, if any.
- ❖ To perform any other function as may be delegated by the Central Govt./State Govt. or its agencies.

Procedure for Approval of an EOU

For setting up a manufacturing or Service sector EOU, three copies of application in the format prescribed in [Appendix 14-I-A of HOP, Vol. I](#) are required to be submitted to the jurisdictional Development Commissioner (DC) for consideration in the UAC.

All the cases received for setting up of an EOU are required to be placed before the UAC under the Chairpersonship of the DC and are required to be approved or rejected by the UAC within a period of 15 days of receipt of the application.

Proposals for setting up of units requiring Industrial Licence or for units in the Service Sector (except Software and IT enabled services, or any other activity as may be delegated by the BOA) is required to be placed by the DC before the BOA and approval or rejection is required to be conveyed to the unit within 45 days.

On approval, a Letter of Permission (LOP), as per the format prescribed in [Appendix 14-I-E of HOP Vol. I](#), is issued to the EOU by the DC /Designated Officer. LOP is valid for 3 years within which the EOU is required to commence commercial production. Validity of LOP can be further extended by another 3 years by the Competent Authority. However, proposal for extension of validity after six years are to be considered in case of exceptional circumstances by BOA on case to case basis.

Once the unit commences commercial production, the LOP is valid for 5 years from the date of commencement of commercial production. On completion of 5 years, the EOU may continue under scheme or may opt out of scheme. Where unit exercises option to continue as EOU, concerned DC is empowered to extend approval period. If no intimation in this regard is received from unit within a period of six months of expiry of the approval period, the DC is required to cancel approval under EOU scheme. In case, the unit exercises their option to continue after expiry of six months as stipulated above, DC is empowered to grant extension after obtaining approval of BOA.

Sector Specific Requirements for Approval of Unit under EOU Scheme [Specified in [Appendix 14-I-C of HOP, Vol. I](#)]

- (1) **Coffee:** Export of imported coffee shall be subject to approval from Coffee Board under relevant Act.
- (2) **High Grade Iron Ore :** Proposals for export of high grade i.e. 64% Iron Ore and above, except Iron Ore of Goa origin and Redi origin are presently canalized through MMTC and its exports would be subject to approval of the Board of Approval.
- (3) **Polyester Yarn:-**
 - (i) No job work with EOU/SEZ/DTA unit shall be permitted. However, this shall not be applicable to units who intend to send the fabric (made out of Polyester (or) texturised Yarn within the unit) for job work to EOU/SEZ/DTA unit for dyeing of the fabric.

- (ii) None of the units making polyester Yarn - existing or new - shall be permitted to export through third party and they have to export directly.

These restrictions shall not apply to units in the same SEZ.

(4) Sale of Surplus Power:-

The following procedure is required to be followed in regard to sale of surplus power by EOU/SEZ units:—

- (i) Whenever the Development Commissioner receives proposal for sale of surplus power, it would be examined in consultation with the State Government including State Electricity Board. This shall, however, not apply to sale of power within the SEZ. The Development Commissioner will report the norms of raw materials and consumables required for generation of a unit of power for consideration and approval by the Board of Approval.
- (ii) No duty shall be required to be paid on sale of surplus power from an EOU/SEZ unit to another EOU/SEZ unit. Development Commissioner of SEZ concerned would be informed in writing of such supply and proper account of the consumption of raw material would be maintained by the supplying unit. The value of imported inputs and consumables shall be taken into account for NFE calculations of the supplying unit.
- (iii) The unit will obtain permission of the Assistant Commissioner of Customs/Central Excise for sale of surplus power in the DTA, after obtaining permission from the SEZs under the relevant statute. Duty on sale of power to the DTA shall be as per the notification of the Department of Revenue in this regard.
- (iv) Due care shall be taken by the Development Commissioner/Board of Approval while approving the power plants by EOU/SEZ units *vis-à-vis* their actual requirement.

(5) Guidelines for the existing Plastic Processing Units:

The following are guidelines for the existing plastic units under EOU scheme:—

- (a) Extension of LOP of the existing units under EOU Scheme may be granted based on the terms & conditions of earlier LOP.
- (b) No enhancement of the production capacity is allowed to units which are utilizing plastic waste/scrap.
- (c) Relocation of the existing units from one Zone to another will be approved on case-to-case basis.
- (d) EOU units be exempted from the purview of Public Notice No. 392 dated 1.1.1997 regarding restrictions on physical forms & sizes and inspection would be done by Zone. However for any supply into DTA, all conditions of public notice will apply.

(6) ***Non ITA-I Items that may be sold in India:***

Following non-ITA-I items may be sold in the DTA in terms of para [6.9\(g\)](#) of the Chapter 6 and Para 7.8 (c) (vii) of the Chapter 7 of the Foreign Trade Policy:

- (i) Colour Display Tubes (CDT) for monitors
- (ii) Deflection Components for Colour Monitors

(7) ***Textiles:***

Activities' pertaining to reprocessing of garments/used clothing/secondary textile materials/clipping/rags/industrial wipers/shoddy wool/yarn/blankets/shawls and other recyclable textile materials will not be allowed under EOU/SEZ Scheme.

(8) ***Tea:***

In case of Tea, a minimum value addition of 50% is to be achieved.

(9) ***Segregation Activities:***

Segregation Activities are not covered under the definition of "manufacture" with effect from 1.4.2002. This activity will, however, be allowed to continue in respect of units set up prior to 1.4.2002 for a period of 5 years from the date of commencement of commercial production. The necessary inputs would also be allowed with exemption benefits as per the existing Policy. However, the facility of DTA sale under [para 6.8](#) or [6.9](#) of Foreign Trade Policy shall not be allowed.

(10) *Spices (Covered by Chapter 9 of the ITC (HS) Classifications of Export & Import Items, 2004-09):*

Duty free imports of spices for export shall be permitted only for value addition purposes like crushing/grounding/ sterilization or for manufacture of oils and oleo-resins and not for simple cleaning, grading, re-packing etc.

A minimum value addition of 15% is required to be achieved.

(11) *Gems and Jewellery Products:*

The minimum value addition on each consignment shall be in terms of [Para 4A.2.1](#) of the Handbook of Procedures.

Conversion of DTA unit to EOU Unit

Existing DTA units are allowed to be converted into an EOU unit. However, such DTA units are not eligible for any concessional duty in respect of plant, machinery and equipment already installed. The detailed procedure/ guidelines for conversion of DTA unit into EOU have been laid down by DGFT in [Appendix 14-I-O of HOP, Vol. I](#).

The DTA unit intending to get converted into EOU unit is required to apply to the concerned Development Commissioner/Director, STPI in the manner as applicable to the new units. Once the project is approved by the Development Commissioner/Director, STPI, LOP is issued to the unit. The unit is required to execute a Letter of Undertaking(LUT) in the format prescribed in [Appendix 14-I-O of HOP, Volume I](#), with DC /Director, STPI.

After completion of above formalities, the unit can apply for private bonded warehousing license to the concerned Central Excise Authorities and execute B-17 bond.

As per the guidelines prescribed by DGFT, in case, where there is an outstanding export obligation under Advance Authorization Scheme, the raw materials obtained against advance authorization, which is still having valid export obligation period, can only be carried forwarded to EOU.

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In case, where there is outstanding export commitment under EPCG scheme, the same would be added to the future export obligation. This is done by adding value of imported capital goods under EPCG Scheme to the value of imported capital goods by the EOU. All the previous obligations under EPCG scheme would cease to exist on such conversion.

Part-III

Procedural Formalities with Central Excise Department

Administrative Control

Prior to 31.7.2010, EOUs units in the port cities and Bangalore were placed under the administrative control of jurisdictional Commissioner of Customs. However, **with effect from 31.7.2010**, in the background of implementation of Automation of Central Excise and Service Tax (ACES), all EOU/EHTP/STP/BTP units have been placed under the Administrative control of Central Excise formations.

The administrative control over the Large Tax Payers EOU is with the Large Tax payer Unit (LTU). However, in respect of these large tax payer-EOUs, specific functions requiring physical presence of the officers for the purposes such as warehousing, sealing or any other work as assigned by LTUs are to be dealt with by the Commissioner of Central Excise, who has concurrent jurisdiction over the large taxpayer-EOU.

All works relating to EOU unit are handled by the jurisdictional Commissioner of Central Excise under whose administrative control the unit is located. In all cases of short levy or evasion of either Customs or Central Excise duties, or both, the Commissioner of Central Excise, who has administrative control over the EOU Unit, is the proper officer for investigation, issue of show cause notice, adjudication and recovery.

[\[Ref.:Circular No. 15/2007-Customs, dated 20.03.2007, and Circular No. 932/22/2010-CX, dated 4.8.2010\]](#)

Customs Bonding

EOUs have to operate under Customs Bond as per the conditions stipulated under the FTP & corresponding Customs/ Central Excise exemption notification and follow the procedure prescribed. For issuance of Customs Private Bonded Warehousing Licence, application accompanied by following information/document may be made to the jurisdictional Assistant Commissioner /Deputy Commissioner of Central Excise:—

- (1) Copy of notification declaring the place, where EOU is planned to be located, as a Warehousing station under Section 9 of Customs Act, 1962.
- (2) Copy of LOP issued by the DC and copy of Letter of Undertaking (LUT) executed.
- (3) Details of premises to be bonded including ground plan, title of Land/Building (in case of units engaged in aquaculture, horticulture and floriculture, granite quarrying, the physical bonding of the premises is not required).
- (4) Project report & manufacturing process.
- (5) List of Raw material, consumables & Capital Goods etc.
- (6) Undertaking that cost recovery & other charges shall be paid.

Further, the EOUs having inter-linkages with domestic economy through procurement or sale of goods in DTA are additionally required to obtain Central Excise registration from the jurisdictional office of Central Excise Department.

Procedure for bonding

Except where otherwise provided, the operations of an EOU are to be carried out in a Customs Bonded area i.e. a licence under section 58 of Customs Act, 1962 is required to be obtained by EOU. The requirement of physical bonding of the premise of the unit has been exempted in case of horticulture farms, aquaculture farms, granite quarries.

