THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT
EXECUTIVE PROGRAMME

Economic, Business and Commercial Laws
(FOR DECEMBER 2024 EXAMINATION)

Module 2

PAPER 7

CONTENT

LESSON 3
FOREIGN EXCHANGE TRANSACTIONS & COMPLIANCES

FOREIGN EXCHANGE MANAGEMENT (MANNER OF RECEIPT AND PAYMENT) REGULATIONS, 2023

Manner of Receipt and Payment

Regulation 3 of the FEM (Manner of Receipt and Payment) Regulations, 2023 states that save as otherwise in a manner as provided in the Act or the rules or regulations made or directions issued under the Act, no person resident in India shall make or receive payment from a person resident outside India:

It may be noted that the Reserve Bank may, on an application made to it, permit a person resident in India to make or receive payment under the Foreign Exchange Management Act, 1999.

The receipt and payment between a person resident in India and a person resident outside India shall, unless provided otherwise, be made through an Authorised Bank or Authorised Person and in the manner as specified below:

I. Trade transactions –

(a) receipt/payment for export to or import from the countries given below of eligible goods and services shall be made as under:

i. Nepal and Bhutan - in Indian Rupees provided that in case of exports from India where the importer in Nepal has been permitted by the Nepal Rashtra Bank to make payment in foreign currency, such receipts towards the amount of the export may be in foreign currency;

ii. Member countries of ACU, other than Nepal and Bhutan - through ACU mechanism or as per the directions issued by the Reserve Bank to authorised dealer from time to time: Provided that in case of imports where the goods are shipped to India from a member country of the ACU (other than Nepal and Bhutan) but the supplier is resident of a country other than a member country of the ACU, the payment may be made in a manner as specified at (iii) below.

iii. Countries other than member countries of ACU - In Indian Rupees or in any foreign currency.

(b) Notwithstanding anything contained in this sub-regulation, receipts and payments may also be made in a manner as may be provided in the extant Foreign Trade Policy framed by the Central Government.

Explanation: The expression 'ACU' (Asian Clearing Union) shall have the same meaning assigned to it under Article I of the ACU agreement and the ACU mechanism shall be construed accordingly.

II. Transactions other than trade transactions - receipt and payment shall be made as under:

i. Nepal and Bhutan - In Indian Rupees provided that in case of overseas investment in Bhutan, payment may also be made in foreign currency;

ii. Other Countries – In Indian Rupees or any foreign currency.

Payment and receipt in India for any current account transaction, other than a trade transaction, between any person resident in India and a person resident outside India, who is on a visit to India, may be made only in Indian Rupees.

It may be noted that any payment or receipt under regulation 3 may also be made by debit/ credit to a bank account maintained in terms of the rules, regulations or directions issued under the Foreign Exchange Management Act, 1999.

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LESSON 5
FOREIGN DIRCECT INVESTMENT REGULATIONS & FDI POLICY

FOREIGN DIRECT INVESTMENT POLICY ON SPACE SECTOR

The Government of India has reviewed the extant Foreign Direct Investment (FDI) Policy on Space sector. Accordingly, the following amendments have been made in Consolidated FDI Policy Circular of 2020, as amended from time to time (FDI Policy):

Space Sector

Sector/Activity	Sectoral Cap	Entry Route
(1) Satellites-Manufacturing & Operation	100%	Up to 74%: Automatic Beyond 74%: Government route
(2) Satellite Data Products		
(3) Ground Segment & User Segment		
(1) Launch Vehicles and associated systems or subsystems	100%	Up to 49%: Automatic Beyond 9%: Government route
(2) Creation of Spaceports for launching and receiving Spacecraft		
Manufacturing of components and systems/ sub-systems for satellites, ground segment and user segment	100%	Up to 100%: Automatic

The investee entity shall be subject to sectoral guidelines as issued by Department of Space from time to time.

Definitions:

(1) Satellites — Manufacturing & Operation: End-to-end manufacturing and supply of satellite and/or payload, establishing the satellite systems including control of in-orbit operations of the satellite & payloads.

(2) Satellite Data Products: Reception, generation or dissemination of earth observation/remote sensing satellite data and data products including Application Interfaces (API).

(3) Ground Segment & User Segment:

(a) Ground Segment: Supply of satellite transmit/receive earth stations including earth observation data receive station, gateway, teleports, satellite Telemetry, Tracking and Command (TTC) station, Satellite Control Centre (SCC), etc.

(b) User Segment: Supply of user ground terminals for communicating with the satellite, which are not covered under the ground segment.

(4) Launch Vehicles and Associated Systems or Subsystems: A vehicle and its stages or components that is designed to operate in or place spacecraft with payloads or persons, in a suborbital trajectory, earth orbit or outer space.

(5) Creation of Spaceports for launching and receiving Spacecraft: A spaceport (also referred as launch site) can be regarded as the base from which spacecraft are launched, and consisting of facilities involving devices for transportation to, from and via outer space.

(6) Manufacturing of Components and Systems/Subsystems for Satellites ground segment and user segment: Comprises the manufacturing and supply of the electrical, electronic and mechanical components systems/ subsystems for satellites, ground segment and user segment.

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Lesson 6

OVERSEAS DIRECT INVESTMENT

Regulatory Framework

Overseas Investments Governed Under:

- *Foreign Exchange Management (Overseas Investment) Rules, 2022*
- *Foreign Exchange Management (Overseas Investment) Regulations, 2022*
- *Foreign Exchange Management (Overseas Investment) Directions, 2022*

Regulation Notified by RBI	Regulations Superseding on Notification
Foreign Exchange Management (Overseas Investment) Regulations, 2022	Foreign Exchange Management (Transfer or Issue of any Foreign Security Regulations, 2004
	Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015

Introduction

Overseas investments by persons resident in India enhance the scale and scope of business operations of Indian entrepreneurs by providing global opportunities for growth. Such ventures through easier access to technology, research and development, a wider global market and reduced cost of capital along with other benefits increase the competitiveness of Indian entities and boost their brand value. These overseas investments are also important drivers of foreign trade and technology transfer thus boosting domestic employment, investment and growth through such interlinkages.

In view of the evolving needs of businesses in India, in an increasingly integrated global market, there is need of Indian corporates to be part of global value chain and in keeping with the spirit of liberalisation and to promote ease of doing business, the Central Government and the Reserve Bank of India have been progressively simplifying the procedures and rationalising the rules and regulations under the Foreign Exchange Management Act, 1999. In this direction, a significant step has been taken with operationalisation of a new Overseas Investment regime. Foreign Exchange Management (Overseas Investment) Rules, 2022 have been notified by the Central Government on August 22, 2022.

Overseas Direct Investment (ODI) *means*:

(i) Acquisition of any ***unlisted equity capital*** *or* ***subscription*** *as a part of the Memorandum of Association of a foreign entity, or*

(ii) Investment in 10% or more of the ***paid-up equity capital of a listed foreign entity****, or*

(iii) ***Investment with control*** *where investment is less than 10% of the paid-up equity capital of a listed foreign entity.*

For better understanding of Overseas Direct Investment (ODI), **foreign entity** means an entity formed or registered or incorporated outside India, including in International Financial Services Centre (IFSC) in India, that has limited liability.

Further, **Control** means the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements that entitle them to ten percent or more of voting rights or in any other manner in the entity.

"Overseas Investment" means financial commitment and Overseas Portfolio Investment by a person resident in India.

It may be noted that **financial commitment** by a person resident in India means the aggregate amount of investment by way of ODI, debt other than Overseas Portfolio Investment (OPI) and non-fund-based facility or facilities extended by it to all foreign entities.

An Indian entity may lend or invest in any debt instruments issued by a foreign entity or extend non-fund-based commitment to or on behalf of a foreign entity, including overseas SDSs of such Indian entity, subject to the following conditions:

(i) the Indian entity is eligible to make ODI;
(ii) the Indian entity has made ODI in the foreign entity;
(iii) the Indian entity has acquired control in the foreign entity on or before the date of making such financial commitment.

Indian Entity	A Company defined under the Companies Act, 2013
	A Body corporate incorporated by any law for the time being in force
	A Limited Liability Partnership formed under the Limited Liability Partnership Act, 2008
	A Partnership firm registered under the Indian Partnership Act, 1932

"Overseas Portfolio Investment" (OPI) means investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an IFSC:
Provided that OPI by a person resident in India in the equity capital of a listed entity, even after its delisting shall continue to be treated as OPI until any further investment is made in the entity.
Debt instruments are:

(i) Government bonds;
(ii) corporate bonds;
(iii) all tranches of securitisation structure which are not equity tranche;
(iv) borrowings by firms through loans; and
(v) depository receipts whose underlying securities are debt securities

Permission for Overseas Investment

A person resident in India may make or transfer any investment or financial commitment outside India under general permission/automatic route subject to the provisions contained in the Foreign Exchange Management (Overseas Investment) Rules, 2022 and Foreign Exchange Management (Overseas Investment) Regulations, 2022. Accordingly, overseas investment may be made in a foreign entity engaged in a bona fide business activity, directly or through Step Down Subsidiary (SDS) /Special-Purpose Vehicle (SPV).

Further, Subsidiary"/ "Step Down Subsidiary (SDS) of a foreign entity means an entity in which the foreign entity has control and the structure of such subsidiary/SDS shall comply with the structural requirements of a foreign entity, i.e., such subsidiary/SDS shall also have limited liability where the foreign entity's core activity is not in strategic sector. The investee entities of the foreign entity where such foreign entity does not have control (as defined above) shall not be treated as SDSs and therefore need not be reported henceforth.

Procedure for Making Overseas Investment

1	The person intending to make any financial commitment shall fill up the ***Form FC*** duly supported by the requisite documents and approach the designated Authorised Dealer (AD) bank for making the investment/remittance.
2	In respect of any case under the approval route, the applicant shall approach their designated AD bank who shall forward the proposal to the Reserve Bank after due scrutiny and with its specific recommendations. The application for overseas investment under the approval route would continue to be submitted to the Reserve Bank in physical/electronic form through email as hitherto, in addition to the online reporting.
3	The designated AD bank before forwarding the proposal shall submit the relevant sections of the Form FC in the online OID application and the transaction number generated by the application shall be mentioned in their reference.
4	The following documents shall be submitted along with the proposal: ➢ Background and brief details of the transaction. ➢ Reason(s) for seeking approval mentioning the extant FEMA provisions.

	➢ Observations of the designated AD bank with respect to the following: • Prima facie viability of the foreign entity; • Benefits which may accrue to India through such investment; • Financial position and business track record of the Indian entity and the foreign entity; • Any other material observation.
5	Recommendations of the designated AD bank with confirmation that the applicant's board resolution or resolution from an equivalent body, as applicable, for the proposed transaction(s) is in place.
6	Diagrammatic representation of the organisational structure indicating all the subsidiaries of the Indian entity horizontally and vertically with their stake (direct and indirect) and status (whether operating company or SPV).
7	Valuation certificate for the foreign entity (if applicable).
8	Other relevant documents properly numbered, indexed and flagged.
9	The proposal shall be submitted to the Reserve Bank of India.

Approval from the Central Government

The applications for overseas investment/financial commitment in Pakistan/other jurisdiction as may be advised by the Central Government from time to time or in strategic sectors/specific geographies shall be forwarded by the AD banks from their constituents to the Reserve Bank as per the laid down procedure for onward submission to the Central Government.

It may be noted that strategic sector shall include energy and natural resources sectors such as Oil, Gas, Coal, Mineral Ores, submarine cable system and start-ups and any other sector or sub-sector as deemed fit by the Central Government. The restriction of limited liability structure of foreign entity shall not be mandatory for entities with core activity in any strategic sector. Accordingly, Overseas Direct Investment (ODI) can be made in such sectors in unincorporated entities as well. An Indian entity is also permitted to participate in a consortium with other international operators to construct and maintain submarine cable systems on co-ownership basis. AD banks may allow remittances for ODI in strategic sector after ensuring that Indian entity has obtained necessary permission from the competent authority, wherever applicable.

Approval from the Reserve Bank

Financial commitment by an Indian entity, exceeding USD 1 (one) billion (or its equivalent) in a financial year shall require prior approval of the Reserve Bank even when the total financial commitment of the Indian entity is within the eligible limit under the automatic route.

No Objection Certificate (NOC) from the lender bank/regulatory body/investigative agency

Any person resident in India having an account appearing as a Non-Performing Asset (NPA) or is classified as wilful defaulter or is under investigation by a financial sector regulator/ investigative

agency shall obtain an NOC from the lender bank/regulatory body/investigative agency concerned before making financial commitment or undertaking disinvestment.

Where an Indian entity has already issued a guarantee in accordance with the FEMA provisions before an investigation has begun or account is classified as NPA/wilful defaulter and subsequently is required to honour such contractual obligation, such remittance due to the invocation will not constitute fresh financial commitment and hence NOC shall not be required.

Mode of Payment

A person resident in India making Overseas Investment may make payment –

(i) ***by remittance made through banking channels;***

(ii) ***from funds held in an account maintained in accordance with the provisions of the Foreign Exchange Management Act;***

(iii) ***by swap of securities;***

(iv) ***by using the proceeds of American Depository Receipts or Global Depositary Receipts or stock swap of such receipts or external commercial borrowings raised in accordance with the provisions of the Act and the rules and regulations made thereunder for making ODI or financial commitment by way of debt by an Indian entity.***

It is further provided that:

(i) Overseas investment by way of cash is not permitted.

(ii) An Indian entity can make remittances to its office/branch outside India only for the purpose of normal business operations of such branch or office. Accordingly, no remittance shall be made by any Indian entity to its branch/office outside India for making any overseas investment.

(iii) A person resident in India shall not make any payment on behalf of any foreign entity other than by way of financial commitment as permitted under the OI Rules/Regulations.

(iv) Any investment/financial commitment in Nepal and Bhutan shall be done in a manner as provided in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016. All dues receivable on investments (or financial commitment) made in freely convertible currencies, as well as their sale/winding up proceeds are required to be repatriated to India in freely convertible currencies only.

Pricing Guidelines

The AD bank, before facilitating an overseas investment related transaction, shall ensure compliance with the provisions of Overseas Investment Rules. With respect to the documents to be taken by the AD bank, they shall be guided by their board approved policy, which may, *inter alia*, provide for taking into consideration the valuation as per any internationally accepted pricing methodology for valuation. The AD bank shall put in place a board approved policy within two months from the date of these directions.

Such policy may also provide for scenarios where the valuation may not be insisted upon, such as:

(i) transfer on account of merger, amalgamation or demerger or liquidation, where the price has been approved by the competent Court/Tribunal as per the laws in India and/or the host jurisdiction or
(ii) price is readily available on a recognised stock exchange, etc.

The policy shall also clearly provide for additional documents such as the audited financial statements of the foreign entity, etc. that may be taken by the AD banks for ascertaining the bona fides in cases involving write-off of the investment.

Transfer or Liquidation

A person resident in India holding equity capital in accordance with OI Rules may transfer such investment, in compliance with the limits and subject to the conditions for such investment or disinvestment, pricing guidelines or documentation and reporting requirements, in the manner provided in these rules and the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

A person resident in India may transfer equity capital by way of sale to a person resident in India, who is eligible to make such investment under these rules, or to a person resident outside India.

In case the transfer is on account of merger, amalgamation or demerger or on account of buyback of foreign securities, such transfer or liquidation in case of liquidation of the foreign entity, shall have the approval of the competent authority as per the applicable laws in India or the laws of the host country or host jurisdiction, as the case may be.

It is clarified that where the transferor is required to repatriate all the dues before disinvestment, such requirement shall not apply to the dues that do not arise on account of investment in equity or debt like export receivables, etc.

Restructuring

A person resident in India who has made ODI in a foreign entity may permit restructuring of the balance sheet by such foreign entity, which has been incurring losses for the previous two years as evidenced by its last audited balance sheets, subject to ensuring compliance with reporting, documentation requirements and subject to the diminution in the total value of the outstanding dues towards such person resident in India on account of investment in equity and debt, after such restructuring not exceeding the proportionate amount of the accumulated losses.

It may be noted that in case of such diminution where the amount of corresponding original investment is more than USD 10 million or in the case where the amount of such diminution exceeds twenty per cent of the total value of the outstanding dues towards the Indian entity or investor, the diminution in value shall be duly certified on an arm's length basis by a registered valuer as per the Companies Act, 2013 or corresponding valuer registered with the regulatory authority or certified public accountant in the host Jurisdiction.

The certificate dated not more than six months before the date of the transaction shall be submitted to the designated AD bank. The certificate shall mention the amount of accumulated losses as per the audited balance sheet of the foreign entity, the proportionate amount of accumulated losses based upon the share of the Indian entity/investor, the amount of diminution in the value of the outstanding dues towards the Indian entity/investor post restructuring and that such diminution does not exceed the proportionate amount of accumulated losses.

The above stated provisions shall not be used where the assets are simply revalued in the books of the Indian entity without any restructuring of the balance sheet of the foreign entity.

Opening of Foreign Currency Account abroad by an Indian entity

An Indian entity may open, hold and maintain Foreign Currency Account (FCA) abroad for the purpose of making ODI in accordance with the provisions contained in Foreign Exchange Management (Foreign Currency Accounts by a resident in India) Regulations, 2015.

Obligations of the Person Resident in India

1	A person resident in India acquiring equity capital in a foreign entity, which is reckoned as ODI, shall submit the evidence of investment to the AD bank within six months, failing which the funds remitted overseas shall be repatriated within the said period of six months.
2	The evidence of investment shall be retained by the designated AD bank, who shall monitor the receipt of required documents and satisfy themselves about the bona fides of the documents so received.
3	Form FC shall be submitted along with requisite documents to AD bank for obtaining UIN on or before making initial ODI.
4	The AD bank after due verification shall report the details in the OID application for allotment of UIN.
5	Any remittance towards a foreign entity shall be facilitated by the AD bank only after obtaining the necessary UIN for such entity.
6	The allotment of UIN does not constitute an approval from the Reserve Bank for the investment made/to be made in the foreign entity.
7	The issue of UIN only signifies taking on record of the investment for maintaining the database.

Manner of making Overseas Direct Investment by Indian entity

Manner of making ODI

(1) An Indian entity may make ODI by way of investment in equity capital for the purpose of undertaking bonafide business activity in the manner and subject to the limits and prescribed conditions.
(2) The ODI may be made or held by way of, –

(i) subscription as part of memorandum of association or purchase of equity capital, listed or unlisted;
(ii) acquisition through bidding or tender procedure;
(iii) acquisition of equity capital by way of rights issue or allotment of bonus shares;
(iv) capitalisation, within the time period, if any, specified for realisation under the Act, of any amount due towards the Indian entity from the foreign entity, the remittance of which is permitted under the Act or does not require prior permission of the Central Government or the Reserve Bank under the Act or any rules or regulations made or directions issued thereunder;
(v) the swap of securities;
(vi) merger, demerger, amalgamation or any scheme of arrangement as per the applicable laws in India or laws of the host country or the host jurisdiction, as the case may be.

ODI in Financial Services Activity

(1) An Indian entity engaged in financial services activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, subject to the following conditions, namely: --

(i) the Indian entity has posted net profits during the preceding three financial years;
(ii) the Indian entity is registered with or regulated by a financial services regulator in India;
(iii) the Indian entity has obtained approval as may be required from the regulators of such financial services activity, both in India and the host country or host jurisdiction, as the case may be, for engaging in such financial services:

(2) An Indian entity not engaged in financial services activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, except banking or insurance, subject to the condition that such Indian entity has posted net profits during the preceding three financial years:

Provided that an Indian entity not engaged in the insurance sector may make ODI in general and health insurance where such insurance business is supporting the core activity undertaken overseas by such an Indian entity.

(3) Overseas Investment by banks and non-banking financial institutions regulated by the Reserve Bank shall be subject to the conditions laid down by the Reserve Bank under applicable laws in this regard.

Limit for Financial Commitment

(1) The total financial commitment made by an Indian entity in all the foreign entities taken together at the time of undertaking such commitment shall not exceed 400 percent of its net worth as on the date of the last audited balance sheet or as directed by the Reserve Bank, in consultation with Central Government from time to time.

(2) The total financial commitment shall not include capitalisation of retained earnings for reckoning such limit but shall include–

(i) utilisation of the amount raised by the issue of American Depository Receipts or Global Depositary Receipts and stock-swap of such receipts; and
(ii) utilisation of the proceeds from External Commercial Borrowings to the extent the corresponding pledge or creation of charge on assets to raise such borrowings has not already been reckoned towards the above limit:

It may be noted that the financial commitment made by Maharatna or Navratna or Miniratna or subsidiaries of such public sector undertakings in foreign entities outside India engaged in strategic sectors shall not be subject to the limits laid down above.

Overseas Investment by Person Resident in India Other than Indian Entity and Resident Individual

ODI by Registered Trust or Society:

Any person being a registered Trust or a registered Society engaged in the educational sector or which has set up hospitals in India may make ODI in a foreign entity with the prior approval of the Reserve Bank, subject to the following conditions, namely: –

(i) the foreign entity is engaged in the same sector that the Indian Trust or Society is engaged in;
(ii) the Trust or the Society, as the case may be, should have been in existence for at least three financial years before the year in which such investment is being made;
(iii) the trust deed in case of a Trust, and the memorandum of association or rules or bye-laws in case of a Society shall permit the proposed ODI;
(iv) such investment have the approval of the trustees in case of a Trust and the governing body or council or managing or executive committee in case of a Society;
(v) in case the Trust or the Society require special licence or permission either from the Ministry of Home Affairs, Central Government or from the relevant local authority, as the case may be, the special licence or permission has been obtained and submitted to the designated AD bank.

Overseas Investment in IFSC by Person Resident in India

Subject to the provisions of the Foreign Exchange Management (Overseas Investment) Rules, 2022 and the Foreign Exchange Management (Overseas Investment) Regulations, 2022, a person resident in India may make Overseas Investment in an IFSC in India.

Provided that –

(i) in the case of an ODI made in an IFSC, the approval by the financial services regulator concerned, wherever applicable, shall be decided within forty-five days from the date of application complete in all respects failing which it shall be deemed to be approved;
(ii) an Indian entity not engaged in financial services activity in India, making ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, except banking or insurance, who does not meet the net profit condition as required under these rules, may make ODI in an IFSC.
(iii) a person resident in India may make contribution to an investment fund or vehicle set up in an IFSC as OPI;
(iv) a resident individual may make ODI in a foreign entity, including an entity engaged in financial services activity, (except in banking and insurance), in IFSC if such entity does not have subsidiary or step-down subsidiary outside IFSC where the resident individual has control in the foreign entity.

A recognised stock exchange in the IFSC shall be treated as a recognised stock exchange outside India for the purpose of these rules.

Reporting

All reporting with respect to overseas investment by a person resident in India shall be made through the designated AD bank in the prescribed manner and in the format provided by the Reserve Bank.

A person resident in India who has made ODI or making financial commitment or undertaking disinvestment in a foreign entity shall report the following, namely: –

(a) financial commitment, whether it is reckoned towards the financial commitment limit or not, at the time of sending outward remittance or making a financial commitment, whichever is earlier;
(b) disinvestment within thirty days of receipt of disinvestment proceeds;
(c) restructuring within thirty days from the date of such restructuring.

A person resident in India other than a resident individual making any Overseas Portfolio Investment (OPI) or transferring such OPI by way of sale shall report such investment or transfer of investment within sixty days from the end of the half-year in which such investment or transfer is made as of September or March-end:

Provided that in case of OPI by way of acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme, the reporting shall be done by the office in India or branch of an overseas entity or a subsidiary in India of an overseas entity or the Indian entity in which the overseas entity has direct or indirect equity holding where the resident individual is an employee or director.

Any acquisition of foreign securities through conversion of Indian Depository Receipts (IDRs) shall be duly reported as ODI or OPI, as applicable.

The Annual Performance Report (APR) shall be certified by a chartered accountant where the statutory audit is not applicable, including in case of resident individuals. It is also clarified that where APR is required to be filed jointly, either one investor may be authorised by other investors for filing APR, or such persons may jointly file the APR.

Delay in Reporting

In case a person resident in India has made a delay in filing/submitting the requisite form/return/document, such person may file/submit the requisite form/return/ document, etc. and pay the Late Submission Fee (LSF) through the designated AD bank in accordance with OI Regulations.

Restriction on Further Financial Commitment or Transfer

A person resident in India who has made a financial commitment in a foreign entity in accordance with the Act or rules or regulations made thereunder, shall not make any further financial commitment, whether fund-based or non-fund-based, directly or indirectly, towards such foreign entity or transfer such investment till any delay in reporting is regularised.

AD bank shall not facilitate any outward remittance/further financial commitment by a person resident in India towards a foreign entity until any delay in reporting is regularised.

Restrictions and Prohibitions

Unless otherwise provided in the FEMA or these ODI Rules, no person resident in India shall make ODI in a foreign entity engaged in–––

(a) real estate activity;
(b) gambling in any form; and
(c) dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank.

Explanation. – the expression "real estate activity" means buying and selling of real estate or trading in Transferable Development Rights but does not include the development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing.

Any ODI in start-ups recognised under the laws of the host country or host jurisdiction as the case may be, shall be made by an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual.

No person resident in India shall make financial commitment in a foreign entity that has invested or invests into India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries.

It may be noted that such restriction shall not apply to the following classes of companies mentioned in Rule 2(2) of the Companies (Restriction on Number of Layers) Rules, 2017 as may be amended from time to time, namely: -
(a) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;
(b) a non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank and considered as systematically important non-banking financial company by the Reserve Bank;
(c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999; and
(d) a Government company referred to in clause (45) of section 2 of the Companies Act, 2013.

Restriction on Acquisition or Transfer of Immovable Property Outside India

(1)	A person resident in India shall not acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank. However, following property excluded–	
	(a)	held by a person resident in India who is a national of a foreign State;
	(b)	acquired by a person resident in India on or before the 8th day of July, 1947 and continued to be held by such person with the permission of the Reserve Bank;
	(c)	acquired by a person resident in India on a lease not exceeding five years.
(2)	A person resident in India may acquire immovable property outside India by way of inheritance or gift or purchase from a person resident in India who has acquired such property as per the foreign exchange provisions in force at the time of such acquisition. Further, a person resident in India may acquire immovable property outside India from a person resident outside India–	
	(a)	by way of inheritance;
	(b)	by way of purchase out of foreign exchange held in RFC account;
	(c)	by way of purchase out of the remittances sent under the Liberalised Remittance Scheme instituted by the Reserve Bank. Provided that such remittances under the Liberalised Remittance Scheme may be consolidated in respect of relatives if such relatives, being persons resident in India, comply with the terms and conditions of the Scheme;
	(d)	jointly with a relative who is a person resident outside India;
	(e)	out of the income or sale proceeds of the assets, other than ODI, acquired overseas under the provisions of the Act.
(3)	An Indian entity having an overseas office may acquire immovable property outside India for the business and residential purposes of its staff, as per the directions issued by the Reserve Bank from time to time.	

(4)	A person resident in India who has acquired any immovable property outside India in accordance with the foreign exchange provisions in force at the time of such acquisition may–	
	(a)	transfer such property by way of gift to a person resident in India who is eligible to acquire such property under these rules or by way of sale;
	(b)	create a charge on such property in accordance with the Act or the rules or regulations made thereunder or directions issued by the Reserve Bank from time to time.
(5)		The holding of any investment in immovable property or transfer thereof in any manner shall not be permitted if the initial investment in immovable property was not permitted under the Foreign Exchange Management Act.

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LESSON 9
FOREIGN TRADE POLICY & PROCEDURE

KEY CONCEPTS

- Foreign Trade Policy
- Amnesty Scheme
- Status Holder
- E-Commerce Export Hubs
- SCOMET
- Deemed Exports
- National Committee on Trade Facilitation
- Duty Exemption/ Remission Scheme
- Duty Free Import Authorisation Scheme (DFIA)

Learning objectives

To understand:

- India's Foreign Trade Policy (FTP), 2023
- Amnesty Scheme
- Export promotion
- Duty Exemption / Remission Schemes
- Deemed Export

Lesson Outline

- Introduction
- Key Highlights of FTP 2023
- Legal Framework and Trade Facilitation
- General Provisions Regarding Imports and Exports
- Developing Districts as Export Hubs
- Duty Exemption / Remission Schemes
- Export Promotion Capital Goods (EPCG) Scheme
- Export Oriented Units (EOUs), Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio-Technology Parks (BTPs)
- Deemed Exports
- Quality Complaints and Trade Disputes
- Promoting Cross Border Trade in Digital Economy
- SCOMET: Special Chemicals, Organisms, Materials, Equipment and Technologies
- Lesson Round- Up
- Test Yourself
- List of Further Readings
- Other References (Including Websites/ Video Links)

INTRODUCTION

Foreign Trade Policy (FTP) 2023 is a policy document which is based on continuity of time-tested schemes facilitating exports as well as a document which is nimble and responsive to the requirements of trade. It is based on principles of 'trust' and 'partnership' with exporters. In the FTP 2015-20, changes were done subsequent to the initial release even without announcement of a new FTP responding dynamically to the emerging situations. Hereafter, the revisions of the FTP shall be done as and when required. Incorporating feedback from Trade and Industry would also be continuous to streamline processes and update FTP, from time to time.

The FTP 2023 aims at process re-engineering and automation to facilitate ease of doing business for exporters. It also focuses on emerging areas like dual use high end technology items under SCOMET, facilitating e-commerce export, collaborating with States and Districts for export promotion. The New FTP is introducing a one-time Amnesty Scheme for exporters to close the old pending authorizations and start afresh. The FTP 2023 encourages recognition of new towns through "Towns of Export Excellence Scheme" and exporters through "Status Holder Scheme". The FTP 2023 is facilitating exports by streamlining the popular Advance Authorization and EPCG schemes, and enabling merchanting trade from India.

The Key Approach to the policy is based on these 4 pillars: (i) Incentive to Remission, (ii) Export promotion through collaboration - Exporters, States, Districts, Indian Missions, (iii) Ease of doing business, reduction in transaction cost and e-initiatives and (iv) Emerging Areas – E-Commerce Developing Districts as Export Hubs and streamlining SCOMET policy.

KEY HIGHLIGHTS OF FTP 2023

Process Re-Engineering and Automation

Greater faith is being reposed on exporters through automated IT systems with risk management system for various approvals in the new FTP. The policy emphasizes export promotion and development, moving away from an incentive regime to a regime which is facilitating, based on technology interface and principles of collaboration. Considering the effectiveness of some of the ongoing schemes like Advance Authorisation, EPCG etc. under FTP 2015-20, they will be continued along with substantial process re-engineering and technology enablement for facilitating the exporters. FTP 2023 codifies implementation mechanisms in a paperless, online environment, building on earlier 'ease of doing business' initiatives. Reduction in fee structures and IT-based schemes will make it easier for MSMEs and others to access export benefits.

Duty exemption schemes for export production will now be implemented through Regional Offices in a rule-based IT system environment, eliminating the need for manual interface. During the FY23-24, all processes under the Advance and EPCG Schemes, including issue, re-validation, and EO extension, will be covered in a phased manner. Cases identified under risk management framework will be scrutinized manually, while majority of the applicants are expected to be covered under the 'automatic' route initially.

Towns of Export Excellence

Four new towns, namely Faridabad, Mirzapur, Moradabad, and Varanasi, have been designated as Towns of Export Excellence (TEE) in addition to the existing 39 towns. The TEEs will have priority access to export promotion funds under the MAI scheme and will be able to avail Common Service Provider (CSP) benefits for export fulfillment under the EPCG Scheme. This addition is expected to boost the exports of handlooms, handicrafts, and carpets.

Recognition of Exporters

Exporter firms recognized with 'status' based on export performance will now be partners in capacity-building initiatives on a best-endeavor basis. Similar to the 'each one teach one' initiative, 2-star and above status holders would be encouraged to provide trade-related training based on a model curriculum to interested individuals. This will help India build a skilled manpower pool capable of servicing a $5 Trillion economy before 2030. Status recognition norms have been re-calibrated to enable more exporting firms to achieve 4 and 5-star ratings, leading to better branding opportunities in export markets.

Promoting export from the districts

The FTP aims at building partnerships with State governments and taking forward the Districts as Export Hubs (DEH) initiative to promote exports at the district level and accelerate the development of grassroots trade ecosystem. Efforts to identify export worthy products & services and resolve concerns at the district level will be made through an institutional mechanism – State Export Promotion Committee and District Export Promotion Committee at the State and District level, respectively. District specific export action plans to be prepared for each district outlining the district specific strategy to promote export of identified products and services.

Streamlining SCOMET Policy

India is placing more emphasis on the "export control" regime as its integration with export control regime countries strengthens. There is a wider outreach and understanding of SCOMET (Special Chemicals, Organisms, Materials, Equipment and Technologies) among stakeholders, and the policy regime is being made more robust to implement international treaties and agreements entered into by India. A robust export control system in India would provide access of dual-use High end goods and technologies to Indian exporters while facilitating exports of controlled items/technologies under SCOMET from India.

Facilitating E-Commerce Exports

E-commerce exports are a promising category that requires distinct policy interventions from traditional offline trade. Various estimates suggest e-commerce export potential in the range of $200 to $300 billion by 2030. FTP 2023 outlines the intent and roadmap for establishing e-commerce hubs and related elements such as payment reconciliation, book-keeping, returns policy, and export entitlements. As a starting point, the consignment wise cap on E-Commerce exports through courier has been raised from ₹5Lakh to ₹10 Lakh in the FTP 2023. Depending on the feedback of exporters, this cap will be further revised or eventually removed. Integration of Courier and Postal exports with ICEGATE will enable exporters to claim benefits under FTP. The comprehensive e-commerce policy addressing the export/import ecosystem would be elaborated soon, based on the recommendations of the working committee on e-commerce exports and inter-ministerial deliberations. Extensive outreach and training activities will be taken up to build capacity of artisans, weavers, garment manufacturers, gems and jewellery designers to onboard them on E-Commerce platforms and facilitate higher exports.

Facilitation under Export Promotion of Capital Goods (EPCG) Scheme

The EPCG Scheme, which allows import of capital goods at zero Customs duty for export production, is being further rationalized. Some key changes being added are:

- Prime Minister Mega Integrated Textile Region and Apparel Parks (PM MITRA) scheme has been added as an additional scheme eligible to claim benefits under CSP(Common Service Provider) Scheme of Export Promotion capital Goods Scheme(EPCG).
- Dairy sector to be exempted from maintaining Average Export Obligation – to support dairy sector to upgrade the technology.
- Battery Electric Vehicles (BEV) of all types, Vertical Farming equipment, Wastewater Treatment and Recycling, Rainwater harvesting system and Rainwater Filters, and Green Hydrogen are added to Green Technology products – will now be eligible for reduced Export Obligation requirement under EPCG Scheme.

Facilitation under Advance authorization Scheme

Advance authorisation Scheme accessed by DTA units provides duty-free import of raw materials for manufacturing export items and is placed at a similar footing to EOU and SEZ Scheme. However, the DTA unit has the flexibility to work both for domestic as well as export production. Based on interactions with industry and Export Promotion councils, certain facilitation provisions have been added in the present FTP such as-

- Special Advance Authorisation Scheme extended to export of Apparel and Clothing sector under para 4.07 of HBP on self-declaration basis to facilitate prompt execution of export orders – Norms would be fixed within fixed timeframe.
- Benefits of Self-Ratification Scheme for fixation of Input-Output Norms extended to 2 star and above status holders in addition to Authorised Economic Operators at present.

Merchanting trade

To develop India into a merchanting trade hub, the FTP 2023 has introduced provisions for merchanting trade. Merchanting trade of restricted and prohibited items under export policy would now be possible. Merchanting trade involves shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary. This will be subject to compliance with RBI guidelines, and won't be applicable for goods/items classified in the CITES and SCOMET list. In course of time, this will allow Indian entrepreneurs to convert certain places like GIFT city etc. into major merchanting hubs as seen in places like Dubai, Singapore and Hong Kong.

Amnesty Scheme

Finally, the government is strongly committed to reducing litigation and fostering trust-based relationships to help alleviate the issues faced by exporters. In line with "*Vivaad se Vishwaas*" initiative, which sought to settle tax disputes amicably, the government is introducing a special one-time Amnesty Scheme under the FTP 2023to address default on Export Obligations. This scheme is intended to provide relief to exporters who have been unable to meet their obligations under EPCG and Advance Authorizations, and who are burdened by high duty and interest costs associated with pending cases. All pending cases of the default in meeting Export Obligation (EO) of authorizations mentioned can be regularized on payment of all customs duties that were exempted in proportion to unfulfilled Export Obligation. The interest payable is capped at 100% of these exempted duties under this scheme. However, no interest is payable on the portion of Additional Customs Duty and Special Additional Customs Duty and this is likely to provide relief to exporters as interest burden will come down substantially. It is hoped that this amnesty will give these exporters a fresh start and an opportunity to come into compliance.

LEGAL FRAMEWORK AND TRADE FACILITATION

Legal Basis of Foreign Trade Policy

The Foreign Trade Policy (FTP) 2023 is notified by Central Government, in exercise of powers conferred under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992) [FT (D&R) Act], as amended.

Duration of FTP

The Foreign Trade Policy (FTP) 2023 incorporating provisions relating to export and import of goods and services, shall come into force with effect from 1st April, 2023 and shall continue to be in operation unless otherwise specified or amended. All exports and imports made up to 31.03.2023 shall, accordingly, be governed by the relevant FTP, unless otherwise specified.

Amendment to FTP

Central Government, in exercise of powers conferred by Section 3 and Section 5 of FT (D&R) Act, 1992, as amended from time to time, reserves the right to make any amendment to the FTP, by means of notification, in public interest.

Hand Book of Procedures (HBP) and Appendices & Aayat Niryat Forms (ANF)

Director General of Foreign Trade (DGFT) may, by means of a Public Notice, notify Hand Book of Procedures, including Appendices and Aayat Niryat Forms or amendment thereto, if any, laying down the procedure to be followed by an exporter or importer or by any Licensing/Regional Authority or by any other authority for purposes of implementing provisions of FT (D&R) Act, the Rules and the Orders made there under and provisions of FTP.

It may be noted that-

"Importer" means a person who imports or intends to import and holds an IEC number, unless otherwise specifically exempted.

Specific provision to prevail over the general

Where a specific provision is spelt out in the FTP/Hand Book of Procedures (HBP), the same shall prevail over the general provision.

Transitional Arrangements

a) Any License/ Authorisation/ Certificate/ Scrip/ instrument bestowing financial or fiscal benefit issued before commencement of FTP 2023 shall continue to be valid for the purpose and duration for which it was issued, unless otherwise stipulated.
b) Item wise Import/Export Policy is delineated in the ITC (HS) Schedule I and Schedule II respectively. The importability/ exportability of a particular item is governed by the policy as on the date of import/ export. The date of import/ export is defined in para 2.17 of HBP 2023. Bill of Lading and Shipping Bill are the key documents for deciding the date of import and export respectively. In case of change of policy from 'free' to 'restricted/prohibited/state trading' or 'otherwise regulated', the import/export already made before the date of such regulation/restriction will not be affected. However, the import through High Sea sales will not be covered under this facility. Further, the

import/export on or after the date of such regulation/restriction will be allowed for importer/ exporter who has a commitment through Irrevocable Commercial Letter of Credit (ICLC) before the date of imposition of such restriction/ regulation and shall be limited to the balance quantity, value and period available in the ICLC. For operational listing of such ICLC, the applicant shall have to register the ICLC with jurisdictional RA against computerized receipt within 15 days of imposition of any such restriction/ regulation. Whenever, Government brings out a policy change of a particular item, the change will be applicable prospectively (from the date of Notification) unless otherwise provided for.

It may be noted that -

"Free" as appearing in context of import/export policy for items means goods which do not need any 'Authorisation'/ License or permission for being imported into the country or exported out.

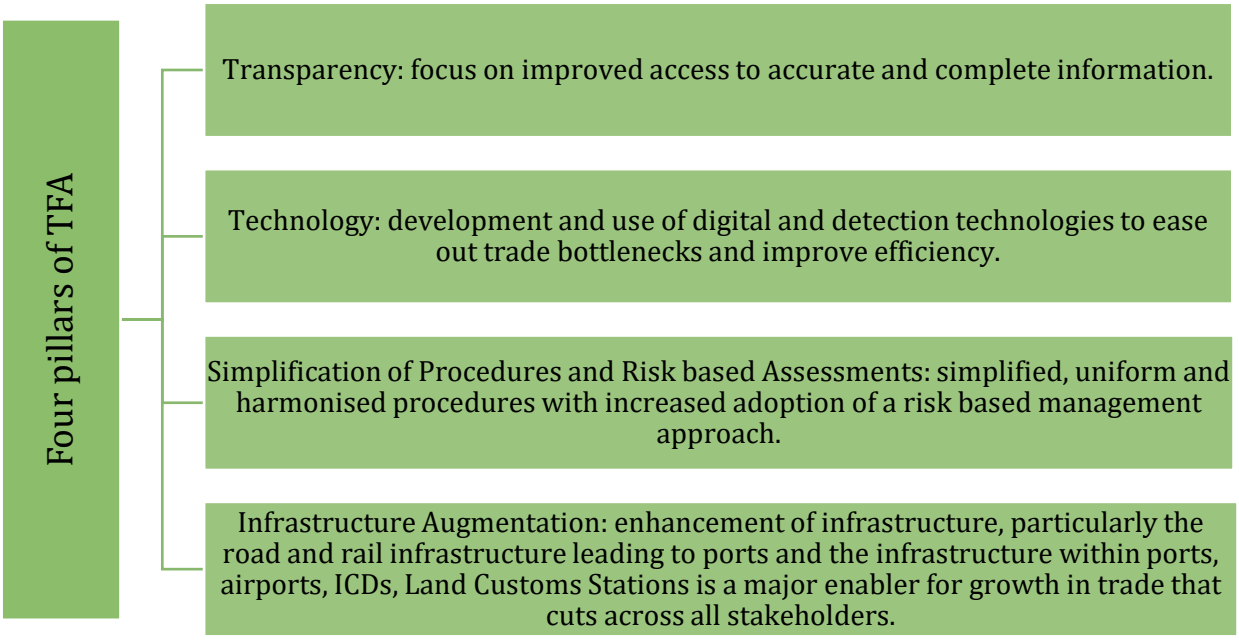
ITC (HS) refers to Indian Trade Classification (Harmonized System) at 8 digits.

