CA\CS\CMA FINAL

NEW Foreign Trade Policy (FTP), 2023

Concept Notes &

Questions with MCQs

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Applicable For Nov. 2023 / May 2024 & Onwards

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SECTION C : FOREIGN TRADE POLICY

CHAPTER

34

Foreign Trade Policy

34.1 Introduction

In the era of globalization, international trade has become the lifeline of any economy. Today, international trade has begun to play a significant part in the Indian economy reflecting its increasing integration in globalisation.

International trade not only enables a nation to specialize in the goods which it can produce most cheaply and efficiently, but also to consume more than it would be able to produce with its own resources. International trade enlarges the potential markets for the goods of a particular economy.

Foreign Trade Policy is a set of guidelines or instructions issued by the Central Government which specifies policy for exports and imports viz., foreign trade. Its primary purpose is not merely to earn foreign exchange, but also to stimulate greater economic activity.

Legislation governing foreign trade :

In India, Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade.

The Foreign Trade Policy, 2023, (as updated) is notified by the Central Government, in exercise of powers conferred under **Section 5 of the Foreign Trade (Development & Regulation) Act, 1992** [FT(D&R) Act], as amended.

The main legislation concerning foreign trade is the **Foreign Trade (Development and Regulation) Act, 1992 [FT (D&R) Act]**. The FT(D&R) Act provides for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from, India and for matters connected therewith or incidental thereto. As per the provisions of the Act, the Central Government: -

(i) may make provisions for facilitating and controlling foreign trade;

(ii) may prohibit, restrict and regulate exports and imports, in all or specified cases as well as subject them to exemptions;

(iii) is authorised to formulate and announce an export and import policy and also amend the same from time to time, by notification in the Official Gazette;

(iv) is also authorised to appoint a 'Director General of Foreign Trade' for the purpose of the Act, including formulation and implementation of the export-import policy.

<u>Foreign Trade Policy :</u> In exercise of the powers conferred by the FT(D&R) Act, the Union Ministry of Commerce and Industry, Government of India generally announces the integrated Foreign Trade Policy (FTP) with certain underlined objectives. The Foreign Trade Policy was earlier called as Export Import policy i.e., EXIM Policy. However, export import policy is now referred to as Foreign Trade Policy (FTP) of the country as it covers areas much beyond export and import. This policy is updated every year, in addition to changes that are made throughout the year.

The FTP, in general, aims at developing export potential, improving export performance, encouraging foreign trade and creating favorable balance of payments position. The policies are driven by factors like export led growth, improving efficiency and competitiveness of the Indian industries, ease of doing business etc.

34.2 Salient Features of FTP

The following are some of the key attributes of the FTP:

- Export-Import of goods and services is generally free unless specifically regulated by the provisions of the Policy or any other law for the time being in force.
- Export and import goods are broadly categorized as – (a) Free (b) Restricted (c) Prohibited.
- Exports are promoted through various promotional schemes.
- Goods and services to be exported but, not the taxes. Hence, any indirect taxes on exports are either exempted or refunded on both outputs and inputs, through application of various schemes in the form of Duty Exemption / Duty Refund (Drawbacks and Rebates), as the case may be.
- Capital goods can be imported at NIL duty for the purpose of exports under the scheme of EPCG.
- For units undertaking to export all their production, there are special schemes so that they can avoid taxes at every stage under the scheme of EOU/SEZ.
- In certain specified cases imports get duty exemption/concession/remission for certain special purposes. In such cases, to enable domestic suppliers to compete with the international suppliers, the supplies of domestic suppliers are treated as deemed exports.

Foreign Trade Policy 2023 - The present Foreign Trade Policy, which was announced on 01.04.2023, is an integrated policy for 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.

34.3 Administration of the FTP

The FTP is formulated, controlled and supervised by the office of the Director General of Foreign Trade (DGFT), an attached office of the Ministry of Commerce & Industry, Government of India. DGFT has several offices in various parts of the country which work on the basis of the policy formed by the headquarters at Delhi.

DGFT grants **Importer Exporter Code (IEC)** Number to importers and exporters. Import and Export without IEC number is not permitted, unless specifically exempted.

Decision of DGFT is final and binding in respect of 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).

DGFT online customer portal (https://dgft.gov.in) provides information relating to export and import including Acts, rules, policy and procedures. Online facilities for e-RCMC/RC related processes, e-Certificate of Origin (e- CoO) and Quality Control and Trade Disputes (QCTD) are also available on said common digital platform.

Other authorities involved : Though the FTP is formulated by DGFT, it is administered in close coordination with other agencies. Other important authorities dealing with FTP are:

1) **Central Board of Indirect Taxes and Customs (CBIC):** CBIC comes under Ministry of Finance and its two Departments namely, Customs and GST facilitate in implementing the provisions of the FTP.

   Customs Department is responsible for clearance of export and import goods after their valuation and examination. Customs authorities follow the policy formed by the DGFT while clearing the imported and export goods.

   Since there is GST on almost all the goods and services (except petroleum products and alcoholic liquor for human consumption), Central GST authorities need to be involved for all matters of exports, where goods have to be cleared with/without payment of GST.

2) **Reserve Bank of India (RBI) :** RBI is the nodal bank in the country which formulates the policies related to management of money, including payments and receipts of foreign exchange. It also monitors the receipt and payments for exports and imports. RBI works under the Ministry of Finance.

3) **State GST Departments :** To avoid dual control, some taxable persons are under jurisdiction of State GST authorities. In their case, State GST Authorities are controlling authorities.

34.4 Foreign Trade Policy vis a vis Tax Laws

The Foreign Trade Policy is closely knit with the Customs, GST Laws and Excise/state laws of India. However, the policy provisions per-se do not override tax laws. The exemptions extended by FTP are given effect to by issuing notifications under the respective tax laws (e.g., Customs Tariff Act). Thus, actual benefit of the exemption depends on the language of exemption notifications issued by the CBIC. In most of the cases the exemption notifications refer to policy provisions for detailed conditions. Ministry of Finance/ Tax Authorities cannot question the decision of authorities under the Ministry of Commerce (so far as the issue of authorization etc. is concerned).

FTP, Handbook of procedures under FTP, CGST Act, SGST Act, IGST Act, Central Excise Act (for petroleum products and tobacco products), Customs Act and notifications issued hereunder form an integrated scheme of indirect taxation. All these statues have to be read as a whole and not in isolation, since, they are series of statues relating to the related subject matter.

34.5 Contents of Foreign Trade Policy

The contents of the FTP, 2023 are as follows

(i) **FTP, 2023 :** Giving basic policy.

(ii) **Handbook of Procedures 2023 :** (HBP 2023) covering procedural aspects of policy.

