

Additional CVD on DEPB imports!

(By Swamy Associates)

DEPB scheme has the rare distinction of being the most ever misunderstood scheme on this planet. Even after a decade of its birth and existence, still 9 out of 10 believe that DEPB is a mode of payment and have not understood that it is an exemption scheme, whereas, the remaining 1 doesn't know what DEPB at all! It shall be first understood that the **DEPB scheme is a duty exemption scheme**. In other words, any goods imported under the DEPB scheme, by way of debits in the pass book, are imported without payment of Customs duties.

Budget 06-07 imposed (or has extended) the Additional Duty of Customs (ACVD) leviable under Section 3 (5) of the Customs Tariff Act (CTA), by its Notification 19/2006 dated 1/3/2006. Notification 20/2006-Cus dated 1/3/2006 exempts certain category of goods from this levy of ACVD. As per Sl. No. 1 of this Notification 20/2006, all goods on which no Basic Customs Duty (BCD) as well as the Additional Duty of Customs leviable under Section 3(1) of the CTA (CVD) are leviable, then such goods are exempted from the levy of ACVD also. Now the moot question is as to whether this ACVD is leviable on the goods imported under the DEPB scheme? As already discussed, the DEPB being an exemption scheme, the goods imported under the DEPB scheme are exempted goods. In other words, the goods imported under the DEPB scheme are goods on which no BCD or CVD is leviable and hence qualify for the exemption under Sl. No. 1 of the Notification 20/2006-Cus. **In effect, there shall be no ACVD payable on the goods imported under DEPB scheme!**

Now to the corollaries. An importer importing goods under the DEPB scheme has two options, namely, to use the DEPB scrips against both the BCD and CVD, **either in full or in part**. In other words, an importer may have the DEPB scrips only to an extent of his total liability and may choose to pay the rest in cash. For example, if the total import duty liability (BCD + CVD) is Rs. 1 lakh and if the importer has DEPB scrips worth of Rs. 60,000/- only, then he may have to pay the remaining Rs.40,000/- by cash. In such cases, the goods cannot be termed as totally exempted goods. They are exempt only to the extent of Rs. 60,000/- against which the DEPB scrips are used. As seen from the Sl. No. 1 of the Notification No. 20/2006-Cus, **the ACVD shall be exempt only if the entire BCD and CVD are exempt**. Hence, in such cases, the goods are not exempt from the ACVD, as per Notification 20/2006-Cus. If so, what would be the ACVD liability on such cases?

An illustrative example would make the situation lucid and clear:

Situation 1: Let us first see a normal situation, wherein the importer does not avail the DEPB scheme at all but prefers to pay the entire duty liability by cash.

- a. Let the transaction value be : Rs. 100.00
- b. BCD @12.5% on (a) : Rs. 12.50
- c. CVD @ 16.32% on (a+b) : Rs. 18.36
- d. Education CESS @ 2%on (b+c): Rs. 0.62
- e. Total (a+b+c+d) : Rs. 131.48
- f. ACVD @ 4% on (e) : Rs. 5.26

Payout: Rs. 36.74

CENVAT credit availability: Rs. 23.62 (Rs. 18.00 as CVD, Rs. 0.36 as EC and Rs. 5.26 as ACVD)

Net payout: Rs. 13.12

Situation 2: Now let us see an import made under the DEPB scheme, wherein, the entire duty liability is debited to the pass book.

- a. Let the transaction value be : Rs. 100.00
- b. BCD @12.5% on (a) : Rs. 12.50
- c. CVD @ 16.32% on (a+b) : Rs. 18.36
- d. Total duty (b+c) : Rs. 30.86

Now, as the above import is under DEPB scheme (the duties are debited under the pass book), the above Customs duties become totally exempt and effectively becomes "ZERO". This makes the Education CESS (EC) also to be ZERO, as the EC is levied @ 2% on the Customs duties payable. Now, as discussed above, the ACVD is also exempt as per SI.No 1 of Notification 20/2006-Cus, thus making the import absolutely duty free.

