Executive summary


This Tax Alert summarizes the key changes in the revised FTP. The highlights of the revised FTP are as follows:

- The 24x7 Customs clearance facility has been extended to all types of bills of entry. Further, Merchant Overtime charges are not required to be paid on such clearance.

- The MEIS and SEIS rates for specified products and services respectively have been increased. The increased rates of MEIS shall be applicable for exports made during 1 November 2017 and 30 June 2018 and that of SEIS, for services exported from 1 November 2017 to 31 March 2018.

- The benefit of Duty Credit Scrips is not extended to taxes payable under GST. The Integrated tax and GST Compensation Cess on import of goods under Advance Authorization or EPCG scheme are exempt till 31 March 2018.

- A new Self Ratification Scheme has been framed for the purpose of issuance of Advance Authorization.

The revised FTP is effective from 5 December 2017.
Background and facts

- The Foreign Trade Policy 2015-20 (FTP) was launched on 1 April 2015, incorporating various measures including new scheme for promotion of Merchandise and Service exports, incentivizing e-commerce exports, etc.

- In the light of introduction of Goods and Services Tax (GST) w.e.f. 1 July 2017 and recent economic scenario impacting business environment across the globe, the Government has undertaken a mid-term review of FTP.

- The revised FTP released by the Ministry of Commerce and Industry, is effective from 5 December 2017.

Key Changes

The key changes in FTP 2015-20 are summarized below:

**Importer Exporter Code (IEC)**

- Consequent to introduction of GST, IEC will be equivalent to PAN and will be separately issued by DGFT based on an application.

- Application for IEC is to be submitted online along with digital signature. The provision for manual filing of application has been now removed.

- List of documents required to be submitted along with has been pruned down.

**Import for export**

- Goods which are freely importable can be re-exported [except items in the Prohibited or SCOMET (Special Chemicals, Organisms, Materials, Equipment and Technology) List of exports], in same or substantially same form, even though such goods are under ‘restricted list’ for export, subject to the following conditions:
  - Goods are not of Indian origin;
  - Goods imported shall be kept in bonded warehouse under supervision of Customs;
  - Goods to be exported have never been cleared for home consumption;
  - Export of goods shall be subjected to section 69 of Customs Act, 1962.

**Export of Replacement Goods**

- If the export item is ‘restricted’/ under SCOMET, the exporter shall require an export license for replacement.

**Export of Repaired Goods**

- This section covers exported goods, on being found defective or damaged are imported for repair and would be subsequently re-exported.

- Exporter will have to return the benefits/incentive availed at the time of initial export of the returned goods.

- If the goods are ‘restricted’ for import, the exporter shall require an import license.

**Re-export of imported Goods found defective and unsuitable for use:**

- Imported goods found defective after Customs clearance, or not found as per specifications or requirements may be re-exported back as per the provisions of Customs Act, 1962.

**Denomination of Export Contracts**

- Earlier, there was a provision that the export contracts for which payments are received through Asian Clearing Union (ACU) shall be denominated in ACU Dollar. There is a further addition in this provision that the participants in the ACU may settle their transactions in ACU Dollar or in ACU Euro as per RBI Notifications.

**Duty Credit Scrips (MEIS and SEIS)**

- Earlier, Duty Credit Scrips could be used for payment of all Customs duties. Now, it is specified that such scrips can be used for payment of Basic Customs Duty and Additional Customs Duty specified under sections 3 (1), 3 (3) and 3 (5) of the Customs Tariff Act.

Thus, Duty Credit Scrips cannot be used for payment of Integrated tax (IGST) and GST Compensation Cess (if applicable) on import of goods.

- Earlier, the Duty Credit Scrips could be used for payment of Central Excise duties or Service tax on domestic procurement of goods or services. However, similar benefit is not extended to pay tax on procurement of goods and services under GST.

For the goods covered under Central excise, the benefit of utilizing Duty Credit Scrips for payment of excise duty, continues.

- The validity period of Duty Credit Scrips is increased to 24 months (from 18 months).

- The rates of reward under MEIS (Merchandise Exports from India Scheme) are increased for certain products. These relate to MSME, agriculture and labour intensive products. The revised rates shall be applicable for exports made effective 1 November 2017 till 30 June 2018.¹

- The rate of rewards under SEIS (Service Exports from India Scheme) have also been increased. Such rates shall be applicable for services exported from 1 November 2017 to 31 March 2018. The rates shall be subject to review from 1 April 2018.²

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¹ As per Public Notice No. 44/2015-2020, dated 5 December 2017.