(iii) **Classification of exports and import items :** Indian Trade Classification Code based on Harmonized System of Coding [ITC(HS)]. ITC-HS codes are divided into two schedules. **Schedule I - Import Policy** whereas **Schedule II – Export Policy**.

34.6 Scope Of FTP

Ch. No.	Contents of Foreign Trade Policy
1.	Legal framework and trade facilitation
2.	General provisions regarding imports and exports
3.	Developing districts as export hubs
4.	Duty exemption & remission schemes
5.	Export promotion Capital Goods (EPCG) Scheme
6.	Export Oriented Units (EOUS), Electronics Hardware Technology Parks (EHTPS), Software Technology Parks (STPS) and Bio-Technology Parks (BTPS)
7.	Deemed exports
8.	Quality Complaints and Trade Disputes
9.	Promoting cross border trade in digital economy
10.	Scomet: special chemicals, organisms, materials, equipment and technologies
11.	Definitions

Provisions relating to Special Economic Zone (SEZ) are contained in a separate Act and are not part of FTP. However, provisions of SEZ are closely related to Foreign Trade Policy.

Handbook of Procedures (HBP 2023) has 11 corresponding chapters which mainly deal with procedural aspects of the foreign trade policy.

34.7 Trade Facilitation And Ease Of Doing Business

National Committee on Trade Facilitation (NCTF) has been constituted to facilitate coordination and implementation of provisions of World Trade Organization's Trade Facilitation Agreement (TFA). 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.

34.8 Developing Districts as Export Hubs

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 to provide support for export promotion.

34.9 Provisions Regarding Imports And Exports

A. General Provisions Applicable To Import And Export Of Goods

Before entering into a transaction of import or export, one needs to ascertain whether the specific item is 'free' or 'restricted' or 'prohibited' for import or export, and whether it is required to be traded exclusively through a State Trading Enterprise (STE). Prohibitions / restrictions on import or export can be imposed by the DGFT through a notification for specified reasons which are essentially the public interest factors. If there is a restriction, an authorisation is required for export / import; and the import authorisations are for the 'actual user' only, unless this condition is specifically dispensed with by the DGFT. Authorisation can be applied for on the portal of the DGFT, dgft.gov.in by using the applicant's IEC number.

Prohibitions on import and export have been imposed for specified countries, organisations, groups, individuals etc. Further, product specific prohibitions are also imposed. Special schemes may be devised to promote and regulate trade and strengthen economic ties with neighbouring countries.

Imported goods are required to comply with all domestic laws applicable to domestically produced goods, unless exempted. In addition, the DGFT may prescribe procedures by means of a public notice, to be followed by an importer or exporter.

Some other general provisions regarding export and import have been outlined as follows:

1. **State Trading Enterprises :** ITC(HS) specifies against certain goods that they can be imported/exported only through 'State Trading Enterprises' notified by DGFT. State Trading Enterprises (STEs) are governmental/non-governmental enterprises, including marketing boards, which deal with goods for export and /or import.

   Some of the STEs are Food Corporation of India, Oil and Natural Gas Corporation Ltd, National Fertilizers Limited, Indian Rare Earth Ltd., National Dairy Development Board, National Agricultural Cooperative Marketing Federation of India (NAFED), State Cooperative Marketing Federation, etc.

2. **Importer-Exporter Code (IEC) :** A person can undertake export or import activity only after obtaining Importer-Exporter Code (IEC) unless specifically exempted. It is a ten-character alphanumeric number allotted to an entity. It is the same number as the applicant's PAN but is issued separately by the DGFT. An online application has to be filed for IEC. Specified categories of importers or exporters are exempted from obtaining IEC. IEC details have to be electronically updated every year, even if there are no changes; failing which it will be de-activated till updation**.**

3. **Mandatory documents:**

- **For export,** the following documents are mandatory:
  1. Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/Postal Receipt
  2. Commercial Invoice cum Packing List (or separate invoice and packing list)
  3. Shipping Bill/Bill of Export/ Postal Bill of Export
- **For import,** the following documents are mandatory:
  1. Bill of Lading/Airway Bill/Lorry Receipt/ Railway Receipt/Postal Receipt
  2. Commercial Invoice cum Packing List (or separate invoice and packing list)
  3. Bill of Entry

For import/export of specific goods or in specific cases of export or import, additional documents may be notified/sought.

B. Provisions Relating To Import Of Goods

1. **'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 said condition is specifically dispensed with by DGFT.

2. **Import of specific categories of goods**

(a) **Samples :** Import of samples of even 'restricted' items, is allowed without import authorisation. Exceptions are defence / security items, seeds, bees, and new drugs; these need authorisation.

Duty free import of samples upto Rs. 3,00,000 for all exporters shall be allowed subject to terms and conditions of customs notification.

(b) **Gifts:** Import of gifts (including those purchased from e-commerce portals) through post / courier, where customs clearance is sought as gifts, is prohibited. Exceptions are 'rakhi' and life-saving medicines. Gifts, however, can be imported upon payment of applicable customs duties. If duty leviable on rakhi is upto Rs. 100, no duty will be collected on the same.

(c) **Passenger baggage :** Following are allowed to be imported as part of passenger baggage without an authorisation subject to the Baggage Rules, 2016:

- Bona-fide household goods and personal effects
- Samples of items freely importable under FTP*
- Drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for export, imported as part of the passenger baggage of exporters coming from abroad, upto prescribed value limit.

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

(d) **Second hand goods :** Import policy for second hand goods is as follows:

Second hand goods	
Capital goods	**Other than capital goods**
➢ 'Restricted' for import and require authorisation and fulfilment of specified conditions, if any • Air conditioners • Diesel generating sets • Desktop computers • Refurbished / reconditioned spares of re-furbished parts of personal computers/ laptops • All notified electronic and IT goods	➢ Imported for the purpose of repair/refurbishing / reconditioning or re-engineering • Freely importable subject to specified conditions ➢ Remaining goods • 'Restricted' for import, and can be imported only against an import authorization

➢ 'Free' for import • Refurbished / reconditioned spares of capital goods, for which a Chartered Engineer certifies existence of 80% residual life • All other second-hand capital goods, other than those listed above	

C. Provisions Relating To Export Of Goods

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.

1. **Samples :** Exports of trade and technical samples of goods of freely importable items are allowed without any limit.
2. **Gifts :** Goods including edible items, of value not exceeding Rs. 5,00,000 in a licensing year (1st April-31st March), 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.
3. **Passenger baggage :** Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within 1 year before or after passenger's departure from India. Samples that are freely exportable can be exported as part of passenger baggage. Authorisation will be required for restricted items.

