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Export process, Import process, WTO, Authorities governing International Trade in India

Export process - Goods/services are taken out of India (through proper custom channel) and exporter gets payment in foreign currency/INR. In export, goods and services are to be exported, not the taxes. Hence, any indirect taxes on exports are either exempted or refunded on both inputs and outputs, through application of various schemes in the form of Duty Exemption/Duty Refund (Drawbacks and Rebates), as the case may be.

Import process - Bringing goods/services into India (through proper custom channel), pay custom duty and pay foreign currency to selling party. However, no benefit is received on import.

WTO - World trade is regulated by WTO. There are 164 members of WTO. WTO was set up on 1.1.195. WTO regulated world trade and reduces tariff and other barriers to trade.

In India, international trade is regulated by following ministries/Authorities

Ministry of Commerce & Industry - It facilitates trade. It operates through Director General of Foreign Trade (DGFT). DGFT grants IEC and formulates the FTP. India is currently implementing FTP 2015-2020. Handbook on Procedures and SION are a part FTP

Ministry of Finance - Customs department comes under the purview of this ministry. It regulates customs, revenue and incentives.

RBI - It looks after the payment process and makes policies for sending and receiving of foreign currency. It operates through authorised dealers like Bank and Financial Institution.

Export incentives are received only when payment is in convertible foreign exchange but now currency can be received in INR also.

Types of Exports, Categories of Exports, ICC

Export is of 3 types -

1. Export to place outside India
2. SEZ (foreign land in India)
3. Deemed Export (export against advanced authorisation, export against EPCG license, export to EOU, STP) - One gets advance authorisation only when we want import for export purposes.

Following categories of import and export goods

1. Free (Not prohibited, canalized, restricted)
2. Prohibited (Export/import not allowed at all)
3. Restricted (import and export on getting authorisation from DGFT by any person)
4. Canalised (import and export by specialised agencies only not by individuals) – Goods that are canalized can be imported/exported only through State Trading Enterprises (STE).

International transactions are regulated by WTO, ICC etc

- ICC is International Chamber of Commerce and WTO, United Nations, World Bank, G20, International Monetary Fund, APEC is affiliated to ICC.
- ICC is the umbrella body under which various bodies like WTO, UN etc function. To regulate international transactions, various terms have been stated which are called INCO terms.

INCO terms -

1. Ex-works
2. FCA - Free Carrier (particular person is carrier)
3. FAS - Free Alongside Ship (particular vessel is carrier)
4. FOB - Free on Board
5. Cost and Freight
6. CIF - Cost Insurance and Freight
7. DDU - Delivered Duty Unpaid
8. DDP - Delivered Duty Paid

India's Export and Import is always having a Trade Deficit. Only in one year in history i.e. 2007, there was not a trade deficit.

In international transaction there are two terms

1. Terms of trade like FOB, Ex-works, CIF, FRB
2. Terms of payment like advance, TT payment, DP (payment against documents through bank), DA (payment against acceptance through bank) and letter of credit

Types of Letter of Credit, EPC, Requirements to become Exporter

Types of Letter of credit -

- 1.Revocable L/c
- 2.Irrevocable L/c
- 3.L/c at sight and Usance L/c
- 4.Confirmed L/c
- 5.Back to back L/c
- 6.Stand by L/c
- 7.Transferable L/c
- 8.Red Clause L/c

Export Promotion Council (EPC) - Various export promotion council are set up for various goods like gems and jewellery, sports goods, cashew. Where an exporter deals in more than one goods, it can get registered under FIEO (Federation of Indian Export Organization). It is not mandatory to register in any export promotion council, but it is recommended to register under it as all the incentives are provided by government only to those parties who are registered under it.

Requirements to become exporter -

IEC
Bank A/c
EPC

FTP

1. Foreign Trade Policy is a set of guidelines or instructions issued by the Central Government in matters related to import and export of goods in India viz., foreign trade.
2. Made for 5 years. We are currently under FTP policy from 2015-2020.
3. It is as per National and International Environment.