In terms of Customs Act, 1962, licences for Public Bonded Warehouse and Private Bonded Warehouse are issued at a place which has been declared as a warehousing station. The power to issue licence vests with the jurisdictional Assistant/ Deputy Commissioner of Customs & Central Excise. *Vide [notification No. 33/94-Cus. \(NT\), dated 1.7.94](#)*, the powers to declare places to be warehousing Station under [section 9](#) of Customs Act in respect of EOUs has been delegated to the Chief Commissioner /Commissioner of Customs in their jurisdiction. As per CBEC instruction, the validity period of Private Bonded warehouse licence is required to be co-terminus with the validity period of LOP issued by the DC. However, in case of fraud & suppression of

facts, action can be taken for cancellation of licence before expiry of five years as per law.

Vide [Circular No. 9/2008-Customs, dated 25.06.2008](#), it has been clarified by the Board that in case of 100% EOUs, the licensing under [Section 58](#) and grant of permission for in-bond manufacturing facility under [Section 65](#) of the Customs Act, 1962 shall be considered and decided by Assistant Commissioner/ Deputy Commissioner in charge of Unit.

Manufacture in Bond

The operations of EOU are carried out under "[Manufacture and other operations in warehouse Regulations, 1966](#)". With the amendment of these regulations *vide* notification No. 44/98-Customs, dated 2.7.98, the requirement of Customs supervision of all operations of EOU have been removed. *Vide* [Circular No. 88/98-Customs, dated 2.12.1998](#) bonding procedure EOUs has been liberalized by replacing physical control over EOUs by record based controls. EOUs can decide upon their working hours and the manufacturing is not physically supervised by the Central Excise Officer.

B-17 Bond

A single Bond referred to as Mother Bond in the [Form B-17 \(Gen. Surety /Security\)](#) is required to be executed for duty free import, domestic procurement, provisional assessment, for export without payment of duty, for due accountal /disposal of dutiable goods. Format of the bond has been prescribed *vide* [notification No. 6/98-CE \(N.T\), dated 2.3.1998](#) and the bond covers following activities:—

- (a) Transshipment of import/export goods between the port of import/export and unit's premises, Duty free import/domestic procurement of goods,
- (b) Warehousing/processing of goods in the unit,
- (c) Movement of duty free goods for job work & return,
- (d) Temporary clearance for repair, display in exhibitions, testing/approvals etc.
- (e) Movement of goods against ARE-1, ARE-3, CT-3 and transfer from one warehouse/EOU unit to another.

However, it does not cover differential duty amount in the case of Advance DTA sales for which a separate bond is required to be executed.

The units are required to give either surety for the bond amount or furnish 5% of the bond amount as Bank Guarantee or any other Govt. approved security. The solvency of surety may be certified by a Chartered Accountant or banker of the surety. A Limited Company is a distinct legal entity and the members of the Co., including its Directors are distinct from the Company, the directors of EOUs, are allowed to stand as surety in their personal capacity. Other corporate bodies of the EOU/SEZ units may also stand surety for a unit.

Bond Amount

The required bond amount is equal to A+B,
where

A is 25% of the duty foregone on the Capital Goods, whether indigenous or imported as per sanctioned requirement including duty free Capital Goods installed.

B is duty foregone on the raw material, consumables etc. required for 3 months, including raw material utilized in un-exported finished goods.

As and when bond amount is not sufficient to cover the duty foregone, additional/revised bond is required to be executed.

Execution of Bond

The bond is required to be executed on non-judicial stamp paper by the Managing Director or the Director of the company who have been duly authorised for this purpose by a resolution of Board of Directors. Same procedure is followed for Company or person standing as surety provided they are solvent to the extent of Bond amount, otherwise Bank Guarantee @ 5% of bond amount is required to be given.

In the case of firms, all the partners are required to sign the bond. Bond is required to be revised (re-executed) whenever there is a change in ownership of unit or change in the constitution.

Waiver of Bank Guarantee

Units in existence for last three years with unblemished track record having export turnover of rupees five crores or above, are exempted from furnishing Bank Guarantee etc. or Surety along with B-17 bond.

Acceptance of the Bond

Bond complete in all respects, is to be executed before the jurisdictional Assistant Commissioner/Deputy Commissioner of Central Excise.

Bond Register

Original Bond is to be kept safely in the office of jurisdictional Assistant Commissioner / Deputy Commissioner after allotting Bond Nos. and bond values to be mentioned in the bond register for the purposes of debit/credit of duty foregone on the goods imported/procured duty free.

Debits for duty foregone are to be made at the time of issue of every procurement Certificate for import or issuance of CT-3. For debit of bond in case of import/ procurement of Capital Goods, only 25% of the duty foregone should be taken and not the entire duty amount.

Similarly credits of duty foregone may be allowed for the duty contained in inputs used in the manufacture of finished goods exported or cleared in DTA on payment of applicable duties or destroyed as per permission of proper officer or transferred to other warehouses/ EOU/SEZ units or in case of duty free donation of computers.

Monitoring of Bond is to be done by AC/DC of Central Excise and it is to be ensured that Bond is discharged at the time of final debonding of the unit.

Re-warehousing of goods imported or procured indigenously by EOUs

Vide [Circular No. 07/2006-Customs, dated 13.01.2006](#), CBEC has laid down that before issuing re-warehousing Certificate, physical verification of receipt of imported/indigenously procured duty free goods is must. However, later,

vide [Circular No. 19/2007-Customs, dated 3.5.2007](#), it was relaxed in case of units having physical export turnover of Rs. 15 crores and above in the preceding financial year and having a clean track record as determined by the jurisdictional Commissioner of Central Excise. The procedure for duty free procurement of goods from DTA is regulated in terms of [Circular No 851/9/2007-CX dated 03.05.2007](#). For such units, alternate procedure of self-bonding/warehousing of imported/indigenous goods has been prescribed.

Payment of Cost Recovery Charges or Merchant Overtime (MOT)

EOUs carry out their manufacturing activities under Bond in the terms of the Manufacturing & Other Operations Warehousing Regulations, 1966 (as amended). One of the conditions of Private Bonded Warehousing Licence & Bond is payment of cost recovery/other charges in respect of officers dealing with the work of EOUs. However, there is a provision for sharing of cost recovery charges in respect of units located in close proximity. Further, vide [Circular No. 31/2003-Customs, dated 7.4.2003](#), facility to exercise an option to avail services of bond officer on payment of Cost Recovery charges or on payment of Merchant Overtime (MOT) has been given to such units.

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Part-IV

Import/procurement by EOUs,

Duty Free Procurement

The EOUs are eligible for procurement of goods from DTA without payment of Central Excise duty subject to following of the procedure laid down under [Circular Nos. 851/9/2007-CX dated 03.05.2007](#) and [859/17/2007-CX dated 13.11.2007](#). For this purpose Certificate in [Form CT-3](#) annexed to the aforesaid circular dated 03.05.2007 as Annexure-A is required to be issued by the Superintendent, Central Excise in-charge of EOU.

Such goods are required to be brought directly from the manufacturer/warehouse into the unit's premises under ARE-3. On arrival of the goods at the premises of the user industry i.e. EOU, the user industry shall verify the number/quantity/weight/description/value/duty etc. with the contents mentioned in the ARE-3 and invoice of the goods and account for the goods in the records maintained. The user industry shall endorse certificate of warehousing on the application ARE-3 and an intimation regarding arrival of goods with all three copies of the application ARE-3 by the user industry shall be sent to the Superintendent in charge of the EOU. Superintendent shall depute the bond officer to examine the goods on the same day of receipt of information regarding goods arrival and physical verification of the goods would be undertaken within 24 hrs.

After examination of such goods, Superintendent incharge of the EOU on the basis of the report of the bond officer shall countersign the certificate of warehousing on all copies of the ARE-3. Original copy of ARE-3 shall be send to the Superintendent in charge of the consignor, duplicate copy to the consignor and triplicate copy to the EOU for record. The units are required to submit certificate of warehousing within a period of 90 days to the consignor i.e. the manufacturer unit.

In case of textile and Chemical sector EOUs, though CT-3 is issued by the Superintendent of Central Excise, the *post facto* approval of Assistant Commissioner/Deputy Commissioner in charge of Division is required to be taken. ([Ref. Circular No. 66/2002-Customs, dated 8.09.2002](#)).

Issuance of Pre-authenticated CT-3 Books

To avoid separate permission every time, the EOUs are issued pre-authenticated CT-3 in booklet form and against such pre-authenticated CT-3, the EOUs are allowed to procure capital goods in addition to raw materials, consumables etc.

Availment of CENVAT Credit

CENVAT Credit facility has been extended to EOUs with effect from 06.09.04. The EOUs can now procure goods on payment of duty and take credit of duty paid on goods and services, in terms of CENVAT Credit Rules, 2004 which can be later utilized for payment of duty in respect of DTA sale. In case unit is unable to utilize the credit, it can claim refund of the Cenvat Credit in terms of CENVAT Credit Rules, 2004.

Import by EOU/EHTP/STP Units

The EOUs are allowed to import all types of goods (except prohibited goods) namely capital goods, raw materials, consumables, office equipments etc. for the purpose of manufacture/production of export products and export thereof without payment of duty. The units are also allowed to procure these goods from private bonded warehouses or from international exhibitions held in India without payment of duty. The exemption from duty is allowed under Customs [notification No. 52/2003-Cus. dated 31-3-2003](#).

The EOUs intending to import goods without payment of duty are required to obtain a procurement certificate from the jurisdictional Range Officer/Superintendent of Customs in the format as provided in the CBEC [Circular No. 14/98-Customs, dated 10-3-98](#). The Bill of Entry is filed and assessed at the port of Import. On the strength of the procurement certificate, Assistant Commissioner of Customs in charge of the port of import allow clearance of goods without payment of duty under the exemption notification subject to the condition that the unit would submit re-warehousing certificate to AC in charge at the port of import within a period of 90 days of issue of procurement certificate. The goods are allowed clearance from the private bonded warehouse also on the strength of the procurement certificate.

