

This column is compiled by Consultant [EXIM Policy] of EPCH. It contains recent Public Notices, Notifications and Circulars of DGFT, CBIC and Department of Revenue. If a handicraft exporter has question[s] to ask on Foreign Trade Policy, he/she may please write / e-mail to EPCH at policy@epch.com

Impex # 1

RBI further enhances ease of doing business in exports

RBI issues circular improving upon four existing measures to further enhance ease of doing business in exports.

One way to increase ease of doing in any business and reduce transaction cost in it is by introducing new facilitation measures or by improving the existing measures. RBI has been constantly doing it wherever possible.

Now RBI has issued a Circular No. 8 Dt 04.12.2020 improving upon four measures as detailed below:

1. Direct Dispatch of Shipping Documents.
2. "Write-off" of unrealized export bills.
3. Set-off of export receivables against import payables.
4. Refund of export proceeds.

The details of the extent of liberalization on the four measures have been given in the RBI circular DT 04.12.2020 referred to above (copy given below)

External Trade - Facilitation - Export of Goods and Services

Please refer to the Statement on Development and Regulatory Polices announced as part of Bi-monthly Monetary Policy Statement dated December 4, 2020. With a view to further enhance the ease of doing business and quicken the approval process, it has been decided to delegate more powers to the Authorised Dealer Category - I banks (AD banks) in the following areas:

1. Direct Dispatch of Shipping Documents

- 1.1 In terms of Paragraph 2 of A.P.(DIR Series) Circular No.6 dated August 13,2008,AD banks have been allowed to regularise cases of dispatch of shipping documents by the exporter direct to the consignee or his agent resident in the country of the final destination of goods, up to USD 1 million or its equivalent per export shipment.
- 1.2 With a view to simplify the procedure, it has been decided to do away with the limit of USD 1 million per export shipment.
- 1.3 Accordingly, AD banks may regularize such direct dispatch of shipping documents irrespective of the value of export shipment, subject to following conditions:
 - a. The export proceeds have been realized in full except for the amount written off, if any, in accordance with the extant provisions for write off.
 - b. The exporter is a regular customer of AD bank for a period of at least six months.
 - c. The exporter's account with the AD bank is fully compliant with Reserve Bank's extant KYC / AML guidelines.
 - d. The AD bank is satisfied about the bonafides of the transaction.

2. "Write-off" of unrealized Export bills

- 2.1 Attention is invited to A.P. (DIR. Series) Circular No. 88 dated March 12, 2013 on "write-off" of unrealized export bills. To provide greater flexibility to the AD banks and to reduce the time taken for according such approvals, the extant procedure is revised as under:

Particulars	Limit	Limit (%) In relation to
Self-write-off by an exporter (Other than the Status Holder Exporter)	5%	Total export proceeds realized during the calendar year preceding the year in which the write-off is being done
Self-write-off by Status Holder Exporter	10%	
Write-off by AD Category-1 Bank	10%	