"Authorisation" means permission as included in Section 2(g) of the Act to import or export as per provisions of FTP.

TRADE FACILITATION AND EASE OF DOING BUSINESS

National Committee on Trade Facilitation (NCTF)

India has ratified the World Trade Organization's Trade Facilitation Agreement (TFA) in April 2016. To facilitate coordination and implementation of the TFA provisions, an inter-ministerial body i.e. National Committee on Trade Facilitation (NCTF) has been constituted.



National Trade Facilitation Action Plan aims to achieve: -

- Improvement in Ease of Doing Business through reduction in transaction cost and time
- Reduction in cargo release time

- A paperless regulatory environment
- A transparent and predictable legal regime
- Improved investment climate through better infrastructure

DGFT as a facilitator of exports/ imports

DGFT has a commitment to function as a facilitator of exports and imports. Focus is on good governance, which depends on efficient, transparent and accountable delivery systems. In order to facilitate international trade, DGFT consults various Export Promotion Councils as well as Trade and Industry bodies from time to time.

Free passage of Export Consignment

Consignments of items meant for exports shall not be withheld/ delayed for any reason by any agency of Central/ State Government. In case of any doubt, authorities concerned may ask for an undertaking from exporter and release such consignment.

No seizure of export related Stock

No seizure shall be made by any agency so as to disrupt manufacturing activity and delivery schedule of exports. In exceptional cases, concerned agency may seize the stock on the basis of prima facie evidence of serious irregularity. However, such seizure should be lifted within 7 days unless the irregularities are substantiated.

Export of perishable agricultural Products

To reduce transaction and handling costs, a single window system to facilitate export of perishable agricultural produce is being facilitated through Agricultural and Processed Food Products Export Development Authority (APEDA). The detailed procedure is at Appendix 1C.

Niryat Bandhu - Hand Holding Scheme for new export/ import entrepreneurs

DGFT is implementing the Niryat Bandhu Scheme for mentoring new and potential exporter on the intricacies of foreign trade through counseling, training and outreach programmes including the 'Districts as Export Hubs' initiative with 'industry partners', 'knowledge partners' and other stakeholders to create vibrant District-Product-Market relevant knowledge ecosystem.

DGFT Online Customer Portal

Export Import related information including Acts, Rules, Policy and Procedures etc. are available online at DGFT portal https://dgft.gov.in/.

Issue of e-IEC (Electronic-Importer Exporter Code)

Importer Exporter Code (IEC) is mandatory for export/ import from/to India as detailed in paragraph 2.05 of this Policy. DGFT issues Importer Exporter Code in electronic form (e-IEC). For issuance of e-IEC, application can be made on DGFT website (https://dgft.gov.in).

Online facility for e-RCMC/RC Related Processes

DGFT has created a common digital platform for application of issuance, renewal, amendment and related processes pertaining to Registration Cum Membership Certificate (RCMC)/ Registration Certificate (RC) issued by Registering Authorities in electronic form as per Chapter 2 of HBP.

Online facility for e-Certificate of Origin (e-CoO)

DGFT has created a common digital platform for issue of Preferential and Non-Preferential Certificate of Origin (e-CoO) by designated agencies. The CoO Certificates are issued in an online environment without any physical interface (https://coo.dgft.gov.in).

A unique number i.e. UDIN (Unique Document Identification Number) and a QR code is endorsed on every e-CoO for validation and authentication by user agencies.

Online facility to file Quality Control and Trade Disputes (QCTD)

DGFT has created a common digital platform for handling Quality Control and Trade Disputes cases as per Chapter 8 of Foreign Trade Policy where all jurisdictional Indian Mission abroad and Regional Authorities of DGFT have been onboarded to work towards amicable resolution of disputes raised by Indian/Foreigner Importer/Exporter in online environment.

Electronic record of export proceeds through eBRC & EDPMS

(a) e-BRC (Electronic Bank Realisation Certificate) has enabled DGFT to capture details of realisation of export proceeds directly from the Banks through secured electronic mode. This has facilitated the implementation of various export promotion schemes without any physical interface with the stake holders.

(b) RBI has also developed a comprehensive IT-based system called Export Data Processing and Monitoring System (EDPMS) for monitoring of export of goods and software and facilitating AD banks to report various returns through a single platform. RBI EDPMS data available in DGFT IT System can also be used by exporters on DGFT portal.

IT Initiatives in DGFT

DGFT has undertaken a number of IT Initiatives to enable a paperless, contactless and transparent environment for availing benefits under the export promotion schemes with a view to improve the ease of doing business. The details of these initiatives have been provided in Para 1.04 of Handbook of Procedures.

24 X 7 Helpdesk Facility

A dedicated 24 X 7 Helpdesk facility has been put in place to assist the exporters in filing online applications on the DGFT portal and other matters pertaining to Foreign Trade Policy.

Trade Data and Statistics

Continuous efforts are being made for better collection, compilation and wider dissemination of Trade Data and Statistics to help the policy makers, researchers, exporters and importers to formulate their trade strategy. The trade statistics for merchandise trade is available at -

i. Department of Commerce's portal at https:// commerce.gov.in & data bank available at https:// tradestat.commerce.gov.in/eidb/default.asp,
ii. DGCI&S portal at http://www.dgciskol.gov.in and
iii. NIRYAT Portal at https://niryat.gov.in.

Trade Facilitation at Customs

CBIC has undertaken a number of initiatives to facilitate Trade. Some of these are as follows:

i. 24X7 Customs clearance in 20 sea ports and 17 Airports and extended clearance in ICDs as per the needs of the Trade.

ii. Single Window in Customs
iii. E-Sanchit – Enabling Paperless clearance environment
iv. Pan-India Implementation of Faceless e-Assessment in imports.
v. TURANT Customs
vi. Implementation of electronic messages from Document Clearance to Cargo Movement
vii. Paperless Customs initiatives –Preparation and issuance of electronic documents like e-LEO SB, e-Gatepass/e-OOC etc.,
viii. Contactless customs initiatives such as Turant Suvidha Kendras (TKSs).
ix. Release of ICE-DASH–Indian Customs EoDB Monitoring Dashboard
x. Direct Port Delivery (DPD) on imports and Direct Port Entry (DPE) on exports
xi. Compliance Information Portal (CIP)
xii. End to End automated and simplified procedure for Import of certain specified Goods at Concessional Rate of Duty or for specified end use.
xiii. For detailed guidelines/procedures visit https://www.cbic. gov.in/ and https://icegate.gov.in/.

Authorised Economic Operator (AEO) Programme

a. Based upon WCO's SAFE Framework of Standards, Authorised Economic Operator (AEO) programme' has been developed by Indian Customs to enable business involved in the international trade to reap the following benefits:
   i. Secure supply chain from point of export to import;
   ii. (Ability to demonstrate compliance with security standards when contracting to supply overseas importers /exporters;
   iii. Enhanced border clearance privileges in Mutual Recognition Agreement (MRA) partner countries;
   iv. Minimal disruption to flow of cargo after a security related disruption;
   v. Reduction in dwell time and related costs; and
   vi. Customs advice / assistance if trade faces unexpected issues with Customs of countries with which India have MRA.
b. The AEO programmes have been implemented by other Customs administrations that give AEO status holders preferential Customs treatment in terms of reduced examination, faster clearances and other benefits. Indian Customs has signed MRA with South Korea, Taiwan, Hong Kong and US Customs to recognize respective AEO Programmes to enable trade to get benefits on reciprocal basis.
c. As a step further towards trust-based compliance, Indian Customs has introduced the new/revamped Authorised Economic Operator (AEO) Programme wherein extensive benefits, including greater facilitation and self-certification, have been provided to those entities who have demonstrated internal strong control system and compliance with CBIC.
d. Under the AEO program of Indian Customs, the MSMEs are also covered.

For detailed guidelines/procedures, visit https://www. aeoindia.gov.in/ and https://www.cbic.gov.in/.

Towns of Export Excellence (TEE)

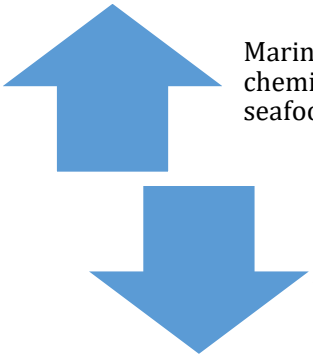
a. Objective: Development and growth of export production centres. A number of towns have emerged as dynamic industrial clusters contributing handsomely to India's exports. It is necessary to grant recognition to these industrial clusters with a view to maximize their potential and enable them to move up the value chain and also to tap new markets.

b. Selected towns producing goods of Rs. 750 Crore or more may be notified as TEE based on potential for growth in exports. However, for TEE in Handloom, Handicraft, Agriculture and Fisheries sector, threshold limit would be Rs.150 Crore. The following facilities will be provided to such TEE:
   i. Recognized associations of units will be provided financial assistance under MAI scheme, on priority basis, for export promotion projects for marketing, capacity building and technological services.
   ii. Common Service Providers in these areas shall be entitled for Authorisation under EPCG scheme.

c. Notified Towns (TEE) are listed in Appendix 1B.

Duty Free Entitlements to Select Sectors

With a view to expand employment opportunities, certain special focus initiatives for Marine Products and Sports Goods & Toys sectors are required. These sectors are being provided the following duty-free entitlements (only basic customs duty is exempted) as per the relevant Customs Notifications:



Marine Sector - Duty free import of specified specialized inputs/ chemicals and flavoring oils not exceeding 1% of FOB value of seafood exports during the preceding financial year.

Sports Goods and Toys - Duty free import of specified inputs not exceeding 3% of FOB value of sports goods exports during the preceding financial year.

For details, refer relevant Customs Notifications in this regard.

Status Holder Certification

a. The objective behind certifying certain exporter firms as "Status Holder" is to recognize such exporter firms as business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. Status Holders are expected to not only contribute towards India's exports but also provide guidance and handholding to new entrepreneurs.
b. All exporters of goods, services and technology having an import-export code (IEC) number, on the date of application, shall be eligible for recognition as a status holder based on export performance. An applicant may be categorized as status holder on achieving the threshold export performance in the current and preceding three financial years as indicated in para 1.26 of Foreign Trade Policy. However, for Gems & Jewelry Sector above export performance threshold during the current and preceding two financial years shall be required. The export performance shall be counted on the basis of FOB of export earnings in freely convertible foreign currencies or in Indian Rupees as per para 2.53of the FTP.
c. For deemed export, FOR value of exports in Indian Rupees shall be converted in USD at the exchange rate notified by CBIC, as applicable on 1st April of each Financial Year.
d. For granting status, an export performance would be necessary in all the three preceding financial years (and in all the two preceding financial years for Gems & Jewelry Sector).

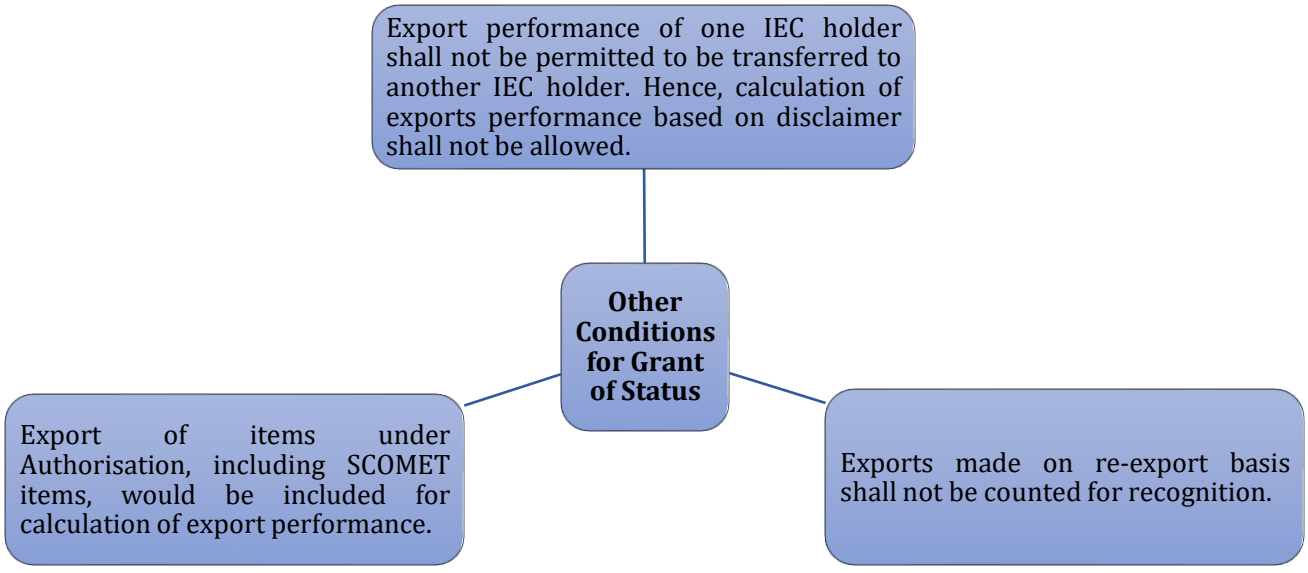
Status Holder Categories

Status Category	Export Performance Threshold in USD Million
One Star Export House	3
Two Star Export House	15
Three Star Export House	50
Four Star Export House	200
Five Star Export House	800

Grant of Double Weightage

a. Double Weightage shall be available for grant of One Star Export House Status category only. Such benefit of double weightage shall not be admissible for grant of status recognition of other categories namely Two Star Export House, Three Star Export House, Four Star export House and Five Star Export House. The exports by IEC holders under the following categories shall be granted double weightage for calculation of export performance for grant of status:
   i. Micro and Small Enterprises as defined in Micro, Small & Medium Enterprises Development (MSMED) Act, 2006.
   ii. Manufacturing units having ISO/BIS Certification.
   iii. Units located in North Eastern States including Sikkim, and Union Territories of Jammu , Kashmir and Ladakh.
   iv. Export of fruits and vegetables falling under Chapters 7 and 8 of ITC HS.

b. A merchandise shipment/ service rendered can get double weightage only once in any one of above categories.



Privileges of Status Holders

A Status Holder shall be eligible for privileges as under:

a. Authorisation and Customs Clearances for both imports and exports may be granted on self-declaration basis;
b. Input-Output norms may be fixed on priority within 60 days by the Norms Committee; Special scheme in respect of Input Output Norms to be notified by DGFT from time to time, for specified status holder
c. Exemption from furnishing of Bank Guarantee for Schemes under FTP, unless specified otherwise anywhere in FTP or HBP;
d. Exemption from compulsory negotiation of documents through banks. Remittance / receipts, however, would be received through banking channels;
e. Two star and above Export houses shall be permitted to establish Export Warehouses as per Department of Revenue guidelines.
f. The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.
g. Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their IEM/IL/LOI) as originating from India with a view to qualify for preferential treatment under different preferential trading agreements (PTA), Free Trade Agreements (FTAs), Comprehensive Economic Cooperation Agreements (CECA) and Comprehensive Economic Partnership Agreements (CEPA). Subsequently, the scheme may be extended to remaining Status Holders. Manufacturer exporters who are also Status Holders shall be eligible to self-certify their goods as originating from India as per Para 2.93 (e) of Hand Book of Procedures.
h. Status holders shall be entitled to export freely exportable items (excluding Gems and Jewelry, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit of Rupees One Crore or 2% of average annual export realization during preceding three licensing years, whichever is lower. For export of pharma products by pharmaceutical companies, the annual limit would be 2% of the average annual export realisation during preceding three licensing years. In case of supplies of pharmaceutical products, vaccines and lifesaving drugs to health programmes of international agencies such as UN, WHO-PAHO and Government health programmes, the annual limit shall be upto 8% of the average annual export realisation during preceding three licensing years. Such free of cost supplies shall not be entitled to Duty Drawback or any other export incentive under any export promotion scheme.

It may be noted that-

"Manufacture" means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, re-packing, polishing, labeling, Re-conditioning repair, remaking, refurbishing, testing, calibration, re-engineering. Manufacture, for the purpose of FTP, shall also include agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining.

"Manufacturer Exporter" means a person who exports goods manufactured by him or intends to export such goods.

Skilling and Mentorship Obligations

a. To improve the trade ecosystem by enhancing the available skilling opportunities, Status Holders are being made "partners" in providing mentoring and training in international trade. Status Holders will endeavor to provide skill upgradation/ training in international trade as detailed below:

Status	Number of Trainees per year
Two Star Export House	5
Three Star Export House	10
Four Star Export House	20
Five Star Export House	50

b. A model training program of a minimum duration of 6 weeks would be put up in public domain for guidance.
c. Detailed eligibility requirements, selection criteria, training curriculum etc will be at the discretion of the Status Holder.

Inter-Ministerial Committee for MSME Trade related grievances

An inter-ministerial committee to be set up to examine MSME trade related grievances which have policy ramifications. This will expedite decision making with a 'whole of government approach'.

Citizen's Charter

DGFT has in place a Citizen's Charter, giving time schedules for providing various services to clients. Timeline for disposal of an application is given in Chapter 11 of HBP.

GENERAL PROVISIONS REGARDING IMPORTS AND EXPORTS

Objectives

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

Policy regarding import /Exports of goods

a. 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 (Harmonized System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed under 'Regulatory Updates' at https://dgft. gov.in
b. Further, there are some items which are 'Free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.

It may be noted that-

"Prohibited" indicates the import/export policy of an item, as appearing in ITC (HS) or elsewhere, whose import or export is not permitted.

"Restricted" is a term indicating the import or export policy of an item, which can be imported into the country or exported outside, only after obtaining an Authorisation from the offices of DGFT.

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 (http://www.wcoomd. org). However, India maintains

national Harmonized System of goods at 8-digit level notified under First Schedule of the Customs Tariff Act, 1975 which may be viewed under 'Regulatory Updates' at http://dgft. gov.in and at https://www.cbic.gov.in

c. The import/export policies for all goods are indicated against each item as per its ITC (HS). Schedule 1 of ITC (HS) lays down the Import Policy regime while Schedule II of ITC(HS) lays down 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 Second Hand goods. For Second Hand goods, the Import Policy regime is given under Para 2.31 of this FTP.

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 may be exempted by DGFT from domestic standards/ quality specifications.

Authority to specify Procedures

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

Importer-Exporter Code (IEC)

An IEC is a 10-character alpha-numeric number allotted to an entity (firm/company/LLP etc.) and is mandatory for undertaking any export/import activities. With a view to maintain the unique identity of an entity, consequent upon introduction / implementation of GST, IEC shall be same as Permanent Account Number (PAN) and shall be separately issued by DGFT based on an online application.

(a) No export or import of goods shall be made by any person without obtaining an IEC unless specifically exempted. For export of services or technology, IEC shall be necessary on the date of rendering services for availing benefits under the Foreign Trade Policy.
(b) Exempt categories and corresponding permanent IECs are given in Para 2.07 of Handbook of Procedures.
(c) Application process for IEC and updation in IEC is completely online and IEC can be generated by the applicant as per the procedure detailed in the Handbook of Procedures.
(d) An IEC holder has to ensure that details in its IEC is updated electronically every year, during the April- June period. In cases where there are no changes in IEC details same also needs to be confirmed online.
(e) An IEC shall be de-activated, if it is not updated within the prescribed period. An IEC so de-activated may be activated, on its successful updation. This would however be without prejudice to any other action taken for violation of any other provisions of the FTP.
(f) An IEC may also be flagged for scrutiny. IEC holder(s) are required to ensure that any risks flagged by the system are timely addressed; failing which the IEC shall be de-activated.

It may be noted that –

"Person" means both natural and legal and includes an individual, firm, society, company, corporation or any other legal person including the DGFT officials.

Mandatory documents for export/ import of goods from/into India

a. Mandatory documents required for export of goods from India:
    i. Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/Postal Receipt
    ii. Commercial Invoice cum Packing List*
    iii. Shipping Bill/Bill of Export/ Postal Bill of Export
b. Mandatory documents required for import of goods into India
    i. Bill of Lading/Airway Bill/Lorry Receipt/ Railway Receipt/Postal Receipt in form CN-22 or CN 23 as the case may be.
    ii. Commercial Invoice cum Packing List**
    iii. Bill of Entry

    [*Note:* *(i) As per CBIC Circulars issued under the Customs Act, 1962 (ii) **Separate Commercial Invoice and Packing List would also be accepted.]
c. For export or import of specific goods or category of goods, which are subject to any restrictions/ policy conditions or require NOC or product specific compliances under any statute, the regulatory authority concerned may notify additional documents for purposes of export or import.
d. In specific cases of export or import, the regulatory authority concerned may electronically or in writing seek additional documents or information, as deemed necessary to ensure legal compliance.

Principles of Restrictions

DGFT may, through a Notification, impose 'Prohibition' or 'Restriction':

a) on export of foodstuffs or other essential products for preventing or relieving critical shortages;
b) on imports and exports necessary for the application of standards or regulations for the classification, grading or marketing of commodities in international trade;
c) on imports of fisheries product, imported in any form, for enforcement of governmental measures to restrict production of the domestic product or for certain other purposes;
d) on import to safeguard country's external financial position and to ensure a level of reserves;
e) on imports to promote establishment of a particular industry;
f) for preventing sudden increases in imports from causing serious injury to domestic producers or to relieve producers who have suffered such injury;
g) for protection of public morals or to maintain public order;
h) for protection of human, animal or plant life or health;
i) relating to the importations or exportations of gold or silver;
j) necessary to secure compliance with laws and regulations including those relating to the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;
k) relating to the products of prison labour;
l) for the protection of national treasures of artistic, historic or archaeological value;
m) for the conservation of exhaustible natural resources;
n) for ensuring essential quantities for the domestic processing industry;
o) essential to the acquisition or distribution of products in general or local short supply;
p) for the protection of country's essential security interests
    i. relating to fissionable materials or the materials from which they are derived;
    ii. relating to the traffic in arms, ammunition and implements of war;

iii. taken in time of war or other emergency in international relations; or

q) in pursuance of country's obligations under the United Nations Charter for the maintenance of international peace and security.

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 Procedures 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.

It may be noted that –

"Actual User" is a person (either natural & legal) who is authorized to use imported goods in his/ its own premise which has a definitive postal address.

(a) "Actual User (Industrial)" is a person (either natural & legal) who utilizes imported goods for manufacturing in his own industrial unit or manufacturing for his own use in another unit including a jobbing unit which has a definitive postal address.

(b) "Actual User (Non-Industrial)" is a person (either natural & legal) who utilizes the imported goods for his own use in.

(i) any commercial establishment, carrying on any business, trade or profession, which has a definitive postal address; or

(ii) any laboratory, Scientific or Research and Development(R&D) institution, university or other educational institution or hospital which has a definitive postal address; or

(iii) Any service industry which has a definitive postal address.

"Jobbing" means processing or working upon of raw materials or semi-finished goods supplied to job worker, so as to complete a part of process resulting in manufacture or finishing of an article or any operation which is essential for aforesaid process.

Terms and Conditions of an Authorisation

Every Authorisation shall, inter alia, include either all or some of the following terms and conditions (as applicable in terms of the para under which the Authorisation has been issued), in addition to such other conditions as may be specified:

Application Fee

a. Application for IEC/Authorisation/License/Scrips/ Registration must be accompanied by application fees as indicated in the Appendix 2K of Appendices and Aayat Niryat Forms. Fees must be paid online through any of the channels as notified under Appendix 2K, unless provided otherwise.
b. Application fee is nothing but the fee for processing of the application. Therefore, the fee once received will not be refunded except in the circumstances and in a manner laid down in Appendix 2K.

Clearance of Goods from Customs against Authorisation

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. This facility will however be not available to 'Restricted' items or items traded through STEs, unless specifically allowed by DGFT.

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.

Penal action and placing of an entity in Denied Entity List (DEL)

a. 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.
b. With a view to raising ethical standards and for ease of doing business, DGFT has provided for self-certification system under various schemes. In such cases, applicants shall undertake self-certification with sufficient care and caution in filling up information/ particulars. Any information/particulars

subsequently found untrue/incorrect will be liable for action under FT (D&R) Act, 1992 and Rules therein in addition to penal action under any other Act/Order.

c. A firm may be placed under Denied Entity List (DEL), by the concerned RA, under the provision of Rule 7 of Foreign Trade (Regulation) Rules, 1993. On issuance of such an order, for reasons to be recorded in writing, a firm may be refused grant or renewal of a licence, authorisation, certificate, scrip or any instrument bestowing financial or fiscal benefits. If a firm is placed under DEL, all new licences, authorisations, scrips, certificates, instruments etc. will be blocked from printing/ issue/renewal.
d. DEL orders may be placed in abeyance, for reasons to be recorded in writing by the concerned RA. DEL order can be placed in abeyance, for a period not more than 60 days at a time.
e. A firm's name can be removed from DEL, by the concerned RA for reasons to be recorded in writing, if the firm completes Export Obligation/ pays penalty/ fulfils requirement of Demand Notice(s) issued by the RA/submits documents required by the RA.

It may be noted that-

"Export Obligation" means obligation to export product or products covered by Authorisation or permission in terms of quantity, value or both, as may be prescribed or specified by Regional or competent authority.

Firm/company under adjudication proceeding before the National Company Law Tribunal (NCLT)

Any firm/company coming under the adjudication proceeding before the National Company Law Tribunal (NCLT) shall inform the concerned Regional Authority (RA) and NCLT of any outstanding export obligations/liabilities under any of the schemes under FTP. The total outstanding duty saved amount/dues along with interest, and any penalty imposed under FT (D&R) Act, or any other dues, shall be counted as part of the dues to the government against the said firm/company.

PROHIBITIONS ON TRADE (COUNTRY, ORGANISATIONS, GROUPS, INDIVIDUALS ETC. AND PRODUCT SPECIFIC)

Prohibition on Import and Export of 'Arms and related material' from / to Iraq

Notwithstanding the policy on Arms and related materials in Chapter 93 of ITC (HS), the import/export of Arms and related material from/to Iraq is 'Prohibited'. However, export of Arms and related material to Government of Iraq shall be permitted subject to 'No Objection Certificate' from the Department of Defence Production.

Prohibition on Trade with the Islamic State in Iraq and the Levant [ISIL, also known as Daesh], Al Nusrah Front [ANF] and other individuals, groups, undertakings and entities associated with Al Qaida

In compliance with United Nations Security Council Resolution No. 2199 [2015], trade in oil and refined oil products, modular refineries and related materials, besides items of cultural (including antiquities), scientific and religious importance is prohibited with the Islamic State in Iraq and the Levant [ISIL], Al Nusrah Front [ANF] and other individuals, groups, undertakings and entities associated, directly or indirectly, with Al Qaida.

Prohibition on direct or indirect import and export from/to DPRK

Direct or Indirect export and import of items, whether or not originating in Democratic People's Republic of Korea (DPRK) to/from DPRK is detailed in Appendix – I of this Chapter.

Direct or Indirect Export/Import to/ from Iran

a. Direct or indirect export to Iran or import from Iran of any item, material, equipment, goods and technology mentioned in the following documents would be permitted subject to the provisions contained in Annex-B to the United Nations Security Council Resolution 2231 (2015):
   i. Items listed in INFCIRC/254/Rev.14/Part1 and INFCIRC/254/Rev.11/Part 2 (IAEA Documents) as updated by the UNSC and IAEA from time to time.
   ii. Items listed in S/2015/546 (UN Security Council document) as updated by the Security Council from time to time.
b. All the UN Security Council Resolutions/Documents and IAEA Documents referred to above are available on the UN Security Council website (https://www. un.org/security council/) and IAEA website (https:// www.iaea.org/).

Prohibition on Import of Charcoal from Somalia

Direct or indirect import of charcoal is prohibited from Somalia, irrespective of whether or not such charcoal has originated in Somalia [United Nations Security Council Resolution 2036(2012)]. Importers of Charcoal shall submit a declaration to Customs that the consignment has not originated in Somalia.

IMPORT / EXPORT THROUGH STATE TRADING ENTERPRISES

State Trading Enterprises (STEs)

a. State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and /or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified n ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.
b. Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.
c. DGFT may, however, grant an authorisation to any other entity to import or export any of the goods notified for exclusive trading through STEs.

It may be noted that-

State Trading Enterprises (STEs), for the purpose of this FTP, are those entities which are granted exclusive right/privileges export and /or import as per Para 2.20 (a) of FTP.

TRADE WITH SPECIFIC COUNTRIES

Trade with Neighbouring Countries

DGFT may issue instructions or frame schemes as may be required to promote and regulate trade and strengthen economic ties with neighbouring countries.

Transit Facility

Transit of goods through India from/ or to countries adjacent to India shall be enabled and regulated in accordance with strategic and economic interests of India as well as the bilateral treaties between India and those countries. Such arrangements will be subject to conditions and restrictions as may be specified by DGFT in accordance with International Conventions/ Treaties/Agreements.

Trade with Russia under Debt-Repayment Agreement

In case of trade with Russia under Debt Repayment Agreement, DGFT may issue instructions or frame schemes as may be required, and anything contained in FTP, in so far as it is inconsistent with such instructions or schemes, shall not apply.

IMPORT OF SPECIFIC CATEGORIES OF GOODS

Import of Samples

No Authorisation shall be required for Import of bonafide technical and trade samples of items "restricted" in ITC (HS) except defence/security items, seeds, bees and new drugs. Import of samples shall be further governed by Para 2.62 of Handbook of Procedures.

Import of Gifts

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).
Explanation:

1. Rakhi (but not gifts related to Rakhi) will be covered under Section 25(6) of Customs Act, 1962 that reads that "no duty shall be collected if the amount of duty leviable is equal to or less than Rs. 100/-"
2. Import of goods as gifts with payment of full applicable duties is allowed.

Import through Passenger Baggage

a. Bona-fide 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 subject to Baggage Rules as notified by Customs from time to time.
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

authorization subject to value limit as laid down in FTP or as per the relevant Customs notification(s) in this regard.

d. Any item(s) including Samples or Prototypes of items whose import policy is "restricted" or "prohibited" or is canalised through STEs are not permitted as part of passenger baggage except with a valid authorization/ permission issued by DGFT.

Re – import of goods repaired abroad

Capital goods, equipment, 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.

It may be noted that –

"Capital Goods" means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernisation, technological up-gradation or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control.

Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector.

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.

Import of Prototypes

Import of new / second hand prototypes / second hand samples may be allowed on payment of duty without an Authorisation to an Actual User (industrial) engaged in production of or having industrial license / letter of intent for research in item for which prototype is sought for product development or research, as the case may be, upon a self-declaration to that effect, to the satisfaction of Customs authorities.

IMPORT POLICY FOR SECOND HAND GOODS

Second Hand Goods

Sl. No.	Categories of Second-Hand Goods	Import Policy	Conditions, if any
I. Second Hand Capital Goods			
I(a)	i. Desktop Computers; ii. Refurbished/re-conditioned spares of re-furbished parts of Personal Computers/ Laptops; iii. Air Conditioners; iv. Diesel generating sets	Restricted	Importable against Authorisation
I(b)	All electronics and IT Goods notified under the Electronics and	Restricted	(i) Importable against an authorization subject to conditions laid down under

	IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time		Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time. (ii) Import of unregistered/non-compliant notified products as in CRO, 2012 as amended from time to time is "Prohibited"
I(c)	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
I(d)	All other second-hand capital goods {other than (a) (b) & (c) above}	Free	
II	Second Hand Goods other than capital goods	Restricted	Importable against Authorisation
III	Second Hand Goods imported for the purpose of repair/refurbishing / reconditioning or re-engineering	Free	Subject to condition that waste generated during the repair / refurbishing of imported items is treated as per domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ Environmental / safety and health norms and the imported item is re-exported back as per the Customs Notification.

IMPORT POLICY FOR METALLIC WASTE AND SCRAPS

Import of Metallic Waste and Scrap

a. Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste/scrap containing radioactive material, any types of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise as detailed in Para 2.51 of Handbook of Procedures.
b. The types of metallic waste and scrap which can be imported freely, and the Procedures of import in the shredded form; un-shredded, compressed and loose form is laid down in Para 2.51 of Handbook of Procedures.

Removal of Scrap/Waste from SEZ

A SEZ unit/Developer/ Co-developer may be allowed to dispose of in DTA any waste or scrap, including any form of metallic waste and scrap, generated during manufacturing or processing activity, without an Authorisation, on payment of applicable Customs Duty.

It may be noted that –

"Developer" means a person or body of persons, company, firm and such other private or government undertaking, who develops, builds, designs, organises, promotes, finances, operates, maintains or manages a part or whole of infrastructure and other facilities in SEZ as approved by Central Government and also includes a co- developer.

OTHER PROVISIONS RELATED TO IMPORTS

Import under Lease Financing

No specific permission of DGFT is required for import of 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 the RA concerned before sourcing material from indigenous supplier/ nominated agency as prescribed in Chapter 2 of Handbook of Procedures.

Private/Public Bonded Warehouses for Imports

a. Private/ Public bonded warehouses may be set up in DTA as per rules, regulations and notifications issued under the Customs Act, 1962. 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. The clearance of the warehoused goods shall be as per the provisions of the Customs Act, 1962.

It may be noted that –

"Domestic Tariff Area (DTA)" means area within India which is outside SEZs and EOU/ EHTP/ STP/BTP.

"EOU" means Export Oriented Unit for which a letter of permit has been issued by Development Commissioner.

Special provision for Hides Skins and semi-finished goods

Hides, Skins and semi-finished leather may be imported in the Public/ Private Bonded warehouse for the purpose of DTA sale and the unsold items thereof can be re-exported from such bonded warehouses on payment of the applicable rate of export duty.

Sale on High Seas

Sale of goods on high seas for import into India may be made subject to FTP or any other law in force.

Merchanting Trade

Merchanting trade involving shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary is allowed subject to compliance with RBI guidelines, except for goods/items in the CITES and SCOMET list.

It may be noted that-

"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 FTP is regulated. It is either prohibited or is permitted under an Authorisation.

EXPORTS

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.

Benefits for Supporting Manufacturers

For any benefit to accrue to the supporting manufacturer (as defined in Para 11.59 of FTP), the names of both supporting manufacturer as well as the merchant exporter must figure in the concerned export documents, especially in Tax Invoice / Shipping Bill / Bill of Export/ Airway Bill.

It may be noted that –

"Merchant Exporter" means a person engaged in trading activity and exporting or in tending to export goods.

a. "Supporting Manufacturer" is one who manufactures goods/products or any part/accessories/components of a good/ product for a merchant exporter or a manufacturer exporter under a specific Authorisation.
b. "Supporting Manufacturer" for the EPCG Scheme shall be one in whose premises/ factory Capital Goods imported/ procured under EPCG Authorisation is installed.

Third Party Exports

Third party exports (except Deemed Export) as defined in Chapter 11 shall be allowed under FTP. In such cases, export documents such as shipping bill shall indicate name of both manufacturing exporter/manufacturer and third-party exporter(s). E-Bank Realization Certificate (e-BRC) or export Realizations from RBI's EDPMS wherever available in DGFT IT Systems, Export Order and Invoice should be in the name of third-party exporter.

It may be noted that –

"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 names of both manufacturer exporter/manufacturer and third party exporter(s). Bank Realisation Certificate (BRC), Self-Declaration Form (SDF), export order and invoice should be in the name of third party exporter.

EXPORTS OF SPECIFIC CATEGORIES

Export of Samples

a. Exports of bonafide trade and technical samples of freely exportable item shall be allowed without any limit.

b. The procedure for Export of Samples and Free of charge goods shall be governed by provisions given in Para 2.63 of 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.

It may be noted that-

"Licensing Year" means period beginning on the 1st April of a year and ending on the 31st March of the following year.

Export of Passenger Baggage

a. Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within one year before or after passenger's departure from India. However, items mentioned as restricted in ITC (HS) shall require an Authorisation. Government of India officials proceeding abroad on official postings shall, however, be permitted to carry along with their personal baggage, food items (free, restricted or prohibited) strictly for their personal consumption. The Provisions of the Para shall be subject to Baggage Rules issued under Customs Act, 1962.
b. Samples of such items that are otherwise freely exportable under FTP may also be exported as part of passenger baggage without an Authorisation.

Import for Export

I. (a) 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 in the restricted for import or export in ITC(HS) Schedules.

(b) Goods, including capital goods (both new and second hand), may be imported for export provided:

i. Importer clears goods under Customs Bond;
ii. Goods are freely exportable, i.e., are not "Restricted" or "Prohibited" or subject to "exclusive trading through State Trading Enterprises" or any conditionality or requirement as may be required under Schedule 2 of the Export Policy of the ITC (HS);
iii. Export is against freely convertible currency or as per para 2.52(d)(ii) of FTP.

(c) Goods in (b) above will include 'Restricted' goods for import (except 'Prohibited' items).

(d) Capital goods, which are freely importable and freely exportable, may be imported for export on execution of LUT/BG with the Customs Authority.

(e) Notwithstanding the above, goods which are freely importable may be re-exported except items as in the Prohibited or SCOMET List of exports, in same or substantially same form even though such goods are under "Restricted list" for export, subject to the following conditions:

(i) Goods are not of Indian Origin;

(ii) Goods imported shall be kept in bonded warehouse under supervision of Customs;

(iii) Goods to be exported have never been cleared for home consumption;

(iv) Export of goods shall be subjected to Section 69 of Customs Act, 1962.

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. Goods imported under Para 2.52(d)

(i) would be permitted for exports only against payments as per Para 2.52(d)

(ii) 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) However, re-export of food, medicine and medical equipment, namely, items covered under ITC(HS) Chapters 2 to 4, 7 to 11, 15 to 21, 23, 30 and items under headings 9018, 9019, 9020, 9021 & 9022 of Chapter-90 of ITC(HS) will not be subject to minimum value addition requirement for export to Iran. Exports of these items to Iran shall, however, be subject to all other conditions of FTP and ITC (HS), as applicable. Bird's eggs covered under ITC (HS) 0407 & 0408 and Rice covered under ITC (HS) 1006 are not covered under this dispensation, as at II (a) above.

(d) Exports under this dispensation, as at I (e) and II (a), (b) and (c) 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 imported for replacement free of charge by the exporter in accordance with the relevant Customs Notification, and such goods shall be allowed for export by Customs authorities, provided that replacement goods are not under the restricted or SCOMET items for exports in ITC(HS). If the export item is 'Restricted' or under SCOMET list, the exporter shall require an Authorisation for export of such replacement goods.

Export of Repaired Goods

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 reexport. Such goods shall be allowed clearance without an Authorisation and in accordance with the relevant 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. 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.

It may be noted that-

"Spares" means a part or a sub-assembly or assembly for substitution that is ready to replace an identical or similar part or sub- assembly or assembly. Spares include a component or an accessory.

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 Customs Act, 1962.

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 for manufacturing and other operations in accordance with Section 65 of the Customs Act, 1962.

PAYMENTS AND RECEIPTS ON IMPORTS / EXPORTS

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. However, participants in the ACU may settle their transactions in ACU Dollar or in ACU Euro as per RBI Notifications. 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.
d. Invoicing, payment and settlement of exports and imports is also permissible in INR subject to compliances as under RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022. Accordingly, settlement of trade transactions in INR shall take place through the Special Rupee Vostro Accounts opened by AD banks in India as permitted under Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, in accordance to the following procedures:
    i. Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier.
    ii. Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.

Applicability of FTP Schemes for Export Realisations in Indian Rupees

(i) Export proceeds realized in Indian Rupees against exports to Iran are permitted to avail exports benefits / incentives/ fulfilment of Export Obligations under the FTP, at par with export proceeds realized in freely convertible currency, subject to compliance of para 2.19 of the FTP.

(ii) Export proceeds realized in Indian Rupees as per para 2.52(d)(ii) are permitted to avail exports benefits / incentives / fulfilment of Export Obligations under the FTP.

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 thereunder and the FTP.

b. In case an Exporter is unable to realize the export proceeds for reasons beyond his control (force majeure), he may approach RBI for writing off the unrealized amount as laid down in Para 2.72 of Handbook of Procedures.

c. The payment realized through insurance cover, would be eligible for benefits under FTP as per Procedures laid down in Para 2.71 of Handbook of Procedures.

Export Credit Agencies (ECAs)

a. Export Credit Agencies (ECAs) are policy instruments for Government to support exports. ECAs support exports by insurance, guarantee and also direct lending. Export Credit Agencies (ECAs) like Export Credit Guarantee Corporation of India Ltd. (ECGC) provides credit insurance support to exports and export credit lending. Covers issued by ECGC to exporters, protect against losses arising out of payment failures due to insolvency or default of the buyers or due to political risks. Exporters can diversify their markets in addition to protecting existing markets through such covers. ECGC also supports Medium and Long term (MLT) exports including project exports. Exim Bank is the other ECA in the business of lending for MLT exports and fronting the government's line of credit.

b. ECGC indemnifies losses of exporters in export trade due to insolvency or default of the buyer. Additionally, losses due to political risk like war, sudden import restriction, promulgation of law or decree after the shipment has been affected are also covered. Some of the anti- dumping measures or non-tariff barriers introduced after a shipment has been made will come under the purview of the political risk. In such cases exporter's interest are protected by ECGC.

It may be noted that-

"Project Exports" refers to export of engineering goods on deferred payment terms and execution of turnkey projects and civil construction contracts abroad collectively. Project Exports would encompass:

i. Civil construction contracts;
ii. Turnkey Engineering contracts including supply of Capital Goods on deferred payment terms;
iii. Process and Engineering Consultancy Services; and
iv. Project Construction items (excluding Steel and Cement).

