

F.No.605/06/2019-DBK
Government of India
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes and Customs
(Drawback Division)

4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi
Dated 10th January, 2020

To

All Pr. Chief Commissioners/ Chief Commissioners
of Customs/ Customs (Preventive)/ Customs & Central Tax

All Principal Directors General/ Directors General under CBIC

Madam/Sir,

Subject: Levy and Collection of Social Welfare Surcharge (SWS) on imports under various schemes such as Merchandise Exports from India Scheme (MEIS), Services Exports from India Scheme (SEIS) etc.

The undersigned is directed to invite your attention to the levy of Social Welfare Surcharge (SWS) on imports made and present practice regarding its debit through duty credit scrips such as MEIS, SEIS etc. of the Foreign Trade Policy (FTP).

2. C&AG at Chennai has pointed out that SWS should be paid in cash in respect of imports where duty is debited under MEIS scrips as the relevant Customs exemption notification exempts only Customs duty leviable under First Schedule of Customs Tariff Act, 1975. Further, representations have been received from the trade that as the goods cleared against MEIS scrips are exempted from Basic and Additional Duty of Customs, therefore SWS should also be zero. The levy of SWS has also been challenged in various High Courts by the trade on the said ground.

3. The matter has been examined. As per Section 110 of the Finance Act, 2018, SWS is levied and collected, on the goods imported into India, as a duty of Customs on the goods specified in the First Schedule to the Customs Tariff Act, 1975. The SWS is calculated at the rate of ten per cent on the aggregate of duties, taxes and cesses which are levied and collected under section 12 of the Customs Act, 1962. This surcharge is in addition to any other duties of Customs or tax or cess chargeable on imported goods.

4. The duty credit scrips issued under schemes such as MEIS, SEIS, etc. are granted as rewards/incentives for exporters under the respective FTP. As per Para 3.02 of the Foreign Trade Policy 2015-20, these scrips can be used for payment of Basic Customs Duty and Additional Customs Duty specified under sections 3 (1), 3 (3) and 3 (5) of the Customs Tariff Act, 1975 for

import of inputs or goods and for payment of Central Excise duties on domestic procurement of inputs or goods. The relevant Customs exemption notifications also allow debit of Basic Customs Duty and Additional Duties of Customs in the duty credit scrips. It is to mention that the debit of SWS through duty credit scrip is not envisaged in the FTP and the exemption notifications.

5. Further, as per para 3.15 of the FTP, Basic Customs Duty paid through debit in the duty credit scrip is allowed to be adjusted for duty drawback. Duties debited in duty credit scrip are taken into account while determining the All Industry Rates and Brand Rate of duty drawback. Similarly, Additional Customs Duty paid on imported goods and Central Excise duty paid on domestic procurement of goods is also allowed to be adjusted as CENVAT Credit or Duty Drawback. Hence duty credit scrips are only a mode of payment of duty and not an exemption from duty even though the use of the said scrip is governed by an exemption notification.

6. In this regard, attention is invited to the judgement dated 06.12.2019 of the Hon'ble Supreme Court in the case of M/s Unicorn Industries Vs. Union of India and Others (Civil Appeal Nos. 9237 & 9238 of 2019) wherein it has inter-alia been held that "*A Notification has to be issued for providing exemption under the said source of power. In the absence of a notification containing an exemption to such additional duties in the nature of education cess and secondary and higher education cess, they cannot be said to have been exempted.... The proposition urged that simply because one kind of duty is exempted, other kind of duties automatically fall, cannot be accepted as there is no difficulty in making the computation of additional duties, which are payable under NCCD, education cess, secondary and higher education cess. Moreover, statutory notification must cover specifically the duty exempted. When a particular kind of duty is exempted, other types of duty or cess imposed by different legislation for a different purpose cannot be said to have been exempted*". The complete judgement may be seen at your end.

7. The ratio of the afore-cited judgement is seen to apply to the issue at hand of levy of SWS on imported goods when the Basic Customs Duty and Additional Duties of Customs are debited through duty credit scrips.

8. The matter was also referred to the Department of Legal Affairs for their legal opinion in light of the above-cited judgement. The Department of Legal Affairs has opined that since the Supreme Court has categorically held that a separate Notification has to be issued for providing exemption from additional duties in the nature of education cess and secondary and higher education cess, the same cannot be said to have been exempted and as per Article 141 of the Constitution, the law declared by the Supreme Court is binding on all Courts within the territory of India, the same occupies the field. It was further opined that therefore there appears to be no legal bar for levy and collection of SWS.

9. In view of above there appears no exemption from SWS in the FTP and the relevant Customs exemption notifications. Keeping in view the ratio laid down by Hon'ble Supreme

Court in judgement dated 06.12.2019 (supra), it is clarified that SWS is not exempted and has to be levied and collected on the imported goods.

10. It is further noted that as per past practice, SWS is being allowed to be debited in the duty credit scrips along with Basic Customs Duty and Additional Duties of Customs. However, keeping in view the position explained hereinabove, it emerges that SWS cannot be debited through duty credit scrips and therefore has to be paid by the importer in cash. Directorate General of Systems has been requested to make the relevant System level changes in this regard.

11. With regard to the past cases of debits of SWS already made in duty credit scrips, it has been decided by the Board that for ensuring ease of doing business, such past cases should not be disturbed and the payments made through debit in duty credit scrips may be accepted as revenue duly collected and recoveries in cash not be insisted for these cases.

12. A suitable Trade Notice and Standing Order may be issued for the guidance of the trade and officers. Difficulties faced, if any, in implementation of the Circular may be immediately brought to the notice of the Board.

Yours faithfully,

(Jitender Kumar)
OSD (Drawback)
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