- 2.2 The above limits of self-write-off and write-off by the AD bank shall be reckoned cumulatively and shall be available subject to the following conditions:
- a) The relevant amount has remained outstanding for more than one year;
 - b) Satisfactory documentary evidence is furnished indicating that the exporter had made all efforts to realise the export proceeds;
 - c) The exporter is a regular customer of the bank for a period of at least 6 months, is fully compliant with KYC/AML guidelines and AD Bank is satisfied with the bonafides of the transaction.
 - d) The case falls under any of the undernoted categories:
 - i. The overseas buyer has been declared insolvent and a certificate from the official liquidator, indicating that there is no possibility of recovery of export proceeds, has been produced.
 - ii. The unrealized amount represents the balance due in a case settled through the intervention of the Indian Embassy, Foreign Chamber of Commerce or similar Organization;
 - iii. The goods exported have been auctioned or destroyed by the Port / Customs / Health authorities in the importing country;
 - iv. The overseas buyer is not traceable over a reasonably long period of time.
 - v. The unrealized amount represents the undrawn balance of an export bill (not exceeding 10% of the invoice value) remaining outstanding that turned out to be unrealizable despite all efforts made by the exporter;
 - vi. The cost of resorting to legal action would be disproportionate to the unrealized amount of the export bill or where the exporter even after winning the Court case against the overseas buyer could not execute the Court decree due to reasons beyond his control;
 - vii. Bills were drawn for the difference between the letter of credit value and actual export value or between the provisional and the actual freight charges but the amounts have remained unrealized consequent to dishonor of the bills by the overseas buyer with no prospects of realization.
- 2.3 Notwithstanding anything contained in para 2.1 and 2.2 above, the AD bank may, on request of the exporter, write-off unrealised export bills without any limit in respect of cases falling under any of the categories specified at 2.2 (d) (i), (ii) and (iii) above provided AD bank is satisfied with the documentary evidence produced.
- 2.4 AD banks may also permit write-off of outstanding amount of export bills up to the specified ceilings indicated in para 2.1 above, where the documents have been directly dispatched by the exporter to the consignee or his agent resident in the country of final destination of goods if the case falls under any of the categories specified at 2.2 (d) (i), (ii) and (iii) above.
- 2.5 The AD bank shall ensure that the exporter seeking write-off has submitted documentary evidence towards surrendering of proportionate export incentives, if any, availed of in respect of the relative export bill.
- 2.6 In case of self-write off, the AD bank shall obtain from the exporter, a certificate from Chartered Accountant indicating the export realization in the preceding calendar year and details of the amount of write-off, if any, already availed of during the current calendar year along with the requisite details of the EDF/Export Bill under the write-off request. The certificate shall also indicate that the export incentives, if any, availed by the exporter have been surrendered.
- 2.7 The following cases, however, would not qualify for the "write-off" facility:
- a. Exports made to countries with externalization problem i.e. where the overseas buyer has deposited the value of export in local currency but the amount has not been allowed to be repatriated by the Central Bank authorities of the country concerned.
 - b. EDF/Softex which are under investigation by agencies like, Enforcement Directorate, Directorate of Revenue Intelligence, Central Bureau of Investigation, etc. as also the outstanding bills which are subject matter of civil / criminal suit.
- 2.8 AD banks shall report write-off of export bills in Export Data Processing and Monitoring System (EDPMS).

- 2.9 AD banks shall put in place a system to carry out random check / percentage check of the export bills so written-off by their internal Inspectors/Auditors (including external Auditors).
- 2.10 Requests of write-off not covered under the above instructions may be referred to the Regional Office concerned of the Reserve Bank.

3. Set-off of Export receivables against Import payables

- 3.1 Presently, AD banks are allowing exporters/importers to set-off their outstanding export receivables against outstanding import payables from/to the same overseas buyer/supplier. The Bank has been receiving requests from AD banks, on behalf of their Importer/Exporter constituents, for allowing such set-off with their overseas group/associate companies either on net basis or gross basis, through an in-house or outsourced centralised settlement arrangement.
- 3.2 Accordingly, it has been decided to delegate powers to AD banks to also consider such requests of set-off, and the revised guidelines, in supersession of the instructions contained in circular A.P. (DIR Series) Circular No 47 dated November 17, 2011, are issued as under:

The AD bank may allow set-off of outstanding export receivables against outstanding import payables, subject to the following conditions:

- a. The arrangement shall be operationalized/supervised through/by one AD bank only
- b. AD bank is satisfied with the bonafides of the transactions and ensures that there are no KYC/AML/CFT concerns;
- c. The invoices under the transaction are not under investigation by Directorate of Enforcement/Central Bureau of Investigation or any other investigative agency;
- d. Import/export of goods/services has been undertaken as per the extant Foreign Trade policy
- e. The export / import transactions with ACU countries are kept outside the arrangement;
- f. Set-off of export receivables against goods shall not be allowed against import payables for services and vice versa.
- g. AD bank shall ensure that import payables/export receivables are outstanding at the time of allowing set-off. Further, set-off shall be allowed between the export and import legs taking place during the same calendar year.
- h. In case of bilateral settlement, the set-off shall be in respect of same overseas buyer/supplier subject to it being supported by verifiable agreement/mutual consent.
- i. In case of settlement within the group/associates companies, the arrangement shall be backed by a written, legally enforceable agreement/contract. AD bank shall ensure that the terms of agreement are strictly adhered to;
- j. Set-off shall not result in tax evasion/avoidance by any of the entities involved in such arrangement.
- k. Third party guidelines shall be adhered to by the concerned entities, wherever applicable;
- l. AD bank shall ensure compliance with all the regulatory requirement relating to the transactions;
- m. AD bank may seek Auditors/CA certificate wherever felt necessary.
- n. Each of the export and import transaction shall be reported separately (gross basis) in FETERS/EDPMS/IDPMS, as applicable
- o. AD bank to settle the transaction in E/IDPMS by utilizing the 'set-off indicator' and mentioning the details of shipping bills/bill of entry/invoice details being settled in the remark column (including details of entities involved)

4. Refund of Export Proceeds

- 4.1 Attention is invited to A.P. (DIR Series) Circular No.37 dated April 05, 2007, in terms of which AD banks, through whom the export proceeds were originally realised, were allowed to consider requests for refund of export proceeds of goods exported from India and being re-imported into India on account of poor quality.
- 4.2 There have been instances when re-importing of goods has not been possible as the exported goods had reportedly been auctioned or destroyed in the importing country.

