



**Professional
Development
Courses on
Customs & FTP by
TaxguruEdu Edu –
April'2022
Batch
SN Panigrahi**



Session – 7

Merchant Exports – Merchandize Exports – Project Exports

- **Merchant Exports**
- **Third Country Exports**
- **High Seas Exports**
- **Deemed Exports**
- **How to Send Samples;**
- **Import & Re-export of Rejected Goods;**
- **Project Imports**

Merchant Exports

Manufacturer Exporter

As per Para 9.32 of FTP
"Manufacturer Exporter" means
a person who exports goods
manufactured by him or intends
To export such goods.

**Procures Inputs &
Manufactures / Processes
in his Factory & Exports
Finished Products**

Merchant Exporter

As per Para 9.33 of FTP
"Merchant Exporter" means
a person engaged in trading
Activity and exporting or
intending to export goods.

**Procures Finished Goods
from
a Manufacturer or other
Traders &
Exports in his Own Name**

Export

▪ Merchant Exporter can export the goods either directly from the premises of the manufacturer, with or without sealing of the export consignments, or through his premises under claim for rebate or under bond.

Merchant Exporter

Export

**From Premises
of Manufacturer**

**From other
Premises**

Salient Features of Merchant Exports

Notification Nos. 40/2017-CT (Rate), 41/2017-IT (Rate), both dated 23-10-2017

The merchant exporter should be registered under GSTIN and Export Promotion Council or Commodity Board recognized by the Department of Commerce.

The merchant exporter should place an order to the manufacturer and its copy shall be provided to the jurisdictional tax officer of such manufacturer.

The registered supplier shall supply goods to merchant exporter at a concessional rate of 0.1% IGST (or CGST 0.05% + SGST 0.05%).

Goods should be dispatched directly from the place of the manufacturer to port, ICD, Airport of Land customs station from where goods are to be exported.

Goods can also be sent to a registered warehouse from where goods can be sent to the port, ICD, Airport of Land customs station from where goods are to be exported.

Salient Features of Merchant Exports

Notification Nos. 40/2017-CT (Rate), 41/2017-IT (Rate), both dated 23-10-2017

The goods can be aggregated at the registered warehouse and then sent to the port, ICD, Airport of Land customs station from where goods are to be exported. In such a case, the merchant exporter shall endorse receipt of goods on the tax invoice and also the acknowledgment of receipt of goods in the registered warehouse. These should be provided to the manufacturer as well as to the jurisdictional tax officer of such manufacturer

The merchant exporter is required to export the goods within 90 days from the date of issue of the tax invoice.