The import consignments meant for EOUs are not subjected to detailed examination at the port of import. The goods are superficially examined so as to verify the marks, numbers, gross weight, etc. by the customs staff at the port of import for the purpose of completion of assessment. The imported consignments are examined in full at the bonded premises of the unit.

For clearance of import consignment, the EOU is required to submit following documents:—

- (i) Into-Bond Bill of Entry (in quadruplicate),
- (ii) Invoice, Packing list,
- (iii) Certificate of Origin,
- (iv) Procurement certificate issued by jurisdictional Central Excise,
- (v) Attested copy of legal undertaking,
- (vi) Attested copy of Private Bonded Warehouse License,
- (vii) Copy of the green card and valid LOP.

The **Into-bond Bill of Entry** is assessed at the port of import. The goods move under the cover of Into-bond Bill of Entry. The original copy of the Bill of Entry is retained at the customs station of import and three copies of bill of entry accompany the consignment. The officer in charge of the EOU record the re-warehousing and examination report on the duplicate and triplicate copies and return the duplicate copy to the Assistant Commissioner (Bond) of customs station of import. In case of any discrepancy in goods found during the course of examination, the same is brought to the notice of the Customs station of import for the purpose of updating the original Bill of Entry and connected records.

When the goods imported are required to be sent at the place away from the port of import, transshipment of such goods is allowed under the normal transshipment procedure. The unit is required to furnish a transit bond with the Assistant Commissioner in charge of the port of import. However, in such case, a transit bond or insurance policy equivalent to the duty amount involved is required to be furnished. [*Ref: CBEC Circular No. 2/94-Cus. dated 5/4/94; 29/95-Cus. dated 29/3/95; 41/97-Cus. dated 19/9/97; 72/97-Cus. dated 23/12/97; and 38/98-Cus. dated 21/5/98*].

The software units are allowed to import software through data communication link, internet etc. and file Bill of Entry within twenty four hours. [Ref:[CBEC Circular No. 58/2000-Cus. dated 10.7.2000.](#)]

Period of Utilization

In terms of exemption notification, as mentioned earlier, read with Section 61 of the Customs Act, 1962, raw material, spares, consumables are to be used by the unit within a period of three years from the date of import or such extended period as may be allowed by Assistant Commissioner or Deputy Commissioner in charge of the unit. The capital goods are required to be installed in the approved premises within a period of one year from the date of import. Jurisdictional Assistant/Deputy Commissioner of Excise/Customs is empowered to extend the period of utilization. In case of operating units, such extensions are to be given liberally. ([Ref.: Circular No. 30/99-Customs, dated 25.5.99](#)).

Export by EOU/EHTP/STP Units

For export of consignment, the EOUs are required to take the consignment to the port of export under the cover of ARE-1. Application for removal of a consignment for export should be in ARE-1 form in quadruplicate and to be presented in advance of removal of goods to the jurisdictional Range officer along with relevant documents like invoices, shipping bill, packing list, GR declaration and insurance cover for duty involved etc. All packages should be marked with S. No. and identification marks before presentation.

The jurisdictional Central Excise Officer verifies particulars of packages with the details mentioned in the application and seal each package with departmental seal. The Bond Officer endorses all the copies of application and records the examination report on the application and return duplicate and triplicate copies of ARE-1 to the unit. The unit is required to dispatch the goods under the copies of duly endorsed ARE-1 to the port of export.

At the port of export, the goods are presented to the Customs Officer along with original, duplicate and quintuplicate (optional copy) copies of ARE-1. The shipping bill is filed at the port of export. The Customs Officer at the port of export verifies the copies of the ARE-1 and after allowing shipment, make

endorsement on the ARE-1 with the effect that the goods have been duly exported (by citing shipping bill number and date and other particulars of export) and return the original and quintuplicate copies to the exporter. The duplicate copy of the ARE-1 is submitted as proof of export to the Bond Officer, in charge of the unit.

The EOUs are allowed in-house stuffing of container by Commissioner of Central Excise. The container can be brought to the factory for stuffing and thereafter, the stuffing of the container can be undertaken under the supervision of the Bond officer. This facility has been extended under [CBEC Circular No. 422/55/98-CX dated 21.8.98](#).

The unit is required to present shipping bill in quadruplicate for air consignment and in quintuplicate in case of ICD cargo. In case of ICD cargo, quadruplicate and quintuplicate copies are known as transference copy 1 & 2 respectively. The different copies of shipping bill should be marked in red ink e.g. Triplicate "Exporter's Copy", quadruplicate "Customs copy" etc. The normal validity period of shipping bill for export by air is 72 hours and in the case of export by sea, it is 15 days. For extension of this time limit, the unit is required to approach the Assistant/Deputy Commissioner of Customs at the port of export. While presenting the shipping bill, the units are required to ensure that all the columns of shipping bill are properly or correctly filled in, either by typing or taking computer print-out as handwritten shipping bill is not entertained.

The following documents are attached with the Shipping Bill:—

- (i) G.R. form (in duplicate),
- (ii) Invoice & packing list,
- (iii) A declaration by the unit confirming correctness of export information including contract with foreign buyer etc.,
- (iv) Insurance cover for duty involved.

Self Certification of Export Cargo

CBEC *vide* [Circular No. 12/2005-Customs, dated 4.3.2005](#) has prescribed that EOU/EHTP/STP units can remove the goods from the factory premises for the purposes of exports on the basis of self-certification. The norms of examination at the port of export have been prescribed *vide* [Circular No.](#)

[6/2002-Customs, dated 23.1.2002](#). The consignments taken out on the basis of self-certification by EOUs shall be subjected to examination at the port of export on the basis of norms as prescribed in [Circular No. 6/2002-Customs, dated 23.1.2002 as amended by Circular Nos. 31/2002-Customs, dated 7.6.2002 and 13/2003-Customs, dated 3.3.2003](#). However, if the export consignments of EOU have been sealed by Central Excise Officer, the norms as specified in [para 2.1\(A\) of Circular No. 6/2002-Customs, dated 23.1.2002](#) will be applicable.

Export through Courier

The EOUs can also affect their exports through authorised couriers. The procedure as laid down under "[Courier Export/Import Regulations,1998](#)" shall apply. The procedure for presentation of shipping bill, assessment and examination will be same as in the case of usual export.

Export through Post

The EOUs, intending to export their products, trade samples or warranty spares, can avail the facility of exporting through foreign post offices (FPO).

Export through Electronic Mode

The EOUs engaged in development and export of software and units in STP are allowed to export goods through data communication links. The EOU/STP units are required to use SOFTEX form in place of shipping bill and GR form. The declaration in [Form SOFTEX](#) shall be submitted in triplicate to the Director/Designated Officer of STPI. After certifying all the three copies of SOFTEX form, the designated authority/Director STPI forward the original to the nearest office of the RBI and return the duplicate to the exporter. The triplicate copy is retained by the designated authority/Director STPI. On realisation of the export proceeds, the authorised dealer after due certification, submit the duplicate of SOFTEX Form to the RBI for payment.

Agricultural & Aquaculture Units

Export Oriented Unit engaged in aquaculture, agriculture, animal husbandry, floriculture, horticulture, piciculture, viticulture, poultry or sericulture may import or procure specified goods without payment of duty

as specified in the notification Nos. 52/2003-Customs and 22/2003-CE, both dated 31-03-2003 respectively.

The CBEC *vide* [Circular No. 15/95-Cus., dated 23-2-1995](#) clarified that EOUs in the aquaculture, agriculture, horticulture, viticulture and other such sectors where due to large areas of operations that units are not amendable to Customs bonding are not required to be subjected to customs bonding procedure and supervision by Customs Officer on cost recovery basis is also not required for these units. However, the agricultural or aquacultural units operating at a premise which are amenable to bonding are not exempted from Customs bonding etc.

The EOUs engaged in processing of agricultural products and/or packaging or production or manufacture of agricultural produce are allowed to take out specified goods to the fields or farms of contract farmers for production or in connection therewith and to bring back the produce to the EOU for processing of export subject to the conditions of the notifications and Foreign trade Policy. (Ref: [CBEC Circular No. 38/2002-Cus. dated 1/7/2002](#) and [20/2003-Cus. dated 3/4/2003](#)).

Granite Sector Units

The EOUs engaged in processing of articles of granite are allowed to import or procure specific items as specified in the exemption notification Nos. 52/2003-Customs and 22/2003-CE, both dated 3-3-2003 respectively, subject to the conditions of the exemption notifications and FTP and are also allowed to transfer/supply capital goods and inputs (as specified in the notifications) to the quarries with prior intimation to the jurisdictional Assistant/Deputy Commissioner of Customs for the purpose of quarrying of granite.

The granites so quarried are required to be brought back to the EOUs for further manufacturing/ processing and export thereof. This facility of duty free import/ procurement of equipments for quarrying of granite is available only to the units having manufacturing/processing unit operating under EOU Scheme. The granite so quarried is not allowed to be exported as such and is required to be transferred to the processing unit of the importer/user industry (in case of procurement) operating under EOU Scheme. However, the granite so quarried may be supplied to other granite processing EOU units without payment of duty. The granite quarried is not allowed to be sold in DTA. ([Ref.: CBEC Circular No. 49/2000- Cus., dated 12/5/2000](#)).

STP/EHTP Scheme

STP and EHTP Schemes are sector specific EOU scheme introduced in years 1991 and 1993 respectively. Under STP scheme, a software developmental unit can be set up for the purpose of development of software, data entry and conversion, data processing, data analysis and control, data management or call center services for export out of India. Under EHTP scheme, a unit can be set up for the purpose of manufacture and development of electronic Hardware, or electronics hardware and software in an integrated manner for export out of India.

At the time of introduction of sector specified STP scheme in 1991 and Electronic Hardware Technology Park Scheme in 1993, considering the highly technical nature of the requirement as regards guidance and assistance of this sector, it was felt that the Ministry dealing with similar type of work would be more appropriate. With this intention, STP and EHTP Schemes were placed under the administrative control of Ministry of Communication & Information Technology unlike general EOUs which are placed under the administrative control of Ministry of Commerce & Industry. The administration of STP/EHTP scheme is done by the Department of Information Technology (under the Ministry of Communication & Information Technology) through Director, Software Technology Park of India.