EXPORT PROMOTION COUNCILS

Recognition of EPCs to function as Registering Authority for issue of RCMC

a) Export Promotion Councils (EPCs) are organizations of exporters, set up with the objective to promote and develop Indian exports. Each Council is responsible for promotion of a particular group of products/ projects/services.
b) EPCs are also eligible to function as Registering Authorities to issue Registration-cum-Membership Certificate (RCMC) to its members. The criteria for EPCs to be recognized as Registering Authorities for issue of RCMC to its members are detailed in Para 2.78 of the Handbook of Procedures.

Registration-cum-Membership Certificate (RCMC)

a. Any person, applying for an Authorisation to import/ export under the FTP (except items listed as 'Restricted' items in ITC (HS)) or applying for any other benefit or concession under FTP, shall be required to provide, the RCMC granted by competent authority in accordance with Procedures specified in Handbook of Procedures unless specifically exempted under FTP.
b. Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board and Certificate of Registration as Exporter of Coir & Coir products issued by the Coir Board shall be treated as Registration-Cum- Membership Certificate (RCMC) for the purposes under this Policy.

It may be noted that –

"Competent Authority" means an authority competent to exercise any power or to discharge any duty or function under the Act or the Rules and Orders made there under or under FTP.

"Registration-Cum-Membership Certificate" (RCMC) means certificate of registration and membership granted by an Export Promotion Council/Commodity Board/Development Authority or other competent authority as prescribed in FTP or HBP.

Interpretation of Policy

(a) The decision of DGFT shall be final and binding on all matters relating to interpretation of Policy, or provision in Handbook of Procedures, Appendices and Aayat Niryat Forms or classification of any item for import / export in the ITC (HS).
(b) A Policy Interpretation Committee (PIC) may be constituted to aid and advice DGFT. The composition of the PIC would be as follows:
  (i) DGFT: Chairman
  (ii) All Additional DGFTs in Headquarters: Members
  (iii) All Joint DGFTs in Headquarters looking after Policy matters: Members
  (iv) Joint DGFT (PRC/PIC): Member Secretary
  (v) Any other person / representative of the concerned Ministry / Department, to be co-opted by the Chairman.

Exemption from Policy/Procedures

DGFT may in public interest pass such orders or grant such exemption, relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade to any person or class or category of persons from any provision of FTP or any Procedures. While granting such exemption, DGFT may impose such conditions as he may deem fit after consulting the Committees as under:

Sl. No.	Description	Committee
1	Fixation/modification of product norms under all schemes	Norms Committees
2	Nexus with Capital Goods (CG) and benefits under EPCG Schemes	EPCG Committee
3	All other issues	Policy Relaxation Committee (PRC)

It may be noted that-

"NC" means the Norms Committee in the Directorate General of Foreign Trade for approval of adhoc input –output norms in cases where SION does not exist and recommend SION to be notified in DGFT.

Personal Hearing by DGFT for Grievance Redressal

a) Government is committed to easy and speedy redressal of grievances from Trade and Industry. Paragraph 2.59 of FTP provides for relaxation of Policy and Procedures on grounds of genuine hardship and adverse impact on trade. If an importer/exporter is aggrieved by any decision taken by Policy Relaxation Committee (PRC), or a decision/order by any authority in the Directorate General of Foreign Trade, a specific request for Personal Hearing (PH) along with the prescribed application fee as per Appendix-2K has to be made to DGFT. DGFT may consider request for relaxation after consulting concerned Norms Committee, EPCG Committee or Policy Relaxation Committee (PRC) and the decision conveyed in pursuance to the personal hearing shall be final and binding.
b) The opportunity for Personal Hearing will not apply to a decision/order made in any proceeding, including an adjudication proceeding, whether at the original stage or at the appellate stage, under the relevant provisions of FT (D&R) Act, 1992, as amended from time to time.

Regularization of EO default and settlement of Customs duty and interest through Settlement Commission

With a view to providing assistance to firms who have defaulted under FTP for reasons beyond their control as also facilitating merger, acquisition and rehabilitation of sick units, it has been decided to empower Settlement Commission in Department of Revenue to decide such cases also with effect from 01.04.2005. However, in cases where the matter is under the purview of the NCLT, Para 2.15 of the FTP shall apply.

SELF-CERTIFICATION OF ORIGINATING GOODS

Approved Exporter Scheme for Self- Certification of Certificate of Origin

a) Currently, Certificates of Origin under various Preferential Trade Agreements [PTA], Free Trade Agreements [FTAs], Comprehensive Economic Cooperation Agreements [CECA] and Comprehensive Economic Partnerships Agreements [CEPA] are issued by designated agencies as per Appendix 2B of Appendices and Aayat Niryat Forms. A new optional system of self-certification is being introduced with a view to reducing transaction cost.

b) The Manufacturers who are also Status Holders shall be eligible for Approved Exporter Scheme. Approved Exporters will be entitled to self-certify their manufactured goods as originating from India with a view to qualifying for preferential treatment under different PTAs/FTAs/CECAs/CEPAs which are in operation. Self-certification will be permitted only for the goods that are manufactured as per the

Industrial Entrepreneurs Memorandum (IEM) / Industrial License (IL) /Letter of Intent (LOI) issued to manufacturers.

c) Status Holders will be recognized by DGFT as Approved Exporters for self-certification based on availability of required infrastructure, capacity and trained manpower as per the details in Para 2.94 of Handbook of Procedures read with Appendix 2F of Appendices & Aayaat Niryat Forms.

d) The details of the Scheme, along with the penalty provisions, are provided in Appendix 2F of Appendices and Aayaat Niryat Forms and will come into effect only when India incorporates the scheme into a specific agreement with its partner/s and the same is appropriately notified by DGFT. Further the entities to whom such self-certification will be extended bilaterally under FTA/PTA will be subject to the provisions and conditions of that FTA.

It may be noted that-

"Status holder" means an exporter recognized for export performance by an RA as per para 1.25 of the FTP.

Certification of Origin of Goods EU- GSP

Exporters can self-certify the Statement on Origin of their goods, as per the self-certification scheme, Certification of Origin of Goods for European Union Generalised System of Preferences (EU-GSP), of the European Union (EU) under the Registered Exporter System (REX) as in Para 2.89(A)(c) of the Handbook of Procedures.

DEVELOPING DISTRICTS AS EXPORT HUBS

Objective

To galvanise districts of the country to become export hubs by identifying products and services with export potential in the district, addressing bottlenecks for exporting these products/services, supporting local exporters/ manufacturers to scale and find potential buyers outside India with the aim of promoting exports, manufacturing & services industry in the District. This is intended to bring greater level of awareness and commitment regarding exports at the district level, build capacity to create new exporters and identify new markets for the focused products and services. This will also empower MSMEs, farmers and small scale industries to get benefit of export opportunities in the overseas markets. This decentralised and focused approach will shift the focus on district led export growth for self-sufficiency and self- reliance by providing global platform to products and services from the districts.

District Export Promotion Committees - Institutional Mechanism at District Level

Every district has products and services which are being exported, and can be further promoted, along with new products / services, to increase production, grow exports, generate economic activity and achieve the goal of Atma Nirbhar Bharat, Vocal for local and Make in India.

Products/services (GI products, agricultural clusters, toy clusters etc.) with export potential in each District have to be identified and institutional mechanism in the form of District Export Promotion Committees (DEPCs) at the district level is to be created to provide support for export promotion and address the bottlenecks for export growth in the Districts.

Each District shall constitute a District Export Promotion Committee (DEPC) chaired by Collector/DM/DC of the District and co-chaired by designated DGFT Regional Authority with various other stakeholders as its members.

The primary function of the DEPC will be to prepare and implement district specific Export Action Plans in collaboration with all the relevant stakeholders at the Central, State and the District level.

DGFT Regional Authorities will be engaging with all the relevant State and Central agencies to take forward this initiative in each district.

District Export Action Plans for Each District

The District Export Action Plan (DEAP) may be prepared for each district. 2-3 high potential products/services from the districts may be prioritised and comprehensive plan for their export growth may be prepared. It may include the support required by the local industry in boosting their manufacturing and exports with impetus on supporting the industry from the production stage to the exporting stage. The DEAPs may also include specific quantifiable targets to be achieved in the short term and long term. These plans may outline the interventions that are required to promote the export of identified products and services from the district. Each DEAP may be deliberated by the DEPC and various stakeholders before it is formally adopted by the DEPC of each District. DEAP of each District, once adopted, may be published in the public domain on a dedicated Portal.

State/UT Export Promotion Committees

To synergise the efforts of the Department of Commerce/ DGFT and the State/UT governments in promotion of exports from the State, each State shall constitute a State Export Promotion Committee (SEPC) headed by Chief Secretary of the State. The designated Regional Authority of DGFT shall be the co-convener of the committee.

Nodal DGFT Regional Authority

Districts of the States/UTs have been assigned to the Jurisdictional DGFT Regional Authority and the nodal RA shall be responsible for the Districts under their jurisdiction for all activities related to Districts as Export Hubs initiative in those Districts.

Online Monitoring of District Export Action Plans

DGFT would develop an online monitoring portal that may be accessed on the DGFT website to enable the States/ DGFT RAs to upload all information related to the products/services with export potential of every District. The portal may also help in monitoring the progress of District Export Action Plan and DEPC meetings in all the Districts. Each DGFT Jurisdictional RA to be primarily responsible for updating the information/progress made in implementing Export Action Plan for each District under their Jurisdiction. The information and reports may also be available in public domain for the benefit of the exporters.

Export Promotion Activities in Districts

Support in the form of product/sector specific training and development needs of local industries, dissemination of information through outreach activities including buyer- seller meets, trade fairs, workshops etc. may be provided in each District. The training and development need of District industries may be identified and trainings may be coordinated with other departments. DGFT RAs through DEPCs may

facilitate such buyer-seller meets, exhibitions, trade fairs etc. in the district to encourage the industries to showcase their products/services to the world.

Implementation of District Export Action Plans

The District Export Action Plan notified by the District Export Promotion Committee in each District may include clear identification of products (goods and services) with export potential in the District, institutional/other responsibilities, specifics of policy, regulatory and operational reform, and infrastructure/utilities/logistics interventions required across the entire chain from producer/farm to the export destination, to cover aspects like production, productivity/ competitiveness, improvements required in design, tie up of producers with exporters, aggregation, sorting, testing, certification, packaging, transportation through cold chain or otherwise, import export regulatory formalities, fulfilment of destination countries standards etc. It may also include Identifying bottlenecks/Issues in GI production, registration, marketing and its exports. The plan may also include the support required by the local industry in boosting their manufacturing and exports with impetus on supporting the industry from the production stage to the exporting stage.

Once the plan is formally adopted by the DEPC of each District, the plan may be implemented by the DEPC by identifying the projects/activities required to be done to promote export growth from the Districts. Convergence of various schemes would be done on priority to build synergy and access the central government and State government scheme funds available for infrastructure development and skill/capacity building activities. Department of Commerce schemes such as Market Access Initiative, Niryat Bandhu scheme etc. may also give priority to district specific needs identified under the District Export Action Plan.

DUTY EXEMPTION / REMISSION SCHEMES

Objective

Schemes enable duty free import of inputs for export production, including replenishment of inputs or duty remission.

Schemes

1. Duty Exemption Schemes. - The Duty Exemption schemes consist of the following:
    - Advance Authorisation (AA) (which will include Advance Authorisation for Annual Requirement).
    - Duty Free Import Authorisation (DFIA).
2. Duty Remission Scheme- Duty Drawback (DBK) Scheme, administered by Department of Revenue.
3. Scheme for Rebate on State and Central Taxes and Levies (RoSCTL), as notified by the Ministry of Textiles.
4. Schemes for Remission of Duties and Taxes on Exported Products (RoDTEP) notified by Department of Commerce and administered by Department of Revenue.

Applicability of Policy & Procedures

Authorisation under this Chapter shall be issued in accordance with the Policy and Procedures in force on the date of issue of the Authorisation.

Advance Authorisation

(a) Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed / utilized in the process of production of export product, may also be allowed.

(b) Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

(i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures);

OR

(ii) On the basis of self declaration as per paragraph 4.07 of Handbook of Procedures.

OR

(iii) Applicant-specific prior fixation of norm by the Norms Committee as per para 4.06 of Handbook of Procedures.

OR

(iv) On the basis of Self Ratification Scheme in terms of Para 4.06 of Foreign Trade Policy.

It may be noted that-

"SION" means Standard Input Output Norms notified by DGFT.

Advance Authorisation for Spices

Duty free import of spices covered under Chapter-9 of ITC (HS) shall be permitted only for activities like crushing / grinding / sterilization / manufacture of oils or oleoresins. Authorisation shall not be available for simply cleaning, grading, re-packing, etc.

Special Advance Authorisation Scheme for export of Articles of Apparel and Clothing accessories

Duty free import of fabric under 'Special Advance Authorisation Scheme for export of Articles of Apparel and Clothing Accessories' shall be allowed, as per Customs Notification issued for this scheme, for export of items covered under Chapter 61 and 62 of ITC(HS) Classification of Export and Import, subject to the following terms and conditions:

a. The authorisation shall be issued based on Standard Input Output Norms (SION) or prior fixation of norms by Norms Committee.
b. The authorisation may also be issued on the basis of self-declaration as per para 4.07 of HBP. In such cases, adhoc-norms shall be fixed within stipulated time period of 90 days.
c. The authorisation shall be issued for the import of relevant fabrics including inter lining only as input. No other input, packing material, fuel, oil and catalyst shall be allowed for import under this authorisation.
d. Exporters shall be eligible for All Industry Rate of Duty Drawback, for non-fabric inputs, as determined by Central Government for this scheme. For the purpose of value addition norm of Para 4.08 of FTP, the value of any other input used on which benefit of Drawback is claimed or intended to be claimed shall be equal to 22% of the FOB value of export realised. Minimum value addition shall be as per Para 4.09 of FTP.

e. Where the exporter desires to claim drawback determined and fixed by Jurisdictional Customs Authority (brand rate), he shall follow Para 4.15 of FTP regarding declarations to be made in application for the authorisation and make export under claim for brand rate. In such cases the value addition shall be as per Para 4.08 of FTP. Minimum value addition shall be as per Para 4.09 of FTP.
f. Authorisation, and the fabric imported, shall be subject to actual user condition. The same shall be nontransferable even after completion of export obligation. However, fabric imported may be transferred for job work in terms of provisions of GST Acts under intimation to the Customs authority at the port of registration (excluding the units located in areas eligible for area based exemption from Central Excise Duty). Invalidation of the Authorisation shall not be permitted.
g. The fabric imported shall be subject to pre-import condition and it shall be physically incorporated in the export product (making normal allowance for wastage). Only Physical exports shall fulfill the export obligation. (viii) Provisions of paragraphs 4.02, 4.05(a), 4.13(i), 4.13(ii), 4.14, 4.15, 4.17, 4.19, 4.21(i), 4.21(ii), 4.21(iii), 4.21(iv), 4.22, and 4.23 of Foreign Trade Policy shall be applicable in so far as they are not inconsistent with this scheme.

Eligible Applicant / Export /Supply

a. Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.
b. Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process (as indicated in paragraph 4.18 of Handbook of Procedures) shall be issued to manufacturer exporter only.
c. Advance Authorisation shall be issued for:
    i. Physical export (including export to SEZ)
    ii. Intermediate supply; and/or
    iii. Supply of goods to the categories mentioned in paragraph 7.02 (b), (c), (d), (e), (f) and (g) of this FTP.
    iv. Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.

Self-Ratification Scheme

i. Where there is no SION/valid Adhoc Norms for an export product or where SION has been notified but exporter intends to use additional inputs in the manufacturing process, eligible exporter can apply for an Advance Authorisation under this scheme on self-declaration and self-ratification basis. The expression "additional inputs" refers not to additionality in terms of quantity/value of an input specified in a norm, but to another additional input. Say, if the inputs specified in the norm are X1 and X2 only, then input Y would represent an additional input. RA may issue Advance Authorisations and 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.
ii. A Certificate from a Chartered Engineer who has been not been penalised in the last five years under FT(D&R) Act 1992, Customs Act 1962, Central Excise Act 1944, GST Acts and allied acts and rules made there under shall only be accepted for grant of Authorisation under this scheme.
iii. Detailed procedure for administering the scheme shall be prescribed in the Handbook of Procedures.

iv. An exporter (manufacturer or merchant), who holds AEO Certificate under Common Accreditation Programme of CBEC is eligible to opt for this scheme.

v. A status holder who is a manufacturer cum actual user and holds valid 2-star or above status under para 1.25 of FTP and who has already submitted its application for grant of AEO on CBIC's AEO portal is also eligible to apply for this scheme subject to following conditions: -

a) Status holder submits copy of numbered and dated acknowledgement of its application for grant of AEO.

b) Status holder undertakes to the DGFT that –

1. Their application for grant of AEO certification has not yet been rejected;
2. There is no case of infringement of Customs and allied laws against the status holder in the current year and last three FYs.
3. Status holder has not been issued show cause notice by Customs or GST authorities in the current year and last three FYs.
4. Status holder has positive net current assets.
5. There are no insolvency, bankruptcy or liquidation proceedings taken against the status holder in the current year and last three FYs.

c) If status holder is unable to obtain the AEO certification within 120 days from date of application under this scheme para, the exporter agrees that the facility under this para shall stand withdrawn and he (status holder) will be bound to approach the concerned Norms Committee of DGFT for fixation of norms and to abide by the decision of the said Committee.

d) In case of situation as at (c) above, no further authorisation under this scheme para will be issued.

e) The DGFT may deny authorisation under this scheme para to two star and above status holder based on its risk management principles.

f) Status holder shall be audited by the DGFT as laid down in the Handbook of Procedures.

vi. The scheme shall not be available for the following export products:

a) All items covered under Chapter-1 to 24 and Chapter-71of ITC (HS) Classification;
b) Biotechnology items and related products; and
c) SCOMET items.

vii. The scheme shall not be available for the following inputs:

A. All vegetable / edible oils classified under Chapter-15 and all types of oilseeds classified under Chapter-12 of ITC (HS) book;
B. All types of cereals classified under Chapter–10 of ITC (HS) book;
C. Horn, hoof and any other organ of animal;
D. Wild animal products, organs and waste thereof;
E. Honey;
F. All items with basic customs duty of 30% or more;
G. All types of fruits/ nuts/ vegetables classified under Chapter-7 and Chapter-8 of ITC (HS) book;
H. Items covered under heading 2515, 2516, 3301, 3302, 3303, 6801 and 6802 of ITC (HS) Classification;
I. Items covered under Chapter 50 to 63 of ITC (HS) classification;
J. Acetic Anhydride, Ephedrine and Pseudoephedrine;
K. Vitamins;
L. Biotechnology items and related products;
M. Insecticides, Rodenticides, Fungicides, Herbicides, Anti sprouting products, and plant growth regulators, disinfectants and similar products of all forms, types and grades;

N. Waste/Scrap of all types; and
O. Second hand goods.

viii. Inputs imported shall be subject to pre import condition and they shall be physically incorporated in the export product (making normal allowance for wastage). In case of local procurement under invalidation/ARO, the inputs shall be procured prior to manufacture of export item and shall be physically incorporated in the export product.

ix. Wherever value of by-products and recoverable wastage generated during manufacturing process is more than 5% of CIF value, corresponding quantity of main input shall be reduced from the entitlemen to the extent that value of disallowed quantity is equal to the value of by-products and recoverable wastage generated during manufacturing process.

x. Concerned Norms Committee may conduct audit of the manufacturer. The frequency and manner of audit shall be prescribed by DGFT in Handbook of Procedures. The manufacturer shall be required to provide the necessary facility to verify the books of account/other documents as required, give information and assistance for timely completion of the audit. Non-availability of production and consumption documents/data shall be treated as misdeclaration and indulgence in fraudulent activities and shall be penalised under FT (D&R) Act, as amended and rules made there under.

xi. Concerned Norms Committee may initiate special audit, considering the nature and complexity of the case and revenue of government, if he is of the opinion at any stage of scrutiny/enquiry/investigation that the norms have not been claimed correctly or the excess benefit has been availed. Special audit can be conducted even if the manufacturer has already been audited before.

xii. If the audit results in detection of mis-declaration and/ or instances of claiming of inputs which are not used in manufacturing process or excess quantity of inputs than consumed, demand and recovery actions will be initiated in addition to initiation of action against the authorisation holder, manufacturer and Chartered Engineer in terms of Foreign Trade Development and Regulation Act 1992 and/or Customs Act 1962, as amended and rules made there under.

xiii. In cases where Chartered Engineer has not exercised due diligence or has willfully become party to mis-declaration action will be initiated under against such person under FT(D&R) Act 1992, as amended and rules made there under. In addition, such cases shall also be referred to 'The Institute of Engineers India' for taking action as warranted under the bylaws of the institute

xiv. All the provisions applicable for Advance Authorisation Scheme shall be applicable to this scheme also in so far they are not inconsistent with this scheme.

Advance Authorisation for Annual Requirement and Eligibility Condition

a. Advance Authorisation for Annual Requirement shall only be issued for items notified in Standard Input Output Norms (SION). And it shall not be available in case of adhoc norms under paragraph 4.03 (b) (ii) of FTP.
b. Advance Authorisation for Annual Requirement shall also not be available in respect of SION where any item of input appears in Appendix 4-J.
c. Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorisation for Annual requirement.
d. Entitlement in terms of CIF value of imports shall be upto 300% of the FOB value of physical export and / or FOR value of deemed export in preceding financial year or Rs 1 Crore, whichever is higher.

Value Addition

Value Addition for the purpose of this Chapter (except for Gems and Jewellery sector for which value addition is prescribed in paragraph 4.37 of FTP) shall be:-

$$VA = \frac{A-B}{B} \times 100, \text{ where}$$

A =FOB value of export realized/FOR value of supply received.

B =CIF value of inputs covered by Authorisation, plus value of any other input used on which benefit of DBK is claimed or intended to be claimed.

Minimum Value Addition

(i) Minimum value addition required to be achieved under Advance Authorisation is 15%.

(ii) Export Products where value addition could be less than 15% are given in Appendix 4D.

(iii) Minimum value addition for Gems & Jewellery Sector is given in paragraph 4.60 of Handbook of Procedures.

(iv) In case of Tea, minimum value addition shall be 50%.

(v) In case of spices, minimum value addition shall be 25%. 4.10 Import of Mandatory Spares Import of mandatory spares which are required to be exported / supplied with the resultant product shall be permitted duty free to the extent of 10% of CIF value of Authorisation.

Import of Mandatory Spares

Import of mandatory spares which are required to be exported / supplied with the resultant product shall be permitted duty free to the extent of 10% of CIF value of Authorisation.

Ineligible categories of import on Self Declaration basis

a. Import of following products shall not be permissible on self-declaration basis:
   i. All vegetable / edible oils classified under Chapter- 15 and all types of oilseeds classified under Chapter- 12 of ITC (HS) book;
   ii. All types of cereals classified under Chapter–10 of ITC (HS) book;
   iii. All Spices other than light black pepper (light berries) having a basic customs duty of more than 30%, classified under Chapter-9 and 12 of ITC (HS)book;
   iv. All types of fruits/ vegetables having a basic customs duty of more than 30%, classified under Chapter-7 and Chapter-8 of ITC(HS) book;
   v. Horn, Hoof and any other organ of animal;
   vi. Honey;
   vii. Rough Marble Blocks/Slabs;
   viii. Rough Granite;
   ix. Vitamins except for use in pharmaceutical industry; and
   x. All items with a basic custom duty of more than 30%.
b. For export of perfumes, perfumery compounds and various feed ingredients containing vitamins, no Authorisation shall be issued by Regional Authority under paragraph 4.07 of Handbook of

Procedures and applicants shall be required to apply under paragraph 4.06 of Hand Book of Procedures to the Norms Committee.

c. Where export and/or import of biotechnology items and related products are involved, Authorisation under paragraph 4.07 of Handbook of Procedures shall be issued by Regional Authority only on submission of a "No Objection Certificate" from Department of Biotechnology.

Accounting of Input

a. Wherever SION permits use of either (a) a generic input or (b) alternative input, unless the name of the specific input together with quantity [which has been used in manufacturing the export product] gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, within quantity specified and match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. In other words, the name/description of the input used (or to be used) in the Authorisation must match exactly with the name/description endorsed in the shipping bill.
b. In addition, if in any SION, a single quantity has been indicated against a number of inputs (more than one input), then quantities of such inputs to be permitted for import shall be in proportion to the quantity of these inputs actually used/consumed in production, within overall quantity against such group of inputs. Proportion of these inputs actually used/consumed in production of export product shall be clearly indicated in shipping bills.
c. At the time of discharge of export obligation (issue of EODC) or at the time of redemption, Regional Authority shall allow only those inputs which have been specifically indicated in the shipping bill together with quantity.
d. The above provisions will also be applicable for supplies to SEZs and supplies made under Deemed exports. Details as given above will have to be indicated in the relevant Bill of Export, ARE-3, Central Excise certified Invoice / import document / Tax Invoice for export prescribed under the GST rules.

Pre-import condition in certain cases

i. DGFT may, by Notification, impose pre-import condition for inputs under this Chapter.
ii. Import items subject to pre-import condition are listed in Appendix 4-J or will be as indicated in Standard Input Output Norms (SION).

Details of Duties exempted

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti- dumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c) & (f) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Countervailing Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any. However, imports under Advance Authorisation for physical as well as deemed exports are also exempt from whole of the Integrated Tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975).

Admissibility of Drawback

Drawback as per rate determined and fixed by Customs authority in terms of DoR Rules shall be available for duty paid imported or indigenous inputs (not specified in the norms) used in the export product. For this purpose, applicant shall indicate clearly details of duty paid input in the application for Advance Authorisation. As per details mentioned in the application, Regional Authority shall also clearly endorse details of such duty paid inputs in the condition sheet of the Advance Authorisation.

Actual User Condition for Advance Authorisation

i. Advance Authorisation and / or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty-free input once export obligation is completed.

ii. In case where CENVAT/input tax credit facility on input has been availed for the exported goods, even after completion of export obligation, the goods imported against such Advance Authorisation shall be utilized only in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer). For this, the Authorisation holder shall produce a certificate from Chartered Accountant at the time of filing application for Export Obligation Discharge Certificate to Regional Authority concerned. An AEO having valid certificate has the option to produce self-declaration to this effect.

iii. Waste / Scrap arising out of manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfillment of export obligation.

Validity Period for Import and its Extension

Validity period for import under Advance Authorisation shall be as prescribed in Handbook of Procedures.

Importability / Exportability of items that are Prohibited/ Restricted / STE

i. No export or import of an item shall be allowed under Advance Authorisation / DFIA if the item is prohibited for exports or imports respectively. Export of a prohibited item may be allowed under Advance Authorisation provided it is separately so notified, subject to the conditions given therein.

ii. Items reserved for imports by STEs cannot be imported against Advance Authorisation / DFIA. However, those items can be procured from STEs against ARO or Invalidation letter. STEs are also allowed to sell goods on High Sea Sale basis to holders of Advance Authorisation / DFIA holder. STEs are also permitted to issue "No Objection Certificate (NOC)" for import by Advance Authorisation / DFIA holder and may charge a reasonable fee subject to a maximum of ₹5000 from the applicant.

iii. Items reserved for export by STE can be exported under Advance Authorisation / DFIA only after obtaining a 'No Objection Certificate' from the concerned STE.

iv. Import of restricted items shall be allowed under Advance Authorisation/DFIA unless specifically disallowed.

v. Export of restricted / SCOMET items however, shall be subject to all conditionalities or requirements of export authorisation or permission, as may be required, under Schedule 2 of ITC (HS).

Free of Cost Supply by Foreign Buyer

Advance Authorisation shall also be available where some or all inputs are supplied free of cost to exporter by foreign buyer. In such cases, notional value of free of cost input shall be added in the CIF value of import and FOB value of export for the purpose of computation of value addition. However, realization of export proceeds will be equivalent to an amount excluding notional value of such input.

Domestic Sourcing of Inputs

i. Holder of an Advance Authorisation / Duty Free Import Authorisation can procure inputs from indigenous supplier/ State Trading Enterprise/EOU/EHTP/BTP/ STP in lieu of direct import. Such procurement can be against Advance Release Order (ARO), or Invalidation Letter.
ii. When domestic supplier intends to obtain duty free material for inputs through Advance Authorisation for supplying resultant product to another Advance Authorisation / DFIA /EPCG Authorisation, Regional Authority shall issue Invalidation Letter.
iii. Regional Authority shall issue Advance Release Order if the domestic supplier intends to seek refund of duties exempted through Deemed Exports mechanism as per provisions under Chapter-7 of FTP.
iv. Regional Authority may issue Advance Release Order or Invalidation Letter at the time of issue of Authorisation simultaneously or subsequently.
v. Advance Authorisation holder under DTA can procure inputs from / SEZ units against Certificate of supply till EDI message system between SEZ and Customs is enabled.
vi. Validity of Advance Release Order / Invalidation Letter shall be co- terminous with validity of Authorisation.

Currency for Realisation of Export Proceeds

i. Export proceeds shall be realized in freely convertible currency or in Indian Rupees as per para 2.53 of FTP, except otherwise specified. Provisions regarding realisation and non-realisation of export proceeds are given in paragraph 2.52, 2.53 and 2.54 of FTP.
ii. Export to SEZ Units shall be taken into account for discharge of export obligation provided payment is realised from Foreign Currency Account of the SEZ unit.
iii. Export to SEZ Developers / Co-developers can also be taken into account for discharge of export obligation even if payment is realised in Indian Rupees.
iv. Authorisation holder needs to file Bill of Export for export to SEZ unit/ developer / co-developer in accordance with the procedures given in SEZ Rules, 2006.

Export Obligation Period and its Extension

Period for fulfillment of export obligation and its extension under Advance Authorisation shall be as prescribed in Handbook of Procedures.

Re-import of exported goods under Duty Exemption/ Remission Scheme

Goods exported under Advance Authorisation/ Duty Free Import Authorisation may be re-imported in same or substantially same form subject to such conditions as may be specified by Department of Revenue. Authorisation holder shall also inform about such re- importation to the Regional Authority which had issued the Authorisation within one month from date of re-import.

DUTY FREE IMPORT AUTHORISATION SCHEME (DFIA)

DFIA Scheme

1. Duty Free Import Authorisation is issued to allow duty free import of inputs. In addition, import of oil and catalyst which is consumed/ utilised in the process of production of export product, may also be allowed.
2. Provisions of paragraphs 4.12, 4.18, 4.20, 4.21 and 4.23 of FTP shall be applicable to DFIA also.
3. Import of Tyre under DFIA scheme is not allowed.

Duties Exempted

i. Duty Free Import Authorisation shall be exempted only from payment of Basic Customs Duty (BCD).
ii. Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product. However, in case such drawback is claimed for inputs not specified in SION, the applicant should have indicated clearly details of such duty paid inputs also in the application for Duty Free Import Authorisation, and as per the details mentioned in the application, the Regional Authority should also have clearly endorsed details of such duty paid inputs in the condition sheet of the Duty Free Import Authorisation.

Eligibility

i. Duty Free Import Authorisation shall be issued on post export basis for products for which Standard Input Output Norms have been notified.
ii. Merchant Exporter shall be required to mention name and address of supporting manufacturer of the export product on the export document viz. Shipping Bill/ Bill of Export / Tax Invoice for export prescribed under the GST rules.
iii. Application is to be filed with concerned Regional Authority before effecting export under Duty Free Import Authorisation.
iv. No Duty Free Import Authorisation shall be issued for an input which is subjected to pre-import condition or where SION prescribes 'Actual User' condition or Appendix-4J prescribes pre import condition for such an input.

Minimum Value Addition

Minimum value addition of 20% shall be required to be achieved.

Validity &Transferability of DFIA

a. Applicant shall file online application to Regional Authority concerned before starting export under DFIA.
b. Export shall be completed within 12 months from the date of online filing of application and generation of file number.
c. While doing export/supply, applicant shall indicate file number on the export /supply documents viz. Shipping Bill / Bill of Export / Tax invoice for supply prescribed under GST rules.

d. In terms of Para 4.12 of FTP, Wherever SION permits use of either (a) a generic input or (b) alternative input, the specific input together with quantity [which has been used in manufacturing the export product] should be indicated / endorsed in the relevant Shipping Bill/ Bill of Export / Tax invoice for supply prescribed under GST rules. Only such inputs may be permitted for import in the authorisation in proportion to the quantity of these inputs actually used/consumed in production, within overall quantity against such generic input/alternative input.
e. In addition, if in any SION, a single quantity has been indicated against a number of inputs (more than one input), then quantities of such inputs to be permitted for import shall be in proportion to the quantity of these inputs actually used/consumed in production and declared in Shipping Bill / Bill of Export / Tax invoice for supply prescribed under GST rules within overall quantity against such group of inputs. Proportion of these inputs actually used/consumed in production of export product shall be clearly indicated in Shipping Bill / Bill of Export / Tax invoice for supply prescribed under GST rules.
f. Separate DFIA shall be issued for each SION.
g. Exports under DFIA shall be made from any port listed in Para 4.35 of Handbook of Procedures. However, separate application shall be made for EDI and non-EDI ports. In case export is made from a non-EDI port, separate application shall be made for each non-EDI port.
h. Regional Authority shall issue transferable DFIA with a validity of 12 months from the date of issue. No further revalidation shall be granted by Regional Authority.

Sensitive Items under Duty Free Import Authorisation

i. In respect of following inputs, exporter shall be required to provide declaration with regard to technical characteristics, quality and specification in Shipping Bill: "Alloy steel including Stainless Steel, Copper Alloy, Synthetic Rubber, Bearings, Solvent, Perfumes / Essential Oil/ Aromatic Chemicals, Surfactants, Relevant Fabrics, Marble, Articles made of Polypropylene, Articles made of Paper and Paper Board, Insecticides, Lead Ingots, Zinc Ingots, Citric Acid, Relevant Glass fibre reinforcement (Glass fibre, Chopped / Stranded Mat, Roving Woven Surfacing Mat), Relevant Synthetic Resin (unsaturated Polyester Resin, Epoxy Resin, Vinyl Ester Resin, Hydroxy Ethyl Cellulose), Lining Material".

ii. While issuing Duty Free Import Authorisation, Regional Authority shall mention technical characteristics, quality and specification in respect of above inputs in the Authorisation.

SCHEMES FOR EXPORTERS OF GEMS AND JEWELLERY

Import of Input

Exporters of Gems and Jewellery can import / procure duty free (excluding Integrated Tax and Compensation Cess leviable under Section 3(7) and 3(9) of Customs Tariff Act) input for manufacture of export product.

Items of Export

i) "Gold jewellery, including partly processed jewellery, and articles including medallions and coins (excluding legal tender coins), whether plain or studded, containing gold of 8 carats and above up to a maximum limit of 22 carats.

Gold religious idols (only gods and goddess) of 8 carats and above (up to 24 carats) subject to the following conditions:

a. Exports would be subject to 100% examination by the Approved Government Valuer.

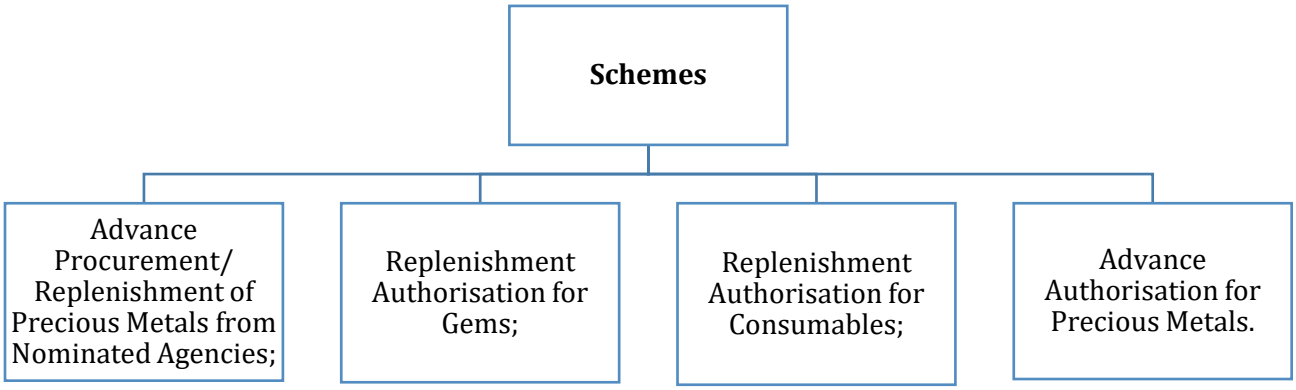
b. Foreign remittance has to be realized within a period of 3 months from the date of export.
c. Exporters must submit confirmed export order before effecting export.
d. Distinction must be made between a religious idol and simply moulded gold article/idol.
e. Exports may be allowed only be actual manufactures of such idols. The findings like posts, push backs, locks which help in collating the jewellery pieces together, containing gold of 3 carats and above up to a maximum limit of 22 carats.

ii) Silver jewellery including partly processed jewellery, silverware, silver strips and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% silver by weight;

iii) Platinum jewellery including partly processed jewellery and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% platinum by weight.

Schemes

The schemes are as follows:



Advance Procurement/ Replenishment of Precious Metals from Nominated Agencies

(i) Exporter of gold / silver / platinum jewellery and articles thereof including mountings and findings may obtain gold/ silver / platinum as an input for export product from Nominated Agency, in advance or as replenishment after export in accordance with the procedure specified in this behalf. Replenishment of gold/silver/platinum will be subject to Customs notification No. 57/2000-Customs dated 08.05.2000, as amended.

(ii) The export would be subject to wastage norms and minimum value addition as prescribed in paragraph 4.59 and 4.60 respectively in the Handbook of Procedures.

Replenishment Authorisation for Gems

(i) Exporter may obtain Replenishment Authorisation for Gems from Regional Authority in accordance with procedure specified in Handbook of Procedures as per the replenishment rate prescribed in Appendix 4F. Replenishment Authorisation for Gems shall be freely transferable.

(ii) Replenishment Authorisation for Gems may be issued against export including that made against supply by Nominated Agency (paragraph 4.40 of FTP) and against supply by foreign buyer (paragraph 4.44 of FTP).

(iii) In the case of studded gold/silver/platinum jewellery and articles thereof, the value of Gem Replenishment Authorisation shall be on the remaining FOB value of exports after deducting the value of gold/ silver/ platinum including admissible wastage. The scale of replenishment and the item of import will be as prescribed in Appendix 4G.

Replenishment Authorisation for Consumables

(i) Replenishment Authorisation for duty free (excluding Integrated Tax and Compensation Cess leviable under Section 3(7) and 3(9) of Customs Tariff Act) import of Consumables, Tools and other items namely, Tags and labels, Security censor on card, Staple wire, Poly bag (as notified by Customs) for Jewellery made out of precious metals (other than Gold & Platinum) equal to 2% and for Cut and Polished Diamonds and Jewellery made out of Gold and Platinum equal to 1% of FOB value of exports of the preceding year, may be issued on production of Chartered Accountant Certificate indicating the export performance. However, in case of Rhodium finished Silver jewellery, entitlement will be 3% of FOB value of exports of such jewellery. This Authorisation shall be non- transferable and subject to actual user condition.

(ii) Application for import of consumables as given above shall be filed online to the concerned Regional Authority in ANF 4H.

It may be noted that –

"Consumables" means any item, which participates in or is required for a manufacturing process, but does not necessarily form part of end-product. Items, which are substantially or totally consumed during a manufacturing process, will be deemed to be consumables.

Advance Authorisation for Precious Metals

1. Advance Authorisation shall be granted on pre-import basis with 'Actual User' condition for duty free (excluding Integrated Tax and Compensation Cess leviable under Section 3(7) and 3(9) of Customs Tariff Act) import of:
   a. Gold of fineness not less than 0.995 and mountings, sockets, frames and findings of 8 carats and above;
   b. Silver of fineness not less than 0.995 and mountings, sockets, frames and findings containing more than 50% silver by weight;
   c. Platinum of fineness not less than 0.900 and mountings, sockets, frames and findings containing more than 50% platinum by weight.
2. Advance Authorisation shall carry an export obligation which shall be fulfilled as per procedure indicated in Chapter 4 of Handbook of Procedures.
3. Value Addition shall be as per paragraph 4.37 of FTP and 4.60 of Handbook of Procedures.
4. Advance Authorisation Scheme is not available where the item of export is 'Gold Medallions and Coins' or 'Gold jewellery/articles manufactured by fully mechanized process'.

Value Addition

Minimum Value Addition norms for gems and jewellery sector are given in paragraph 4.60 of Handbook of Procedures. It would be calculated as under:

$$VA = \frac{A-B}{B} \times 100, \text{ where}$$

A = FOB value of the export realised/ FOR value of supply received.

B= Value of inputs (including domestically procured) such as gold/silver/platinum content in export product plus admissible wastage along with value of other items such as gemstone etc. Wherever gold has been obtained on loan basis, value shall also include interest paid in free foreign exchange to foreign supplier.

Wastage Norms

Wastage or manufacturing loss for gold/silver/platinum jewellery shall be admissible as per paragraph 4.59 of Handbook of Procedures.

DFIA not available

Duty Free Import Authorisation scheme shall not be available for Gems and Jewellery sector.

Nominated Agencies

(i) Exporters may obtain gold / silver / platinum from Nominated Agency. Exporter in EOU and units in SEZ would be governed by the respective provisions of Chapter-6 of FTP / SEZ Rules, respectively.
(ii) Nominated Agencies are The Handicraft and Handlooms Exports Corporation of India Ltd, MSTC Ltd., and Diamond India Limited.
(iii) Reserve Bank of India can authorize any bank as Nominated Agency.
(iv) Procedure for import of precious metal by Nominated Agencies shall be as per the provisions laid down in HBP. The procedure for import of precious metals by the Gems & Jewellery units operating under EOU & SEZ schemes will be as per the applicable schemes. The monitoring mechanism for the Nominated Agencies (other than banks authorised by RBI) shall be as per para 4.93 of HBP.
(v) A bank authorised by Reserve Bank of India is allowed export of gold scrap for refining and import standard gold bars as per Reserve Bank of India guidelines.

