

Chapter 14: Foreign Trade Policy 2015-2020

(Applicability extended up to 31-3-2023)

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Foreign Trade Policy 2015-20

The existing FTP 2015-20 which is valid up to September 30, 2022 is extended up to March 31, 2023.

14.0 Foreign Trade Policy 2015-2020 (Valid from 1st April, 2015 to 30th September, 2021)

Section 3 of Foreign Trade (Development and Regulation) Act, 1992 [FT (D&R) Act, 1992]	Empowers Central Government to make provisions for development and regulation of foreign trade
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Section 5 of FT (D&R) Act, 1992	Empowers Central Government to formulate and announce by notification in Official gazette, the export and import policy and also amend the same by issuing a notification. In India, the Union Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade.
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Administration of Foreign Trade policy

The Director General of Foreign Trade (DGFT) advises Central Government in formulating policy and exercise specified powers under the Foreign Trade (Development and Regulation) Act, 1992. DGFT issues public notices, policy circulars, notifications or decisions from time to time.

DGFT is to work in close coordination with other agencies like CBIC, RBI.

14.1 Features of the Foreign Trade Policy (FTP)

1. Export-Import is free unless specifically regulated by the provisions of the FTP.
2. Export and Import goods are broadly categorized as
 - (a) Free (i.e. general goods freely import or export without any authorization).
 - (b) Restricted (i.e. goods allowed to import or export only with authorization).
 - (c) Prohibited (i.e. goods are not allowed to import or export)
3. There are restrictions on exports and imports for various strategic, health, and other reasons.
4. Exports are promoted through various promotional schemes.
5. There should be no taxes on exports.
6. Capital goods can be imported at NIL duty for the purpose of exports under the scheme of Export Promotion Capital Goods (EPCG) Scheme.
7. EOU'S and SEZ units are exempted from payment of taxes.
8. Deemed exports concept introduced.
9. Duty credit scrip's schemes are designed to promote exports of some specified goods to specified markets and to promote export of specified services.

14.2 The guiding principles of FTP 2015-2020

1. "Make in India" vision.
2. Ease of doing business and trade facilitation by simplifying procedures and extensive use of e-governance (i.e. paper less working).
3. Encourage e-commerce exports of specified products.
4. Encourage manufacture and export by SEZ, EOU, STP, EHTP and BTP.
5. Offering duty credit scripts to encourage goods and services.
6. Special efforts to resolve quality complaints and trade disputes.

The following measures taken in said direction:

- (a) Mandatory documents for export and import have been reduced to 3 each.

Export of goods from India	Import of goods into India
1. Bill of Lading/Airway Bill/Lorry Receipt/Railway Receipt/Postal Receipt.	1. Bill of Lading/Airway Bill/Lorry Receipt/Railway Receipt/Postal Receipt.
2. Commercial Invoice and Packing List.	2. Commercial Invoice and Packing List.
3. Shipping Bill/Bill of Export.	3. Bill of Entry

- (b) The facility of 24 x 7 Customs clearance of specified imports has been made available at seaports and airports.
- (c) Single window scheme has been introduced to enable importer and exporter to lodge their clearance documents at a single point thereby providing a common platform to trade to meet requirements of all regulatory agencies involved in EXIM trade.
- (d) To facilitate processing of shipping bills before actual shipment, prior online filing facility for shipping bills has been provided by Customs:
 - (i) 7 days for air shipments
 - (ii) 14 days for shipments by sea
- (e) Facility to file application (i.e. ANF 2A) through online for Importer Exporter Code (IEC). It is a unique 10 digits code. PAN is pre-requisite for grant of an IEC.

14.3 Scope of FTP

1. Policy for regulating import and export of goods and services.
2. Export Promotional Measures.
3. Duty Remission and Duty Exemption Scheme for promotion of exports.
4. Export Promotion Capital Goods (EPCG) Scheme.
5. Export Oriented Undertakings (EOU/EHTP/STP & BTP) Schemes.
6. Deemed Exports.
7. Quality complaints and Trade Disputes.

Note: Special Economic Zones (covered under separate Act namely Special Economic Zones Act, 2015 and are not part of FTP).

14.4 Authorization

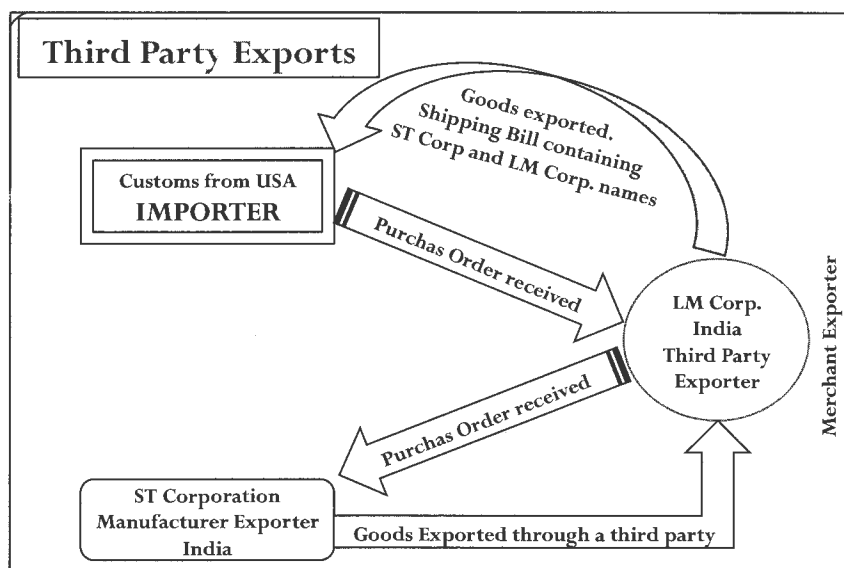
It means “permission for import or export of goods and services” in terms of FT (D&R) Act, 1992. DGFT issues authorization for import or export. Decision of DGFT is final and binding in respect of any authorization issued under the FTP.

14.5 Merchant exporter

Merchant exporter does not have own manufacturing unit or processing factory.

14.6 Third party exports

Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). In such cases, export documents such as shipping bills shall indicate name of both manufacturing exporter/ manufacturer and third-party exporter(s). BRC, GR declaration, export order and invoice should be in the name of third party exporter. Such third-party exports shall be allowed under FTP.



Question: LM Corporation, a merchant exporter, procured order of goods from a customer in USA. It approached ST Corporation, a manufacturer, for execution of the said order. The shipping bills relating to the consignment bear the name of LM Corporation. Bank Realization Certificate, GR declaration, export order and invoice are also in the name of LM Corporation. Comment whether ST Corporation would be deemed as the exporter under FTP.

(CA Final Mock Test May 2015)

Answer: The given scenario is a case of **third-party exports**.

Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). The conditions for being allowed as third-party exports under FTP are:

- (i) Export documents such as shipping bills shall indicate name of both manufacturing exporter/ manufacturer and third-party exporter(s).
- (ii) BRC, GR declaration, export order and invoice should be in the name of third party exporter.

In the above case, though BRC, GR declaration, export order and invoice are in the name of LM Corporation (third party exporter), the shipping bill does not have the name of ST Corporation (manufacturer). **Therefore, ST Corporation will not be treated as the exporter in this case.**

14.7 Letter of Credit

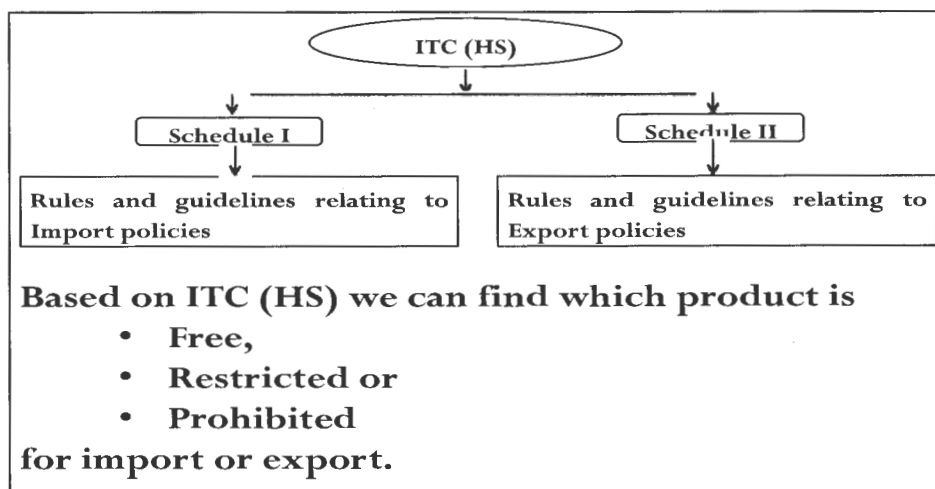
A Letter of credit is a bank's written promise that it will make a customer's (the holder) payment to a vendor (the beneficiary).

14.8 Back-to-back letters of credit

It occurs when a buyer gives a letter of credit to a seller, who then obtains a letter of credit for a supplier.

14.9 Indian Trade Classification (Harmonized System) [ITC (HS)]

The export or import policy regarding import or export of a specific item is given in the Indian Trade Classification Code based on the Harmonized System of Coding. It consists of 8 digit coding.



Schedule I of the ITC-HS code is divided into 21 sections and each section is further divided into chapters. The total number of chapters in the schedule I is 98. The chapters are further divided into sub-heading under which different HS codes are mentioned.

Export Policy Schedule II of the ITC-HS code contain 97 chapters giving all the details about the guidelines related to the export policies.

Based on ITC (HS) we can find which product is Free, Restricted or Prohibited for import or export.

14.10 Board of Trade (BOT)

Board of Trade has been constituted to advise Government on Policy measures like:

- Improve exports,
- Review export performance,
- Review policy and procedures for import and exports and
- Examine issues relevant for promotion of India's foreign trade.

Commerce and Industry Minister will be the Chairman of the BOT. Government shall also be nominated up to 25 persons. Board of Trade will meet at least once every quarter.

14.11 Import of gifts

Import of gifts shall be permitted where such goods are otherwise freely importable under Indian Trade Classification (Harmonized System) [ITC (HS)]. In other cases, a Customs Clearance Permit (CCP) shall be required from DGFT.

Import of goods as gifts prohibited except for life saving drugs/medicines and rakhi (but not gifts related to rakhi) [Notification No. 35/2015-2020, dated 12.12.2019]

Earlier, import of gifts were free where such goods were otherwise freely importable under ITC (HS). In other cases, such imports were permitted against an Authorization issued by DGFT.

However, DGFT vide *Notification No. 35/2015-20, dated 12th December, 2019* has amended the said provision and provided that import of goods, including those purchased from e-commerce portals, through post or courier, where customs clearance is sought as gifts, is prohibited except for life saving drugs/medicines and rakhi (but not gifts related to rakhi). Rakhi will be exempted as under section 25(6) of the Customs Act, 1962 that reads "...no duty shall be collected if the amount of duty leviable is equal to, or less than, ₹100". Further, import of goods as gifts with payment of full applicable duty is permissible.