STP complex (where number of STP units can be located)/EHTP Complex can be set up by the Central Government, State Government, Public or Private Sector Undertakings or any combination thereof. Further, any private party may set up a Software Technology Park for the purpose of export of software developed by the units operating under STP scheme. Such infrastructure provider (for STP units) is allowed to import specified telemetric infrastructure equipments without payment of duty under [notification No. 153/93-Customs, dated 13-8-93](#) (however, there is no corresponding Central Excise exemption notification allowing domestic procurement of telemetric infrastructure equipment). Such Private STP are required to be approved by Inter-Ministerial Standing Committee (IMSC) consisting of representatives of DIT, Department of Revenue, Department of Commerce etc., headed by the Secretary (Information Technology).

An STP unit may be an individual unit by itself (stand alone) or it may be one of such units located in an area designated as STP Complex by the Ministry of Information Technology. The Government has already set up Software Technology Parks at Pune, Bangalore, Bhubaneswar, Hyderabad, Thiruvananthapuram, Gandhinagar and Noida. In these Parks, all the required infrastructural facilities are provided.

For setting up a unit under STP scheme, application procedure is the same as applicable to EOUs. In case of setting up of units, for development of software and IT enabled services under STP Scheme, the Approval would be given by Director, Software Technology Park of India (STPI). In the Foreign Trade Policy, under EOU Scheme, wherever any permission is required to be obtained from Development Commissioner, the same, in case of STP units, may be given by officer designated by Ministry of Communication and Information Technology i.e. Director, STPI.

The Policy provisions governing STP scheme are substantially same as for general EOU scheme. However, considering the requirement of software development sector, some specific provision has been made for the STP/EHTP units in the Policy as well as notification issued by Department of Revenue governing the scheme.

The sector specific provisions in respect of STP/EHTP units are as follows:—

- (i) EHTP/STP units are allowed to make DTA sale of software so developed through data communication/telecommunication links. This is subject to the condition that the Director of STPI (Software Technology Park of India) certifies the valuation of such software sold in DTA. ([*Circular No. 54/98-Cus., dated 31-7-1998*](#)).
- (ii) STP units are allowed to import telematic infrastructure equipments for creating the central facility system for export of software without payment of duty. The Central facilities so developed by STP units for transmission of data/software for export are allowed to be utilised for the purpose of export by other STP units and DTA units engaged in Development of software. In case of EHTP unit, such facility is not available. However, agency/society authorised to set up the EHTP/STP Complex are allowed to create Central facility system for unit by unit located within such complex.

- (iii) Under STP scheme, the units are allowed to render consultancy services for development of software “on site” abroad and consultancy fees received by such units in convertible foreign currencies is deemed to be an exports for the purposes of fulfillment of export obligation under the Scheme.
- (iv) The STP units are allowed to use the computer system for the purpose of training including commercial training provided the unit has achieved the prescribed NFEP. However, Computer terminals are not allowed to be installed outside the bonded premises for the purpose of imparting training. In case of EHTP units are allowed to use computer system for imparting training to the workers only.
- (v) The STP units located in the same premises or in the adjoining premises belonging to the same owner are allowed to share specific goods as mentioned in the notification Nos. 52/2003-Customs, and 22/20003-CE, both dated 31.3.2003.

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Part-V

Sub-contracting of Production or production Process by EOU to DTA unit and Job-working by EOU for DTA unit.

The EOU/EHTP/STP units are licensed as private bonded warehouses under [section 58](#) of the Customs Act, 1962 as well as permitted to undertake manufacturing activity in bonded premises under [section 65](#) of the Customs Act, 1962. It is not always possible or feasible for the EOUs to have facility to carry out all the parts of the production process in the bonded warehouse. For the purpose of carrying out that process, the unit may require removal of in-process goods into DTA or abroad. Sometimes, the EOUs may have export order in hand which exceed its production capacity. This may force EOU to make use of manufacturing capacity available in the domestic market for carrying out production at the premises of the sub-contractor in DTA. Conversely, at times, EOU may not have any export order resulting in idle capacity. This may force them to undertake manufacturing activity on behalf of DTA unit for export.

Considering these practical difficulties, EOU/STP/EHTP/BTP units have been allowed the facility to sub-contract part of the production process or complete production process to be carried out by DTA unit. Further, they have also been allowed to send the in-process goods abroad for carrying out certain processes on these goods and import thereafter. Conversely, EOUs are allowed to undertake job work activities on behalf of DTA unit for the purpose of export.

[Para 6.14 of the FTP](#) also provides that the EOUs may also sub-contract the entire production in DTA upto the limit of 50% FOB value of exports. However, this does not imply that EOUs can sub-contract its production into DTA regularly. This facility has been extended specifically to allow the EOUs to manage excess export orders and to fulfill export commitments within stipulated time.

Though EOU/EHTP/STP/BTP units are granted license under Sections 58 and 65 of the Customs Act, 1962, these units are also governed by the provisions of Central Excise Act, 1944. Any EOU having DTA inter-action by way of domestic procurement or domestic sale or job work is required to be a

Central Excise registrant. Under the Central Excise Law, facility of job work is allowed. To enable EOU/EHTP/ STP/BTP units to send inputs, in-process goods into domestic market for the purpose of carrying out job work activities in DTA, specific provisions have been incorporated in the exemption notifications, namely, 52/2003-Customs and 22/2003-CE, both dated 31.3.2003 governing duty free import/procurement by EOUs respectively.

Further, in order to facilitate the activity of job work, CBEC *vide* **Circular No.65/2002-Customs, dated 07.10.2002** has prescribed detailed procedure required to be followed by EOUs for sending raw materials/in-process goods in DTA for job work.

The CBEC Circular also provides that facility of job work does not mean that the EOUs would parcel out substantial manufacturing operations in the DTA. With this view only, it has been provided that the units having substantial manufacturing facility would be allowed to send goods for job work.

Requirement of Bank Guarantee by EOU

Since goods being sent out in DTA for job work are duty free goods, in order to secure the interest of revenue, it has been provided in the CBEC Circular that in case the EOU send the raw material for job work without any processing, the unit would be required to furnish 100% bank guarantee to cover the duty forgone on the goods being sent for job work. In case goods are sent out for job work after carrying out some processing, the unit shall be required to furnish bank guarantee equivalent to the 50% of the duty on the goods being sent for job work.

Permission for Job work

The permission for job work is granted by the jurisdictional Assistant Commissioner of the EOUs. The permission is valid for one year. The goods sent for job work has to be brought back to the unit within a period of 90 days. However, in the deserving case, there is provision for extension of time limit of 90 days. There is a mandatory requirement of retention of sample of goods being sent out for job work as well as goods received after job work so that it may be ensured that there is no replacement during the process of sub-contracting. Such samples are required to be retained in the Central Excise Range office for at least six months. However, in the case of gems and jewellery, there is no requirement of drawal of sample.

Removal of Jigs/Moulds/Dies to Job-worker premises

The EOUs are also allowed to take jigs/moulds/dies etc. to the premises of the job worker on the condition that these would be brought back to the EOUs within the stipulated time of six months.

Export of goods from Job-worker's Premise

The goods sent for job work can be exported directly from the job worker's premises provided the job worker is Central Excise registrant. In case of export from the job worker's premises, sample of goods exported from the job worker's premises are required to be drawn and sent to Central Excise in charge of the EOU in order to enable verification of the fact that export goods contain inputs which were sent by the unit. Further export through third party is not permissible from job worker's premises.

The waste/remnants arising out of such job work either can be brought back to the unit or can be sold in DTA from the job workers premises on payment of applicable duty. This facility has been provided to reduce the transaction cost of the EOUs.

Job working facility to Gems and Jewellery EOUs

The gems and jewellery units are also allowed to send goods out of the bonded premises for the purpose of job work. However, cut and polished diamonds and other non-zero duty stones can not be taken out of the bonded premises for the purpose of job work.

Job-Working Abroad

The EOU/EHTP/STP units are allowed to send goods abroad for purpose of job work under due permission of Board of Approval. This facility is available only in respect processes which are not available in the country. The goods so processed abroad were required to be returned to India before export.

EOUs are not required to take permission from the BOA for sub-contracting abroad if the processed goods are exported from the foreign location itself after job work provided the intermediate goods sent to sub-contractor abroad are included in the Letter of permission by the DC.

However, there is no change in the existing provision for sub-contracting abroad when goods are not to be exported from sub-contractor's premises abroad and permission of Board of Approval is required in such cases.

The CBEC *vide* [Circular 12/2008-Customs, dated 24.7.2008](#) has clarified that the units which intend to avail of this new procedure would be required to seek permission from the jurisdictional Assistant/ Deputy Commissioner of Central Excise. This provision shall be applicable only for the goods partially processed or manufactured or packaged there from in the unit and the goods imported or procured as such cannot be sent as it would amount to trading of the goods. The intermediate goods so removed to sub-contractor abroad would be cleared under export documents and the value of such goods would be assessed in terms of Section 14 of Customs Act, 1962. The value would be accepted on the basis of declaration of charges of job work abroad in the declaration forms, invoices and full repatriation of foreign exchange.

Job-work by EOU for DTA Unit

In order to provide for utilization of idle capacity of EOU, the job work for DTA exporter by these units has been permitted. The export in such a case would not be counted under the parameter of EOU scheme and no benefit would accrue to the EOU and the facility would be limited to utilization of idle capacity of capital goods etc.

When EOU is carrying out the job working activity for export on behalf of DTA unit, then on export of such goods, DTA unit is eligible for claim of duty drawback. However, in such cases, DTA unit is not eligible for All Industry Rate of Drawback. The DTA exporter is eligible for payment of Brand Rate of Drawback against duties suffered on inputs, on submission of proof of payment of duty. Further, the goods have to be exported from the EOU itself and cannot be allowed to be taken back to the DTA unit.

