



## CHAPTER IV IMPLEMENTATION OF THE EXPORT PROMOTION SCHEMES

Since the Government is foregoing substantial amounts of duty under the export promotion schemes, it has to ensure that various conditions prescribed in the schemes are fulfilled, else import duties exempted have to be recovered. As already mentioned in the last chapter, this is also necessary to protect the interest of manufacturers operating in the domestic market and paying duty on all imports.

### 4.1 Limits on sub-contracted work

According to paragraph 6.14 of FTP 2004-09, EOUs can sub-contract to DTA, upto 50 per cent of the overall production of the previous year in value terms. Similarly, SEZ Rules 2006 provide that SEZ units can sub-contract upto 100 per cent of their production in the previous year to a unit in the DTA/SEZ/EOU. In both cases, permission is accorded by the customs authorities.

Our scrutiny of the records of 61 SEZ units and 18 EOUs under customs commissionerates at Chennai, NCH, Delhi and Ahmedabad revealed that during the period 2004-05 to 2008-09, four SEZ units and one EOU unit sub-contracted production to

DTA units in excess of permissible limits. Duty foregone on the input materials utilised in the excess production worked out to Rs. 1.05 crore and is recoverable.

One case is illustrated below:

Customs House, Chennai permitted (valid upto April 2008) M/s Abhilasha Jewellers Pvt. Ltd., an EOU, to transfer upto 500 kg of gold bars annually from the bonded warehouse to M/s Prakash Gold Palace Pvt. Ltd., Kolkata, for conversion into gold jewellery. The unit sub-contracted for 689 kg of gold bars during the period 2007-08 which was in excess of the permission granted. It also exceeded the limit of 50 per cent of overall production of previous year by Rs. 14.38 crore. The duty concession of Rs. 19.47 lakh is recoverable along with interest.

On the matter being pointed out (January & February 2009) DC, MSEZ, Chennai replied (April 2009) that the permission for job work was amended in April 2008, enhancing the quantity of job work from 500 kg to 1,000 kg and the amendment was valid for 2007-08 also. The reply is not tenable as the amendment dated 1 April 2008 did not mention that it had retrospective effect. Hence, it was applicable only from the date of issue i.e. 1 April 2008.

## 4.2 Grant of replenishment licences

In terms of paragraph 4A.28 of HBP, Volume-I (2004-2009), a replenishment licence is issued for the free import of gold, platinum, related consumables, tools, machinery and equipment at the rate of one and two per cent of FOB value of exports of the preceding year. Exports of cut and polished diamonds were made eligible for this licence w.e.f. 4 April 2008.

Our scrutiny revealed that RLA, Surat issued five replenishment licences of cut and polished diamonds, during the year 2006-07, to M/s Ghaveriya Exports and four others for CIF value of Rs. 23.96 crore. As export of cut and polished

diamond had not become eligible in 2006-07, the issue of these replenishment licences was irregular. The relevant import duty has to be recovered from the exporters.

RLA, Surat replied (June 2009) that excess CIF value of Rs. 19.13 lakh was adjusted in one case. Reply in the remaining cases is awaited (January 2010).

## 4.3 Imposition of late-cut

Paragraph 4.34 of HBP, Volume-1 (2004-2009), provides that application for 'duty free replenishment certificate (DFRC)' should be filed within six months from the date of realisation in respect of all shipments or supplies for which DFRC is being claimed. Any application received within another six months from the last date for submission may be considered after imposing a 'late cut' at the rate of ten per cent on the entitlement.

(i) We noticed that six DFRC licences were issued to M/s Triveni Gems 'N' Jewellery and five other exporters at Jaipur and Bangalore without imposing the applicable late cut of ten per cent though the applications were filed after the stipulated period.

The omission resulted in grant of excess credit of Rs. 28.77 lakh, which needs to be adjusted.

(ii) Similarly, RLA Jaipur issued two DFRC licences to M/s Triveni Gems 'N' Jewellery and one other exporter for which the applications were filed after the expiry of 12 months from the last date of submission. The irregular DFRC licences granted inadmissible credit of Rs. 13.07 lakh, which needs to be adjusted.

## 4.4 Re-export to foreign supplier

Paragraph 4A.15 of HBP, Volume-I (2004-09), provides that in cases where an exporter receives duty free gold from a foreign supplier, converts to jewellery and exports to the same supplier, the exports should be completed within 90 days to qualify for duty exemption on the import. In cases of delay, customs duty would be recovered.

M/s Abhilasha Jewellers Pvt. Ltd., an EOU under DC, MSEZ, Chennai, imported (September 2007) 24 kg of gold bars from M/s Al Haseema Jewellers LLC., Dubai and availed of duty exemption of Rs. 2.50 lakh. It

exported (January 2008) 26.653 kg gold jewellery for FOB value of Rs. 2.54 crore. As the exports were made beyond the prescribed time limit of 90 days after import, duty concession of Rs. 2.50 lakh was recoverable.

#### 4.5 Re-import after exhibition abroad

Gems and jewellery items taken for overseas exhibition and re-imported within 60 days from the close of exhibition are exempt from levy of basic customs duty and additional duty of customs.

Our scrutiny of the records of Air Cargo Complex, Jaipur, revealed that in seven cases, exporters re-imported gems and jewellery items

with assessable value of Rs. 3.88 crore. Since the re-imports were made beyond 60 days from the dates of closure of the exhibitions, they availed of incorrect exemption of Rs 51.67 lakh which is recoverable.

#### 4.6 Authorised export product

According to rule 34 read with rule 25 of the SEZ Rules 2006, the duty free goods admitted into a SEZ should be used for carrying out the authorised export related operations. If the goods are utilised for other purposes, duty would be charged on such goods.