14.12 Export of gifts

Goods, including edible items, of value not exceeding ₹5,00,000 in a licensing year, may be exported as a gift. However, items mentioned as restricted for exports in ITC (HS) shall not be exported as a gift, without an Authorization.

14.13 Import of samples

Authorization for import of samples is required only in case of vegetable seeds, bees and new drugs.

Samples of tea up to ₹2,000 (CIF) per consignment will be allowed without authorization.

All exporters without duty can import samples up to ₹3,00,000.

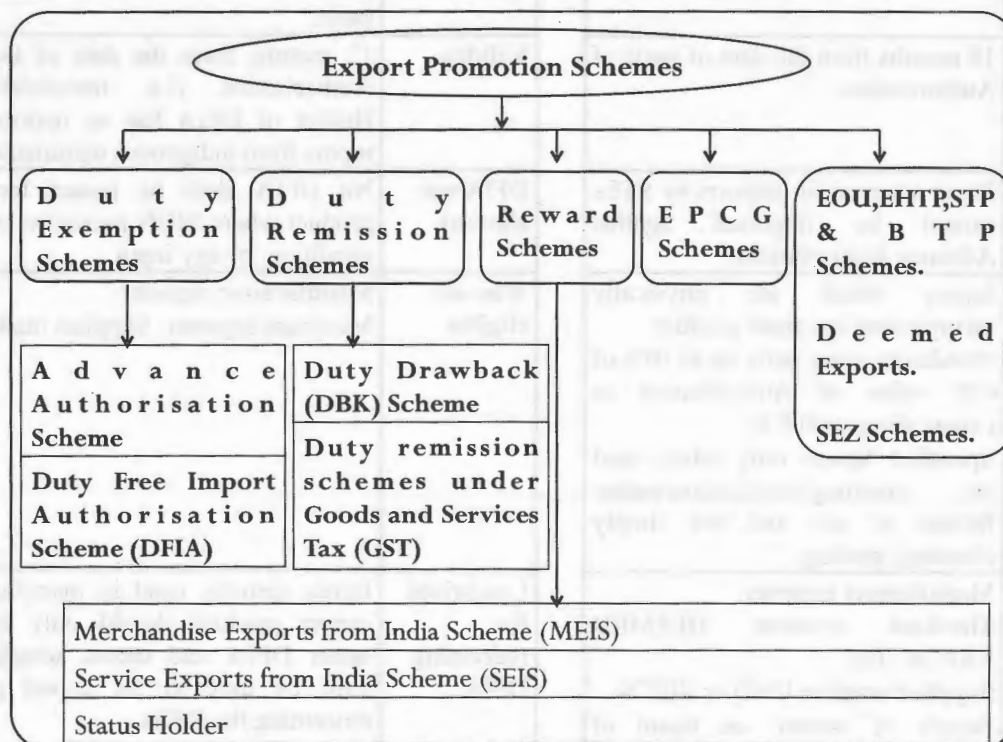
14.14 Export of samples

Export of bona fide trade and technical samples of freely exportable items shall be allowed without any limit. In case of restricted items, application should be made to DGFT.

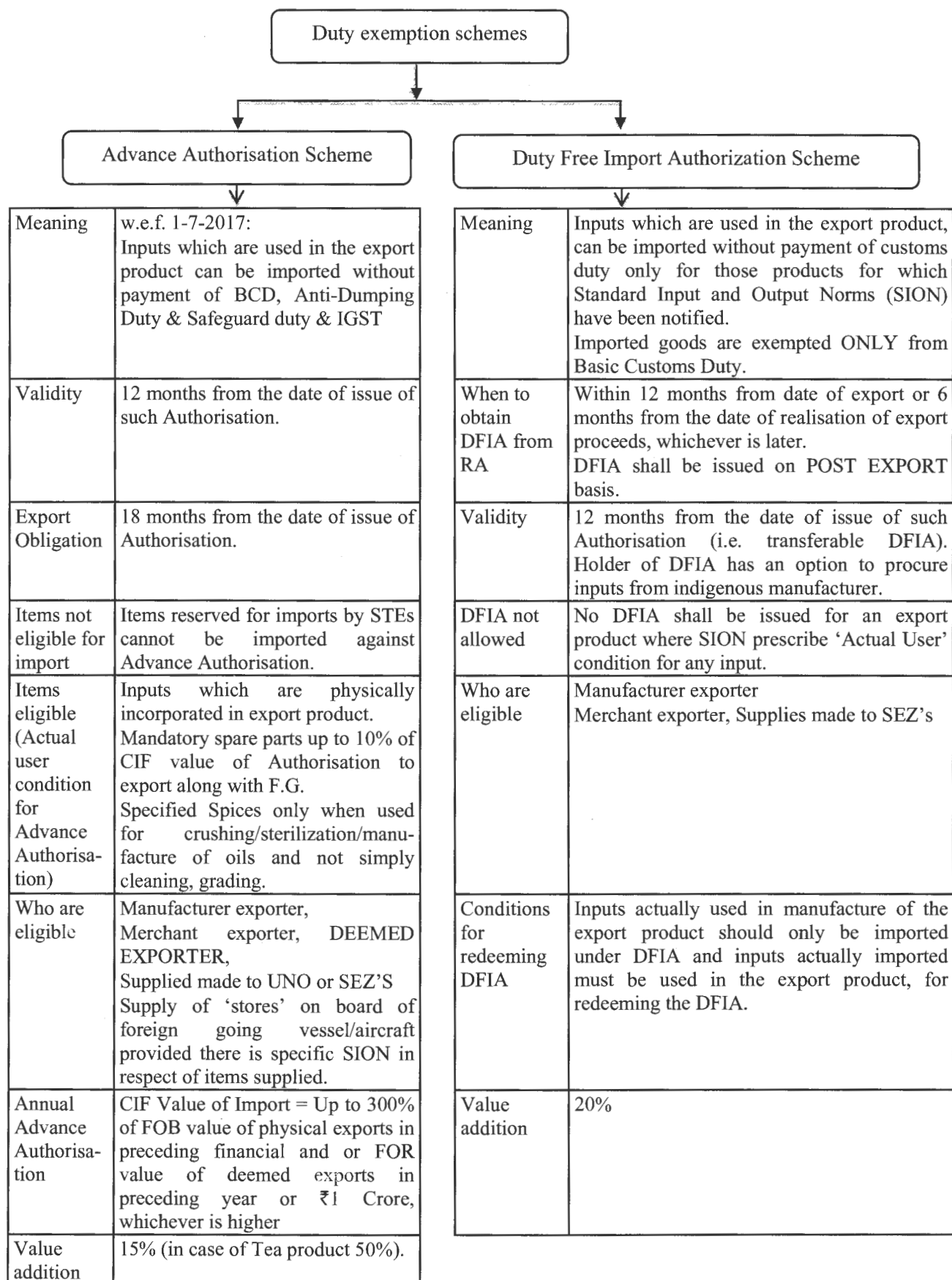
14.15 Export of Items Reserved for MSME Sector

Units other than small scale units (i.e. Micro, Small & Medium Enterprises) are permitted to expand or create new capacities in respect of items reserved for small scale sector, subject to condition that they obtain an Industrial licence under the Industries (Development and Regulation) Act, 1951, with export obligation as may be specified. Such licensee is required to furnish a LUT to RA and DGFT in this regard. DGFT/RA concerned shall monitor export obligation.

Note: EOU/EHTP/STP/BTP units are exempted from obtaining such industrial licence.

Over all view of the FTP:

14.16 Duty Exemption Schemes



Advance Authorization:

- (i) Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorization for Annual Requirement.
- (ii) Materials imported under Advance Authorization will 'Actual User Condition'. These imported goods will not be transferable even after completion of export obligation. However, holder of Advance Authorization will have an option to dispose off product manufactured out of duty free inputs once export obligation is completed.
- (iii) Advance Authorization is issued for inputs in relation to the resultant product on the basis of SION. If SION for a particular item is not fixed, Regional Authority (RA) based on self-declaration by applicant, except certain specified products, can issue Advance Authorization.
- (iv) It is necessary to establish that inputs actually used in manufacture of the export product should only be imported under Advance Authorization and inputs actually imported must be used in the export product, for redeeming the Authorization.

Amendments in FTP w.e.f. 13th October 2017:

Customs Notification No. 79/2017, dated 13th October, 2017 and DGFT's Notification No. 33/2015-2020 contain provisions regarding exemption from GST on imports made under the Duty exemption Schemes.

Exemption from GST and Goods and Service Tax Compensation cess in respect of imports under the Advance Authorization (AA)/Export Promotion Capital Goods (EPCG) from abroad as well as domestic suppliers. The GST Council recommended that the holders of AA/EPCG and EOUs would not have to pay IGST, Cess etc. on imports and Also, domestic supplies to holders of AA/EPCG and EOUs would be treated as deemed exports under section 147 of CGST/SGST Act and refund of tax paid on such supplies given to the supplier.

"Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only", and not for deemed exports under the Foreign Trade Policy.

Further the exemption from integrated tax and Goods and Service tax compensation cess leviable under sub-section (7) and sub-section (9) of the Section 3 of the Customs Tariff Act is available only upto 31st March, 2018.

Extension of exemption upto 31st March, 2022:**Exemption from IGST and GST compensation cess extended upto 31st March, 2022 in case of imports under Advance Authorisation, EPCG, EOU/EHTP/STP/BTP units.**

Earlier imports against Advance Authorisations for physical exports were exempted from Integrated Tax and Compensation Cess upto 31.03.2022 only. The exemption from Integrated Tax and Compensation Cess in case of imports against Advance Authorisations for physical exports has now been extended upto 31-3-2022.

Earlier capital goods imported under EPCG Authorisation for physical exports were exempted from IGST and Compensation Cess upto 31.03.2021 only. The exemption from IGST and Compensation Cess in case of capital goods imported under EPCG Authorisation for physical exports has now been extended upto 31-3-2022.

In case of goods imported by EOU/EHTP/STP/BTP units from DTA, IGST and GST compensation cess was exempt upto 31.03.2021. The exemption from IGST and GST Compensation Cess in case of goods imported by EOU/EHTP/STP/BTP units from DTA has now been extended upto 31-3-2022.

[Notification No. 33/2015-2020, dated 28-9-2021]

Now this exemption further extended up to 31st March, 2023.

Exemption from IGST and GST Compensation Cess extended to deemed exports in case of Advance Authorisation and pre-import condition for said exemption dispensed with:

Exemption from IGST and GST Compensation Cess is available to imports under Advance Authorisation. Earlier, this exemption was restricted to only physical exports and was subject to pre-import condition.

