



PETROFED

Ref. No. PF/9
February 20, 2012

Dr. Anup K. Pujari
Director General of Foreign Trade
Directorate General of Foreign Trade
Udyog Bhawan, New Delhi - 110 011

Sub.: Deemed export benefit on supply of fuels for petroleum operations covered under Sl. Nos. 214 to 218 of Customs Notification number: 21/2002-CUS dated 01.03.2002 (as amended)- Para 8.2 (f) of Foreign Trade Policy

Dear Sir,

We draw your kind attention to our letter of even reference dated November 25, 2011 requesting you to kindly issue necessary clarifications to the Regional authorities so that the legitimate refund of Terminal Excise Duty (TED) could continue to be availed on supply of fuel for use in petroleum operations by E&P companies in terms of para 8.2(f) of the Foreign Trade Policy (FTP) read with para 8.4.4(iii) and para 8.3 of FTP. A copy of our letter in this regard is enclosed for ready reference.

We urge you to kindly issue the necessary clarifications at the earliest to avoid undue hardship to the E&P companies who contribute substantially to achieving a favourable balance of trade and augmenting precious foreign exchange for the country through import substitution and facilitate economic growth.

Thanking you in anticipation of a prompt response.

Yours faithfully,


A.K. Arora
Director General

Encl. as above

✓ cc. Shri G.C. Chaturvedi, Secretary, Ministry of Petroleum & Natural Gas

Arora
20 Feb 12

Petroleum Federation of India

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Dear Sir,

1. The Govt. of India had launched the New Exploration Licensing Policy [NELP] in 1999 to help increase the indigenous production of crude oil and natural gas.

In terms of the said NELP, the Govt. of India is a stake holder in the Exploration & Production (E&P) Blocks offered for exploration. The explorers bring in the much needed money for exploration and the Govt. of India awards the contract for exploration, based among other things, to the bidder who offers to expend the maximum amount in exploring the block under consideration.

The Govt. has contractually committed to the various bidders under NELP that it would exempt all goods used in petroleum operations from all duties & taxes, so that the amounts committed by the bidders to be spent on the exploration blocks are solely used for purchase of goods & machinery and no part of the expenditure committed on the block is taken away by one of the other stakeholder viz. the Govt., as taxes.

2. In this direction, the following exemptions have been made available by the Govt. of India to ensure that there are no taxes levied on the explorers of oil and gas. The exemption notifications permit import of all goods required for petroleum operations free of customs duty, purchase of all indigenous goods for petroleum operations free of excise duty, etc. In particular,
 - (i) Goods imported for use in petroleum operations are exempt from duties of customs in terms of notification Number: 21/2002-CUS dt 01.03.2002;
 - (ii) Goods supplied by indigenous manufacturers for use in petroleum operations under ICB procedure are exempt from duties of excise in terms of notification number: 06/2006-CE dt 01.03.2006;

- (iii) Indigenous manufacturers are also entitled to full CENVAT credit of inputs used in manufacture of goods supplied for use in petroleum operations, so that manufacturers of indigenous goods do not have any 'stranded tax';
- (iv) Further, where duty-paid goods are supplied by indigenous manufacturers for use in petroleum operations, refund of Terminal Excise Duty (TED) is also being made available under Foreign Trade Policy.

3. The policy of allowing refund of TED on goods supplied by indigenous manufacturers is contained in Para. 8.2 (f) of FTP read with para 8.4.4 (iii) of FTP and customs notification number: 21/2002-CUS dt. 01.03.2002. Refund claims filed with the various regional authorities have been settled in the past, under the aforesaid policy.

As far as explorers of oil & gas are concerned, the refund of TED on supplies of fuel for use in petroleum operations is governed solely by Para 8.2 (f) of the FTP and the said TED refund is being allowed since 2006, based on a clarification issued on an industry representation on the issue.

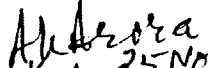
4. We understand that there has been a suspension in passing the refund claims filed by our Industry members in the recent past, on the ground that a decision had been taken in the Policy Interpretation Committee (PIC) meeting held on 15.03.2011 that the Foreign Trade Policy permits duty free fuel only under EOU / SEZ / Advance Authorisation Scheme, and, in no other case, supply of fuel would be eligible for deemed export benefit.
5. We understand that such an interpretation was given in the context of claims of refund of duty on fuel consumed by other than EOU / SEZ / Advance Authorisation Scheme holders and the interpretation was not in the context of benefits conferred on fuel supplied to explorers of oil & gas under petroleum operations which is specifically allowed in terms of Para 8.2 (f), Para 8.3 and Para 8.4.4 (iii) of FTP.
6. Since there has been no change or amendment to the scheme under para 8.2 (f) after issuance of earlier clarification, the said clarification issued in the year 2006 holds. Our members have approached the regional authorities and brought to their notice the fact that the clarification in the PIC meeting of 15.03.2011 was in a different context. The field formations, however, appear to interpret that the clarification given by DGFT (vide letter dated 21.03.2011), in the context of EOUs seeks to stop refund of TED on fuel under any scheme whatsoever; and consequently they have suspended the grant of TED refund, which is rightfully due to the explorers of oil & gas.