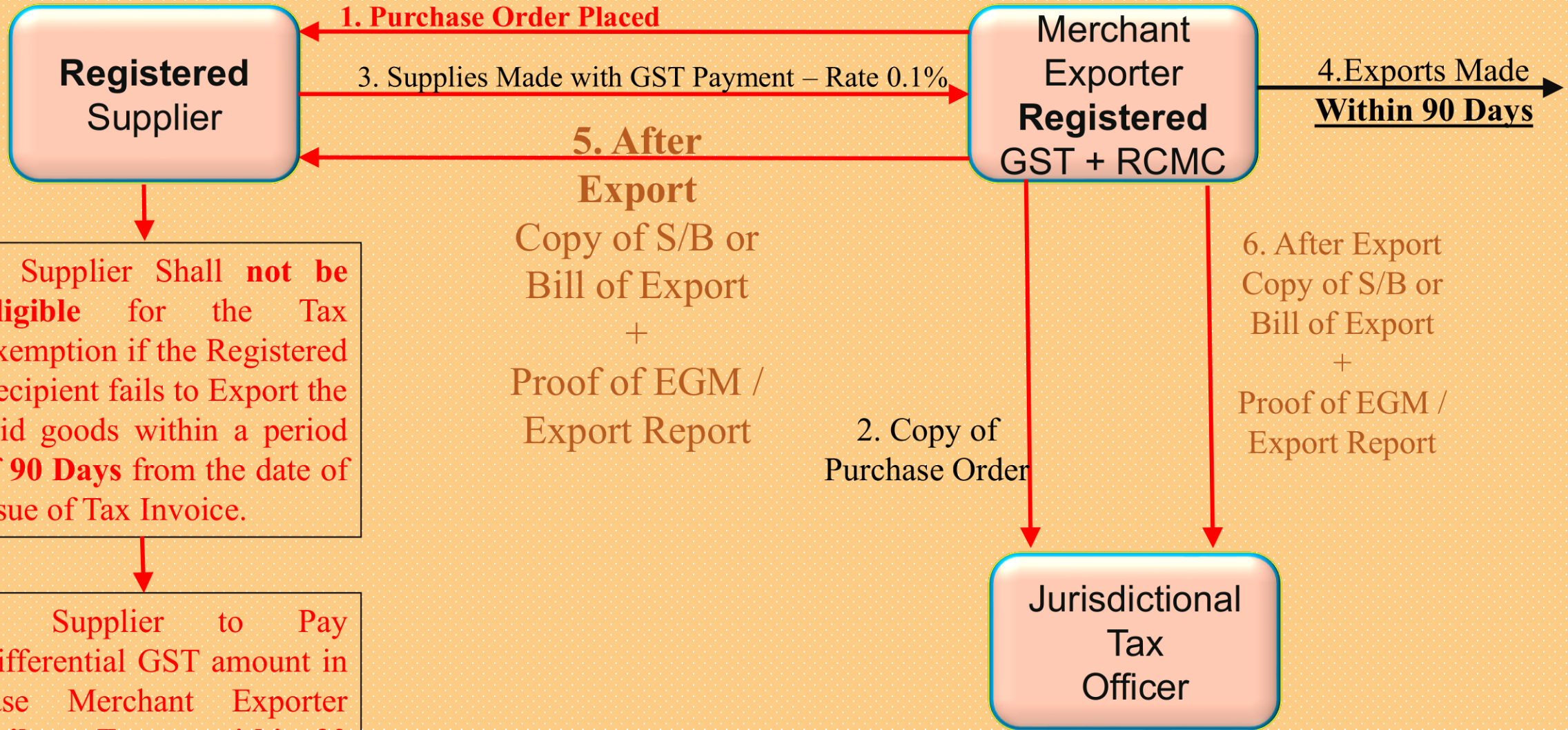
The merchant exporter shall indicate the GSTIN of the supplier and tax invoice number of the manufacturer in the shipping bill or bill of export, as applicable

After export, the merchant exporter shall provide a copy of the shipping bill or bill of export containing details of the manufacturer's GSTIN & his tax invoice with proof of filing of the export general manifest (EGM) or export report.

Merchant Exporter Procuring from Domestic Supplier

Notification No. 40/2017-Central Tax (Rate), 23rd October, 2017

Notification No. 41/2017--Integrated Tax (Rate), 23rd October, 2017



7. Supplier Shall **not be Eligible** for the Tax Exemption if the Registered Recipient fails to Export the said goods within a period of **90 Days** from the date of issue of Tax Invoice.

8. Supplier to Pay Differential GST amount in case Merchant Exporter **Fails to Export within 90 Days**

Some Other Statutory Provisions

Rule 96(10) If goods were procured on payment of 0.1% GST, **export on payment of IGST not permissible.**
If still IGST is paid on export of goods or services, its input tax credit is not available

Rule 96(10) of CGST Rules, inserted on 23-1-2018 but with retrospective effect from 23-10-2017

Rule 89(4B) If the manufacture has claimed the benefit of merchant exports and the merchant exporter makes the zero-rated supplies.
Such merchant exporter is eligible to claim a refund of Input Tax Credit availed in respect of other input & input services

circular No. 94/13/2019-GST dated 28-3-2019 / Circular No. 125/44/2019 dated 18-11-2019

The procedure to claim a refund has been specified

PAYMENT OF CONCESSIONAL TAX BY MANUFACTURER IS NOT MANDATORY

circular No. 37/11/2018-GST, dated 15-3-2018

Payment of 0.1%/0.05% tax by the manufacturer is conditional and not mandatory. The manufacturer can supply goods to merchant exporter on full payment of tax at a normal rate.

CIRCULAR NO.42/2017-CUSTOMS Dated 7 th November, 2017

Registered recipients (Merchant exporters) may, if required, exclude commercially sensitive information while providing copies of Shipping Bills to registered suppliers.