Payout (in the form of DEPB scrips): Rs. 30.86

CENVAT credit availability: Rs. 18.36 (Rs.18.00 as CVD and Rs. 0.36 as EC)

Net payout: Rs. 12.50

Situation 3: Let us analyse a situation wherein the importer opts to have a partial import under DEPB scheme and prefers to pay the remaining duty by cash.

- a. Let the transaction value be : Rs. 100.00
- b. BCD @12.5% on (a) : Rs. 12.50
- c. CVD @ 16.32% on (a+b) : Rs. 18.36
- d. Total duty (BCD + CVD) : Rs. 30.86

Out of the above, say, the importer prefers to debit the BCD under DEPB and pay the CVD in cash. Then the total duty payable becomes Rs. 18.36, as the duty debited under DEPB is exempted.

- e. Total duty (after DEPB debit) : Rs. 18.36
- f. Education CESS @ 2%on (e) : Rs. 0.37
- g. Total (a+e+f) : Rs.118.73
- f. ACVD @ 4% on (g) : Rs. 4.75

Payout: Rs. 35.98 (Rs. 12.50 as DEPB scrips and Rs. 23.48 as cash)

CENVAT credit availability: Rs. 23.11 (Rs. 18.00 as CVD, Rs. 0.36 as EC and Rs. 4.75 as ACVD)

Net payout: Rs. 12.87

As it could be seen from the above, if the imported goods are not for manufacturing where there is no CENVAT credit availment, then the imports under DEPB scheme becomes much more lucrative and cost effective. Two years ago, DEPB licences were sold like gold. The demand – supply curve was so steep that they were sold on a premium. But sadly after the withdrawal of SAD (Special Additional Duty), the DEPB licences have lost their charm and market. Now with the imposition of this present ACVD, it is sure that the DEPB licences are going to regain their past glory!

Before Parting....

Last year when the Education CESS was introduced, there was a similar confusion in respect of the applicability of the EC in respect of all Export related schemes, such as Advance Licence, DFRC, EPCG and DEPB. The CBEC issued a Circular No. 5/2005 dated: 3/1/2005, wherein the Board clarified as under:

"Imports against Advance Licences are exempt from all duties of customs and, therefore, it follows that Education Cess at 2% would not be leviable on such imports. In the case of imports under DFRC, the additional duty of customs is payable and, therefore, Education Cess is also payable. On the same principle, Education Cess is also payable in case of imports under EPCG Scheme under which the goods attract a concessional duty of 5%. However, in the case of imports under DEPB Scheme the position is slightly different. As per the notifications governing imports under DEPB Scheme, the basic duty and additional duty are exempt subject to the condition that the duties leviable on the goods are debited from DEPB. In other words, in the case of DEPB Scheme, though the imports are governed by an exemption notification, the fact remains that in case of such imports the duty is debited from the DEPB scrip. Therefore, it has been decided that in the case of imports under DEPB Scheme, the Education Cess @ 2% would also be debited from the DEPB scrip".

We are in agreement with the contents of the above Circular except for the clarification given for the DEPB scheme and the calculation of DEPB debits in the above illustrations has not taken EC into consideration. Applying the same analogy, there shall be no ACVD in respect of the imports under Advance Licence schemes. DFRC shall have the ACVD. Under EPCG scheme the importer is required to pay 5 % as BCD and the remaining BCD and the entire Additional duties under Section 3 of the CTA are exempted. As the ACVD is levied under Section 3 (5) of the CTA, such imports shall be exempted from ACVD also! In so far as the DEPB scheme, we are in total disagreement with the above Circular. When both the BCD and the CVD are totally exempted under the DEPB scheme, where is the question of EC being leviable on the same? **More than that, when the DEPB notification exempts only the duties leviable under the First Schedule to the CTA and Section 3 of the CTA, and when the EC levied under Section 91 read with section 94 of the Finance Act 2004, how the Board can debit the EC from the DEPB scrips?** The above decision of the Revenue to debit EC @ 2% in the DEPB scrips is highly arbitrary. It is neither logically required nor legally warranted. It is highly surprising as to why the learned trade fraternity has not challenged the legality of the said Circular. Going by

the same, there is every possibility that the Revenue may come up with another Circular requiring the debit of ACVD also from the DEPB scrips. Dear Advocates and Consultants! Pull up your socks! Another grand round of litigation is round the corner!