M/s Chennai Chains (P) Ltd., a SEZ unit in MSEZ, Chennai was authorised (March 2003) to import rough 'agate stones' and manufacture and export 'cameos'.

Our scrutiny revealed that the unit imported 'agate stones' valued at Rs. 73.87 lakh. It manufactured and exported 'agate stone not cut to shape' during 2002-03 to 2007-08 which was not the authorised product for export. The duty foregone of Rs. 30.76 lakh is recoverable alongwith interest.

#### 4.7 Jewellery imported for 'repair'

As per notification no. 52/2003-cus dated 31 March 2003, old jewellery imported for repair and remaking are exempt from levy of customs duty.

M/s Vaibhav Gems Ltd., Jaipur, an EOU, imported gold and platinum jewellery studded with precious and semi-

precious stones with assessable value of Rs. 5.79 crore through ACC, Jaipur during the period February to April 2007. The bills of entry carried a detailed description of the jewellery but did not describe them as 'old'. There was no evidence in the case file to show that the jewellery was old. Therefore, the duty exemption of Rs. 67.47 lakh was unsupported by documents and recoverable.

#### 4.8 Grant of duty free import

Under the FTP 2004-09, an exporter is allowed duty free import of inputs which are required for production of export products. We found that RLAs at Jaipur, Ahmedabad, Chennai, Bangalore and Mumbai SEZ had granted excess duty free import entitlement of Rs. 4.13 crore to exporters.

Some cases are illustrated below:

**4.8.1** According to paragraph 4A.2 of HBP, Volume I (as on 1 April 2007), wastage of 4.5 percent in manufacture of plain silver jewellery is allowed.

Jaipur for import of 5,315 kg of silver having 0.999 fineness<sup>3</sup>.

We observed that the units exported 5,500 kg plain jewellery of 0.925 fineness. After considering the permissible wastage of 4.5 per cent, the licencees were eligible for import of 4,917 kg of silver of 0.999 fineness. This resulted in excess import authorisation of 398 kg silver of 0.999 fineness involving excess CIF value of Rs. 75.26 lakh. Therefore, the duty of Rs. 2.05 lakh on excess import of 398 kg of silver is recoverable from the licencees.

**4.8.2** As per paragraph 4A.31 of HBP Volume-I (2004-09) duty free import of samples upto rupees three lakh is allowed for gems and jewellery sector.

M/s Vijay Dimon Diamond (I) Pvt. Ltd., a SEZ unit under jurisdiction of DC, SEZ Mumbai, imported samples worth Rs. 2.39 crore during the period 2005-06 to 2007-08, which was in excess of Rs. 9 lakh allowable by Rs. 2.30 crore. Thus, customs duty of Rs. 31.27 lakh is recoverable on excess import of samples.

Similarly, in another four cases, excess import entitlement of Rs. 1.09 crore to four exporters was noticed at RLA Jaipur, Chennai and Bangalore. In two other cases under RLA, Ahmedabad and Jaipur, excess import entitlement of 8,29,774.76 kg of silver and 31.19 kg of gold were allowed to four licencees. The value of the excess entitlement could not be determined in these two cases due to the absence of supporting documents.

#### **4.9 Short levy of customs duty due to incorrect classification**

In terms of section 2 of Customs Tariff Act, 1975, the rates of customs duties on imported goods are specified in the first schedule. Different rates of duties are prescribed for different commodities/group of commodities mentioned in the schedule. As per general rule 4 for interpretation of the first schedule, goods which cannot be classified based on essential character, specific description etc., are to be classified under the heading appropriate to the goods to which they are most similar.

We found a few cases of incorrect classification of goods, resulting in short levy of customs duty of Rs. 38.45 lakh which are discussed below.

(i) M/s Goldquest International Pvt. Ltd. imported 22 consignments of 'silver medallions plated with gold' through ACC, Chennai commissionerate, during the period May 2005 to May 2007. They had assessable value of Rs. 2.76

<sup>3</sup> Quantity of pure silver=Quantity of silver x fineness

crore and were classified under chapter heading 7118 as ‘coins’ and assessed at a concessional rate of duty under notification no. 62/2004-cus dated 12 May 2004.

We observed that the notification no. 62/2004-cus was applicable only to pure silver in any form including medallions and coins and not to silver plated with gold, which is appropriately classifiable under chapter heading 7106 which covers silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms or in powder form. Thus, this incorrect classification resulted in short levy of duty of Rs. 32.51 lakh, which is recoverable.

(ii) M/s N. K. Patel & Sons imported 32 consignments of gold and platinum for dental use, with assessable value of Rs. 58.22 lakh, through the commissionerate at ACC, Mumbai, during the period October 2005 to March 2008.

Our scrutiny revealed that the goods were classified under chapter 71 in contravention of note 3(b) of the first schedule, which specifies that dental fillings or other goods of chapter 30 are not classifiable under chapter 71. This resulted in short levy of customs duty of Rs. 5.5 lakh, which is recoverable.

#### **4.10 Miscellaneous cases**

In eight other cases, 36 units imported goods falling under chapter 71 through the commissionerates at ACC, Chennai, Jaipur, Bangalore, Mumbai and DPCC, Mumbai during January 2006 to September 2008 and claimed exemption benefit under various notifications. We found that the exemption allowed was incorrect on account of misclassification of goods, proof of re-import not submitted and same goods were assessed at different rates. Short levy of duty of Rs. 96.65 lakh due to incorrect grant of duty exemption is recoverable in these cases.