India's New Trade Policy: Prospects and Challenges for Exporters

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India's rubber industry is gaining momentum in the global export market. With the rollout of the Foreign Trade Policy 2023, exporters have access to valuable incentives, but compliance issues and ongoing litigation pose challenges. Gourav Sogani and Anushka Jain of Economic Laws Practice delve into the details of these opportunities and obstacles in this insightful article

The rubber industry in India holds a prominent position within the nation's economy, marked by a strong synergy of imports and exports. India is a prominent global player in the export of natural rubber and as per the data published by the Directorate General of Commercial Intelligence and Statistics, Kolkata, the total export of natural rubber was 3,700 tonne during 2022-23, as quoted in *The Hindu*. Moreover, according to *The Indian Express* report in June 2022, the global market for rubber products, currently valued at approximately US$212 billion, is anticipated to experience substantial growth by 2025.

The Government has always supported exports and consistently aimed to ensure that only goods and services are exported out of India, while taxes remain within the country. To accomplish this objective, the Directorate General of Foreign Trade (DGFT) has established a range of incentives within the Foreign Trade Policy (FTP).

Recently, FTP 2023 has been introduced, effective from April 1, 2023, which supersedes the erstwhile FTP 2015-20. The new FTP 2023 shall remain in effect unless otherwise specified or amended. While some of the benefits under the FTP 2023 have been in place for a considerable period of time, there have also been recent introductions of new schemes. Further, during the period of COVID-19 pandemic, major issues and challenges were faced by businesses wherein exports were significantly reduced. However, the Government took note of the same and provided various relaxations in order to help businesses recoup from the losses incurred due to the same.

In this article, let's look at the key benefits extended to exporters under the FTP and explore the potential obstacles are being faced while availing these benefits.

Key schemes that are already in operation

Advance Authorisation (AA) Scheme

The AA Scheme, outlined in Chapter 4 of the FTP 2023, allows the exporter import of inputs without payment of customs duty and other taxes which are incorporated in the goods exported outside India. In other words, when goods are manufactured and exported using inputs imported under this scheme, the customs duty payable at the time of import on such inputs shall be exempted subject to such inputs being incorporated in the exported goods.

Key features of the AA Scheme:

- The Advance Authorisation issued by the DGFT specifies a fixed quantity and value of exports that are required to be fulfilled against the import of specified inputs, known as the Export Obligation.
- Exemption is granted subject to the fulfilment of an Export Obligation within a period of 18 months from the date of issue of Authorisation.

- There should be value addition as per the formula prescribed in the Handbook of Procedures (HBP), subject to a minimum of 15%.
- In case the said export obligations is not fulfilled within the prescribed time period, the import duty saved on inputs would be liable to be paid, along with interest and penalty.

Requirements under the GST Law and Customs Law qua AA Scheme

In addition to the above mentioned features of the Scheme, the AA Holders are also required to comply with certain additional requirements stipulated under the GST Law and Customs Law. The same are enumerated hereunder:

Compliance with Rule 96(10) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules')

Rule 96 of the CGST Rules pertains to refund of IGST paid on the goods or services exported out of India. Vide Notification No. 3/2018 – CT dated 23.01.2028, Rule 96 was amended, and sub-section (10) was inserted retrospectively w.e.f. 23.10.2017. The said Rule underwent multiple amendments, and finally w.e.f., 09.10.2018 states that AA holders cannot claim a refund of IGST paid if they have availed the exemption from payment of IGST at the time of import under the AA.

