

F.No.605/60/2013-DBK
Government of India
Ministry of Finance, Department of Revenue
Central Board of Excise and Customs
Drawback Division

New Delhi, dated 23rd September 2016

To
Pr. Chief Commissioners/Pr. Directors General
Chief Commissioners/Directors General
Pr. Commissioners/Commissioners
(All under CBEC)

Madam/Sir,

Subject: Incorrect simultaneous issuance of dual benefit of Zero duty EPCG and SHIS to exporters under the FTP 2009-14 – option providing flexibility to return either benefit.

The undersigned is directed to say that instances of simultaneous issuance of zero duty EPCG and SHIS were detected by DRI and highlighted to the DGFT. Subsequently, the CAG of India also mapped the concurrent availing of SHIS and zero duty EPCG not being in line with FTP 2009-14 provisions. The issue revolves around wordings in para 5.1A HBP (27.08.2009), para 5.1(f) FTP (5.6.2012), para 5.1(b) FTP (18.4.2013), para 3.10.3 and 9.3 (HBP).

2. After inter-Departmental consultations, that also took into account wordings in conditions specified in Customs EPCG/Post Export EPCG notification Nos. 101/2009-Cus, 102/2009-Cus, 22/2013-Cus, 5/2013-Cus, 23/2013-Cus and SHIS notification No. 104/2009-Cus and clarifications made in Circular Nos. 26/2009-Cus and 38/2010-Cus, the Public Notice No. 30/2015-2020 dated 8.9.2016 (copy attached) has been issued by the Department of Commerce (DGFT) with the concurrence of Department of Revenue. The aspects notified in the Public Notice are self-explanatory. The Ministry directs that pending issues related to the simultaneous issuance or availing of zero duty EPCG/Post Export EPCG and SHIS shall be decided in terms of the said Public Notice.

3. It was noted by the Ministry that consequent to issuance of the said Public Notice, the bar related to dual issuance placed in Customs notifications insofar as they relate to the FTP 2015-20 become unnecessary. These have been removed through Notification No. 52/2016-Customs dated 23.9.2016 that has suitably amended Notification Nos. 104/2009-Cus, 16/2015-Cus and 17/2015-Cus.

4. The trade and officers should be guided by the Commissioners.

Encl: as above

(Dinesh Kumar Gupta)
Director
Tel: 23360581

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(Part-I, Section -I)
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade**

**Public Notice No. 30/2015-2020
New Delhi dated the 8th September, 2016**

Subject: Notification of procedure to be followed in cases of incorrectly issued simultaneous benefits of Zero Duty EPCG and SHIS in FTP 2009-14 by the Director General of Foreign Trade in exercise of powers conferred under Para 2.04 of the Foreign Trade Policy 2015-2020

This Directorate had received references from Directorate of Revenue Intelligence and various exporters, on the subject of incorrectly issued simultaneous benefits of Status Holder Incentive Scheme (SHIS) and Zero Duty EPCG Authorization under Foreign Trade Policy 2009-14. The issue involves Para 5.1(b) of FTP and Para 3.10.3(b) of HBP 2009-14. The representations have been examined by this Directorate in consultation with Department of Revenue and it has been decided that exporters who have been issued or availed such simultaneous benefit of these schemes shall be allowed flexibility, to the extent specified in this public notice, to choose one of the two schemes. The option to return either benefit shall be subject to the following :-

A. Return of SHIS

In case of return of SHIS (including splits), the unutilized SHIS (part or whole) may be surrendered by the original holder to whom such SHIS was issued by surrender of the original SHIS scrip.

The amount of SHIS that has been utilized, by the original applicant to whom SHIS was issued (who has not transferred the SHIS) shall be refunded in cash (with interest at the rate prescribed under Section 28AA of Customs Act from the date of issue of SHIS by the original applicant.

The amount of SHIS that has been transferred by original applicant shall be treated as amount of SHIS utilized and treated accordingly including for purpose of refund and interest payment by original applicant.

