PUBLIC NOTICE NO. 04/2020

Sub: Levy and Collection of social welfare Surcharge (SWS) on import under various schemes such as Merchandise Export from India Scheme (MEIS), Services Export from India Scheme (SEIS) etc.- reg.

Attention of Importers, Customs Brokers and all other stakeholders is invited to the Circular No. 02/2020-Customs dated 10.01.2020 issued by OSD (Drawback), CBIC for 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. 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 percent 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.

3. 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 a 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.

4. 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.

5. In this regard, attention is invited to the judgment 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 of 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 computa 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 ratio of the afore-cited judgment 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.

6. Accordingly, there is 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 Court in judgment dated 06.12.2019(Supra), it is clarified that SWS is not exempted and has to be levied and collected on the imported goods.

7. 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 herein above, 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 already made the relevant System level changes in this regard w.e.f 13.01.2020.

8. Accordingly, 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 (i.e upto 09.01.2020) should not be disturbed and the payment made through debit in duty credit scrips may be accepted as revenue duty collected and recoveries in cash not be insisted for these cases.

9. All trade associations/members of Customs Brokers Association are requested to take note and publicize the contents of this Public Notice among their members/constituents.
10. For the departmental officers, this may be treated as Standing Order.

11. Difficulty, if any, may also be brought to the notice of the Additional Commissioner of Customs (Import), ICD, TKD, New Delhi.

12. This issues with the approval of the Principal Commissioner of Customs, ICD/TKD, Import, New Delhi.

Yours faithfully,

(Hari Shankar)

Additional Commissioner of Customs,
ICD-Import, TKD, New Delhi.

Copy to:

1. The Chief Commissioner of Customs, CCCU (DZ), NCH, New Delhi for information.

2. The Commissioner of Customs (Export), ICD, TKD/ACC (Import)/ACC (Export)/ICD, PPG/Airport & General/Audit, New Delhi

3. PA to Commissioner of Customs (Import), ICD, TKD, New Delhi

4. All Additional /Joint Commissioners of Customs, Import Commissionerate, ICD Tughlakabad, New Delhi

5. All Deputy/Assistant Commissioner of Customs, Import Commissionerate, ICD Tughlakabad, New Delhi

6. The Deputy Commissioner of Customs (EDI), Import Commissionerate, ICD Tughlakabad, New Delhi for uploading the Public Notice on Customs official website

7. The Delhi Customs Clearing Agents Association, 260-60, Anarkali Bazar, Jhandawalan extension, DDA Shopping Complex, New Delhi 110055

8. NISAA, B-1, Cabin No.4, Ansal Towers, Nehru place, New Delhi-110019

9. Notice Board, Import Commissionerate, ICD Tughlakabad, New Delhi

10. Guard File

Deputy Commissioner of Customs (Tech.)
ICD-Import, TKD, New Delhi

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