



P r e s e n t s

EXPORT PROMOTION CAPITAL GOODS

(EPCG SCHEME)

AND

ADVANCE AUTHORISATIONS

(AA SCHEMES)

UNDER GST

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1.0 Overview

Before the implementation of GST in India, various tax benefits, entitlements and export promotion schemes were provided to exporters to augment foreign reserves of India, provide employment opportunities, development of some regional and backward areas etc.

Most of the schemes are managed by Director General of Foreign Trade (DGFT) and are provided in Foreign Trade Policy FTP issued by the government every five years. As of now FTP 2015-20 is in effect from financial year 2015 to the year 2020. Some duty drawbacks on exports are provided by Department of Revenue (DoR), Ministry of Finance (MoF), Government of India and some trade specific incentives are also provided by various departments and ministries like Rebate of State Levies (RoSL) schemes provided by Ministry of Textile for promoting textile industry.

Some of these benefits are activity based incentives like Duty drawbacks, MEIS/SEIS, Advance Authorisations, DFIA, EPCG, RoSL, special schemes for jewelers, special schemes for textiles etc. while other benefits were location based like incentives for units located in DTA, SEZ / EHTP / STP managed and controlled by Ministry of Commerce and Industries, etc. Exporters are allowed to procure imported goods without payment of Customs duty, CVD etc and at the same time they are also allowed to purchase indigenous goods without payment of taxes.

So, both Pre-export and Post-export benefits are provided to the exporters. Most of the pre exports benefits in form of advance authorisations / EPCG schemes etc. are based upon actual user conditions and are provided only upon fulfillment of certain export obligation (EO) along with time bound realisation of export proceeds in freely convertible foreign currency. Some of these Export obligations are either general obligations or others are based upon

average export performances of the exporters during the previous financial years. In some cases to obtain benefit of these schemes, exporters are also required to maintain positive net foreign exchange (NFE) figures. There are many situations where even sales realisation in Indian rupees is considered for calculating discharge of export obligations or achievement of NFE like in case of deemed exports or supplies to SEZ etc. even though consideration is received in INR, but it is deemed to be received in foreign currency.

Post-exports benefits are mainly in form of duty drawbacks in cash, advance authorisations and duty free scrips enabling the holder of such scrip to procure duty free inputs against them. Some of these scrips are even freely transferable and often sold in open market.

Recently, notification no. 18/2020-Customs issued on 30.03.2020 has amended five principal customs notifications related to pre-export benefits provided to the exporters in form of EPCG schemes and Advance Authorisations. So In this article we will understand the impact of this notification on EPCG and advance authorizations under GST.

Details of notifications amended are as follows:

N.No. 16/2015 – Customs	EPCG Scheme
N.No. 18/2015 – Customs	Advance Authorisation
N.No. 20/2015 – Customs	Advance Authorisation for Annual Requirement
N.No. 22/2015 – Customs	Advance Authorisation for Export of Prohibited Goods
N.No. 45/2016 – Customs	Special Advance Authorisation for Fabrics

This article has been divided into two sections *viz.* EPCG and Advance Authorisations. Attempt has been made to first familiarize the readers about

the benefits provided by the government under this scheme under Pre-GST era, then we will discuss about the status of these schemes under GST era and changes made by the government from time to time under the GST regime.

Initially these schemes covered Customs duties and so, GST benefits were not provided in these schemes. However, with effect from 13th October 2017, GST benefits were also included in EPCG schemes and Advance Authorisation schemes. Though a Pre-import condition in case of advance authorization was introduced with effect from 13th October 2017, but the same was also removed later on. We will discuss all these issues in detail, but to start with let us gain some basic understanding of these schemes.

2.01 Basis of Advance Authorisation

Like post export benefits and schemes provided by the government, some pre export entitlements to the exporters are also provided through Chapter 4 of Foreign Trade Policy 2015-2020. This chapter of FTP provides various duty exemption / remission schemes so as to enable duty free import of inputs for export production, including replenishment of input or duty remission. These exemptions or remissions as provided in Chapter 4 of Foreign Trade Policy can be broadly classified as follows:

(a) Duty Exemption Schemes.

The Duty Exemption schemes consist of the following:

- (i) Advance Authorisation (AA) (which includes Advance Authorisation for Annual Requirement).
- (ii) Duty Free Import Authorisation (DFIA).

(b) Duty Remission Scheme.

Duty Drawback (DBK) Scheme, administered by Department of Revenue.

Earlier, a booklet on Duty Drawback was provided to the readers, in this article we will discuss about advance authorisation in detail.

2.02 Advance Authorisation

Under this scheme, inputs that are physically incorporated in export product are allowed to be imported without payment of any duty. In addition, fuel, oil, catalyst etc. which is consumed / utilised in the process of production of export product, may also be allowed to be imported without payment of any duty. **Advance Authorization for annual requirement** is also issued for items having standard input output (SION) norms, those exporters having past export performance of minimum two preceding financial years are entitled to

apply for Advance Authorization for Annual requirement which shall only be issued for items having SION.

Except for some supplies which treated as deemed exports of category covered under paragraph 7.02 (c), (d) and (g) of FTP 2015-20 , Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, wherever applicable. However, exemptions from Basic Customs Duty & Additional Customs Duty are available even if such supplies are covered under paras stated above.

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

(i) As per Standard Input Output Norms (SION) notified; (Annual Authorisations may also be issued for goods which do not appear in annexure 4-J)

OR

(ii) On the basis of self declaration. (Annual Authorisations shall not be issued on adhoc norms)

DGFT may, by notification, impose pre-import condition for inputs for Advance Authorisation. For example, Import of drugs from unregistered sources shall have pre-import condition.