4. Legislation Governing Foreign Trade

- In India, Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade.
- The main legislation concerning foreign trade is the Foreign Trade (Development and Regulation) Act, 1992 [FT (D & R) Act].
- The FT(D&R) Act provides for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from, India and for matters connected therewith or incidental thereto.
- As per the provisions of the Act, the Government :
 - (i) may make provisions for facilitating and controlling foreign trade;
 - (ii) may prohibit, restrict and regulate exports and imports, in all or specified cases as well as subject them to exemptions;
 - (iii) is authorised to formulate and announce an export and import policy and also amend the same from time to time, by notification in the Official Gazette;
 - (iv) is also authorised to appoint a 'Director General of Foreign Trade (DGFT)' for the purpose of the Act, including formulation and implementation of the export-import policy. It includes handbook on procedures

Foreign Trade Policy (2015-2020)

1. In exercise of the powers conferred by the FT(D&R) Act, the Union Ministry of Commerce and Industry, Government of India announces the integrated Foreign Trade Policy (FTP) in every 5 years with certain underlined objectives.
2. This policy is updated every year in April, in addition to changes that are made throughout the year.
3. The Foreign Trade Policy (FTP), 2015-2020, (as updated w.e.f. 05.12.2017) incorporating provisions relating to export and import of goods and services, shall come into force w.e.f. 01.04.2015 and shall remain in force up to 31st March, 2020, unless otherwise specified. **This has been extended to ~~30th September, 2021~~ ~~31st March, 2022~~ ~~30th September, 2022~~ ~~31st March, 2023~~ (NN 37/2015-2020 – GOI, MoCI, DGFT, dated 29-9-2022)**
4. **New FTP (2015-20) Vision:** The new five year Foreign Trade Policy, 2015-20 provides a framework for increasing exports of goods and services as well as generation of employment and increasing value addition in the country, in keeping with the "Make in India" vision of our Honourable Prime Minister. The focus of the government is to support both the manufacturing and services sectors, with a special emphasis on improving the 'ease of doing business'.
5. Various measures adopted in the direction of ease of doing business, trade facilitation, Make in India, Atmanirbhar Bharat, includes –
 - a) The no of mandatory documents required for exports and imports of goods from/into India have been reduced to 3 each.
 - b) The facility of 24*7 customs clearance for specified imports has been made available at 19 sea ports and 17 air cargo complexes.
 - c) SWIFT (Single Window Interface for Facilitating trade) 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 (such as Animal quarantine, Drug Controller, etc.) 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 the Customs – 7 days for air shipments & ICDs and 14 days for shipments by sea.
- e) DGFT under the EDI initiatives has provided the facility of online filing of applications to obtain IEC and various authorizations/scrips.

6. Contents of Foreign Trade Policy – The contents of the FTP 2015-20 are as follows –

- i. **FTP 2015-2020** - having 9 chapters giving basic policy. This has been notified by the Central Government on 01-04-2015. The current FTP 2015-2020 which was valid till 31-3-2020 has been extended to ~~31-3-2021~~ ~~30-9-2021~~ ~~31-3-2022~~ ~~30-9-2022~~ 31-3-2023.
- ii. **Handbook of Procedures 2015-2020 (Vol. 1)** – containing 9 chapters, covering procedural aspects of policy. This has been notified by DGFT. It is amended from time to time as per requirements. Also, it contains **Appendices and Aayat Niryat Forms (AANF)** containing various appendices and forms relating to the procedural aspects provided under the policy and procedures.
- iii. **Handbook of Procedures 2015-2020 (Vol. 2)** – Standard Input-Output Norms (SION) of various products are notified from time to time. Based on SION, exporters are provided the facility to make duty-free import of inputs required for manufacture of export products under the Duty Exemption Schemes like Advance Authorisation and DFIA.
- iv. **ITC (HS) Classification of Exports and Import Items** – The Export Import Policy regarding import or export of a specific item is given in the Indian Trade Classification Code based on Harmonized System of Coding (ITC(HS)). ITC-HS was adopted in India for import-export operations. Indian custom uses eight digit ITC-HS Codes to suit the national trade requirements. ITC-HS codes are divided into two schedules.
 - i. Schedule I – Import Policy – ITC(HS) 2017
 - ii. Schedule II – Export Policy – ITC(HS) 2018

Presently, most of the goods can be imported without any authorization. Schedule II contains very few products, where export is prohibited or restricted. Excluding those items, export of all other goods is free. **SCOMET LIST is also provided.** SCOMET is the nomenclature for dual use items of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET). Export of dual-use items and technologies under India's Foreign Trade Policy is regulated. It is either prohibited or is permitted under an authorization.