Now, pre-import condition for said exemption has been dispensed with and said exemption has been extended to following deemed exports:

- (a) Supply of goods by registered person against Advance Authorisation
- (b) Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation.

14.16.1 Standard Input Output Norms

Standard Input Output Norms or SION in short is standard norms which define the amount of input/inputs required to manufacture unit of output for export purpose. Input output norms are applicable for the products such

as electronics, engineering, chemical, food products including fish and marine products, handicraft, plastic and leather products, etc. SION is notified by DGFT in the Handbook and is approved by its Boards of Directors.

An application for modification of existing Standard Input-Output norms may be filed by manufacturer exporter and merchant-exporter. The Directorate General of Foreign Trade (DGFT) from time to time issue notifications for fixation or addition of SION for different export products. Fixation of Standard Input Output Norms facilitates issues of Advance License to the exporters of the items without any need for referring the same to the Headquarter office of DGFT on repeat basis.

14.16.2 Basics Requirements of Standard Input Output Norms

For fixation/modification of Standard Input Output Norms (SION) following details are required:

- Technical Details of the export product as per the details given in Appendix 33.
- Chartered Engineer certificate certifying the import requirements of raw materials in the format given in Appendix 32B.
- Production and Consumption data of the manufacturer/supporting manufacturer of the preceding three licensing years as given in Serial No. 3 of sub-section XII, duly certified by the Chartered accountant/Cost Accountant/Jurisdictional Excise Authority.

Example 1: Answer the following questions with reference to the provisions of Foreign Trade Policy:

Bestron Ltd. manufactures goods by using imported inputs and supplies the same under Aid Programme of the United Nations. The payment for such supply is received in free foreign exchange. Can Bestron Manufacturers seek Advance Authorization in relation to the supplies made by it?

Answer: Advance Authorization can be issued for supplies made to United Nations Organisations or under Aid Programme of the United Nations or other multilateral agencies and such supplies need to be paid for in free foreign exchange.

Example 2: LMN Ltd. has imported inputs without payment of duty under Advance Authorization. The CIF value of such inputs is ₹20,00,000. The inputs are processed and the final product is exported. The exports made by LMN Ltd. are subject to general rate of value addition prescribed under Advance Authorization Scheme. No other input is being used by LMN Ltd. in the processing. What should be the minimum FOB value of the exports made by the LMN Ltd. as per the provisions of Advance Authorization?

ANSWER:

Advance Authorization necessitates exports with a minimum of 15% value addition (VA).

Therefore, the minimum FOB value of the exports made by LMN Ltd. should be ₹23,00,000 (i.e. ₹20 L x 115/100).

Example 3: Jigsaw Puzzle has imported inputs, having CIF value of ₹25,00,000 without payment of duty under Advance Authorisation. Inputs are supplied free of cost valued at ₹5,00,000 to meet eventualities of quality issues arising during manufacture.

On manufacturing, the products are supplied to units in SEZ and realization is in Indian currency.

Jigsaw Puzzle wants to know whether it is entitled to Advance Authorisation scheme and what should be the minimum value addition.

And you are required to compute FOR value of supplies to SEZ.

Jigsaw Puzzle has manufactured and supplied goods to international organizations in India from imported inputs for their office use. The payment for such supply is received in Indian currency. Can Advance Authorisation be denied as payment has not been received in free foreign exchange?

Answer: Supplies to SEZ unit is entitled to Advance Authorisation even payment received in Indian currency.

Value addition = 15%

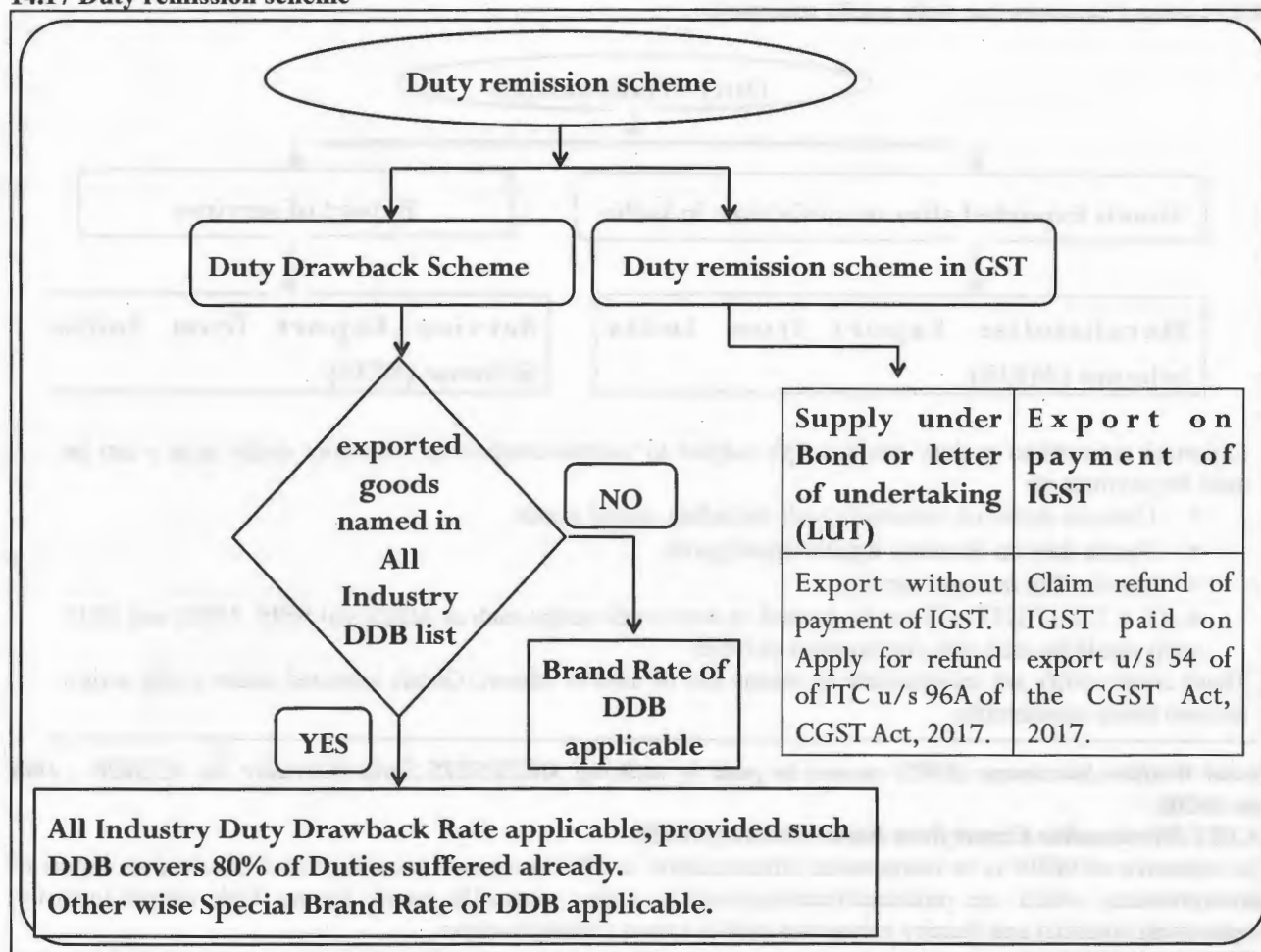
Minimum FOB value of supply to SEZ = ₹34,50,000 [₹25,00,000 + ₹5,00,000) x 115%]

Note: items are supplied free of cost by foreign buyer, its notional value will be added in the CIF value of import and FOB value of export for purpose of calculating value addition.

Advance Authorization can be issued for supplies made to international organizations in India (like United Nations Organisations or under Aid Programme of the United Nations or other multilateral agencies) and such supplies need to be paid for in free foreign exchange.

In the given case Jigsaw Puzzle is not entitled for Advance Authorisation since, payment has not been received in free foreign exchange.

14.17 Duty remission scheme

**Duty remission scheme under GST:**

Discussed under Customs Law.

Export rebate not allowable when Indian market price of goods exported is less than the rebate claimed w.e.f. 1-3-2016:

For claiming rebate under rule 18 of Central Excise Rules, 2002, *vide* Notification No. 18/2016-CE (NT), dated 01.03.2016, one of the condition is that the **Indian market price** (prior to 1-3-2016 market price only was mentioned) of the excisable goods at the time of exportation should not be less than the amount of rebate of duty claimed.

Chartered Engineer certificate:

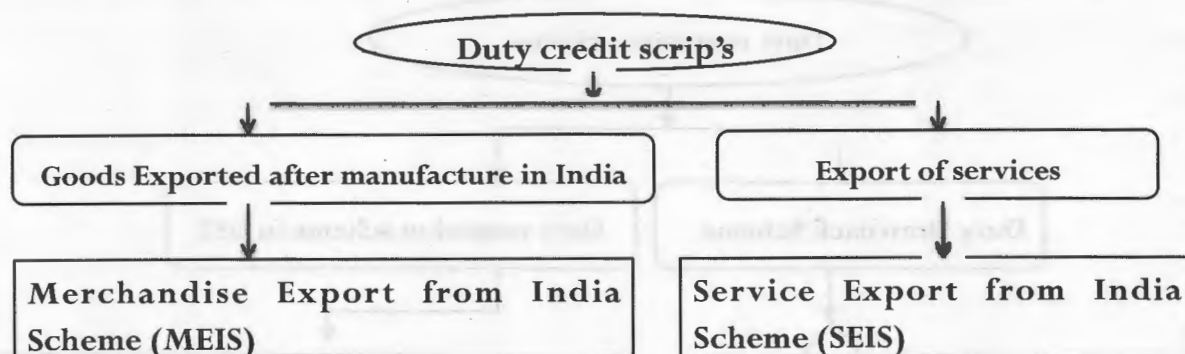
W.e.f. 1-3-2016, the procedure required filing of a declaration by the manufacturer, will also have to file a Chartered Engineer's Certificate for correctness of ratio of input and output where SION is notified for claiming rebate of inputs used in goods exported.

The permission for manufacture and export of finished goods before commencement of export will be given on the basis of such certificate.

Conditions and procedure relating to export

The export consignments from the factory/warehouse/any other approved premises, goods needs to be sealed-either by Central Tax Officer after examination of such goods or by the exporter himself under self-sealing and self-certification.

Exception: In case of bulk cargo, iron-ore, alumina concentrates, heavy machinery etc. are difficult to seal in packages or container. Hence, it provides that where the nature of goods is such that the goods cannot be sealed in a package or a container such as coal or ore, etc., exemption from sealing of package or container may be granted by the Principal Chief Commissioner/Chief Commissioner of Central Tax subject to safeguard as may be specified by him in the permission.

