

Circular No. 41/2016-Cus

**F. No. DGEP/EOU/18/2008/pt.
Government of India
Department of Revenue
Central Board of Excise & Customs
Directorate General of Export Promotion**

New Delhi, 30th August, 2016

To

All Principal Chief Commissioners/ Chief Commissioners of Central Excise, Customs & Service Tax,

All Principal Chief Commissioners/Chief Commissioners of Customs,

All Principal Chief Commissioners/Chief Commissioners of LTU.

Madam/Sir,

Sub: Admissibility of un-utilized cenvat credit of DTA unit converted into EOU – reg.

Attention is drawn to Circular No. 77/99-Cus dt. 18.11.99 which provided for lapse of unutilized balance modvat credit on conversion of DTA unit into EOU/EHTP/STP unit.

2. Representation has been received that consequent to extension of cenvat credit to EOUs, the said circular is redundant and needs to be withdrawn. Accordingly the matter has been examined.

3. The Circular No. 77/99-Cus dt. 18.11.99 was issued in view of the erstwhile Rule 100 H of Central Excise Rules, 1944 which specifically prohibited EOU's from availing Modvat Credit of Inputs / Capital Goods under Rule 57A and 57Q. But consequent to supersession of Central Excise Rules, 1944 by Central Excise Rules, 2002 there is no provision similar to Rule 100 H of CER, 1944 which prohibits the EOU from availing Cenvat Credit of Inputs/ Capital Goods.

4. Moreover Rule 17 of Central Excise Rules' 2002 which deals with the removal of goods by an EOU, was amended w.e.f 06-9-2004 to allow use of Cenvat credit for payment of duty by an EOU. Rule 10 of Cenvat credit Rule'2004 provides in unambiguous terms that if manufacturer transfers his factory on account of change in

ownership or lease, then the manufacturer shall be allowed to transfer the Cenvat credit lying unutilized in his accounts to transferred entity. EOU is a manufacturer, and hence this rule apply to them. Hence on conversion from a DTA unit to EOU, the transfer of unutilized cenvat credit lying in the books of DTA unit on the date of conversion into EOU unit is admissible.

5. Accordingly, the Circular No. 77/99-Cus dt. 18.11.99 is hereby withdrawn.
6. This issues with the approval of CBEC.
7. This may be brought to the notice of all the field formations and also the trade.

Yours faithfully,

Sd/-

(Dr. Tejpal Singh)
Addl. Director General