In cases where SHIS was issued based on exports of immediately preceding year and then zero duty EPCG was also issued, and the exporter opts to return the SHIS, the power under Para 2.58 of FTP 2015-20 in consultation with relevant Committee would be exercised by DGFT to relax the FTP/HBP provisions requiring the 'prior' return of SHIS.

B. Return of zero duty EPCG/Post Export EPCG

When zero duty EPCG (i.e. all relevant authorizations) has to be returned, the amount equivalent to the duty forgone shall be refunded in cash with interest at the rate prescribed –

- (a) Rate in EPCG notification if EPCG returned was correctly availed
- (b) Rate Under Section 28AA of Customs Act if EPCG returned was incorrectly availed) by the exporter.

The unutilized zero duty EPCG (whole or part) may be surrendered. Further, instead of return of zero duty EPCG (i.e. return of all the relevant authorizations), the exporter may opt to convert zero duty EPCGs issued till 17.4.2013 to 3% EPCGs (subject to eligibility) by paying the differential duties plus applicable interest (at the rate prescribed under Section 28AA) from date of clearance of the goods till the date of payment. In such cases, SHIS scrip need not be surrendered. **This option shall not be available when the zero duty EPCG is already redeemed by DGFT.**

When zero duty Post Export EPCG is to be returned, the authorization(s) shall be surrendered. If any related duty credit scrip(s) against such Zero duty Post Export EPCG authorization(s) have been issued the same if unutilized may be surrendered by the original holder [by surrendering the original duty credit scrips]. The amount of such Post Export EPCG scrip(s) that has been utilized by the original applicant shall be refunded in cash (with interest at the rate prescribed under Section 28 AA of Customs Act from the date of issue of the PE EPCG). The amount of PE EPCG Scrip(s) that has been transferred shall be treated as amount of Post Export EPCG scrip(s) utilized and treated accordingly including for purposes of payment of interest by exporter.

C. Mode of payment

The amount shall be paid back to Government in cash. The facility of debiting the amount in valid freely transferable duty credit scrip issued under Foreign Trade Policy or in valid SHIS scrip held by the original holder to whom it was issued, shall be

allowed for paying the refund part. However, interest part shall be always paid in cash.

D. Time Frame

A time frame of 9 months from provision of option by DGFT is allowed to exporters for the above.


E. No penal action in cases of incorrect issuance

On account of different interpretations on the issue in the past, it has been decided in consultation with DoR that any erroneous issuance of SHIS/Zero Duty EPCG Authorisation will be considered bonafide error and no penal action shall be taken against exporters by RAs / field formations of Custom, including DRI. The Annexure provides the proper interpretation on the issuance of SHIS and Zero duty EPCG/PE-EPCG benefits.

F. Consequential Action by CBEC

The CBEC would be issuing a separate Circular for guidance of its field formations.

Effect of this Public Notice: The exporters who have incorrectly availed simultaneous benefit of zero percent EPCG and SHIS have been provided an option to surrender one of the benefits subject to certain conditions.



(Anup Wadhawan)
Director General of Foreign Trade
E-Mail: dgft@nic.in

[Issued from F.No. 01/61/180/41/AM-13/PC3(Pt.)]

Annexure to Public Notice No. 30 /2015-20 dated 08.09.2016

Different Scenarios of incorrect/simultaneous issuance of SHIS & Zero duty EPCG benefits

Glossary :

- S1 SHIS issued for exports made in year 1
- S2 SHIS issued for exports made in year 2
- S3 SHIS issued for exports made in year 3
- S4 SHIS issued for exports made in year 4
- E Zero duty EPCG scheme availed i.e. issued
- N Not taken i.e. not issued