   Samples of freely exportable items may be exported as part of passenger baggage without an authorisation.
4. **Payments and Receipts on Imports / Exports :**

   (a) **Denomination of Export Contracts :** Export contracts may be denominated either in Indian rupees or freely convertible currency, but export proceeds should be realised in freely convertible foreign currency. However, in specified cases, exports proceeds may be realized in rupees subject to fulfilment of specified conditions.

   Freely convertible foreign currency refers to a currency that can be exchanged or converted into other currencies without significant restrictions or limitations imposed by the government or regulatory authorities.

   (b) **Non-realisation of export proceeds :** If an exporter fails to realize export proceeds within time specified by RBI, he shall be liable to return all benefits/ incentives availed against such exports and shall be liable to penal action under FT (D&R) Act and the FTP. However, if such non-realization is for reasons beyond his control, he may approach RBI for writing off the unrealized amount.

   (c) **Export Credit Agencies (ECAs) :** ECAs provide financial support to exporters. They support exports by insurance, guarantee and also direct lending. For instance, Export Credit Guarantee Corporation of India Ltd. (ECGC), Exim Bank, etc.

34.10 Status Holders

Status Holders are exporter firms recognised as business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. They are expected to not only contribute towards India's exports but also provide guidance and handholding to new entrepreneurs. All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance.

An applicant shall be categorized as status holder upon achieving the threshold export performance in the current and preceding 3 financial years, as indicated below:

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

Points which merit consideration while computing export performance for grant of status:

- The export performance shall be counted on the basis of FOB of export earnings in freely convertible foreign currencies or in Indian Rupees
- For deemed export, FOR value of exports in Indian Rupees shall be converted in US$ at the exchange rate notified by CBIC, as applicable on 1st April of each Financial Year.
- For granting status, an export performance would be necessary in all the three preceding FYs.
- Export performance is not transferrable among IEC holders.
- Exports made on re-export basis shall not be counted for recognition.
- Export of items under authorization, including SCOMET items, would be included for calculation of export performance.
- For calculating export performance for grant of One Star Export House Status category, exports by IEC holders under Micro and Small Enterprises, manufacturing units having ISO/BIS certification, units located in North eastern States including Sikkim and Union Territories of Jammu, Kashmir and Ladakh and export of fruits and vegetables shall be granted double weightage once in any of these categories.

Privileges of Status Holders : Status holders are eligible for privileges as under:

(a) Authorisation and custom clearances for both imports and exports on self- declaration basis.

(b) Fixation of Input Output Norms on priority i.e. within 60 days by Norms Committee.

(c) Exemption from compulsory negotiation of documents through banks. Exceptions are remittance/ receipts.

(d) Exemption from furnishing of Bank Guarantee in Schemes under FTP unless otherwise specified.

(e) Two Star Export Houses and above are permitted to establish export warehouses.

(f) Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods as originating from India with a view to qualify for preferential treatment under specified agreements.

(g) Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to a specified annual limit.

(h) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.

Skilling and mentorship obligations of Status Holders

Status Holders (other than One Star Export House) are being made "partners" in providing mentoring and training in international trade to specified number of trainees each year based on status they achieve.

Illustration 1:

Indicate five benefits available to "Status Holders" under the reward scheme of Foreign Trade Policy, 2023. There is no need to define the term "status holder". ***[CA Final, May 2018 - New] (5 Marks)***

Solution: Status holders are eligible for privileges as under

(a) Authorisation and custom clearances for both imports and exports on self- declaration basis.

(b) Fixation of Input Output Norms on priority i.e. within 60 days by Norms Committee.

(c) Exemption from compulsory negotiation of documents through banks. Exception are remittance/ receipts.

(d) Exemption from furnishing of Bank Guarantee in Schemes under FTP unless otherwise specified.

(e) Two Star Export Houses and above are permitted to establish export warehouses.

(f) Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their Industrial Entrepreneurs Memorandum (IEM)/ Industrial License (IL)/Letter of Intent (LOI)) as originating from India with a view to qualify for preferential treatment under specified agreements.

(g) Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to a specified annual limit.

(h) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.

Illustration 2:

M/s Krishna Handicrafts Pvt. Ltd. (KHPL) has achieved the status of One Star Export House in the current financial year. KHPL is a manufacturer exporter of machines. What would have been the minimum export performance of the KHPL to achieve such status?

KHPL wants to establish export warehouse in accordance with the applicable guidelines. What should be its export turnover to enable it to establish export warehouses?

Solution:

Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance.

In order to be categorized as One Star Export House, an exporter needs to achieve the export performance of 3 million US $ million [FOB/ FOR (as converted)] during current and previous 3 financial years. Thus, export performance of KHPL would have been at least 3 million US $ million [FOB/ FOR (as converted)] during current and previous 3 financial years.

Further, Two Star Export Houses and above are permitted to establish export warehouses. Therefore, KHPL can establish export warehouse in India only if it achieves the status of atleast Two Star Export House for which the exporter needs to achieve the export performance of atleast 15 million US $ million [FOB/ FOR (as converted)] during current and previous 3 financial years.

34.11 Export Promotion Schemes

Exports of a country play an important role in the economy. Government always endeavors to encourage exports by introducing various export promotion schemes.

Duty Exemption & Remission Schemes

The Duty Exemption and Remission Schemes are the most important schemes in the Foreign Trade Policy as they are most widely utilized.

Objective

Duty exemption and remission schemes enable **duty free import of inputs for export production**, including replenishment of inputs or duty remission.

Schemes

(A) **Duty exemption schemes :** Duty exemption schemes enable duty free import of inputs required for export production.

The two duty exemption schemes are as follows: -

1. Advance Authorization Scheme (which will include Advance Authorisation for Annual Requirement).
2. Duty Free Import Authorization Scheme (DFIA)

(B) **Duty remission schemes:** Duty Remission Scheme enables post export replenishment / remission of duty on inputs used in export product. Duty Drawback (DBK) Scheme, administered by Department of Revenue is designed for this purpose.

(C) **Scheme for Remission of duties and taxes on exported products (RoDTEP)**

This scheme has been notified by Department of Commerce and administered by Department of Revenue.

(D) **Scheme for Rebate on State and Central Taxes and Levies (RoSCTL), as notified by the Ministry of Textiles**

(This scheme has not been discussed in detail and not relevant from examination point of view).

34.11.1 Duty exemption schemes

1. Advance Authorisation Scheme

➢ **Items which can be imported duty free against advance authorization :**

- Input that is physically incorporated in export product (making normal allowance for wastage).
- Fuel, oil, catalyst which is consumed / utilized in the process of production of export product.

➢ **Eligible Applicant / Export**

- Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.
- Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process shall be issued to manufacturer exporter only.

➢ **Eligible Supply**

Advance Authorisation is issued for procurement of inputs for the following kinds of supply:-

- Physical export (including export to SEZ)
- Intermediate supply; and/or
- Deemed exports
- Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific SION in respect of item supplied.