• Ground Handling Services is added to the list of services where receipt of payment in INR can be treated as receipt in Deemed Foreign Exchange, for the purpose of eligibility of SEIS.\(^3\)

• Regional Authority may ask for export documents (such as export invoices) at any time within three years from the date of issue of the Duty Credit Scrip.

• Transitional Arrangement:

  In respect of goods and services exported upto 5 December 2017, for which the Duty Credit Scrip is applied or issued after such date, the policy and procedure prevailing at the time of export shall be applicable to the scrips.

**Advance Authorization (AA)**

• AA (issued for inputs in relation to resultant product) can also be issued on following basis:

  • Applicant specific prior fixation of norm by the Norms Committee;
  
  • Self Ratification Scheme.

• Self Ratification Scheme:

  A new Self Ratification Scheme has been framed for the purpose of issue of AA. The key features of this scheme are as follows:

  • Where there are no Standard Input Output Norms (SION) /valid Adhoc Norms for an export product and where SION has been notified but exporter intends to use additional inputs in the manufacturing process, eligible exporter can apply for an AA under this scheme on self declaration and self ratification basis. Such cases need not be referred to Norms Committees for ratification of norms.

  • Application under this scheme shall be made along with a certificate from Chartered Engineer in the prescribed format.

  • Detailed procedure for administering the scheme shall be prescribed in the Handbook of Procedures.

  • The scheme is not available for certain specified inputs and exports.

  • DGFT may conduct audit or special audit of the manufacturer, as per the prescribed procedures.

  • Imports under AA for physical exports, are exempt from IGST and GST Compensation Cess\(^4\). Such exemption is available only uptp 31 March 2018.

  • Earlier, there were separate provisions for determining minimum value addition in case of physical exports for which payments are not received in freely convertible currency. These are now deleted.

  • Domestic procurement of inputs by AA holder from EOU/EHTP/BTP/ STP units has to be against Advance Release Order (ARO) or Invalidation Letter. Earlier, procurement of inputs from such units was allowed without obtaining ARO or Invalidation Letter. However, similar benefit allowed for procurements from SEZ units is continued.

• Provision granting extension of export obligation period to units under BIFR (The Board for Industrial and Financial Reconstruction) / Rehabilitation is deleted.

**Duty Free Import Authorization Scheme (DFIA)**

• Earlier, there was a provision that for items where higher value addition has been prescribed under AA in Appendix 4C, the same value addition shall be applicable for DFIA also. This provision is now removed.

**Schemes for exporters of Gem and Jewellery**

• Earlier, such exporters could import/ procure duty free input for manufacture of export product. This scheme is continued, however, exemption would not be available for payment of IGST and GST Compensation cess on import of goods.

**Export Promotion Capital Goods Scheme (EPCG)**

• Benefit of EPCG is not available to import of capital goods specified in negative list in Appendix 5(f).

• Import of capital goods under EPCG Authorisation for physical exports are exempt from IGST and GST Compensation Cess till 31 March 2018.

• In case IGST and Compensation Cess are paid in cash on imports under EPCG, incidence of the said IGST and Compensation Cess would not be taken for computation of net duty saved provided Input Tax Credit is not availed.

• Restriction on import of second hand capital goods and import of any capital goods for generation/ transmission of power (including captive plants and power generation sets of any kind) has been removed.

• Actual user condition was previously applicable till export obligation is completed. Now, it will be applicable till Export Obligation Discharge Certificate is granted.

• Provision granting extension of export obligation period to units under BIFR (The Board for Industrial and Financial Reconstruction) / Rehabilitation is deleted.

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4 Leviable under sub section (7) and (9) of section 3 of Customs Tariff Act, 1975.
**Initiatives for EOU’s/EHTP/STP/BTP**

- Exemption from payment of Customs duty, IGST and GST Compensation cess has been granted for import or procurement of goods from bonded warehouse in Domestic Tariff Area (DTA) or from international exhibition held in India. Such exemption is valid up to 31 March 2018.

- The procurement of goods from DTA, covered under GST, would be on payment of applicable GST and Compensation cess. The refund of GST paid on such supply to EOU would be available to the supplier subject to the conditions and documents specified in the GST legislation.