Import of Diamonds for Certification / Grading & Re-export

Following agencies are permitted to import diamonds to their laboratories without any import duty, for the purpose of certification / grading reports, with a condition that the same should be re-exported with the certification/grading reports, as per the procedure laid down in Hand Book of Procedures:

(1) Gemological Institute of America (GIA), Mumbai, Maharashtra.

(2) Indian Diamond Institute, Surat, Gujarat, India.

(3) De Beers India Private Ltd., Surat, Gujarat, India.

(4) HRD Diamond Institute Private Limited, Mumbai, Maharashtra, India

(5) International Gemological Institute (India) Pvt. Ltd., Bandra Kurla Complex, Mumbai,

(6) Gemological Science International (GSI) Pvt. Ltd., Mumbai, Maharashtra, India.

Export of Cut & Polished Diamonds for Certification/ Grading & Re-import

List of authorized laboratories for certification / grading of diamonds of 0.25 carat and above are given in paragraph 4.73 of Handbook of Procedures.

Export of Cut & Polished Diamonds with Re-import Facility at Zero Duty

An exporter (with annual export turnover of Rs 5 crores for each of the last three years) or the authorized offices/ agencies in India of laboratories mentioned under paragraph 4.73 of Hand Book of Procedures may export cut & polished diamonds (each of 0.25 carat or above) to any of the agencies/laboratories mentioned under paragraph 4.73 of Handbook of Procedures with re-import facility at zero duty within 3 months from the date of export. Such facility of re- import at zero duty will be subject to guidelines issued by Central Board of Customs & Excise, Department of Revenue.

Export against Supply by Foreign Buyer

(i) Where export orders are placed on nominated agencies / status holder / exporters of three years standing having an annual average turnover of Rupees five crores during preceding three financial years, foreign buyer may supply in advance and free of charge, gold/silver/ platinum, alloys, findings and mountings of gold / silver / platinum for manufacture and export.

(ii) Such supplies can also be in advance and may involve semi- finished jewellery including findings / mountings / components for repairs / re-make and export subject to minimum value addition as prescribed under paragraph 4.60 of Handbook of Procedures. In such cases of export, wastage norms as per paragraph 4.59 of Handbook of Procedures shall apply.

(iii) Exports may be made by nominated agencies directly or through their associates or by status holder / exporter. Import and Export of findings shall be on net to net basis.

It may be noted that –

"Component" means one of the parts of a sub-assembly or assembly of which a manufactured product is made up and into which it may be resolved. A component includes an accessory or attachment to another component.

Export Promotion Tours/ Export of Branded Jewellery

(i) Nominated Agencies and their associates, with approval of Department of Commerce and with approval of Gem & Jewellery Export Promotion Council (GJEPC), may export gold / silver / platinum jewellery and articles thereof for exhibitions abroad.

(ii) Personal carriage of gold / silver / platinum jewellery, precious, semi-precious stones, beads and articles and export of branded jewellery is also permitted, subject to conditions as in Handbook of Procedures. 4.46 Personal Carriage of Export /Import Parcels Personal carriage of gems and jewellery export parcels by foreign bound passengers and import parcels by an Indian importer/foreign national may be permitted as per the Handbook of Procedures.

Export by Post

Export of jewellery through Foreign Post Office including via Speed Post is allowed. The jewellery parcel shall not exceed 20 kgs by weight.

Private / Public Bonded Warehouse

Private / Public Bonded Warehouses may be set up in SEZ/ DTA for import and re-export of cut and polished diamonds, cut and polished coloured gemstones, uncut & unset precious & semi- precious stones, subject to achievement of minimum value addition of 5% by DTA units.

Special Notified Zone (SNZ)

Import, auction/sale and re-export of rough diamonds by entities, as notified vide RBI Notification 116 of 1st April, 2014, as amended from time to time, on consignment or outright basis, will be permitted in Special Notified Zone (SNZ) administered by the operator of SNZ, under supervision of Customs. The procedure of import, auction/ sale and re- export of rough diamonds (unsold) would be as specified by CBIC.

Diamond & Jewellery Dollar Accounts

1. Firms and companies dealing in purchase / sale of rough or cut and polished diamonds / precious metal jewellery plain, minakari and / or studded with / without diamond and / or other stones with a track record of at least three years in import or export of diamonds / coloured gemstones / diamond and coloured gemstones studded jewellery / plain gold jewellery and having an average annual turnover of Rs. 3 crore or above during preceding three licensing years may also carry out their business through designated Diamond Dollar Accounts (DDA).
2. Dollars in such accounts available from bank finance and / or export proceeds shall be used only for:
   a) Import / purchase of rough diamonds from overseas/ local sources;
   b) Purchase of cut and polished diamonds, coloured gemstones and plain gold jewellery from local sources;
   c) Import / purchase of gold from overseas / nominated agencies and repayment of dollar loans from the bank; and
   d) Transfer to Rupee Account of exporter. Details of this DDA Scheme are given in Handbook of Procedures.
3. A non DDA holder is also permitted to supply cut and polished diamonds to DDA holder, receive payment in dollars and convert the same into Rupees within 7 days. Cut and polished diamonds and coloured gemstones so supplied by non-DDA holder will also be counted towards discharge of his export obligation and/ or entitle him to replenishment Authorisation.

Export of cut & polished precious and semi-precious stones for treatment and re-import

Gems and Jewellery exporters shall be allowed to export cut and polished precious and semi-precious stones for the treatment and re- import as per customs rules and regulations. In case of re-export, the exporter shall be entitled for duty drawback as per rules.

Re-import of rejected Jewellery

Gems & Jewellery exporters shall be allowed to re-import rejected precious metal jewellery as per paragraph 4.90 of Handbook of Procedures.

Export and import on consignment basis

Gems & Jewellery exporters shall be allowed to export and import diamond, gemstones & jewellery on consignment basis as per Handbook of Procedures and Customs Rules and Regulations.

SCHEME FOR REMISSION OF DUTIES AND TAXES ON EXPORTED PRODUCTS

Scheme Objective and Operating Principles

i. The Scheme's objective is to refund, currently unrefunded:
   a. Duties/ taxes / levies, at the Central, State and local level, borne on the exported product, including prior stage cumulative indirect taxes on goods and services used in the production of the exported product and
   b. Such indirect Duties/ taxes / levies in respect of distribution of exported product.

ii. The rebate under the Scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.

iii. 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.

iv. The overall budget/outlay for the RoDTEP Scheme would be finalized by the Ministry of Finance in consultation with Department of Commerce (DoC), taking into account all relevant factors.

v. The Scheme will operate in a Budgetary framework for each financial year and necessary calibrations and revisions shall be made to the Scheme benefits, as and when required, so that the projected remissions for each financial year are managed within the approved Budget of the Scheme. No provision for remission of arrears or contingent liabilities is permissible under the Scheme to be carried over to the next financial year.

vi. The sequence of introduction of the Scheme across sectors, prioritization of the sectors to be covered, degree of benefit to be given on various items within the rates recommended by the Committee and within a ceiling as may be prescribed, on the per item/total overall benefit amount permissible, within the overall budget/ outlay finalized, will be decided and notified by the Department of Commerce (DoC) in consultation with Department of Revenue.

vii. Under the Scheme, a rebate would be granted to eligible exporters at a notified rate as a percentage of FOB value with a value cap per unit of the exported product, wherever required, on export of items which are categorized under the notified 8 digit HS Code. However, for certain export items, a fixed quantum of rebate amount per unit may also be notified. Rates of rebate / value cap per unit under RoDTEP will be notified in Appendix 4R. In addition to necessary changes which may be brought in view of budget control measures as mentioned above, efforts would be made to review the RoDTEP rates on an annual basis and to notify them well in advance before the beginning of a financial year.

viii. 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 realization of export proceeds at the time of issue of rebate. However, adequate safeguards to avoid any misuse on account of non-realization 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 the RoDTEP Scheme.

ix. Mechanism of Issuance of Rebate: Scheme would be implemented through end to end digitization 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 & Customs (CBIC). 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 realization, 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 digitization. Necessary provisions for recovery of rebate amount where foreign exchange is not realized, suspension/withholding of RoDTEP in case of frauds and misuse, as well as imposition of penalty will also be built suitably by CBIC.

x. The Scheme will take effect for exports from 1st January 2021. However, for exports made by categories under Para 4.55 (x), (xi) and (xii), the implementation date will be decided later as per provisions of Para 4.55B.

Ineligible Supplies/ Items/Categories under the Scheme

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

i. Export of imported goods covered under paragraph 2.46 of FTP.
ii. Exports through trans-shipment, meaning thereby exports that are 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 export under Schedule-2 of Export Policy in ITC (HS).
v. Products which are prohibited for export 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 the Customs Act, 1962.
x. Products manufactured or exported in discharge of export obligation against an Advance Authorisation or Duty Free Import Authorization or Special Advance Authorisation issued under a duty exemption scheme of relevant Foreign Trade Policy.
xi. Products manufactured or exported by a unit licensed as hundred per cent 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 Zones or Export Processing Zones or Special Economic Zones.
xiii. Products manufactured or exported availing the benefit of the Notification No. 32/1997-Customs dated 1st April, 1997.
xiv. Exports for which electronic documentation in ICEGATE EDI has not been generated/ Exports from non-EDI ports.
xv. Goods which have been taken into use after manufacture.

Government, however, reserves the right to modify any of the categories as mentioned above for inclusion or exclusion under the scope of RoDTEP, at a later date.

Inclusion of exports made by categories mentioned in para 4.55 (x), (xi) and (xii) above and RoDTEP rates for export items under such categories would be decided based on the recommendations of the RoDTEP Committee.

Nature of Rebate

The e-scrips would be used only for payment of duty of Customs leviable under the First Schedule to the Customs Tariff Act, 1975 viz. Basic Customs Duty.

Monitoring, Audit and Risk Management System

For the purposes of audit and verification, the exporter would be required to keep records substantiating claims made under the Scheme. A monitoring and audit mechanism with an IT based Risk Management System (RMS) would be put in place by the CBIC, Department of Revenue to physically verify the records of the exporters on sample basis. Sample cases for physical verification will be drawn objectively by the RMS, based on risk and other relevant parameters.

For a broad level monitoring, an Output Outcome framework will be maintained and monitored at regular intervals.

Residual Issues

Residual issues related to the Scheme arising subsequently shall be considered by an Inter-Ministerial Committee, named as "RODTEP Policy Committee (RPC)" chaired by DGFT (comprising members of Department of Commerce and Department of Revenue), whose decisions would be binding.

The Appendix 4R containing the eligible RoDTEP export items, rates and per unit value caps, wherever applicable is available at the DGFT portal www.dgft.gov.in under the link 'Regulatory Updates >RoDTEP'.

EXPORT PROMOTION CAPITAL GOODS (EPCG) SCHEME

Objective

The objective of the EPCG Scheme is to facilitate import of capital goods for producing quality goods and services and enhance India's manufacturing competitiveness.

EPCG Scheme

1. EPCG Scheme allows import of capital goods (except those specified in negative list in Appendix 5 F) for pre-production, production and post-production at zero customs duty. Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess, leviable thereon under the subsection (7) and subsection (9) respectively, of section 3 of the Customs Tariff Act, 1975, as provided in the notification issued by Department of Revenue. Alternatively, the Authorisation holder may also procure Capital Goods from indigenous sources in accordance with provisions of paragraph 5.07 of FTP. Capital goods for the purpose of the EPCG scheme shall include:
    a) Capital Goods as defined in Chapter 11 including in CKD/SKD condition thereof;
    b) Computer systems and software which are a part of the Capital Goods being imported;
    c) Spares, moulds, dies, jigs, fixtures, tools & refractories; and
    d) Catalysts for initial charge plus one subsequent charge.
2. Import under EPCG Scheme shall be subject to an Export Obligation (EO) equivalent to 6 times of duties, taxes and cess saved on capital goods, to be fulfilled in 6 years reckoned from date of issue of Authorisation.
3. Import/procurement under EPCG scheme shall also be subjected to Average Export Obligation (AEO) as given in para 5.04(c) of FTP.
4. Authorisation shall be valid for import for 24 months from the date of issue of Authorisation. Revalidation of EPCG Authorisation shall not be permitted.

5. In case Integrated Tax and Compensation Cess are paid in cash on imports under EPCG, incidence of the said Integrated Tax and Compensation Cess would not be taken for computation of net duty saved provided Input Tax Credit is not availed.
6. Import of items which are restricted for import shall be permitted under EPCG Scheme only after approval from Exim Facilitation Committee (EFC) at DGFT Headquarters.
7. If the goods proposed to be exported under EPCG Authorisation are restricted for export, the EPCG Authorisation shall be issued only after approval for issuance of Export Authorisation from Exim Facilitation Committee (EFC) at DGFT Headquarters.

Coverage

(a) EPCG scheme covers manufacturer exporters with or without supporting manufacturer(s), merchant exporters tied to supporting manufacturer(s) and service providers. Name of supporting manufacturer(s) shall be endorsed on the EPCG Authorisation before installation of the capital goods in the factory / premises of the supporting manufacturer(s). In case of any change in supporting manufacturer(s), the RA shall intimate such change to jurisdictional Customs Authority of existing as well as changed supporting manufacturer(s) and the Customs at port of registration of Authorisation.

(b) Export Promotion Capital Goods (EPCG) Scheme also covers a service provider who is certified as a Common Service Provider (CSP) by the DGFT - HQs, Department of Commerce in a Town of Export Excellence or Prime Minister Mega Integrated Textile Region and Apparel Parks (PM MITRA) subject to provisions of Foreign Trade Policy/Handbook of Procedures with the following conditions:

(i) Common utility services like providing Electricity, Water, Gas, Sanitation, Sewerage, Telecommunication, Transportation etc. shall not considered for benefit of CSP;

(ii) Export by users of the common service shall be counted towards fulfillment of EO of the CSP provided the EPCG Authorisation details of the CSP is mentioned in the respective Shipping bills and concerned RA must be informed about the details of the users prior to such export;

(iii) Such export will not count towards fulfillment of specific export obligation in respect of other EPCG Authorisations of the user;

(iv) Authorisation holder shall be required to submit Bank Guarantee (BG) which shall be equivalent to the duty saved. BG can be given by CSP or by any one of the users or a combination thereof, at the option of the CSP; and (v) Capital goods shall be installed within a Town of Export Excellence or PM MITRA.

It may be noted that-

"Service Provider" means a person providing:

(i) Supply of a 'service' from India to any other country; (Mode1- Cross border trade)

(ii) Supply of a 'service' from India to service consumer(s)of any other country in India; (Mode 2- Consumption abroad)

(iii) Supply of a 'service' from India through commercial presence in any other country. (Mode 3 – Commercial Presence.)

(iv) Supply of a 'service' from India through the presence of natural persons in any other country (Mode 4- Presence of natural persons.)

Actual User Condition

Imported capital goods shall be subject to Actual User condition till export obligation is completed and Export Obligation Discharge Certificate (EODC) is granted.

Export obligation

Following conditions shall apply to the fulfillment of Export obligation:-

(a) Export obligation shall be fulfilled by the Authorisation holder through export of goods which are manufactured by him or his supporting manufacturer / services rendered by him, for which the EPCG authorisation has been granted.
(b) For export of goods, EPCG Authorisation holder may export either directly or through third party(ies).
(c) EO under the scheme shall be, over and above, the average level of exports achieved by the applicant in the preceding three licensing years for the same and similar products within the overall EO period including extended period, if any; except for categories mentioned in paragraph 5.12(a). Such average would be the arithmetic mean of export performance in the preceding three licensing years for same and similar products. The Average Export Obligation (AEO) shall be fulfilled every financial year, till export obligation is completed. Exports/supplies made over and above AEO shall only be considered for fulfillment of Export Obligation.
(d) In case of indigenous sourcing of Capital Goods, specific EO shall be 25% less than the EO stipulated in Para 5.01. There shall be no change in average EO imposed, if any, as stipulated in Para 5.04(c).
(e) Exports under Advance Authorisation, DFIA, Duty Drawback, RoSCTL and RoDTEP Schemes would also be eligible for fulfilment of EO under EPCG Scheme.
(f) Export obligation may be fulfilled both by physical exports as well as deemed exports. Deemed export supplies shall also be eligible for benefits available under paragraph 7.03 of FTP.
(g) Exports made from DTA units shall only be counted for calculation and/or fulfillment of AEO and/or EO.
(h) EO can also be fulfilled by the supply of ITA-I items to DTA, provided realization is in free foreign exchange.
(i) Royalty payments received by the Authorisation holder in freely convertible currency and foreign exchange received for R&D services shall also be counted for discharge under EPCG.
(j) Payment received in rupee terms for such Services as notified in Appendix 5D shall also be counted towards discharge of export obligation under the EPCG scheme.
(k) Export proceeds realized in Indian Rupees as per para 2.52(d)(ii) are also counted towards fulfillment of export obligation.
(l) Only one benefit specified in paras 5.04(d), 5.09, 5.10 and 5.11 shall be admissible.
(m) Extension of EO period shall be permitted as prescribed in Handbook of Procedures.

Provision for companies admitted under the provisions of Insolvency and Bankruptcy Code 2016

A company holding EPCG authorizations and having been admitted under the provisions of Insolvency and Bankruptcy Code 2016 for commencement of insolvency proceedings and in respect of whom the resolution plan has been approved under Section 31 of IBC 2016 by Adjudicating Authority may be permitted to relief, concessions and waivers in accordance with the resolution plan approved/ finalised by Adjudicating Authority/Appellate Authorities as the case may be.

LUT/Bond/BG in case of Agro units

LUT/Bond or 15% BG, as applicable, may be furnished for EPCG Authorisation granted to units in Agri-Export Zones provided EPCG Authorisation is taken for export of primary agricultural product(s) notified or their value-added variants.

Indigenous Sourcing of Capital Goods and benefits to Domestic Supplier

A person holding an EPCG Authorisation may source capital goods from a domestic manufacturer either through Invalidation Letter or through Advance Release Order. Such domestic manufacturer shall be eligible for deemed export benefits under paragraph 7.03 of FTP, and as may be provided under GST Rules under the category of deemed exports. Such domestic sourcing shall also be permitted from EOUs and these supplies shall be counted for purpose of fulfillment of positive NFE by said EOU as provided in Para 6.08 (a) of FTP.

Calculation of Export Obligation

In case of direct imports, EO shall be reckoned with reference to actual duty /Taxes/Cess saved amount. In case of domestic sourcing, EO shall be reckoned with reference to notional Customs duty /Taxes/Cess saved on FOR value as indicated in ARO / Invalidation letter.

Incentive for early EO fulfillment

With a view to accelerating exports, in cases where Authorisation 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 Authorisation redeemed by RA concerned.

Reduced EO for Green Technology Products

For exporters of Green Technology Products, Specific EO shall be 75% of EO as stipulated in Para 5.01(b). There shall be no change in average EO imposed, if any, as stipulated in Para 5.04(c). The list of Green Technology Products is given in Para 5.26 of HBP.

Reduced EO for North East Region and UTs of Jammu & Kashmir and Ladakh

For manufacturing units located in Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Jammu & Kashmir and Ladakh, specific EO shall be 25% of the EO, as stipulated in Para 5.01(b). There shall be no change in average EO imposed, if any, as stipulated in Para 5.04(c).

Exemption from maintenance of average export obligation

(a) In case of export of goods relating to the following, the EPCG Authorisation holder shall not be required to maintain average export obligation.
(i) Handicrafts, (ii) Handlooms, (iii) Industries covered under Khadi and Village Industries Commission (KVIC) (iv) Agriculture (v) Aquaculture (including Fisheries),Pisciculture, (vi) Animal husbandry and Dairying, (vii) Floriculture & Horticulture, (viii) Poultry, (ix) Viticulture, (x) Sericulture, (xi) Carpets, (xii) Coir, and (xiii) Jute

(b) However, this exemption from maintenance of average export obligation shall not be allowed for import of fishing trawlers, boats, ships and other similar items.

(c) Goods, excepting tools imported under EPCG scheme by sectors specified in sub-paragraph (a) above, shall not be allowed to be transferred for a period of five years from date of imports even in cases where export obligation has been fulfilled.

Transitional Arrangements

Authorisations issued during various policy periods viz., 2002-07, 2004-09, 2009-14, 2015-20 issued prior to 05.12.2017 and 2015-20 RE 2017 shall be governed by corresponding Foreign Trade Policy provisions and Handbook of Procedures, unless otherwise specifically stated.

EXPORT ORIENTED UNITS (EOUS), ELECTRONICS HARDWARE TECHNOLOGY PARKS (EHTPS), SOFTWARE TECHNOLOGY PARKS (STPS) AND BIO-TECHNOLOGY PARKS (BTPS)

Introduction and Objective

(a) Units undertaking to export their entire production of goods and services(except permissible sales in DTA), may be set up under the Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park(STP) Scheme or Bio-Technology Park (BTP) Scheme for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, bio-technology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. Trading units are not covered under these schemes.

(b) Objectives of these schemes are to promote exports, enhance foreign exchange earnings, attract investment for export production and employment generation.

Export and Import of Goods

(a) An EOU / EHTP / STP / BTP unit may export all kinds of goods and services except items that are prohibited in ITC (HS). However, export of gold jewellery, including partly processed jewellery, whether plain or studded, and articles, containing gold of 8 carats and above up to a maximum limit of 22 carats only shall be permitted. The export of findings like posts, push backs, locks which help in collating the jewellery pieces together, containing gold of 3 carats and above up to a maximum limit of 22 carats only shall be allowed.

(b) Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) shall be subject to fulfillment of conditions contained in the Chapter 10 of the FTP (new Chapter for SCOMET). In respect of an EOU, permission to export prohibited item(s) may be considered by BOA on a case to case basis, provided the input(s) used for the export item(s) is/are imported and there is no procurement of such inputs from DTA.

(c) Procurement and supply of export promotion material like brochure/literature, pamphlets, hoardings, catalogues, posters etc. upto a maximum value limit of 1.5% of FOB value of previous year's exports shall also be allowed.

(d) (i) An EOU / EHTP/ STP/ BTP unit may import and / or procure, from DTA or bonded warehouses in DTA / international exhibition held in India, all types of goods, including capital goods, required for its activities, provided they are not prohibited items of import in the ITC (HS) subject to conditions given at para (ii) & (iii) below. Any permission required for import under any other law shall be applicable. Units shall also be permitted to import goods including capital goods required for approved activity, free of cost or on loan / lease from clients. Import of capital goods will be on

a self-certification basis. Goods imported by a unit shall be with actual user condition and shall be utilized for export production.

(ii) The imports and/ or procurement from bonded warehouse in DTA or from international exhibition held in India shall be without payment of duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 and additional duty, if any, leviable thereon under Section 3(1), 3(3) and 3(5) of the said Customs Tariff Act. Such imports and/ or procurements shall be made without payment of integrated tax and compensation cess leviable thereon under section 3(7) and 3(9) of the Customs Tariff Act, 1975 as per notification issued by the Department of Revenue.

(iii) The procurement of goods covered under GST from DTA would be on payment of applicable GST and compensation cess. The refund of GST paid on such supply from DTA to EOU would be available to the supplier subject to such conditions and documentations as specified under GST rules and notifications issued there under. EOUs can also procure excisable goods falling under the Fourth Schedule of Central Excise Act, 1944 from DTA without payment of applicable duty of excise.

(e) State Trading regime shall not apply to EOU manufacturing units. However, in respect of Chrome Ore/Chrome concentrate, State Trading Regime as stipulated in export policy of these items will be applicable to EOUs.

(f) EOU/EHTP/STP/BTP units may import/procure from DTA, with or without payment of duties/taxes as provided at Para 6.01 (d) (ii) and 6.01(d) (iii) above, certain specified goods for creating a central facility. Software EOU/DTA units may use such facility for export of software.

(g) An EOU engaged in agriculture, animal husbandry, aquaculture, floriculture, horticulture, pisciculture, viticulture, poultry or sericulture may be permitted to remove specified goods in connection with its activities for use outside the premises of the unit.

(h) Gems and jewellery EOUs may source gold / silver / platinum through nominated agencies on loan / outright purchase basis. Units obtaining gold / silver / platinum from nominated agencies, either on loan basis or outright purchase basis shall export gold / silver / platinum within 90 days from date of release of such metals by the nominated agencies.

(i) EOU/EHTP/STP/BTP units, other than service units, may export to Russian Federation in Indian Rupees against repayment of State Credit/ Escrow Rupee Account of buyer subject to RBI clearance, if any.

(j) Procurement and export of spares / components, upto 5% of FOB value of exports, may be allowed to same consignee / buyer of the export article, subject to the condition that it shall not count for NFE and direct tax benefits.

(k) Development Commissioner /Designated Officer in EOU/EHTP/STP/BTP units may allow, on a case to case basis, EOU / EHTP / STP/ BTP units in sectors other than Gems & Jewellery, for consolidation of goods related to manufactured articles and export thereof along with manufactured article. Such goods may be allowed to be imported / procured from DTA by EOU with or without payment of duty and/ or taxes as provided at Para 6.01(d) (ii) and (iii) above, as the case may be to the extent of 5% FOB value of such manufactured articles exported by the unit in preceding financial year. Details of procured / imported goods and articles manufactured by the EOU will be listed separately in the export documents. In such cases, value of procured / imported goods will not be taken into account for calculation of NFE and DTA sale entitlement. Such procured / imported goods shall not be allowed to be sold in DTA. Development Commissioner /Designated Officer may also specify any other conditions.

Second hand Capital Goods

Second hand capital goods, without any age limit, may also be imported with or without payment of duty/ taxes as provided under Para 6.01(d)(ii) above.

Leasing of Capital Goods

a. An EOU / EHTP/STP/BTP unit may, on the basis of a firm contract between parties, source capital goods from a domestic / foreign leasing company with or without payment of duties/taxes as provided at Para 6.01 (d) (ii) and (iii) above, as the case may be in such a case, EOU / EHTP/STP/BTP unit and domestic / foreign leasing company shall jointly file documents to enable import/ procurement of capital goods.

b. An EOU/ EHTP/STP/BTP unit may sell capital goods and lease back the same from a Non Banking Financial Company (NBFC), subject to the following conditions:
   i. The unit should obtain permission from the jurisdictional Deputy/Assistant Commissioner of Customs for entering into transaction of 'Sale and Lease Back of Assets', and submit full details of the goods to be sold and leased back and the details of NBFC;
   ii. The goods sold and leased back shall not be removed from the unit's premises;
   iii. The unit should be NFE positive at the time when it enters into sale and lease back transaction with NBFC;
   iv. A joint undertaking by the unit and NBFC should be given to pay duty on goods in case of violation or contravention of any provision of the notification under which these goods were imported or procured, read with Customs Act, 1962 or Central Excise Act, 1944, and that the lien on the goods shall remain with the Customs Department, which will have first charge over the said goods for recovery of sum due from the unit to Government under provision of Section 142(b) of the Customs Act, 1962 read with the Customs (Attachment of Property of Defaulters for Recovery of Govt. Dues) Rules, 1995.

It may be noted that –

"Accessory" or "Attachment" means apart, sub-assembly or assembly that contributes to efficiency or effectiveness of a piece of equipment without changing its basic functions.

Net Foreign Exchange Earnings

EOU/EHTP/STP/BTP unit shall be a positive net foreign exchange earner. In addition, sector specific provision of Appendix 6B of Appendices & ANFs, where a higher value addition and other conditions are given, shall be required to be followed. NFE Earnings shall be calculated cumulatively in blocks of five years, starting from commencement of production. Whenever a unit is unable to achieve NFE due to prohibition / restriction imposed on export of any product mentioned in LoP, the five year block period for calculation of NFE earnings may be suitably extended by BoA. Further, wherever a unit is unable to achieve NFE due to adverse market condition or any grounds of genuine hardship having adverse impact on functioning of the unit, the five year block period for calculation of NFE earnings may be extended by BoA for a period of upto one year, on a case to case basis. The method of calculation of NFE in detail is given in para 6.10 of current Handbook of Procedures.

Applications & Approvals/Letter of Permission / Letter of Intent and Legal Undertaking

a. (i) 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. The powers of DC are defined in para 6.34 of HBP.
   (ii) In case of units under EHTP / STP schemes, necessary approval / permission under relevant paras of this Chapter shall be granted by officer designated by Ministry of Electronics & Information Technology, instead of DC, and by Inter- Ministerial Standing Committee (IMSC) instead of BOA.
   (iii) 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.
   (iv) On approval, a Letter of Permission (LoP) / Letter of Intent (LoI) shall be issued by DC / Designated officer to EOU/EHTP/STP/BTP unit. The validity of LoP/LoI shall be given in the Hand Book of Procedures.
b. LoP / LoI issued to EOU/EHTP/STP/BTP units by concerned authority, subject to compliance of provision in Para 6.01 above, would be construed as an Authorisation for all purposes.
c. Unit shall execute an LUT with DC concerned. Failure to ensure positive NFE or to abide by any of the terms and conditions of LoP / LoI / IL / LUT shall render the unit liable to penal action under provisions of the FT (D&R) Act, as amended, and Rules and Orders made thereunder, without prejudice to action under any other law / rules and cancellation or revocation of LoP / LoI / IL.

Investment Criteria

Only projects having a minimum investment of Rs.1 Crore in plant & machinery shall be considered for establishment as EOUs. However, this shall not apply to existing units, units in EHTP / STP/ BTP, and EOUs in Handicrafts/Agriculture/ Floriculture/Aquaculture/Animal Husbandry/Information Technology, Services, Brass Hardware and Handmade jewellery sectors. BoA may allow establishment of EOUs with a lower investment criteria.

DTA Sale of Finished Products/Rejects/ Waste/Scrap/Remnants and By- products

Entire production of EOU/EHTP/STP/BTP units shall be exported. However, the following are allowed as exceptions subject to the conditions specified.

a. (i) Units, other than those of gems and jewellery may sell finished goods manufactured by them as specified in LoP (including by-products, rejects, waste and scraps arising in the course of production, manufacture, processing or packaging of such goods) which are freely importable under FTP in DTA, subject to fulfillment of positive NFE, on payment of excise duty, if applicable, and/ or payment of GST and compensation cess along with reversal of duties of Custom leviable under First Schedule to the Customs Tariff Act, 1975 availed as exemption, if any on the inputs utilized for the purpose of manufacturing of such finished goods (including by-products, rejects, waste and scraps arising in the course of production, manufacture, processing or packaging of such goods). No DTA sale shall be permissible in respect of, pepper & pepper products, marble and such other items as may notified from time to time. This reversal of Customs Duty would be as per prevailing SION norms or norms fixed by Norms Committee (where no SION norms are fixed).

(ii) Such DTA sale shall also not be permissible to units engaged in activities of packaging / labeling / segregation / refrigeration / compacting / micronisation / pulverization / granulation / conversion of monohydrate form of chemical to anhydrous form or vice-versa.

(iii) Sales made to a unit in SEZ shall also be taken into account for purpose of arriving at FOB value of export by EOU provided payment for such sales are made from Foreign Currency Account of SEZ unit. Sale to DTA would also be subject to mandatory requirement of registration of pharmaceutical products (including bulk drugs).

(iv) An amount equal to Anti Dumping duty under section 9A of the Customs Tariff Act, 1975 leviable at the time of import, shall be payable on the goods used for the purpose of manufacture or processing of the goods cleared into DTA from the unit.

(v) Such DTA sale shall also be subject to refund of any benefits under Chapter 7 of FTP availed by the EOU/supplier as per FTP, on the goods used for manufacture of the goods cleared into the DTA.

b. For services, including software units, sale in DTA in any mode, including on line data communication, shall also be permissible up to 50% of FOB value of exports and /or 50% of foreign exchange earned, where payment of such services is received in foreign exchange. However, sale in DTA in respect of services classified under Chapter Heading 9988 and 9989 under GST, but covered in LOP/para 11.31 of FTP as manufacturing of goods, will continue to be covered under para 6.07(a) above. At the time of DTA clearance, applicable GST and compensation cess as per GST classification would apply.

c. Gems and jewellery units may sell upto 10% of FOB value of exports of the preceding year in DTA, subject to fulfillment of positive NFE. The unit shall pay applicable GST and compensation cess along with reversal of duties of Customs leviable under First Schedule of the Customs Tariff Act, 1975 availed as exemption, on inputs used in such jewellery.

d. Unless specifically prohibited in LoP, rejects may be sold in DTA on payment of excise duty, if applicable, and/or payment of GST and compensation cess along with reversal of duties of Customs leviable under First Schedule of the Customs Tariff Act, 1975 availed as exemption on inputs on prior intimation to Customs authorities. Sale of rejects upto 5% of FOB value of exports shall not be subject to achievement of NFE.

e. Scrap / waste / remnants arising out of production process or in connection therewith may be sold in DTA, as per SION notified under Duty Exemption Scheme, on payment of applicable duties and/ or taxes and compensation cess. Such sales of scrap / waste / remnants shall not be subject to achievement of positive NFE. In respect of items not covered by norms, DC may fix ad- hoc norms for a period of six months and within this period, norms should be fixed by Norms Committee. Ad-hoc norms will continue till such time norms are fixed by Norms Committee. Scrap / waste / remnants may also be exported.

f. There shall be no duties / taxes on scrap / waste / remnants, in case same are destroyed with permission of Customs authorities. The expression “no duties/ taxes” shall not include applicable taxes and cess under the GST laws.

g. By-products included in LoP may also be sold in DTA subject to achievement of positive NFE, on payment of excise duty, if applicable, and/or payment of GST and compensation cess along with reversal of duties of Custom leviable under First Schedule to the Customs Tariff Act, 1975, if availed on inputs.

h. In case of units manufacturing electronics hardware and software, NFE and DTA sale entitlement shall be reckoned separately for hardware and software.

i. In case of new EOUs, advance DTA sale will be allowed not exceeding 50% of its estimated exports for first year, except pharmaceutical units where this will be based on its estimated exports for first two years.
j. Procurement of spares / components, up to 2% of the value of manufactured articles, cleared into DTA, during the preceding year, may be allowed for supply to the same consignee / buyer for the purpose of after-sale-service. The same can be cleared in DTA on payment of applicable GST and compensation cess along with reversal of duties of Customs leviable under First Schedule of the Customs Tariff Act, 1975 availed as exemption if any.

Other Supplies counted for fulfilment of NFE

Following supplies effected from EOU / EHTP / STP / BTP units will be counted for fulfillment of positive NFE. Such supplies shall not include "marble", except if such supply of marble is an inter unit supply as provided at Sub-Para(c) below:

(a) Supplies effected in DTA to holders of Advance Authorization / Advance Authorization for annual requirement / DFIA under duty exemption / remission scheme / EPCG scheme. However, printing sector EOUs (or any other sector that may be notified in HBP), can't supply goods, where basic customs duty and CVD is nil or exempted otherwise, to holders of Advance Authorization / Advance Authorization for annual requirement.
(b) Supplies effected in DTA against foreign exchange remittance received from overseas.
(c) Supplies to other EOU / EHTP / STP / BTP / SEZ units, provided that such goods are permissible for procurement in terms of Para 6.01 of FTP.
(d) Supplies made to bonded warehouses set up under FTP and / or under section 65 of Customs Act and free trade and warehousing zones, 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, as may be provided in HBP.
(f) Supplies of Information Technology Agreement (ITA1) 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.
(h) Supply of LPG produced in an EOU refinery to Public Sector domestic oil companies for being supplied to household domestic consumers at subsidized prices under the Public Distribution System (PDS) Kerosene and Domestic LPG Subsidy Scheme, 2002, as notified by the Ministry of Petroleum and Natural Gas vide notification No. E-20029/18/2001-PP dated 28.01.2003 (hereinafter referred to as PDS Scheme) subject to the following conditions:-
    a. Only supply of such quantity of LPG would be eligible for which Ministry of Petroleum and Natural Gas declines permission for export and requires the LPG to be cleared in DTA; and
    b. The Ministry of Finance by a notification has permitted duty free imports of LPG for supply under the aforesaid PDS Scheme.

Export through others

An EOU/EHTP/STP/BTP unit may export goods manufactured/ software developed by it through another exporter or any other EOU/EHTP/STP/BTP/SEZ unit subject to conditions mentioned in Para 6.19 of HBP.

Entitlement for Supplies from the DTA

a. Supplies from DTA to EOU/EHTP/STP/ BTP units for use in their manufacture for exports will be eligible for "benefits under Chapter 7 of FTP". DTA supplier shall be eligible for relevant entitlements under chapter 7 of FTP, besides discharge of export obligation, if any, on the supplier. The refund of GST paid on such supply from DTA to EOU would be available to the supplier subject to such conditions and documentations as specified under GST rules and notifications issued there under.
b. Suppliers of precious and semi-precious stones, synthetic stones and processed pearls from DTA to EOU shall be eligible for grant of Replenishment Authorizations at rates and for items mentioned in HBP.
c. In addition, EOU/EHTP/STP/BTP units shall be entitled to following :-
    i. Reimbursement of Central Sales Tax (CST) on goods manufactured in India, wherever applicable. Simple interest @ 6% per annum will be payable on delay in refund of CST, if the case is not settled within 30 days of receipt of complete application (as in Para 11.10 of HBP).
    ii. (ii) Exemption from payment of Central Excise Duty on goods, falling in Fourth Schedule of Central Excise Act, procured from DTA on such goods manufactured in India.

Other Entitlements

Other entitlements of EOU/EHTP/STP/BTP units are as under:

(a) Exemption from industrial licensing for manufacture of items reserved for micro and small enterprises.
(b) Export proceeds will be realized within nine months.
(c) Units will be allowed to retain 100% of its export earnings in the EEFC account.
(d) Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, where:
    i. the unit has turnover of Rs. 5 crore or above; and
    ii. the unit is in existence for at least three years; and
    iii. the unit has achieved positive NFE / export obligation wherever applicable; and has not been issued a show cause notice or a confirmed demand, during the preceding 3 years, on grounds other than procedural violations, under the penal provision of the Customs Act, CGST/ SGST/UTGST//IGST Acts, the Central Excise Act, the Foreign Trade (Development & Regulation) Act, 1992, the Foreign Exchange Management Act, the Finance Act, 1994 covering Service Tax or any allied Acts or the rules made thereunder, on account of fraud / collusion / willful mis-statement / suppression of facts or contravention of any of the provisions thereof.
(e) Unit will also not be required to furnish bank guarantee at the time of import or going for job work in DTA, if it has achieved necessary certification as an Authorised Economic Operator (AEO) and has not been issued a show cause notice or a confirmed demand, during the preceding 3 years, on grounds other than procedural violations, under the penal provision of the Foreign Trade (Development & Regulation) Act, 1992 and the Foreign Exchange Management Act.
(f) 100% FDI investment permitted through automatic route similar to SEZ units.
(g) The Units Approval Committee may consider on a case-to-case basis request for sharing of infrastructural facilities among EOUs and it shall forward its recommendation to the Board of Approval for its consideration. While accepting such proposals, the NFE obligations of the units shall not be altered. Such facilities will be available to units in EHTP / STP after getting approval from IMSC. However, sharing of facilities between EOUs and SEZ Units shall not be permitted.

Inter Unit Transfer

a. Transfer of manufactured goods from one EOU/ EHTP/STP/BTP unit to another EOU / EHTP/ STP/ BTP unit is allowed on payment of applicable GST and compensation cess with prior intimation to concerned Development Commissioners of the transferor and transferee units as well as concerned Customs authorities, as per following procedure for movement of goods:
    i. The supplier unit shall endorse on usual commercial documents, such as, tax invoice and delivery challan, the amount of duties of Custom leviable under First Schedule to the Customs Tariff Act, 1975 availed as exemption on inputs used in the manufacture of such finished goods (including by- products, rejects, waste and scraps arising in the course of production, manufacture, processing or packaging of such goods) supplied to another unit. The recipient unit shall pay such endorsed Customs duty besides his own liability of reversal of Customs duty as provided in Para 6.07 above, before clearance of such finished goods in DTA and as provided under DoR notifications/ circulars/ guidelines in this regard.
    ii. Upon receipt of goods, the recipient unit shall submit endorsed copies of tax invoice to their jurisdictional Customs authority as well as to the jurisdictional Customs authorities of the supplier unit.
b. Capital goods may be transferred or given on loan to other EOU/EHTP/STP/BTP/SEZ units, with prior intimation to concerned DC and Customs authorities on payment of applicable GST and compensation cess. Such transferred goods may also be returned by the second unit to the original unit in case of rejection or for any reason on payment of applicable GST and compensation cess.
c. Goods supplied by one unit of EOU/EHTP/STP/ BTP to another unit shall be treated as imported goods for second unit for payment of duty, on DTA sale by second unit.
d. In respect of a group of EOUs/EHTPs/STPs/BTP units which source inputs centrally in order to obtain bulk discount and / or reduce cost of transportation and other logistics cost and / or to maintain effective supply chain, inter unit transfer of goods and services may be permitted on a case-to-case basis by the Unit Approval Committee. In case inputs so sourced are imported and then transferred to another unit, then value of the goods so transferred shall be taken as inflow for the unit transferring these goods and as outflow for the unit receiving these goods, for the purpose of calculation of NFE.

Sub–Contracting

(a) (i) EOU/EHTP/STP/BTP units, including gems and jewellery units, may be on the basis of annual permission from Customs authorities, subcontract production processes to DTA through job work which may also involve change of form or nature of goods, through job work by units in DTA.
(ii) These units may sub–contract upto 50% of overall production of previous year in value terms in DTA with permission of Customs authorities.