Advance Authorisation is available to only eligible exporters for eligible commodities only. These are as follows:

(a) Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.

(b) Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process shall be issued to manufacturer exporter only.

(c) Advance Authorisation shall be issued for:

- (i) Physical export (including export to SEZ);
- (ii) Intermediate supply; and/or
- (iii) Supply of goods to the some of the categories mentioned as Deemed Exports in paragraph 7.02 of FTP 2015-20.
- (iv) Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.

As discussed, there is a condition of minimum value addition which has to be achieved in order to be eligible to obtain Advance Authorization, these are as follows:

- Minimum value addition required to be achieved under Advance Authorisation is 15%.
- Export Products where value addition could be less than 15% are given in Appendix 4D of FTP.
- For physical exports for which payments are not received in freely convertible currency, value addition shall be as specified in Appendix 4C of FTP.
- In case of Tea, minimum value addition shall be 50%.

Value Addition for this purpose shall be:-

Value addition VA = $(A - B) * 100 / B$

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.

Please note that, the provisions related to Minimum value addition are stated above are not applicable to Gems & Jewellery sector. For them limit of minimum value addition and formulae to calculate value addition is given in paragraph 4.38 of FTP 2015-20.

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

As per para 4.24 of FTP 2015-20, goods exported under Advance Authorisation / Duty Free Import Authorisation may be re-imported in same or substantially same form subject to such conditions as may be specified by Department of Revenue. Authorisation holder shall also inform about such re-importation to the Regional Authority which had issued the Authorisation within one month from date of re-import.

As per para 2.13 of FTP, goods already imported / shipped / arrived, in advance, but not cleared from Customs may also be cleared against an Authorisation issued subsequently. This facility will however be not available to “restricted” items or items traded through STEs.

2.03 Advance Authorisation for Annual Requirement

Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorisation for Annual requirement. Exporter shall be entitled to obtain Advance Authorisation for Annual requirement (in terms of CIF value of imports) 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.

Advance Authorisation for Annual Requirement shall only be issued for items notified in Standard Input Output Norms (SION), and it shall not be available in case of adhoc norms under paragraph 4.03 (b)(ii) of FTP 2015-20. Also, Advance Authorisation for Annual Requirement shall not be available in respect of SION where any item of input appears in Appendix 4-J of FTP 2015-20.

Though Advance Authorisations are issued on the basis of self-declarations filed by the exporter, however import of following products shall not be permissible on self-declaration basis:

- (i) All vegetable / edible oils classified under Chapter-15 and all types of oilseeds classified under Chapter-12 of ITC (HS) book;
- (ii) All types of cereals classified under Chapter-10 of ITC (HS) book;
- (iii) All Spices other than light black pepper (light berries) having a basic customs duty of more than 30%, classified under Chapter-9 and 12 of ITC (HS) book;
- (iv) All types of fruits/ vegetables having a duty of more than 30%, classified under Chapter-7 and Chapter-8 of ITC (HS) book;
- (v) Horn, hoof and any other organ of animal;
- (vi) Honey;
- (vii) Rough Marble Blocks/Slabs; and
- (viii) Rough Granite.

(ix) Vitamins except for use in pharmaceutical industry.

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

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

However, waste / scrap arising out of manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfillment of export obligation.

Advance Authorisation holder shall be eligible to import without payment of duty for 12 months from the date of issue of Authorisation. In case of Deemed Export, Advance Authorisation shall be valid up to the contracted duration of project execution or 12 months from the date of issue of Authorisation, whichever is more.

Though, Import of restricted items may be allowed under Advance Authorisation / DFIA, however if such item is prohibited for exports or imports it shall not be allowed under Advance Authorisation / DFIA respectively unless it is separately so notified subject to fulfillment of the conditions provided in that notifications.

Also, items that are reserved for imports by STEs cannot be imported against Advance Authorisation / DFIA. In that case those items can be procured from STEs against ARO or Invalidation letter. Also, STEs are allowed to sell goods on High Sea Sale basis to holders of Advance Authorisation / DFIA holder. STEs are also permitted to issue “No Objection Certificate (NOC)” for import by Advance Authorisation / DFIA holder. Authorisation Holder would be required to file Quarterly Returns of imports effected against such NOC to concerned STE and STE would submit half-yearly import figures of such imports to concerned administrative Department for monitoring with a copy endorsed to DGFT. Items reserved for export by STE can be exported under Advance Authorisation / DFIA only after obtaining a ‘No Objection Certificate’ from the concerned STE.

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

Holder of an Advance Authorisation / DFIA can also procure inputs from domestic indigenous supplier / State Trading Enterprise in lieu of direct import. Such procurement can be against Advance Release Order (ARO), Invalidation Letter or Back-to-Back Inland Letter of Credit.

Such domestic supplier who intends to obtain duty free material for inputs through Advance Authorisation for supplying resultant product to another Advance Authorisation / DFIA / EPCG Authorisation, shall obtain Invalidation Letter from Regional Authority.

Regional Authority shall issue Advance Release Order if the domestic supplier intends to seek refund of duty through Deemed Exports mechanism.

Both ARO and Invalidation letter may be issued simultaneously or subsequently.

Holder of an Advance Authorisation under DTA can also procure inputs directly from EOU / EHTP / BTP / STP / SEZ units without obtaining Advance Release Order or Invalidation Letter. However, Holder of DFIA can procure inputs directly from EOU / EHTP / BTP / STP / SEZ units after obtaining Advance Release Order or Invalidation Letter.