14.18 Reward Schemes (i.e. duty credit schemes):

Exporters are entitled to duty credit scrip's subject to various conditions. This duty credit scrip's can be used for payment of:

- Customs duties on imported goods including capital goods.
- Excise duty on domestic inputs/capital goods.
- Service Tax on input services.

w.e.f. 1-7-2017 GST will not be debited in duty credit scrips such as MEIS and SEIS. MEIS and SEIS scrip would be used only for payment of BCD.

These credit scrip's are transferrable (it means can be sold to others). Goods imported under credit scrip's are also freely transferable.

Social Welfare Surcharge (SWS) cannot be paid by utilizing MEIS/SEIS Scrip (Circular No. 02/2020 – 10th Jan 2020).

14.18.1 Merchandise Export from India Scheme (MEIS)

The objective of MEIS is to compensate infrastructural inefficiencies and associated cost involved in export of goods/products, which are produced/manufactured in India, especially goods having high export intensity, employment potential and thereby enhancing India's export competitiveness.

MEIS Reward Rates:

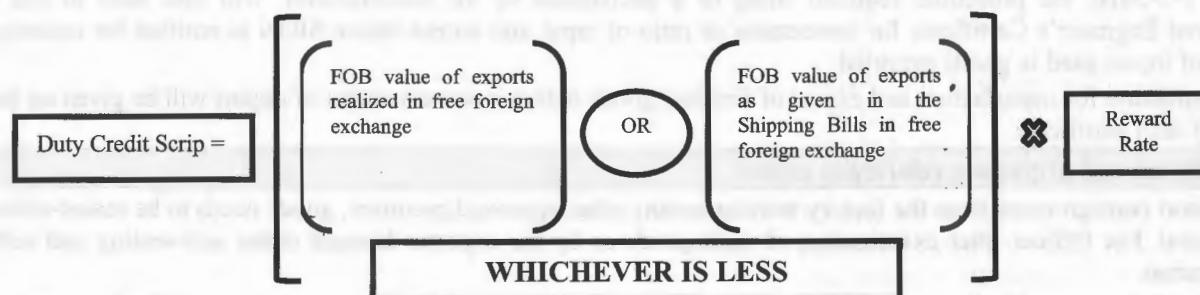
Reward rates are prescribed under Appendix 3B-MEIS Schedule Table 2. ITC (HS) code wise list of products with rewards rates are incorporated under Appendix 3B. There are three types of reward rates are prescribed namely 2%, 3% and 5%. Applicability of these rates depends up on the country group and description of goods.

On request, split certificates of Duty Credit Scrip subject to a minimum of ₹5 Lakh each and multiples thereof may also be issued, at the time of application.

Once Duty Credit Scrip has been issued, request for splits can be permitted with same port of registration as appearing on the original Scrip.

The above procedure shall be applicable only in respect of EDI enabled ports.

In case of export through non-EDI ports, the facility of splits shall not be allowed after issue of Scrip.

14.18.2 Basis of calculation of MEIS reward or Duty Credit Scrip:**Entitlement under MEIS for exports made through courier or foreign post office enhanced**

Presently, export of handicraft items, handloom products, books/periodicals, leather footwear, toys and tailor made fashion garments through courier or foreign post office using e-commerce of FOB value upto ₹25000 per consignment are entitled for reward under MEIS.

However, DGFT vide *Notification No. 22/2015-20, dated 26th July 2018* has amended the said provision and provided that for export of aforesaid items through courier or foreign post office of FOB value upto ₹5,00,000 per consignment will be entitled for reward under MEIS. If the value of exports is more than ₹5,00,000 per consignment then MEIS reward would be calculated on the basis of FOB value of ₹5,00,000 only.

Example: During F.Y. 2017-18 S Pvt Ltd has made Exports of “Safety Valves” coming under Chapter Heading 8481.

Country of Export – USA & UK.

Realised FOB value of exports in free foreign exchange: ₹50 Crore

FOB value of exports as given in the Shipping Bills in free foreign exchange (Covered in ₹): ₹55 Crore. As per Appendix 3B of Foreign Trade Policy 2015-20, reward for Export of Safety Valves to USA & UK is 3%.

Find the Duty Credit Scrip or MEIS reward available to S Ltd.

Answer:

Realised FOB value of exports = ₹50 crore or

FOB value of exports = ₹55 crore (as given in the Shipping Bills)

Whichever is LESS.

Therefore, MEIS Reward available to S Pvt Ltd for F.Y. 2015-16 would be ₹1.5 Crores

(i.e. ₹50 Cr x 3%).

14.18.3 MEIS duty credit scrip's are not allowed in the following cases

- (1) EOU/EHTPs/BTPs/STPs who are availing direct tax benefits/exemption.
- (2) Supplies made from DTA units to SEZ units.
- (3) Exports through trans-shipment, i.e., exports that are originating in third country but trans-shipped through India.
- (4) Deemed Exports.
- (5) SEZ/EOU/EHTP/BTP/FTWZ products exported through DTA units.
- (6) Export products which are subject to Minimum export price or export duty.
- (7) Ores and concentrates of all types and in all formations.
- (8) Cereals of all types.
- (9) Sugar of all types and all forms unless specifically notified.
- (10) Crude/petroleum oil and crude/primary and base products of all types and all formulations.
- (11) Export of milk and milk products and meat and meat products unless specifically notified.

14.18.4 Export of goods through courier/foreign post offices using e-commerce

The following products are eligible for rewards under MEIS:

- Exports of handicraft items,
- Export of handloom products,
- Export of books/periodicals,
- Export of leather footwear,
- Export of toys and
- Export of tailor made fashion garments

through courier or foreign post office using e-commerce of FOB value up to ₹25,000 per consignment shall be entitled for rewards under MEIS.

In case the value exceeds INR 25000, MEIS reward would be limited to FOB value of INR 25000 only.

However, DGFT vide *Notification No. 22/2015-20, dated 26th July 2018* has amended the said provision and provided that for export of aforesaid items through courier or foreign post office of FOB value upto ₹5,00,000 per consignment will be entitled for reward under MEIS. If the value of exports is more than ₹5,00,000 per consignment then MEIS reward would be calculated on the basis of FOB value of ₹5,00,000 only.

Example: Classmate Printers Pvt. Ltd., manufactured register account books & letter pads and exported the same by courier at FOB value of 4,000 USD per consignment to USA and 6,500 UK Pounds per consignment to UK. During the year, 40 consignments sent to USA. Exchange rate is ₹70 per USD. 20 consignments sent to UK. Exchange rate is ₹88 per Pound. Classmate Printers Pvt. Ltd., entitled 2% reward rate. Find the reward amount under MEIS for Classmate Printers Pvt. Ltd.

Answer:

Export to USA:

Reward amount in ₹2,24,000 [(i.e. ₹2,80,000 x 40 consignments) x 2%]

[i.e. (4,000 USD x ₹70) = ₹2,80,000]

(maximum permissible per consignment is ₹5,00,000)

Export to UK:

Reward amount in ₹2,00,000/-

[i.e. (6,500 UK Pounds x ₹88 = ₹5,72,000)

however, maximum is ₹5,00,00 per consignment.

[i.e. ₹(5,00,000 x 20) x 2%] = ₹2,00,000

Last date for filing application for obtaining Duty Credit Scrip under MEIS shall be Later of:

(1) Twelve months from the Let Export Order date OR

(2) Three months from the date of:

- Uploading of EDI shipping bills into the DGFT server by Customs
- Printing/release of shipping bills for Non EDI shipping bills.

New Scheme RODTEP:

The Government had recently announced the introduction of a new scheme “Remission of Duties and Taxes on Exported Products” (RoDTEP) to replace the Merchandise Exports from India Scheme (MEIS) available to exporters of goods. Accordingly, the items covered under the existing MEIS scheme would be shifted in a phased manner to the new RoDTEP scheme.

RoDTEP has been made effective for exports from 1st January 2021 in respect of those exports where intention to claim the benefit has been manifested on the shipping bills. RoDTEP is going to give a boost to Indian exports by providing a level playing field to domestic industry abroad.

RoDTEP Benefits:

Being WTO-compliant, the RoDTEP scheme can make available from the government benefits to the exporters seamlessly.

- (a) The scheme is more exhaustive in that certain taxes that were not covered under the previous scheme are also included in the list, for example, education cess, state taxes on oil, power and water.
- (b) It will add more competitiveness in the foreign markets, with assured duty benefits by the Indian Government.
- (c) It will also help exporters meet international standards and promote business growth etc.,

Objective of RODTEP Scheme:

The Scheme's objective is to refund, currently un-refunded duties and taxes. The scheme has been introduced with an objective to neutralize the taxes and duties suffered on exported goods which are otherwise not credited or remitted or refunded in any manner and remain embedded in the export goods. This scheme provides for rebate of all hidden Central, State, and Local duties/taxes/levies on the goods exported which have not been refunded under any other existing scheme namely:

- Mandi Tax, Municipal Taxes, Property Taxes, VAT,
- Coal cess,
- Central Excise duty on fuel,
- Electricity duty on purchase of electricity,
- Stamp duty on export documents; etc.

will now be refunded under this particular scheme.

All the items under the MEIS and the RoSCTL (Rebate of State and Central Taxes and Levies) are now under the purview of the RoDTEP Scheme.

RODTEP Scheme Operating Principles:

1. RoDTEP support will be available to eligible exporters at a notified rate as a percentage of Freight on Board (FOB) value. Rebate on certain export products will also be subject to value cap per unit of the exported product.
However, for the purpose of calculation of duty credit, value of exported shall be least of the following:
 - (a) FOB value of said goods, or
 - (b) 1.5 times of the market price of the goods.
2. Identified export sectors and rates under RoDTEP cover 8555 tariff lines in addition to similar support being extended to apparel and made-ups exports under RoSCTL scheme of Ministry of Textiles.
3. Employment Oriented Sectors like Marine, Agriculture, Leather, Gems & Jewellery etc. are covered under the Scheme. Other sectors like Automobile, Plastics, Electrical/Electronics, Machinery etc. also get support. The entire value chain of textiles also gets covered through RoDTEP & RoSCTL.

4. Rebate under the Scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.
5. The determination of ceiling rates under the scheme will be done by a Committee in the Department of Revenue/Drawback Division with suitable representation of the DoC/DGFT, line ministries and experts, on the sectors prioritized by Department of Commerce and Department of Revenue.
6. No provision for remission of arrears or contingent liabilities is permissible under the Scheme to be carried over to the next financial year.
7. The rebate allowed is subject to the receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999 failing which such rebate shall be deemed never to have been allowed. The rebate would not be dependent on the realisation of export proceeds at the time of issue of rebate. However, adequate safeguards to avoid any misuse on account of non-realisation and other systemic improvements as in operation under Drawback Scheme, IGST and other GST refunds relating to exports would also be applicable for claims made under RoDTEP Scheme.