(b) (i) EOU may, with annual permission from Customs authorities, under take job work for export, on behalf of DTA exporter, provided that goods are exported directly from EOU and export document shall jointly be in name of DTA/ EOU. For such exports, DTA units will be entitled for refund of duty paid on inputs by way of brand rate of duty drawback. However, such brand rate of drawback 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).
(ii) Import of goods for execution of export order placed on EOU by foreign supplier on job work basis, would be allowed with or without payment of duties and/or taxes as provided under Para 6.01(d)(ii) above subject to condition that no DTA clearance shall be allowed.

(iii) Sub-contracting of both production and production processes may also be under taken without any limit through other EOU/EHTP/STP/ BTP/SEZ units, on the basis of records maintained in unit.
(iv) EOU/EHTP/STP/BTP units may sub-contract part of production process abroad and send intermediate products abroad as mentioned in LoP. No permission would be required when goods are sought to be exported from sub-contractor premises abroad. When goods are sought to be brought back, prior intimation to concerned DC and Customs authorities shall be given.

(c) Scrap/waste/remnants generated through job work may either be cleared from job worker's premises on payment of applicable duty and/or taxes, as provided under Para 6.07 above on transaction value or destroyed in presence of Customs authority or returned to unit. Destruction shall not apply to gold, silver, platinum, diamond, precious and semi-precious stones.

(d) Sub-contracting/ exchange by gems and jewellery EOUs through other EOUs or SEZ units or units in DTA, shall be as per procedure indicated in HBP.

Sale of Unutilized Material and Capital Goods

(a) In case an EOU / EHTP/ STP/BTP unit is unable to utilize goods and services imported or procured from DTA, it may be:
   (i) Transferred to another EOU/EHTP/STP/BTP/ SEZ unit; or
   (ii) Disposed of in DTA with intimation to Customs authorities on payment of applicable duties and/ or taxes and compensation cess. In addition, exemption of duties of Customs leviable under First Schedule of the Customs Tariff Act, 1975 availed, if any on the goods , at the time of import will also be payable. This sale would be further subject to compliance of applicable import conditions such as requirement of import Authorisation; or
   (iii) Exported.
   (iv) Such transfer from EOU/EHTP/STP/BTP unit to another such unit would be treated as import for receiving unit.

(b) Capital goods and spares that have become obsolete/ surplus, may be exported or transferred to SEZ unit, transferred to another EOU/EHTP/STP/BTP/on payment of applicable GST and compensation cess or disposed of in DTA on payment of applicable GST and compensation cess and duties of Customs leviable under First Schedule of the Customs Tariff Act, 1975. Benefit of depreciation will be available in case of disposal in DTA only when the unit has achieved positive NFE taking into consideration the depreciation allowed. No duty shall be payable other than the applicable taxes under GST laws incase capital goods, raw material consumables, spares, goods manufactured, processed or packaged, and scrap/ waste/remnants /rejects are destroyed within unit after intimation to Customs authorities or destroyed outside unit with permission of Customs authorities. Destruction as stated above shall not apply to gold, silver, platinum, diamond, precious and semi-precious stones.

(c) In case of textile sector, disposal of left over material/ fabrics upto 2% of CIF value or quantity of import, whichever is lower, on payment of duty on transaction value, may be allowed, subject to certification of Central Excise/Customs officers that these are left over items.

(d) Disposal of used packing material will be allowed on payment of duty on transaction value.

It may be noted that-

"Raw material" means input(s) needed for manufacturing of goods. These inputs may either be in a raw/natural/unrefined/unmanufactured or manufactured state.

Reconditioning/Repair and Re-engineering

(a) EOUs shall be set up with approval of UAC to carry out reconditioning, repair, remaking, testing, calibration, quality improvement, upgradation of technology and re-engineering activities for export in foreign currency. Provisions of paragraphs 6.07, 6.08, 6.09, 6.12, 6.13of FTP and para 6.29(a), (b), (c) and (d) of HBP shall not, however, apply to such activities.

(b) EHTP/STP/BTP units shall be set up with approval of IMSC to carry out reconditioning, repair, remaking, testing, calibration, quality improvement, upgradation of technology and re-engineering activities for export in foreign currency. Provisions of paragraphs 6.07, 6.08, 6.09, 6.12, 6.13of FTP and para 6.29(a), (b), (c) and (d) of HBP shall not, however, apply to such activities.

Replacement / Repair of Imported / Indigenous Goods

(i) General provisions of FTP relating to export /import of replacement/repair of goods would also apply equally to EOU/EHTP/STP/BTP units. Cases not covered by these provisions shall be considered on merits by DC.

(ii) Goods sold in DTA and not accepted for any reasons, may be brought back for repair/replacement, under intimation to concerned jurisdictional customs authorities.

(iii) Goods or parts thereof, on being imported / indigenously procured and found defective or otherwise unfit for use or which have been damaged or become defective subsequently, may be returned against refund of purchase value/ against replacement or destruction. In the event of replacement, goods may be received from foreign suppliers or their authorized agents in India or indigenous suppliers. The unit can take free of cost replacement (duty paid) from the authorized agents in India of foreign suppliers, provided the defective part is re–exported or destroyed. However, destruction shall not apply to precious and semi-precious stones and precious metals.

Exit from the Scheme

(c) With approval of DC/Designated officer of EHTP/ STP/BTP, an EOU/EHTP/STP/BTP unit may opt out of scheme. Such exit shall be subject to payment of applicable Excise and Customs duties and on payment of applicable IGST/ CGST/ SGST/ UTGST and compensation cess, if any, and industrial policy in force.

(d) If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.

(e) In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gems and other materials available for manufacture of jewellery, shall be handed over to an agency nominated by DoC, at price to be determined by that agency.

(f) An EOU / EHTP / STP / BTP unit may also be permitted by DC to exit from the scheme at any time on payment of applicable duties and taxes and compensation cess on capital goods under the prevailing EPCG Scheme for DTA Units. This will be subject to fulfillment of positive NFE criteria under EOU scheme, eligibility criteria under EPCG scheme and standard conditions indicated in HBP.

(g) Unit proposing to exit out of the scheme shall intimate DC of EOU/Designated officer of EHTP/STP/BTP and Customs authorities in writing. Unit shall assess duty liability arising out of exit and submit details of such assessment to Customs authorities. Customs authorities shall confirm duty liabilities on priority basis, subject to the condition that the unit has achieved positive NFE, taking into consideration the depreciation allowed.

After payment of duty and clearance of all dues, unit shall obtain “No Dues Certificate” from Customs authorities. On the basis of “No Dues Certificate” so issued by the Customs authorities, unit shall apply to DC/Designated officer for final exit. In case there is no proceeding pending under FT(D&R) Act, as

amended, DC/Designated officer shall issue final exit order within a period of 7 working days. Between "No Dues Certificate" issued by Customs authorities and final exit order by DC/Designated officer, unit shall not be entitled to claim any exemption for procurement of capital goods or inputs. However, unit can claim Advance Authorization / DFIA/ Duty Drawback as per its eligibility. In case the duty calculations and dues are disputed and take a long time, a BG / Bond / Installment processes backed by BG shall be provided for expediting the exit process.

(h) In cases where a unit is initially established as DTA unit with machines procured from abroad after payment of applicable import duty, or from domestic market after payment of excise duty/GST, and unit is subsequently converted to EOU, in such cases removal of such capital goods to DTA after exit would be without payment of duty. Similarly, in cases where a DTA unit imported capital goods under EPCG Scheme and after completely fulfilling export obligation gets converted into EOU, unit would not be charged customs duty on capital goods at the time of removal of such capital goods in DTA upon exit.

(i) An EOU / EHTP / STP / BTP unit may also be permitted by DC to exit under Advance Authorisation as one time option. This will be subject to fulfillment of positive NFE criteria.

(j) A simplified procedure may be provided to fast track the De-bonding/ Exit of the STP / EHTP Unit which has not availed any duty benefit on procurement of raw material, capital goods etc.

Conversion

(a) Existing DTA units may also apply for conversion into an EOU / EHTP / STP/ BTP unit.

(b) Existing EHTP / STP units may also apply for conversion / merger to EOU unit and vice-versa. In such cases, units will avail exemptions in duties and taxes as applicable.

(c) Applications for conversion into an EOU / EHTP / STP / BTP unit from existing DTA units, having an investment of Rs. 50 crores and above in plant and machinery or exporting Rs. 50 crores and above annually, shall be placed before BOA for a decision.

Monitoring of NFE

Performance of EOU/EHTP/STP/ BTP units shall be monitored by Units Approval Committee as per guidelines in HBP.

Export through Exhibitions/ Export Promotion Tours/ Showrooms Abroad /Duty Free Shops

EOU / EHTP / STP / BTP are permitted to:

(i) Export goods for holding/participating in Exhibitions abroad with permission of DC /Designated officer.

(ii) Personal carriage of gold / silver / platinum jewellery, precious, semi-precious stones, beads and articles.

(iii) Export goods for display / sale in permitted shops set up abroad.

(iv) Display / sell in permitted shops set up abroad, or in showrooms of their distributors / agents.

(v) Set up showrooms / retail outlets at International Airports.

Personal Carriage of Import / Export Parcels including through Foreign Bound Passengers

Import/ export through personal carriage of gems and jewellery items may be undertaken as per Customs procedure. However, export proceeds shall be realized through normal banking channel. Import/ export through personal carriage by units, other than gems and jewellery units, shall be allowed provided goods are not in commercial quantity. An authorized person of Gems & Jewellery EOU may also import gold in

primary form, upto 10 Kgs in a financial year through personal carriage, as per guidelines prescribed by RBI and DoR.

Export /Import by Post/ Courier

Goods including free samples, may be exported/imported by air freight or through foreign post office or through courier, as per Customs procedure.

Administration of EOU / EHTP / STP / BTP units and Powers of DC/Designated Officer of EOU/EHTP/STP/SEZ

Details of administration of EOUs / EHTP / STP / BTP units and powers of DC/Designated Officer are given in HBP.

DEEMED EXPORTS

Objective

To provide a level-playing field to domestic manufacturers and to promote Make in India, in certain specified cases, as may be decided by the Government from time to time.

Deemed Exports

(i) "Deemed Exports" for the purpose of this FTP refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified in Paragraph 7.02 below shall be regarded as "Deemed Exports" provided goods are manufactured in India.

(ii) "Deemed Exports" for the purpose of GST would include only the supplies notified under Section 147 of the CGST/SGST Act, on the recommendations of the GST Council. The benefits of GST and conditions applicable for such benefits would be as specified by the GST Council and as per relevant rules and notification.

Categories of Supply

Supply of goods under following categories (a) to (c) by a manufacturer and under categories (d) to (g) by main / sub-contractors shall be regarded as 'Deemed Exports':

A. Supply by manufacturer:

a) Supply of goods against Advance Authorisation / Advance Authorisation for annual requirement / DFIA.
b) Supply of goods to EOU / STP / EHTP / BTP.
c) Supply of capital goods against EPCG Authorisation.

B. Supply by main / sub-contractor(s):

(d) (i) Supply of goods to projects financed by multilateral or bilateral Agencies / Funds as notified by Department of Economic Affairs (DEA), MoF, where legal agreements provide for tender evaluation without including customs duty.

(ii) Supply and installation of goods and equipment (single responsibility of turnkey contracts) to projects financed by multilateral or bilateral Agencies/Funds as notified by Department of Economic Affairs (DEA), MoF, for which bids have been invited and evaluated on the basis of Delivered Duty Paid (DDP) prices for goods manufactured abroad.

(iii) Supplies covered in this paragraph shall be under International Competitive Bidding (ICB) in accordance with procedures of those Agencies / Funds.

(iv) A list of agencies, covered under this paragraph, for deemed export benefits, is given in Appendix- 7A.

(e) (i) Supply of goods to any project or for any purpose in respect of which the Ministry of Finance by Customs Notification No. 50/2017-Customs dated 30.6.2017, as amended from time to time, permits import of such goods at zero basic customs duty subject to conditions mentioned therein. Benefits of deemed exports shall be available only if the supply is made under procedure of ICB.

(ii) Supply of goods required for setting up of any mega power project, as specified in the list 31 at Sl. No. 598 of Department of Revenue Notification No. 50/2017-Customs dated 30.6.2017, as amended from time to time and subject to conditions mentioned therein, shall be eligible for deemed export benefits provided such mega power project conforms to the threshold generation capacity specified in the above said Notification.

(iii) For mega power projects, ICB condition would not be mandatory if the requisite quantum of power has been tied up through tariff based competitive bidding or if the project has been awarded through tariff based competitive bidding.

(f) Supply of goods to United Nations or International organization for their official use or supplied to the projects financed by the said United Nations or an International organization approved by Government of India in pursuance of Section 3 of United Nations (Privileges and Immunities Act), 1947. List of such organization and conditions applicable to such supplies is given in the Customs Notification No. 84/97-Customs dated 11.11.1997, as amended from time to time. A list of Agencies, covered under this paragraph, is given in Appendix-7B.

(g) Supply of goods to nuclear power projects provided:

i) Such goods are required for setting up of any Nuclear Power Project as specified in the list 32 at Sl. No. 602, Customs notification No. 50/2017- Customs dated 30.6.2017, as amended from time to time and subject to conditions mentioned therein.
ii) The project should have a capacity of 440 MW or more.
iii) A certificate to the effect is required to be issued by an officer not below the rank of Joint Secretary to Government of India, in Department of Atomic Energy.
iv) Tender is invited through National competitive bidding (NCB) or through ICB.

Benefits for Deemed Exports

Deemed exports shall be eligible for any / all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to terms and conditions as given in HBP and ANF-7A:

(a) Advance Authorisation / Advance Authorisation for annual requirement / DFIA.
(b) Deemed Export Drawback.

(c) Refund of terminal excise duty for excisable goods mentioned in Schedule 4 of Central Excise Act, 1944 provided the supply is eligible under that category of deemed exports and there is no exemption.

It may be noted that –

"Excisable goods" means any goods produced or manufactured in India and subject to duty of excise under Central Excise and Salt Act 1944(1of 1944).

Benefits to the Supplier /Recipient

Categories of supplies as per Para 7.02	Benefits on supplies, as given in Para 7.03 above, whichever is applicable.		
	Para 7.03 (a) Advance Authorisation	Para 7.03 (b) Duty Drawback	Para 7.03 (c) Terminal Excise Duty
(a)	Yes (for intermediate supplies against an invalidation letter)	Yes (against ARO)	Yes
(b)	Yes	Yes	Yes
(c)	Yes	Yes	NA
(d)	Yes	Yes	NA
(e)	Yes	Yes	NA
(f)	Yes	Yes	NA
(g)	Yes	Yes	NA

Conditions for refund of Terminal Excise Duty

Supply of goods will be eligible for refund of terminal excise duty as per Para 7.03 (c) of FTP, provided recipient of goods does not avail CENVAT credit/rebate on such goods.

Conditions for refund of Deemed Export drawback

Supplies will be eligible for deemed export drawback as per para 7.03 (b) of FTP, as under:

Refund of drawback on the inputs used in manufacture and supply under the said category can be claimed on 'All Industry Rate' of Duty Drawback Schedule notified by Department of Revenue from time to time provided no CENVAT credit has been availed by supplier of goods on excisable inputs or on 'Brand Rate Basis' upon submission of documents evidencing actual payment of basic custom duties.

Common conditions for deemed export benefits

(i) Supplies shall be made directly to entities listed in the Para 7.02. Third party supply shall not be eligible for benefits/exemption.

(ii) In all cases, supplies shall be made directly to the designated Projects / Agencies/ Units/ Advance Authorisation/ EPCG Authorisation holder. Sub-contractors may, however, make supplies to main contractor instead of supplying directly to designated Projects/ Agencies. Payments in such cases shall be made to sub-contractor by main-contractor and not by project Authority.

(iii) Supply of domestically manufactured goods by an Indian Subcontractor to any Indian or foreign main contractor, directly at the designated project's/ Agency's site, shall also be eligible for deemed export

benefit provided name of sub- contractor is indicated either originally or subsequently (but before the date of supply of such goods) in the main contract. In such cases payment shall be made directly to sub-contractor by the Project Authority.

(iv) Steel manufacturers supplying steel against Advance Authorization under Para 7.02 (a), through their Service Centers/ Distributors/ Dealers/ Stock yards, shall also be eligible to claim duty drawback provided such supplies are made in accordance with Ministry of Steel O.M. No. S-21016/3/2020-TRADE-TAX-Part(1) dated 27.5.2020 read with O.M. dated 24.6.2020, as amended from time to time. However, the invoice against such supplies would be raised by the manufacturer on the Advance Authorization holder. Delivery of such supplies can be made through their Service Centers/ Distributors/ Dealers/ Stock yards, who in turn will raise the tax invoice on the steel manufacturer bearing a cross reference for such supplies.

Benefits on specified supplies

(i) Deemed export benefits shall be available for supplies of "Cement" under Para 7.02(d) only.

(ii) Deemed export benefit shall be available on supply of "Steel":
   (a) As an inputs to Advance Authorisation/ Annual Advance Authorisation/DFIA holder/ an EOU.
   (b) To multilateral/ bilateral funded Agencies as per sub-para 7.02(d).

(iii) Deemed export benefit shall be available on supply of "Fuel" (in respect of eligible fuel items covered under Schedule 4 of Central Excise Act, 1944) provided supplies are made to:
   (a) EOUs.
   (b) Advance Authorisation holder / Annual Advance Authorisation holder.

Liability of Interest

Incomplete/deficient application is liable to be rejected. However, simple interest @ 6% per annum will be payable on delay in refund of duty drawback and terminal excise duty under the scheme, provided the claim is not settled within 30 days from the date of issue of final Approval Letter by RA.

Risk Management and Internal Audit mechanism

(a) A Risk Management system shall be in operation, wherein every month, Computer system in DGFT headquarters, on random basis, will select 10% of cases, for each RA, where benefit(s) under this Chapter has/have already been granted. Such cases shall be scrutinized by an internal Audit team, headed by a Joint DGFT, in the office of respective Zonal Addl. DGFT. The team will be responsible to audit claims of not only for its own office but also the claims of all RAs falling under the jurisdiction of the Zone.

(b) The respective RA may also, either on the basis of report from Internal Audit/ External Audit Agency (ies) or suo-motu, re-assess any case, where any erroneous/ in-eligible payment has been made/claimed. RA will take necessary action for recovery of payment along with interest at the rate of 15% per annum on the recoverable amount.

Penal Action

In case, claim is filed by submitting mis-declaration/ mis-representation of facts, then in addition to effecting recovery under Para 7.10(b) above, the applicant shall be liable for penal action under the provisions of FT (D&R) Act, Rules and orders made there under.

QUALITY COMPLAINTS AND TRADE DISPUTES

Objective

Exporters need to project a good image of the country abroad to promote exports. Maintaining an enduring relationship with foreign buyers is of utmost importance, and complaints or trade disputes, whenever they arise, need to be settled amicably as soon as possible. Importers too may have grievances as well.
In an endeavour to resolve such complaints or trade disputes and to create confidence in the business environment of the country, a mechanism is being laid down to address such complaints and disputes in an amicable way. Complaints/Disputes between two or more Indian entities are not covered under this mechanism. Similarly, complaints/disputes between two or more foreign entities are also not covered.

Quality Complaints/ Trade disputes

The following type of complaints may be considered:

(a) Complaints received from foreign buyers in respect of quality of goods or services or technology supplied by exporters from India;
(b) Complaints of importers against foreign suppliers in respect of quality of the goods or services or technology supplied; and
(c) Complaints of unethical commercial dealings categorized mainly as non-supply/ partial supply of goods or services or technology after confirmation of order; supplying goods or services or technology other than the ones as agreed upon; non- payment; non-adherence to delivery schedules, etc.

Obligation on the part of importer/ exporter

(a) Rule 11 of the Foreign Trade (Regulation) Rules, 1993, requires that on the importation into, or exportation out of, any customs ports of any goods or services or technology, whether liable to duty or not, the owner of such goods or services or technology shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962, state the value, quality and description of such goods or services or technology to the best of his knowledge and belief and in case of exportation of goods or services or technology, certify that the quality and specification of the goods or services or technology as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods or services or technology are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents. Violation of this provision renders the exporter liable for penal action;
(b) Certain export commodities have been notified for Compulsory Quality Control & Pre-shipment Inspection prior to their export. Penal action can be taken under the Export (Quality Control & Inspection) Act, 1963 as amended in 1984, against exporters who do not conform to these standards and/ or provisions of the Act as laid down for such products.

Provisions in FT (D&R) Act, 1992, as amended & FT (Regulation) Rules, 1993, as amended for necessary action against erring exporters/ importers

Action against erring exporters/importers can be taken under the Foreign Trade (Development and Regulation) Act, 1992, as amended and under Foreign Trade (Regulation) Rules, 1993, as amended, as follows:-

(a) Section 8 of the Act empowers the Director General of Foreign Trade or any other officer authorized by him to suspend or cancel the Importer Exporter Code Number for the reasons as given therein;
(b) Section 9 (2) of the Act empowers the Director General of Foreign Trade or an officer authorised by him to refuse to grant or renew a license, certificate, scrip or any other instrument bestowing financial or fiscal benefit granted under the Act;
(c) Section 9(4) of the Act empowers the Director General of Foreign Trade or the officer authorized by him to suspend or cancel any License, certificate, scrip or any instrument bestowing financial or fiscal benefit granted under the Act;
(d) Section 11(2) of the Act provides for imposition of fiscal penalty in cases where a person makes or abets or attempts to make any import or export in contravention of any provision of the Act, any Rules or Orders made there under or the Foreign Trade Policy.

Mechanism for handling of Complaints/ Disputes

(a) Committee on Quality complaints and Trade Disputes (CQCTD) To deal effectively with the increasing number of complaints and disputes, a 'Committee on Quality Complaints and Trade Disputes' (CQCTD) will be constituted in the Regional Authorities (RAs) of DGFT. Names of RAs, where CQCTD has been constituted and jurisdiction of CQCTD is given in Chapter 8 of the Handbook of Procedures.
(b) Composition of the CQCTD
The CQCTD would be constituted under the Chairpersonship of the Head of Office. The constitution of CQCTD is given in Chapter 8 of the Hand Book of Procedures.
(c) Functions of CQCTD
The Committee (CQCTD) will be responsible for enquiring and investigating into all Quality related complaints and other trade related complaints falling under the jurisdiction of the respective RAs. It will take prompt and effective steps to redress and resolve the grievances of the importers/ exporters and overseas buyers/ sellers preferably within three months of receipt of the complaint. Wherever required, the Committee (CQCTD) may take the assistance of the Export Promotion Councils/FIEO/Commodity Boards or any other agency as considered appropriate for settlement of these disputes.
CQCTD will hold its meetings at regular intervals and at least four in a year given the pendency of complaints/disputes.

Proceedings under CQCTD

CQCTD proceedings are conciliatory in nature and the aggrieved party, whether the foreign entity or the Indian entity, is free to pursue any legal recourse against the other erring party.

Procedures to deal with complaints and trade disputes

The procedure for making an application for such complaints or trade disputes and the procedure to deal with such quality complaints and disputes is given in the Handbook of Procedures.

Corrective Measures

a) The Committee at RA level can authorize the Export Inspection Agency or any technical authority to assess whether there has been any technical failure of not meeting the standards, manufacturing/ design defects, etc. for which complaints have been received;
b) Initially, efforts will be made to settle the complaint/ dispute amicably. In case the matter is not settled amicably, action may be taken against the erring Indian entity in terms of the Foreign Trade

(Development & Regulation) Act, 1992, as amended, and the Foreign Trade (Regulation) Rules, 1993, as amended;

c) Complaints against foreign entities would be taken up for settlement by the respective 'Foreign Trade Division' in the Department of Commerce, Vanijya Bhavan, New Delhi through Indian Missions abroad. Indian Missions Abroad will take up the complaints against the foreign entities with authorities concerned;

d) In case, the Indian Missions abroad are satisfied about the malafide of any foreign entity, they shall send such information to DGFT for circulation amongst the EPCs/Commodity Boards, ECGC and other regulatory authorities.

Case Officer

A Case Officer will be assigned for monitoring purposes in the designated Regional Authorities for resolving complaints and trade disputes in a time bound manner.

Nodal Officer

Director General of Foreign Trade would appoint an officer, not below the rank of Joint Director General, in the Headquarters, to function as the 'Nodal Officer' for monitoring the trade disputes and coordinating with Regional Authorities of DGFT, Foreign Trade Divisions of Department of Commerce, Indian Missions and other agencies.

PROMOTING CROSS BORDER TRADE IN DIGITAL ECONOMY

Objective

The objective of this chapter is to provide a framework for cross-border trade of goods and services from India in the digital economy and the promotion of e-Commerce and other emerging channels of exports from India.

It may be noted that –

"e-commerce" means buying and selling of goods through the internet on an e-commerce platform, the payment for which shall be done through international credit or debit cards, or other authorised electronic payment channels and as specified by the Reserve Bank of India from time to time.

E-Commerce Exports of Goods

Export of goods where selling is through the internet on an e-Commerce platform, the payment for which shall be done through international credit or debit cards, or other authorised electronic payment channels and as specified by the RBI from time to time.

E-Commerce Exports of Services

Exports of services where selling is through the internet on an e-Commerce platform, the payment for which shall be done through international credit or debit cards, or other authorised electronic payment channels and as specified by the RBI from time to time.

E-Commerce Platform

E-Commerce platform is an electronic platform, including a web-portal, that enables the commercial process of buying and selling through the internet.

E-Commerce Export Logistics Provider

Any service provider who provides logistics services towards exports of goods or services for e-Commerce Exports.

Export through Courier Service/Post

Exports through a registered courier service/Foreign Post Office is permitted as per Notification(s) issued under Customs Act, 1962. However, exportability of such items shall be regulated in accordance with FTP/Export Policy in ITC(HS) as notified. The value limit for exports through courier service shall be Rs. 10,00,000 per consignment.

Import through courier service/Post

i. Imports through a registered courier service or Post are permitted as per Notification(s) issued under the Customs Act, 1962. However, importability of such items shall be regulated in accordance with FTP and the ITC(HS) based Import Policy as notified.
ii. Exports by courier mode of precious Metal Jewellery through E-commerce and re-import of such export shipments returned by the buyer shall be allowed as per the Notification(s) issued and procedures prescribed under the Customs Act, 1962.

A. PROMOTION OF E-COMMERCE EXPORTS

Handholding and outreach to promote e-Commerce Exports

i. The Niryat Bandhu Scheme (NBS) as defined under Chapter 1 of the Policy shall have a component for the promotion of e-Commerce and other emerging channels of exports. Under the given NBS component, DGFT shall organise outreach activities/workshops in partnership with Customs Authorities, Department of Post, 'Industry Partners' and 'Knowledge Partners' for promotion of e-Commerce exports. Besides outreach/ workshops, specific focus may be on creation of electronic content as well.
ii. In addition to increasing awareness on e-Commerce related rules and processes, actions may be undertaken under the said NBS component for capacity building and skill development for promotion of e-Commerce exports, in partnership with Customs Authorities, Department of Post, 'Industry Partners' or the 'Knowledge Partners'.

B. E-COMMERCE EXPORT HUBS (ECEHs)

Objective of E-Commerce Export Hubs

The objective is to establish designated areas as E-Commerce Export Hubs (hereafter called "ECEH"), which would act as a centre for favourable business infrastructure and facilities for Cross Border E-Commerce activities.

Creation of ECEH

i. The ECEH shall ordinarily be setup through private initiative. It may also be setup in Public-Private-Partnership (PPP) mode in partnership with the State governments/Central government. Request for approval of an ECEH proposed shall be submitted to the notified committee to be constituted by DGFT.

ii. Existing facility with the required infrastructure may also apply to be designated as ECEH.

Nature of ECEH Operations

i. ECEH will function to achieve agglomeration benefits for e-commerce exporters. The ECEH may provide for storage (including cold storage facilities), packaging, labelling, certification & testing and other common facilities for the purposes of export.

ii. The ECEH shall also provide for dedicated logistics infrastructure for connecting to and leveraging the services of the nearest Logistics hub(s).

iii. All goods, including SCOMET and Restricted goods (subject to suitable compliance of regulations and conditions) and except goods which are prohibited or otherwise disallowed, may be handled at ECEH.

iv. Capital goods brought to a ECEH shall be utilized only for activities as mentioned at (i) above on payment of the duties and taxes, as applicable, in terms of extant laws.

Entitlement under ECEHs

i. ECEH may be provided financial assistance under MAI scheme, for e-Commerce export promotion projects for marketing, capacity building and technological services such as imaging, cataloguing, product video creation of e-Commerce Goods.

C. PROMOTION OF E-COMMERCE EXPORTS THROUGH POSTAL ROUTE

Dak Niryat Kendras

Dak Ghar Niryat Kendras shall be operationalised throughout the country to work in a hub-and-spoke model with Foreign Post Offices (FPOs) to facilitate cross-border e-Commerce and to enable artisans, weavers, craftsmen, MSMEs in the hinterland and land-locked regions to reach international markets.

SCOMET: SPECIAL CHEMICALS, ORGANISMS, MATERIALS, EQUIPMENT AND TECHNOLOGIES

Objective

The general provisions governing the export of dual use items, munitions and nuclear related items, including software and technology viz. SCOMET, are dealt with in this Chapter.

Brief Background

India is a signatory to international conventions on disarmament and non-proliferation, viz. the Chemical Weapons Convention (CWC) and Biological and Toxin Weapons Convention (BWC). The United Nations Security Council Resolution 1540 obliges all countries to prohibit access of weapons and mass destruction and their delivery systems to non-state actors (in particular for terrorist purposes); and prescribed measures and controls on weapons of mass destruction, their delivery systems and related materials, equipment and technology. India is also a member of the major multilateral export control regimes, viz. the Missile Technology Control Regime (MTCR), Wassenaar Arrangement (WA) and Australia Group (AG); and has harmonized its guidelines and control lists with that of the Nuclear Suppliers Group (NSG). In consonance with the guidelines and control lists of these international conventions and obligations as well as multilateral export control regimes, India has regulated the exports of dual use items, nuclear related items, including software and technology.

In respect of controls on export of specified goods, services and technology, the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005) shall

apply to exports, transfers, re-transfers, brought in transit, trans-shipment of, and brokering in specified goods, technology or services. These provisions have been incorporated in Chapter IVA of Foreign Trade (Development & Regulation) Act, 1992, as amended in 2010.

SCOMET List

Export of dual-use items, including software and technologies, having potential civilian / industrial applications as well as use in weapons of mass destruction is regulated. It is either prohibited or is permitted under an Authorization unless specifically exempted.

SCOMET is an acronym for Special Chemicals, Organisms, Materials, Equipment and Technologies. Accordingly, the SCOMET list is our National Export Control List of dual use items munitions and nuclear related items, including software and technology and is aligned to the control lists of the all the multilateral export control regimes and conventions. The SCOMET List has been notified under Appendix 3 to Schedule 2 of ITC (HS) Classification of Export and Import Items, which is available on the website of DGFT.

Classification of SCOMET categories and Licensing jurisdiction

The SCOMET List is divided into nine categories of items from Category 0 to Category 8. However, Category 7 is presently 'Reserved' and has not been populated. The broad classification of different categories under SCOMET List and their jurisdictional licensing authorities are tabulated as under:

Table: SCOMET Categories and Licensing Jurisdiction

SCOMET Category	SCOMET items	Jurisdictional Licensing Authority	Remark
0	Nuclear materials, nuclear-related other materials, equipment and technology	Department of Atomic Energy (DAE)	Including items mentioned in Note 2 of CIN of SCOMET List
1	Toxic chemical agents and other chemicals	Directorate General of Foreign Trade (DGFT)	
2	Micro-organisms, Toxins	DGFT	
3	Materials, Materials Processing Equipment and related Technologies	DGFT	
4	Nuclear-related other equipment and technology, not controlled under Category '0'	DGFT	
5	Aerospace systems, equipment, including production and test equipment, and related Technology and specially designed components and accessories thereof.	DGFT	
6	Munitions List	Department of Defence Production (DDP)/ Ministry of Defence	Excluding those covered under Note 2 and 3 of CIN and Sub-category 6A007, 6A008

7	**'Reserved'**	DGFT	
8	Special Materials and Related Equipment, Material Processing, Electronics, Computers, Telecommunications, Information Security, Sensors and Lasers, Navigation and Avionics, Marine, Aerospace and Propulsion.	DGFT	

CIN : Commodity Identification Note of SCOMET List

*Note: DGFT to be licensing authority for above specified categories/s*ub-categories *and any other sub-category as may be specified.*

Export of SCOMET Items

Procedure for grant of export authorization for SCOMET items in respect of Categories 1 to 5 and 8, is specified under Chapter 10 of Hand Book of Procedures (HBP).Export of SCOMET items under Category 0 and Note 2 of the Commodity Identification Note (CIN) of SCOMET will be permitted against an authorization issued by the Department of Atomic Energy (DAE) as per the guidelines for Nuclear Transfers (Exports) and Notification of schedule of Prescribed Substances, Prescribed Equipment and Technology" issued under Atomic Energy Act 1962 and Atomic Energy (Working of Mines, Minerals and Handling of Prescribed Substance) Rules 1984.Export of SCOMET items under Category 6 (Munitions List) [except those covered under Note 2 and 3 of CIN and items under Category 6A007, 6A008], irrespective of end use of the items, whether military or civil will be permitted against an authorization to be issued by Department of Defence Production (DDP)/ Ministry of Defence under the extant guidelines /Standing Operating Procedure (SOP) issued by the DDP, time to time.

Additional controls on Non-SCOMET items for dual use (Catch-all controls)

Export of items not in the SCOMET List may also be regulated under provisions of the Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act,2005.If the exporter has been notified in writing by DGFT or he knows or has reason to believe that an item not covered in the SCOMET list has a potential risk of use in or diversion to weapons of mass destruction (WMD) or in their missile system or military end use (including by terrorists and non-state actors), the export of such an item may be denied or permitted subject to the grant of a license, as per the procedure provided for SCOMET items in Para 10.05 and 10.06 of HBP.

Supply of SCOMET Items from DTA to SEZ/EOU and outside the country

Export authorisation is not required for supply of SCOMET items from DTA to SEZ /EoU. However, all supplies of SCOMET items from DTA to SEZ/EOU will be reported to the Development Commissioner (DC) of the respective SEZ/EoU by the supplier in the prescribed performa within one week of the supplies getting effected. Export Authorisation is, however, required if the SCOMET items are to be physically exported outside the country from SEZ/ EOU, i.e. to another country (Rule 26 of the SEZ Rules, 2006 may be referred).

Export of imported SCOMET items

Imported goods covered under the SCOMET list are not permitted for export, even from the Customs bonded ware house, without an export authorization, unless specifically exempted.

Different types of export authorizations for SCOMET items

(i) Direct export to ultimate end user: Export to the ultimate end users abroad after due verification process;

(ii) Export for repeat orders of same SCOMET items: Repeat export of items of same technical specifications which have earlier been allowed for export to the same countries/entities after due verification process;

(iii) Export for Stock and Sale purpose: Export of items initially to the stockist abroad and then from the stockist to the ultimate end users in the same country or approved countries;

(iv) Export of spare parts under SCOMET under Stock and Sale: Export of spare parts along with main item/ equipment under stock and sale;

(v) Export for/after repair / replacement of defective SCOMET items: Export authorizations for repair/ replacement of imported items on being found defective and export authorization after repair of indigenous/third party items imported for repair;

(vi) Temporary export of SCOMET items: Export authorization for demo/display/exhibition/tenders/ RFP/RFQ/NIT abroad or for return abroad after demo/ display/ exhibition/ tenders/ RFP/ RFQ/ NIT etc. in India;

(vii) Export of imported items to the same foreign entity or to its OEM: Export of imported items to its foreign supplier or its OEM on obsolescence of technology, dead on arrival, cancellation of order, calibration, testing, etc.;

(viii) Global Authorization for Intra-Company Transfers (GAICT) of SCOMET Items including Software/ Technology :Only one time authorization will be required, for export and/or re-export of SCOMET items including software and technology under SCOMET Category 8 (except items listed in Appendix 10M), where the export is an Intra-company transfer from the Indian parent company (applicant exporter) to its foreign subsidiary company or from the Indian subsidiary of foreign company (applicant exporter) to its foreign parent/another subsidiary of foreign parent company and; based on a Master Service Agreement / Contract between the Indian parent company/Indian subsidiary of foreign company and foreign subsidiary of Indian company/foreign parent company of Indian subsidiary for carrying out certain services but not limited to design, encryption, research, development, delivery, validation, calibration, testing, related services, etc. in specified countries for the one time validity of 3 years subject to the post export reporting of all the exports done under the authorisation.

(ix) General Authorization for export of Chemicals and related equipments(GAEC) except software and technology : Export of chemicals (Excluding Software and Technology) listed in 1C,1D, 3D001 and 3D004 sub-categories is allowed to Australian Group(AG) countries and those listed in 1E sub-category allowed for export to State Parties to the Chemical Weapons Convention (CWC) on the basis of a onetime General authorization for export of Chemicals and related equipments (GAEC) issued by DGFT with one time validity of 5 years subject to the post export reporting of all the exports done under the authorisation.

(x) General Authorization for export after repair in India(GAER): Export of imported SCOMET items to the same entity abroad after repair in India will be allowed on the basis of a one-time General authorization for Export after Repair in India (GAER) issued by DGFT subject to post reporting on quarterly basis and other conditions as specified in para 10.12(D) of the Hand Book of Procedures.

Issue, amendment and revalidation of SCOMET authorizations

Export authorization for SCOMET items will be issued centrally by the DGFT (HQrs). Amendments, including revalidation, etc. on such authorization will also be done by the DGFT (HQrs) only. The procedure for Revalidation is prescribed in Para 10.20 of Handbook of Procedures.

Outreach Programmes on SCOMET and Export Control Framework

DGFT in association with Administrative Ministries/ Departments and Trade Associations will organize Industry Outreach Programmes on regular basis for effective awareness among the exporters/importers dealing with trade and manufacture, in particular, of SCOMET items. Institutional mechanism will be adopted to organize sector specific / region specific outreach programmes with focus on MSMEs and Startups.

Voluntary Self Disclosure of export of dual use items

DGFT recognizes that there may be occasions where responsible exporters, occasionally did not comply with the export control provisions of the FTDR Act, WMD Act, Customs Act, or any regulation, order, license, or other authorization on export controls issued by DGFT. DGFT encourages voluntary self-disclosures of failure to comply with the export control provisions, and supports raising awareness among exporters to avoid any incidents of non-compliance while taking strict action under FTDR Act for violation of SCOMET policy in cases other than voluntary self-disclosure.

LESSON ROUND-UP

- Foreign Trade Policy (FTP) 2023 is a policy document which is based on continuity of time-tested schemes facilitating exports as well as a document which is nimble and responsive to the requirements of trade.
- The FTP 2023 aims at process re-engineering and automation to facilitate ease of doing business for exporters. It also focuses on emerging areas like dual use high end technology items under SCOMET, facilitating e-commerce export, collaborating with States and Districts for export promotion.
- The New FTP is introducing a one-time Amnesty Scheme for exporters to close the old pending authorizations and start afresh. The FTP 2023 encourages recognition of new towns through "Towns of Export Excellence Scheme" and exporters through "Status Holder Scheme".
- The Key Approach to the policy is based on these 4 pillars: (i) Incentive to Remission, (ii) Export promotion through collaboration - Exporters, States, Districts, Indian Missions, (iii) Ease of doing business, reduction in transaction cost and e-initiatives and (iv) Emerging Areas – E-Commerce Developing Districts as Export Hubs and streamlining SCOMET policy.
- Amnesty Scheme is intended to provide relief to exporters who have been unable to meet their obligations under EPCG and Advance Authorizations, and who are burdened by high duty and interest costs associated with pending cases.
- Projects having a minimum investment of Rs.1 Crore in plant & machinery shall be considered for establishment as EOUs. However, this shall not apply to existing units, units in EHTP / STP/ BTP, and EOUs in Handicrafts/Agriculture/

Floriculture/Aquaculture/Animal Husbandry/Information Technology, Services, Brass Hardware and Handmade jewellery sectors.

- The objective of deemed exports is to provide a level-playing field to domestic manufacturers and to promote Make in India, in certain specified cases, as may be decided by the Government from time to time.
- Exporters need to project a good image of the country abroad to promote exports. Maintaining an enduring relationship with foreign buyers is of utmost importance, and complaints or trade disputes, whenever they arise, need to be settled amicably as soon as possible. Importers too may have grievances as well.
- The objective E-Commerce Export Hubs is to establish designated areas as E-Commerce Export Hubs (hereafter called "ECEH"), which would act as a centre for favourable business infrastructure and facilities for Cross Border E-Commerce activities.
- SCOMET is an acronym for Special Chemicals, Organisms, Materials, Equipment and Technologies. Accordingly, the SCOMET list is our National Export Control List of dual use items munitions and nuclear related items, including software and technology and is aligned to the control lists of the all the multilateral export control regimes and conventions.
- DGFT recognizes that there may be occasions where responsible exporters, occasionally did not comply with the export control provisions of the FTDR Act, WMD Act, Customs Act, or any regulation, order, license, or other authorization on export controls issued by DGFT.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. What are the objectives of foreign trade policy, 2023?
2. Discuss briefly the privileges enjoyed by Status Holder under FTP, 2023.
3. How doe NCTF helps to facilitate trade and enables ease of doing business?
4. Write short notes on:
   - Transitional Arrangements
   - Denomination of Export Contracts
   - Export Credit Agencies (ECAs)
   - Export hubs
   - EPCG Scheme
   - SCOMET List

LIST OF FURTHER READINGS

- Foreign Trade Policy (FTP) 2023

OTHER REFERENCES (INCLUDING WEBSITES/ VIDEO LINKS)

- https://www.dgft.gov.in/CP/?opt=ft-policy
- https://www.dgft.gov.in/CP/

LESSON 12 COMPETITION ACT, 2002

Key Concepts One Should Know

- Competition
- Cartel
- Consumer
- Bid rigging
- Enterprise
- Anti-Competitive Agreement
- Dominant Position
- Combination
- Competition Commission of India
- Director General
- Settlement
- Commitment

Learning Objectives

To understand:

- Competition Policy
- Anti-Competitive Agreements
- Abuse of Dominant Position
- Overview of Combination
- Regulation of Combinations
- Competition Advocacy
- Competition Commission of India
- Right to Legal Representation

Regulatory Framework

- Competition Act, 2002
- Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011
- Competition Commission of India (Lesser Penalty) Regulations, 2009
- Competition Commission of India (Determination of Cost of Production) Regulations, 2009
- Competition (Amendment) Act, 2023

Lesson Outline

- Competition Law and Policy
- Competition Regime in India
- Anti-Competitive Agreement
- Abuse of Dominant Position
- Combination
- Director General
- Enquiry into Certain Agreements
- Enquiry into Dominant Position of Enterprise
- Enquiry into Combination by Commission
- Competition Commission of India
- Competition Advocacy
- Offences and penalties
- Appeal to Supreme Court
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References (Websites/ Video Links)

INTRODUCTION

There is a growing recognition that a flexible, dynamic and competitive private sector is essential to fostering sustained economic development. Promoting effective competition spurs firms to focus on efficiency and improves consumer welfare by offering greater choice of higher-quality products and services at lower prices. It also promotes greater accountability and transparency in government-business relations and decision making, helps reduce corruption, lobbying, and rent seeking. In addition, it provides opportunities for broadly based participation in the economy and for sharing in the benefits of economic growth.