High Sea Transactions

Taxability of High Sea Sale under GST

It has been clarified vide **Circular No- 33/2017- Customs dated 1st August 2017**, that IGST on High Sea Sales transaction on imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the **import declarations are filed before the Custom authorities for the custom clearance purposes for the First Time**.

High sea sale transactions, though regarded as supply in the **course of inter-state trade or commerce**, are not subject to **levy of IGST** as the supply takes place before filing of Bill of entry and **IGST in case of importation of goods can be levied at the time of filing of Bill of Entry**.

Deemed Exports

What is Deemed Export

As per Foreign Trade Policy

Para 7.01 (i) of FTP

“**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.

As per GST Law

Sec 2(39) of CGST Act : Deemed exports” means such supplies of goods as may be notified under Section 147

Sec 147 of CGST Act :

The Government may notify certain supplies of goods as deemed exports where goods supplied do not leave India & payment received either in Indian rupees or in convertible foreign exchange. If such goods are manufactured in India

**Deemed
Exports
Sec 147 of
CGST Act**

Goods Supplied Do Not Leave India

Payment Received either in Indian Rupees or in Convertible Foreign Exchange

Goods are Manufactured in India

Category of Supplies which are Treated as Deemed Exports

Notification No. 48/2017-CT dated 18-10-2017

Following Supply of Goods are Treated as Deemed Exports

- (a) Supply of goods by a registered person against Advance Authorization
- (b) Supply of capital goods by a registered person against Export Promotion Capital Goods (EPCG) Authorization.
- (c) Supply of goods by a registered person to Export Oriented Unit (EOU)
- (d) Supply of gold by a bank or Public Sector Undertaking specified in the **Notification No. 50/2017-Customs, dated the 30th June 2017** (as amended) against Advance Authorization

Deemed Export : GST Provisions

Explanation 1 to Section 54	” Refund ” includes a refund of tax on supply of goods regarded as deemed exports
third proviso to Rule 89(1)	In respect of supplies regarded as deemed export, the refund application may be filed by (a) the recipient of deemed export supplies or (b) the supplier of deemed export supplies.
Rule 89(4A) Rule 96(10)	If the supplier has claimed the benefit of deemed exports and the recipient of such supply makes the zero-rated supplies. Such recipient is eligible to claim a refund of Input Tax Credit availed <u>in respect of other input & input services.</u> However, the <u>export of goods on payment of IGST not permissible</u> to such recipient. If still IGST is paid on export of goods or services, its input tax credit is not available

Deemed Export : Refund

**Registered
Domestic
Supplier**

Supply (GST Items)

on Payment of GST

Treated as Deemed Exports

Notification No. 48/2017-Central Tax

Dated 18th Oct' 2017

**Refund of Deemed Exports supply can be
claimed by either Recipient or Supplier**

Notification No. 47/2017-Central Tax

Dated 18th Oct' 2017

**Advance
Authorization
Holder**

**EPCG
Authorization
Holder**

**EOU / EHTP /
STP / BTP unit**

**Supply of gold by a
bank or Public
Sector Undertaking**

- ❖ Domestic Supplier Must be Registered Person
- ❖ Deemed Export Supplies are Not Treated as Zero Rated, therefore LUT is Not Applicable
- ❖ The Supplier such Charge GST & may opt for Refund
- ❖ Deemed Export Refund may be Claimed by Either the Supplier or Recipient against Disclaimer Certificate from the other.

CLAIM FORM: The taxpayer shall file the refund application in **Form RFD-01** on the **GST portal**.

Procedure to be followed for refund claim in case of deemed exports has been elaborated in the FAQ on GST Chapter 14 Q No. 76 issued by CBI&C on 15-12-2018.

Third Country (Merchandize) Exports

Whether Third Country Exports are Treated as Exports under GST?

Since in case of Third Country Exports, Goods are not Physically Moved from India, therefore is not Considered as Exports : Section 2 (5) of IGST Act, 2017



Whether Third Country Exports are Treated as Supply & Applicable to GST?

Supply of Goods from Non-taxable territory to another place in Non-taxable territory without entering into India are treated neither as 'supply of goods' nor 'supply of services'. Therefore GST is Not Applicable.