2.04 Requirement of Bank Guarantee / LUT

As per para 2.35 of FTP, wherever any duty free import is allowed or where otherwise specifically stated, importer shall execute, Legal Undertaking (LUT) / Bank Guarantee (BG) / Bond with the Customs Authority, as prescribed, before clearance of goods. In case of indigenous sourcing, Authorisation holder shall furnish LUT/BG/Bond to RA concerned before sourcing material from indigenous supplier/ nominated agency as prescribed in Chapter 2 of Handbook of Procedures.

CBEC Circular 11(A)/2011-Cus dated 25.02.2011 has provided the financial year-wise facility of executing common Bond/LUT against Advance Authorization (AA)/Export Promotion Capital Goods (EPCG) Authorisation which is usable across all EDI ports/locations.

As per para 2.29 of HBP, before clearance of goods through Customs, Authorisation holder shall execute a BG/LUT with Customs Authorities. In such cases, RA shall endorse the following condition on the licence/ Authorisation: "BG / LUT as applicable, to be executed with concerned Customs Authorities". In case of indigenous sourcing, Authorisation holder shall furnish BG/ LUT to RA as per Customs Circular No.58/2004 dated 31.10.04, as amended from time to time. In case, the firm has already executed BG/LUT for the full value of the licence/ certificate/ authorisation/ permission (covering the items indigenously procured) to the Customs and furnishes proof of the same to Regional Authority (RA), no BG/LUT shall be required to be executed with the RA. The RA concerned shall endorse on the authorisation

that the Customs Authority shall release/redeem BG/LUT only after receipt of NOC or EODC from the RA concerned. RA shall endorse a copy of the same along with a forwarding letter to the Customs Authority at the Port of registration for their information and record.

As per guidelines dated 28.07.2017, issued by DGFT on monitoring / revalidating of Bank guarantees, all the concerned RA's were directed to update BG register and enter details of BG in all cases where either export obligation has not been fulfilled or it has not been redeemed and check them on monthly basis.

2.05 Some industry specific provisions for advance authorisations

For export of perfumes, perfumery compounds and various feed ingredients containing vitamins, no Authorisation shall be issued by Regional Authority under paragraph 4.07 of Handbook of Procedures and applicants shall be required to apply under paragraph 4.06 of Hand Book of Procedures to the Norms Committee.

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

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

Special Advance Authorisation Scheme for export of Articles of Apparel and Clothing Accessories has been introduced vide notification no. 21/2015-2020

dated 11.08.2016 which allows Duty free import of fabric for export of items covered under Chapter 61 and 62 of ITC(HS) Classification of Export and Import. However, the authorisation under this scheme shall be subject to following conditions:

- (i) The authorisation shall be issued based on Standard Input output Norms (SION) or prior fixation of norms by Norms Committee.
- (ii) The authorisation shall be issued for the import of relevant fabrics including inter lining only as input. No other input, packing material, fuel, oil and catalyst shall be allowed for import under this authorisation.
- (iii) Exporters shall be eligible for All Industry Rate of Duty Drawback, for non fabric inputs, as determined by Central Government for this scheme. For the purpose of value addition norm of Para 4.08 of FTP, the value of any other input used on which benefit of Drawback is claimed or intended to be claimed shall be equal to 22% of the FOB value of export realised. Minimum value addition shall be as per Para 4.09 of FTP.
- (iv) Where the exporter desires to claim drawback determined and fixed by Jurisdictional Customs Authority (brand rate), he shall follow Para 4.15 of FTP regarding declarations to be made in application for the authorisation and make export under claim for brand rate. In such cases the value addition shall be as per Para 4.08 of FTP. Minimum value addition shall be as per Para 4.09 of FTP.
- (v) Authorisation, and the fabric imported, shall be subject actual user condition. The same shall be non transferable even after completion of export obligation. However fabric imported may be transferred for job work as permitted by Central Excise (excluding to units located in areas eligible for area based exemption from Central Excise Duty). Invalidation of the authorisation shall not permitted.
- (vi) The fabric imported shall be subject to pre-import condition and it shall be physically incorporated in the export product (making normal allowance for wastage). Only Physical exports shall fulfil the export obligation.

- (vii) Provisions of paragraphs 4.02, 4.05(a), 4.13(i), 4.13(ii), 4.14, 4.15, 4.17, 4.19, 4.21(i), 4.21(ii), 4.21(iii), 4.21(v), 4.22(i), and 4.24 of Foreign Trade Policy shall be applicable insofar as they are not inconsistent with this scheme.

2.06 Export Obligations for Advance Authorisations

As per para 4.22 of FTP 2015-2020, period for fulfilment of export obligation under Advance Authorisation shall be 18 months from the date of issue of Authorisation or as notified by DGFT. In cases of supplies to projects in India under deemed export category or projects abroad, the Export Obligation period shall be co-terminus with contracted duration of the project execution or 18 months whichever is more. Export Obligation for items falling in categories of defence, military store, aerospace and nuclear energy shall be 24 months from the date of issue of authorization or co-terminus with contracted duration of the export order whichever is more. Export Obligation Period for inputs as specified in Appendix 4-J, shall be as mentioned in the relevant column of the said Appendix.