➢ **Basis of issuance of Advance Authorisation**

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

- As per Standard Input Output Norms (SION) notified); or
- On the basis of self declaration or
- Applicant-specific prior fixation of norm by the Norms Committee or
- On the basis of Self Ratification Scheme

➢ **Self-Ratification Scheme**

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.

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

Eligiblity to opt for this scheme

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

A status holder who is a manufacturer cum actual user and holds valid 2-star or above status 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 the specified conditions.

Pre-import condition

Imported inputs are subject to pre import condition and they should 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.

Invalidation letter - Regional Authority shall issue Invalidation Letter 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.

Advance Release Order (ARO) - Regional Authority shall issue Advance Release Order if the domestic supplier intends to seek refund of duties exempted through Deemed Exports mechanism.

Validity Period for Import

Validity Period of an advance authorization in two situations is as follows:

- Validity period of Advance Authorisation shall be 12 months from the date of issue of Authorisation. This means that import under the authorisation must be made within this period. Re-validation for another period of 12 months can be allowed once only. Application for re- validation can be made online.
- Validity of Advance Authorisation for supplies under deemed exports shall be co-terminus with contracted duration of project execution or 12 months from the date of issue of Authorisation, whichever is later.

Advance Authorisation for Annual Requirement and Eligibility Condition

- Advance Authorisation for Annual Requirement shall only be issued for items notified in SION.
- Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorisation for Annual requirement.
- 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.

Illustration 3:

Compute entitlement for advance authorisation for annual requirement for an exporter having export performance in past 3 years and last financial year's detail being :

(a) Physical Export [FOB Rs. 20 lakh];

(b) Deemed Exports [FOR Rs. 15 lakh].

Answer: Since exporter has export performance in at least past 2 years, it is eligible for advance authorisation for annual requirement.

The Entitlement would be :

- 300% of the [20 lakh + 15 lakh] = Rs. 105 lakh; or
- Rs. 1 crore,

whichever is higher i.e., Rs. 105 lakh.

Value Addition

Value Addition for the purpose of this Chapter shall be:-

VA = (A – B)/ B x100, 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 duty drawback is claimed or intended to be claimed.

- **Minimum Value Addition = 15%**

- **Import of Mandatory Spares**

Spares that are required to be supplied with the export product can be imported duty-free under the advance authorisation up to a value of **10% of the CIF** value of the authorisation.

- **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.

Note : Imports under Advance Authorisation for physical as well as deemed exports are also exempt from whole of the IGST and GST Compensation Cess.

- **Actual User Condition for Advance Authorisation**

- Advance Authorisation and / or material imported under Advance Authorisation is 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.
- Waste / Scrap arising out of manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfillment of export obligation.

- **Free of Cost Supply by Foreign Buyer**

Advance Authorisation is also 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 is 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.

- **Export Obligation Period and its Extension**

"Export Obligation" means obligation to export product.

The Export Obligation Period (EOP) of Advance Authorisations issued for such items shall be **90 days** from the date of clearance of import consignment and no extension in EOP shall be allowed. Such import shall be subject to actual user condition and no transfer of imported raw material, for any purpose, including job work, shall be permitted.

- **Admissibility of Drawback**

Duty drawback as per rate determined and fixed by Customs authority is 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.

Audit/Special audit

Concerned Norms Committee may conduct audit of the manufacturer. Concerned Norms Committee may also 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.

Common provisions applicable to Advance authorisation and DFIA schemes

Domestic Sourcing of Inputs

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.

Validity of Advance Release Order / Invalidation Letter shall be co- terminous with validity of Authorisation.

Currency for Realisation of Export Proceeds.

Export proceeds shall be realized in freely convertible currency or in Indian Rupees, except otherwise specified.

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 the specified conditions.

Illustration 4:

Bestron Ltd. manufactures goods by using imported inputs and supplies the same under Aid Programme of the United Nations. The payment for such supply is received in free foreign exchange. Can Bestron Manufacturers seek Advance Authorisation in relation to the supplies made by it? ***[RTP, November, 2014]***

Answer :

Supply goods to UN or international organisations for their official use or supplied to projects financed by them are 'deemed exports'. Advance Authorization can be issued for supplies made to such 'deemed exports'. Therefore, Bestron Ltd. can seek an Advance Authorization for the supplies made by it.

Illustration 5:

Rahul Ltd. has imported inputs without payment of duty under advance authorisation. The CIF value of such inputs is Rs. 15,00,000. The inputs are processed and the final product is exported. The exports made by Rahul Ltd. are subject to general rate of value addition prescribed under advance authorisation Scheme. No other input is being used by Rahul Ltd. in the processing. The FOB value of the exports made by the Rahul Ltd. is Rs. 20,00,000. Is Rahul Ltd. eligible for Advance Authorisation Scheme as per the provisions of advance authorisation ?

Answer: Advance Authorisation necessitates exports with a minimum value addition of 15%. Hence export value must be = Rs. 15 lakh import value + 15% value addition = Rs. 17,25,000. And, in the present case, since, FOB value of exports by Rahul Ltd. is Rs. 20 lakhs (which is higher than minimum limit). Therefore Rahul Ltd. is eligible for Advance Authorisation Scheme.

Illustration 6:

P Ltd. imports goods worth Rs. 20 lakh free of cost from M Inc. of UK under advance authorisation. It also imported goods worth Rs. 50 lakhs under Advance Authorisation. The resultant product is supplied to M Inc. of UK at FOB value Rs. 65 lakhs. Determine whether aforesaid export is eligible export under Advance Authorisation.

Answer: In case of free of cost imports from foreign buyer (here, M/s M Inc.), the notional value of imports is added to purchase/ sales both, i.e.,

- CIF Value of Imports = Rs. 50 lakh + Rs. 20 lakh = Rs. 70 lakh; and
- FOB Value of Export = Rs. 65 lakhs + Rs. 20 lakhs = Rs. 85 lakh

The minimum value – addition criteria is 15% of 70 lakh = Rs. 10.50 lakh and the same is met, as export value (i.e. Rs. 85 lakhs) is higher than minimum requirement (i.e. Rs. 80.50 lakhs).

Illustration 7:

'Kartik Ltd' has used some duty paid inputs in its export products. However, for the rest of the inputs, he wants to apply for the Advance Authorization. Can he do so? Explain. ***[CA Final Suggested May 2019, 5 Marks]***

Answer:

Yes, 'Kartik Ltd' can do so. In case of part duty free and part duty paid imports, both Advance Authorization and drawback will be available. Drawback can be obtained for any duty paid material, whether imported or indigenous, used in goods exported, as per drawback rate fixed by Department of Revenue (DoR), Ministry of Finance (Directorate of Drawback). Advance Authorization can be used for importing duty free material. Drawback allowed must be mentioned in the application for Advance Authorization. In such case, All Industry Brand Rates are not applicable. The manufacturer has to get specific brand rate fixed from Commissioner for these exported goods.