Mechanism of Issuance of Rebate:

- (a) Scheme would be implemented through end to end digitalization of issuance of rebate amount in the form of a transferable duty credit/electronic scrip (e-scrip), which will be maintained in an electronic ledger by the Central Board of Indirect Taxes and Customs (CBIC).
- (b) Necessary rules and procedure regarding grant of RoDTEP claim under the scheme and implementation issues including manner of application, time period for application and other matters including export realisation, export documentation, sampling procedures, record keeping etc. would be notified by the CBIC, Department of Revenue on an IT enabled platform with a view to end to end digitalisation.
- (c) Necessary provisions for recovery of rebate amount where foreign exchange is not realised, suspension/withholding of RoDTEP in case of frauds and misuse, as well as imposition of penalty will also be built suitably by CBIC.

Eligible Sectors for RoDTEP Scheme:

The following sectors are eligible to avail of benefits under the scheme.

1. All sectors shall be covered under the scheme. Labour-intensive sectors will be accorded a priority.
2. Both manufacturer exporters and merchant exporters (traders) are eligible.
3. There is no turnover threshold for availing benefits under the scheme.
4. Re-exported products are not eligible under this scheme.
5. The exported products should have India as their country of origin to be eligible for benefits under the scheme.
6. Special Economic Zone Units and Export Oriented Units are also eligible.
7. The scheme also applies to goods that have been exported via courier through e-commerce platforms.

Ineligible categories under the Scheme for claiming benefit:

The following categories of exports/exporters which shall not be eligible for rebate under the RoDTEP Scheme:

- (i) Exports of imported goods as per para 2.46 of FTP i.e. Import for Export;
- (ii) Exports through trans-shipments, meaning thereby exports originating in third country but trans-shipped through India;
- (iii) Export products which are subject to minimum export price or export duty;
- (iv) Products which are restricted for exports under Schedule-2 of Export Policy in ITC (HS);
- (v) Products which are prohibited for exports under Schedule-2 of Export Policy in ITC (HS);
- (vi) Deemed Exports;
- (vii) Supplies of products manufactured by DTA units to SEZ/FTWZ units;
- (viii) Products manufactured in EHTP and BTP;
- (ix) Products manufactured partly or wholly in a warehouse under section 65 of Customs Act, 1962;
- (x) *Products manufactured or exported in discharge of export obligation against advance authorisation or Duty Free Import Authorization (DFIA) or Special Advance Authorisation issued under a duty exemption scheme of relevant Foreign Trade Policy;
- (x.) *Products manufactured or exported by a unit licensed as 100% Export Oriented Unit (EOU) in terms of the provisions of the Foreign Trade Policy;
- (xii) *Products manufactured or exported by any of the units situated in Free Trade Zone (FTZ), Export Processing Zones (EPZ) or Special Economic Zone (SEZ);
- (xiii) Products manufactured or exported availing the benefit of Notification No 32/1997- Customs dated 01.04.2017 (i.e. jobbing transactions);

- (xiv) Exports for which electronic documentation in ICEGATE EDI has not been generated or Exports from Non-EDI port; and
- (xv) Goods which have been taken into use after manufacture (i.e. second-hand goods);

[*** As per para 4.55B of the FTP (inserted vide DGFT Notification No. 19/2015-20, dated 17.08.2021), the inclusion of exports made by categories mentioned in Sr. No. X, XI and XII above i.e. the exporters under the categories of SEZ, EOU, Advance Authorisation etc. and the RoDTEP rates for export items under such categories would be decided later based on the recommendations of the RoDTEP Committee.]

RoDTEP v MEIS:

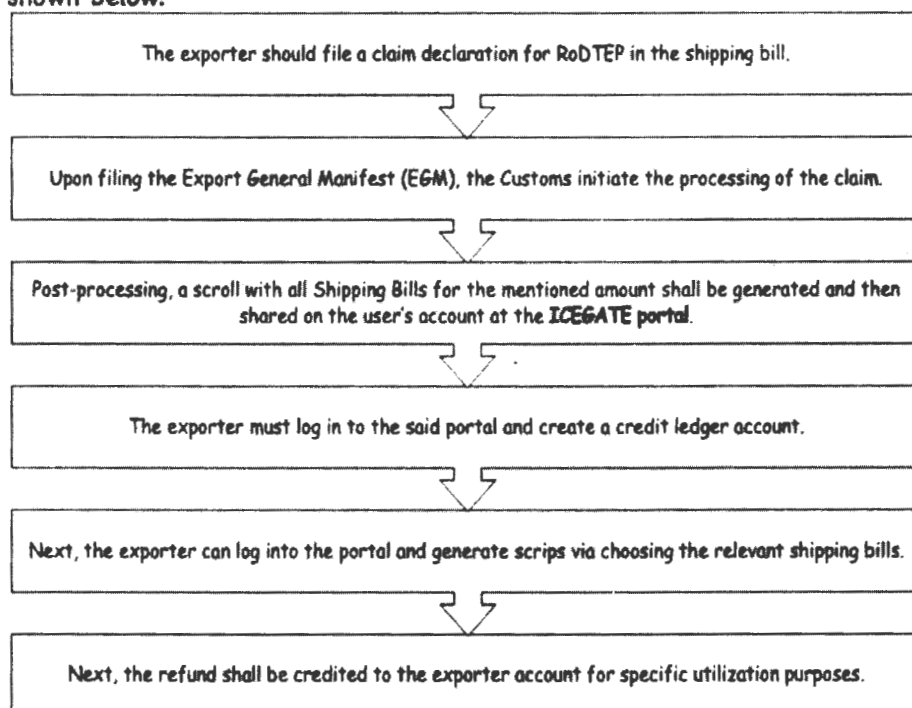
Feature	RODTEP	MEIS
Incentive Scheme	Refund of indirect taxes on inputs used in the manufacture of exported products that are not being currently reimbursed in any other existing schemes.	Incentive on exports of goods in form of transferable scrips
Mode of issue	Issued in the form of transferable duty credit/electronic scrip, which will be maintained in electronic ledger	Issued in the form of transferable scrips (physical copy)
WTO compliant	Yes. It is as per WTO norms	No
Incentive	At a notified rate as a percentage of Freight on Board (FOB) value. Rebate on certain export products will also be subject to value cap per unit of the exported product.	As a % of realised FOB value of exports in free foreign exchange or FOB value of exports as per shipping bill, whichever is lower.
Transferable	Transferable in open market	Transferable in open market

Utilisation of Duty Credit:

The created and approved Scrips can either be used for debiting Basic Customs Duty for own imports or the approved Scrip can be transferred to another IEC holder who is also created RODTEP Ledger under his log in Credentials

The current owner of the Scrip can use the scrip credits for debiting to his imports in the same manner in the past like all other scrips like MEIS, RoSCTL etc as in the past.

The process of generating and claiming scrips as per the RoDTEP scheme is shown below.



The common documents required for RoDTEP Scheme include—

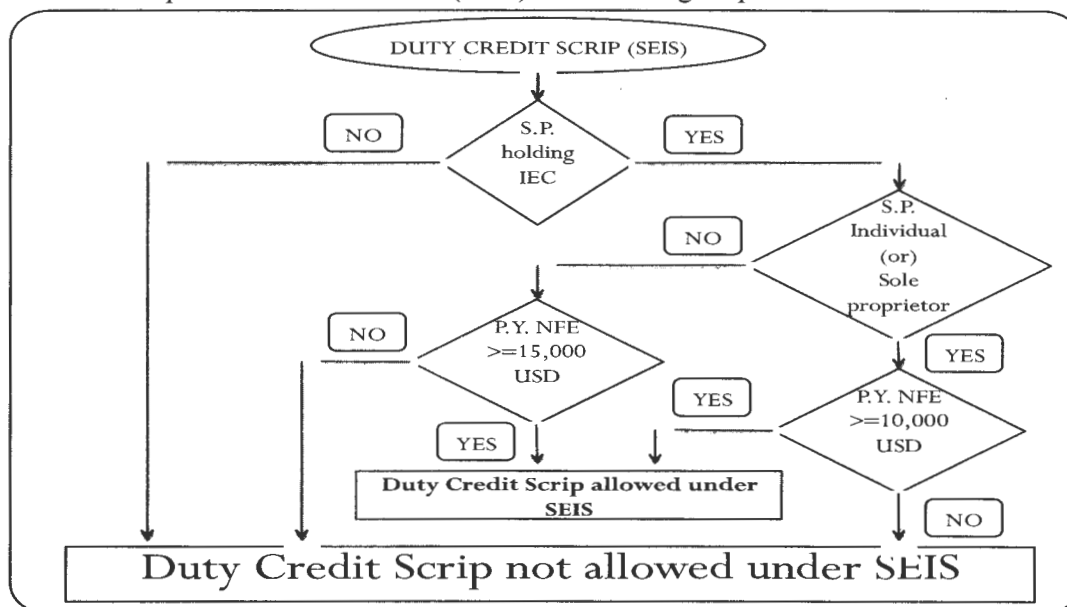
- Shipping bills,
- Digital Signature Certificate (DSC) – Class 3,
- Electronic Bank Realisation Certificate (eBRC), and
- RCMC Certificate.

Electronic Bank Realisation Certificate: An eBRC (electronic Bank Realisation Certificate) refers to a digital certificate for those engaged with the export business. It is granted by the designated bank as confirmation that the concerned exporter has received payment against the exports of goods or services.

Registration Cum Membership Certificate: As per the Foreign Trade Policy, a RCMC is required to avail benefits under the policy. The certificate mainly benefits the exporters and helps reduce immediate liabilities relating to shipping.

14.19 Service Export from India Scheme (SEIS)

Objective of Service Exports from India Scheme (SEIS) is to encourage export of notified Services from India.



S.P. = Service provider, P.Y. = Previous Year

NFE = Net Foreign Exchange

14.19.1 Net Foreign Exchange Earnings:

Particulars	Value in USD
Gross Earnings of Foreign Exchange	XXXX
Less: Payments made by IEC holder relating to service sector in the financial year	(xxxx)
Net Foreign Exchange Earnings (NFE)	Xxxx

Note:

- If exporter is a manufacturer of goods as well as service provider, then the foreign exchange earnings and Total expenses/payment shall be taken into account for service sector only.
- Foreign exchange earned through credit cards is counted for the purpose of computing the limit of minimum net foreign exchange required for being eligible to SEIS Scheme.