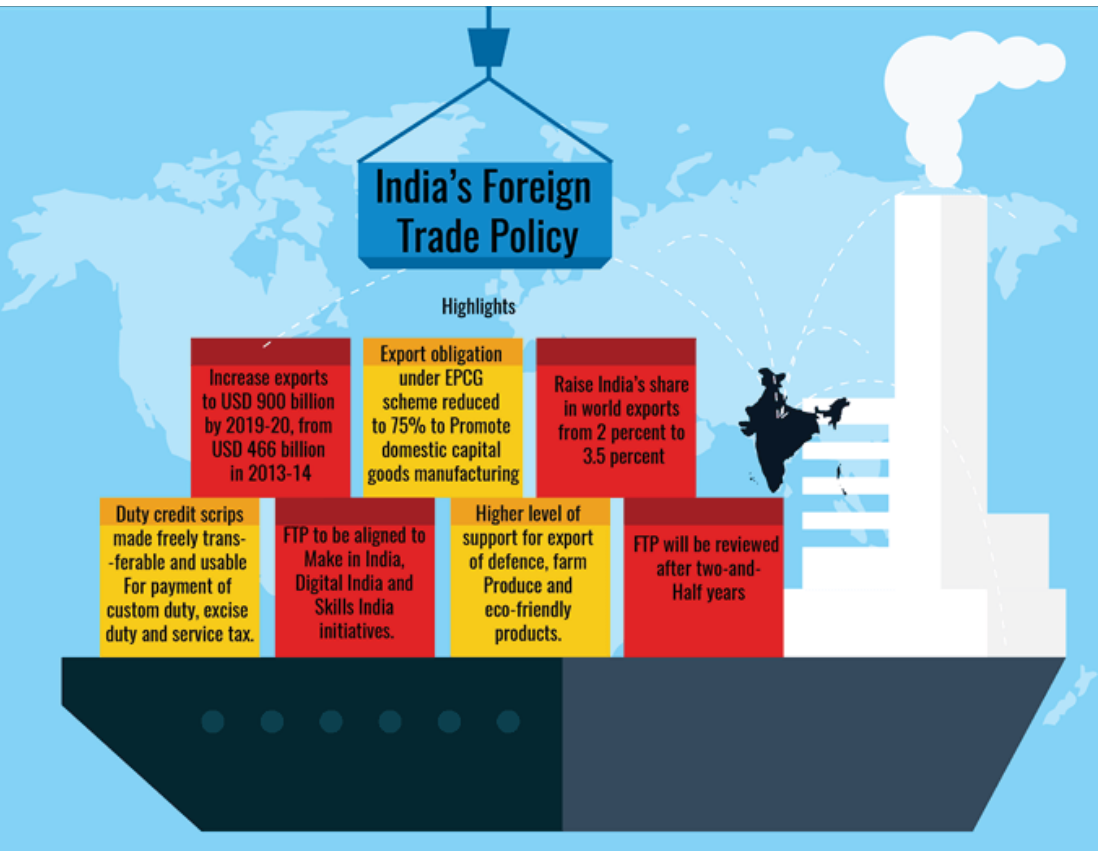
In other words, the Rule deals with the restriction on the refund of IGST on exported goods or service. So, if an AA holder has imported or procured inputs without paying IGST, then he is not allowed to export finished products or services by paying IGST and then seeking a refund. Accordingly, the benefit of IGST exemption on imports under the AA Scheme and IGST refund on exported goods or services cannot be availed simultaneously in terms of the said Rule.

Fulfilment of Pre-Import Condition

In the month of October 2017, a new condition was introduced in the AA Scheme. For the period 13.10.2017 - 09.01.2019 i.e., for 13 months, the export

\obligation stipulated under the AA was subject to a 'pre-import condition' in order to be eligible to avail the exemption of IGST on imports.

The term 'pre-import condition' is not defined under the FTP or Notification / Clarifications issued thereon. However, in common parlance, it was construed that pre-import condition means that the inputs have to be imported first and thereafter, the products manufactured using the said imported inputs should be exported. Accordingly, the said condition was required to be fulfilled during the aforesaid 13 months period for availing the benefit of AA Scheme.



Ongoing litigation for the AA holders

Recently, a plethora of notices have been issued from various Government departments, including the Directorate General of Goods and Services Tax Intelligence (DGGI), Directorate of Revenue Intelligence (DRI), and the GST Audit Wing, to exporters availing benefit under the AA Scheme, affecting nearly all industries. The demands under these notices run in hundreds of crores, leaving exporters alarmed and astounded with respect to the allegations raised in the notices. The key reasons behind these notices, which are

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being issued to a lot of exporters availing the benefit of AA Scheme, is non-compliance or lack of awareness of the following issues:

Non-Compliance of Rule 96(10) of the CGST Rules: Presently, country wide this is one of the major issues which is being faced by exporters *qua* the AA Scheme. As discussed above, in terms of Rule 96(10) of the CGST Rules, AA holders cannot claim a refund of IGST paid on exports if they have availed the exemption from payment of IGST at the time of import under the AA.

However, either due to a lack of awareness about the changes in provisions or an inability to stay updated with numerous amendments, exporters continued to export goods on payment of IGST and subsequently claiming a refund of the same in violation of the Rule 96(10) of the CGST Rules. Consequently, various government departments began issuing notices to such exporters.

Non-fulfilment of the Pre-Import Condition: The exporters being unaware of such a condition, continued to avail the IGST exemption without fulfilling the pre-import condition. Further, the department applied the common parlance test and initiated inquiries against the exporters for non-fulfilment of the pre-import condition. Various notices have been issued to the exporters for default in fulfilment of the pre-import condition not just for the aforesaid period, but also for the subsequent period.

Availability of ITC of IGST paid: Vide the notices, department is seeking the recovery of IGST erroneously refunded for shipping bills that bear an AA number in violation of Rule 96(10) of the CGST Rules. However, a key question arises as to whether the exporters would be entitled to claim Input Tax Credit (ITC) for the amount being refunded in case they opt to pay the amount under notices. To address this issue, the Central Board of Indirect Taxes (CBIC) issued a Circular on July 6, 2022, outlining a procedure for recrediting an amount equivalent to the refunded sum in the electronic credit ledger.

In cases where the pre-import condition has not been fulfilled, the authorities are demanding payment of IGST that was exempted on imported goods, along with interest. The challenge in this situation is whether the exporter would be entitled to avail the ITC of the IGST paid now.