However there are Two Differing Opinions

In Re Synthite Industries Ltd (AAR Kerala)
Not Liable to GST on the sale of goods
procured from China and directly supplied to
USA

In re Sterlite Technologies Ltd (GST AAR Gujarat)
GST Liable on Goods Purchased & Sold Outside India

GST not payable on Merchant Trade Transaction : AAR

In Re Synthite Industries Ltd (AAR Kerala);

Order No. CT/2275/18-C3; 26/03/2018

The applicant in his application dated 29.01.2018 has raised following issues for determination by the Authority;

1. Whether on procuring goods from China, in a context where the goods purchased are not brought into India, is GST payable by them?
2. On the sale of goods to the company in USA, where goods sold are shipped directly from China to USA without entering India, is GST payable by them?
3. On procuring goods from China not against specific export order, in a context when the goods purchased are not brought into India, is GST payable by them?
4. On the sale of goods from Netherlands warehouse to their end customers in and around Netherlands, without entering India, is GST payable by them?'

Ruling:

The goods are liable to IGST when they are imported into India and the IGST is payable at the time of importation of goods into India.

The applicant is neither liable to GST on the sale of goods procured from China and directly supplied to USA nor on the sale of goods stored in the warehouse in Netherlands, after being procured from China, to customers, in and around Netherlands, as the goods are not imported into India at any point.

Sending Samples Outside India

Export of Samples

Para 2.43 of FTP Export of Samples

Export of Samples and Free of charge goods shall be governed by provisions given in **Para 2.66 of Handbook of Procedures.**

Para 2.66 of Handbook of Procedures.

Exports of Samples / Exhibits

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

(b) An application for export of samples/exhibits, which are **restricted for export, may be made to DGFT as per ANF-2Q.**

Export of Gifts

Para 2.44 of FTP 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 Authorization.

Para 2.68 of HB

Gifts / Spares / Replacement Goods

For export of gifts, indigenous / imported warranty spares and replacement goods in **excess of ceiling** / period prescribed for exports of Gifts; export of Spares and export of replacement goods in FTP, an application may be made to DGFT in **ANF 2Q**.

Para 2.84 of HB

Free of Cost Exports for status holders

Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an **annual limit of Rs.10 lakh or 2% of average annual export realisation during preceding three licensing years** whichever is lower.

For **Pharma exports**, the annual limit would be 2% of the annual export realisation during preceding three licensing years.

In case of government supplies and supplies of vaccines and lifesaving drugs to health programmes of international agencies such as UN and WHO-PAHO, 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.

Grant of EDF waiver

AD Category – I banks may consider requests for grant of EDF waiver from exporters as under:

Status holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit as below:

a. Annual limit of 2% of average annual export realization during preceding three licensing years for all exporters (excluding the exporters of following sectors-(1) Gems and Jewellery Sector, (2) Articles of Gold and precious metals sector).

b. Annual limit of Rupees One Crore or 2% of average annual export realization during preceding three licensing years, whichever is lower. (for exporters of the following sectors-(1) Gems and Jewellery Sector, (2) Articles of Gold and precious metals sector).

c. 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.

Exports of goods not involving any foreign exchange transaction directly or indirectly requires the waiver of EDF procedure from the Reserve Bank

Grant of EDF Waiver for Export of Goods Free of Cost

RBI/2015-16/332: A.P. (DIR Series) Circular No.53; March 03, 2016

Government of India vide amendment Notification No. 9/2015-2020 dated June 4, 2015, has notified that the Status Holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of Rs 10 lakh or 2% of average annual export realization during preceding three licensing years whichever is lower.

AD Category – I banks may, therefore, consider requests from Status Holder exporters for grant of Export Declaration Form (EDF) waiver, for export of goods free of cost based on the revised norm.

Para 2.47 of FTP

Export through Courier Service/Post

Exports through a registered courier service/Foreign Post Office is permitted as per Notification issued by DoR. However, exportability of such items shall be regulated in accordance with FTP/Export Policy in ITC(HS), 2018.

The value limit for exports through courier service shall be Rs.5,00,000 per consignment.

