

Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade
Udyog Bhawan, New Delhi

Trade Notice No.07/2018

Date: 8th May 2017

To

1. All RAs of DGFT
2. Customs Authorities

Subject: Implementation of the Hon'ble Supreme Court's Judgment dated 27th Oct 2015 in Civil Application No. 554 of 2006 with regard to *recovery of Duty Free Credit Entitlement (DFCE) Scheme Scrips for the exports made in the year 2003-04.*

a. Duty Free Credit Entitlement (DFCE)Scheme: As per Exim Policy w.e.f 01.04.2003, under DFCE Scheme duty free import entitlement was available to status holder exporters having incremental growth of more than 25% in FOB value of exports in free foreign exchange subject to a minimum export turnover of Rs. 25 crore in free foreign exchange in the growth year. The duty free entitlement in the form of **Duty Credit Scrip** was 10% of the incremental growth in exports.

b. Litigation: Certain amendments were made vide Notification No. 28 dated January 28, 2004 in the DFCE Scheme. Vide Public Notice No. 40 dated 28.01.2004, the Government announced exclusion of export performance in relation to certain classes of goods from computation of the entitlement under the Scheme and, at the same time, sought to disallow the import of agricultural products falling under Chapters I to XXIV of ITC (HS) under the said scheme. This was followed by Notification No. 38 dated April 21, 2004 and Notification No. 40 dated April 23, 2004 on the same lines on which Public Notice dated January 28, 2004 was issued.

c. Judgement: The above Notifications dated 28.01.2004, 21.04.2004 and 23.04.2004 and the Public Notice dated 28.01.2004 were challenged in various High Courts and finally in the Supreme Court. The Hon'ble Supreme Court has held that:

1. the Notification No.28 dated 28.01.2004 is clarificatory and validity of the same has been upheld (**Para 85 of the Judgement**).

- II. the Public Notice No. 40 dated 28.01.2004 is ultra vires (**Para 96 of the Judgement**)
- III. decisions taken in the Notifications No 38 dated April 21st, 2004 and No. 40 dated 23rd April , 2004 did not take away any vested right of the petitioner exporters and amendments were necessitated by over-whelming public interest / considerations to prevent the misuse of the Scheme. Therefore, even when the impugned Notifications issued under Section 5 could not be retrospective in nature, **“such retrospectivity has not deprived the writ petitioners/exporters of their right inasmuch as no right had accrued in favour of such persons under the Scheme. This Court or for that matter the High Court, in exercise of its writ jurisdiction, cannot come to the aid of such petitioners/exporters who, without making actual exports, play with the provisions of the Scheme and try to take undue advantage thereof. To this extent, direction of Bombay High Court granting these exporters benefit of the scheme for the past period is set aside”**(para 114 of the Judgment).

d. Implementation: Hence, as per the Judgement of the Hon'ble Supreme Court, the recoveries, if any, of DFCE shall be processed as per the decision of the Hon'ble Supreme Court as per procedure as under:

- I. **Zonal Committees:** Zonal Committees shall be constituted comprising Zonal Additional DGFT, Officials from the Regional Customs Authority, Excise Authority, DRI, Income Tax Authority and any such other agencies as deemed necessary by the Zonal Committees. All applications/cases of misuse shall be compulsorily placed before the concerned Zonal Committees. Any applications/cases of misuse pending in any other Regional offices shall be placed before the respective Zonal Committees for appropriate decision and the Head of such RA shall be a member for such cases in the respective Zonal Committees.
- II. **Irregular cases:** *No legal right shall accrue to the exporters who misused **Duty Free Credit Entitlement (DFCE) Scheme** as established in the investigations of Revenue Department (DRI/Customs). All cases of reported misuse of DFCE shall be subject to rigorous scrutiny and appropriate recovery.*

e. Reporting: RAs, shall submit fortnightly progress report of the status of implementation of the decision of the Hon'ble Supreme Court including the name of the exporters and the value of recoveries made. Any difficulties in the implementation of

the orders dated 27.10.2015 Hon'ble Supreme Court and the above instructions shall be brought to the notice of this Directorate.

f. This issues with approval of Competent Authority



Joint Director General of Foreign Trade

File No: 011/94/180/893/AM08/PC-3(part)