14.19.2 Ineligible categories under SEIS:

- Foreign exchange earnings from
 - Equity or debt participation
 - Donations
 - Receipts of repayment of loans
- Raising of all types of foreign currency Loans
- Export proceeds realization of clients
- Issuance of Foreign Equity through ADRs/GDRs or other similar instruments
- Issuance of foreign currency Bonds
- Sale of securities and other financial instruments

7. Other receivables not connected with services rendered by financial institutions.
8. Earned through contract/regular employment abroad (e.g. labour remittances)
9. Payments for services received from EEFC Account
10. Foreign exchange turnover by Healthcare Institutions like equity participation, donations etc.
11. Foreign exchange turnover by Educational Institutions like equity participation, donations etc. Under education services, SEIS shall not be available on Capitation fee.
12. Export turnover relating to services of units operating under EOU/EHTP/STPI/BTP Schemes or supplies of services made to such units.
13. Clubbing of turnover of services rendered by SEZ/EOU/EHTP/STPI/BTP units with turnover of DTA Service Providers
14. Exports of Goods
15. Foreign Exchange earnings for services provided by Airlines, Shipping lines service providers plying from any foreign country X to any foreign country Y routes not touching India at all.
16. Service providers in Telecom Sector.

Rate of SEIS Reward:

Appendix 3D of Foreign Trade Policy 2015-20 gives list of Notified Services & rate of reward on such services. There are two types of rates namely 3% and 5%. Many services are entitled for 5% duty credit scrip.

Calculation of Reward:

The reward under SEIS will be calculated at rate notified in Appendix 3D of Foreign Trade Policy 2015-20 and on Net Foreign Exchange Earned.

Payment in INR:

Payment in Indian Rupees for service charges earned on specified services shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India. The list of such services is indicated in Appendix 3E.

Procedure for getting SEIS:

- Online Application is to be filed in Form ANF 3B
- Application should be enclosed with CA/CMA/CS Certificate in the form specified.

Last date of filing of application for Duty Credit Scrips under SEIS shall be 12 months from the end of relevant financial year of claim period.

Example: M Pvt Ltd is provides services of Technical Testing & Analysis Services.

During F.Y. 2015-16, Gross earning in foreign exchange from providing of services is \$ 2 Million. (INR ₹12 Crore) from USA and \$ 1.5 Million. (INR ₹9 Crore) from Nepal & Bhutan. Payment made in foreign Currency on services received from abroad is \$ 50,000 (INR 30 lakhs) and purchase of Capital Equipment of \$ 1 million (INR 6 Crore).

Calculate eligibility of SEIS Scheme to M Pvt Ltd.

During F.Y. 14-15, Net Foreign Exchange Earning was \$ 2.5 Million.

Note: Reward for export of Technical Testing & Analysis Services is 3%

Answer:

SEIS Reward available to M Pvt. Ltd., for F.Y. 15-16 would be ₹44.10 lakhs

[i.e. $(12+9) - (0.3+6) \times 3\%$].

14.20 Common Provisions applicable for both the schemes (MEIS & SEIS):

- (i) The following duties and taxes are allowed as CENVAT Credit, if paid by utilizing Duty Credit Scrip:

- (i) Additional Customs duties (CVD & Spl. CVD).
- (ii) Excise duty.
- (iii) Service Tax

Note: Basic Customs duty paid by utilizing duty credit scrip shall be adjusted for Duty Drawback.

MEIS & SEIS is not allowed as ITC against GST liability. It means GST has to pay without adjustment of MEIS & SEIS.

- (ii) Transfer of export performance from one IEC hold to another IEC holder shall not be permitted. Thus, a shipping bill containing name of applicant shall be counted in export performance/turnover of applicant only if export proceeds from overseas are realized in applicant's bank account and this shall be evidenced from e-BRC/FIRC.
- (iii) However, MEIS rewards can be claimed either by the supporting manufacturer (along with disclaimer from the company/firm who has realized the foreign exchange directly from overseas) or by the company/firm who has realized the foreign exchange directly from overseas.
- (iv) Utilization of Duty Credit Scrip shall be permitted for payment of duty in case of import of capital goods under lease financing.

- (v) Duty Credit Scrip can be utilised/debited for payment of Custom Duties in case of EO defaults for Authorizations. However, penalty/interest shall be required to be paid in cash.
- (vi) Duty Credit Scrip under MEIS & SEIS will be valid for 18 months from the date of issue and must be valid on the date on which actual Debit of duty is made.
- (vii) Incentives of MEIS & SEIS are available to units located in SEZs also.

Example 1: Examine whether benefit of Service Exports from India Scheme (SEIS) can be availed with respect to notified services provided by service providers located in India in the current financial year in the following independent cases:

- (a) Net Foreign Exchange (NFE) earned by Mr. Raj, a service provider, in the preceding financial year is USD 4,500.
- (b) X & Co., is a partnership firm, supplier of taxable services, has earned net foreign exchange to the tune of USD 17,500 in the preceding financial year.
- (c) Mr. Roshan, a service provider, has earned net foreign exchange of USD 13,000 in the preceding financial year. Out of this, USD 4,000 has been paid to Mr. Roshan through the credit card of the foreign client.

Note: all the above services providers have an active IEC at the time of rendering services.

Answer:

- (a) Mr. Raj is not eligible for SEIS Scheme as his net foreign exchange earnings are less than USD 10,000 (minimum limit for individuals).
- (b) X & Co., being a partnership firm eligible for SEIS Scheme as their net foreign exchange exceeds the limit of USD 15,000 (minimum limit for firms).
- (c) Foreign exchange earned through credit cards is counted for the purpose of computing the limit of minimum net foreign exchange required for being eligible to SEIS Scheme. Thus, Mr. Roshan is eligible for SEIS Scheme.

Example 2: George Inc., a US based company, sought architectural services from ABC India Pvt. Ltd. with regard to its newly established business in New York in April 2015. ABC India Pvt. Ltd. charged US \$50,000 as a consideration for the architectural services provided to George Inc. In addition, ABC India Pvt. Ltd., also exported goods worth US \$15,000 to George Inc. and received the entire consideration of US \$65,000 on 28-04-2015.

Discuss the eligibility of ABC India Pvt. Ltd., for duty credit scrip entitlement under the Service Exports from India Scheme (SEIS).

Notes:

- (i) ABC India Pvt Ltd., has an active Importer Exporter Code (IEC) at the time of rendering such services.
- (ii) Net Foreign Exchange earnings of ABC India Pvt Ltd., in the financial year 2014-15 are US \$16,000.
- (iii) Notified rate of reward for architectural services is 5%

Will your answer be different if ABC India Pvt. Ltd. had provided telecom services to George Inc.?

Answer:

Duty credit scrip entitlement of ABC India Pvt. Ltd. is 5% of US \$ 50,000 i.e., US \$ 2,500.

Further, if ABC India Pvt. Ltd. had provided telecom services to George Inc., it would not have been eligible for the duty credit scrip entitlement under the SEIS.

Example 3: XYZ Co. Ltd., Delhi, with an active IEC, has provided research and development services on natural sciences* to a US based company in the current financial year. It has earned net foreign exchange to the tune of USD 14,000 in the preceding financial year. Can XYZ Co. Ltd. avail the benefit of Service Exports from India Scheme (SEIS) with respect to services provided by it?

*notified for availing benefit under Service Exports from India Scheme (SEIS)

Answer: For availing SEIS by a person (other than individual or sole proprietor) need to fulfil minimum NFE is 15,000 USD.

In the given case XYZ & Co. Ltd. Delhi is not entitled to avail the SEIS, since, their NFE in the preceding previous year is 14,000 USD only.

Levy and collection of Social Welfare Surcharge (SWS) on imports under various schemes such as Merchandise Exports from India Scheme (MEIS), Services Exports from India Scheme (SEIS) etc. vide CBIC Circular No. 02/2020-Customs, dated 10th January, 2020:

Social Welfare Surcharge (SWS) cannot be debited through duty credit scrips and therefore has to be paid by the importer in cash.

14.21 Status holders

Business leaders who have excelled in international trade and have successfully contributed to country's foreign trade are proposed to be recognized, as Status Holders and given special treatment and privileges to facilitate their trade transactions, in order to reduce their transaction costs and time.

All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder

An applicant shall be categorized as status holder upon achieving export performance during current and previous two financial years, as indicated below:

Status category	Export Performance FOB/FOR (as converted) Value (in US \$ Million) during current year and two previous years
One Star Export House	3
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2000

Note: One million = 10 lakh

Important points:

- FOR Value (i.e. deemed export) of exports in India Rupees shall be converted in US\$ at the exchange rate notified by CEBC, as on 1st April of each Financial Year.
- For granting status, export performance is necessary in at least 2 out of 3 years.
- Grant of double weightage while calculating export performance is given to exporters who seeks One Star Export House status under the following categories:
 - Micro, Small & Medium Enterprises (MSME)
 - Manufacturing units having ISO/BIS
 - Units located in North Eastern States and Jammu & Kashmir
 - Units located in Agri Export Zones.

A shipment can get double weightage only once in any one of above categories. It means a shipment can be included in one of categories indicated above only once.

- Exports made on re-export basis shall not be counted for recognition.
- Export of items under authorization, including Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) items, would be included for calculation of export performance.
- Status Certificates issued under this FTP shall be valid for a period of 5 years from the date on which application for recognition was filed.

14.21.1 Benefits to Status holders

- Authorisation and Customs Clearances for both imports and exports may be granted on self- declaration basis;
- Fixation of Input Output Norms (SION) on priority by the Norms Committee i.e. within 60 days.
- Exemption from compulsory negotiation of documents through banks. The remittance receipts, however, would continue to be received through banking channels by way of e-BRC by DGFT.
- Exemption from furnishing of Bank Guarantee in Schemes under FTP.
- Two Star Export Houses and above are permitted to establish export warehouses.
- Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBIC.
- Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of ₹10 lakh (w.e.f. 23rd Aug 2017 ₹1 Crore) or 2% of average annual export realization during preceding 3 licensing years, whichever is higher.

The free of cost supplies made under provisions of free of cost basis shall not be entitled to **Duty Drawback** or any other export incentive under any export promotion scheme.

Removal of limit of ₹1 crore per year for exports on Free of Cost Exports basis for export promotion for Status Holders: It means that the limit of ₹1 Crore per year for exports on free of cost exports basis for export promotion for Status Holders is removed and is made 2% of average annual export realization during preceding three licensing years. [Notification No. 28/2015-20 dated 27.08.2018]

- Manufacturer exporters who are also Status Holders shall be eligible to self-certify their goods as originating from India.

Example 1: From the following identify correct category for grant of status certificate to X Ltd:

Type of Exports in US \$	Current Year (From April - Oct)	Previous Year 1	Previous Year 2
1. Exports of goods without Weightage US\$	1,25,000	11,00,000	5,80,000
2. Exports of services without Weightage US\$	1,55,000	4,20,000	3,95,000
3. FOR value for Deemed Exports (₹)	50,00,000	1,25,00,000	1,20,00,000

Exchange rate notified by the CBIC as on 1st April 2019, 1st April 2020 and 1st April 2021 is ₹55/USD, ₹58/USD and ₹60/USD respectively.