- 4.3 The instructions have been reviewed and henceforth AD banks, while permitting refund of export proceeds of goods exported from India, shall:
- Exercise due diligence on the track record of the exporter;
 - Verify the bona-fides of the transaction/s;
 - Obtain from the exporter a certificate issued by DGFT / Custom authorities that no export incentive has been availed of by the exporter against the relevant export or the proportionate export incentives availed, if any, have been surrendered;
 - Not insist on the requirement of re-import of goods, where exported goods have been auctioned or destroyed by the Port / Customs / Health authorities/ any other accredited agency in the importing country subject to submission of satisfactory documentary evidence.
- 4.4 In all other cases AD banks shall ensure that procedures as applicable to normal imports are adhered to and that an undertaking from the exporter, to re-import the goods within three months from the date of refund of export proceeds, shall be obtained.
5. AD banks may bring the contents of this Circular to the notice of their constituents concerned. The Master Direction No 16/ 2015 dated January 01, 2016 is being updated to reflect the above changes.

Impex # 2

One more port added for import of unshredded metallic scrap and waste

DGFT issues Public Notice adding the name of 'Hazira Port' for import of metallic scarp and waste.

Metallic scrap and waste cannot be allowed to be imported from all ports as the imported goods may be radio-active and such harmful to living beings. They are allowed to be imported from those ports which have been equipped with monitors and scanners.

Before issues of Public Notice No. 31/2015-20 Dt 1st December 2020, India had 16 designation ports for clearance of goods under reference. By issue of the above Public notice, DGFT has added one more name that of Hazira port in the list (copy reproduced below):

(Copy)

Public Notice No. 31/2015-2020, New Delhi, the 1st December, 2020

Subject: Enlistment as designated port in Para 2.54(d)(iv) of Handbook of Procedure, 2015-2020

S.O. (E): In exercise of powers conferred under paragraph 2.04 of the Foreign Trade Policy, 2015-2020, the Director General of Foreign Trade hereby inserts the name of Hazira Port in Para 2.54 (d) (iv) of HBP, 2015-2020 as under:

Existing Para 2.54 (d)(iv)	Revised Para 2.54 (d)(iv)
Import of scrap would take place only through following designated ports and no exceptions would be allowed even in case of EOUs, SEZs:-	Import of scrap would take place only through following designated ports and no exceptions would be allowed even in case of EOUs, SEZs:-
1. Chennai, 2. Cochin, 3. Ennore, 4. JNPT, 5. Kandla, 6. Mormugao, 7. Mumbai, 8. New Mangalore, 9. Paradip, 10. Tuticorin, 11. Vishakhapatnam, 12. Pipava 13. Mundra, 14. Kolkata and 15. Krishnapatnam and 16. Kattupalli.	1. Chennai, 2. Cochin, 3. Ennore, 4. JNPT, 5. Kandla, 6. Mormugao, 7. Mumbai, 8. New Mangalore, 9. Paradip, 10. Tuticorin, 11. Vishakhapatnam, 12. Pipava 13. Mundra, 14. Kolkata and 15. Krishnapatnam, 16. Kattupalli and 17. Hazira.

2. Effect of this Public Notice: In continuation of Public Notice No. 43/2015-2020 dated 13.11.2019, Hazira Port is enlisted as a designated port for import of unshredded metallic scrap and waste.

DGFT issues Public Notice enabling the modification of PAN based IEC due to change in constitution of a PAN based IEC.

DGFT issues IEC based on PAN. To take care of a case of change in constitution of PAN based IEC by way of merger, acquisition, liquidation, inheritance, etc. such that PAN of the new entity so informed is different from the earliest one, DGFT has issued a Public Notice No. 34/2015-20 Dt 24th Dec, 2020 so that an IEC can be availed against the new PAN, if not existing already.