Export Promotion Capital Goods (EPCG) Scheme

The EPCG Scheme, outlined in Chapter 5 of FTP 2023, allows the duty-free import of capital goods which are intended to be used in the manufacture export goods. In terms of this scheme, the EPCG holders would be entitled to avail the exemption from payment of import duties on the capital goods provided they are used for the manufacture of export goods.

Key features of the EPCG Scheme are as under:

i) Import shall be subject to an Export Obligation equivalent to 6 times of duties saved on capital goods and is to be fulfilled within a period of 6 years from date of issue of Authorisation.

ii) Exports Obligation to be fulfilled would be over and above the Average Export Obligation, which is the average of exports achieved in the preceding three licensing year.

iii) Imports can be made within a period of 24 months from the date of issue of Authorisation.

Challenge under EPCG Scheme

Due to the impact of COVID-19 pandemic, many EPCG holders were unable to fulfil the requisite export obligations under the prescribed time period. Default in

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fulfilment of export obligation as well the average export obligation, would lead to the payment of customs duty on the imported capital goods, along with interest.

Relaxation provided due to COVID-19 Pandemic

The COVID-19 pandemic disrupted the ability of many AA and EPCG holders to meet their export obligations within the specified timeframe. To alleviate the burden on exporters for authorisations issued under FTP 2015-20, the DGFT issued Public Notice No. 67/2015-2020 dated 31.03.2020 and Notification No. 28/2015-2020 dated 23.09.2021 whereby the time period to fulfil export obligations under the AA and EPCG Scheme, in specified cases, was extended till December 31, 2021, without payment of composition fee. Therefore, these public notices served as a lifeline for exporters who had been adversely affected by the COVID-19 pandemic and were unable to fulfil their export commitments within the specified period.

However, many exporters have not availed the benefit of this relaxation while determining their export obligation period. Therefore, it is imperative that while computing the export obligation fulfilled within the stipulated timeframe, the above extensions should also be taken into consideration.

Key schemes that have been recently introduced

RoDTEP (Remission of Duties and Taxes on Exported Products)

RoDTEP scheme was introduced w.e.f. January 1, 2021, in lieu of the erstwhile Mercantile Exports from India Scheme (MEIS). MEIS faced a challenge from the United States at the World Trade Organization (WTO) on the grounds that India's export subsidies provided unfair advantages to Indian exporters and were in violation of WTO rules. This resulted in the discontinuation of MEIS and similar schemes.

RoDTEP provides for a rebate of all underlying Central, State, and Local duties, taxes, and levies on exported goods that have not been reimbursed through any other existing scheme. The rewards under RoDTEP are granted as a percentage of the Free on Board (FOB) value of the exported goods and currently, the rewards on rubber products range from 1% - 1.4% approx.

Challenges under RoDTEP Scheme

Inadequate rewards: The objective of the RoDTEP Scheme is to provide exporters with reimbursement for all embedded duties that are not otherwise compensated. However, the currently fixed percentage of reward may fall short of fully offsetting the duties incurred. In such a case, representations can be made before the ministry requesting for an increase the percentage of benefits.

Certain Industries not covered: Certain sectors like the iron, steel and pharmaceutical industries were initially not covered under the RoDTEP Scheme. Representations to the ministry, seeking inclusion in the RoDTEP Scheme and eventually in December 2022 the benefit was extended to these industries till September 30, 2023, which is expected to be extended further.

Hence, while the RoDTEP Scheme was introduced as a replacement for MEIS, it hasn't proven advantageous for many industries. The rewards granted are insufficient to cover the expenses borne by exporters, undermining the idea that only goods should be exported and not the taxes. This places the country's exporters at a competitive disadvantage when compared to other countries.

New Schemes introduced under FTP 2023

Niryat Bandhu Scheme (NBS): Introduced to boost e-Commerce and emerging export channels through collaboration with Customs Authorities, Department of Post, industry partners, and knowledge partners to conduct outreach activities and workshops aimed at promoting e-Commerce exports. The ultimate goal is to establish designated areas known as E-Commerce Export Hubs (ECEH), serving as centres for fostering favourable business infrastructure and facilities to facilitate cross-border e-Commerce activities.

Amnesty Scheme: Valid till March 31, 2014, allows exporters to close the past pending authorizations.

Conclusion

While India's Foreign Trade Policy offers a gamut of incentives, it is imperative to acknowledge two critical aspects: first, that many businesses remain unaware of the array of benefits available to them; and second, that businesses already availing these benefits often struggle with ensuring proper compliance with the FTP and are unable to succeed in getting the benefits from the regional offices due to the same. As the policy landscape evolves and trade regulations become increasingly complex, businesses must not only seize the opportunities that FTP 2023 offers but also diligently address these challenges. In this dynamic environment, informed decision-making and strategic planning will be essential for businesses to thrive in the international market. ■

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