The idea of competition has had, for two centuries or more, a powerful influence on the way we think about our society, the way we organise things and the way we conduct our own economic and personal lives. The competition being an essential element in the efficient working of markets encourages enterprise and efficiency and widens choice. By encouraging efficiency in industry, competition in the domestic market whether between domestic companies alone or between those and overseas companies also contribute to international competitiveness. The full benefits of competition are, however, felt in markets that are open to trade and investment.

Economic theory suggests that prices and quantities in a competitive market equilibrate to levels that generate efficient outcomes at a given point of time. Competition is therefore, beneficial as it provides to consumers wider choice and provides sellers with stronger incentives to minimize costs, so eliminating waste. Competition increases the likelihood that cost savings resulting from efficiency gains will be passed on to a firm's customers, who may be either final consumers or intermediary customers (in which case costs of those firms are also lowered). Ample empirical evidence supports these arguments. The importance of competition for achieving a higher rate of innovation and adoption of new technologies over time is critical for sustaining rapid growth. Yet it is not automatic and is not the same as laissez faire.

In fact, there are reasons to believe that less mature markets tend to be more, rather than less, vulnerable to anti- competitive practices than the markets of developed countries. Reasons include: (a) high "natural" entry barriers due to inadequate business infrastructure, including distribution channels, and (sometimes) intrusive regulatory regimes; (b) asymmetries of information in both product and credit markets; and (c) a greater proportion of local (non-tradable) markets. Competition also serves to diffuse socio-economic power, broadening participation in economic, social, and political advances while ensuring opportunities for new entrepreneurs. Moreover, it can facilitate realization of the benefits for the domestic economy of integrating into international trade and investment patterns.

Several studies have demonstrated the stimulating effects of competitive markets in terms of growth and prosperity. William Lewis in his book, The Power of Productivity underlines this point forcefully with his observations on the growth of productivity in the late 1990s in the United States. The author has argued that more than technology and other factors, what matters above all is competition. Similarly, economist Paul London in his book, *The Competition Solution* concludes that heightened competition in the US over-shadowed tax cuts or new technologies in explaining the prosperity of the 1990s. Competitive pressures helped suppress inflation and raise living standards through improved productivity. The author noted that competition from imports forced the steel and auto industry, among other manufacturers, to streamline, thereby pushing manufacturing productivity up by 4% a year.

Competition has brought down real air fares, telephone rates and several other costs. Where jobs have been lost in one industry, these have been more than compensated by jobs created elsewhere; thus employment has not suffered but has shifted from losers to winners. This argument underlines across the board, the benefits of competition to a wide section of society, including consumers, workers and many others.

Competition and Economic Efficiency

A number of empirical studies found a positive relationship between competition and innovation, productivity and economic growth. P. Aghion and P. Howitt in *Endogenous Growth Theory* offered several theoretical situations where competition is conducive to innovation – Intensified product market competition could force managers to speed up the adoption of new technologies; Intensive product market competition with incumbent firms engaged in step by step innovative activities could enhance each firms incentive to acquire or increase its technological lead over its rivals and, if labour markets are flexible, competition will induce skilled workers to move to opportunities employing best practices and technologies. Competition also reduces slack by providing more incentives for managers and workers to increase efforts and improve efficiency. Therefore, the product market competition disciplines firms into efficient operation.

Nickel et. al. in his article *Competition and Corporate Performance* suggested three different channels of incentives – competition creates greater opportunities for comparing performance; a more competitive environment where price elasticity of demand tends to be higher, induces greater efforts among workers and managers for cost reducing improvements in productivity since improvements could generate larger increase in revenue and profits; and a more competitive environment forces managers to improve efficiency, because more intense the competition, greater the chances for inefficient to be extinguished.

UK White Paper on World Class Competition Regime clearly brings out the importance of competition in an increasingly innovative and globalised economy. Vigorous competition between firms is the lifeblood of strong and effective markets. Competition helps consumers get a good deal. It encourages firms to innovate by reducing slack, putting downward pressure on costs and providing incentives for the efficient organisation of production.

Empirical evidences show that strong competition is closely linked to dynamic and efficient markets. The benefits of competitive forces for economic growth and consumer welfare are widely recognized and evidenced by several studies. Recently, an empirical study in the U.K. by the Centre for Competition Policy, University of East Anglia showed that prices were more than halved through competition in international telephony and airfares, and were significantly reduced in other areas. The survey also brought home the point that competition is not just about prices but is typically multi-faceted, bringing new ways of doing business and leading to technological and other advances. Michel Porter in his recent work *Can Japan Compete?* shows that in Japan only those sectors characterized by strong domestic competition remain internationally competitive following the country's recent economic downturn, examples include cameras, automobiles and audio equipment. Many leading competition experts believe in the premise that, in the presence of competition, the market will achieve the objective of maximising welfare.

COMPETITION, COMPETITION LAW AND COMPETITION POLICY

Competition is a complex and technical subject which does not lend itself to easy summary or concise clarification. Of late, with globalisation and opening of the markets worldwide, it has become a subject of great practical importance. It involves the establishment and development of concepts, legal principles and policies for the benefit of consumer interest. The principles and policies are applied to a wide range of private agreements and arrangements, which commercial undertakings enter into for themselves or with each other. In addition, they also apply to the policies and directions of the Government.

In the absence of a generally accepted definition of the phenomenon of competition, it has to be regarded as the object fostered and protected by competition policy and law. The World Bank and OECD in its Report *A Frameworkfor the Design and Implementation of Competition Law and Policy,* broadly defines the competition is "a situation ina market in which firms or sellers independently strive for the buyers' patronage in order to achieve a particular business objective, for example, profits, sales or market share."

Competition can also be defined as a process of economic rivalry between market players to attract customers. These market players can be multinational or domestic companies, wholesalers, retailers, or even the neighborhood shopkeeper. In their pursuit to outdo rival enterprises, market players either adopt fair means (producing quality goods, being cost efficient, adopting appropriate technologies, etc.) or indulge in unfair measures (carrying out restrictive business practices – such as predatory pricing, exclusive dealing, tied selling, collusion, cartelisation, abuse of dominant position, etc.). However, in the interest of consumers, and the economy as a whole, it is necessary to promote an environment that facilitates fair competitive outcomes in the market, curb anti-competitive behaviour and discourage market players from adopting unfair measures.

What is competition in the market?

In common parlance, competition in the market means sellers striving independently for buyers' patronage to maximize profit (or other business objectives). A buyer prefers to buy a product at a price that maximizes his benefits whereas the seller prefers to sell the product at a price that

Competition refers to a situation in a market place in which firms/ entities or sellers independently strive for the patronage of buyers in order to achieve a particular business objective, such as profits, sales, market share etc. By responding to demand for goods and services with lower prices and higher quality, competing businesses are pressured to reduce costs, innovate in processes and products, invest in technology and better managerial practices and increase productivity. This process leads to achievement of static, dynamic as also resource/allocative efficiencies, sustainable economic growth, development, and poverty alleviation.

Competition is not an end unto itself, rather a means to achieve economic efficiency and welfare objectives. Importantly, competition is not automatic, and requires to be promoted, protected and nurtured through appropriate regulatory frameworks, by minimising market restrictions and distortions, and provision of related productive inputs such as infrastructure services, finance, human capital etc. However, a Competition Policy has to be evolved to imbibe the principles of

competition in various endeavours of the Government, of course in alignment with the national strategic objectives, along with social, environmental, public safety, and other considerations.

Competition Policy means government measures, policies, statutes, and regulations including a competition law, aimed at promoting competitive market structure and behavior of entitites in an economy. Competition Law is but a sub-set of the Competition Policy. The Raghavan Committee had observed that *"Competition law must emerge out of a national competition policy, which must be evolved to serve the basic goals of economic reforms by building a competitive market economy."*

Following the Government's resolve to enact a new competition law, a High Level Committee on Competition Policy and Law (the Raghavan Committee Report) was set up, which in its report recognised the need for a National Competition Policy and noted that:

"An effective competition policy promotes the creation of a business environment which improves static and dynamic efficiencies and leads to efficient resource allocation, and in which the abuse of market power is prevented mainly through competition. Where this is not possible, it requires the creation of a suitable regulatory framework for achieving efficiency. In addition, competition law prevents artificial entry barriers and facilitates market access and complements other competition promoting activities. Trade liberalisation alone is not sufficient to promote competition and there is a need for a separate competition policy."

The World Trade Organisation (WTO) defines competition policy as: *"the full range of measures that may be used to promote competitive market structures and behaviour, including but not limited to a comprehensive competition law dealing with anti-competitive practices of enterprises".* World Bank also provides a definition of competition policy as*: "government measures that directly affect the behaviour of enterprises and the structure of industry. An appropriate competition policy includes both: (a) policies that enhance competition in local and national markets, and (b) competition law, also referred to as antitrust or antimonopoly law."*

Competition Policy is a broader term which includes all government policies and laws whereas competition law is specific statute with a pre-defined mandate to adjudicate on violation(s) of the law. In the case of India, the Competition Act, 2002 deals with anti-competitive agreements such as price fixing, bid rigging, joint boycotts, etc; abusive practices undertaken by dominant entities such as predatory pricing, abusive conditions of supply, etc, and regulation of combinations. It would be seen that a competition law is a regulatory instrument to check the prevalence of anti-competitive practices whereas a competition policy is a proactive and positive effort to build a competition culture in an economy.

The World Bank and OECD in its Report *A Framework for the Design and Implementation of Competition Law and Policy* pointed out that a dynamic and competitive environment, underpinned by sound competition law and policy,is an essential characteristic of a successful market economy. Effective enforcement of competition law and active competition advocacy can also be powerful catalysts for successful economic restructuring. This in turn fosters flexibility and mobility of resources, which in the current global business environment are critical elements for the competitiveness of firms and industries across nations. Although the field of competition law and policy is evolving rapidly and includes many different viewpoints on specific issues,

recognition is growing that effective competitionlaw is important in shaping business culture and that its proper implementation needs to allow for the education ofbusiness people, government officials, the judiciary, and the interested public.

The basic purpose of Competition Policy and law is to preserve and promote competition as a means of ensuring efficient allocation of resources in an economy. Competition policy typically has two elements: one is a set of policies that enhance competition in local and national markets. The second element is legislation designed to prevent anti- competitive business practices with minimal Government intervention, i.e., a competition law. Competition law by itself cannot produce or ensure competition in the market unless this is facilitated by appropriate Government policies. On the other hand, Government policies without a law to enforce such policies and prevent competition malpractices would also be incomplete.

Competition policies cover a much broader set of instruments than competition law and typically include all policies aimed at increasing the intensity of competition or rivalry in local and national markets by lowering entry barriers and opportunities for harmful coordination, to ensure that markets work effectively and serve the interests of all citizens. Competition law is only a subset of a nation's competition policies. Competition policies typically include pro-competition approaches to trade, investment, sectoral regulation, and consumer protection. The barriers to international or interregional trade, restrictions on Foreign Direct Investment (FDI) and technology transfers, restrictions on entry in regulated network utility industries, regulations affecting the registration of new enterprisesand the taxation and corporate governance of existing enterprises and rules on marketing practices all influence the extent of competitive pressures in markets and so are appropriate concerns of competition policies. In many countries, competition authorities have become the focal point for consultations and putting forward pro- competition viewpoints across a broad range of policy areas.

Asian Development Bank in "During economic transition or reforms", observed that "the benefits of an open market economy cannot be fully realized unless restrictions on competition are removed. Opening markets is not enough by itself for countries to begin reaping the benefits of competition; firms will still find incentives to engage in anti- competitive practices. Thus, the intended benefits of trade reforms may not be realized without active enforcementof competition law. This highlights the importance of having faith in the benefits of competition from an early stage of economic growth and of incorporating competition policy into the broader economic policy framework."

Prof. Paul Geroski, former Chairman, Competition Commission of the United Kingdom observed that "Competitionpolicy is about ensuring that markets are, and remain, competitive. This brings benefits to consumers eventually inall the ways. However, eliminating anti-competitive practices and dismantling monopoly positions that lead to abuses also benefit firms whose business suffers from these practices and abuses. It is worth emphasizing that many of the benefits that emanate from proper application of competition policy are felt in the first instance by firms. This is important for those who seem to think of competition policy as an added and unnecessary burden on business. Competition policy is sometimes a burden on business, but only on those businesses that try to unfairly disadvantage their rivals in ways that reduce their competitive abilities or incentives to compete vigorously".

Hence, competition policy and competition law need to be distinguished. The former can be regarded as a genus, of which, the latter is specie.

COMPETITION REGIME IN INDIA

Historical Perspective

The Indian economy remained subject to controls and regulations for several decades, such as industrial licensing, foreign exchange restrictions, small scale industry protection, control on foreign investment and technologies, quantitative restrictions on imports, administered prices, and control on capital issues. The domestic industry was thus insulated from competition.

The economic consequences of this policy regime, though initially beneficial, were reflected in a poor rate of economic growth, low levels of productivity and efficiency, absence of international competitiveness, sub- optimal size of businesses, and outdated and inefficient technologies in various sectors.

India has therefore witnessed two phases of development process with different policy regimes and institutional frameworks. In the first phase, since independence, the transformation and development of the Indian economy took place within a planned, rigidly regulated and relatively closed economic framework. In the second phase, since 1991, when the country embarked upon reform process and embraced market oriented policies.

In the late 1980s and early 1990s, need for liberalization policies was recognized and a range of policy and regulatory reforms were initiated, such as delicensing of industry, shrinking the monopoly of the public sector industries (other than those where strategic and security concerns dominated), removal of quantitative restrictions on imports, market determined exchange rate, liberalization of foreign direct investment, capital market reforms, liberalizing the financial markets, reduction in small scale industry reservations, and a much greater role for the private sector in infrastructure industries such as power, port, transport and communications.

Economic Reforms and Competition

The world economy has been experiencing a progressive international economic integration for the last half a century. There has been a marked acceleration in this process of globalisation and also liberalisation during the last three decades.

Since 1991, the Government of India has introduced a series of economic reforms, including policies of liberalisation, deregulation, disinvestment and privatisation. The seriousness of macroeconomic imbalances and unanimity towards reform rendered this possible. The broad thrust of the new policies was a move away from the centralised allocation of resources in some key sectors by the government to allocation by market forces. Private participation in economic development has emerged as an alternative to the state-oriented development strategy in the reform period.

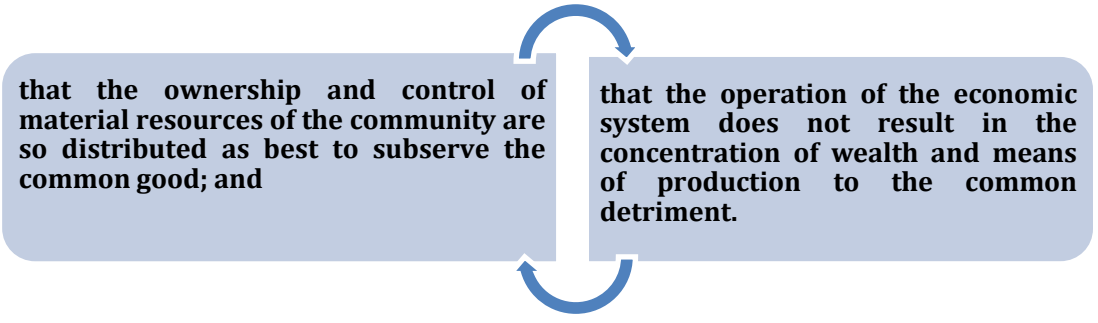
After a decade of reforms, restraints to competition such as state monopolies and protective measures and controls have been replaced by relatively more competitive and de-regulated open market policies. In the post reform period, the private sector participation in production and supply of utility services has increased substantially. Independent regulators have been established for many sectors such as road, power, telecommunications and insurance. These sectoral regulators have been empowered to determine sector specific entry conditions and eventually the level of competition. In nutshell, post reforms period witnessed an open market orientation in industrial policy, foreign trade policy, foreign investment policy and financial sector policy, infrastructure policy, etc.

After Independence, India pursued a strategy of planned economic development, with the objective of developing a broad industrial base to achieve speedy economic self-reliance and promoting social justice. The industrial policy assigned commanding heights of the economy to the public sector. The State exercised control over the direction, pattern and quantum of investments through the Industries (Development & Regulation) Act, 1951 and the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). A major part of the financial sector was also kept under Government control while a number of products were also subjected to price and distribution controls coupled with extensive reservations and concessions in favour of small-scale industry. The trade policy too affected competition by providing a high level of protection to domestic industry. These restrictions, which were in consonance with the National Strategic Policies at that time and relevant in the context of limited resources and need of checking monopolies and concentration of economic power, did nevertheless, impacted competition. However, gradually, and from 1980 onwards, incremental changes were brought in to usher in greater competition. The Industrial Policy Statement of 1980 introduced greater competition in the domestic market, technological up-gradation and modernisation. The major reforms initiated from 1991 onwards were, however, on a much broader scale, sweep and scope, and provided a new paradigm shift to economic growth in India, releasing new entrepreneurial energy and dynamism in the Indian industry, diversification of domestic production and stimulating exports, adding to the GDP growth.

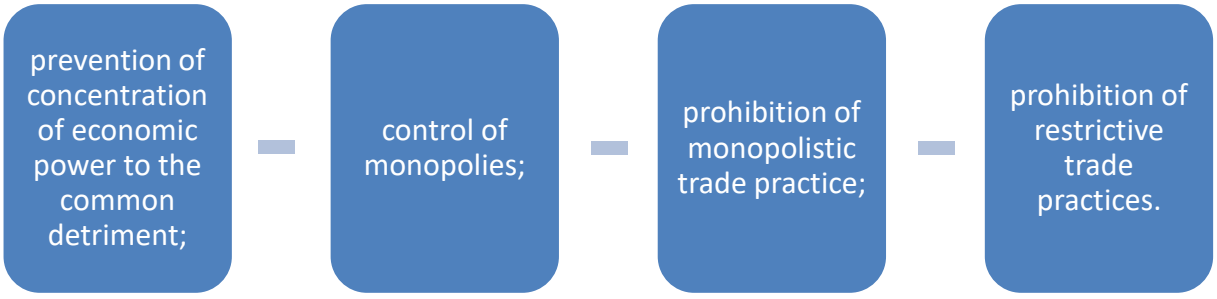
Since 1991 have witnessed significant changes in terms of opening of markets, factor mobility and regulatory environment. The benefits have been substantial and manifested in various segments of economy, e.g. telecom, civil aviation, transport, manufacturing, etc. However, the progress has been somewhat uneven, and so also the trickledown effects on the common man. Underlying this success is a structural shift in India's growth trajectory. Further, like many other similar economies under transition, there have been residual restraints and anti-competitive traits in several areas of economy. While the process of reforms is a continuing one, the pace and direction necessitates the introduction of an overarching National Competition Policy to realise the fuller growth potential of the economy.

Competition Law-Evolution and Development

The first Indian competition law was enacted in 1969 and was christened as the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). The genesis of the MRTP Act, 1969 is traceable to Articles 38 and 39 of the Constitution of India. The Directive Principle of State Policy in those Articles lays down, *inter-alia* that the State shall strive to promote the welfare of the people by securing and protecting as effectively, as it may, a social order in which justice - social, economic and political- shall inform all the institutions of the national life, and the State shall, in particular, direct its policy towards securing:



The principal objectives of the Act, as spelt out in the preamble were:



The MRTP Act, 1969 underwent amendments in 1974, 1980, 1982, 1984, 1986, 1988 and 1991. Major changes introduced in the 1982 and 1984 Amendment Acts were based on the recommendations of the Sachar Committee. The 1984 amendment introduced the concept of unfair trade practice under the Act. Far-reaching changes have been brought about by the 1991 amendment and these were made in the wake of new industrial policy of July, 1991 which is wedded to liberalisation, globalisation and de-regulation.

Recommendations of Sachar Committee

The Government of India appointed a Committee in August, 1977 under the Chairmanship of Justice Rajinder Sachar to look into the simplification of the working of the companies and the MRTP Act. The Committee submitted its report in the year 1978 and as far as recommendations pertaining to the MRTP Act are concerned, far reaching changes were suggested by the Committee. For the first time, the Committee highlighted the need for introduction of suitable provisions to curb unfair trade practices.

In its view, the assumption that curbing monopolistic and restrictive trade practices and thereby preventing distortion of competition automatically results in the consumers getting a fair deal was only partly true. It was feltnecessary to protect the consumers from practices adopted by trade and industry to mislead or dupe them.

The Committee pointed out that advertisements and sales promotion having become well established modes of modern business techniques, representations through such advertisements to the consumer should not become deceptive. If a consumer was falsely induced to enter into buying goods which do not possess the quality and did not have the cure for the ailment advertised, it was apparent that the consumer was being made to pay for quality of things on false representation. Such a situation could not be accepted.

Therefore, an obligation is to be cast on the seller to speak the truth when he advertises and also to avoid half-truths,the purpose being preventing false or misleading advertisements.

The Committee also noted that fictitious bargain was another common form of deception and many devices were used to lure buyers into believing that they were getting something for nothing or at a nominal value for their money. The Committee observed: Prices may be advertised as greatly reduced and cut when in reality the goods may be sold at sellers regular prices. Advertised statements that could have two meanings, one of which is false, are also considered misleading. In America, it was held that statement that a tooth paste fights decay could be interpreted as a promise of complete protection and was thus deceptive. Mock-ups on television put up by companies including Colgate Palmolive had also received the attention of the

Enforcement Agencies in America and have been held to be deceptive.

We cannot say that the type of misleading and deceptive practices which are to be found in other countries are not being practised in our country. Unfortunately, our Act is totally silent on this aspect. The result is that the consumer has no protection against false or deceptive advertisements. Any misrepresentation about the quality of a commodity or the potency of a drug or medicine can be projected without much risk. This has created a situation of a very safe haven for the suppliers and a position of frustration and uncertainty for the consumers.

It should be the function of any consumer's legislation to meet this challenge specifically. Consumer protection must have a positive and active role.

Accordingly, the Committee specified certain unfair trade practices which were notorious and suggested prohibition of such practices. The main category of unfair trade practices recommended for prohibition by the Sachar Committee were: (a) misleading advertisements and false representations (b) bargain sale, bait and switch selling; (c) offering gifts or prizes with the intention of not providing them and conducting promotional contests; (d) supplying goods not conforming to safety standards; and (e) hoarding and destruction of goods.

In India, by an amendment to the MRTP Act in the year 1984 Part B Unfair Trade Practices was added to Chapter V. It may be recalled that Part A of Chapter V deals with registration of agreements relating to restrictive trade practices. Section 36A, 36B, 36C, 36D and 36E are relevant for the purposes of understanding the main provisions relating to unfair trade practices.

Recommendations of Raghavan Committee

As India moved steadily on the path of reforms comprising of Liberalisation, Privatisation and Globalisation, it did away with the MRTP Act, 1969 as it was realised that the Act had outlived its utility and control of monopoly was not appropriate to support the growth aspirations of more than 1 billion Indians. Indeed, need was felt to promote and sustain competition in the market place. The then Finance Minister (Shri.Yashwant Sinha) in the budget speech in 1999 had announced:

"The Monopolies and Restrictive Trade Practices Act has become obsolete in certain areas in the light of international economic developments relating to competition laws. We need to shift our focus from curbing monopolies to promoting competition. Government has decided to appoint a Committee to examine this range of issues and propose a modern Competition Law suitable for our conditions."

Accordingly, a High-Level Committee on Competition Policy and Law was constituted under Chairmanship of Mr.

S.V.S Raghavan. The Committee submitted its report on 22nd May 2000 recommending replacement of the MRTP Act with a modern competition law for fostering competition and for eliminating anticompetitive practices in the economy. After consulting the stakeholders, Competition Bill, 2001 was introduced in the Parliament which eventually became the Competition Act, 2002.

The purpose of the Competition Act, as stated in its preamble is: *"An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in*

markets, in India, and for matters connected therewith or incidental thereto."

Why do we need competition in the market?

Competition is now universally acknowledged as the best means of ensuring that consumers have access to the broadest range of services at the most competitive prices. Producers will have maximum incentive to innovate, reduce their costs and meet consumer demand. Competition thus promotes allocative and productive efficiency. But all this requires healthy market conditions and governments across the globe are increasingly trying to remove market imperfections through

COMPETITION ACT, 2002

The Competition Act, 2002 has been enacted to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in the markets, to protect the interest of consumers and to ensure freedom of trade carried on by other participant in the markets in India and for matters connected therewith or incidental thereto.

The provisions relating to prohibition of anti-competitive agreements and abuse of dominant position came into effect from May 20, 2009 and the merger regulation regime has been enforced with effect from June 1, 2011. The Competition Act, 2002 last amended by Competition (Amendment) Act, 2023.

Scheme of the Act

The Scheme of the Act has been split into nine chapters indicated hereunder: Chapter I contains preliminary provisions viz. Short title, extent and Definition clauses; Chapter II provides for substantive laws i.e. Anti-Competitive Agreements, Abuse of Dominance and Regulation of Combinations; Chapter III contains provisions relating to Establishment of Commission, Composition of Commission, Selection of Committee for Chairperson and other Members, Term of Office of Chairperson etc. Chapter IV elaborately provides the Duties, Powers and Functions of the Commission; Chapter V provides for the Duties of Director General; Chapter VI stipulates Penalties for Contravention of Orders of Commission, Failure to Comply with Directions of Commission and Director-General, Making False Statement or Omission to Furnish Material Information etc; Chapter VII deals with Competition Advocacy; Chapter VIII contains provisions relating to Finance, Accounts and Audit, Chapter VIII A contains provisions relating to "Appellate Tribunal" and Chapter IX contains Miscellaneous provisions.

CASE LAWS

Hon'ble Supreme Court in ***CCI v. Bharati Airtel Civil Appeals arising out of SLP (C) No. 35574 of 2017 & Ors December 05, 2018*** observed that in the wake of globalisation and keeping in view the economic development of the country, responding to opening of its economy and resorting to liberalisation, need was felt to enact a law that ensures fair competition in India by prohibiting trade practices which cause an appreciable adverse effect on competition within markets in India and for establishment of an expert body in the form of Competition Commission of India, which would

discharge the duty of curbing negative aspects of competition, the Competition Act, 2002 has been enacted by the Parliament.

The Act deals with three kinds of practices which are treated as anti-competitive and are prohibited. These are:

a) where agreements are entered into by certain persons with a view to cause an appreciable adverse effect on competition;

b) where any enterprise or group of enterprises, which enjoys dominant position, abuses the said dominant position; and

c) regulating the combination of enterprises by means of mergers or amalgamations to ensure that such mergers or amalgamations do not become anti-competitive or abuse the dominant position which they can attain.

Hon'ble Supreme Court in Competition Commission of ***India v. SAIL (2010) 10 SCC 744*** observed that it is well settled that the Competition Act, 2002 is a regulatory legislation enacted to maintain free market so that the Adam Smith's concept of invincible hands operate unhindered in the background. Further it is clear from the Statement of objects and reason that this law was foreseen as a tool against concentration of unjust monopolistic powers at the hands of private individuals which might be detrimental for freedom of trade. Competition law in India aims to achieve highest sustainable levels of economic growth, entrepreneurship, employment, higher standards of living for citizens, protect economic rights for just, equitable, inclusive and sustainable economic and social development, promote economic democracy, and support good governance by restricting rent seeking practices.

Therefore, an interpretation should be provided which is in consonance with the aforesaid objectives. As far as the objectives of competition laws are concerned, they vary from country to country and even within a country they seem to change and evolve over the time. However, it will be useful to refer to some of the common objectives of competition law. The main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of market responsive to consumer preferences. The advantages of perfect competition are threefold: allocative efficiency, which ensures the effective allocation of resources, productive efficiency, which ensures that costs of production are kept at a minimum and dynamic efficiency, which promotes innovative practices. These factors by and large have been accepted all over the world as the guiding principles for effective implementation of competition law.

In the case of ***Excel Crop Care Limited v. Competition Commission of India and Another (Civil Appeal No. 2480 of 2014)*** judgement dated May 08, 2017 the Hon'ble Supreme Court of India observed that the Act, which prohibits anti-competitive agreements, has a laudable purpose behind it. It is to ensure that there is a healthy competition in the market, as it brings about various benefits for the public at large as well as economy of the nation. In fact, the ultimate goal of competition policy (or for that matter, even the consumer policies) is to enhance consumer well-being. These policies are directed at ensuring that markets function effectively. Competition policy towards the supply side of the market aims to ensure that consumers have adequate and affordable choices. Another purpose in curbing anti-competitive agreements is to ensure 'level playing field' for all market players that helps markets to be competitive. It sets 'rules of the game' that protect the competition process itself, other than competitors in the market. In this way, the pursuit of fair and effective competition can contribute to improvements in economic efficiency, economic growth and development of consumer welfare. How these benefits accrue is explained in ASEAN Regional Guidelines on Competition Policy.

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purpose behind it. The benefits of which are explained in ASEAN Regional Guidelines on Competition Policy and are as follows:

"2.2 Main Objectives and Benefits of Competition Policy"

2.2.1.1 ***Economic efficiency:*** *Economic efficiency refers to the effective use and allocation of the economy's resources. Competition tends to bring about enhanced efficiency, in both a static and a dynamic sense, by disciplining firms to produce at the lowest possible cost and pass these cost savings on to consumers, and motivating firms to undertake research and development to meet customer needs.*

2.2.1.2 ***Economic growth and development:*** *Economic growth–the increase in the value of goods and services produced by an economy – is a key indicator of economic development. Economic development refers to a broader definition of an economy's well-being, including employment growth, literacy and mortality rates and other measures of quality of life. Competition may bring about greater economic growth and development through improvements in economic efficiency and the reduction of wastage in the production of goods and services. The market is therefore able to more rapidly reallocate resources, improve productivity and attain a higher level of economic growth. Over time, sustained economic growth tends to lead to an enhanced quality of life and greater economic development.*

2.2.1.3 ***Consumer Welfare:*** *Competition policy contributes to economic growth to the ultimate benefit of consumers, in terms of better choice (new products), better quality and lower prices. Consumer welfare protection may be required in order to redress a perceived imbalance between the market power of consumers and producers. The imbalance between consumers and producers may stem from market failures such as information asymmetries, the lack of bargaining position towards producers and high transaction costs. Competition policy may serve as a complement to consumer protection policies to address such market failures."*

The aforesaid guidelines also spell out few more benefits of such laws incorporating competition policies by highlighting the following advantages:

"2.2.2 In addition, competition policy is also beneficial to developing countries. Due to worldwide deregulation, privatisation and liberalisation of markets, developing countries need a competition policy, in order to monitor and control the growing role of the private sector in the economy so as to ensure that public monopolies are not simply replaced by private monopolies.

2.2.3 Besides contributing to trade and investment policies, competition policy can accommodate other policy objectives (both economic and social) such as the integration of national markets and promotion of regional integration, the promotion or protection of small businesses, the promotion of technological advancement, the promotion of product and process innovation, the promotion of industrial diversification, environment protection, fighting inflation, job creation, equal treatment of workers according to race and gender or the promotion of welfare of particular consumer groups.

In particular, competition policy may have a positive impact on employment policies, reducing redundant employment (which often results from inefficiencies generated by large incumbents and from the fact that more dynamic enterprises are prevented from entering the market) and favouring

jobs creation by new efficient competitors.

2.2.4 Competition policy complements trade policy, industrial policy and regulatory reform. Competition policy targets business conduct that limits market access and which reduces actual and potential competition, while trade and industrial policies encourage adjustment to the trade and industrial structures in order to promote productivity-based growth and regulatory reform eliminates domestic regulation that restricts entry and exit in the markets. Effective competition policy can also increase investor confidence and prevent the benefits of trade from being lost through anticompetitive practices. In this way, competition policy can be an important factor in enhancing the attractiveness of an economy to foreign direct investment, and in maximizing the benefits of foreign investment."

Further, the Apex Court inter alia observed that in fact, there is broad empirical evidence supporting the proposition that competition is beneficial for the economy. Economists agree that it has an important role to play in improving productivity and, therefore, the growth prospects of an economy. It is achieved in the following manner:

"International Competition Network - Economic Growth and Productivity:

Competition contributes to increased productivity through:

Pressure on firms to control costs**:** *In a competitive environment, firms must constantly strive to lower their production costs so that they can charge competitive prices, and they must also improve their goods and services so that they correspond to consumer demands.*

Easy market entry and exit**:** *Entry and exit of firms reallocates resources from less to more efficient firms. Overall productivity increases when an entrant is more efficient than the average incumbent and when an exiting firm is less efficient than the average incumbent. Entry – and the threat of entry –incentivizes firms to continuously improve in order not to lose market share to or be forced out of the market by new entrants.*

Encouraging innovation: *Innovation acts as a strong driver of economic growth through the introduction of new or substantially improved products or services and the development of new and improved processes that lower the cost and increase the efficiency of production. Incentives to innovate are affected by the degree and type of competition in a market.*

Pressure to Improve Infrastructure**: *Competition puts pressure on communities to keep local producers competitive by improving roads, bridges, docks, airports, and communications, as well as improving educational opportunities.***

Benchmarking: *Competition also can contribute to increased productivity by creating the possibility of benchmarking. The productivity of a monopolist cannot be measured against rivals in the same geographic market, but a dose of competition quickly will expose inferior performance. A monopolist may be content with mediocre productivity but a firm battling in a competitive market cannot afford to fall behind, especially if the investment community is benchmarking it against its rivals." Productivity is increased through competition by putting pressure on firms to control costs as the producers strive to lower their production costs so that they can charge competitive prices. It also*

improves the quality of their goods and services so that they correspond to consumers' demands. Competition law enforcement deals with anti-competitive practices arising from the acquisition or exercise of undue market power by firms that result in consumer harm in the forms of higher prices, lower quality, limited choices and lack of innovation. Enforcement provides remedies to avoid situations that will lead to decreased competition in markets. Effective enforcement is important not only to sanction anti-competitive conduct but also to deter future anti-competitive practices.

Keeping in view the aforesaid objectives that need to be achieved, Indian Parliament enacted Competition Act, 2002. Need to have such a law became all the more important in the wake of liberalisation and privatisation as it was found that the law prevailing at that time, namely, Monopolistic Restrictive Trade Practices Act, 1969 was not equipped adequately enough to tackle the competition aspects of the Indian economy. The law enforcement agencies, which include CCI and COMPAT, have to ensure that these objectives are fulfilled by curbing anti-competitive agreements.

IMPORTANT DEFINITIONS

"Acquisition" means, directly or indirectly, acquiring or agreeing to acquire—

i. shares, voting rights or assets of any enterprise; or
ii. control over management or control over assets of any enterprise. [Section 2(a)]

"Agreement" includes any arrangement or understanding or action in concert, —

i. whether or not, such arrangement, understanding or action is formal or in writing; or
ii. whether or not such arrangement, understanding or action is intended to be enforceable bylegal proceedings. [Section 2(b)]

"Appellate Tribunal" means the National Company Law Appellate Tribunal referred to in sub-section (*1*) of section 53A. [Section 2(ba)]

"Cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services. [Section 2(c)]

The nature of a cartel is to raise price above competitive levels, resulting in injury to consumers and to the economy.For the consumers, cartelisation results in higher prices, poor quality and less or no choice for goods or/and services. An international cartel is said to exist, when not all of the enterprises in a cartel are based in the same country or when the cartel affects markets of more than one country. An import cartel comprises enterprises (including an association of enterprises) that get together for the purpose of imports into the country.

An export cartel is made up of enterprises based in one country with an agreement to cartelize markets in other countries. In the Competition Act, cartels meant exclusively for exports have been excluded from the provisions relating to anti-competitive agreements. This is because such cartels do not adversely affect markets in India and are hence outside the purview of the Competition Act. If there is effective competition in the market, cartels would find it difficult to be formed and sustained.

Some of the conditions that are conducive to cartelization are:

- high concentration - few competitors
- high entry and exit barriers
- homogeneity of the products (similar products)
- similar production costs
- excess capacity
- high dependence of the consumers on the product
- history of collusion

"Chairperson" means the Chairperson of the Commission appointed under sub-section (*1*) of section 8. [Section 2(d)]

"Commission" means the Competition Commission of India established under sub-section (*1*) of section 7. [Section 2(e)]

"Commitment" means the commitment referred to in section 48B. [Section 2(ea)]

"Consumer" means any person who—

i. buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;

ii. hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use. [Section 2(f)]

"Director General" means the Director General appointed under sub-section (*1*) of section 16 and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section. [Section 2(g)]

"Enterprise" means a person or a department of the Government, including units, divisions, subsidiaries, who or which is, or has been, engaged in any economic activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Explanation. —For the purposes of this clause, —

a. "activity" includes profession or occupation;
b. "article" includes a new article and "service" includes a new service;
c. "unit" or "division", in relation to an enterprise, includes—
    a. a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;
    b. any branch or office established for the provision of any service. [Section 2(h)]

"Goods" means goods as defined in the Sale of Goods Act, 1930 and includes—

a. products manufactured, processed or mined;
b. debentures, stocks and shares after allotment;
c. in relation to goods supplied, distributed or controlled in India, goods imported into India. Section 2(i)]

"Member" means a Member of the Commission appointed under sub-section (*1*) of section 8 and includes the Chairperson. [Section 2(j)]

"Notification" means a notification published in the Official Gazette. [Section 2(k)]

"Party" includes a consumer or an enterprise or a person or an information provider, or a consumer association or a trade association, or the Central Government or any State Government or any statutory authority, as the case may be, and shall include an enterprise or a person against whom any inquiry or proceeding is instituted; and any enterprise or person impleaded by the Commission to join the proceedings. Section 2(ka)]

"Person" includes—

i. an individual;
ii. a Hindu undivided family;
iii. a company;
iv. a firm;
v. an association of persons or a body of individuals, whether incorporated or not, in India oroutside India;
vi. any corporation established by or under any Central, State or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;
vii. anybody corporate incorporated by or under the laws of a country outside India;
viii. a co-operative society registered under any law relating to co-operative societies;
ix. a local authority;
x. every artificial juridical person, not falling within any of the preceding sub-clauses. [Section 2(l)]

"Practice" includes any practice relating to the carrying on of any trade by a person or an enterprise. [Section 2(m)]

"Prescribed" means prescribed by rules made under this Act. [Section 2(n)]

"Price", in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, or deferred, and includes any consideration

which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing. [Section 2(o)]

"Public Financial Institution" means public financial institution as defined in clause (*72*) of section 2 of the Companies Act, 2013 and includes a State Financial Corporation, State Industrial Corporation or State Investment Corporation. [Section 2(p)]

"Regulations" means the regulations made by the Commission under section 64. [Section 2(q)]

"Relevant Market" means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets. [Section 2(r)]

"Relevant Geographic Market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas. [Section 2(s)]

"Relevant Product Market" means a market comprising of all those products or services—

i. which are regarded as inter-changeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use; or

ii. the production or supply of, which are regarded as interchangeable or substitutable bythe supplier, by reason of the ease of switching production between such products and services and marketing them in the short term without incurring significant additional costs orrisks in response to small and permanent changes in relative prices. [Section 2(t)]

"Service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.[Section 2(u)]

"Settlement" means the settlement referred to in section 48A. [Section 2(ua)]

"Shares" means shares in the share capital of a company carrying voting rights and includes—

i. any security which entitles the holder to receive shares with voting rights;
ii. stock except where a distinction between stock and share is expressed or implied.[Section 2(v)]

"Statutory Authority" means any authority, board, corporation, council, institute, university or any other body corporate, established by or under any Central, State or Provincial Act for the purposes of regulating production or supply of goods or provision of any services or markets therefor or any matter connected therewith or incidental thereto. [Section 2(w)]

"Trade" means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services. [Section 2(x)]

"Turnover" includes value of sale of goods or services. [Section 2(y)]

Words and Expressions used but not defined in this Act and defined in the Companies Act, 2013 shall have the same meanings respectively assigned to them in that Act. [Section 2(z)]

PROHIBITION OF CERTAIN AGREEMENTS

Section 3 deals with anti-competitive agreements. Section 3(1) provides that no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

As per Section3(2) any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void.

Section 3(3) states that any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

a) directly or indirectly determines purchase or sale prices;

b) limits or controls production, supply, markets, technical development, investment or provisionof services;

c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

d) directly or indirectly results in bid rigging or collusive bidding,

shall be presumed to have an appreciable adverse effect on competition.