7. Decision of DGFT is final and binding in respect of interpretation of any provision of FTP, classification of any item in ITC(HS), content scope or issue of any authorization issued under the FTP.
8. **Foreign Trade Policy vis a vis tax laws** – The FTP is closely knit with the Customs, GST Laws and Excise/State laws of India. However, the policy provisions per-se do not override tax laws. The exemptions extended by FTP are given effect to by issuing notifications under the respective tax laws (eg. Customs Tariff Act). Thus, actual benefit of the exemption depends on the language of exemption notifications issued by the CBIC. In most of the cases the exemption notifications refer to policy provisions for detailed conditions. Ministry of Finance/Tax Authorities cannot question the decision of authorities under the Ministry of Commerce (so far as the issue of authorization etc. is concerned)

Scope of FTP

- 1. Chapter 3 contains - MEIS (Now RoDTEP)** (It is product specific and country specific, it is a transferable duty scrip which can be sold in market or used to pay import duty), **SEIS** (It is a transferable duty scrip) and **Status Holder Scheme**
- 2. Chapter 4 contain - Advance Authorisation** - It is a duty exemption scheme. It is authorisation to import and buy Raw Material from local markets without payment of duty. The holder of Advance Authorisation certificate has to undertake export obligations. Advance authorisation is given as per SION.
There has to be a min of 15% value addition - $(\text{Export(FOB)} - \text{Import(CIF)}) / \text{Import(CIF)}$.
Import duration - 12 months from date of authorisation and
Export duration - 18 months from the date of authorization.
- 3. Chapter 5 contains- EPCG** - EPCG means Export Promotion Capital Good Scheme - It is authorisation to buy locally or through import Capital Goods without payment of duty. The holder of EPCG licence has to undertake export obligations. Capital goods can be pre-production, production or post-production capital goods.
Export obligation - 6 times the amount of duty saved in 6 years out of which 50% to be fulfilled in 4 years and 50% in next 2 years and Last three years export average to be maintained.
- 4. Chapter 6 contains – Export Oriented Undertakings (EOU) / Electronic Hardware Technology Park (EHTP) / Software Technology Park (STP) and Bio Technology Park (BTU) Schemeds**
- 5. Chapter 7 contains – Deemed Exports**

ECGC, Bonded Warehouse, SEZ and FTWZ

ECGC - Export Credit Guarantee Corporation Scheme

It gives credit rating to buyer and buyer country and it extends credit facilities to

- Exporter against Buyer/Bank - Insolvency of buyer, repudiated contract, insolvency of I/c opening bank, political disturbance like war, diversion of voyage, import restrictions, transfer delay
- Bank - insolvency of bank/ buyer

Bonded Warehousing - Bonded means under the supervision of custom department, where duty unpaid goods are kept. Goods have to be released within 6 months of warehousing it (extension possible) on payment of duty.

SEZ - It is foreign land in India. It is mainly used by manufacturing unit for export of manufactured goods.

FTWZ - Free Trade Warehousing Zone are used for Warehousing duty unpaid goods and which can be either -

- Exported without payment of duty
- Sold to DTA - on payment of import duty
- Sold to SEZ/EOU - without payment of duty.
- It is used by trader of imported goods.

AA vs 100% EOU, SEZ vs 100% EOU

AA vs 100% EOU

AA	100% EOU
Case to case basis	Has to export all of it's output. But if all output is not exported then pay duty

100% EOU vs SEZ

100% EOU	SEZ
Deemed Export	Under SEZ Act (Actual Export)
Located in DTA with some validity	Located in specified Location

General Provisions Regarding Imports and Exports

OBJECTIVE

The general provisions governing import and export of goods and services are dealt with in this chapter.

EXPORTS AND IMPORTS – ‘FREE’, UNLESS REGULATED

Exports and Imports shall be ‘Free’ except when regulated by way of ‘prohibition’, ‘restriction’ or ‘exclusive trading through State Trading Enterprises (STEs)’ as laid down in Indian Trade Classification (Harmonised System) [ITC (HS)] of Exports and Imports.