As per para 4.23 of FTP 2015-2020, a company holding Advance Authorisation and registered with BIFR / Rehabilitation Department of State Government or any firm / company acquiring a unit holding Advance Authorisation which is under BIFR / Rehabilitation, may be permitted export obligation extension for the Advance Authorisation(s) held by the acquired unit, as per rehabilitation package prepared by operating agency and approved by BIFR / Rehabilitation Department of State Government. If time-period upto which EO extension is to be granted is not specifically mentioned in the BIFR order, EO extension of two years from the date of expiry of EOP (including extended period) or the date of BIFR order, whichever is later, shall be granted without payment of composition fee.

This export proceeds shall be realized in freely convertible currency except otherwise specified. Provisions regarding realization of export proceeds are given in paragraph 2.43 of FTP. Export to Rupee Payment Area (RPA) (for which payments are not received in freely convertible currency) shall be subject to minimum value addition as specified in Appendix-4C. Export to SEZ Units shall also be taken into account for discharge of export obligation provided payment is realised from Foreign Currency Account of the SEZ unit. However, export to SEZ Developers / Co-developers shall be taken into account for discharge of export obligation even if payment is realised in Indian Rupees. For this, authorisation holder shall file Bill of Export for export to SEZ unit / developer / co-developer in accordance with the procedures given in SEZ Rules, 2006.

2.07 Duty Free Import Authorisation Scheme (DFIA Scheme)

Unlike AA where duty free imports are allowed before making such exports, there is another scheme where an exporter after exporting some goods is then allowed to import the inputs used in manufacture of these goods as per SION, with a few exceptions. In addition, import of oil and catalyst which is consumed / utilised in the process of production of export product, may also be allowed. Since, export transactions may be non-recurring for some exporters, so such an exporter may either import these inputs without payment of duty and then use these inputs himself or he may also alternatively sell these inputs to others. However, if such an exporter does not want to import the inputs again, then he may transfer the DFIA scrip to some other importer for valid purposes. In other words it is a post export authorisation to import goods on duty free basis.

Most of the features of Duty Free Import Authorisation Scheme are similar to Advance Authorisation scheme, though there are a few differences stated below:

1. Advance Authorisations are issued on pre export basis, whereas DFIA is issued on post export basis i.e. Advance Authorisation may be issued for export projections while DFIA can be issued only on actual exports.
2. Input output ratio may also be required in Advance Authorisation, while DFIA are based upon SION.
3. Advance Authorisation may be issued to both merchant manufacturer and merchant exporter, whereas DFIA can be issued only to merchant manufacturer and it cannot be issued to merchant exporter.
4. Advance Authorisation may be issued for some categories of deemed exports, whereas DFIA cannot be issued for deemed exports.
5. Under DFIA exporter shall be exempted only from payment of only Basic Customs Duty on imports. However under Advance Authorisation exporter shall be exempted from payment of only Basic Customs Duty, Additional Customs Duty, Education Cess, Anti Dumping Duty, Safeguard Duty and Transition Product Specific safeguard duty on imports.
6. In case of DFIA, Additional customs duty/excise duty, being not exempt, shall it be adjusted as CENVAT credit as per DoR rules. Also DFIA Scheme is not available for some commodities like sugar.
7. Advance Authorisation may be issued for both direct exports and deemed exports, whereas DFIA can be issued only for direct exports.
8. As discussed above, in case of DFIA once Export Obligation and realisation conditions are met, both the inputs and the scrip may become transferable. In case of Advance Authorisation neither inputs nor the scrip is transferable, however once Export Obligation and realisation conditions are met, goods manufactured out of these duty free inputs may be transferred.

Duty Free Import Authorisation shall be issued on post export basis for products for which Standard Input Output Norms have been notified. No Duty

Free Import Authorisation shall be issued for an export product where SION prescribes 'Actual User' condition for any input.

As compared to Advance Authorisation, In case of DFIA minimum value addition of 20% shall be required to be achieved. However, where higher value addition has been prescribed under Advance Authorisation in Appendix 4C, the same value addition shall be applicable for Duty Free Import Authorisation also.

Application for DFIA shall be filed online to the RA concerned **before starting export** under DFIA, a unique file number shall be generated at this stage.

Then exporter shall complete the **export** order. Such export shall be completed within 12 months from the date of online filing of application and generation of file number. However, subject to imposition of late cut as provided in para 9.02 of HBP, applicant shall be allowed to file application beyond 24 months from the date of generation of file number.

This file number has to be mentioned on all the export documents viz. Shipping Bill / Airway Bill/ Bill of Export / ARE-1 / ARE-3, Central Excise certified Invoice.

After completion of exports and **realization** of proceeds, request for issuance of **transferable DFIA** may be made to concerned RA within a period of twelve months from the date of export or six months (or additional time allowed by RBI for realization) from the date of realization of export proceeds, whichever is later.

RA shall issue transferable DFIA with a validity of 12 months from the date of issue. No further revalidation shall be granted by RA.

Exports under DFIA shall be made from a single port. So, separate DFIA shall be issued for each SION and each port.

No DFIA shall be issued for an input where SION prescribes 'Actual User' condition and/or Appendix-4J prescribes pre import condition for such an input.

In respect of resultant products requiring following sensitive items as inputs, exporter shall be required to provide declaration with regard to technical characteristics, quality and specification in Shipping Bill:

“Alloy steel including Stainless Steel, Copper Alloy, Synthetic Rubber, Bearings, Solvent, Perfumes / Essential Oil/ Aromatic Chemicals, Surfactants, Relevant Fabrics, marble, Articles made of polypropylene, Articles made of Paper and Paper Board, Insecticides, Lead Ingots, Zinc Ingots, Citric Acid, Relevant Glass fibre reinforcement (Glass fibre, Chopped / Stranded Mat, Roving Woven Surfacing Mat), Relevant Synthetic Resin (unsaturated polyester resin, Epoxy Resin, Vinyl Ester Resin, Hydroxy Ethyl Cellulose), Lining Material”.