2. Duty Free Import Authorisation Scheme (DFIA)

Provisions applicable to Advanced Authorisation are broadly applicable in case of DFIA. However, these Authorizations shall be issued **only for products for which Standard Input and Output Norms (SION) have been notified.**

(a) Duty Free Import Authorisation is issued to allow duty free import of inputs as well as of oil and catalyst which is consumed/ utilised in the process of production of export product.

(b) Import of Tyre under DFIA scheme is not allowed.

➢ Duties Exempted

- Duty Free Import Authorisation shall be exempted only from payment of Basic Customs Duty (BCD).
- 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.

➢ Eligibility

- Duty Free Import Authorisation shall be issued on **post export basis** for products for which SION have been notified.
- Application is to be filed with concerned Regional Authority **before starting export** under DFIA.

➢ No DFIA for inputs with 'Actual User' condition

No DFIA shall be issued for an input which is subject to pre-import condition or where SION prescribes 'Actual User' condition or certain other specified inputs with pre import condition.

➢ Minimum Value Addition = 20%

➢ Transferability of DFIA = Regional Authority shall issue **transferable DFIA.**

➢ Validity of DFIA

- Export shall be completed within 12 months from the date of online filing of application and generation of file number.
- DFIA is valid for 12 months from the date of issue.

- No further revalidation shall be granted by Regional Authority.
- Separate DFIA shall be issued for each SION.

Illustration 8:

Explain the conditions for redeeming authorisation under duty free import authorisation scheme as per Foreign Trade Policy, 2023. ***[Nov. 2016, Q.6 (d), 4 Marks]***

Answer: DFIA scheme is also an advance authorisation scheme in which benefit availed in advance of duty free imports of inputs, oils, catalysts to produce goods for export is authorised by Regional Authority under Foreign Trade Policy 2023.

For redeeming the DFIA scheme, export obligation shall be fulfilled with value addition norms. The minimum value addition under the scheme is 20%.

The export obligation shall be fulfilled within 12 months from the date of online filing of application and generation of file number. The DFIA holder has to apply to Regional Authority for issuance of transferable DFIA.

It is relevant to note that under DFIA Scheme, both scheme and the imported material are transferable.

Illustration 9:

Discuss briefly the similarities and differences between Advance Authorization and DFIA (Duty Free Import Authorization) Schemes. ***[CA Final, May 2018 - Old] (Marks 4)***

Solution: In both DFIA and Advance Authorization schemes, import of inputs, oil and catalyst which are required for export products are permitted without payment of customs duty. Further the method of computing value addition for all the schemes is same.

The differences between DFIA and Advance Authorization schemes are as follows

(i) Advance Authorization is not transferable. DFIA is transferable after export obligation is fulfilled.

(ii) Advance Authorization scheme requires 15% value addition, while in case of DFIA, minimum 20% value addition is required.

(iii) DFIA cannot be issued where SION (Standard Input Output Norms) prescribes actual user condition [as the material is transferable after fulfilment of export obligation].

(iv) Advance Authorization can be issued even if SION for that product is not fixed. DIFA can be issued only if SION has been fixed for the product to be exported.

34.11.2 Duty remission schemes

DUTY DRAWBACK (DBK)

- "Drawback" in relation to any goods manufactured in India and exported, means the rebate of duty excluding IGST and Compensation Cess, chargeable on any imported materials or excisable materials used in the manufacture of such goods.
- Under the duty drawback scheme, customs duty paid on inputs is given back to the exporter of finished product by way of 'duty drawback'. Section 75 of Customs Act, 1962 provide for drawback on materials used in manufacture or processing of export product.
- It may be noted that duty drawback under section 75 of the Customs Act, 1962 is granted when imported materials are used in the manufacture of goods which are then exported, while duty drawback under section 74 is applicable when imported goods are re-exported as it is, and article is easily identifiable.

34.11.3 Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP)

RoDTEP scheme is based on the globally accepted principle that taxes and duties should not be exported, and taxes and levies borne on the exported products should be either exempted or remitted to exporters.

The Remission of duties & taxes on exported Product (RoDTEP) scheme aims to refund such duties and taxes on exported products, as are otherwise not being refunded under other provisions of law.

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

- **Objective of the Scheme:**

  The objective of the scheme is to refund, currently unrefunded:

  - Duties/ taxes/ levies, at the Central, State & local level, borne on the exported product, including prior stage cumulative indirect taxes on goods & services used in production of the exported product, and
  - Such indirect duties/taxes/levies in respect of distribution of exported products.

- **Salient features of the scheme:**

  - Rebate amount is issued in the form of a transferable duty credit/electronic scrip (e-scrip), which will be maintained in an electronic ledger by the CBIC.
  - Such duty credit shall be used only to pay basic customs duty on imported goods.
  - The duty credit scrips are freely transferable, i.e. credits can be transferred to other importers.
  - The rebate under the scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.

- **Reward under the scheme**

  Rebate would be granted to eligible exporters at a notified rate as a % of FOB value with a value cap per unit of the eligible exported product, wherever required, on export of items. However, for certain export items, a fixed quantum of rebate amount per unit may also be notified.

- **Sale proceeds**

  Rebate would not be dependent on the realization of export proceeds at the time of issue of rebate. However, rebate will be deemed never to have been allowed in case of non-receipt of sale proceeds within time allowed under the FEMA, 1999.

- **Ineligible supplies/ items/ categories under RoDTEP**

  Following categories of exports/exporters shall not be eligible for rebate under the scheme:

Export of imported goods in same or substantially the same form
Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India
Export products which are subject to minimum export price or export duty
Products which are restricted/prohibited for export under FTP
Deemed Exports
Supplies of products manufactured by DTA units to SEZ/FTWZ units.
Products manufactured in EHTP and BTP
Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act
Products manufactured or exported availing the benefit of Notification No. 32/1997 Cus. dated 01.04.1997 (i.e. Import of goods for job work without payment of BCD, IGST and GST Cess and re-export of the same after job

work)	
Exports for which the electronic documentation in ICEGATE EDI has not been generated/ exports from non-EDI ports	
Goods which have been taken into use after manufacture	
Products manufactured or exported in discharge of EO against an AA/DFIA/Special AA issued under a duty exemption scheme of relevant FTP	Inclusion of exports made under these categories in RoDTEP scheme will be decided later.
Products manufactured/exported by a unit licensed as 100% EOU in terms of the provisions of FTP or by any of the units situated in Free Trade Zones (FTZ)/Export processing Zones (EPZ)/Special Economic Zones (SEZ).	