7. For your kind and immediate reference, we enclose herewith as Annexure A, a brief note explaining the various provisions of the Customs Act, 1962 and the Foreign Trade Policy 2009-14, in terms of which refund of TED shall be allowed on supplies of fuel for use in petroleum operations.
8. We wish to submit on behalf of the oil & gas explorers that if refund of TED on supplies of fuel for use in petroleum operations were to be denied, they would be left with no alternative but to import all their requirement of fuel [HSD] to overcome the stranding of taxes arising out TED refund being denied. In that case there would be simultaneous import as well as export of HSD in India; import of HSD duty free by explorers for use in petroleum operations and export of surplus HSD by the Oil companies. This may lead to clogging up of ports, which is not desirable.
9. You are kindly aware that the E&P Companies contribute substantially to achieving a favourable balance of trade and augmenting precious foreign exchange for the country through import substitution and facilitate economic growth and employment generation.
10. The denial of refund of TED on supplies of fuel for use in petroleum operations would cause undue hardship to the E&P Companies. We seek your kind intervention to issue necessary clarifications to the Regional authorities that refund of TED would continue to be available on supplies of fuel for use in petroleum operations by E&P companies in terms of para 8.2(f) of FTP read with Para 8.4.4(iii) and Para 8.3 of FTP.

We urge you to kindly reiterate that supplies of fuel to oil & gas explorers continue to enjoy the benefit of refund of TED on indigenous fuel used in petroleum operations.

Thanking you in anticipation of a prompt response.

Yours faithfully,


A. K. Arora

Director General

cc: Shri G. C. Chaturvedi, Secretary, Ministry of Petroleum & Natural Gas

Annexure A

1. In terms of Para 8.2 (f) of FTP, supply of goods to any project or purpose in respect of which the MoF, by notification, permits import of such goods at zero customs duty, shall be regarded as "Deemed Exports" under FTP, provided goods are manufactured in India.
2. In terms of Para 8.4.4 (iii) of FTP, benefit of deemed export under Para 8.2 (f) shall be applicable in respect of items, import of which is allowed by DoR at zero customs duty, subject to fulfilment of conditions specified under Notification No 21/2002- Customs dated 1.3.2002, as amended from time to time.
3. In terms of Customs notification number: 21/2002-CUS dt. 01.03.2002, exemption from duty of customs leviable under the First Schedule of the Customs Tariff Act, 1975 and from additional duty leviable under Section 3 of the said Tariff Act,
 - is available to goods specified in List 12 (attached to the said notification) required in connection with petroleum operations undertaken under petroleum exploration licenses or mining leases, as the case may be, issued or renewed after the 1st of April, 1999 and granted by the Government of India or any State Government to the Oil and Natural Gas Corporation or Oil India Limited on nomination basis, in terms of Sl. No. 214 of notification number: 21/2002-CUS dated 01.03. 2002;
 - is available to goods specified in List 12 (attached to the said notification) required in connection with petroleum operations undertaken under specified contracts, in terms of Sl. No. 216 of notification number: 21/2002-CUS dated 01.03. 2002;
 - is available to goods specified in List 12 (attached to the said notification) required in connection with petroleum operations undertaken under specified contracts under the New Exploration Licensing Policy, in terms of Sl. No. 217 of notification number: 21/2002-CUS dt 01.03. 2002.
 - is available to goods specified in List 13 (attached to the said notification) required in connection with coal bed methane operations undertaken under specified contracts under the Coal Bed Methane Policy in terms of Sl. No 218 of notification no. 21/2002-CUS dt 01.03. 2002,when such goods are imported into India.
4. Sr. no. 24 of List 12 attached to the notification number: 21/2002-CUS dated 01.03.2002 reads as "Sub-assemblies, tools, accessories, stores, spares, materials, supplies, consumables for running, repairing or maintenance of the goods specified in this list". Fuel used in petroleum operations is required for running those goods covered under Sl. No 2, 4 and 5 of the said list no.12.
5. Similarly Sr. no. 19 of List 13 attached to the notification number: 21/2002-CUS dated 01.03.2002 reads as "Sub-assemblies, tools, accessories, stores, spares, materials, supplies, consumables for running, repairing or maintenance of the goods specified in this list". Fuel used in petroleum operations is required for running those goods covered under Sl. No 2 and 3 of the said list no.13.
6. In terms of Sec 2 (38) of Customs Act, 1962, "stores" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.
7. The above definition of 'Stores' in Customs Act, 1962 is identical to the definition of 'Stores' included in Para 9.59.1 of FTP which reads as "'Stores' means goods for use in a vessel or aircraft and includes fuel and spares and other articles of equipment, whether or not for immediate fitting".