Answer: Statement showing exports for shipments during last two years and current year up to 31st October:

Type of Exports in US \$	Current Year in US \$ (From April - Oct)	Previous Year 1 in US \$	Previous Year 2 in US \$
1. Exports of goods without Weightage	1,25,000	11,00,000	5,80,000
2. Exports of services without Weightage	1,55,000	4,20,000	3,95,000
3. FOR value for Deemed Exports US\$	83,333.33	2,15,517.24	2,18,181.82
TOTAL	3,63,333.33	17,35,517.24	11,93,181.82

X Ltd. export performance as on the date of application made to RA/Development Commissioner (DC) is US\$ 3.292 Million (i.e. 32,92,032.39 US\$/10,00,000). Therefore, X Ltd is eligible for One Star Export House status.

Example 2: X Pvt. Ltd., being a by Micro, small & medium enterprises (MSME) manufactured and exported packing material to USA. Other information is as follows:

S. No.	Category of exports	FOB value US\$ in the current year (April to June)	FOB value US\$ in the Previous Year 1	FOB value US\$ in the Previous Year 2
1.	Export of goods as MSME	50,000	20,00,000	Nil
2.	Manufacturing units having ISO/BIS	Nil	Nil	5,00,000

Find whether X Pvt. Ltd., is eligible for double weightage? If yes identify its export status?

Answer:

S. No.	Category of exports	FOB value US\$ in the current year (April to June)	FOB value US\$ in the Previous Year 1	FOB value US\$ in the Previous Year 2
1.	Export of goods as MSME	50,000	20,00,000	Nil
2.	Manufacturing units having ISO/BIS	Nil	Nil	5,00,000
	Total FOB	50,000	20,00,000	5,00,000
	FOB Value of Exports with Double Weightage (US\$) = [2 X Total FOB Value]	1,00,000	40,00,000	10,00,000

X Pvt. Ltd., achieved export turnover of US\$ 5.10 Million by applying double weightage. Therefore, X Pvt. Ltd., can apply for One Star Export House status.

Example 3: X Pvt. Ltd., (One Star Export House) wanted to export general goods (i.e. export freely without any restriction or prohibition) worth ₹25 lakhs on free of cost basis for export promotion to USA.

Particulars	Current Year (From April - Oct)	Previous Year 1	Previous Year 2	Previous Year 3
Annual Export realization (INR)	9,11,25,000	1,11,00,000	10,80,00,000	8,15,80,000

Whether X Pvt. Ltd., can export goods on free of cost basis, if so what amount. Advise.

Answer: X Pvt. Ltd. being a status holder can export freely exportable items on free of cost basis for export promotion maximum of:

₹10,00,000 or ₹13,37,867.

Therefore, maximum value of export at free of cost is ₹13,37,867.

Working note:

$[(1,11,00,000 + 10,80,00,000 + 8,15,80,000)/3] \times 2\% = ₹13,37,867$

14.22 Export Promotion Capital Goods (EPCG) Scheme

This scheme permits exporter to procure capital goods at concessional rate of customs duty/zero customs duty in return exporter is under an obligation to fulfill the export obligation.

Authorization shall be valid for 18 months from the date of issue of Authorization.

Import of capital goods shall be subject to 'Actual User' condition till export obligation is completed. After export obligation is completed, capital goods can be sold or transferred.

Export Obligation:

Export obligation means obligation to export product(s) covered by Authorisation/permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority. Export obligation consists of average export obligation and specific export obligation.

Specific Export Obligation (Specific EO) for such EPCG Authorizations would be 6 times of duty saved on capital goods to be fulfilled in 6 years reckoned from the date of issue of authorization.

Duty Saved Amount:	₹
Effective duty under Project Imports	Xxxx
Less: Concessional duty under the EPCG Scheme	(xx)
Duty Saved amount	Xxxx

In case of indigenous sourcing of capital goods, specific EO shall be 25% less than the EO mentioned above, i.e. EO will be 4.5 times (75% of 6 times) of duty saved on such goods procured.

Average Export Obligation (Average EO) means is the average level of exports made by the applicant in the preceding 3 licensing years for the same and similar product. It has to be achieved within the overall EO period (i.e. within 6 years reckoned from the date of issue of authorization).

In cases where Authorization holder has fulfilled 75% or more of specific export obligation and 100% of Average Export Obligation till date, if any, in half or less than half the original export obligation period specified, remaining export obligation shall be condoned, and the Authorization redeemed.

Shipments under Advance Authorisation, DFIA, Drawback scheme, or reward schemes; would also be counted for fulfillment of EO under EPCG Scheme.

EO can also be fulfilled by the supply of Information Technology Agreement (ITA-1) items to DTA, provided realization is in free foreign exchange.

Both physical exports as well as specified deemed exports shall also be counted towards fulfillment of export obligation.

In case the Authorization Holder wants to export through a third party, export documents viz., shipping bills/ Bill of exports etc. shall indicate name of both authorization holder and supporting manufacturer, if any, along with EPCG authorization number. BRC, GR declaration, export order and invoice should be in the name of third party exporter. The goods exported through third party should be manufactured by the EPCG Authorisation Holder or the supporting manufacturer where the capital goods imported under the authorisation have been installed.

Amendments in FTP w.e.f. 13th October 2017:

Exemption from GST and Goods and Service Tax Compensation cess in respect of imports under the Advance Authorization (AA)/Export Promotion Capital Goods (EPCG) from abroad as well as domestic suppliers. The GST Council recommended that the holders of AA/EPCG and EOUs would not have to pay IGST, Cess etc. on imports and Also, domestic supplies to holders of AA/EPCG and EOUs would be treated as deemed exports under Section 147 of CGST/SGST Act and refund of tax paid on such supplies given to the supplier.

Customs Notification 79/2017, dated 13th October, 2017 and DGFT's Notification No. 33/2015-2020 contain provisions regarding exemption from GST on imports made under the Duty exemption Schemes.

"Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only", and not for deemed exports under the Foreign Trade Policy.

Further the exemption from integrated tax and Goods and Service tax compensation cess leviable under sub-section (7) and sub-section (9) of the Section 3 of the Customs Tariff Act is available only upto 31st March, 2018.

14.23 Post Export EPCG Duty Credit Scrip(s):

Under this scheme, capital goods are imported on full payment of applicable duties in cash. Later, basic customs duty paid on Capital Goods is remitted in the form of freely transferable duty credit scrip(s) and it can be utilized in the similar manner as the scrip's issued under reward schemes.

Specific EO shall be 85% of the applicable specific EO stipulated under EPCG scheme. Average EO remains unchanged.

Duty Drawback can be claimed for the duties paid like CVD & Spl. CVD paid on import of capital goods provided CENVAT Credit not availed.

The following are eligible for EPCG Scheme:

1. Manufacturer exporters with or without supporting manufacturer(s),
2. Merchant exporters tied to supporting manufacturer(s), and
3. Service providers including service providers designated as Common Service Provider (CSP) subject to prescribed conditions.

Note: "Common Service Provider" (CSP) means a service provider who is designated or certified as a Common Service Provider by the DGFT, Department of Commerce or State Industrial Infrastructural Corporation in a Town of Export Excellence;

Eligible capital goods for import under EPCG Scheme:

1. Capital Goods including capital goods in CKD/SKD condition
2. Computer software systems
3. Spares, moulds, dies, jigs, fixtures, tools & refractories for initial lining and spare refractories
4. Capital goods for Project Imports notified by CBIC.

Ineligible capital goods for import under EPCG Scheme:

1. Secondhand capital goods
2. Power Generator Sets

Example 1: Tarun Pvt. Ltd., a manufacturer, wants to import capital goods in CKD condition from a foreign country and assemble the same in India. The import of the capital goods will be under Project Imports. The capital goods will be used for pre-production processes. The final products of Tarun Pvt. Ltd. would be supplied in SEZ. Tarun Pvt. Ltd. wishes to sell the capital goods imported by it as soon as the production process starts. Tarun Pvt. Ltd. seeks your advice whether it can avail the benefit of EPCG Scheme for importing the intended capital goods.

Note: Assume that all other conditions required for being eligible to the EPCG Scheme are fulfilled in the above case. (CA Final May 2015 RTP)

Answer:

Export Promotion Capital Goods Scheme (EPCG) permits exporters to procure capital goods at concessional rate of customs duty/zero customs duty. In return, exporter is under an obligation to fulfill the export obligation. Export obligation means obligation to export product(s) covered by Authorization/permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority.

Exports to SEZ unit/developer/co-developer will be considered for discharge of export obligation of EPCG Authorization, irrespective of currency.

The license holder can either procure the capital goods (whether used for pre-production, production or post-production) from global market or domestic market. The capital goods can also be imported in CKD/SKD to be assembled in India.

An EPCG Authorization can also be issued for import of capital goods under Scheme for Project Imports'.

Export obligation for such EPCG Authorizations would be 6 times of duty saved.

Duty Saved Amount:	₹
Effective duty under Project Imports	Xxx
Less: Concessional duty under the EPCG Scheme	(xxx)
Duty Saved amount	xxxx

However, import of capital goods is subject to 'Actual User' condition till export obligation is completed.

Therefore, based on the above discussion, Tarun Pvt. Ltd. can import the capital goods under EPCG Scheme.

However, it has to make sure that it does not sell the capital goods till the export obligation is completed.

Example 2: X Ltd., imported a machine from USA under EPGC Scheme with zero customs duty in the financial year 2020-21 for production of product 'P'.

Customs duty otherwise payable is ₹20 lakhs. Find the specific export obligation and average export obligation.

Exports of finished goods 'P' in the preceding 5 licensing years are as follows:

Particulars	2019-20	2018-19	2017-18	2016-17	2015-16
FOB value of exports in INR	80 lakhs	72 lakhs	45 lakhs	50	25

Answer: Specific Export Obligation is ₹120 lakhs. It means capital goods imported under EPCG scheme should produce finished goods worth ₹120 lakhs for export over a period of 6 years reckoned from the date of issue of Authorization.

Average Export Obligation is ₹65.67 lakhs. It has to be achieved within the overall EO period (i.e. within 6 years reckoned from the date of issue of authorization).

Export obligation consists of average export obligation and specific export obligation. Hence, to redeem export obligation both specific and average export obligation should be fulfilled.

14.24 EOU, EHTP, STP & BTP:

These units may import or procure from DTA without payment of duty provided they are not prohibited items.

w.e.f. 1-7-2017 100% EOU will not get *ab initio* exemption of IGST for imports. In GST regime, EOUs will have to pay IGST on imports. Refund of Input Tax Credit (ITC) can be taken after exports as per ITC/Refund Rules.

Amendments in FTP w.e.f. 13th October 2017:

Customs notification 79/2017, dated 13th October 2017 and DGFT's Notification No. 33/2015-2020 contain provisions regarding exemption from GST on imports made under the Duty exemption Schemes.