2.08 Status of DFIA under GST.

Existing Export promotion schemes like DFIA shall continue as regard payment of Customs duties is concerned; however IGST and Compensation Cess will have to be paid all the imports made under GST, unless otherwise specifically exempted through some notification or amendment under the IGST Act'2017 and rules made there under.

Corresponding changes have also been made to the provisions as Advance Authorisations and DFIA in chapter 4 of HBP vide public notice no. 26/2015-20 dated 20th September 2017 issued by Ministry of Commerce and Industry, whereby apart from other specific changes:

Reference to Invoice has been replaced with Tax Invoice issued under GST Laws.

Reference to Excise Authority has been replaced with Jurisdictional Customs Authority.

Reference to Excise Act / Rules has been replaced with GST Act / Rules.

Also a new para 4.43A was inserted in HBP 2015-20 as follows:

“4.43A Re-export of goods imported under Advance Authorisation Scheme

Goods imported against Advance Authorisation Scheme, which are found defective or unfit for use, may be re-exported, as per Department of Revenue guidelines. The authorisation holder has to inform the RA who has issued the authorisation before re-export of such defective goods.”

2.09 Status of Advance Authorisation at the time of implementation of GST.

At the time of introduction of GST in India, it was provided that the existing Export promotion schemes like Advance Authorisation shall continue as regard payment of Customs duties like Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Safeguard Duty and Transition Product Specific Safeguard Duty is concerned; however IGST and Compensation Cess will have to be paid all the imports made under GST, unless otherwise specifically exempted through some notification or amendment under the IGST Act'2017 and rules made there under.

Advance Authorisation holder will have to pay IGST at the time of imports. He can take input Tax Credit (ITC), and after export, claim refund of any unutilized input tax credit at the end of tax period.

For items covered under the GST, No Advance Release Order (ARO) facility will be available in Advance Authorisation and EPCG scheme i.e. Advance Release Order facility shall not be available for procurement of inputs under Advance Authorization scheme except for inputs listed in Schedule 4 of Central Excise Act, 1944 read with The Taxation Laws (Amendment) Act 2017 No 18 of 2017, with effect from July 1, 2017.

Invalidation facility will be available for both Advance Authorisation and EPCG schemes, but applicable GST would need to be paid while making local procurement, using an invalidation letter. Input Tax Credit (ITC) of the GST paid on such local procurement can be availed.

The balance import quantities under Advance Authorisations can be utilised for duty free import but only Basic Customs Duty will be exempted on import after 01.07.2017. The applicable IGST will be required to be paid. There will be no implication on export obligation of Advance Authorisations.

2.10 Status of Advance Authorisations w.e.f. 13-10-2017.

As explained above, exporters were required to pay IGST & cess while importing goods under Advance Authorisation and there were huge blockage of working capital among the exporters, so they approached the court for relief, which was immediately provided by the Honorable Delhi High Court in case of Narendra Plastic Private Limited vs. Union of India & others W.P. (C) No. 6534/2017. In this case court granted an interim relief to an exporter holding advance authorization received by him before 01-07-2017, which was received by him against the export orders which were still pending by the exporter. Exporter was allowed to import goods without payment of IGST subject to following conditions:

1. Customs department may verify the quantity and value of goods imported with the authorization.
2. Customs department may verify that the imports are made only up to the extent of credits available in the authorization.
3. The relief being an interim relief and case was fixed for next hearing on 22-02-2018, so petitioner is required to file an undertaking that in case he does not succeed in the petition, he will pay IGST leviable on such imports along with interest amount as decided by the Court.

4. Petitioner should furnish entire list of authorizations which are valid as on 01-07-2017 to the Customs department.
5. Petitioner will not accept any further export orders based upon these authorizations, even if some balance is still available in these authorizations.

Special Leave Petition was filed by the Govt. against the Hon'ble Delhi High Court order allowing exemption from IGST in respect of imports made post GST introduction under advance authorization scheme. However, Honorable Supreme Court dismissed the said SLP filed by CBIC. So, GST Council in its 22nd meeting held on 06th October 2017 at New Delhi announced the following package of relief and incentives for exporters with immediate effect:

Schemes for procurement of duty free inputs

- a.Immediate relief is being given by extending the Advance Authorization (AA) / Export Promotion Capital Goods (EPCG) / 100% EOU schemes to sourcing inputs etc. from abroad as well as domestic suppliers. Holders of AA / EPCG and EOUs would not have to pay IGST, Cess etc. on imports.
- b.Domestic supplies to holders of AA / EPCG and EOUs would be treated as deemed exports under Section 147 of CGST/SGST Act and refund of tax paid on such supplies would be given to the supplier.
- c.Merchant exporters will now have to pay nominal GST of 0.1% for procuring goods from domestic suppliers for export. An important point to note here is that this facility is provided only to Merchant Exporters and not to manufacturer exporters.
- d.Specified banks and Public Sector Units (PSUs) are being allowed to import Gold without payment of IGST. This can then be supplied to exporters as per a scheme similar to Advance Authorization.

Note : recommendations and approvals by GST council do not have any binding effect unless such provisions are notified under official notifications issued and published in official gazette in this regards.