- Application and Approval for setting up the units:
  - Application for setting up an EOU shall be considered by Unit Approval Committee (UAC)/ Board of Approval (BoA) as the case may be, as detailed in the Hand Book of Procedure.
  - In case of units under EHTP/ STP schemes, necessary approval/ permission shall be granted by officer designated by Ministry of Communication and Information Technology, Department of Electronics & Information Technology, instead of DC, and by Inter-Ministerial Standing Committee (IMSC) instead of BOA.
  - Bio-Technology Parks (BTP) would be notified by DGFT on recommendations of Department of Biotechnology. In case of units in BTP, necessary approval / permission under relevant provisions of this chapter will be granted by designated officer of Department of Biotechnology.
  - Units (other than gems and jewellery units) may sell the approved finished goods in DTA subject to payment of excise duty, wherever applicable, IGST and GST Compensation cess provided the goods are freely importable under FTP in DTA and subject to fulfillment of positive Net Foreign Exchange (NFE) condition.

- Customs duty exemption availed on importation of inputs utilized for the purpose of manufacturing of such finished goods supplied in DTA needs to be reversed. The reversal of Customs Duty would be as per prevailing SION norms or norms fixed by Norms Committee (where no SION norms are fixed).

- Certain restrictions on sale of goods to DTA units (eg.no DTA sale in respect of motor cars, alcoholic liquors, books, tea; restriction of DTA sale up to 50%of Free on Board value of exports) have been removed.

- Destruction of scrap/waste/remnants would be subject to taxes and cess applicable under GST.

- Transfer of manufactured goods or capital goods from one EOU/STP/EHTP/BTP unit to another such unit is permissible subject to payment to applicable GST and compensation cess. However, prescribed procedure for such movement needs to be followed.

- Where EOU works as a job worker of DTA for export goods, the entitlement of duty drawback by the DTA unit shall be as per Customs and Central Excise Duties Drawback Rules, 2017 and shall be limited to Customs duties and Central Excise Duties (in respect of eligible items covered under Schedule IV of Central Excise Act, 1944).

- Where job work is given by the foreign supplier to EOU, the goods for such job work may be imported with/without payment of applicable duties and taxes. Further, no DTA clearance of such goods shall be allowed.

**Deemed Exports**

- A clear distinction is made between deemed export benefits under FTP and deemed export benefits under GST. The deemed export benefits in relation to Basic Customs duty (BCD) and Excise duty (on products not subsumed under GST) would be governed by FTP, whereas the deemed export benefits of GST would be regulated by section 147 of CGST Act and the relevant rules and notification issued thereafter.

- The refund of drawback in the form of BCD of the inputs used in manufacture and supply under the deemed export category shall be given on brand rate basis upon submission of documents evidencing actual payment of basic custom duties.

**Other new initiatives and amendments**

- Reserve Bank of India (RBI) has developed a comprehensive IT-based system called Export Data Processing and Monitoring System (EDPMS) for monitoring export of goods and software and facilitating Authorized Dealer Bank (AD Bank) to report various returns through a single platform.

- Directorate General of Foreign Trade (DGFT) has signed Memorandum of Understanding (MOU) for sharing e-Bank Realization Certificate (e-BRC) with Agricultural Directorate, Agricultural Processing and Monitoring System (EDPMS) for facilitating Authorized Dealer Bank (AD Bank) to report various returns through a single platform.

- CBEC had introduced 24x7 customs clearance facility in respect of facilitated Bills of Entry, factory stuffed containers and goods shipped under free shipping bills. The facility is available at 19 sea ports and 17 air cargo complexes. Now, such facility has been extended to all types of bills of entry. Also, Merchant Overtime charges (MOT charges) are not required to be paid on such clearance.

- Resolution of foreign trade related issues for importers and exporters will be done through a single window contact point called Contact@DGFT.

- A new ‘Logistics Division’ is set up to carry out policy changes, improvement of existing procedures, identification of bottlenecks and introduction of technology for overall development of logistics sector in India.
Comments

Through the revised FTP, the Government has addressed the challenges faced by exporters due to the GST rollout, by introducing various measures to reduce cash flow and procedural burden and thereby facilitating ease of doing business.

The extension of 24x7 Customs clearance facility for all types of bills of entry, without payment of additional Merchant Overtime Charges, is appreciated.

The new self-ratification scheme for duty-free import of raw materials and the extension of the validity period of Duty Credit Scrips from 18 to 24 months will help in mitigating the concerns of the exporters of critical products and enhance its utility in the GST framework.

The move to create a logistics division for integrated development of the logistics sector is also likely to positively impact exports by reducing transaction costs and improving product movement efficiencies.
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