INDIAN TRADE CLASSIFICATION (HARMONISED SYSTEM) [ITC (HS)] OF EXPORTS AND IMPORTS

- (a) ITC (HS) is a compilation of codes for all merchandise/goods for export/import. Goods are classified based on their group or sub-group at 2/4/6/8 digits.
- (b) ITC (HS) is aligned at 6 digit level with international Harmonized System goods nomenclature maintained by World Customs Organization. However, India maintains national Harmonized System of goods at 8 digit level.
- (c) The import/export policies for all goods are indicated against each item in ITC (HS). Schedule 1 of ITC (HS) lays down the Import Policy regime while Schedule 2 of ITC (HS) details the Export Policy regime.
- (d) Except where it is clearly specified, Schedule 1 of ITC (HS), Import Policy is for new goods and not for the Second Hand goods. For Second Hand goods, the Import Policy regime is given in FTP.

General Provisions Regarding Imports and Exports

COMPLIANCE OF IMPORTS WITH DOMESTIC LAWS

- (a) Domestic Laws/Rules/Orders/Regulations/Technical specifications/environmental/safety and health norms applicable to domestically produced goods shall apply, mutatis mutandis, to imports, unless specifically exempted.
- (b) However, goods to be utilized/consumed in manufacture of export products, as notified by DGFT, may be exempted from domestic standards/quality specifications.

AUTHORITY TO SPECIFY PROCEDURES

DGFT may specify procedure to be followed by an exporter or importer or by any licensing/Regional Authority (RA) or by any other authority for purposes of implementing provisions of FT (D&R) Act, the Rules and the Orders made there under and FTP. Such procedure, or amendments, if any, shall be published in Handbook of Procedures by means of a Public Notice.

EXEMPTION FROM POLICY/PROCEDURES

DGFT may, in public interest, exempt any person or class or category of persons from any provision of FTP or any procedure and may, while granting such exemption, impose such conditions as they may deem fit. DGFT may pass such orders or grant such conditions as they may deem fit. DGFT may pass such orders or grant such relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade.

IMPORTER-EXPORTER CODE (IEC) [AS AMENDED BY UPDATED FTP W.E.F. 05.12.2017]

1. It is a unique 10 digit code issued by DGFT to a person. IEC is mandatory to export any goods out of India or to import any goods into India unless specifically exempt. Permanent Account Number (PAN) is pre-requisite for grant of an IEC. Only one IEC can be issued against a single PAN.

General Provisions Regarding Imports and Exports

2. DGFT has decided to use income tax PAN as IEC number 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.
3. With the introduction of GST, GSTIN would be used for purposes of (i) credit flow of IGST on import of goods, and (ii) refund or rebate of 1GST related to export of goods. In view of this, it has been decided that importer/exporter would need to declare only GSTIN (wherever registered with GSTN) at the time of import and export of goods. For residuary categories, UIN issued by GSTN and authenticated by DGFT will be used. For others, common number will be notified by DGFT.
4. An application for IEC /modification in IEC is to be made only electronically by applicants through digital signature (Class-II or Class-III).
5. Further, only the following are required to be uploaded/submitted along with the application for IEC:
 - (a) Digital photograph of the signatory applicant;
 - (b) Copy of the PAN card of the business entity in whose name Import/Export would be done (Applicant individual in case of Proprietorship firms);
 - (c) Cancelled cheque bearing entity's pre-printed name or Bank certificate in prescribed format ANF-2A(I).
6. In case of STPI/ EHTP/ BTP units, the Regional Offices of the DGFT having jurisdiction over the district in which the Registered/ Head Office of the STPI unit is located shall issue or amend the IECs.
7. Further, no export or import shall be made by any person without obtaining an IEC number unless specifically exempted.