Exemption from GST and Goods and Service Tax Compensation cess in respect of imports under the Advance Authorization (AA)/Export Promotion Capital Goods (EPCG) from abroad as well as domestic suppliers. The GST Council recommended that the holders of AA/EPCG and EOUs would not have to pay IGST, Cess etc. on imports and Also, domestic supplies to holders of AA/EPCG and EOUs would be treated as deemed exports under Section 147 of CGST/SGST Act and refund of tax paid on such supplies given to the supplier.

“Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only”, and not for deemed exports under the Foreign Trade Policy.

Further the exemption from integrated tax and Goods and Service tax compensation cess leviable under sub-section (7) and sub-section (9) of the Section 3 of the Customs Tariff Act is available only upto 31st March, 2018.

EOU scheme is administered by Ministry of Commerce and Industry, while EHTP, STP & BTP schemes are administered by their respective administrative ministries. STP/EHTP Scheme is administered by Ministry of Information Technology. Bio Technology Park (BTP) is established on the recommendation of Department of Biotechnology.

Trading units are not covered under these schemes.

Only projects having a minimum investment of ₹1 crore in plant & machinery shall be considered for establishment as EOUs. However, Board of Approvals (BoA) may allow establishment of EOUs with a lower investment criteria also.

Approval for setting up of units under EOU scheme shall be granted by the Units Approval Committee within 15 days as per prescribed criteria. In other cases, approval may be granted by Board of Approval (BoA) set up for this purpose.

On approval, concerned authority will issue a Letter of Permission (LoP)/Letter of Intent (LoI) which will have initial validity of 2 years (extendable by 2 years and further extension, if necessary, by BoA), by which time unit should have commenced production.

14.24.1 Positive Net Foreign Exchange (NFE) earnings:

EOU/EHTP/STP/BTP unit must be a positive net foreign exchange earner.

NFE Earnings shall be calculated cumulatively in blocks of 5 years, starting from commencement of production.

Items of manufacture for export specified in LoP/LoI alone shall be taken into account for calculation of NFE.

$$\text{Positive NFE} = A - B > 0$$

‘A’ is FOB value of exports;

‘B’ is CIF value of imported inputs, Capital goods and value of all payments made in foreign exchange by way of commission/royalty etc. plus goods are obtained from another EOU/SEZ/international exhibition held in India or bonded warehouses

In case units not able to achieve NFE due to any reason 5 years block period, may be extended suitably by BoA. In case of adverse market conditions 5 years period can be extendable up to 1 year.

Units Approval Committee shall monitor performance of EOU's with regard to NFE earnings.

The following sales to DTA can be counted for positive NFE:

- (a) Supplies in DTA to holders of Advance Authorization/Advance Authorization for annual requirement/DFIA under duty exemption/remission scheme/EPCG scheme subject to certain exceptions.

- (b) Supplies affected in DTA against foreign exchange remittance received from overseas.
- (c) Supplies to other EOU/EHTP/STP/BTP/SEZ units.
- (d) Supplies made to bonded warehouses set up under FTP and/or under section 65 of Customs Act and Free Trade and Warehousing Zones (FTWZ), where payment is received in foreign exchange.
- (e) Supplies of goods and services to such organizations which are entitled for duty free import of such items in terms of general exemption notification issued by MoF.
- (f) Supplies of Information Technology Agreement (ITA-1) items and notified zero duty telecom/ electronics items.
- (g) Supplies of items like tags, labels, printed bags, stickers, belts, buttons or hangers to DTA unit for export.

14.24.2 Benefits to EOU/EHTP/STP/BTP units:

- (i) Exemption from industrial licensing for manufacture of items reserved for SSI sector.
- (ii) Export proceeds will be realized within 9 months.
- (iii) Units will be allowed to retain 100% of its export earnings in the EEFC account.
- (iv) Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, subject to fulfilment of required conditions.
- (v) 100% FDI investment permitted through automatic route like SEZ units.

14.24.3 Sales to DTA units

Up to 50% of FOB value of exports (including sales made to SEZ unit from Foreign Exchange Account of such unit), subject to fulfillment of positive NFE, on payment of concessional duties.

In case of units manufacturing and exporting more than one product, sale of any of these products into DTA, up to 90% of FOB value of export of the specific products is permitted, provided total DTA sales does not exceed the overall entitlement of 50% of FOB value of exports for the unit.

In case of new EOUs, advance DTA sale will be allowed not exceeding 50% of its estimated exports for first year (2 years for pharmaceutical units).

Example: With reference to the provisions relating to Export Oriented Unit (EOU) Scheme as contained in Foreign Trade Policy, answer the following questions:

- (i) An EOU has started production after 4 years 10 months from the date of grant of Letter of Permission (LoP). Is it correct?
- (ii) A unit intending to trade in handicrafts wants to set up an EOU. Is it allowed?

Answer:

- (i) On approval, concerned authority will issue a Letter of Permission (LoP)/Letter of Intent (LoI) which will have initial validity of 2 years (extendable by 2 years and further extension, if necessary, by BoA), by which time unit should have commenced production.

In the given can EOU commenced production after 4 years 10 months from the date of LoP without obtaining extension. Hence, the given statement is incorrect.

- (ii) Trading unit cannot setup an EOU. Manufacturing units (i.e. make in India) can set up an EOU.

14.25 Deemed Exports

Goods manufactured in India and supplies from DTA to EOU, EHTP, STP & BTP units will be regarded as deemed exports and DTA supplier shall be eligible for export incentives.

The following supplies considered as deemed exports:

Goods supplied by a manufacturer:

1. Supply of goods against Advance Authorisation/Advance Authorisation for Annual Requirement/ DFIA.
2. Supply of goods to units located in EOU/STP/BTP/EHTP.
3. Supply of capital goods against EPCG authorization.
4. Supply of marine freight containers by 100% EOU provided said containers are exported within 6 months by another 100% EOU.

Goods supplied by a Main contractor/sub-contractor:

1. Supply of goods to projects or turnkey contracts financed by multilateral or bilateral agencies/Funds notified by Department of Economic Affairs (DEA), under International Competitive Bidding.
2. Supply of goods to any project where import is permitted at zero customs duty.
3. Supply of goods to mega power projects against International Competitive Bidding.
4. Supply to goods to UN or international organisations.
5. Supply of goods to nuclear projects through competitive bidding (need not be international competitive bidding).

BENEFITS FOR DEEMED EXPORTS

Deemed exports shall be eligible for any/all of following benefits:

1. Advance Authorisation/Advance Authorisation for Annual requirement/DFIA
2. Deemed Export Drawback
3. Domestic supplies to EOUs would be treated as deemed exports under Section 147 of CGST/SGST Act and refund of tax paid on such supplies given to the supplier (Customs notification 79/2017, dated 13th October 2017 and DGFT's Notification No. 33/2015-2020).

14.26 Special Economic Zone

The provisions relating to SEZ are contained in Special Economic Zone Act, 2005 and SEZ Rules, 2006.

- SEZs are like a separate island within territory of India.
- SEZs are projected as duty free area for the purpose of trade, operation, duty and tariffs.
- Goods and services coming to SEZ units from domestic tariff area are treated as exports from India and goods and services rendered from SEZ to the DTA are treated as import into India.

Any proposal for setting up of SEZ unit in the Private/Joint/State Sector is routed through the concerned State government who in turn forwards the same to the Department of Commerce with its recommendations for consideration.

The following incentives offered to the units in SEZ:

- (a) Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units.
- (b) Single window clearance for Central and State level approvals.
- (c) Exemption from State sales tax and other levies as extended by the respective State Governments.
- (d) "In order to give a boost to exports from SEZs, government has now decided to extend benefits of both the reward schemes (MEIS and SEIS) to units located in SEZs.
- (e) SEZs have been exempted from payment of IGST on imports. Supplies to SEZs by DTA units also exempted from IGST (i.e. zero-rated supply).

Example: With reference to the provisions of Foreign Trade Policy 2015-2020, discuss, giving reasons, whether the following statements are true or false:

- (i) If any doubt arises in respect of interpretation of any provision of FTP, the said doubt should be forwarded to CBIC. Decision of CBIC thereon would be final and binding.
- (ii) Waste generated during manufacture in an SEZ Unit can be freely disposed in DTA on payment of applicable customs duty, without any authorization. (CA Final May 2015 RTP)

Answer:

- (i) False. If any question or doubt arises in respect of interpretation of any provision of the FTP, said question or doubt ought to be referred to DGFT whose decision thereon would be final and binding.
- (ii) True. Any waste or scrap or remnant including any form of metallic waste & scrap generated during manufacturing or processing activities of an SEZ Unit/Developer/Co-developer are allowed to be disposed in DTA freely, without any authorization, subject to payment of applicable customs duty.

14.27 FTP and GST

As per DGFT Trade Notice No. 9/2017, dated 12-6-2017 the provisions are as follows:

The Foreign Trade (Development & Regulation) Act, 1992 provides that no person shall make any import or export except under an Importer Exporter Code (IEC) number, granted by the Director General of Foreign Trade or the officer authorized by the Director General in this behalf.

It means, a 10-digit IEC number, is mandatory for undertaking any import export activities.

With the implementation of the Goods and Services Tax (GST) w.e.f. 1st July 2017, GSTIN would be used for purpose of

- (i) credit flow of IGST on import of goods and
- (ii) refund or rebate of IGST related to export of goods.

14.28 GSTIN or PAN in place of Importer Exporter Code (IEC):

As GSTIN will be used for the purposes mentioned above, it thereby assumes importance as identifier at the transaction level. In view of this, it has been decided that importer/exporter would need to declare only GSTIN (wherever registered with GSTIN) at the time of import and export of goods. The PAN level aggregation of data would automatically happen in the system.

Since obtaining GSTIN is not compulsory for all importers/exporters below a threshold limit of turnover, all exporters/importers may not have registered with GSTIN, barring compulsory registration in certain cases, it has been further decided, with the implementation of GST, to use PAN of an entity for the purpose of IEC (not individual transactions).

As a measure of ease of doing business, it has been decided to keep the identity of an entity uniform across the Ministries/Departments. Henceforth, (i.e. after introduction of GST w.e.f. 01-07-2017) PAN of an entity will be used for the purpose of IEC, i.e. IEC will be issued by DGFT with the difference that it will be alpha numeric (instead of 10-digit numeric at present) and will be same as PAN of an entity. For new applicants, w.e.f. 1-7-2017 the application for IEC will be made to DGFT and applicant's PAN will be authorised as IEC. For residuary categories, the IEC will be either Unique Identity Number issued by GSTIN and authorized by DGFT or any common number to be notified by DGFT.

Further, the legacy data, which is based on IEC, would be converted into PAN based in due course of time.

Penalties:

In case any exporter or importer in the country violates any provision of the Foreign Trade Policy, the office of DGFT can cancel his IEC number and thereupon that exporter or importer would not be able to transact any business in export or import.