*SHIS issued with one year late cut

**SHIS issued with two year late cut

Different scenarios in different years on issuance of SHIS, 0% EPCG and 0% Post Export EPCG				
	Year	SHIS Issued	0%EPCG issued	REMARKS (reference to 0% EPCG includes 0% PE-EPCG import authorization)
Year 1	2009-10			Not Relevant
Year 2	2010-11	S1	E	EPCG issued first. Wrong issuance of SHIS. S1 will lapse forever i.e. S1* and S1** will not be available in future, as E has been availed.
		S1	E	SHIS issued first. Wrong issuance of EPCG if SHIS benefit availed was not already surrendered, or refunded with applicable interest in case utilized.
		N	E	S1 will lapse forever i.e. S1* and S1** will not be available in future, as E has been availed.
		S1	N	Scrip has been correctly issued
		N	N	Not Relevant
Year 3	2011-12	S1*	E	EPCG issued first. S1* available if EPCG not availed in 2010-11.
		S2	E	EPCG issued first. Wrong issuance of SHIS. S2 will lapse forever i.e. S2* and S2** will not be available in future, as E has been availed.
		S1*/S2	E	SHIS issued first. S1* available if EPCG not availed in 2010-11. Wrong issuance of EPCG if S2 availed was not already surrendered or refunded with applicable interest in case utilized.
		N	E	S2 will lapse forever i.e. S2* and S2** will not be available in future, as E has been availed.
		S1*	N	Scrip has been correctly issued, provided 0% EPCG has not been availed in 2010-11.
		S2	N	Scrip has been correctly issued

		N	N	Not Relevant
Year 4	2012-13	S1**	E	EPCG issued first. S1** available if EPCG not availed in 2010-11.
		S2*	E	EPCG issued first. S2* available if EPCG not availed in 2011-12.
		S3	E	EPCG issued first. Wrong issuance of SHIS. S3 will lapse forever i.e. S3* and S3** will not be available in future, as E has been availed.
		S1**/S2*/S3	E	SHIS issued first. S1** available if EPCG not availed in 2010-11. S2* available if EPCG not availed in 2011-12. Wrong issuance of EPCG if S3 availed was not already surrendered or refunded with applicable interest in case utilized.
		N	E	S3 will lapse forever i.e. S3* and S3** will not be available in future, as E has been availed.
		S1**	N	Scrip has been correctly issued, provided E has not been availed in 2010-11.
		S2*	N	Scrip has been correctly issued, provided E has not been availed in 2011-12.
		S3	N	Scrip has been correctly issued
		N	N	Not Relevant
Year 5	2013-14	S2**	E	EPCG issued first. S2** available if EPCG not availed in 2011-12.
		S3*	E	EPCG issued first. S3* available if EPCG not availed in 2012-13.
		S4	E	EPCG issued first. Wrong issuance of SHIS. S4 will lapse forever i.e. S4* and S4** will not be available in future, as E has been availed.
		S2**/S3*/S4	E	SHIS issued first. S2** available if EPCG not availed in 2011-12. or S3* available if EPCG not availed in 2012-13. Wrong issuance of EPCG if S4 availed was not already surrendered or refunded with applicable interest in case utilized.
		N	E	S4 will lapse forever i.e. S4* and S4** will not be available in future, as E has been availed.
		S2**	N	Scrip has been correctly issued, provided E has not been availed in 2011-12.
		S3*	N	Scrip has been correctly issued, provided E has not been availed in 2012-13.
		S4	N	Scrip has been correctly issued.
		N	N	Not Relevant

Year 6	2014-15	S3**	E	EPCG issued first. S3** available if EPCG not availed in 2012-13.
		S4*	E	EPCG issued first. S4* available if EPCG not availed in 2013-14.
		S3**/S4*	E	SHIS issued first. S3** available if EPCG not availed in 2012-13. S4* available if EPCG not availed in 2013-14.
		N	E	Not relevant as the scheme has already sunset on 31 March 2013
		S3**	N	Scrip has been correctly issued, provided E has not been availed in 2012-13.
		S4*	N	Scrip has been correctly issued, provided E has not been availed in 2013-14
		N	N	Not relevant as the SHIS scheme has already sunset on 31 March 2013
Year 7	2015-16	S4**	E	EPCG issued first. S4** available if EPCG not availed in 2013-14
		S4**	E	SHIS issued first. S4** available if EPCG not availed in 2013-14.
		S4**	N	Scrip has been correctly issued, provided E has not been availed in 2013-14.
		N	E	Not relevant as the SHIS scheme has already sunset on 31 March 2013.