

Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade
Udyog Bhawan, New Delhi

Trade Notice No.06/2018

Date: 8th May 2017

To

1. All RAs of DGFT
2. Customs Authorities

Subject: Implementation of the Hon'ble Supreme Court's Judgment dated 27th Oct 2015 in Civil Application No. 554 of 2006 with regard to ***Target Plus Scheme (TPS) Scrips for the exports made in the year 2005-06 over 2004-05.***

a. Background: Target Plus Scheme as a part of Foreign Trade Policy was announced on 31.08.2004 w.e.f. 01.04.2004. The objective was to accelerate growth in exports by rewarding Star Export Houses with minimum threshold export turnover of Rs. 10 Crore in the previous year. The Scheme provided for three slabs of entitlement of duty credit scrips: 5/10/15% based on the percentage incremental growth of exports: 25%/25- <100%/100% and above respectively. The Scheme was in operation for the years 2004-05 and 2005-06.

b. Litigation & Judgment: In the TPS for 2005-06, Directorate General of Foreign Trade (DGFT), vide Notification No. 48 dated February 20, 2006 had made certain products ineligible for claiming the benefit under Target Plus Scheme (TPS) and vide Notification No.8 dated June 12, 2006 had reduced rates of entitlement to 5% from earlier 5, 10 and 15% w.e.f 01.04.2005 respectively. Both these Notifications dated 20.02.2006 & 12.06.2006 were challenged in various High Courts and finally in the Supreme Court. Hon'ble Supreme Court on 27.10.2015 at Para 134 of the Judgement held that Notification No. 48/2005 dated February 20, 2006 and Notification No. 8/2006 dated June 12, 2006 cannot be applied retrospectively and they would be effective only from the dates they were issued.

c. Accordingly, the Government has approved implementation of TPS for 2005-06 as per the Judgment of the Hon'ble Supreme Court. Notification No.06/2015-2020 dated 8th May, 2017 has been issued in this regard. Accordingly, all RAs are directed to re-examine all the eligible claims/applications pending for **TPS 2005-06** for issue of the

balance claim/recovery of wrong claims as applicable after ensuring due diligence and ensuring genuineness of the exports.

d. Following instructions are to be complied with by all RAs:

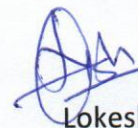
- I. **Zonal Committees:** Zonal Committees shall be constituted comprising Zonal Additional DGFT, Officials from the Regional Customs Authority, Excise Authority, DRI, Income Tax Authority and any such other agencies as deemed necessary by the Zonal Committees. All claims/applications shall be compulsorily placed before the concerned Zonal Committees. Any claims/applications pending in any other Regional offices shall be placed before the respective Zonal Committees for appropriate decision and the Head of such RA shall be a member for such cases in the respective Zonal Committees.
- II. **Due Diligence:** The concerned Zonal Committee shall thoroughly scrutinize the claims to ascertain genuineness of exports by exercising due diligence. While processing such claims, the Committee will thoroughly check the claims having high growth in terms of percentage and/or value and against irregularities if any more specifically on the exclusion made in the relevant Policy Provisions before the issuance of the Notification No. 48 dated 20.02.2006 and Notification No.8 dated 12.06.2006.
- III. **Irregular cases:** *No legal right shall accrue to the exporters who misused Target Plus Scheme (TPS) as established in the investigations of Revenue Department (DRI/Customs) and no benefit shall be extended to such exports.*
- IV. **Product Exclusion:** The Notification No 48 dated 20.02.2006 shall be given effect from 20.02.2006 and accordingly, for exports made on or after 20.02.2006, TPS shall not be allowed in respect of the export products excluded under TPS vide the said notification.
- V. **TPS Rate:** The rate of entitlement to be considered shall be as per the Original provisions of the TPS existing before issuance of the Notification No.8 dated 12.06.2006. The Notification No.20 dated 13.07.2006, wherein the eligibility criteria for TPS was reduced from Rs.10 crore to Rs. 5 crore w.e.f 01.04.2005, shall not be given effect. If there are any cases wherein claims have been allowed to exporters as per the Notification No.20 dated 13.07.2006, recoveries shall be made in respect of such claims.
- VI. **Application & Late Cut:** The date of initial application shall be considered as the date of application for determining the applicable late cut.

- VII. **Validity of fresh TPS Scrips:** The validity period of such additional/fresh TPS scrips shall be 24 months (as per the provisions of the original TPS 2005-06) from the date of issue. The Duty Credit scrips can be used for import of goods as per Para 3.7.6 of FTP 2005-06 read with Para 3.2.5 of HBP, 2005-06.
- VIII. **Pending dues to Government:** In order to ensure that existing government dues, if any, are recovered from the eligible entities for which claims are now being settled based on the judgment of the Hon'ble Supreme Court, a certificate from these entities must be taken that no dues are pending to government/departments including DGFT. If any due is there, then it must be paid before release of the claim under TPS. In case of large claims, this certificate may be sent to the concerned Departments/Ministries for time-bound comments. In case of DGFT, any dues towards recoveries on account of any of DGFT's Schemes including DFCE shall have to be adjusted first before issue of TPS scrips.

For the purpose of submitting the Certificate under this sub-paragraph, if the firm is a Limited Company, the Certificate shall be signed by the Managing Director or two Directors of the Company, along with the seal of the Company. Alternatively the Certificate shall be signed by a senior executive of the Company of the rank of General Manager and one of the Directors of the Company who have been authorized by the board of Directors for this purpose, along with the seal of the Company. In such cases, Certificate shall be countersigned by the Company Secretary. In case of a Partnership/Proprietorship firm, the Certificate shall be signed by all the Partners/Proprietor respectively. In all cases, the certificate shall be countersigned by the statutory auditor of the company/firm.

e. Reporting: All Zonal heads shall submit fortnightly progress report of the status of implementation of the decision of the Hon'ble Supreme Court including RA wise name of the exporters and the value of claims processed/recoveries made. Any difficulties in the implementation of the orders dated 27.10.2015 of the Hon'ble Supreme Court and the above instructions shall be brought to the notice of this Directorate.

f. This issues with approval of Competent Authority.



Lokesh.HD

Joint Director General of Foreign Trade