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Provided further that an enterprise or association of enterprises or a person or association of persons though not engaged in identical or similar trade shall also be presumed to be part of the agreement under this sub-section if it participates or intends to participate in the furtherance of such agreement.

Explanation. —For the purposes of this sub-section, ***"bid rigging"*** means any agreement, between enterprises or persons referred to in sub-section (*3*) engaged in identical or similar production or tradingof goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

Bid rigging is anti-competitive

Bidding, as a practice, is intended to enable the procurement of goods or services on the most

favourable terms and conditions. Invitation of bids is resorted to both by Government (and Government entities) and private bodies (companies, corporations, etc.). But the objective of securing the most favourable prices and conditions may be negated if the prospective bidders collude or act in concert. Such collusive bidding or bid rigging contravenes the very purpose of inviting tenders and is inherently anti-competitive.

Some of the most commonly adopted ways in which collusive bidding or bid rigging may occur are:

- agreements to submit identical bids
- agreements as to who shall submit the lowest bid, agreements for the
- submission of cover bids (voluntarily inflated bids)
- agreements not to bid against each other,
- agreements on common norms to calculate prices or terms of bids
- agreements to squeeze out outside bidders
- agreements designating bid winners in advance on a rotational basis, or on a geographical or customer allocation basis.

If bid rigging takes place in Government tenders, it is likely to have severe adverse effects on its purchases and on public spending. Bid rigging or collusive bidding is treated with severity in the law. The presumptive approach reflects the severe treatment.

Section 3(4) provides that any other agreement amongst enterprises or persons including but not restricted to agreement amongst enterprises or persons at different stages or levels of the production chain in different markets,in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

a) tie-in arrangement;
b) exclusive dealing agreement;
c) exclusive distribution agreement;
d) refusal to deal;
e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause anappreciable adverse effect on competition in India.

Provided that nothing contained in this sub-section shall apply to an agreement entered into between an enterprise and an end consumer.

Explanation. —For the purposes of this sub-section, —

a) ***"Tie-In Arrangement"*** includes any agreement requiring a purchaser of goods or services, as a condition of such purchase, to purchase some other distinct goods or services;

b) ***"Exclusive Dealing Agreement"*** includes any agreement restricting in any manner the purchaseror the seller, as the case may be, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person, as the case may be;

c) ***"Exclusive Distribution Agreement"*** includes any agreement to limit, restrict or withhold the output or supply of any goods or services or allocate any area or market for the disposal or sale of the goods or services;

d) ***"Refusal to Deal"*** includes any agreement which restricts, or is likely to restrict, by any methodthe persons or classes of persons to whom goods or services; are sold or from whom goods or services are bought;

e) ***"Resale Price Maintenance"*** includes, in case of any agreement to sell goods or provide services, any direct or indirect restriction that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

It may be noted that Section 3 shall not restrict—

i. the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under—
   a. the Copyright Act, 1957;
   b. the Patents Act, 1970;
   c. the Trade and Merchandise Marks Act, 1958 or the Trade Marks Act, 1999;
   d. the Geographical Indications of Goods (Registration and Protection) Act, 1999;
   e. the Designs Act, 2000;
   f. the Semi-conductor Integrated Circuits Layout-Design Act, 2000;
   g. any other law for the time being in force relating to the protection of other intellectualproperty rights.

ii. the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

What Is An Anti-Competitive Agreement?

An anti-competitive agreement is an agreement having appreciable adverse effect on competition. Anti-competitive agreements include, but are not limited to:-

- agreement to limit production and/or supply;
- agreement to allocate markets;
- agreement to fix price;
- bid rigging or collusive bidding;
- conditional purchase/ sale (tie-in arrangement);
- exclusive supply / distribution arrangement;
- resale price maintenance; and
- refusal to deal.

PROHIBITION OF ABUSE OF DOMINANT POSITION

According to Section 4(1) of the Act, no enterprise or group shall abuse its dominant position.

Section 4(2) states that there shall be an abuse of dominant position under sub-section (1), if an enterprise or a group, —

a. directly or indirectly, imposes unfair or discriminatory—
   i. condition in purchase or sale of goods or service; or
   ii. price in purchase or sale (including predatory price) of goods or service.

Explanation. —For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such condition or price which may be adopted to meet the competition; or

b. limits or restricts—
   i. production of goods or provision of services or market therefor; or
   ii. technical or scientific development relating to goods or services to the prejudice of consumers; or
c. indulges in practice or practices resulting in denial of market access in any manner; or
d. makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
e. uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation. — For the purposes of this section, the expression—

"Dominant Position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—

i. operate independently of competitive forces prevailing in the relevant market; or
ii. affect its competitors or consumers or the relevant market in its favour.

"Predatory Price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

"Group" means two or more enterprises where one enterprise is directly or indirectly, in a position to—

i. exercise twenty-six per cent. or such other higher percentage as may be prescribed, of the voting rights in the other enterprise; or
ii. appoint more than fifty per cent. of the members of the board of directors in the other enterprise; or
iii. control the management or affairs of the other enterprise.

What Constitutes Abuse of Dominance?

Dominance refers to a position of strength which enables an enterprise to operate independently of competitive forces or to affect its competitors or consumers or the market in its favour. Abuse of dominant position impedes fair competition between firms, exploits consumers and makes it difficult for the other players to compete with the dominant undertaking on merit. Abuse of dominant position includes:

i. imposing unfair conditions or price,
ii. predatory pricing,
iii. limiting production/market or technical development,
iv. creating barriers to entry,
v. applying dissimilar conditions to similar transactions,
vi. denying market access, and
vii. using dominant position in one market to gain advantages in another market.

CASE LAW

In the case of ***Mr. Umar Javeed and Others Vs. Google LLC and Another in Case No. 39 of 2018***, the Competition Commission of India (CCI) vide its Order dated 20th October, 2022 inter alia observed that the Commission has carefully perused the provisions of Section 4 of the Act and on a holistic consideration thereof, it is observed that "dominant position" under the Act has been defined as meaning a position of strength, enjoyed by an enterprise, in the relevant market which enables it to operate independently of competitive forces or to affect its competitors or consumers in its favour. Thus, once an entity is found to be dominant in the relevant market, the Act recognizes its ability to adversely affect competition in the market unilaterally through its conducts. As such, the dominant enterprise is clothed with a special responsibility not to indulge in the conducts which are enumerated in Section 4(2) of the Act. Resultantly, once a dominant undertaking is found to have indulged in any of the acts provided in Section 4(2) of the Act, the contravention of the Act stands established. This is further evident from the phraseology used in Section 4(2) of the Act which, inter alia, provides that there shall be an abuse of dominant position if an enterprise directly or indirectly "imposes" unfair or discriminatory condition/ price in purchase or sale of goods or services. The moment there is any imposition of any unfair or discriminatory condition by a dominant player, the statutory prohibitions shall trigger. The same is true for other instances of abuse as enshrined in Section 4(2) of the Act as well and the same also have to be read in this manner, which is consistent with the avowed objectives of the Act…… .

COMBINATION

Section 5 of the Competition Act, 2002 provides that the acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if—

a. any acquisition where—
   i. the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have —

A. either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or
B. in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or

ii. the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,—

A. either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or
B. in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or

b. acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if—

i. the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have, —

A. either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or
B. in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or

ii. the group, to which enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have, —

A. either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

B. in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or

c. any merger or amalgamation in which—

i. the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have, —

A. either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

B. in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or

ii. the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have, —

A. either in India, the assets of the value of more than rupees four-thousand crores or turnover more than rupees twelve thousand crores; or

B. in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India.

d. value of any transaction, in connection with acquisition of any control, shares, voting rights or assets of an enterprise, merger or amalgamation exceeds rupees two thousand crore:

Provided that the enterprise which is being acquired, taken control of, merged or amalgamated has such substantial business operations in India as may be specified by regulations.

e. notwithstanding anything contained in clause (*a*) or clause (*b*) or clause (*c*), where either the value of assets or turnover of the enterprise being acquired, taken control of, merged or amalgamated in India is not more than such value as may be prescribed, such acquisition, control, merger or amalgamation, shall not constitute a combination under section 5.

Explanation. —For the purposes of section 5 —

a. ***"Control"*** means the ability to exercise material influence, in any manner whatsoever, over the management or affairs or strategic commercial decisions by—
   i. one or more enterprises, either jointly or singly, over another enterprise or group; or
   ii. one or more groups, either jointly or singly, over another group or enterprise;

b. ***"Group"*** means two or more enterprises where one enterprise is directly or indirectly, in a position to—
   i. exercise twenty-six per cent. or such other higher percentage as may be prescribed, of the voting rights in the other enterprise; or
   ii. appoint more than fifty per cent. of the members of the board of directors in the other enterprise; or
   iii. control the management or affairs of the other enterprise;

c. ***"Turnover"*** means the turnover certified by the statutory auditor on the basis of the last available audited accounts of the company in the financial year immediately preceding the financial year in which the notice is filed under sub-section (*2*) or sub-section (*4*) of section 6 and such turnover in India shall be determined by excluding intra-group sales, indirect taxes, trade discounts and all amounts generated through assets or business from customers outside India, as certified by the statutory auditor on the basis of the last available audited accounts of the company in the financial year immediately preceding the financial year in which the notice is filed under sub-section (*2*) or sub-section (*4*) of section 6;

d. ***"Value of Transaction"*** includes every valuable consideration, whether direct or indirect, or deferred for any acquisition, merger or amalgamation;

e. ***the Value of Assets*** shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed combination falls and if such financial statement has not yet become due to be filed with the Registrar under the Companies Act, 2013 then as per the statutory auditor's report made on the basis of the last available audited accounts of the company in the financial year immediately preceding the financial year in which the notice is filed under sub-section (*2*) or sub-section (*4*) of section 6, as reduced by any depreciation,

and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights under the laws provided in sub-section (*5*) of section 3;

f. where a portion of an enterprise or division or business is being acquired, taken control of, merged or amalgamated with another enterprise, the value of assets or turnover or value of transaction as may be applicable, of the said portion or division or business or attributable to it, shall be the relevant assets or turnover or relevant value of transaction for the purpose of applicability of the thresholds under section 5.

What is Combination?

Broadly, combination under the Act means acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise where such person has direct or indirect control over another enterprise engaged in competing businesses, and mergers and amalgamations between or amongst enterprises when the combining parties exceed the thresholds set in the Act. The thresholds are specified in the Act in terms of assets or turnover in India and outside India. Entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India is prohibited and such combination shall be void.

THRESHOLDS FOR COMBINATION

In exercise of the powers conferred by sub-section (3) of Section 20 of the Competition Act, 2002, the Central Government vide its Notification dated March 07, 2024 and in consultation with the Competition Commission of India, enhanced, on the basis of the wholesale price index and exchange rate of rupee, the value of assets and the value of turnover, by One hundred and fifty percent for the purposes of section 5 of the Competition Act. The value of assets and turnover after revision is as under:

THRESHOLDS FOR FILING NOTICE				
Enterprise level		Assets		Turnover
	India	*> 2500 INR Crore*		*> 7500 INR Crore*
	In India or Outside India	*> USD 1.25 bn with at least > 1250 INR Crore in India*	Or	*> USD 3.75 bn with at least > 3750 INR Crore in India*
OR				
Group Level		Assets		Turnover
	India	*> 10000 INR Crore*		*> 30000 INR Crore*
	In India or Outside India	*> USD 5 bn with at least > 1250 INR Crore in India*	Or	*> USD 15 bn with at least > 3750 INR Crore in India*

De-Minimis Thresholds: In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002 it has also been decided with regards to de-minimis thresholds that the value of assets and turnover be enhanced from INR 350 crore (rupees three hundred fifty crore) to INR 450 crore (rupees four hundred fifty crore) for assets and from INR 1000 crore (rupees one thousand crore) to INR 1250 crore (rupees one thousand two hundred fifty crore) for turnover.

THRESHOLDS FOR AVALING OF DE-MINIMIS EXEMPTION				
		Assets	Or	Turnover
Target Enterprise	In India	< Rs.450 Crore		< Rs.1250 Crore

In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002, the Central Government vide Notification S.O. 1131(E) dated March 07, 2024 and in public interest exempted the enterprises being parties to ––

(a) any acquisition referred to in clause (a) of section 5 of the Competition Act;

(b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, referred to in clause (b)of section 5 of the Competition Act; and

(c) any merger or amalgamation, referred to in clause (c) of section 5 of the Competition Act,

where the value of assets being acquired, taken control of, merged or amalgamated is not more than rupees Four hundred and fifty crore in India or turnover of not more than rupees One thousand two hundred and fifty crore in India, from the provisions of section 5 of the said Act for a period of two years from the date of publication of this notification in the Official Gazette.

Where a portion of an enterprise or division or business is being acquired, taken control of, merged or amalgamated with another enterprise, the value of assets of the said portion or division or business and or attributable to it, shall be the relevant assets and turnover to be taken into account for the purpose of calculating the thresholds under section 5 of the Act. The value of the said portion or division or business shall be determined by taking the book

value of the assets as shown, in the audited books of accounts of the enterprise or as per statutory auditor's report where the financial statement have not yet become due to be filed, in the financial year immediately preceding the financial year in which the date of the proposed combination falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indications, geographical indications, design or layout- design or similar other commercial rights, if any, referred to in sub-section (5) of section 3. The turnover of the said portion or division or business shall be as certified by the statutory auditor on the basis of the last available audited accounts of the company.

REGULATION OF COMBINATIONS

Section 6(1) provides that no person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India

and such a combination shall be void.

Section 6(2) states that subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, shall give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, after any of the following, but before consummation of the combination of—

a. approval of the proposal relating to merger or amalgamation, referred to in clause (c) and clause (d) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation,as the case may be;

b. execution of any agreement or other document for acquisition referred to in clause (a) and clause (d) of section 5 or acquiring of control referred to in clause (b) of that section.

'Explanation. —For the purposes of this sub-section, ***"Other Document"*** means any document, by whatever name called, conveying an agreement or decision to acquire control, shares, voting rights or assets or if the acquisition is without the consent of the enterprise being acquired, any document executed by the acquiring enterprise, by whatever name called, conveying a decision to acquire control, shares or voting rights or where a public announcement has been made in accordance with the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 made under the Securities and Exchange Board of India Act, 1992 for acquisition of shares, voting rights or control such public document.

According to Section 6(2A), no combination shall come into effect until one hundred and fifty days have passed from the day on which the notice has been given to the Commission under sub-section (2) or the Commission has passed orders under section 31, whichever is earlier.

Section 6(3) provides that the Commission shall, after receipt of notice under sub-section (2), deal with such notice in accordance with the provisions contained in sections 29, 29A, 30 and 31.

Section 6(4) states that notwithstanding anything contained in sub-sections (2A) and (3) and section 43A, if a combination fulfils such criteria as may be prescribed and is not otherwise exempted under this Act from the requirement to give notice to the Commission under sub-section (2), then notice for such combination may be given to the Commission in such form and on payment of such fee as may be specified by regulations, disclosing the details of the proposed combination and thereupon a separate notice under sub-section (2) shall not be required to be given for such combination.

As per Section 6(5) upon filing of a notice under sub-section (4) and acknowledgement thereof by the Commission, the proposed combination shall be deemed to have been approved by the Commission under sub-section (1) of section 31 and no other approval shall be required under sub-section (2) or sub-section (2A).

Section 6(6) provides that if within the period referred to in sub-section (1) of section 20, the Commission finds that the combination notified under sub-section (4) does not fulfil the requirements specified under that sub-section or the information or declarations provided are

materially incorrect or incomplete, the approval under sub-section (5) shall be void ab initio and the Commission may pass such order as it may deem fit:

Provided that no such order shall be passed unless the parties to the combination have been given an opportunity of being heard.

Section 6(7) states that notwithstanding anything contained in this section and section 43A, upon fulfilment of such criteria as may be prescribed, certain categories of combinations shall be exempted from the requirement to comply with sub-sections (2), (2A) and (4).

Section 6(8) provides that notwithstanding anything contained in sub-sections (4), (5), (6) and (7)—

i. the rules and regulations made under this Act on the matters referred to in these sub-sections as they stood immediately before the commencement of the Competition (Amendment) Act, 2023 and in force at such commencement, shall continue to be in force, till such time as the rules or regulations, as the case may be, made under this Act; and

ii. any order passed or any fee imposed or combination consummated or resolution passed or direction given or instrument executed or issued or thing done under or in pursuance of any rules and regulations made under this Act shall, if in force at the commencement of the Competition (Amendment) Act, 2023, continue to be in force, and shall have effect as if such order passed or such fee imposed or such combination consummated or such resolution passed or such direction given or such instrument executed or issued or done under or in pursuance of this Act.

According to Section 6(9) the provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign portfolio investor, bank or Category I alternative investment fund, pursuant to any covenant of a loan agreement or investment agreement.

Explanation. —For the purposes of section 6, the expression—

(a) ***"Category I alternative investment fund"*** has the same meaning as assigned to it under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992;

(b) ***"foreign portfolio investor"*** has the same meaning as assigned to it under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 made under the Securities and Exchange Board of India Act,1992.

Open Offers, etc

Section 6A of the Act provides that nothing contained in section 6(2A) and section 43A shall prevent the implementation of an open offer or an acquisition of shares or securities convertible into other securities from various sellers, through a series of transactions on a regulated stock exchange from coming into effect, if—

(*a*) the notice of the acquisition is filed with the Commission within such time and in such manner as may be specified by regulations; and

(*b*) the acquirer does not exercise any ownership or beneficial rights or interest in such shares or convertible securities including voting rights and receipt of dividends or any other distributions, except as may be specified by regulations, till the Commission approves such acquisition in accordance with the provisions of sub-section (2A) of section 6 of the Act.

Explanation. —For the purposes of this section, ***"open offer"*** means an open offer made in accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 made under the Securities and Exchange Board of India Act, 1992.

COMPETITION COMMISSION OF INDIA

Establishment of Commission

Section 7 of the Act empowers the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the "Competition Commission of India".

The Commission shall be a body corporate by the name aforesaid having perpetual succession anda common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

The head office of the Commission shall be at such place as the Central Government may decide from time to time. The Commission may establish offices at other places in India.

Composition of Commission

According to Section 8 the Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government.

The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, technology, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.

The Chairperson and other Members shall be whole-time Members.

Selection Committee for Chairperson and Members of Commission

Section 9 provides that the Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of—

The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

Term of office of Chairperson and other Members

Section 9 of the Act states that the Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his officeand shall be eligible for re-appointment:

Provided that the Chairperson or other Members shall not hold office as such after he has attained the age of sixty-five years.

A vacancy caused by the resignation or removal of the Chairperson or any other Member under section 11 or by death or otherwise shall be filled by fresh appointment in accordance with the provisions of sections 8 and 9.

The Chairperson and every other Member shall, before entering upon his office, make and subscribe to an oath of office and of secrecy in such form, manner and before such authority, as may be prescribed.

In the event of the occurrence of a vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson, until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes the charge of his functions.

Resignation, Removal and Suspension of Chairperson and other Members

Section 10(1) provides that the Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

It may be noted that the Chairperson or a Member shall, unless he is permitted by the Central

Government torelinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

As per Section 10(2) notwithstanding anything contained in sub-section (1), the Central Government may, by order, remove the Chairperson or any other Member from his office if such Chairperson or Member, as the case may be,—

a) is, or at any time has been, adjudged as an insolvent; or

b) has engaged at any time, during his term of office, in any paid employment; or

c) has been convicted of an offence which, in the opinion of the Central Government, involvesmoral turpitude; or

d) has acquired such financial or other interest as is likely to affect prejudicially his functions asa Member; or

e) has so abused his position as to render his continuance in office prejudicial to the publicinterest; or has become physically or mentally incapable of acting as a Member.

(2) Notwithstanding anything contained in sub-section (2), no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court, ona reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed.

Restriction on Employment of Chairperson and other Members

According to Section 12(1) of the Act, Chairperson and other Members shall, for a period of two years from the date on which they cease to hold office, notaccept any employment in or advise as a consultant, retainer or in any other capacity whatsoever, or be connected with the management or administration of--

a) any enterprise which is or has been a party to a proceeding before the Commission under thisAct; or
b) any person who appears or has appeared before the Commission under section 35.

Section 12(2) provides that notwithstanding anything contained in section 35, the Chairperson or any other Member after retirement or otherwise ceasing to be in service for any reason shall not represent for any person or enterprise before the Commission:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013.

Appointment of Director General

Section 16 empowers the Commission with the prior approval of the Central Government appoint a Director General for the purposes of assisting the Commission in conducting inquiry into

contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.

The number of other Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner of appointment of such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees shall be such as may be prescribed.

Every Additional, Joint, Deputy and Assistant Directors General or such officers or other employees, shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director General.

The salary, allowances and other terms and conditions of service of the Director General and Additional, Joint, Deputy and Assistant Directors General or, such officers or other employees, shall besuch as may be prescribed.

The Director General and Additional, Joint, Deputy and Assistant Directors General or such officers or other employees, shall be appointed from amongst persons of integrity and outstanding abilityand who have experience in investigation, and knowledge of accountancy, management, business, public administration, international trade, law or economics and such other qualifications as may be prescribed.

Appointment of Secretary, Experts, Professionals and Officers and other Employees of Commission

Section 17 empower the Commission to appoint a Secretary and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

The salaries and allowances payable to, and other terms and conditions of service of, the Secretary and officers and other employees of the Commission and the number of such officers and other employees shall be such as may be prescribed.

The Commission may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and outstanding ability, who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission in the discharge of its functions under this Act.

DUTIES, POWERS AND FUNCTIONS OF COMMISSION

Duties and Functions of Commission

Section 18 of the Act deals with duties and functions of the Commission. It states that subject to the provisions of this Act, it shall be theduty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India.

Provided that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country. Provided further that, the

Commission may, for the purpose of discharging its duties or performing itsfunctions under this Act, enter into any memorandum or arrangement with any statutory authority or department of Government.

Inquiry into Certain Agreements and Dominant Position of Enterprise

Section 19(1) provides that the Commission may inquire into any alleged contravention of the provisions contained in section 391) or section 4(1) either on its own motion or on—

a) receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or

b) a reference made to it by the Central Government or a State Government or a statutory authority.

It may be noted that the Commission shall not entertain an information or a reference unless it is filedwithin three years from the date on which the cause of action has arisen.

Provided further that an information or a reference may be entertained after the period specified in the first proviso if the Commission is satisfied that there had been sufficient cause for not filing the information or the reference within such period after recording its reasons for condoning such delay.

As per Section 19(2), without prejudice to the provisions contained in sub-section (1), the powers and functions of the Commission shall include the powers and functions specified in sub-sections (3) to (7).

The Commission shall, while determining whether an agreement has an appreciable adverse effecton competition under section 3, have due regard to all or any of the following factors, namely: —

a) creation of barriers to new entrants in the market;

b) driving existing competitors out of the market;

c) foreclosure of competition;

d) benefits or harm to consumers;

e) improvements in production or distribution of goods or provision of services;

f) promotion of technical, scientific and economic development by means of production ordistribution of goods or provision of services.

The Commission shall, while inquiring whether an enterprise enjoys a dominant position or notunder section 4, have due regard to all or any of the following factors, namely: —

a) market share of the enterprise;

b) size and resources of the enterprise;

c) size and importance of the competitors;

d) economic power of the enterprise including commercial advantages over competitors;

e) vertical integration of the enterprises or sale or service network of such enterprises;

f) dependence of consumers on the enterprise;

g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;

h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;

i) countervailing buying power;

j) market structure and size of market;

k) social obligations and social costs;

l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;

m) any other factor which the Commission may consider relevant for the inquiry.

For determining whether a market constitutes a "relevant market" for the purposes of this Act, the Commission shall have due regard to the "relevant geographic market'' and "relevant product market".

The Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely: —

a) regulatory trade barriers;

b) local specification requirements;

c) national procurement policies;

d) adequate distribution facilities;

e) transport costs;

f) language;

g) consumer preferences;

h) need for secure or regular supplies or rapid after-sales services;

i) characteristics of goods or nature of services;

j) costs associated with switching supply or demand to other areas.

The Commission shall, while determining the "relevant product market", have due regard to all orany of the following factors, namely: —

a) physical characteristics or end-use of goods [1][or the nature of services];

b) price of goods or service;

c) consumer preferences;

d) exclusion of in-house production;

e) existence of specialised producers;

f) classification of industrial products;

g) costs associated with switching demand or supply to other goods or services;

h) categories of customers.

CASE LAW

In ***Competition Commission of India v. Coordination Committee of Artistes and Technicians of West Bengal Film and Television and Ors.— (2017) 5 SCC 17***, the Hon'ble Supreme Court referring to Section 3(4) of the Act, 2002 observed that while inquiring into any alleged contravention, whether by the Commission or by the Director General, and determining whether any agreement has an appreciable adverse effect on competition under Section 3, factors which are to be taken into consideration are mentioned in Section 19, which are creation of barriers to new entrants in the market; driving existing competitors out of the market; foreclosure of competition by hindering entry into the market; accrual of benefits to consumers; improvements in production or distribution of goods or provision of services; or promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services; relevant product market; relevant geographic market.

Market definition is a tool to identify and define the boundaries of competition between firms. It serves to establish the framework within which competition policy is applied by the Commission. The main purpose of market definition is to identify in a systematic way the competitive constraints that the undertakings involved face. The objective of defining a market in both its product and geographic dimension is to identify those actual competitors of the undertakings involved that are capable of constraining those undertakings behaviour and of preventing them from behaving independently of effective competitive pressure.

Therefore, the purpose of defining the "relevant market" is to assess with identifying in a systematic way the competitive constraints that undertakings face when operating in a market. This is the case in particular for determining if undertakings are competitors or potential competitors and when assessing the anti-competitive effects of conduct in a market. The concept of relevant market implies that there could be an effective competition between the products which form part of it and this presupposes that there is a sufficient degree of interchangeability between all the products forming part of the same market insofar as specific use of such product is concerned. The relevant market within which to analyse market power or assess a given competition concern has both a product dimension and a geographic dimension. In this context, the relevant product market comprises all those products which are considered interchangeable or substitutable by buyers because of the products' characteristics, prices and intended use. The relevant geographic market comprises all those regions or areas where buyers would be able or willing to find substitutes for the products in question. The relevant product and geographic market for a particular product may vary depending on the nature of the buyers and suppliers concerned by the conduct under examination and their position in the supply chain. For example, if the questionable conduct is concerned at the wholesale level, the relevant market has to be defined from the perspective of the wholesale buyers. On the other hand, if the concern is to examine the conduct at the retail level, the relevant market needs to be defined from the perspective of buyers of retail products.

Inquiry into Combination by Commission

Section 20(1) states that the Commission may, upon its own knowledge or information relating

to acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of section 5 or merger or amalgamation referred to in clause (c) of that section 5 or acquisition of any control, shares, voting right or assets of an enterprise, merger or amalgamation referred to in clause (d) of that section, inquire into whether such a combination has caused or is likely to cause an appreciable adverse effect on competition in India:

Provided that the Commission shall not initiate any inquiry under this sub-section after the expiry of one year from the date on which such combination has taken effect. Section 20(2) provides that the Commission shall, on receipt of a notice under section 6(2) inquire whether a combination referred to in that notice or reference has caused or is likely to cause an appreciable adverse effect on competition in India. According to Section 20(3) of the Act, notwithstanding anything contained in section 5, the Central Government shall, on the expiry of aperiod of two years from the date of commencement of this Act and thereafter every two years, in consultation with the Commission, enhance or reduce by notification, or keep at the same level, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, or such factors that in its opinion are relevant in this matter, the value of assets or the value of turnover or value oftransaction], for the purposes of that section.

As per Section 20(4), for the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely: —

(a) actual and potential level of competition through imports in the market;
(b) extent of barriers to entry into the market;
(c) level of concentration in the market;
(d) degree of countervailing power in the market;
(e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
(f) extent of effective competition likely to sustain in a market;
(g) extent to which substitutes are available or arc likely to be available in the market;
(h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
(i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
(j) nature and extent of vertical integration in the market;
(k) possibility of a failing business;
(l) nature and extent of innovation;
(m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;
(n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

Reference by Statutory Authority

Section 21 provides that where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take, is or would be, contrary to any of the provisions of this Act, then such statutory authority may make a reference in respect of such issue to the Commission.

It may be noted that any statutory authority, may, *suo motu*, make a reference to the Commission on any issue that involves any provision of this Act or is related to promoting the objectives of this Act, as the case may be.

On receipt of a reference, the Commission shall give its opinion, within sixty days of receipt of such reference, to such statutory authority which shall consider the opinion of the Commission and thereafter, give its findings recording reasons therefor on the issues referred to in the said opinion.

Reference by Commission

Section 21A states that where in the course of a proceeding before the Commissionan issue is raised by any party that any decision which, the Commission has taken during such proceedingor proposes to take, is or would be contrary to any provision of an Act whose implementation is entrusted to a statutory authority, then the Commission may make a reference in respect of such issue to the statutory authority:

It may be noted that the Commission, may, *suo motu*, make a reference to a statutory authority on any issue that involves provisions of an Act whose implementation is entrusted to that statutory authority.

On receipt of a reference, the statutory authority shall give its opinion,within sixty days of receipt of such reference, to the Commission which shall consider the opinion of the statutory authority, and thereafter give its findings recording reasons therefor on the issues referred to in the said opinion.

Procedure for Inquiry into Certain Agreements and Dominant Position of Enterprise

Section 26 deals with procedure for Inquiry into Certain Agreements and Dominant Position of Enterprise. It states that:

1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter:

   It may be noted that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass

such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

2A) The Commission may not inquire into agreement referred to in section 3 or conduct of an enterprise or group under section 4, if the same or substantially the same facts and issues raised in the information received under section 19 or reference from the Central Government or a State Governmentor a statutory authority has already been decided by the Commission in its previous order.

3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.

3A) If, after consideration of the report of the Director General referred to in sub-section (3), the Commission is of the opinion that further investigation is required, it may direct the Director General to investigate further into the matter.

3B) The Director General shall, on receipt of direction under sub-section (3A), investigate the matter and submit a supplementary report on his findings within such period as may be specified by the Commission.

4) The Commission may forward a copy of the report referred to in sub-section (3) and (3B) to the parties concerned.

Provided that in case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in sub-section (3) and (3B) to the Central Government or the State Government or the statutory authority, as the case may be.

5) If the report of the Director General referred to in sub-section (3) and (3B) recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the partiesconcerned, as the case may be, on such report of the Director General.

6) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

7) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission is of the opinion that further investigation is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

8) If the report of the Director General referred to in sub-section (3) and (3B) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.

9) Upon completion of the investigation or inquiry under sub-section (7) or sub-section (8),

as the case may be, the Commission may pass an order closing the matter or pass an order under section 27, and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

Provided that before passing such order, the Commission shall issue a show-cause notice indicating the contraventions alleged to have been committed and such other details as may be specified by regulations and give a reasonable opportunity of being heard to the parties concerned.

CASE LAW

In ***Competition Commission of India v. Steel Authority of India (Civil Appeal No. 7779 of 2010, judgment dated September 09,2010)***, looked into the ambit and scope of power vested with the Commission under Section 26(1) of the Act and whether the parties, including the informant or the affected party, are entitled to notice or hearing, as a matter of right, at the preliminary stage of formulating an opinion as to the existence of the prima facie case. With regard to notice and/or hearing at the stage of forming prima facie decision by the Commission under Section 26(1) of the Act, Supreme Court of India held that neither any statutory duty is cast on the Commission to issue notice or grant hearing, nor any party can claim, as a matter of right, notice and/or hearing at the stage of formation of opinion by the Commission, in terms of Section 26(1) of the Act that a prima facie case exists for issuance of a direction to the Director General to cause an investigation to be made into the matter. However, the Commission, being a statutory body exercising, inter alia, regulatory jurisdiction, even at that stage, in its discretion and in appropriate cases may call upon the concerned party(s) to render required assistance or produce requisite information, as per its directive. Supreme Court also observed that the Commission is expected to form such prima facie view without entering upon any adjudicatory or determinative process. The Commission is entitled to form its opinion without any assistance from any quarter or even with assistance of experts or others. The Commission has the power in terms of Regulation 17 (2) of the Regulations to invite not only the information provider but even 'such other person' which would include all persons, even the affected parties, as it may deem necessary. In that event it shall be 'preliminary conference', for whose conduct of business the Commission is entitled to evolve its own procedure.

In the aforesaid context, Supreme Court noted kind of function the Commission is called upon to discharge while forming an opinion under Section 26(1) of the Act. Supreme court observed that at the face of it, this is an inquisitorial and regulatory power. The jurisdiction of the Commission, to act under this provision, does not contemplate any adjudicatory function. The Commission is not expected to give notice to the parties, i.e. the informant or the affected parties and hear them at length, before forming its opinion. The function is of a very preliminary nature and in fact, in common parlance, it is a departmental function. At that stage, it does not condemn any person and therefore, application of *audi alteram partem* is not called for. Formation of a prima facie opinion departmentally (Director General, being appointed by the Central Government to assist the Commission, is one of the wings of the Commission itself) does not amount to an adjudicatory function but is merely of administrative nature. At best, it can direct the investigation to be conducted and report to be submitted to the Commission itself or close the case in terms of Section 26(2) of the Act, which order itself is appealable before the Tribunal and only after this stage, there is a specific right of notice and hearing available to the aggrieved/affected party. Accordingly, keeping in mind the nature of the

functions required to be performed by the Commission in terms of Section 26(1), Supreme Court observed that the right of notice of hearing is not contemplated under the provisions of Section 26(1) of the Act.

Supreme Court in the case of ***Competition Commission of India v. Steel Authority of India*** also looked into the issue whether it is obligatory for the Commission to record reasons for formation of a prima facie opinion in terms of Section 26(1) of the Act. Supreme Court held that in consonance with the settled principles of administrative jurisprudence, the Commission is expected to record at least some reason even while forming a prima facie view. However, while passing directions and orders dealing with the rights of the parties in its adjudicatory and determinative capacity, it is required of the Commission to pass speaking orders, upon due application of mind, responding to all the contentions raised before it by the rival parties.

In the aforesaid context, Supreme Court of India noted that the proposition of law whether an administrative or quasi-judicial body, particularly judicial courts, should record reasons in support of their decisions or orders is no more res integra and has been settled by a recent judgment of this Court in the case of Assistant Commissioner, C.T.D.W.C. v. M/s Shukla & Brothers [JT 2010 (4) SC 35]. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions.

By practice adopted in all courts and by virtue of judge made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and in fact, is a mandatory requirement of the procedural law. Supreme Court noted that recording reasons in support of decisions or orders is consistent with the settled canons of law and would apply to Section 26, under its different sub-sections, which requires the Commission to issue various directions, take decisions and pass orders, some of which are even appealable before the Tribunal. Supreme Court also noted that even if it is a direction under any of the provisions and not a decision, conclusion or order passed on merits by the Commission, it is expected that the same would be supported by some reasoning. At the stage of forming a prima facie view, as required under Section 26(1) of the Act, the Commission may not really record detailed reasons, but must express its mind in no uncertain terms that it is of the view that prima facie case exists, requiring issuance of direction for investigation to the Director General. Such view should be recorded with reference to the information furnished to the Commission. Such opinion should be formed on the basis of the records, including the information furnished and reference made to the Commission under the various provisions of the Act, as afore-referred. However, other decisions and orders, which are not directions simpliciter and determining the rights of the parties, should be well reasoned analyzing and deciding the rival contentions raised before the Commission by the parties. In other words, the Commission is expected to express prima facie view in terms of Section 26(1) of the Act, without entering into any adjudicatory or determinative process and by recording minimum reasons substantiating the formation of such opinion, while all its other orders and decisions should be well reasoned.

Orders by Commission after Inquiry into Agreements or Abuse of Dominant Position

Section 27 of the Act provides that where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:

a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;

b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover or income, as the case may be, for the last three preceding financial years, upon each of such person or enterprise which is a party to such agreement or has abused its dominant position.

Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover or income, as the case may be, for each year of the continuance of such agreement, whichever is higher.

Explanation 1. —For the purposes of this clause, the expression "turnover" or "income", as the case may be, shall be determined in such manner as may be specified by regulations.

Explanation 2. —For the purposes of this clause, "turnover" means global turnover derived from all the products and services by a person or an enterprise.'

c) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;

d) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;

e) pass such other order or issue such directions as it may deem fit:

It may be noted that while passing orders under this section, if the Commission comes to a finding,that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause (*b*) of the *Explanation* to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.

CASE LAW

In ***Excel Crop Care Limited Vs Competition Commission of India & Another (Civil Appeal No. 2480 of 2014***, judgment dated May 08, 2017), Hon'ble Supreme Court of India observed that a plain reading of Section 27 (b) elucidates that the commission is empowered to impose penalty and to the extent as it deems fit but not exceeding ten percent of the turnover. Section 27 (b) emphasize that penalty is to be levied on 'person or enterprise' who have contravened Section 3 or Section 4 of the Act. Supreme Court emphasized on the usage of the phrase 'as it may deem fit' as occurring under Section 27 of the Act. At the outset this phrase is indicative of the discretionary power provided for the fining authority under the Act. As the law abhors absolute power and arbitrary discretion, this discretion provided under Section 27 needs to be regulated and guided so that there is uniformity and stability with respect to imposition of penalty. This discretion should be governed by rule of law and not by arbitrary, vague or fanciful considerations. Supreme Court noted that any penal law imposing punishment is made for general good of the society. As a part of equitable consideration, we should strive to only punish those who deserve it and to the extent of their guilt. Further it is well established by this Court that the principle of proportionality requires the fine imposed must not exceed what is appropriate and necessary for attaining the object pursued.

In the aforesaid context, Hon'ble Supreme Court observed that in consonance of established jurisprudence, the principle of proportionality needs to be imbibed into any penalty imposed under Section 27 of the Act. Otherwise excessively high fines may over-deter, by discouraging potential investors, which is not the intention of the Act. Therefore, the fine under Section 27(b) of the Act should be determined on the basis of the relevant turnover. Supreme Court laid out a two-step calculation that has to be followed while imposing the penalty under Section 27 of the Act. Under Step 1 relating to determination of relevant turnover, Hon'ble Supreme Court observed that at this point of time it needs to be clarified that relevant turnover is the entity's turnover pertaining to products and services that have been affected by such contravention. The aforesaid definition is not exhaustive. The authority should have regard to the entity's audited financial statements. Where audited financial statements are not available, the Commission may consider any other reliable records reflecting the entity's relevant turnover or estimate the relevant turnover based on available information. However, the Tribunal is free to consider facts and circumstances of a particular case to calculate relevant turnover as and when it is seized with such matter. Under Step 2 relating to determination of appropriate percentage of penalty based on aggravating and mitigating circumstances, Hon'ble Supreme Court observed that after such initial determination of relevant turnover, commission may consider appropriate percentage, as the case may be, by taking into consideration nature, gravity, extent of the contravention, role played by the infringer, the duration of participation, the intensity of participation, loss or damage suffered as a result of such contravention, market circumstances in which the contravention took place, nature of the product, market share of the entity, barriers to entry in the market, nature of involvement of the company, bona fides of the company, profit derived from the contravention etc.

These factors are only illustrative for the tribunal to take into consideration while imposing appropriate percentage of penalty. Accordingly, Supreme Court observed that at the cost of repetition it should be noted that starting point of determination of appropriate penalty should be to determine relevant turnover and thereafter the tribunal should calculate appropriate percentage of penalty based on facts and circumstances of the case taking into consideration various factors while determining the quantum. But such penalty should not be more than the overall cap of 10% of the entity's relevant turnover. Such interpretation of Section 27 (b) of the Act, wherein the discretion of the commission is guided by principles established by law would sub-serve the intention of the enactment.

Division of Enterprise Enjoying Dominant Position

Section 28(1) of the Act provides that the Commission may, notwithstanding anything contained in any other law for the time being in force, by order in writing,direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.

Section 28(2) states that in particular, and without prejudice to the generality of the foregoing powers, the order referred to in sub-section (1) may provide for all or any of the following matters, namely: —

a. the transfer or vesting of property, rights, liabilities or obligations;
b. the adjustment of contracts either by discharge or reduction of any liability or obligation orotherwise;
c. the creation, allotment, surrender or cancellation of any shares, stocks or securities;
d. the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;
e. the extent to which, and the circumstances in which, provisions of the order affecting an

enterprise may be altered by the enterprise and the registration thereof;

f. any other matter which may be necessary to give effect to the division of the enterprise.

Notwithstanding anything contained in any other law for the time being in force or in any contract or in any memorandum or articles of association, an officer of a company who ceases to hold office as such in consequence of the division of an enterprise shall not be entitled to claim any compensation for such cesser.

Procedure for Investigation of Combinations

Section 29 of the Act deals with procedure of investigation of Combinations. It provides that:

1) Where the Commission is of the prima facie opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within fifteen days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted.

(1A) After receipt of the response of the parties to the combination under sub-section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.

(1B) The Commission shall, within thirty days of receipt of notice under sub-section (2) of section 6, form its prima facie opinion referred to in sub-section (1).

2) The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven days from the date of receipt of the response of the parties to the combination, or the receipt of the report from Director General called under sub section (1A), whichever is later, direct the parties to the said combination to publish details of the combination within seven days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.

3) The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within ten days from the date on which the details of the combination were published under sub-section (2).

4) The Commission may, within seven days from the expiry of the period specified in sub-section (3), call for such additional or other information as it may deem fit from the parties to the saidcombination.

5) The additional or other information called for by the Commission shall be furnished by the parties referred to in sub-section (4) within ten days from the expiry of the period specified in sub- section (4).

6) After receipt of all information, the Commission shall proceed to deal with the case in accordance with the provisions contained in section 29A or section 31, as the case may be.

7) Notwithstanding anything contained in this section, the Commission may accept appropriate modifications offered by the parties to the combination or suo motu propose modifications, as the case may be, before forming a prima facie opinion under sub-section (1).