To give effect to his announcement, Ministry of Finance, vide notification no. 79/2017-Customs dated 13-10-2017 made amendments to various notifications issued under the Customs Act 1962. These are as follows:

- A. 2nd amendment was made in notification no. 18/2015-Customs, dated 1st April 2015, whereby imports of goods under **Advance Authorisation** are made exempted from payment of IGST, Compensation cess(if applicable) & countervailing duty leviable thereon under section 9 upto 31st March 2018.

Earlier 1st amendment was made in the principal notification no. 18/2015 vide notification no. 26/2017 dated 29-06-2017, whereby the exemptions was restricted to the whole of the duty of customs leviable thereon under the First-Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A. i.e. exemption was not available for IGST, Compensation cess & countervailing duty leviable thereon under section 9.

Now vide notification no. 79/2017, this exemption has been extended to the integrated tax, compensation cess & countervailing duty leviable thereon under section 9 of the said Customs Tariff Act upto 31st March 2018.

However, some restrictions/conditions have also been imposed to avail this benefit, these are:

1. In case where the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only.
2. The exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be subject to pre-import condition;
3. The exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be available up to the 31st March, 2018.

B. 2nd amendment was made in notification no. 20/2015-Customs, dated 1st April 2015, whereby imports of goods under **Advance Authorisation for Annual Requirement** are made exempted from payment of IGST, Compensation cess(if applicable) & countervailing duty leviable thereon under section 9 upto 31st March 2018.

Earlier 1st amendment was made in the principal notification no. 20/2015 vide notification no. 26/2017 dated 29-06-2017, whereby the exemptions was restricted to the whole of the duty of customs leviable thereon under the First-Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A. i.e. exemption was not available for IGST, Compensation cess & countervailing duty leviable thereon under section 9.

Now vide notification no. 79/2017, this exemption has been extended to the integrated tax, compensation cess & countervailing duty leviable thereon under section 9 of the said Customs Tariff Act upto 31st March 2018.

However, some restrictions/conditions have also been imposed to avail this benefit, these are:

1. In case where the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only.
2. The exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be subject to pre-import condition;
3. The exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be available up to the 31st March, 2018.
4. Like safeguard duty, transitional product specific safeguard duty and anti-dumping, exemption from Countervailing duty also shall not be available in respect of material imported :
 - (a) for supply of goods against Advance Authorisation or Advance Authorisation for annual requirement or Duty Free Import Authorisation;
 - (b) for supply of goods to Export Oriented Unit or Software Technology Parks or Electronic Hardware Technology Parks or Biotechnology Parks;
 - (c) for supply of goods against Export Promotion Capital Good (EPCG) Authorisation;
 - (d) for supply of marine freight containers by 100% Export Oriented Unit (domestic freight container - manufacturers) where said containers are exported out of India within 6 months or such further period as

permitted by Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be; and

(e) for supply for official use or to the projects funded by UN or International Organisation in terms of Notification No. 108/95-Central Excise dated 28.08.1995

- C. 2nd amendment was made in notification no. 21/2015-Customs, dated 1st April 2015, whereby imports of goods under **Advance Authorisation for Deemed Exports** are made exempted from payment of countervailing duty leviable thereon under section 9 of The Customs Tariff Act 1975.

Earlier 1st amendment was made in the principal notification no. 21/2015 vide notification no. 26/2017 dated 29-06-2017, whereby the exemptions was restricted to the whole of the duty of customs leviable thereon under the First-Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A. i.e. exemption was not available for countervailing duty leviable thereon under section 9 of The Customs Tariff Act 1975.

Now vide notification no. 79/2017, this exemption has been extended to the countervailing duty leviable thereon under section 9 of the said Customs Tariff Act.

However, some restrictions/conditions have also been imposed to avail this benefit, like safeguard duty, transitional product specific safeguard duty and anti-dumping, exemption from Countervailing duty also shall not be available in respect of material imported :

(a) for supply of goods against Advance Authorisation or Advance Authorisation for annual requirement or Duty Free Import Authorisation;

(b) for supply of goods against Export Promotion Capital Good (EPCG) Authorisation;

(c) for supply of marine freight containers by 100% Export Oriented Unit (domestic freight container - manufacturers) where said containers are exported out of India within 6 months or such further period as permitted by Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be; and

(d) for supply for official use or to the projects funded by UN or International Organisation in terms of Notification No. 108/95-Central Excise dated 28.08.1995

D. 2nd amendment was made in notification no. 22/2015-Customs, dated 1st April 2015, whereby imports of goods under **Advance Authorisation meant for manufacture of goods for export of a prohibited item** are made exempted from payment of IGST, Compensation cess(if applicable) & countervailing duty leviable thereon under section 9 of The Customs Tariff Act 1975.

Earlier 1st amendment was made in the principal notification no.22/2015 vide notification no. 26/2017 dated 29-06-2017, whereby the exemptions was restricted to the whole of the duty of customs leviable thereon under the First-Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A. i.e. exemption was not available for IGST, Compensation cess & countervailing duty leviable thereon under section 9.

Now vide notification no. 79/2017, this exemption has been extended to the integrated tax, compensation cess & countervailing duty leviable thereon under section 9 of the said Customs Tariff Act 1975.

However, this exemption has been extended to the integrated tax & compensation cess only upto 31st March 2018 and as regards exemption of countervailing duty no such date is mentioned therein.