34.12 Export Promotion Capital Goods Scheme (EPCG)

➢ Objective of EPCG scheme

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.

Export Promotion Capital Goods Scheme (EPCG) permits exporters to import capital goods (except specified goods) for pre-production, production and post-production at zero customs duty or procure them indigenously without paying duty in the prescribed manner. In return, exporter is under an obligation to fulfill the export obligation.

➢ Eligible exporters :

Following are eligible for EPCG scheme:

- Manufacturer exporters with or without supporting manufacturer(s),
- Merchant exporters tied to supporting manufacturer(s), and
- Service providers including service providers designated as Common Service Provider (CSP) subject to prescribed conditions.

➢ Eligible capital goods

- Capital Goods including capital goods in CKD/SKD condition
- Computer systems and software which are a part of the Capital Goods being imported
- Spares, moulds, dies, jigs, fixtures, tools & refractories
- Catalysts for initial charge plus one subsequent charge

➢ Applicability of IGST and compensation cess

Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess .

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.

➢ 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.

➢ Validity

Authorisation shall be valid for import for **24 months** from the date of issue of Authorisation. Revalidation of EPCG Authorisation shall not be permitted.

- ## 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. Such domestic sourcing shall also be permitted from EOUs.

- ## Export Obligation

Export obligation means obligation to export product(s) covered by Authorisation/permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority.

Import under EPCG scheme shall be subject to an export obligation equivalent to **6 times of duties, taxes and cess saved on capital goods to be fulfilled in 6 years reckoned from the date of issue of authorization.**

Import/procurement under EPCG scheme shall also be subjected to Average Export Obligation (AEO)

Export obligation consists of average export obligation and specific export obligation :

Specific export obligation (Specific EO) under EPCG scheme is equivalent to 6 times of duty saved on capital goods imported under EPCG scheme, to be fulfilled in 6 years reckoned from Authorization issue-date. Specific EO is over and above the Average EO.

Average export obligation(Average EO) under EPCG scheme is the average level of exports made by the applicant in the preceding 3 licensing years for the same and similar products. It has to be achieved within the overall EO period (including extended period unless otherwise specified).

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.

- ## Conditions applicable to the fulfilment of the Export Obligation (EO):

EO 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.
For export of goods, EPCG Authorisation holder may export either directly or through third party(ies).
In case of **indigenous sourcing of capital goods**, Specific EO shall be 25% less than the EO mentioned above, i.e. **EO will be 4.5 times** (75% of 6 times) of duty saved on such goods procured. There shall be no change in average EO imposed, if any.
Exports under Advance Authorisation, DFIA, Duty Drawback, RoSCTL and RoDTEP Schemes would also be eligible for fulfilment of EO under EPCG Scheme.
Exports made from DTA units shall only be counted for calculation and/or fulfillment of AEO and/or EO.
EO can also be fulfilled by the supply of Information Technology Agreement (ITA-1) items to DTA, provided realization is in free foreign exchange.
Both physical exports as well as specified deemed exports shall also be counted towards fulfilment of export obligation.

- ## 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.

➢ Incentives for early fulfillment of export obligation

In cases where Authorization 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 Authorization redeemed.

Illustration 10: (EPCG)

Determine Export Obligation of Mr. Kapil, an exporter, who has purchased following capital goods under EPCG scheme.

- **Import of Capital Goods 'P':** Duty payable was Rs. 5,00,000 (but out of this, only IGST u/s 3(7) of Rs. 1,00,000 was paid in cash and no ITC of such IGST was taken);
- **Import of Another Capital Goods 'Q' :** Duty payable was Rs. 10,00,000 (but out of this, only IGST u/s 3(7) of Rs. 2,00,000 was paid in cash and ITC of such IGST was taken);
- **Import of Another Capital Goods 'R' :** Total duty was Rs. 6,00,000 (no duty was paid including IGST u/s 3(7) Rs. 75,000 availing benefit of scheme);
- **Domestic Purchase of Capital Goods 'S' :** Notional customs duties payable (considering it as deemed import) were Rs. 4,00,000.

Answer: Computation of Export Obligation is as follows :

Capital Goods	Duty Saved (will exclude CVD only if it is paid in cash and credit is not taken)	Factor	EO
P	Rs. 5,00,000 – Rs. 1,00,000 = Rs. 4,00,000	6	24,00,000
Q	Rs. 10,00,000	6	60,00,000
R	Rs. 6,00,000	6	36,00,000
S (factor is 25% less)	Notional Customs Duties i.e., Rs. 4,00,000	4.5	18,00,000
	Total Export Obligation		1,38,00,000

Illustration 11: (EPCG - CKD Imports under EPCG)

Tarun Pvt. Ltd., a manufacturer, wants to import capital goods in CKD condition from a foreign country and assemble the same in India. The capital goods will be used for pre-production processes. The final products of Tarun Pvt. Ltd. would be supplied to units in domestic market (eligible under specified deemed export). Tarun Pvt. Ltd. wishes to sell the capital goods imported by it as soon as the production process starts. Tarun Pvt. Ltd. seeks your advice whether it can avail the benefit of EPCG Scheme for importing the intended capital goods.

[**Note**: Assume that all other conditions required for being eligible to the EPCG Scheme are fulfilled in the above case.] ***(RTP, May 2015)***

Answer : The following points are relevant :

- EPCG scheme allows duty-free/concessional import of capital goods subject to fulfilment of EO (Export Obligation) being '6 times of duty saved';
- Supplies to units in domestic market which is eligible as specified 'deemed exports' are also counted towards discharge of export obligation;
- Capital goods may be purchased for pre-production, production or post-production stage;
- Capital goods can also be imported in CKD/SKD condition and assembled in India;
- But, import of capital goods is subject to 'Actual User' condition till export obligation is completed and export obligation discharge certificate is granted.

  In view of the above, Tarun Pvt. Ltd;

- can import capital goods in CKD condition for pre-production processes;

- has to fulfil EO = 6 × Duty saved as compared to duty payable under project imports;
- may fulfil said EO by making specified deemed exports;
- but, cannot sell capital goods till EO (as above) is completed and export obligation discharge certificate is granted.

Illustration 12:

Define Export Obligation under Export Promotion Capital Goods Scheme (EPCGS) of Foreign Trade Policy, 2023. What will be the specific export obligation if the Capital Goods are indigenously sourced under EPCG Scheme? ***[May 2016, Q.5 (d), 4 Marks]***

Answer: Export obligation = 6 Times of duty saved on capital goods, to be fulfilled in 6 years reckoned from date of issue of Authorization.

And, in case of indigenously sourced capital goods, specific export obligation shall be 25% less than the normal export obligation (i.e. 4.5 Times).