Para 2.70 of HB : Export by post

In case of export by post, exporter shall submit following documents in lieu of documents prescribed for export by sea/air:

- (a) Bank Certificate of Export and Realization as in e-BRC in Appendix - 2U**
- (b) Relevant postal receipt**
- (c) Invoice duly attested by Customs Authorities.**

Para 2.48 of FTP

Export of Replacement Goods

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

Para 2.49 of FTP : 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 re-export**. Such goods shall be allowed clearance without an Authorisation and in accordance with customs notification. **To that extent the exporter shall return the benefits / incentive availed on the returned goods.**

If the item is 'restricted' for import, the exporter shall require an import license. 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.”

Para 2.50 of FTP: 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.

Para 2.50A of FTP :

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.

Para 2.24 of FTP: Import of Samples

Import of samples shall be governed by Para 2.65 of Handbook of Procedures.

2.65 of Handbook of Procedures : Import of Samples

- (a) No Authorisation shall be required for Import of bonafide technical and trade samples of items restricted in ITC (HS) except vegetable seeds, bees and new drugs. Samples of tea not exceeding Rs.2000 (CIF) in one consignment shall be allowed without an Authorisation by any person connected with Tea industry.
- (b) **Duty free import of samples upto Rs.3,00,000 for all exporters shall be allowed as per terms and conditions of Customs Notification.**

Para 2.29 of FTP

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 satisfaction of customs authorities

Para 2.30 of FTP

Import through courier service/Post 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/ ITC (HS), 2017.

Exhibits and Samples

Exhibits and Samples: Para 2.63 of HB

Exhibits Required for National and International Exhibitions or Fairs and Demonstration

- (a) Import / export of exhibits, including the construction and decorative materials, except items in the “Prohibited” or SCOMET list, required for the temporary stands of foreign / Indian exhibitors at exhibitions, fair or similar show or display for a period of **six months on re-export / re-import basis**, shall be allowed without an Authorization on **submission of a bond / security to Customs or ATA Carnet**.
- (b) **Extension beyond six months for re-export / re-import will be considered by Customs authorities on merits.**
Consumables such as paints, printed material, pamphlets, literature etc. pertaining to exhibits need not be re-exported/re-imported.

Sale of Exhibits

Para 2.64 of HB Sale of Exhibits

- (a) Restricted Items: Sale of exhibits of restricted items, mentioned in ITC (HS), imported for an international exhibition / fair may also be made, without an Authorization within bond period allowed for reexport, on payment of applicable customs duties, subject to a ceiling limit of Rs.5 lakh (CIF) for such exhibits for each exhibitor.
- (b) Freely importable items: However, sale of exhibits of items which are freely importable shall be allowed within bond period allowed for reexport on payment of applicable customs duties.
- (c) If goods brought for exhibition are not re-exported or sold within bond period due to circumstances beyond control of importer, Customs Authorities may allow extension of bond period on merits.

Sending Goods sent for Exhibits Abroad

Circular No. 108/27/2019-GST dated 18.07.2019

- The goods are not a zero-rate supply as taking the goods out of the country is not supplying. Therefore, execution of a bond or LUT is not required. (The same is required under section 16 of the IGST Act).
- Goods need to be brought back under six months of taking out. The goods will be considered supplied if not brought back within the stipulated time of six months or sold.
- In the case mentioned above, the sender is required to issue a tax invoice on the date of expiry of six months from the date of taking the goods out. This will contain details of quantity of goods which have neither been sold nor brought back.
- According to the CBIC notification, such supplies will not get the benefit of zero-rating, including refund.
- No tax invoice is needed to be issued for goods which are brought back to India within the period of six months.
- In case the goods are sold abroad, whether in full or partial, within the stipulated period “the supply shall be held to have been effected, in respect of the quantity so sold, on the date of such sale”.
- The sender is required to issue a tax invoice stating quantity of goods sold. “These supplies shall become zero-rated supplies at the time of issuance of invoice. However, refund in relation to such supplies shall be available only as refund of unutilized ITC and not as refund of IGST”.

Goods Taken Out of India for Exhibitions – Treatment under GST

<https://taxguru.in/goods-and-service-tax/goods-india-exhibitions-treatment-gst.html>

Circular No. 108/27/2019-GST dated 18.07.2019

Import of Samples

Para 2.65 of HB Import of Samples

(a) No Authorisation shall be required for Import of bonafide technical and trade samples of items restricted in ITC (HS) except vegetable seeds, bees and new drugs.