General Provisions Regarding Imports and Exports

MANDATORY DOCUMENTS FOR EXPORT/IMPORT OF GOODS FROM/INTO INDIA

(a) Mandatory documents required for export of goods from india:

1. Bill of Lading/Airway Bill/Lorry Receipt/Railway Receipt/Postal Receipt
2. Commercial Invoice cum Packing List*
3. Shipping Bill/Bill of Export/Postal Bill of Export

(b) Mandatory documents required for import of goods into India

1. Bill of Lading/Airway Bill/Lorry Receipt/Railway Receipt/Postal Receipt in form CN-22 or CN-23 as the case may be
2. Commercial Invoice cum Packing List*
3. Bill of Entry

[Notes :

- (i) *As per CBIC Circular No. 01/15-Customs dated 12/01/2015.
- (ii) Separate Commercial Invoice and Packing List would also be accepted.]

PRINCIPLES OF RESTRICTIONS

DGFT may, through a Notification, impose restrictions on export and import, necessary for :

- a) Protection** of public morals;
- b) Protection** of human, animal or plant life or health;
- c) Protection** of patents, trademarks and copyrights, and the prevention of deceptive practices;

General Provisions Regarding Imports and Exports

- d) **Protection** of national treasures of artistic, historic or archaeological value;
- e) **Protection** of trade of fissionable material or material from which they are derived;
- f) **Prevention** of traffic in arms, ammunition and implements of war.
- g) **Prevention** of use of prison labour;
- h) **Conservation** of exhaustible natural resources;
- i) Relating to the importation or exportation of gold or silver (as amended by updated FTP w.e.f. 05.12.2017)

EXPORT/IMPORT OF RESTRICTED GOODS/SERVICES

Any goods /service, the export or import of which is 'Restricted' may be exported or imported only in accordance with an Authorisation/Permission or in accordance with the procedure prescribed in a Notification/Public Notice issued in this regard.

ACTUAL USER CONDITION

Goods which are importable freely without any 'Restriction' may be imported by any person. However, if such imports require an Authorisation, actual user alone may import such good(s) unless actual user condition is specifically dispensed with by DGFT.

TERMS AND CONDITIONS OF AN AUTHORISATION

Every Authorisation shall, inter alia, include such terms and conditions as may be specified by RA along with the following:

- (a) Description, quantity and value of goods;
- (b) Actual User condition (as defined in Chapter 9);

General Provisions Regarding Imports and Exports

- (c) Export Obligation;
- (d) Minimum Value addition to be achieved;
- (e) Minimum export/import price;
- (f) Bank guarantee/ Legal undertaking/Bond with Customs Authority/RA.
- (g) Validity period of import/export as specified in Handbook of Procedures.

APPLICATION FEE

Application for IEC/ Authorisation/License/Scripts must be accompanied by application fees as indicated in the Appendix 2K Appendices and Aayat Niryat Forms. Fees must be paid online through electronic fund transfer (EFT) mechanism or through credit/debit cards, unless provided otherwise (as amended by updated FTP w.e.f. 05.12.2017).

CLEARANCE OF GOODS FROM CUSTOMS AGAINST AUTHORIZATION

Goods already imported/shipped/arrived, in advance, but not cleared from Customs may also be cleared against an Authorisation issued subsequently. This facility will however be not available to “restricted” items or items traded through STEs.

AUTHORISATION - NOT A RIGHT

No person can claim an Authorisation as a right and DGFT or RA shall have power to refuse to grant or renew the same in accordance with provisions of FT (D&R) Act, Rules made there under and FTP.

General Provisions Regarding Imports and Exports

PENAL ACTION AND PLACING OF AN ENTITY IN DENIED ENTITY LIST (DEL)

If an Authorisation holder violates any condition of such Authorisation or fails to fulfill export obligation, or fails to deposit the requisite amount within the period specified in demand notice issued by Department of Revenue and/or DGFT, he shall be liable for action in accordance with FT (D&R) Act, the Rules and Orders made there under, FTP and any other law for time being in force.

Provisions Relating to Import of Goods

ACTUAL USER CONDITION

1. Goods which are importable without any restrictions, may be imported by any person.
2. If imports required an Authorisation, actual user alone may import such goods unless actual user condition is specifically dispensed with by DGFT.

REMOVAL OF SCRAP/WASTE FROM SEZ

Any waste or scrap or remnant including any form of metallic waste and scrap generated during manufacturing or processing activities of an SEZ unit/Developer/Co-developer shall be allowed to be disposed in DTA (Domestic Tariff Area) freely, subject to payment of applicable custom duty.