Illustration 13:

Briefly explain as to how FTP is linked with customs laws. (5 Marks) ***[MTP, May 2019]***

Solution: The Foreign Trade Policy is closely knit with the Customs laws of India. However, the policy provisions *per-se* do not over ride tax laws. The exemptions extended by FTP are given effect to by issue of notifications under respective tax laws (e.g., IGST Act, CGST Act, SGST/UTGST Act, Customs Tariff Act, 1975, Central Excise Act, 1944, Customs Act, 1962 etc.). Thus, actual benefit of the exemption depends on the language of exemption notifications issued by the CBIC.

In most of the cases the exemption notifications refer to policy provisions for detailed conditions. Ministry of Finance/ Tax Authorities cannot question the decision of authorities under the Ministry of Commerce (so far as the issue of authorization etc. is concerned).

Decision of Director General of Foreign Trade (DGFT) is final and binding in respect of (a) Interpretation of any provision of foreign trade policy or provision of Handbook of Procedures, Appendices, Aayat Niryat Forms (b) Classification of any item in ITC (HS).

Illustration 14:

Monotype trader wants to enter into export contracts with various customers. It intends to understand the currency denomination while entering into contracts with them and seeks your advice as to how it should ensure compliance.

[CA Final, May 2018 - Old] (Marks 4)

Solution: Denomination of Export Contracts :

Export contracts may be denominated either in Indian rupees or freely convertible currency, but export proceeds should be realised in freely convertible foreign currency. However, in specified cases, exports proceeds may be realized in rupees subject to fulfilment of specified conditions.

Illustration 15:

A star export house wishes to import goods which are exempt from duty under Foreign Trade Policy (FTP), subject to fulfillment of export obligation. However, Customs Notification giving effect to the FTP is yet to be issued. Can the export house import the goods claiming exemption from duty under FTP in the absence of Customs Notification?

[RTP, May 2019]

Solution: No. The exemptions extended by Foreign Trade Policy can be taken only when the exemption notification is issued under the relevant tax laws. The provisions of FTP cannot override tax laws.

34.13 EOU, EHTP, STP AND BTP

EOU, EHTP, STP and BTP stands for Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP). Units undertaking to export their entire production of goods and services (except permissible sales in DTA), may be set up under these schemes 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.

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

EOU/EHTP/STP/BTP units may export all kinds of goods and services except items that are prohibited in ITC (HS). 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, required for its activities, without payment of basic customs duty, additional duty (leviable u/s 3 of the Customs Tariff Act), IGST and compensation cess. However, procurement of goods covered under GST from DTA would be on payment of applicable GST and compensation cess. Units can also import goods including capital goods required for approved activity on a self-certification basis. Goods imported by a unit shall be with actual user condition and shall be utilized for export production.

Supplies from DTA to EOU/EHTP/STP/BTP units for use in their manufacture for exports will be eligible for "benefits under deemed exports". DTA supplier shall be eligible for relevant entitlements under deemed exports provisions 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 specified conditions and documentations.

- **Other Entitlements :**

  Exemption from industrial licensing for manufacture of items reserved for micro and small enterprises. Export proceeds will be realized within 9 months. Units will be allowed to retain 100% of its export earnings in the EEFC (Exchange Earners' Foreign Currency) account. Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA subject to fulfilment of specified conditions. 100% FDI investment permitted through automatic route similar to SEZ units.

- **Net Foreign Exchange Earnings:**

  EOU/EHTP/STP/BTP unit shall be a positive net foreign exchange earner.

1. **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.

2. **Inter Unit Transfer**

   Transfer of manufactured goods/capital 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 the specified procedure. Goods supplied by one unit to another unit shall be treated as imported goods for second unit for payment of duty, on DTA sale by second unit.

3. **Exit from the Scheme**

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

4. **Conversion**

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

Illustration 16: A unit intending to trade in handicrafts wants to set up an EOU. Is it allowed?

Answer : No. 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 and rendering of services. But, trading units are not covered under these schemes.

Illustration 17: An Export Oriented Unit (EOU) can be set up anywhere in India. State true or false.

Answer : True

34.14 Deemed Exports

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 i.e. to ensure that the domestic suppliers are not in disadvantageous position vis-à-vis foreign suppliers in terms of the fiscal concessions. The underlying theory is that foreign exchange saved must be treated at par with foreign exchange earned by placing Indian manufacturers at par with foreign suppliers.

Deemed Exports for the purpose of this FTP

It refers 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 FTP shall be regarded as "Deemed Exports" provided goods are manufactured in India.

Deemed Exports for the purpose of GST

It 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.

We will restrict our discussion to 'Deemed exports for the purpose for FTP' in this chapter.

Deemed exports broadly cover three areas.

(a) Supplies to domestic entities who can import their requirements duty free or at reduced rates of duty.

(b) Supplies to projects/ purposes that involve international competitive bidding.

(c) Supplies to infrastructure projects of national importance.

1. Categories Of Supplies Considered As 'Deemed Export

Supply by manufacturer	Supply by main/sub-contractor(s)
Supply of goods against Advance Authorisation/Advance Authorisation for annual requirement/ DFIA	Supply of goods to projects or turnkey contracts financed by multilateral or bilateral agencies/Funds notified by Department of Economic Affairs (DEA), under International Competitive Bidding (ICB).
Supply of goods to units located in EOU/ STP/ EHTP/ BTP.	Supply of goods to any project or for any purpose where import is permitted at zero basic customs duty provided supply is made against International Competitive Bidding.
Supply of capital goods against EPCG	Supply of goods to mega power projects

authorisation	Supply to goods to UN or international organisations for their official use or supplied to projects financed by them.
	Supply of goods to nuclear projects through national/international competitive bidding.

2. 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 specified terms and conditions:

(a) Advance Authorisation/ Advance Authorisation for Annual requirement/ DFIA

(b) Deemed Export Drawback

Refund of drawback on the inputs used in manufacture and supply under the deemed exports category can be claimed on 'All Industry Rate' of Duty Drawback Schedule 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.

(c) Refund of terminal excise duty for specified excisable goods

Supply of goods will be eligible for refund of terminal excise duty provided recipient of goods does not avail CENVAT credit/rebate on such goods and supply is eligible under that category of deemed exports.

3. Common Conditions For Deemed Export Benefits

(a) Supplies shall be made directly to entities listed in the point (I) above. Third party supply shall not be eligible for benefits/exemption.

(b) 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.

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

Illustration 18: List some supplies which are 'deemed exports' for purpose of benefits under Foreign Trade Policy, 2023.