- E. 2nd amendment was made in notification no. 45/2016-Customs, dated 13th August 2016, whereby **imports of goods as fabrics (including interlining) imported into India against a valid Special Advance Authorisation** are made exempted from payment of IGST, Compensation cess(if applicable) & countervailing duty leviable thereon under section 9 of The Customs Tariff Act 1975.

Earlier 1st amendment was made in the principal notification no.46/2016 vide notification no. 26/2017 dated 29-06-2017, whereby the exemptions was restricted to the whole of the duty of customs leviable thereon under the First-Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A. i.e. exemption was not available for IGST, Compensation cess & countervailing duty leviable thereon under section 9.

Now vide notification no. 79/2017, this exemption has been extended to the integrated tax, compensation cess & countervailing duty leviable thereon under section 9 of the said Customs Tariff Act 1975.

However, this exemption has been extended to the integrated tax & compensation cess only upto 31st March 2018 and as regards exemption of countervailing duty no such date is mentioned therein.

Necessary amendments are also made in Foreign Trade Policy 2015-20 vide notification 33/2015-20 dated 13-10-2017, whereby Para 4.14 (Details of Duties exempted) is replaced by this new para as below:

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Countervailing Duty, Safeguard duty, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Countervailing Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any.

However, imports under Advance Authorization for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition.

3.01 EPCG Scheme

Like Inputs, capital goods required for manufacturing of goods meant for exports are also allowed to be imported or procured locally without payment of duty. Chapter 5 of Foreign Trade Policy 2015-20, provides special Export Promotion Capital Goods (EPCG) Scheme for exporters to facilitate import of capital goods for producing quality goods and services to enhance India's export competitiveness.

EPCG scheme is available to direct manufacturer exporters, manufacturer exporters with supporting manufacturer(s), merchant exporters tied to supporting manufacturer(s) and service providers including Common Service Provider (CSP). So even a supporting manufacturer(s), merchant exporters tied to supporting manufacturer(s) or service providers can procure capital goods under EPCG scheme, though they may not directly export the final product.

This EPCG Scheme allows import of capital goods for pre-production, production and post-production at Zero customs duty. Alternatively, the Authorisation holder may also procure such capital goods from indigenous sources i.e. under EPCG Scheme procurement of capital goods without payment of customs duty is allowed for both post-export and pre-export situations, also such capital goods can, not only be imported but these may also be procured without payment of duty from local market. However in that case such domestic manufacturer shall be eligible for deemed export benefit under paragraph 7.03 of FTP. Such domestic sourcing of capital goods by authorisation holder shall also be permitted from EOUs and in this case, these supplies shall be counted for purpose of fulfilment of positive NFE by said EOU as provided in Para 6.09 (a) of FTP.

Import of capital goods under EPCG Scheme shall be subject to Actual User condition, so capital goods acquired under EPCG scheme cannot be transferred till export obligation related to that particular EPCG scheme is completed.

EPCG Authorisation shall be valid for import for 18 months from the date of issue of Authorisation and revalidation of EPCG Authorisation shall not be permitted.

EPCG Authorisation shall be issued with a single port of registration, for imports. However, exports can be made from any port.

Exporters who intend to first import capital goods on full payment of applicable duties in cash may apply for freely transferable Post Export EPCG Duty Credit Scrip(s). However, duty remission under these scrips shall be only after the Export Obligation is fulfilled.

EPCG scheme is not available for capital goods related to power generation sector also some conditions regarding meeting of export obligations are imposed by DGFT.

Capital Goods imported under EPCG scheme, which are found defective or unfit for use, may be re-exported to foreign supplier within three years from the date of clearance by Customs of such goods, with permission of RA / Customs Authority. Consequently, EO would be re-fixed.

Capital Goods imported and found defective or otherwise unfit for use may be exported, and Capital Goods in replacement thereof be imported under EPCG scheme. In such cases, while allowing export, the Customs shall credit the duty benefit availed which can be debited again at the time of import of such replaced Capital Goods.

Also vide public notice no. 29/2015-20 dated 9th October 2017, para 5.25 of HBP was revised to provide provisions for “Repair” of Capital goods imported under EPCG, a new clause (c) was inserted as follows:

“Capital Goods imported under EPCG Scheme, may be re-exported for repairs abroad within three years from the date of clearance of Customs of such goods, with permission of RA/Customs Authority. The duty component on the expenditure incurred on the repairs as well as the insurance and the freight, both ways shall be taken into account for re-fixation of the EO.”

3.02 Goods eligible for procurement under EPCG

Capital goods for the purpose of the EPCG scheme shall include:

(i) Capital Goods as defined in Chapter 9 including in CKD/SKD condition thereof; i.e. any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernisation, technological up-gradation or expansion. It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control, whether in SKD (Semi Knocked Down) or CKD (Completely Knocked Down) condition.

(ii) Computer software systems;

(iii) Spares, moulds, dies, jigs, fixtures, tools & refractories for initial lining and spare refractories; and

(iv) catalysts for initial charge plus one subsequent charge.

Import of capital goods for Project Imports notified by Central Board of Excise and Customs is also permitted under EPCG Scheme. However, Second hand capital goods shall not be permitted to be imported under EPCG Scheme.

However, authorisation under EPCG Scheme shall not be issued for import of any Capital Goods for generation / transmission of power (including Captive plants and Power Generator Sets of any kind) for:

- (i) Export of electrical energy (power)
- (ii) Supply of electrical energy (power) under deemed exports
- (iii) Supply of power (energy) in their own unit, and
- (iv) Supply/export of electricity transmission services

Also, import of items which are restricted for import shall be permitted under EPCG Scheme only after approval from Exim Facilitation Committee (EFC) at DGFT Headquarters and if the goods proposed to be exported under EPCG authorisation are restricted for export, the EPCG authorisation shall be issued only after approval for issuance of export authorisation from Exim Facilitation Committee at DGFT Headquarters.