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Part-VI

DTA sale by EOUs

Duty Leviability on DTA Sales

In terms of proviso to [Section 3\(1\) of the Central Excise Act, 1944](#), the excise duty leviable on goods manufactured in an EOU and brought to any other place in India is the amount equal to the customs duty leviable under section 12 of the Customs Act, 1962 or under any other law for the time being in force on like goods produced or manufactured outside India, if imported into India. Thus, the duty is worked out exactly in the same manner as applicable to imported goods, but collected as Central Excise duty.

Similarly, Services rendered by Service Sector EOUs will be liable for payment of service tax in term of provisions of Finance Act, 1994.

DTA sale entitlement under Paragraph 6.8(a) of FTP

[Paragraph 6.8\(a\) of FTP](#) read with [paragraph 6.14 of HOP](#) provides for DTA sale by EOU/EHTP/STP unit. The guidelines are contained in the [Appendix 14-I-H of HOP, Vol. I](#). The units can avail DTA sale on quarterly/half yearly/annual basis and DTA sale entitlement shall be availed of within three years of the accrual of entitlement. The application as per Annexure II to [Appendix 14-I-H of HOP, Vol. I](#) is to be submitted to the Development Commissioner concerned certified by an independent Cost/Chartered/Cost & Works Accountant and endorsed by bond officer of Central Excise having jurisdiction over the unit. DTA sale is to be availed by the unit on the basis of authorization issued by Development Commissioner.

DTA sale in case of Gems and Jewellery units

The DTA sale entitlement (sale of goods in DTA on payment of concessional duty) in case of units other than Gems and Jewellery and instant tea units is limited to 50% of the FOB value of export in the preceding year subject to fulfillment of positive NFE. In case of Gems & Jewellery units, it is limited to 10% of FOB value of exports in the preceding year.

The DTA sale of instant tea is allowed upto 20% FOB value of export in the form of Tea bags or Bulk.

Prohibition on DTA Sale for Specified EOUs

No DTA sale entitlement is permissible in case of motor cars, alcoholic liquors, tea (except instant tea) pepper & pepper products, packaging/labeling/segregation/ refrigeration unit/ compacting /micronisation /pulverization/granulation/ conversion of monohydrate form of chemical to anhydrous form or *vice-versa*. In case of unit set up for repair, re-conditioning, or reengineering, no DTA sale entitlement accrues to the unit and DTA sale is not allowed.

All DTA sale entitlement accrues only when unit has achieved positive NFE cumulatively on the basis of FOB value of exports. The words “FOB value of exports” refers to physical exports only. Therefore, the value of deemed exports made by the unit is not considered while determining the FOB value of exports. However, the sales made to special economic zone are taken into account for the limited purpose of arriving at FOB value of exports by EOU units provided payment for such sales are made from EEFC accounts. Such supplies are covered under [notification No. 46/2001-Central Excise \(NT\), dated 26.6.2001](#) and are subject to conditions, procedures, class of exporters specified under [CBEC Circular No. 581/18/2001-CX, dated 29.6.2001](#) as amended.

Advance DTA Sale

The EOUs are allowed the facility of Advance DTA sale for the purpose of trial production of the goods. The permission in this regard is given by the DC. The value of such advance DTA is limited to entitlement accruable on the exports envisaged in the first year of operation of the unit.

The advance DTA sale permitted to the unit is adjusted against the subsequent DTA sale entitlements within a period of two years. However, drugs and pharmaceutical units can make advance DTA sale of the production on the exports envisaged in the first two years, adjustable against subsequent entitlement within a maximum period of three years from the date of commencement of production by the unit. Advance DTA sale is also available

in case of capacity expansion/product diversification. In such cases, the unit is entitled to advance DTA sale linked to the exports envisaged from the expansion or new production stream or through product diversification. No advance DTA sale is admissible to the DTA unit converted into EOU except in respect of new production stream as a result of change of technology.

As advance DTA sales made by the unit are on payment of concessional rate of duty, there may be cases where after availing of advance DTA sale, the unit is not able to earn DTA sale entitlement subsequently. In such a situation, the differential duty has to be recovered from such units. Advance DTA sale is not covered under B-17 Bond, and therefore, separate bond has to be required to be executed with the Assistant Commissioner /Deputy Commissioner (Central Excise) to undertaking cover the difference between the duty paid on advance DTA sale and the full duties applicable on such goods.

Valuation of Goods sold in DTA

Section 3 of the Central Excise Act, 1944 provides that the valuation of goods manufactured in the EOU and cleared into DTA is to be done in accordance with the provisions of the Customs law. Thus, when the invoice price of the goods under-assessment is in the nature of transaction value, such invoice value can be accepted.

The CBEC *vide* [Circular No.933/23/2010-CX dated 6.8.2010](#) clarified that the goods sold in DTA has to be determined by sequential application of Rules 3 to 9 of the Customs Valuation Rules, 1988 as has been held by the CESTAT in the following cases:-

- Endress Hauser Flowtec (I) Pvt. Ltd. [2009 (237) ELT 598 (T)]
- Morarjee Brembana Ltd. [2003(154) ELT 500 (T)]
- Uniworth Textile Ltd. [2009 (244) ELT 401 (T)]

Duty to be paid on DTA sale made under [Paragraph 6.8\(a\) of FTP](#)

On fulfillment of positive NFE (Net Foreign Exchange Earnings) the EOUs other than gem and jewellery units, are allowed to sell goods including rejects (upto 5% of FOB value of exports), waste, scrap, by-products and services in DTA upto 50% of FOB value of exports at a concessional rate of duty. The

concessional rate of duty is charged in an amount equal to 50% of basic Customs duty (25% prior to 1.3.2008] and 100% additional duty of customs under section 3 of Customs Tariff Act. Any other duty of customs under any other law for time being in force is taken into account unless specifically exempt. Whereas the clearance of finished goods in DTA up to 50% of FOB is on payment of concessional rate of duty subject to the condition of achievement of positive NFE, sales in DTA beyond 50% attract full duties. The waste and scrap generated is required to conform to SION norms and in case of higher wastage the EOU can get the norms fixed from BOA on the basis of data verified by excise authorities. No DTA sale of waste, scrap and by-products would be allowed at concessional rate of duty unless the unit is eligible for DTA sale entitlement under para 6.8(a) of the Foreign Trade Policy. ([Ref.: Notification No. 23/2003-CE, dated 31-3-2003 as amended](#)).

DTA sale of goods manufactured wholly out of Indigenous raw material

Where the finished goods, by-products, rejects, waste, scrap, remnants are manufactured or produced wholly out of indigenous raw material, the same is allowed to be sold in DTA within the DTA sale entitlement under paragraph 6.8(a) of FTP, subject to fulfillment of positive NFE (clearance of waste/scrap/remnants on payment of full duty are not subject to achievement of positive NFE) on payment of central excise duty which is leviable on like goods manufactured and cleared by units other than EOUs ([Ref : Sr. No. 3 of Notification No. 23/2003-CE](#)). The goods manufactured out of indigenous raw material on which deemed export benefits such as deemed duty drawback or advance authorisation for deemed export have been availed are required to be treated as imported raw material for the purpose of notification No. 23/2003-CE, dated 31.3.2003.

If any goods are manufactured & cleared by unit other than EOU and are fully exempt from duties of excise or are chargeable to 'Nil' rate of duty, the clearance of such goods by EOU into DTA, is allowed on payment of 30% of each of duties of customs leviable on similar goods, if imported. ([Ref. Sr. No. 4 of Notification No. 23/2003-CE](#)).

DTA sale of By-product & Rejects

The DTA clearance of by-products and rejects on concessional rate of duty is not allowed to the EOUs, which have failed to achieve the positive NFE. In

such cases, the EOUs are liable to pay full duty. Further, in case of these units, DTA clearance of finished goods is not allowed even on payment of full duty. As for waste/scrap/remnants, the same are allowed to be sold in DTA on payment of concessional rate of duty within overall limit of 50% of FOB value of exports. In case of sale of scrap/waste/remnants beyond this limit, the same is allowed on payment of full duty. As for DTA clearance of goods manufactured by the EOUs which are not excisable (e.g. cut flowers) or attract NIL rate of Customs duty when imported into India, the duty foregone on inputs and consumables etc. procured/imported duty free under exemption notifications, which have gone into production of such non-excisable goods or into production of goods attracting NIL customs duty when imported into India, is to be recovered.

DTA sale of Rags, Trimmings and Tailor cuttings

In addition to above, there is full exemption from payment of duty to the rags, trimmings and tailor cuttings arising in the course of manufacture of readymade garments falling within the Schedule to the Central Excise Tariff Act, 1985 and produced in EOUs. However this is subject to the condition that the percentage of waste material in the form of rags, trimmings and tailor cutting does not exceed the SION fixed in this regard or the percentage approved by the Board of Approval. ([Sr. No. 11 of Notification No. 23/2003-CE, dated 31-3-2003](#)).

DTA sale of specified miscellaneous goods

Further under Sr. Nos. [12 to 16 of Notification No. 23/2003-CE](#), the waste of fish or crustaceans, mollusks or other aquatic invertebrates falling in chapter heading 05.01, castor oil cake manufactured from the indigenous castor oil seeds on indigenous plant and machinery falling under chapter heading 23.02, guar meal manufactured wholly from indigenous guar seeds falling under chapter heading 23.01 and yarn of jute and goods of jute, manufactured from wholly indigenous raw materials falling under chapter heading 53.07, 53.10, 5702.12, 5703.20, 58.01, 58.02, 58/06 or 6305.10 are fully exempt from payment of duty if manufactured by EOUs and brought to any other place in India. Further the goods falling under heading 52.02 of Central Excise Tariff are fully exempted if produced or manufactured by EOU and allowed to be sold in India. This exemption is independent of availability of DTA sale entitlement

under para 6.8(a) of the FTP however the other conditions of the exemption notification 23/2003-CE are required to be complied with.

DTA sale by Gems and Jewellery EOUs

In case of Gems and Jewellery EOUs, the units are allowed to sell upto 10% of FOB value of exports of the preceding year in DTA subject to achievement of positive NFE. In case of sale of plain gold jewellery, Plain Silver Jewellery, studded gold jewellery, unsuitable/broken cut and polished diamonds, rough diamonds, precious and semi-precious stones or dead stock in Domestic Tariff Area, the units are allowed to pay concessional rate of duty as specified in the notification. (Reference: Sr. Nos. 8 to 10 of Notification No. 23/2003-CE, dated 31.3.2003).

