

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

K.NANCY, B.COM., B.L. (HONS.),

M.S.HARSHA PRABHU, L.L.M.

CONSULTANTS:

GST, CUSTOMS, FOREIGN TRADE LAWS,
FOREIGN EXCHANGE MANAGEMENT ACT.

BY E-MAIL / COURIER

File No.24/2022-Opinion

23.02.2022

M/s. Super Auto Forge Private Limited,
B3, Phase II, Zone A, MEPZ-SEZ,
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Sir,

Sub.: Removal of capital goods into DTA.

1. This is in continuation of the opinion given under even reference yesterday. Querist has sought further clarification as to what will be the procedure, if they exit out of SEZ scheme.

2. The provisions that will be applicable to an SEZ unit if it wants to exit out of the scheme are different to the provisions that are applicable for just removal of used machinery from the unit, while it continues to be an SEZ unit. The provisions relating to exit from the SEZ scheme are contained in Rule 74 of SEZ Rules. Rule 74(1) reads as follows:

“(1) The Unit may opt out of Special Economic Zone with the approval of the Development Commissioner and such exit shall be subject to payment of applicable duties on the imported or indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock.”

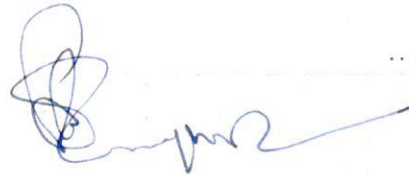
3. It is also to be noted that the exit is subject to the unit achieving net foreign exchange earning and otherwise, in terms of the proviso to the above rule, penal action can be initiated by the Development Commissioner.

4. Further, sub-rules (4) and (5) of Rule 74 read as follows:

“(4) Development Commissioner may permit a Unit, as one time option, to exit from Special Economic Zone on payment of duty on capital goods under the prevailing Export Promotion Capital Goods Scheme under the Foreign Trade Policy subject to the Unit satisfying the eligibility criteria under that Scheme.

(5) Depreciation norms for capital goods shall be as given in sub-rule (1) of rule 49.”

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5. A perusal of the above provisions will indicate that the rule only states that applicable duties are to be paid on the imported or indigenous capital goods, raw materials etc. It does not clarify as to the rates of duties and the deeming concept of import of goods.
6. As a matter of fact, when the letter of approval given to an SEZ unit is cancelled or withdrawn, a specific procedure is prescribed and there is also a detailed reference as to how the duties/taxes are to be recovered if the unit has availed any benefit under the scheme. Rule 77 of SEZ Rules reads in this regard as follows:

“77. Procedures for withdrawal or cancellation of exemptions, concessions, drawbacks or any other benefits to a Unit

(1) Where the Letter of Approval has been cancelled under section 16, the Unit shall furnish to the Development Commissioner, within thirty days of the cancellation of the Letter of Approval, the details of the exemptions, drawbacks, concessions, and any other benefit in respect of the Central Goods, finished goods, raw materials and consumables lying in stock, relating to the Unit and the Development Commissioner shall direct the Specified Officer to determine the amount to be remitted to the Government by the Unit in the form of Customs Duty.

(2) The Specified Officer shall, based on the details provided by the Unit shall assess and communicate the quantum of amount to be remitted by the unit for clearing the said goods in the Domestic Tariff Area, which shall be remitted within a period of three months from the date of communication:

PROVIDED, however, that this period of three months may be extended for a further period not exceeding three months, by the Development Commissioner for valid reasons to be recorded in writing:

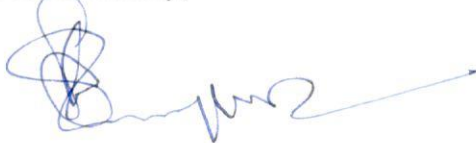
PROVIDED FURTHER that the amount to be remitted shall not exceed the exemptions drawbacks and concessions availed of by the Unit on such goods and/or the Customs Duty payable on such finished goods when imported into India.”

7. Thus, in the case of cancellation of letter of approval as contemplated in Section 16 of SEZ Act, then, the method of duty calculation is different and is specifically provided for. That is not the case in respect of exit from the scheme voluntarily by the unit.
8. In this context, it also may be noted that under the EOU scheme when the unit wants to de-bond and come out of the scheme, a question arose as to the method of calculation of the duty payable on the goods manufactured and lying in stock. The Supreme Court in the case of *Siv Industries Ltd.* reported in 2000 (117) E.L.T. 281 (S.C.) took a view that once the unit is exiting out of the scheme, then, the normal excise duty payable on the goods manufactured will be attracted and not the excise duty in terms of the proviso. A copy of this judgment is attached.



9. However, after subsequent amendments, the various benches of the Tribunal have taken a view that till the date the unit comes out of the scheme, it continues to be under the EOU scheme and the provisions of the scheme will apply in full force and as such, the unit will be required to pay the applicable duties in terms of the relevant EOU notifications for removing the manufactured goods in stock. Two decisions in this regard given in the following cases may be referred to in this connection. Copies of the same are attached.
- i. *Maral Overseas Ltd. Vs. Commissioner of Central Excise, Indore* reported in 2016 (344) E.L.T. 461 (Tri. - Del.).
 - ii. *Jubilant Life Sciences Ltd. Vs. Commissioner of C. EX., Meerut-II* reported in 2014 (301) E.L.T. 649 (Tri. - Del.).
10. In our view, a harmonious reading of the various provisions contained in the SEZ Act and Rules suggest that when the unit is opting out of the SEZ scheme, it needs to pay the duties, as applicable to a unit in SEZ and not otherwise.
11. However, as the issue is open for different interpretations, it will be advisable to get a categorical opinion/ruling from the department/Development Commissioner himself as to the method of calculation of duty payable on the domestically procured capital goods so that the querist need not face any demands at a later date.

Yours faithfully,



S. MURUGAPPAN

Attached: as above.

sm/ss

Disclaimer:- The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.