Issue of Statement of Objections by Commission and Proposal of Modifications

Section 29A (1) of the Act provides that upon completion of the process under section 29, where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall issue a statement of objections to the parties identifying such appreciable adverse effect on competition and direct the parties to explain within twenty-five days of receipt of the statement of objections, why such combination should be allowed to take effect.

As per Section 29A (2) where the parties to the combination consider that such appreciable adverse effect on competition can be eliminated by suitable modification to such combination, they may submit an offer of appropriate modification to the combination along with their explanation to the statement of objections issued under sub-section (1) in such manner as may be specified by regulations.

Section 29A(3) states that if the Commission does not accept the modification submitted by the parties under sub-section (2) it shall, within seven days from the date of receipt of the proposed modifications under that sub-section, communicate to the parties as to why the modification is not sufficient to eliminate the appreciable adverse effect on competition and call upon the parties to furnish, within twelve days of the receipt of the said communication, revised modification, if any, to eliminate the appreciable adverse effects on competition.

Provided that the Commission shall evaluate such proposal for modification within twelve days from receipt of such proposal:

Provided further that the Commission may *suo motu* propose appropriate modifications to the combination which may be considered by the parties to the combination.

Procedure in case of Notice under Section 6(2)

Section 30 provides that where any person or enterprise has given a notice under section 6(2) the Commission shall examine suchnotice and form its prima facie opinion as provided in section 29(1) and proceed as per provisions contained in that section.

Orders of Commission on Combinations

Section 31 deals with order of the commission on combination. It states that:

1) Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination in respect of which a notice has been given under sub-section (2) of section 6.

   It may be noted that if the Commission does not form a prima facie opinion as provided under sub-section (1B) of section 29, the combination shall be deemed to have been approved and no separate order shall be required to be passed.

2) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.

3) Where the Commission is of the opinion that any appreciable adverse effect on competition that the combination has, or is likely to have, can be eliminated by modification proposed

by the parties or the Commission, as the case may be, under sub-section (7) of section 29 or sub-section (2) or sub-section (3) of section 29A, it may approve the combination subject to such modifications as it thinks fit.

4) Where a combination is approved by the Commission under sub-section (3), the parties to the combination shall carry out such modification within such period as may be specified by the Commission.

5) Where—

   i. the Commission has directed under sub-section (2) that the combination shall not take effect; or

   ii. the parties to the combination, fail to carry out the modification within such period as may be specified by the Commission under sub-section (4); or

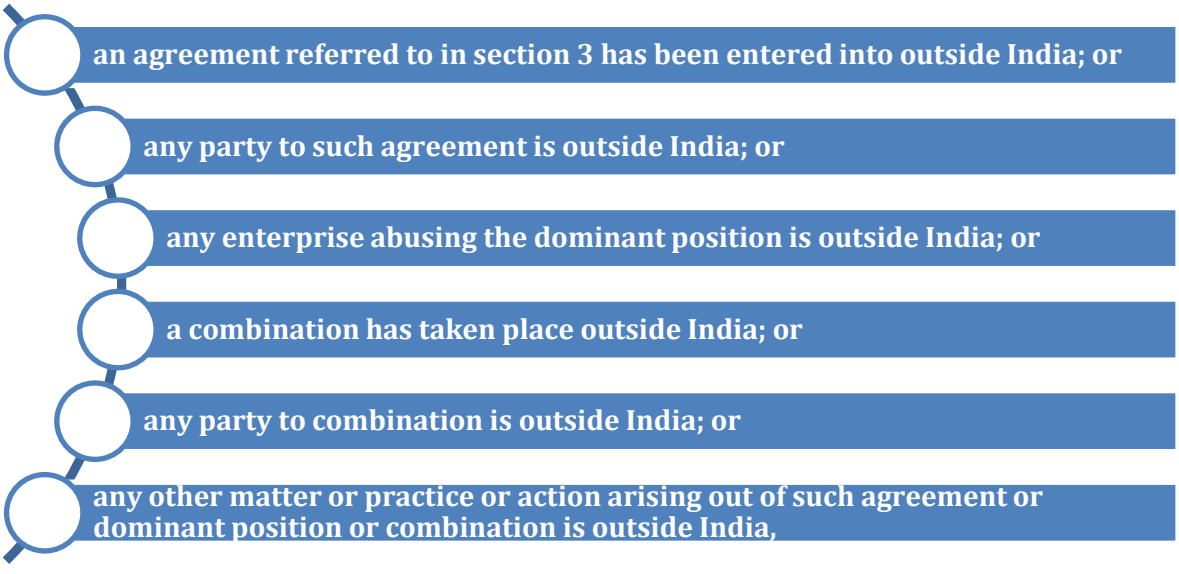
   iii. the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition which cannot be eliminated by suitable modification to such combination,

then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that such combination shall not be given effect to, or be declared void, or frame a scheme to be implemented by the parties to address the appreciable adverse effect on competition, as the case may be.

6) If no order is passed or direction issued by the Commission in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), as the case may be, within a period of one hundred and fifty days from the date of notice given to the Commission under sub-section (2) of section 6, the combination shall be deemed to have been approved by the Commission.

Acts Taking Place outside India but Having an Effect on Competition in India

According to Section 32 of the Act, the Commission shall, notwithstanding that, —



have power to inquire in accordance with the provisions contained in sections 19, 20, 26, 29, 29A and 30 of the Act into such agreement or abuse of dominant position or combination if such

agreement or dominantposition or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India and pass such orders as it may deem fit in accordance with the provisions ofthis Act.

CASE LAW

In the case of ***Mr. Umar Javeed and Others Vs. Google LLC and Another in Case No. 39 of 2018,*** the Competition Commission of India (CCI) vide its Order dated 20th October, 2022 inter alia observed that Commission also observes that Section 32 of the Act which deals with "Acts taking place outside India but having an effect on competition in India", clearly inter alia provides that the Commission shall notwithstanding that any enterprise abusing the dominant position is outside India, have the power to inquire into abuse of dominant position by such player if such dominant position has or is likely to have an appreciable adverse effect on competition in India. That being the statutory scheme in respect of anti-competitive acts taking place outside India, there cannot be any higher threshold for examining the abusive conduct which has taken place within the municipal limits of India.

Power to Issue Interim Orders

Section 33 provides that where during an inquiry, the Commission is satisfied that an act in contravention of section 3(1) or section 4(1) or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary.

CASE LAW

In ***Competition Commission of India v. Steel Authority of India (Civil Appeal No. 7779 of 2010,*** judgment dated September 09,2010), Supreme Court observed that during an inquiry and where the Commission is satisfied that the act is in contravention of the provisions stated in Section 33 of the Act, it may issue an order temporarily restraining the party from carrying on such act, until the conclusion of such inquiry or until further orders without giving notice to such party, where it deems it necessary. This power has to be exercised by the Commission sparingly and under compelling and exceptional circumstances. The Commission, while recording a reasoned order inter alia should : (a) record its satisfaction (which has to be of much higher degree than formation of a prima facie view under Section 26(1) of the Act) in clear terms that an act in contravention of the stated provisions has been committed and continues to be committed or is about to be committed; (b) It is necessary to issue order of restraint and (c) from the record before the Commission, it is apparent that there is every likelihood of the party to the lis, suffering irreparable and irretrievable damage or there is definite apprehension that it would have adverse effect.

Appearance before Commission

Section 35(1) states that a party or the Director General may either appear in person or authorise one or more chartered accountants or ***Company Secretaries*** or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission.

Explanation. —For the purposes of this section, —

a) "Chartered Accountant" means a chartered accountant as defined in clause (b) ofsub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

b) ***"Company Secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;***

c) "Cost Accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub- section (1) of section 6 of that Act;

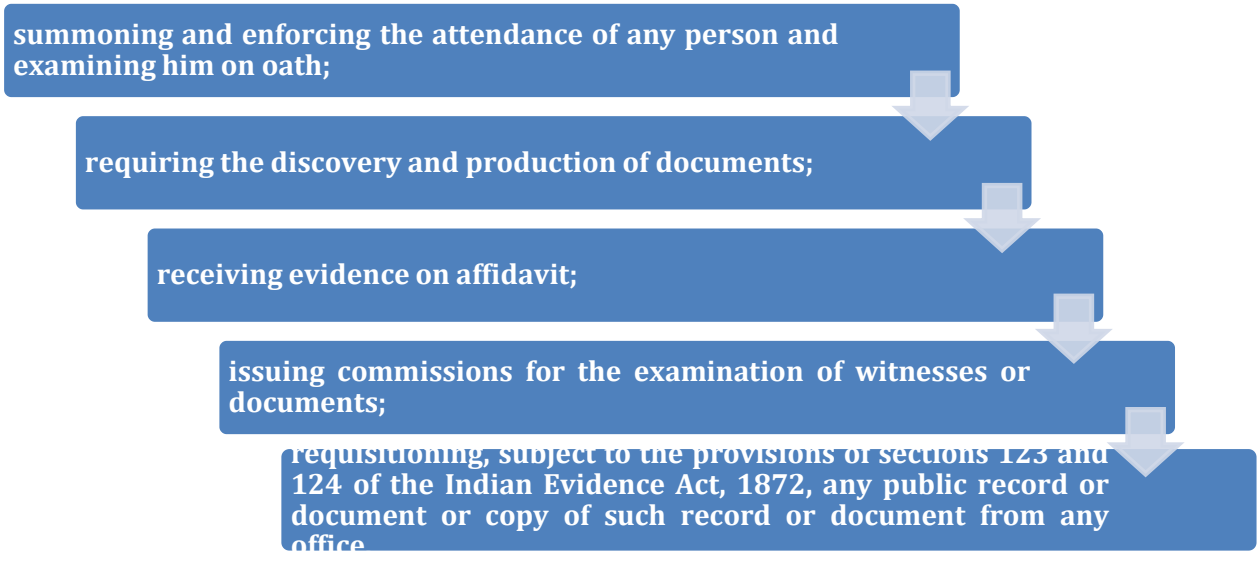
d) "Legal Practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

As per Section 35(2) without prejudice to sub-section (1), a party may call upon experts from the fields of economics,commerce, international trade or from any other discipline to provide an expert opinion in connection with any matter related to a case.

Power of Commission to Regulate its Own Procedure

Section 36 provides that in the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.

The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely: —



The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary, to assist the Commission in the conduct of any inquiry by it.

The Commission may direct any person—

- to produce before the Director General or the Secretary or an officer authorised by it, such books or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act;

- to furnish to the Director General or the Secretary or any other officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person as may be required for the purposes of this Act.

Rectification of Orders

With a view to rectifying any mistake apparent from the record, the Commission may amend any order passed by it under the provisions of the Act. Subject to the other provisions of this Act, the Commission may make—

an amendment for rectifying any such mistake which has been brought to its notice by any party to the order.

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an amendment under sub-section (1) of its own motion;

Explanation. —For the removal of doubts, it is hereby declared that the Commission shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

Execution of orders of Commission Imposing Monetary Penalty

1. If a person fails to pay any monetary penalty imposed on him under the Act, the Commission shall proceed to recover such penalty in such manner as may be specified by the regulations.
2. In a case where the Commission is of the opinion that it would be expedient to recover the penaltyimposed under this Act in accordance with the provisions of the Income-tax Act, 1961, it may make a reference to this effect to the concerned income-tax authority under that Act for recovery of the penalty as tax due under the said Act.
3. Where a reference has been made by the Commission under sub-section (*2*) for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the assessee in default under the Income-tax Act, 1961 and the provisions contained in sections 221 to 227, 228A, 229, 231 and 232 of the said Act and the Second Schedule to that Act and any rules made there under shall, in so far as may be, apply as if the said provisions were the provisions of this Act and referredto sums by way of penalty imposed

under this Act instead of to income- tax and sums imposed by way of penalty, fine and interest under the Income–tax Act, 1961 and to the Commission instead of the Assessing Officer.

DUTIES OF DIRECTOR GENERAL

Section 41 of the Act empowers the Director General to investigate contraventions. It provides that:

(1) The Director General shall, when so directed by the Commission, assist the Commission in investigating into any contravention of the provisions of this Act or any rules or regulations made thereunder.

(2) The Director General shall have all the powers as are conferred upon the Commission under sub-section (*2*) of section 36.

(3) Without prejudice to sub-section (*2*), it shall be the duty of all officers, other employees and agents of a party which are under investigation—

a. to preserve and to produce all information, books, papers, other documents and records of, or relating to, the party which are in their custody or power to the Director General or any person authorised by it in this behalf; and

b. to give all assistance in connection with the investigation to the Director General.

(4) The Director General may require any person other than a party referred to in sub-section (3) to furnish such information or produce such books, papers, other documents or records before it or any person authorised by it in this behalf if furnishing of such information or the production of such books, papers, other documents or records is relevant or necessary for the purposes of its investigation.

(5) The Director General may keep in his custody any information, books, papers, other documents orrecords produced under sub-section (3) or sub-section (4) for a period of one hundred and eighty days andthereafter shall return the same to the person by whom or on whose behalf the information, books, papers,other documents or records were produced:

Provided that the information, books, papers, other documents or records may be called for by the Director General if they are needed again for a further period of one hundred and eighty days by an order in writing:

Provided further that the certified copies of the information, books, papers, other documents or records, as may be applicable, produced before the Director General may be provided to the party or person on whose behalf the information, books, papers, other documents or records are produced at their own cost.

(6) The Director General may examine on oath—

a. any of the officers and other employees and agents of the party being investigated; and

b. with the previous approval of the Commission, any other person, in relation to the affairs of the party being investigated and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

(7) The examination under sub-section (6) shall be recorded in writing and shall be read over to or by,and signed by, the person examined and may thereafter be used in evidence against

it.

(8) Where in the course of investigation, the Director General has reasonable grounds to believe that information, books, papers, other documents or records of, or relating to, any party or person, may be destroyed, mutilated, altered, falsified or secreted, the Director General may make an application to the Chief Metropolitan Magistrate, Delhi for an order for seizure of such information, books, papers, other documents or records.

(9) The Director General may make requisition of the services of any police officer or any officer of the Central Government to assist him for all or any of the purposes specified in sub-section (10) and it shall be the duty of every such officer to comply with such requisition.

(10) The Chief Metropolitan Magistrate, Delhi may, after considering the application and hearing from the Director General, by order, authorise the Director General—

a. to enter, with such assistance, as may be required, the place or places where such information,books, papers, other documents or records are kept;

b. to search that place or places in the manner specified in the order; and

c. to seize information, books, papers, other documents or records as it considers necessary forthe purpose of the investigation:

Provided that certified copies of the seized information, books, papers, other documents or records, asthe case may be, may be provided to the party or person from whose place or places such documents havebeen seized at its cost.

(11) The Director General shall keep in his custody such information, books, papers, other documents or records seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the party or person from whose custody or power they were seized and inform the Chief Metropolitan Magistrate, of such return:

Provided that the Director General may, before returning such information, books, papers, other documents or records take copies of, or extracts thereof or place identification marks on them or any part thereof.

(12) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating to search or seizure made under that Code.

Explanation. —For the purposes of this section, —

a) ***"Agent",*** in relation to any person, means any one acting or purporting to act for or on behalf of such person, and includes the bankers, and persons employed as auditors and legal advisors, by such person;

b) ***"Officers",*** in relation to any company or body corporate, includes any trustee for the debenture holders of such company or body corporate;

c) any reference to officers and other employees or agents shall be construed as a reference to past as well as present officers and other employees or agents, as the case may be.

CASE LAW

Hon'ble Supreme Court in ***CCI v. SAIL (2010) 10 SCC 744*** observed that the DG appointed under Section 16(1) of the Act is a specialized investigating wing of the Commission. DG, being appointed by the Central Government to assist the Commission, is one of the wings of the Commission itself to whom the investigation is directed with dual purpose; (a) to collect material and verify the information, as may be, directed by the Commission, (b) to enable the Commission to examine the report upon its submission by the DG and to pass appropriate orders after hearing the parties concerned.

Hon'ble Supreme Court in SAIL judgment clearly observed that the 'inquiry' shall be deemed to have commenced when direction to the DG is issued to conduct investigation in terms of Regulation 18(2) of the General Regulations. In other words, the law shall presume that an 'inquiry' is commenced when the Commission, in exercise of its powers under Section 26(1) of the Act, issues a direction to the DG. Further it was observed that the DG is expected to conduct an investigation only in terms of the directive of the Commission and thereafter, inquiry shall be deemed to have commenced, which continues with the submission of the report by the DG.

As per the scheme of the Competition Act, 2002 the DG is a fact-finding body, whose duty is to collect evidence, analyse such information and present its opinion on the basis of such evidence to the Commission. However, the conclusion/findings of the DG are mere recommendatory and are not final. The Investigation Report as prepared by the DG is never binding upon the Commission and it is always for the Commission to decide whether the alleged conduct is in contravention of the provisions of the Act or not.

PENALTIES

Contravention of Orders of Commission

According to Section 42 of the Act, the Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.

If any person, without reasonable clause, fails to comply with the orders or directions of the Commission issued under sections 6, 27, 28, 31, 32, 33, 42A, 43, 43A, 44 and 45 of the Act, he shall be liable to a penalty which may extend to rupees one lakh for each day during which such non-compliance occurs, subject to a maximum of rupees ten crore, as the Commission may determine.

If any person does not comply with the orders or directions issued, or fails to pay the penalty imposed, he shall, without prejudice to any proceeding under section 39, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty-five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit.

It may be noted that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence underthis section save on a complaint filed by the Commission or any of its officers authorised by it.

Compensation in case of Contravention of Orders of Commission

Section 42A provides that without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, bysuch person as a result of the said enterprise violating directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission issued under sections 6, 27, 28, 31, 32 and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or delaying in carrying out such orders or directions of the Commission.

Penalty for Failure to comply with directions of Commission and Director General

As per Section 43 of the Act, if any person fails to comply, without reasonable cause, with a direction given by—

a. the Commission under sub-sections (*2*) and (*4*) of section 36; or
b. the Director General while exercising powers referred to in sub-section (*2*) of section 41,

such person shall be liable to a penalty which may extend to rupees one lakh for each day during which such failure continues subject to a maximum of rupees one crore, as may be determined by the Commission.

Power to Impose Penalty for Non-Furnishing of Information on Combination

According to Section 43A if any person or enterprise fails to give notice to the Commission under sub-section (2) or sub-section (4) of section 6 or contravenes sub-section (2A) of section 6 or submit information pursuant to an inquiry under sub-section (1) of section 20, the Commission may impose on such person or enterprise, a penalty which may extend to one per cent., of the total turnover or assets or the value of transaction referred to in clause (d) of section 5, whichever is higher, of such a combination:

It may be noted that in case any person or enterprise has given a notice under sub-section (4) of section 6 and such notice is found to be void ab initio under sub-section (6) of section 6, then a notice under sub-section (2) of section 6 may be given by the acquirer or parties to the combination, as may be applicable, within a period of thirty days of the order of the Commission under sub-section (6) of that section and no action under this section shall be taken by the Commission till the expiry of such period of thirty days.

Power to Impose Lesser Penalty

Section 46(1) provides that the Commission may, if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated section 3, has made a full and true disclosure in respect of the alleged violations and such disclosure is vital, impose upon such producer, seller, distributor, trader or service provider a lesser penalty as may be specified by regulations, than leviable under this Act or the rules or the regulations made under the Act.

Provided that lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under section 26 has been received before making of such disclosure:

Provided further that lesser penalty shall be imposed by the Commission only in respect of a producer, seller, distributor, trader or service provider included in the cartel, who has made the full, true and vital disclosures under this section.

Provided also that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to co-operate with the Commission till the completion of the proceedings before the Commission.

Provided also that the Commission may, if it is satisfied that such producer, seller, distributor, trader or service provider included in the cartel had in the course of proceedings, —

(a) not complied with the condition on which the lesser penalty was imposed by the Commission; or

(b) had given false evidence; or

(c) the disclosure made is not vital, and thereupon such producer, seller, distributor, trader or service provider may be tried for the contravention with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person has been liable, had lesser penalty not been imposed.

(2) The Commission may allow a producer, seller, distributor, trader or service provider included in the cartel, to withdraw its application for lesser penalty under this section, in such manner and within such time as may be specified by regulations.

(3) The Director General and the Commission shall be entitled to use for the purposes of this Act, any evidence submitted by a producer, seller, distributor, trader or service provider in its application for lesser penalty, except its admission.

(4) Where during the course of the investigation, a producer, seller, distributor, trader or service provider who has disclosed a cartel under sub-section (1), makes a full, true and vital disclosure under sub-section (1) with respect to another cartel in which it is alleged to have violated section 3, which enables the Commission to form a prima facie opinion under sub-section (1) of section 26 that there exists another cartel, then the Commission may impose upon such producer, seller, distributor, trader or service provider a lesser penalty as may be specified by regulations, in respect of the cartel already being investigated, without prejudice to the producer, seller, distributor, trader or service provider obtaining lesser penalty under sub-section (1) regarding the newly disclosed cartel.

CONTRAVENTION BY COMPANIES

Section 48(1) states that where a person committing contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be in contravention of this Act and unless otherwise provided in this Act, the Commission may impose such penalty on such persons, as it may deem fit which shall not be more than ten per cent. of the average of the income for the last three preceding financial years.

Provided that in case any agreement referred to in section 3(3) has been entered into by a cartel, the Commission may unless otherwise provided in this Act, impose upon such persons referred to in sub-section (1), a penalty of up to ten per cent. of the income for each year of the continuance of such agreement.

Section 48(2) provides that nothing contained in sub-section (1) shall render any such person liable to any penalty if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

As per Section 48(3) notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officers of the company, such director, manager, secretary or other officers shall also be deemed to be in contravention of the provisions of this Act and unless otherwise provided in this Act, the Commission may impose such penalty on such persons, as it may deem fit which shall not be more than ten per cent. of the average of the income for

the last three preceding financial years:

Provided that in case any agreement referred to in section 3(3) has been entered into by a cartel, the Commission may, unless otherwise provided under this Act, impose upon such person a penalty as it may deem fit which shall not exceed ten per cent. of the income for each year of the continuance of such agreement.

Explanation. —For the purposes of this section, —

a. "company" means a body corporate and includes a firm or other association of individuals;
b. "director", in relation to a firm, means a partner in the firm;
c. "income", in relation to a person, shall be determined in such manner as may be specified by regulations.

Settlement

According to Section 48A of the Act, any enterprise, against whom any inquiry has been initiated under section 26(1) for contravention of section 3(4) or section 4, may, for settlement of the proceeding initiated for the alleged contraventions, submit an application in writing to the Commission in such form and upon payment of such fee as may be specified by regulations.

An application may be submitted at any time after the receipt of the report of the Director General under section 26(4) but prior to such time before the passing of an order under section 27 or section 28 as may be specified by regulations. The Commission may, after taking into consideration the nature, gravity and impact of the contraventions, agree to the proposal for settlement, on payment of such amount by the applicant or on such other terms and manner of implementation of settlement and monitoring as may be specified by regulations.

While considering the proposal for settlement, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any. If the Commission is of the opinion that the settlement offered above is not

appropriate in the circumstances or if the Commission and the party concerned do not reach an agreement on the terms of the settlement within such time as may be specified by regulations, it shall, by order, reject the settlement application and proceed with its inquiry under section 26.

The procedure for conducting the settlement proceedings under this section shall be such as may be specified by regulations. No appeal shall lie under section 53B against any order passed by the Commission under this section. All settlement amounts, realised under this Act shall be credited to the Consolidated Fund of India.

Commitment

As per Section 48B of the Act, any enterprise, against whom any inquiry has been initiated under section 26(1) for contravention of section 3(4) or section 4, as the case may be, may submit an application in writing to the Commission, in such form and on payment of such fee as may be specified by regulations, offering commitments in respect of the alleged contraventions stated in the Commission's order under section 26(1).

An offer for commitments may be submitted at any time after an order under section 26(1) has been passed by the Commission but within such time prior to the receipt by the party of the report of the Director General under section 26(4) as may be specified by regulations.

The Commission may, after taking into consideration the nature, gravity and impact of the alleged contraventions and effectiveness of the proposed commitments, accept the commitments offered on such terms and the manner of implementation and monitoring as may be specified by regulations.

While considering the proposal for commitment, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any.

If the Commission is of the opinion that the commitment offered above is not appropriate in the circumstances or if the Commission and the party concerned do not reach an agreement on the terms of the commitment, it shall pass an order rejecting the commitment application and proceed with its inquiry under section 26 of the Act.

The procedure for commitments offered under this section shall be such as may be specified by regulations.

No appeal shall lie under section 53B against any order passed by the Commission under this section.

Revocation of the Settlement or Commitment Order and Penalty

Section 48C provides that if an applicant fails to comply with the order passed under section 48A or section 48B or it comes to the notice of the Commission that the applicant has not made full and true disclosure or there has been a material change in the facts, the order passed under section 48A or section 48B, as the case may be, shall stand revoked and withdrawn and such enterprise shall be liable to pay legal costs incurred by the Commission which may extend to rupees one crore and the Commission may restore or initiate the inquiry in respect of which the order under section 48A or section 48B was passed.

COMPETITION ADVOCACY

Section 49 deals with Competition Advocacy. It provides that the Central Government may, in formulating a policy on competition (including review of laws related to competition) or on any other matter, and a StateGovernment may, in formulating a policy on competition or on any other matter, as the case may be, make a reference to the Commission for its opinion on possible effect of such policy on competition and on the receipt of such a reference, the Commission shall, within sixty days of making such reference, giveits opinion to the Central Government, or the State Government, as the case may be, which may thereaftertake further action as it deems fit.

The opinion given by the Commission shall not be binding upon the Central Government or the State Government, as the case may be, in formulating such policy. The Commission shall take suitable measures for the promotion of competition advocacy or culture, creating awareness and imparting training about competition issues.

APPELLATE TRIBUNAL

According to Section 53A of the Act, the National Company Law Appellate Tribunal constituted under section 410 of the Companies Act, 2013 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Actand the said Appellate Tribunal shall—

- hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-section (6) of section 6, sub-sections (2), (2A), (6) and (9) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of this Act; and
- adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under sub-section (2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act.

Appeal to Appellate Tribunal

Section 53B provides that the Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (*a*) of section 53A may prefer an appeal to the Appellate Tribunal.

Every appeal shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed. Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the Commission, shall be entertained by the Appellate Tribunal unless the appellant has deposited twenty-five per cent. of that amount in the manner as directed by the Appellate Tribunal.

On receipt of an appeal, the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.

The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.

The appeal filed before the Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.

CASE LAWS

In ***Samir Agrawal vs. Competition Commission of India & Ors (Civil Appeal No. 3100 of 2020)*** judgement dated December 15, 2020, Supreme Court held that a reading of the provisions of the Act and the 2009 Regulations would show that "any person" may provide information to the CCI, which may then act upon it in accordance with the provisions of the Act. In this regard, the definition of "person" in section 2(l) of the Act, set out hereinabove, is an inclusive one and is extremely wide, including individuals of all kinds and every artificial juridical person. This may be contrasted with the definition of "consumer" in section 2(f) of the Act, which makes it clear that only persons who buy goods for consideration, or hire or avail of services for a consideration, are recognised as consumers.

The expressions used in sections 53B and 53T of the Act are "any person", thereby signifying that all persons who bring to the CCI information of practices that are contrary to the provisions of the Act, could be said to be aggrieved by an adverse order of the CCI in case it refuses to act upon the information supplied. By way of contrast, section 53N(3) speaks of making payment to an applicant as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II of the Act, having been committed by an enterprise. By this sub-section, clearly, therefore, "any person" who makes an application for compensation, under sub-section (1) of section 53N of the Act, would refer only to persons who have suffered loss or damage, thereby, qualifying the expression "any person" as being a person who has suffered loss or damage.

Thus, the preliminary objections against the Informant/Appellant filing Information before the CCI and filing an appeal before the NCLAT are rejected.

When the CCI performs inquisitorial, as opposed to adjudicatory functions, the doors of approaching the CCI and the appellate authority, i.e., the NCLAT, must be kept wide open in public interest, so as to subserve the high public purpose of the Act.

Right to Legal Representation

According to Section 53-S of the Act, a person preferring an appeal to the Appellate Tribunal may either appear in person or authorise one or more chartered accountants or ***company secretaries*** or costaccountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

The Central Government or a State Government or a local authority or any enterprise preferring an appeal to the Appellate Tribunal may authorise one or more chartered accountants or ***company secretaries*** or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

The Commission may authorise one or more chartered accountants or ***company secretaries*** or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

APPEAL TO SUPREME COURT

Section 53T provides that the Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved byany decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty daysfrom the date of communication of the decision or order of the Appellate Tribunal to them:

It may be noted that the Supreme court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said periodof sixty days.

COMPOUNDING OF CERTAIN OFFENCES

Section 59A states that notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only or imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by the Appellate Tribunal or a court before which such proceeding is pending.

LESSON ROUND-UP

- Competition Act, 2002 seeks to provide, keeping in view the economic development of the country, for the establishment of Competition Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India and for matters connected therewith or incidental thereto besides repeal of MRTP Act and the dissolution of the MRTP Commission.
- No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition.
- Competition Act expressly prohibits any enterprise or group from abusing its dominant position. Dominant Position meaning thereby a position of strength, enjoyed by an enterprise or group, in the relevant market, in India, which enables it to operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour.
- Competition Act prohibits any person or enterprise from entering into a combination which causes or islikely to cause an appreciable adverse effect on competition within the relevant market in India and if such a combination is formed it shall be void.
- While formulating a policy on the competition the Central/State Government may make a reference to theCommission for its opinion on possible effect of such a policy

on the competition.

- Competition Appellate Tribunal to hear and dispose of appeals against the direction issued or decision made or orders passed by the Commission under the Act, and to adjudicate on claim of compensation.
- The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation)

1. Define and discuss the Bid Rigging and Cartel.
2. What are anti-competitive agreements? Discuss the procedure for enquiry into anti-competitiveagreements.
3. The Competition Act does not prohibit dominance, but the abuse of dominant position. Explain.
4. Discuss the composition and functions of Competition Commission of India.
5. Write short notes on:
   (i) Combinations.
   (ii) Competition Advocacy.

LIST OF FURTHER READINGS

- Bare Act - Competition Act, 2002 and amendments made therein.
- Competition Commission of India (Procedure in regard tothe transaction of business relating to combinations) Regulations, 2011

OTHER REFERENCES

- https://www.cci.gov.in/
- https://www.cci.gov.in/legal-framwork/act

LESSON 13
CONSUMER PROTECTION ACT 2019

According to Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021 *Vide Notification dated* 30th December, 2021 prescribed the following Pecuniary Jurisdiction:

- **District Commission:** ***Does not exceed fifty lakh rupees***
- **State Commission:** ***Exceeds fifty lakhs but does not exceed two crore rupees.***
- **National Commission**: ***Exceed two crore rupees***

Case Laws

1. In the case of ***Alpha G184 Owners Association (Appellant) Vs. Magnum International Trading Company Pvt. Ltd (Respondent) Civil Appeal No. 4718 of 2022 with Civil Appeal Nos. 329-332 of 2023 judgement dated May 15th, 2023*****,*** Hon'ble Supreme Court of India inter alia observed that the Consumer Protection Act, 1986; 68 of 1986 (hereinafter referred to as "the 1986 Act") and the Consumer Protection Act, 2019; 35 of 2019 (hereinafter referred to as "the 2019 Act") have got a laudable objective. The 2019 Act facilitates the consumers to approach the forums by providing a very flexible procedure. It is meant to encourage consumerism in the country. Any technical approach in construing the provisions against the consumer would go against the very objective behind the enactment. Hon'ble Supreme Court of India placed reliance on the decision of Supreme Court in *National Insurance Co. Ltd. v. Harsolia Motors, 2023 SCC OnLine SC 409,*

"21. The Act, 1986 is a social benefit-oriented legislation and, therefore, the Court has to adopt a constructive liberal approach while construing the provisions of the Act. To begin with the Preamble of the Act, 1986 which can afford useful assistance to ascertain the legislative intention, it was enacted to provide for the protection of the interests of consumers. Use of the word "protection" furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled law that a Preamble cannot control otherwise plain meaning of a provision.

22. In fact, the law meets long felt necessity of protecting the common man from such wrong for which the remedy under ordinary law for various reasons has become illusory. Various legislations and regulations permitting the State to intervene and protect interests of the consumers have become a haven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively and inefficiently for reasons which are not necessary to be stated.

23. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. A scrutiny of various definitions such as "consumer", "service", "trader", "unfair trade practice" indicates that legislature has attempted to widen the ambit and reach of the Act. Each of these definitions are in two parts, one explanatory and the other inclusive. The explanatory or the main part itself uses expressions of amplitude indicating clearly its wide sweep within its ambit to widen such things which otherwise would have been beyond its natural import. 24. The provisions of the Act, 1986 thus have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit-oriented legislation. The primary duty of the Court/Commission while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to attempted objective of the enactment."

2. In the case of *Secretary* ***Ministry of Consumer Affairs {Appellant(s)} Versus Dr. Mahindra Bhaskar Limaye & Ors. {Respondent(S)} Civil Appeal No. 831 of 2023 (@ SLP(C) NO. 19492 OF 2021) with Civil Appeal No. 832 of 2023 with Civil Appeal No. 833 of 2023 Judgement dated March 03, 2023,*** Hon'ble Supreme Court of India inter alia observed that the Consumer Protection Act, 1986 has been repealed and the Consumer Protection Act, 2019 has come into force w.e.f. 24.07.2020 with a sole intention to provide adequate safeguards to the consumers and the pecuniary jurisdiction of the District Fora and State Commissions are enhanced substantially.

However, there is no substantial change in the scheme with respect to the adjudication of the consumer disputes. No justification at all is shown to do away with the written examination while framing the Rules, 2020 under the Consumer Protection Act, 2019. Therefore, as rightly observed by the High Court, the Rule 6(9) of the Rules, 2020 is unconstitutional, arbitrary and violative of Article 14 of the Constitution of India, more particularly, when the same is wholly impermissible to override/overrule the earlier decisions of this Court and that too without any justification. We are in complete agreement with the view taken by the High Court.

It is required to be noted that under provision 4(1) of Rules, 2020, a person who is eligible to be appointed as a district judge (having minimum experience of 7 years) is qualified to be appointed as President of the District Commission but in order to be appointed as a Member, Rule 4(2)(c) mandates a minimum experience of 15 years which is rightly held to be violative of Article 14 of the Constitution.

Similarly providing 20 years' experience under Rule 3(2)(b) also rightly held to be arbitrary and violative of Article 14 of the Constitution. It is required to be noted that under Rule 3(2)(b), a presiding officer of a Court having experience of 10 years is eligible for becoming President of the State Commission. Even under Rule 3(1) a judge of the High Court, present or former, shall be qualified for appointment of the President. As per Article 233 of the Constitution, a lawyer needs to have only 7 years of practice as an advocate in High Court. Under the circumstances to provide 20 years' experience under Rule 3(2)(b) is rightly held to be unconstitutional, arbitrary and violative of the Article 14 of the Constitution of India. We are in complete agreement with the view taken by the High Court. At this stage, it is required to be noted that in the case of *Madras Bar Association Vs. Union of India & Anr. – MBA III - (2017) 7 SCC 369 decided on 27.11.2020,* Supreme Court directed to consider 10 years' experience, after detail reasoning.

3. In the case of ***Brigade Enterprises Limited v. Anil Kumar Virmani & Ors.| Civil Appeal No.1779 of 2021 judgement dated December 17, 2021,*** Hon'ble Supreme Court inter alia observed that Section 35(1)(c) enables one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, to file a complaint, on behalf of or for the benefit of all consumers so interested. It is needless to point out that the sine qua non for invoking Section 35(1)(c) is that all consumers on whose behalf or for whose benefit the provision is invoked, should have the same interest. Interestingly, Section 35(1) (c) uses the disjunction "or" in between two sets of words, namely, (i) "on behalf of"; and (ii) "for the benefit of". Therefore, a complaint filed under Section 35(1)(c) could either be "on behalf of" or "for the benefit of" all consumers having the same interest.

Section 38(11) of the Consumer Protection Act, 2019 makes the provisions of Order I Rule 8 of the First Schedule to the Code of Civil Procedure, 1908 applicable to cases where the complainant is a consumer referred to in Section 2(5)(v), which defines a 'complainant' to mean one or more consumers, where there are numerous consumers having the same interest.

Order I Rule 8, CPC, unlike Section 35(1)(c) operates both ways and contains provisions for a two way traffic. It not only permits plaintiffs to sue in a representative capacity but also permits people to be sued and to be defended in an action, in a representative capacity.

In simple terms, the salient features of the stipulations contained in Order I Rule 8 CPC can be summed up as follows:

(i) where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue on behalf of or for the benefit of all persons so interested;

(ii) where there are numerous persons having the same interest in one suit, one or more of such persons may be sued or one or more such persons may defend such suit, on behalf of or for the benefit of all persons so interested;

(iii) the Court itself may, without the plaintiffs or defendants seeking any permission under Order I Rule 8(1)(a), direct that one or more such persons may sue or be sued or may defend the suit on behalf of and for the benefit of all persons interested;

(iv) notice of the institution of the suit to all persons so interested either by personal service or by public advertisement should be ordered by the Court in both categories of cases, namely, where permission is given by the Court on the application of the individuals or direction is issued by the Court itself;

(v) any person on whose behalf or for whose benefit the suit is instituted or defended may seek to be made a party to the suit;

(vi) abandonment of the whole or part of the claim, withdrawal of the suit or the recording of any agreement, compromise or satisfaction shall not be allowed by the Court unless notice to all persons interested in the matter is issued either by personal service or by public advertisement.

(vii) the Court may at any time substitute the person suing or defending in a representative capacity, with any other person, if the former was not prosecuting the suit or defence with due diligence.

(viii) the decree passed in the suit covered by this Rule will be binding on all persons.

A careful reading of the provisions of Section 35(1) would show that there is no scope for the contention that wherever there are more consumers than one, they must only take recourse to Order I Rule 8 CPC, even if the complaint is not on behalf of or for the benefit of, all the consumers interested in the matter. There may be cases where only "a few consumers" and not "numerous consumers" have the same interest. There is nothing in the Act to prohibit these few consumers from joining together and filing a joint complaint. A joint complaint stands in contrast to a complaint filed in a representative capacity. For attracting the provisions of Section 35(1)(c), the complaint filed by one or more consumers should be on behalf of or for the benefit of numerous consumers having same interest. It does not mean that where there are only very few consumers having the same interest, they cannot even join together and file a single complaint, but should take recourse only to independent and separate complaints. (Para 34)

Therefore, the proper way of interpreting Section 35(1) read with section 2(5), would be to say that a complaint may be filed: (i) by a single consumer; (ii) by a recognised consumer Association; (iii) by one or more consumers jointly, seeking the redressal of their own grievances without

representing other consumers who may or may not have the same interest; (iv) by one or more consumers on behalf of or for the benefit of numerous consumers; and (v) the Central Government, Central Authority or State Authority.(Para 38)

It must be remembered that the provisions of the Consumer Protection Act are in addition to and not in derogation of the provisions of any other law for the time being in force, by virtue of Section 100. Even Section 38 which prescribes the procedure to be followed by the Commission for enquiring into the complaint, does not expressly exclude the application of the provisions of CPC. Though Subsections (9), (11) and (12) of Section 38 make specific reference only to a few provisions of the Code of Civil Procedure, the principle behind Order I Rule 1 enabling more than one person to join in a suit as plaintiff is not expressly excluded. (Para 39)

Therefore, Supreme Court is of the considered view that while the National Commission was wrong in this case, in the peculiar facts and circumstances in permitting an application under Section 35(1)(c) read with Order I Rule 8 CPC, it does not mean that the complaint filed by the respondents itself is liable to be thrown out. The complaint filed by the respondents may have to be treated as a joint complaint and not a complaint in a representative capacity on behalf of 1134 purchasers. The purchasers of other flats, such as the intervenors herein may join as parties to the consumer complaint, if they so desire. As a matter of fact, it is stated by the intervenors that pursuant to the impugned order, advertisements were issued and the intervenors have already filed impleadment application before the National Commission. They are entitled to be impleaded. (Para 40)

4. Supreme Court in the case of **Manohar Infrastructure and Constructions Private Limited vs Sanjeev Kumar Sharma & ors,** *judgement dated December 07, 2021* held that the condition of pre-deposit for entertaining appeal under Section 51 of the Consumer Protection Act, 2019 is mandatory. Section 51 of the Consumer Protection Act, 2019 provides that no appeal by a person, who is required to pay any amount in terms of order of the State Commission shall be entertained by the NCDRC unless the appellant has deposited 50 percent of that amount.

The Court in answering the question laid down the following:

1. Pre-deposit of 50 per cent of amount as ordered by the State Commission under second proviso to Section 51 of the Consumer Protection Act, 2019 is mandatory for entertainment of an appeal by the National Commission;

2. The object of the said pre-deposit condition is to avoid frivolous appeals;

3. The said pre-deposit condition has no nexus with the grant of stay by the NCDRC;

It then held that the NCDRC can grant a conditional stay directing the appellant to deposit the entire amount and/or any amount higher than 50 per cent of the amount determined by the State Commission.

However, while doing so, the NCDRC has to assign some cogent reasons and pass a speaking order either as an ex parte order or after hearing both sides and considering the facts and circumstances of the case.

"It must reflect an application of mind by the National Commission why the order passed by the State Commission is to be stayed on condition of deposit of the entire amount and/or any amount higher than 50 per cent of the amount awarded by the State Commission," the Court ruled.

5. "Recognised Consumer Association" means any voluntary consumer association registered under any law for the time being in force. In the case of ***Sobha Hibiscus Condominium vs. MW Sosha developer's ltd judgement dated February 2020***, Hon'ble Supreme Court observed that in essence voluntary consumer association will be a body formed by group of person's coming together, of their own will and without any pressure or influence from anyone and without being mandated by any other provisions of law.