For the required modification as detailed above, the IEC holder has to apply to the RA concerned as per procedure given in the Public Notice referred to above (copy given below):

(Copy)

Public Notice No. 34/2015-2020, Dated the 24th December, 2020

Subject: Amendment in Para 2.14 (Modification of IEC) of Chapter-2 of Handbook of Procedures, 2015-2020.

S.O(E): In exercise of powers conferred under paragraph 1.03 and 2.04 of the Foreign Trade Policy, 2015-2020, the Director General of Foreign Trade hereby inserts the following new sub-paras after sub para (c) of the existing Para 2.14 (**Modification of IEC**) as laid down in Chapter-2 of Handbook of Procedures, 2015-2020:

(d) In case of change in constitution of a **PAN** based IEC by way of merger, acquisition, liquidation, inheritance etc. such that PAN of the new entity so formed is different from the earlier one, an IEC can be availed against the new PAN, if not existing already. Previous IEC(s) can also be operationally linked to the PAN/IEC of the new entity.

(e) An application for linking the obligations under the old/ previous IEC may be submitted online to the jurisdictional RA of the new entity along with supporting documents. Concerned RA may sanction the given linkage after due scrutiny of the evidence provided by the applicant including submission of affidavits etc. After RA's approval, previous IEC(s) shall be treated as surrendered.

2. Effect of this Public Notice: Provisions for modifying PAN based IEC has been introduced vide para 2.14 (d) and 2.14 (e) under existing Para 2.14 of Chapter-2 of Handbook of Procedures, 2015-2020.

CBIC issues instruction for time bound processing of Duty Drawback claim.

To increase ease of doing business and reduce transaction cost in exports, it is very essential that custom which is responsible for disbursement of duty drawback does so in the time bound, manner as laid down on the subject.

To reiterate the above, CBEC has issued an Instruction No. 21/2020-Customs Dt. 16th Dec, 2020 (copy reproduced below):

Instructions for time bound processing of Duty Drawback claims

The undersigned is directed to state that to reduce the pendency and improve the rate of disposal of duty drawback claims, various timelines relating to duty drawback scheme have been conveyed in the Action Plan of CBIC for 2020-21 through DGPM's d.o. letter F.No. 503/01/2020-T dated 04.08.2020.

2. Among the action points, it has been mentioned therein that all remaining drawback claims should be positively disposed of by 31.03.2021 and that while doing so the target of disposing drawback within 7 working days should be achieved.

3. It is to inform that in the 5th meeting of the National Committee on Trade Facilitation (NCTF), it has been instructed that **at least 90% of Drawback should be credited within a time period of 3 days. Further, the refund may be deposited into the customer account in T+2 days.**

4. As regard the time taken for payment of duty drawback by banks to the exporters accounts, it is to mention that as per the Circular dated 24.04.2018 issued by the Office of the Principal CCA, CBIC, it has already been instructed to the authorized banks that the credit/refund of the drawback amount to the exporters' account may be done either on the same day of receiving the Computerized Customs Drawback Advice along with the supporting cheque or on the next working day.

5. In supersession of the timeline referred in para 2 above relating to disposal of drawback claims within 7 working days, it is instructed that the above-cited time-limit given by NCTF for crediting of duty drawback within a period of 3 days should be

Impex # 5

Questions & Answers

Question : What is High Sea Sales? Whether the High Sea Sales of imported goods would be chargeable to IGST twice i.e. at the time of Customs clearance under section 3(7) of the Customs Tariff Act, 1975 and separately under Section 5 of IGST Act, 2017?

Answer : High Sea Sales is a situation whereby the original importer sells the goods to a third person before customs clearance. After the High sea sale of the goods, the Customs declarations i.e. Bill of Entry etc. is filed by the person who receives the goods from the original importer during the said sale. High Sea Sales being an Interstate transaction under GST Laws are subject to IGST. The Central Government vide Circular No. 33 / 2017-Customs dated 01-08-2017 clarified that IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance. [Thus IGST will be levied only once].

Question : We have sufficient credit lying on our IGST account as we received supplies from inter- state. Can we settle the IGST amount on imports of goods from the ITC credit lying in our IGST account?

Answer : IGST on imports is charged on Reverse Charge Mechanism (RCM) and all RCM taxes have to be paid in cash. Therefore IGST on imports of goods cannot be paid from ITC. However, the IGST amount paid in cash on imports is available as ITC to importers which can be utilized by him for settling his further liabilities. However, the SGST liabilities can be settled only in respect of the State where the importer is located. Thus if the importer is located in UP, he can only discharge his SGST liabilities in respect of UP and not in respect of other States.