Answer : As per FTP, 2023, following are treated as deemed exports:

Supply by manufacturer	Supply by main/sub-contractor(s)
Supply of goods against Advance Authorisation/Advance Authorisation for annual requirement/ DFIA	Supply of goods to projects or turnkey contracts financed by multilateral or bilateral agencies/Funds notified by Department of Economic Affairs (DEA), under International Competitive Bidding (ICB).
Supply of goods to units located in EOU/ STP/ EHTP/ BTP.	Supply of goods to any project or for any purpose where import is permitted at zero basic customs duty provided supply is made against International Competitive Bidding.
Supply of capital goods against EPCG authorisation	Supply of goods to mega power projects
	Supply to goods to UN or international organisations for their official use or supplied to projects financed by them.
	Supply of goods to nuclear projects through national/international competitive bidding.

34.15 Glossary (Acronyms)

Acronym	Explanation
AEO	Authorised Economic Operator
ARO	Advance Release Order
BTP	Biotechnology Park
DC	Development Commissioner
DTA	Domestic Tariff Area
e-IEC	Electronic Importer-Exporter Code
EHTP	Electronic Hardware Technology Park
EO	Export Obligation
EOU	Export Oriented Unit
EPCG	Export Promotion Capital Goods
RA	Regional Authority
RCMC	Registration-cum-Membership Certificate
STPI	Software Technology Park of India

34.16 Additional Questions For Practice

Question 19

Enumerate the various matters in respect of which policies and regulations are framed under FTP. ***(MTP May 20)***

Answer :

The various matters in respect of which policies and regulations are framed under FTP are as follows –

- 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

Question 20

With reference to the provisions of FTP, 2023, discuss giving reasons whether the following statements are true or false:

(i) If any doubt arises in respect of interpretation of any provision of FTP, the said doubt should be forwarded to CBIC, whose decision thereon would be final and binding.

(ii) Authorization once claimed by an importer cannot be refused by DGFT.

(iii) IEC is a unique 12 digit PAN based alphanumeric code allotted to a person for undertaking any export/ import activities.

Answer :

(i) **False.** If any question or doubt arises in respect of interpretation of any provision of the FTP, said question or doubt ought to be referred to DGFT whose decision thereon would be final and binding.

(ii) **False.** No person may claim an Authorization as a right and DGFT shall have power to refuse to grant or renew the same in accordance with provisions of FT(D&R) Act, rules made thereunder and FTP.

(iii) **False.** IEC is a unique 10 digit code allotted to a person for undertaking export/ import activities.

Question 21

Mr. A has brought a laptop from USA with him. Such laptop has been used by Mr. B - the seller for few months there. Mr. A contends that he can freely import such laptop as baggage without any restriction / authorization. Examine the correctness of Mr. A's claim in the light of the provisions of FTP, 2023.

Answer :

Import of one laptop computer (notebook computer) as baggage is exempt from whole of the customs duty. Further, Foreign Trade Policy, 2023 provides that import of second hand laptop requires authorization.

In view of above, Mr. A's claim is not correct as second hand laptops can be imported only against an authorization.

Question 22

State in brief policy for import of samples.

Answer : Samples : Import of samples of even 'restricted' items, is allowed without import authorisation. Exceptions are defence / security items, seeds, bees, and new drugs; these need authorisation.

Duty free import of samples upto Rs. 3,00,000 for all exporters shall be allowed subject to terms and conditions of customs notification.

Question 23

Which exporters are eligible for Export Promotion Capital Goods Scheme as per Foreign Trade Policy, 2023? Also describe which capital goods are eligible for import under this scheme? ***(CA Final Nov. 2018,7(d),- Old) (4 Marks)***

Answer : Following exporters are eligible for Export Promotion Capital Goods Scheme (EPCG) as per Foreign Trade Policy, 2023:-

(i) Manufacturer exporters with or without supporting manufacturer(s),

(ii) Merchant exporters tied to supporting manufacturer(s), and

(iii) Service providers including service providers designated as Common Service Provider (CSP) subject to prescribed conditions.

Further, following capital goods are eligible for imports under this scheme:-

(1) Capital goods including capital goods in CKD/SKD condition

(2) Computer systems and software which are a part of capital goods being imported

(3) Spares, moulds, dies, jigs, fixtures, tools & refractories

(4) Catalysts for initial charge plus one subsequent charge.

Question 24

State salient aspects of Advance authorisation for annual requirements to exporters.

Answer :

- Advance Authorisation for Annual Requirement shall only be issued for items notified in SION.

- Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorisation for Annual requirement.
- 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.

Question 25

What are the salient features of Duty-Free Import Authorization Scheme (DFIA)? Which duties are exempted under this scheme? ***(CA Final MTP Nov. 20, 5 Marks)***

Answer : DFIA is issued to allow duty free import of inputs, oil and catalyst which are required for production of export product. The goods imported are exempt ONLY from basic customs duty.

DFIA shall be issued on post export basis for products for which SION have been notified. Separate DFIA shall be issued for each SION.

No DFIA shall be issued for an export product where SION prescribes 'Actual User' condition for any input.

Holder of an DFIA 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.

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.

DFIA or the inputs imported against it can be transferred after the fulfillment of the export obligation. A minimum 20% value addition is required for issuance of DFIA.

Question 26

What is the normal period for which EPCG authorisation will be issued?

Answer : 24 months.

34.17 Multiple Choice Questions

Question 1

Under Foreign Trade Policy, the term "STPI" stands for

(a) Software Traders Place in India (b) Software Technology Park of India

(c) Small Traders & Practitioners in India (d) None of the above

Question 2

Goods other than restricted goods, including edible items, of value upto …….. in a licensing year, may be exported as a gift ***[CA Final MTP May 21, 1 Marks]***

(a) Rs. 1,00,000 (b) Rs. 2,00,000 (c) Rs. 5,00,000 (d) Rs. 10,00,000

Question 3

Under which of the following Export Promotion Schemes, Capital Goods are allowed to be imported duty free?

(a) Export Promotion Capital Goods Scheme (b) Export Oriented Unit Scheme

(c) Software Technology Park Scheme (d) All of the above

Question 4

Which of the following privileges are granted to the Status Holders as per Foreign Trade Policy, 2023?

(i) Authorisation and custom clearances for both imports and exports may be granted on self-declaration basis.

(ii) Two Star Export Houses and above are permitted to establish export warehouses.

(iii) Input-Output norms may be fixed on priority within 7 days by the Norms Committee.

(iv) Exemption from furnishing of bank guarantee in Schemes under FTP.

Choose the most appropriate option.

(a) (i), (ii) and (iv)

(b) (i), (ii) and (iii)

(c) (i), (ii), (iii) and (iv)

(d) (i) and (ii)

Answer Key

01	**(b)**	**02**	**(c)**	**03**	**(d)**	**04**	**(a)**

चलो अपनी तकदीर को एक नया मोड देते हैं
जी तोड़ मेहनत से मंजिल की कठिनाई को
तोड़ देते हैं..!!