



GOVERNMENT OF INDIA
MINISTRY OF COMMERCE
OFFICE OF THE JOINT DIRECTOR GENERAL OF FOREIGN TRADE,
1544, INDIA LIFE BUILDING (ANNEXE), I FLOOR,
TRICHY ROAD, COIMBATORE-18

TRADE NOTICE NO.3 DATED 27.7.2015.

SUB: EXPORTS THROUGH 3RD PARTY AS PER PARA 9.62 OF FOREIGN TRADE
POLICY

Trade, Industry and other Stakeholders are hereby informed that the Trade Notice No.2 dated 25.11.2014 issued by this office has been questioned by the various Export Promotion Bodies representing the exporters such as Southern India Mills' Association (SIMA), South India Spinners Association (SISPA), Tirupur Exporters Association (TEA), Apparel Export Promotion Council (AEPC), Texpreneurs Forum, Confederation of Indian Textile Industry (CITI), Federation of Indian Exporters Organisation (FIEO) & others. These Associations have also represented to the DGFT, the Policy making Authority under the Foreign Trade (Development & Regulation) Act, 1992, as amended.

2. Subsequent to the issue of the Trade Notice No.2 by this office, the DGFT, New Delhi has come out with the New Foreign Trade Policy & Procedures – 2015-2020 with effect from 1.4.2015. The Procedures to be followed in the matters of Third Party Exports have been incorporated under Para 5.10(d) of HBP, 2015-20, with effect from 1.4.2015.

3. Legal Notices have been received questioning the sanctity of Trade Notice No.2 dated 25.11.2014 and the jurisdiction under which such Notice has been issued "retrospectively" by exercising the delegation of powers by the Regional Authority, Coimbatore alone. The Counsels of the Associations also quoted the well settled principles of the Apex Court in the following decisions:-

(a) Union of India Vs Asian Food Industries – 2006 (204) E.L.T. 8 (S.C.)

- (b) Vice Chancellor, M.D. University, Rohtak Vs Jahan Singh – 2007 5 SCC 77
- (c) Noble Resources and Trading India Pvt. Ltd., Vs Union of India – 2012 (276) E.L.T. 3 (Bom.)
- (d) M/s Malik Tanning Industries Vs Union of India – 2015 (320) E.L.T. 508 (Del.)
- (e) M/s Wipro Ltd. Vs Asst. Collector of Customs – 2015 (319) E.L.T. 177 (S.C.)

4. In nut shell, the Trade Notice No.2 has been questioned quoting the judgement of the Supreme Court stating that *"the delegated power to legislate by making rules for carrying out the purpose of the Act is a general delegation without laying down any guidelines; it cannot be so exercised so as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself."* – M/s Wipro Ltd. Vs Asst. Collector of Customs – 2015 (319) E.L.T. 177 (S.C.).

5. On assessing the current developments and based on the representations of the Exporters Association, the DGFT convened a meeting on 18.6.2015 at New Delhi, in which the concerned representatives of the Association were present. Senior officials from the DGFT & Department of Revenue (DRI) had also participated in the meeting. The decision taken in the meeting has been communicated to all the concerned authorities outlining the methodologies/procedures to be adopted in the matters of third party exports vide DGFT communication dated 6.7.2015. Since, the Third Party Export Procedures have been incorporated under Para 5.10(d) of the Current Handbook of Procedures, which is effective from 1.4.2015, and no such clarity or procedures were made available in the earlier Policies & Procedures (before 1.4.2015), the continuance of the Trade Notice No.2 issued by this office does not serve any purpose which has also been assailed for adding transaction time and cost to the exporters, the DGFT has withdrawn the Trade Notice No.2 vide their communication dated 6.7.2015.


7. It has also been brought to our notice that certain customs authorities have started calling for additional documents that had already been submitted to the Regional Authorities of the DGFT for Export Obligation Discharge Certificates (EODCs) adding transaction time and cost to the exporters against

the principles & objectives of the Foreign Trade Policy. One such correspondence issued by Customs, Tuticorin in File No.49/56-EPCG dated 16.6.2015 is an example in hand by which the Exporters are burdened with additional documents which amounts to duplication of paper work by the EPCG authorisation Holders. Such procedures calling for additional documents by the Customs was necessitated solely because of the Trade Notice No.2 dated 25.11.2014.

8. Now, the matter has been fully addressed by the competent authority, DGFT, New Delhi, by withdrawing the Trade Notice No.2 dated 25.11.2014. Therefore, calling for additional documents from the authorisation holders especially when the third party export transactions are being allowed by all other Regional Authorities of the Directorate General of Foreign Trade and no other customs in other major ports has issued any such letters calling for the EODC documents, except Customs, Tuticorin, may not be insisted. In other words, the procedures outlined in the Trade Notice No.2 have been subsumed in Para 5.10(d) of HBP, 2015-20 effective from 1.4.2015 prospectively, Trade Notice No.2, now withdrawn, need not be used as an instrument to cause undue hardships to the exporting community as a whole.

9. However, all Trade & Industry and the stakeholders including the Exporters Associations are hereby requested to take necessary steps to enlighten their member exporters to meticulously follow the procedures outlined in Para 5.10(d) of the current HBP, 2015-20, so as to avoid any inconvenience to the EPCG authorisation holders in respect of third party export transactions.

This issues with the Approval of the Competent Authority.


(M. Vijayalakshmi)

Foreign Trade Development Officer
For Joint Director General Of Foreign Trade

Copy to:-

- 1) The DGFT (EPCG Section), Udyog Bhavan, New Delhi.
- 2) The Zonal Joint DGFT, Chennai.
- 3) All RAs in South Zone
- 4) To all Customs Authorities.