In addition to the above, under Sr. Nos. [5 to 7A of notification No. 23/2003-CE](#), certain specified textile items are also allowed to pay concessional rate of duty in case of DTA sales of such items by EOUs.

The EOUs are allowed to remove the goods into DTA on an invoice. The invoice under [Rule 17 of Central Excise Rules, 2002](#) is used both as a transport document and also as a document for determining the assessable value. EOUs can pay the duty by depositing the duty amount in the authorized bank or the duty can also be debited from the Personal Ledger Account if an account current is maintained. The CENVAT credit available in respect of goods manufactured by an EOU has been restricted for the recipient of the goods in terms of sub-rule (7) of Rule 3 of the CENVAT credit rules, 2004.

Other DTA sales [Specified under [Paragraph 6.9 of FTP](#)]

EOU/ETHP/STP units are permitted to sell finished goods, which are freely importable under the Foreign Trade Policy, in DTA against payment of full duties provided they have achieved positive NFE. Further, following supplies of manufactured goods affected from EOU/EHTP/STP/BTP unit to DTA are counted for the purpose of fulfillment of positive NFE:—

- (a) Supplies effected in DTA to holder of Advance Authorisation/ Advance Authorisation for annual requirement/DIFR under duty exemption /remission Scheme/ EPCG Scheme. However, printing section EOUs (or any other sector that may be notified HBP vol. I)

cannot supply goods, where Basic Custom duty and CVD is Nil or exempted otherwise to holders of advance authorization/ Advance Authorisation for annual requirement.

- (b) Supplies effected in DTA against foreign exchange remittance received from overseas.
- (c) Supplies to other EOU / EHTP / STP / BTP / SEZ units, provided that such goods are permissible for procurement in terms of Para 6.2 of FTP.
- (d) Supplies made to bonded warehouses set up under FTP and / or under section 65 of Customs Act and FTWZ, where payment is received in foreign exchange.
- (e) Supplies of goods and services to such organizations which are entitled for duty free import of such items in terms of general exemption notification issued by MoF, as may be provided in HOP Volume 1.
- (f) Supplies of Information Technology Agreement (ITA -1) items and notified zero duty telecom / electronics items.
- (g) Supplies of items like tags, labels, printed bags, stickers, belts, buttons or hangers to DTA unit for export.
- (h) Supply of LPG produced in an EOU refinery to Public Sector domestic oil companies for being supplied to household domestic consumers at subsidized prices under the Public Distribution System (PDS) Kerosene and Domestic LPG Subsidy Scheme, 2002, as notified by the Ministry of Petroleum and Natural Gas vide notification No.E-20029/18/2001-PP dated 28.01.2003 (hereinafter referred to as PDS Scheme) subject to the following conditions:-

- (a). Only supply of such quantity of LPG would be eligible for which Ministry of Petroleum and Natural gas declines permission for export and requires the LPG to be cleared in DTA; and
- (b). The Ministry of Finance by a notification has permitted duty free imports of LPG for supply under the aforesaid PDS Scheme.

Important Points to be noted regarding DTA Sale by EOUs

- In respect of DTA sale under clauses (a) to (h) of [Paragraph 6.9 of FTP](#), prohibition or regulation under any law effecting import thereof in force at the time when such goods are imported, will be applicable at the time of DTA sale.
- The duty on goods being cleared into DTA is exempted only if exemption notification has been issued by DOR (MOF) specifically providing exempting fully or partially such supplies in DTA. Otherwise, full duty as leviable under proviso to section 3(1) of Central Excise Act, 1944 is payable on such supplies made in DTA.
- End use based exemption notifications issued under Customs Act 1962 would be applicable in case of DTA sales and Deputy/Assistant Commissioner incharge of the EOU would act as if he is the officer of customs as if posted at the port and would ensure compliance of the conditions of the end use based exemption notification issued under Customs Act with reference to DTA sale by EOU. (CBEC Instruction issued *vide* [F.No. 305/83/94-FTT dated 15.09.1994](#)).
- Provisions have been incorporated in the Customs Tariff Act, 1975 to charge Safeguard duty/Anti-dumping duty on inputs/raw materials, imported without payment of safeguard duty/Anti-dumping duty by an EOU, when cleared into DTA as such or used in the manufacture of final products which are subsequently cleared into DTA.
- In case of units working under Fast Track Clearance Procedure for EOU in terms of para 6.38 of the HOP, additional responsibility lies with the jurisdiction Central Excise officers as the EOU may opt to avail DTA sale entitlement at concessional rate of duty without obtaining permission of the Development Commissioner. In such cases the unit would be only submitting the prior intimation only to the Development Commissioner. (Para 6.38.8 of HOP and para 2(H) of CBEC Circular No. [12/2005-Customs, dated 04.03.2005](#). The eligibility for concessional rate of duty should be verified wherever required with reference to the intimation submitted.

Part-VII

Monitoring & Control of EOU; Debonding of EOUs

Policy provision relating to monitoring and Control of EOU are contained in [paragraphs 6.20 of FTP](#) and [Paragraphs 6.11 of HOP](#). Further, Appendix 14-I-G contained detailed guidelines for monitoring the performance of EOUs by units Approval Committee.

Role of Development Commissioner

Right from establishment of EOU upto its final debonding, jurisdictional Development Commissioner plays a key role in considering the application and grant of approval for setting up of the unit, acceptance of legal undertaking, monitoring the commencement of commercial production, study of quarterly and annual export performance report, Monitoring of net foreign exchange earnings, grant of DTA Sale entitlement on the basis of FOB value of exports (Physical exports), advance DTA Sale permission, other DTA Sale permissions, post approval change in constitution/location or merger of units, diversification/broad banding of activities, approval for duty free import/procurement of capital goods and fuel oils, levy of fiscal penalty under FT (DR) Act, 1992, in-principal debonding, final debonding, conversion into EPCG Scheme etc.

Performance of the EOU is also reviewed on half yearly and yearly basis jointly by Development Commissioner & jurisdictional Commissioner of Central Excise on the basis of quarterly and annual progress report.

Role of Central Excise Department

Monitoring and control for the duty foregone, duty free goods and duty leviable on DTA sales or where goods have not been duly accounted for or are not utilized in the export production or not exported even after stipulated period or for non-fulfillment of export obligation or for violation of the conditions of Bond, LOP, import/procurement, notifications, action is taken by Customs & Central Excise department as per law and procedures contained under Central Excise Act & Customs Act and rules & notifications issued thereunder.

Export obligation for EOUs

Under the EOU Scheme, no export obligation in terms of quantity or value of goods to be exported by the unit has been prescribed. However, EOUs have to be a net foreign exchange earner. In other words, the net foreign exchange implies value of export (including deemed exports as prescribed in the Foreign Trade Policy) must be greater than value of import or foreign exchange outgo on other accounts. In terms of [Para 6.5 of FTP](#), a unit shall have to be positive net foreign exchange earner except for the sector specific provision of [Appendix 14-I-C of HOP](#).

Provision for NFE Calculation

The manner of computation of NFE is defined under [Para 6.9.1 of HOP](#) and the manner of calculation is explained in Annexure-I to [Appendix 14-I-G of HOP](#). The unit has to achieve positive NFE in the block of five years starting from the date of commencement of production.

Supplies though not Import, but treated as Import for NFE purpose

The following supplies to EOUs, although not import from outside India, are taken into account for calculation of import for the purpose of computing NFE of the unit:—

- (i) Value of goods purchased on High seas basis against payment in Indian rupees.
- (ii) All payments made in foreign exchange by way of export commission, royalty, fees, dividends, interest on external commercial borrowings or any other charges implying outflow of foreign exchange.
- (iii) Value of goods obtained from other SEZ units/EOU/EHTP/STP/BTP/Bonded warehouse/international exhibitions held in India/precious metal procured from nominated agency.

Explanation: For computation of NFE, the value of imported capital goods and lump-sum payment of foreign technology know-how fee would be

amortized at the rate of 10% per year from 1st year to 10th year. The value of goods imported on free of cost/loan basis/leased from leasing company also would be counted for computation of NFE. It may be mentioned that the rates prescribed for amortization are different from the rates prescribed for depreciation at the time of debonding. However, a unit exiting prior to expiry of 10 years, the NFE will be calculated on the value of capital goods and payment of foreign technical know-how fee based on the rate of depreciation allowable on the goods. [[Ref: para 2 of the CBEC Circular No. 12/2008-Customs](#)]

Supplies though not Export, but treated as Export for NFE purpose

The following supplies from EOU/EHTP/STP units, although not physical export out of India, are taken into account for calculation of export for the purpose of computing NFE of the unit:—

- (i) Supplies affected in DTA to holders of advance Authorisation/advance Authorisation for annual requirement/DFRC under the duty exemption/remission scheme/EPCG scheme.
- (ii) Supplies to other EOU/EHTP/STP/BTP/SEZ units provided that such goods are permissible for procurement in terms of paragraph 6.2 of the Policy.
- (iii) Supplies made to bonded warehouses set up under the Policy and/or under section 65 of the Customs Act and free trade and warehousing zones, where payment is received in foreign exchange.
- (iv) Supplies of goods and services to such organizations which are entitled for duty free import of such items in terms of general exemption notification issued by the Ministry of Finance.
- (v) Supplies of Information Technology Agreement (ITA-I) items and notified zero duty telecom/electronic items.

Guideline for monitoring performance of EOUs

The HOP Vol.I provide that performance of EOU units shall be monitored by the Units Approval Committee as per the guidelines given in [Appendix 14-I-G](#) on six monthly basis i.e. April-September each year to be completed in the following quarter on the basis of QPRs/APR to be furnished by the EOUs. The

formats of QPR/APR have been prescribed in the LUT at [Appendix 14-I-F](#). It also provides that review of NFE of EOU would be conducted by the Unit Approval Committee. Prior to 23-8-2010, a system of joint monitoring of EOU by Development Commissioner and concerned Assistant Commissioner of Customs was in place. Appendix 14-I-G of the HOP has been amended vide PUBLIC NOTICE No. 04/2010(RE-2009-14), dated 23-8-2010 to provide that monitoring of the EOU would be done by Unit Approval Committee.