CLEARANCE OF GOODS FROM CUSTOMS

Goods already imported/shipped/arrived, in advance, but not cleared from customs may also be cleared against an Authorisation issued subsequently. However, such goods already imported/shipped/arrived, in advance are first warehoused against Bill of Entry for Warehousing and then cleared for home consumption against an Authorisation issued subsequently. However, this facility will not be available to restricted items or items traded through STEs.

Provisions Relating to Import of Goods

IMPORT OF GIFTS AND SAMPLES

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).

Further, import of samples shall be governed by the prescribed procedures (Para 2.64 of Handbook of Procedures).

PASSENGER BAGGAGE

(a) Bonafide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.

(b) Samples of such items that are otherwise freely importable under FTP may also be imported as part of passenger baggage without an Authorisation.

(c) Exporters coming from abroad are also allowed to import drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for export, as part of their passenger baggage without an Authorisation.

RE-IMPORT OF GOODS REPAIRED ABROAD

Capital goods, equipments, components, parts and accessories, whether imported or indigenous, except those restricted under ITC (HS) may be sent abroad for repairs, testing, quality improvement or upgradation or standardization of technology and re-imported without an Authorisation.

IMPORT OF GOODS USED IN PROJECTS ABROAD

Project contractors after completion of projects abroad, may import without an Authorisation, goods including capital goods used in the project, provided they have been used for at least one year.

Provisions Relating to Import of Goods

IMPORT POLICY FOR SECOND HAND GOODS

S.No	Categories of Second Hand Goods	Import Policy	Conditions, if any
1.	Second Hand Capital Goods		
(a)	(i) Personal computers/laptops including their refurbished/re-conditioned spares (ii) Photocopier machines/Digital multifunction Print and Copying Machines (iii) Air conditioners (iv) Diesel generating sets	Restricted	Importable against authorization
(b)	Refurbished/re-conditioned spares of Capital Goods	Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare.
(c)	All other second hand capital goods {other than (a) and (b) above}	Free	
2.	Second Hand Goods other than capital goods	Restricted	Importable against Authorization

Provisions Relating to Import of Goods

IMPORT UNDER LEASE FINANCING

No specific permission of RA is required for lease financed capital goods.

EXECUTION OF LEGAL UNDERTAKING (LUT)/BANK GUARANTEE (BG)

- (a) Wherever any duty free import is allowed or where otherwise specifically stated, importer shall execute, Legal Undertaking (LUT)/Bank Guarantee (BG)/Bond with the Customs Authority, as prescribed, before clearance of goods.
- (b) In case of indigenous sourcing, Authorisation holder shall furnish LUT/BG/Bond to RA concerned before sourcing material from indigenous supplier/nominated agency.

PRIVATE/PUBLIC BONDED WAREHOUSES FOR IMPORTS

- (a) Private/Public bonded warehouses may be set up in DTA as per terms and conditions of notification issued by DoR. Any person may import goods except prohibited items, arms and ammunition, hazardous waste and chemicals and warehouse them in such bonded warehouses.
- (b) Such goods may be cleared for home consumption in accordance with provisions of FTP and against Authorisation, wherever required. Customs duty as applicable shall be paid at the time of clearance of such goods.
- (c) If such goods are not cleared for home consumption within a period of one year or such extended period as the customs authorities may permit, importer of such goods shall re-export the goods.

Export Related General Provisions

FREE EXPORTS

All goods may be exported without any restriction except to the extent that such exports are regulated by ITC (HS) or any other provision of FTP or any other law for the time being in force. DGFT may, however, specify through a public notice such terms and conditions according to which any goods, not included in ITC (HS), may be exported without an Authorisation.

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). Bank Realisation Certificate (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.

Illustration 1

CD Corporation, a merchant exporter, procured order of goods from a customer in USA. It approached AB Corporation, a manufacturer, for execution of the said order. The shipping bills relating to the consignment bear the name of CD Corporation. BRC, export order and invoice are also in the name of CD Corporation. Comment whether AB Corporation would be deemed as the exporter under FTP.

Ans

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).

Export Related General Provisions

ii. BRC, export order and invoice should be in the name of third party exporter.