Question : We send goods for exhibition without paying GST as we were expecting them to be re-imported after the exhibition. However, goods are now sold in the exhibition. How should we pay GST and can we get a refund for the same?

Answer : If the specified goods are sold abroad, fully or partially, within the period of six months, the supply shall be held to have been effected, in respect of the quantity so sold, on the date of such sale. In such case, the seller shall issue a tax invoice in respect of such quantity of goods which has been sold. These supplies shall become zero-rated supplies at the time of issuance of invoice. However, refund in relation to such supplies shall be available only as refund of unutilized ITC and not as refund of IGST.

Question : We will be starting our exports to the EU shortly and have been informed to get registration of EORI. Can you please explain?

Answer : If the goods are simply being consigned to you as an importer or you are consigning the goods as an exporter to an EU importer, EORI (Economic Operators Registration and Identification) registration is not

needed by you. EORI registration is required only when you make certain declarations to EU Customs as detailed in the EORI guidelines, which are not done by Indian exporters/ importers.

Question : Will EORI be required if we take our machinery for exhibition to Germany under ATA Carnet facility?

Answer : Economic operators not established in the customs territory of the European Union who are holders of ATA Carnets will not have to apply for an EORI number for placing goods under temporary admission procedure or re-export declaration to discharge that procedure. For example, an Indian exporter who declares goods for the temporary admission procedure under an ATA carnet does not have to apply for an EORI number.

Question : We paid compensation cess on supplies received for exports purposes. Can the compensation cess be refunded on exports to us?

Answer : The exporter making exports without payment of IGST under bond or LUT who pays compensation cess on inward supplies could avail the ITC of the compensation cess in GSTR 3B and apply for refund of such accumulated ITC to the extent of export turnover. While an exporter may also make exports on payment of integrated tax, he cannot utilize the credit of the compensation cess for payment of integrated tax in view of the proviso to section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies. Therefore, you cannot claim refund of compensation cess in case of zero-rated supply on payment of integrated tax but can claim as ITC refund on exports.

News from 'Print Media'

Pillai Panel Begins Verification of Benefit Rates under RoDTEP

THE REJIG Govt proposes to roll out new scheme next month replacing the popular MEIS

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New Delhi: A three-member committee under former home and commerce secretary GK Pillai has sought evidence and data from the industry to justify their claim of the benefit needed to be given under the proposed tax neutralisation. The government proposes to roll out the Remission of Duties and Taxes on Exported Products (RoDTEP) scheme next month replacing popular Merchandise Exports from India Scheme.

Remission rates suggested by the industry are higher than the incentives under MEIS, payable as a percentage of realised free-on-board value of 2%, 3% and 5%. MEIS is being replaced by RoDTEP as the former violates the global trade norms.

The RoDTEP committee, headed by Pillai, was constituted in July to formulate the modalities to calculate taxes at the central, state and local levels imposed on the exported products including embedded taxes, such as local levies, coal cess, mandi tax, electricity duties and fuel used for transportation, which are not exempted or refunded under any other

Final Step

RoDTEP will replace MEIS where benefits are 2-5%

Industry has sought benefits higher than extant sops

Carpet sector sought 8% benefit, handicrafts 5-7% rate

Apparel industry has recommended 6-6.5% benefits

existing scheme.

The carpet industry has suggested a RoDTEP rate of 8%, the apparel export sector has suggested 6-6.5%, while the range for leather goods is 1.6-6% and the handicrafts sector has sought a 5-7% benefit rate. The aluminium industry has sought a tax refund rate of 12-13%.

"Not all sectors may get the benefits immediately. The committee has sought

clarifications on the rates suggested by various sectors as they have to verify the rates," said A Sakthivel, chairman, Apparel Export Promotion Council.

As per a representative of the Council for Leather Exports, the panel has asked various export promotion councils on how they arrived at the rates. A meeting on the issue was held last week in the finance ministry.

THE FALL

EXPORTS FELL 8.74% IN NOV, STEEPER THAN THE 5.12% DIP IN OCT

TRADE DEFICIT HIT A 10-MONTH HIGH OF \$9.87 BILLION IN NOV

"The drawback committee has been meeting regularly. We will notify the rates they finalise. As of now, it doesn't look as if MEIS will get extended," said an official aware of the details.

India's exports fell 8.74% in November, steeper than the 5.12% dip in October, at \$23.52 billion with the trade deficit touching a 10-month high of \$9.87 billion.

Economic Times
21st December
2020