Samples of tea not exceeding Rs.2000 (CIF) in one consignment shall be allowed without an Authorisation by any person connected with Tea industry.

(a) Duty free import of samples upto Rs.3,00,000 for all exporters shall be allowed as per terms and conditions of Customs Notification.

Project Exports

<https://www.projectexports.com/uploads/PROJECT-EXPORTS-GUIDELINES.pdf>

Project Exports

Project Exports [Para 9.42A of FTP]

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**).

Third Party Exports

Para 9.60 of FTP

"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.

Para 2.42 of FTP : Third Party Exports :

Third party exports (except Deemed Export) as defined in Chapter 9 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). Bank Realization Certificate (BRC), Export Order and Invoice should be in the name of third party exporter.

RBI - Master Direction – Export of Goods and Services (Updated as on October 19, 2020)

B.8 Third party export proceeds

Realization of export proceeds in respect of export of goods / software from third party should be duly declared by the exporter in the appropriate declaration form

Project Imports Regulations, 1986

What is Project Imports?

Project Imports Scheme is a concept, unique to Indian Customs, wherein all the goods imported for the purpose of setting up of Industrial Project or substantial expansion of existing industrial projects is subjected to single classification under heading 98.01 of Custom Tariff Act, 1975 and subjected to single rate of duty instead of merit assessment of imported goods.

Why Project Imports?

Normally, imported goods are classified separately under different tariff headings and assessed to applicable Customs duty, but as a **variety of goods are imported for setting up an industrial project their separate classification and valuation for assessment to duty becomes cumbersome.**

Further, the suppliers of a contracted project, **do not value each and every item or parts of machinery which are supplied in stages.** Hence, **ascertaining values for different items delays assessment leading to demurrage and time and cost overruns for the project.**

Therefore, to facilitate smooth and quick assessment by a simplified process of classification and valuation, the goods imported under Project Import Scheme are placed under a single Tariff in the Customs Tariff Act, 1975. This facilitates assessment and ensures faster clearances of goods.

Classification of Goods under Project Imports: Under Project Imports, the goods are classified under **Custom Tariff Heading No. 98.01.**

Projects Eligible under Project Imports

Under the Scheme of Project Import, the following projects are covered:-

- (1) Industrial Plant,**
- (2) Irrigation Project,**
- (3) Power Project,**
- (4) Mining Project,**
- (5) Project for the exploration for oil or other minerals, and**
- (6) Such other projects as the central government may, having regard to the economic development of the country notify in the Official Gazette.**

Thus, a number of notifications have been issued notifying a large number of projects for assessment under Tariff Heading 9801.

Project Import Procedure

4. Finalisation of Contract

- Under Rule 7 of the PIR, 1986: Submission & Reconciliation Statement by Importer within 3 Months from the Date of Clearance of the Last Consignment or within such Extended Time
- Plant Site Verification : Contract Value > Rs 1 Cr; Otherwise on Selective Basis
- Provisional Assessments are Finalized within a Period of Three Months where Plant Site Verification is Not Required and within Six Months where Plant Site Verification is Required.

3. Filing B/E & Clearance of Goods after Registration

- ❖ Every B/E should Mention Project Contract Number Allotted to it.
- ❖ Bill of Entry is sent to the Project Group, which is required to check the Details
- ❖ Bill of Entry is Assessed Provisionally
- ❖ The Project Group Maintained a Separate File for Each Project

1. Registration of Contract(s)

Importer should have Entered into one or more Contracts with the Suppliers of the Goods. As per Regulation 4, the assessment under Heading No.98.01 is available only to those goods which are imported against one or more specific contracts, which have been Registered. Regulation 5. The contract is required to be registered.

2. Customs Formalities – Bond Registration

- After Satisfying that Goods are Eligible for Project Imports Benefit, the Contract is Registered by the Custom House
- Accepting the Provisional Duty Bond
- Project Registration Number - a 10-digit Number with First Two Digits as 99 is Assigned and is Communicated to the Importer.



TaxguruEdu

SN Panigrahi
9652571117