



## PHARMACEUTICALS EXPORT PROMOTION COUNCIL

(Set up by Ministry of Commerce, Govt. of India)

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Date : 18-05-2010

News / Story reproduced with thanks:- **Business Standard**

### 'Exporters may claim refund of education cess'

T N C Rajagopalan / New Delhi May 18, 2010, 0:56 IST

Direct link to the News/Story:-

<http://www.business-standard.com/india/news/%5Cexporters-may-claim-refundeducation-cess%5C/395206/>

Against our deemed export supplies, we have claimed refund of terminal excise duty, as per Para 8.3 (c) of the Foreign Trade Policy (FTP). Can we claim refund of the education cess and the secondary higher education cess also?

The DGFT Policy Circular no. 15/2005-09 dated 4th July 2005 clarifies that you can claim refund of the education cess along with refund of terminal excise duty. Later, the DGFT letter no. 01/92/180/92/AM 05/PC VI dated 11th April 2008 clarified that the education cess, including secondary and higher education cess paid along with excise duty, may be refunded subject to fulfillment of requisite conditions. These instructions were re-iterated through DGFT Policy Circular no. 11/2009 dated 13th October, 2009.

We have received a letter of credit with the following over-riding clause: "Presentation of document(s) that are not in compliance with the applicable anti-boycott, anti-money laundering, anti-terrorism, anti-drug trafficking and economic sanctions laws and regulations is not acceptable. Applicable laws vary depending on the transaction and may include United Nations, United States and/or local laws." What is the implication for us?

The International Chamber of Commerce (ICC) has prepared 'Guidance Paper for use of sanction clauses in trade related products (e.g. letters of credit, documentary collections and guarantees) subject to ICC Rules'. It recommends that practitioners engaging in cross-border business should be aware that sanctions may be in force in other countries with which they are dealing and should take these issues into account in accordance with their company's own risk management policies. So, you have to be careful. But the paper does say that a sanction clause should not bring into question the bank's commitment under a transaction to which it relates. Further, banks should ensure that they do nothing that brings into question the irrevocable nature of the credit or guarantee, the certainty of payment or the intent to honour obligations, always understanding that the letter of credit or guarantee and the UCP, ISP or URR Rules have always been subject to the application of the relevant local law. For details, you may look up the website [www.iccwbo.org](http://www.iccwbo.org).

We want to export replacement goods free of charge to our buyer, who will later send us the goods exported earlier and found defective. Our bank says that we can get the GR waiver after re-import of the goods exported earlier. Is this correct?

As per Regulation 4 (j) of Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, export of goods, free of charge as replacement, in accordance with the provisions of Exim Policy in force, may be made without furnishing GR/SDF form. So, you don't need any GR waiver either. But, as a matter of practice, exporters do obtain GR waiver from banks, as the Customs may not be aware of the foreign exchange regulations. In any case, the stand taken by your bank does not find any support from the relevant regulations. You may point out the relevant Regulation 4(j) to your bank.