As per the monitoring guidelines prescribed in [Appendix 14-I-G](#) of the Handbook of Procedures, the position is as under:—

No Action for shortfall in achievement of NFE in 1st and 2nd year

- If there is shortfall in achieving the NFE as per norms in EOU/SEZ Scheme at the end of 1st and 2nd year.
- No show cause notice under FT (D&R) Act shall be issued and the units would be kept under watch.

Action for shortfall in achievement of NFE after 3rd year of commencement

In case the unit fails to achieve positive NFE at the end of 3rd year or subsequent year, show cause notice under FT (D&R) Act shall be issued to the unit. If after the completion of first five years the unit is found to have failed in achieving positive NFE, as per EOU/SEZ Scheme, the Development Commissioner would initiate penal action under the FT (D&R) Act, 1992. The action under FTDR will be initiated only after completion of 5 years as net +NFE shall be computed cumulatively over a period of five years. Although it is provided that show cause notice would be issued if the unit fails to achieve +NFE after the end of 3rd year, but action for non-achievement can be initiated only after completion of the 5th Year.

Monitoring of Utilization of Goods Imported or Procured Duty Free

In terms of Notification Nos. 52/03-Cus., dated 31.3.2003 and 22/03-CE, dated 31.3.2003, the capital goods imported or procured from DTA are to be installed by the EOU within a period of one year or the period extended by the

jurisdictional Assistant Commissioner/Deputy Commissioner of Customs and Central Excise. Similarly in case of raw material the same should be utilized within a period of three years or the period extended.

In case of goods produced or manufactured, raw material/ consumables and empty cones, bobbins or containers, suitable for repeated use either should be exported or disposed off in the manner provided under FTP within a period of one year from the date of production/manufacture or importation/procurement. Thus the unit which fails to comply with above conditions would be required to pay duty and interest on the goods.

The EOU may seek extension of warehousing period in respect of capital goods/raw material well in advance to avoid any action in terms of the notifications. The CBEC has issued instruction that in the case of EOUs, extension may be granted liberally and the duty and interest may be demanded only in cases involving *mala fide* and diversion of raw material.

Further, CBEC, *vide* [Circular No. 7/2005-Customs](#), has further liberalized the procedure for extension of warehousing in respect of capital goods. It provides that extension of warehousing in respect of capital goods should be given in such a manner so as to make it *co-terminus* with the terms of LOA and warehousing license.

Accountal of inputs in accordance with Standard Inputs-Output Norms (SION)

Prior to, the Annual Supplement, 2008 to FTP came into force on 11-4-2008; in terms of [para 6.8\(e\) of FTP](#) only scrap/waste/remnants arising out of production process or in connection therewith was required to be sold in the DTA as per the Standard Input-Output Norms (SION) notified under the Duty Exemption Scheme.

The [para 6.6\(e\) of HOP](#) provides for accounting of inputs as per SION. The notifications governing duty free import and procurement by EOUs have been amended suitably so as to provide that inputs imported or procured duty free are required to be accounted for in accordance with SION. In respect of items for which no SION has been notified, consumption of inputs would be

allowed subject to generation of waste, scrap and remnants upto 2% of input quantity. However, if any item in addition to those given in SION are required as input or where generation of waste, scrap and remnants is beyond 2% of the input quantity, consumption would be allowed on the basis of self-declared norms for a period of three months till the jurisdictional Development Commissioner fixes *ad hoc* norms subject to an undertaking by the unit that the self-declared/*ad hoc* norms would be adjusted in accordance with norms as finally fixed by the Norms Committee in DGFT for the unit. Further, a provision has also been made to consider such cases by the Board of Approval for appropriate decision in case of difficulty in fixation of SION by the Norms Committee. The norms fixed by the Norms Committee shall be applicable to the specific unit. [Ref. [CBEC Circular No. 12/2008-Customs](#)]

Monitoring other than NFE

The DC is also required to monitor Foreign Exchange realization/remittance of EOU units in coordination with the concerned General Manager of RBI as per instructions issued on the subject *vide* RBI Circular No. COEXD. 3109/05.62.05/99-2000, dated 21.2.2000.

Issuance of SCN against EOUs

Vide [Circular No. 21/95-Cus. dated 10.3.1995](#), the CBEC has clarified to its field formations that prompt action should be taken for issue of SCNs against units indulging in gross violations of law like illicit removal/non-accountal/disappearance of goods and the like.

However, on issues like the non-fulfillment of export obligations action has to be initiated in consultation with the DC or the Commerce Ministry. Further, *vide* Instruction [F. No. 307/5/97-FTT, dated 6.8.1997](#), the CBEC clarified that the EOUs which failed to achieve export obligations/value addition in/after 5 years of inception, duty may be demanded without waiting for any reference to the Development Commissioner.

But in matters involving interpretations of statutory provisions or the policy provisions or the scope of notifications, the issues may be referred to

the Board demi-officially, (giving the details properly and enclosing copies of documents on which doubts have arisen) for detailed examination in the Board's Office. In such cases, show cause notices should be issued only after the issues are examined and the legal position settled. This would avoid situations wherein the allegations in the notices might be found unsustainable in terms of EXIM Policy/Customs Law and may have to be dropped by the department itself.

The CBEC, now *vide* [Circular No. 12/2008-Customs](#) has clarified that after the block of 5 years, final decision would be taken by the Development Commissioner with respect to fulfillment of export obligation as far as possible within 6 months but positively within one year. An amendment to this effect has also been made in para 3(ii) of part (a) of [Appendix 14-I-G to HOP](#). Hence as per the CBEC Circular, duty, if any, can be demanded in the event of default in achieving NFE from a unit after a block of 5 years in accordance with the conclusion arrived at by the DC/Director STPI within a period of six months after the expiry of 5 years' block period. In the cases of non-receipt of final decision from the DC/Director STPI within a period of six months, the matter may be taken up immediately by the jurisdictional Central Excise authorities with these authorities so that a decision regarding status of achievement of positive NFE is not delayed beyond one year and action could be initiated for recovery of duty from the defaulting units without any further delay. This implies that demand of duty for non-fulfillment of NFE rests on the decision of DC.

Debonding from EOU Scheme

The EOU units are allowed to debond from the Scheme subject to approval of the jurisdictional DC. The detailed guidelines for exiting out of EOU/EHTP/STP Scheme are given in the [Appendix 14-I-Lof the HOP, Vol. I](#).

In the event of debonding, the unit is required to pay applicable customs and excise duty on the imported and indigenous capital goods, raw materials, components, consumables, spares, finished goods, waste & scrap etc. in stock. The unit has to apply for debonding to the jurisdictional DC who permits 'In-principle' debonding subject to certain conditions. The penalty imposed by the

appropriate authority under FT (D & R) Act, 1992 for non-fulfillment of conditions of approval, is required to be paid. In case an appeal against the order is pending, exit from the Scheme would be considered if the unit has obtained a stay order from the competent authority and furnished a bank guarantee for the penalty adjudicated by the appropriate authority unless the appellate authority makes a specific order exempting the unit from this requirement.

If any unit has failed to fulfill terms and conditions of LOP and penal proceedings are to be taken up/are in process, a legal undertaking for payment of penalties, that may be imposed, would be required to be executed with the concerned Development Commissioner as per proforma prescribed in [Appendix 14-I-L of HOP, Vol. I.](#)

The unit would be required to fulfill the above conditions before obtaining final debonding order from Development Commissioner. The unit would continue to be EOU unit till the final debonding order is issued. The Development Commissioner however, may allow further extension of period required for fulfillment of the conditions in deserving cases.

Clearance from Central Excise Department prior to Final Debonding

The unit is required to obtain clearance from the jurisdictional Central Excise Officers before obtaining final debonding order. The unit is allowed to pay duty on imported and indigenous capital goods on depreciated value at the time of debonding.

Depreciation of Debonded Capital goods of Computer & Computer Peripheral

The depreciation is allowed at the higher rate notified under notification Nos. 52/03-Cus., dated 31-3-2003 and 22/03-CE, dated 31-3-2003 in the case of computer and computer peripherals items. The rate of depreciation in case of other capital goods has also been notified under the aforesaid Customs and Central Excise notification. The depreciation is allowed upto 100%. The depreciation is allowed for the period from the date of commencement of commercial production of the unit or where such goods have been received after such commencement; from the date such goods have come into use for commercial production to the date of payment of duty. Under the notification

Nos. 52/03-Cus., dt.31-3-2003 and 22/03-CE, dt.31-3-2003, it has been provided that depreciation to be allowed is subject to achievement of positive NFE. The depreciation is allowed in straight line method and would be allowed till the date of payment of duty, on the basis of completed quarters. In case of goods other than capital goods, no depreciation is allowed. Duty as per Proviso to section 3(1) of Central Excise Act, 1944 is required to be paid on the manufactured goods at the rate as applicable on the date of payment of duty.

Depreciation in cases where NFE has not been achieved

[Para 6.15\(b\)](#) and [para 6.18\(e\)](#) of FTP provide that depreciation in case of clearance or debonding of capital goods for disposal in DTA and exit from the scheme respectively is admissible only when the unit has achieved positive NFE taking into consideration of depreciation allowed. The notifications governing duty free import and procurement by EOUs have been suitably amended by notifications Nos. [60/2008-Customs](#) and [26/2008-CE](#), both dated 05.05.2008 so as to allow clearance/ debonding of capital goods on the depreciated value proportionate to the NFE achieved by the unit which is arrived at after taking into consideration the rate of depreciation allowable on such capital goods. In case the unit has 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. This may be further explained by following example:—

Supposing a unit imports a C.G and subsequently wants to clear it after 2 years of use. According to rate of depreciation, the unit is entitled for 32% depreciation. Hence the unit would be required to fulfill NFE 32% over and above its normal NFE requirement, If the unit's NFE achievement falls short, by say, 20%, then in such situation, only 12% depreciation would be allowed to the unit.