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

(Note – However, AB Corporation can supply goods without payment of GST under bond of Merchant Exporter.)

EXPORT OF SAMPLES

Export of Samples and Free of charge goods shall be governed by provisions given in Handbook of Procedures.

EXPORT OF GIFTS

Goods including edible items, of value not exceeding Rs. 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 Authorisation.

EXPORT OF PASSENGER BAGGAGE

Bonafide personal baggage may be exported either along with passenger or, if unaccompanied, within one year before or after passenger's departure from India as per the prescribed provisions under the Baggage Rules.

IMPORT FOR EXPORT

I. Goods imported, in accordance with FTP, may be exported in same or substantially the same form without an Authorisation provided that item to be imported or exported is not restricted for import or export in ITC (HS).

II.

(a) Goods imported against payment in freely convertible currency would be permitted for export only against payment in freely convertible currency, unless otherwise notified by DGFT.

(b) Export of such goods to the notified countries (presently only Iran) would be permitted against payment in Indian Rupees, subject to minimum 15% value addition.

(c) Exports under this dispensation, as at II(b) above shall not be eligible for any export incentives.

EXPORT OF REPLACEMENT GOODS

Goods or parts thereof on being exported and found defective/damaged or otherwise unfit for use may be replaced free of charge by the exporter and such goods shall be allowed clearance by Customs authorities, provided that replacement goods are not mentioned as restricted items for exports in ITC (HS). If the export item is 'restricted'/under SCOMET, the exporter shall require an export license for replacement (as amended by updated FTP w.e.f. 05.12.2017)

EXPORT OF REPAIRED GOODS

- (i) “Goods or parts thereof, except restricted under ITC (HS), on being exported and found defective, damaged or otherwise unfit for use may be imported for repair and subsequent re-export. Such goods shall be allowed clearance without an Authorisation and in accordance with customs notification. To that extent the exporter shall return the benefits/incentive availed on the returned goods. If the item is 'restricted' for import, the exporter shall require an import license (as amended by updated FTP w.e.f. 05.12.2017).
- (ii) However, re-export of such defective parts/spares by the Companies/firms and Original Equipment Manufacturers shall not be mandatory if they are imported exclusively for undertaking root cause analysis, testing and evaluation purpose.”

EXPORT OF SPARES

Warranty spares (whether indigenous or imported) of plant, equipment, machinery, automobiles or any other goods, [except those restricted under ITC (HS)] may be exported along with main equipment or subsequently but within contracted warranty period of such goods, subject to approval of RBI.

PRIVATE BONDED WAREHOUSES FOR EXPORTS

- (a) Private bonded warehouses exclusively for exports may be set up in DTA as per terms and conditions of notifications issued by Department of Revenue.
- (b) Such warehouses shall be entitled to procure goods from domestic manufacturers without payment of duty. Supplies made by a domestic supplier to such notified warehouses shall be treated as physical exports provided payments are made in free foreign exchange.

DENOMINATION OF EXPORT CONTRACTS

- (a) All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.
- (b) However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan. Additionally, rupee payment through Vostro account must be against payment in free foreign currency by buyer in his non-resident bank account. Free foreign exchange remitted by buyer to his non-resident bank (after deducting bank service charges) on account of this transaction would be taken as export realization under export promotion schemes of FTP.
- (c) Contracts (for which payments are received through Asian Clearing Union (ACU) shall be denominated in ACU Dollar. Central Government may relax provisions of this paragraph in appropriate cases. Export contracts and invoices can be denominated in Indian rupees against EXIM Bank/Government of India line of credit.

NON-REALISATION OF EXPORT PROCEEDS

- (a) If an exporter fails to realize export proceeds within time specified by RBI, he shall, without prejudice to any liability or penalty under any law in force, be liable to return all benefits/incentives availed against such exports and action in accordance with provisions of FT (D&R) Act, Rules and Orders made there under and FTP.
- (b) In case an Exporter is unable to realise the export proceeds for reasons beyond his control (force-majeure), he may approach RBI for writing off the unrealised amount as per procedure laid down in Handbook of Procedures.
- (c) The payment realized through insurance cover, would be eligible for benefits under FTP. The procedure to be followed in such cases is laid down in Handbook of Procedures.