[Para 6.18\(e\) of the FTP](#) has been amended so as to provide that in case of exit from EOU Scheme, the duty liability of the unit would be confirmed subject to the condition that the unit has achieved positive NFE taking into consideration allowed. The unit debonding prior to expiry of 10 years, the NFE will be calculated on the payment of foreign technical know-how and capital goods based on the rate of depreciation allowable on the goods.

CBEC *vide* [Circular No. 12/2008-Customs, dated 24-7-2008](#) has clarified rationale for calculation of NFE with rate of depreciation. Paragraph 6.10.4 of HOP, provides for amortization of the value of imported capital goods and payment of foreign technical know-how fee at the rate of 10% per year. The NFE earnings are calculated cumulatively in the block of five years in terms of Para 6.5 of FTP. Accordingly, the unit was able to achieve a positive NFE only by exporting 50% of value of the imported capital goods. On the other hand, 100% depreciation for computer and computer peripherals and 60% for other capital goods have been allowed in the period of five years. This implies that a unit achieving positive net foreign exchange earning only for the 50% of the value of capital goods in a period of five year though 100% depreciation on the value of computers and 60% depreciation on the value of other capital goods is allowed. Considering this, para 6.10.4 of HBP has been amended so that for a unit exiting prior to expiry of 10 years, the NFE would be calculated on the value of capital goods and payment of foreign technical know-how fee based on the rate of depreciation allowable on the goods. It has been clarified that departmental officers before issuing No-dues certificate for exit from the EOU scheme, would be required to ensure that the unit has achieved positive NFE taking into consideration the rate of depreciation allowable on the goods as explained above.

Relevant Date for payment of duty at the time of De-bonding

For imported goods, duty of customs to be paid on the original assessable value at the rates prevailing on the date of payment of duty. Similarly in the case of goods procured from the units in DTA without payment of excise duty, excise duty as leviable on the date of payment of duty is required to be paid.

Debonding in cases where SCN is pending for Adjudication

In cases where any show cause notice or demand of duty is pending against the unit, the unit is allowed to debond on furnishing an undertaking on stamp paper to the effect that it would not dispose of its land, building, capital goods etc. till such time the show cause notice is adjudicated and the amount confirmed, if any, paid. This undertaking would be backed by a bank guarantee of, say, 10% of the amount involved in the show cause notices. Before accepting the undertaking certain additional factors should also be kept

in mind, e.g. whether the land/building is owned or leased, whether the capital goods are hypothecated to a bank or are free from any encumbrances, etc. Even where the above facility is extended and the unit allowed to debond it should be ensured that duty on the non-duty paid raw materials, non-duty paid capital goods and finished manufactured goods, is discharged before the unit is allowed to debond.

In the cases, where Government has lost in the Tribunal and has preferred an appeal to Apex court, the amount involved in the SCN issued on same issue is not to be taken into consideration for computing 10% Bank Guarantee of the amount of such demand. Where security has been furnished in form of bank guarantee along with B-17 bond, then assessee may request for adjustment as required to be furnished in terms of [Circular No.8/2004-Customs](#).

[Ref: [Appendix 14-I-L of HOP](#), [CBEC Circular Nos.8/2004-Cus.Dated 28-1-2004](#), [14/2004-Cus. Dated 13-2-2004](#) and [55/2004-Cus., dated 14-10-2004](#), [12/2008-Customs dated 24-7-2008](#)].

Part-VIII

Summary of Changes in EOU Scheme in the last two years

Important changes in EOU Scheme in 2013

In annual Supplement of Foreign Trading Policy, 2013-14, a new Para i.e. Para 6.7.5 in Handbook of Procedures, Vol. I, has been inserted. Under the newly inserted provision, Authorized person(s)/employee(s) of the IT related EOU/ STP/ EHTP and BTP has been permitted to work from home and/or a place outside the unit subject to the following conditions:—

- (a) There must be an Authorisation from the unit specifying the duration of such authorization.
- (b) Responsibility for carrying out the work and supervision, if any, be that of the unit, which will be liable for any misuse.
- (c) Export of the resultant products/ services would take place only from the premises of the unit.

Important changes in EOU Scheme in 2014

- (a) Paragraph 6.2(a) (i) of FTP has been amended [vide notification No. 51 \(RE -2013\)/2009-2014](#) allowing EOUs to export prohibited goods on permission of Board of Approval and subject to the condition that raw materials are imported.
- (b) Notification No. 22/2003-CE, dated 31.3.2003 granting concession of duty on goods sold by EOU in DTA has been amended [vide notification No. 18/2014-CE dated 11.7.2014](#) in order to provide exemption from Education Cess and Secondary & Higher Education Cess (custom component).
- (c) Full exemption from excise duty has been provided on plastic materials reprocessed out of the scrap or waste and cleared into the DTA by an EOU. ([Ref: S. No. 147 of notification No. 12/2012- Central Excise, dated 17th March, 2012](#) as amended *vide* notification No. 12/2014-Central Excise, dated 11.07.2014).
- (d) Provision has been incorporated in the Customs Tariff Act, 1975 to charge Safeguard duty on inputs/raw materials, imported without payment of safeguard duty by an EOU, when cleared into DTA as

Concept of 100% EOU Scheme

such or used in the manufacture of final products which are subsequently cleared into DTA.

The comparative charts of EOU and SEZ Schemes are as explained below:

Comparison of EOU and SEZ Schemes

Sr. No.	Benefits	Special Economic Zone (SEZ) Unit	Export Oriented Units (EOU)
1.	Income Tax	<p>100% income-tax exemption for five years and 50% exemption for five years and thereafter 50% exemption for five years in case of re-investment of profits in terms of section 10AA of Income Tax Act, 1961 inserted after section 10A as per the Second Schedule of the SEZ Act (read with section 27 of the SEZ Act, 2005).</p> <p>The units commencing operations before 1st April, 2005 shall be covered as per provision contained under section 10A of Income Tax Act.</p> <p><i>Note :</i> In terms of SEZ Act, 2005 (with effect from 10.2.2006) for SEZ developer, the exemption from Income Tax shall be available for a period of 10 years in a block of 15 years as per section 80-IAB inserted after section 80-IA in terms of Second Schedule of the SEZ Act, 2005.</p>	<p>100% Income-tax exemption upto 31.3.2011 (i.e. Assessment Year 2011-12) or first 10 years, whichever is earlier.</p> <p>At present, no income tax exemption available to EOU/STP/EHTP/BTP units</p>
2.	Construction Material	<p>Goods for infrastructure development/maintenance <i>i.e.</i> construction material allowed to be imported / procured indigenously duty free.</p>	<p>Goods for infrastructure development <i>i.e.</i> construction material not allowed to be imported/procured indigenously duty free.</p>
3.	Service Tax	<p>SEZ units/developer exempted from payment of service tax in respect of services consumed</p>	<p>EOUs not exempted from payment of service tax, however CENVAT credit is allowed for</p>

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		<p>within the SEZ.</p> <p>Services used partially in the SEZ or used outside the SEZ as per notification issued by CBEC are allowed to be refunded</p>	<p>service tax paid.</p> <p>Post manufacture services which are not input services are allowed to be refunded as per notification issued by CBEC.</p>
4.	Central Sales Tax	Central Sales Tax exempted on the goods procured indigenously.	No CST exemption, however CST reimbursement to be claimed from jurisdictional Development Commissioner.
5.	DTA Sale	DTA sale allowed on payment of full Customs duty as applicable on imported goods.	<p>Limited DTA sale (upto 50% of FOB value of exports) permitted on payment of concessional rate of duty.</p> <p>Subject to achievement of +NFE, EOUs are allowed to sell goods in DTA on payment of full excise duty which is equivalent to import duty.</p>
6.	Trading Unit	Trading units are allowed to be set up in SEZ.	Trading units are not permitted to be set up under EOU Scheme.
7.	Domestic Procurement	Supply from DTA to SEZ is physical exports.	Supply from DTA to EOU considered as 'deemed' exports.
8.	Benefit to DTA supplier	For supplies from DTA, benefit of DEPB/Advance authorisation available. The drawback/claim of rebate applicable as in case of physical export.	For supplies from DTA, benefit of deemed export drawback/ Advance authorisation/ Refund of terminal excise duty available.
9.	Cost recovery charges	<p>No cost recovery charges recoverable for the customs staff deputed during office hours. Exclusive customs staff deployed in the SEZ for handling customs work.</p> <p>Cost recovery charges for staff posted in the SEZ are required to be paid by the Developer.</p>	<p>Cost recovery charges or Merchant Overtime recoverable for the customs staff deputed even during office hours. No exclusive customs/central excise staff for handling customs/Central Excise work relating to the unit.</p>
10.	Period of utilization	Duty free goods (except capital goods) to be utilized within the validity period of LOP.	Duty free goods (except capital goods) to be utilized within the validity period of three years.
11.	Foreign Investment	100% FDI investment permitted through automatic route for SEZ manufacturing unit and formal	100% FDI investment permitted through automatic route for EOUs and formal FIPB approval

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		FIPB approval not required. Sector Specific guidelines are applicable.	not required. Formal FIPB approval required. Sector Specific guidelines are applicable.
12.	Customs Documentation	All import/export documentation and assessment formalities to be completed in the zone itself.	All import/export documentation and assessment formalities to be completed at the respective port of import/ export.
13.	Examination of Goods	No routine examination of export /import goods by Customs.	Examination of exports/imports goods by customs except in cases where selfcertification is allowed.
14.	Warehousing License	Private bonded Warehouse License not required.	Private bonded warehouse license is required.
15.	Locational Requirements	SEZ unit can only be set up in the SEZ notified under Section 4 of the SEZ Act.	No such requirement for EOU. EOU can be set up anywhere in the country on standalone basis provided the area has been declared as warehousing stations.
16.	Investment Requirements	No minimum statutory investment limit prescribed.	Minimum investment limit of one crore in plant and machinery required except certain specified sectors such as software, handicraft etc.

NOTE:

Take the Quiz on Part-II of this E-book & Test your knowledge