3.03 Condition of Export Obligation

As discussed earlier, import under EPCG Scheme shall be subject to meeting of export obligation by the exporter (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.

Export obligation in this case shall be equivalent to 6 times of duty saved on capital goods which has to be fulfilled by the exporter in 6 years reckoned from date of issue of Authorisation. In case countervailing duty (CVD) is paid in cash on imports under EPCG scheme, incidence of CVD would not be taken for computation of net duty saved, provided CENVAT is not availed. In case of

direct imports, EO shall be reckoned with reference to actual duty saved amount. In case of domestic sourcing, EO shall be reckoned with reference to notional Customs duties saved on FOR value.

Apart from this EPCG specific EO, authorisation holder under the scheme shall be also be required to achieve the average level of exports. So under EPCG scheme authorisation holder has to achieve both average EO & Specific EO.

In case of indigenous sourcing of Capital Goods, specific EO shall be 25% less than the EO stipulated above.

For exporters of Green Technology Products, Specific EO shall be 75% of EO as stipulated above. There shall be no change in average EO imposed.

For exporters who wish to import capital goods after payment of full customs duty and then avail post exports EPCG credit scrips, specific EO shall be 85% of the applicable specific EO under the EPCG Scheme. There shall be no change in average EO imposed.

For units located in Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Jammu & Kashmir, specific EO shall be 25% of the EO, as stipulated above. There shall be no change in average EO imposed.

In case the Authorization Holder wants to export through a third party, export shall indicate name of both authorization holder and supporting manufacturer, though BRC, GR declaration, export order and invoice should be in the name of third party exporter.

Average Export Obligation.

Such average would be the arithmetic mean of export performance of the applicant in the preceding three licensing years for same and similar products. While calculating Average Export Obligation, exports counted for fulfilling specific EO against EPCG Authorisations within valid EO Period (whether original or extended) that have been made in the preceding 3 years will not be taken into account.

However, as per para 5.13 of HBP, in case of export of goods relating to the following goods, the EPCG authorisation holder shall not be required to maintain average export obligation:

- (i) Handicrafts,
- (ii) Handlooms,
- (iii) Cottage & Tiny sector,
- (iv) Agriculture,
- (v) Aqua-culture (including Fisheries), Pisciculture,
- (vi) Animal husbandry,
- (vii) Floriculture & Horticulture,
- (viii) Poultry,
- (ix) Viticulture,
- (x) Sericulture,
- (xi) Carpets,
- (xii) Coir, and
- (xiii) Jute

This does not include trawlers, boats, ships and other similar items.(so average EO is applicable on them.)

These goods, shall not be allowed to be transferred within 5 years of their imports thereof, even if the condition of export obligation attached with EPCG

authorisation have been fulfilled by the authorisation holder.

Green Technology Products

As per para 5.29 of HBO green technology products are:

- (i) Equipment for Solar Energy decentralized and grid connected products,
- (ii) Bio-Mass Gassifier,
- (iii) Bio-Mass/Waste Boiler,
- (iv) Vapour Absorption Chillers,
- (v) Waste Heat Boiler,
- (vi) Waste Heat Recovery Units,
- (vii) Unfired Heat Recovery Steam Generators,
- (viii) Wind Turbine,
- (ix) Solar Collector and Parts thereof,
- (x) Water Treatment Plants,
- (xi) Wind Mill, Wind Mill Turbine / Engine,
- (xii) Other Generating Sets - Wind powered,
- (xiii) Electrically Operated Vehicles – Motor Cars,
- (xiv) Electrically Operated Vehicles - Lorries and Trucks,
- (xv) Electrically Operated Vehicles – Motor Cycles/Mopeds, and
- (xvi) Solar Cells.

3.04 Fulfillment of Export Obligation

Export shall be physical export. However, deemed exports as specified in paragraph 7.02 (a), (b), (e), (f) & (h) of FTP shall also be counted towards fulfillment of export obligation to the supporting manufacturer(s), merchant exporters tied to supporting manufacturer(s) and service providers respectively.

Shipments under Advance Authorisation, DFIA, Drawback scheme or reward schemes under Chapter 3 of FTP; would also count for fulfillment of EO under EPCG Scheme.

EO can also be fulfilled by the supply of ITA-I items to DTA, provided realization is in free foreign exchange.

Royalty payments received by the Authorisation holder in freely convertible currency and foreign exchange received for R&D services shall also be counted for discharge under EPCG.

Payment received in rupee terms for such Services as notified in Appendix 3E shall also be counted towards discharge of export obligation under the EPCG scheme.

A company holding EPCG authorisation and registered with BIFR / Rehabilitation Department of State Government or any firm/ company acquiring a unit holding EPCG authorisation which is under BIFR / Rehabilitation, may be permitted EO extension for the EPCG authorisation(s) held by the acquired unit, as per rehabilitation package prepared by operating agency and approved by BIFR / Rehabilitation Department of State Government. If time-period upto which EO extension is to be granted is not specifically mentioned in the BIFR order, EO extension of 3 years from the date of expiry of EOP (including extended period) or the date of BIFR order, whichever is later, shall be granted without payment of composition fee.

The Authorisation holder shall fulfill the specific export obligation over the prescribed block period as follows, during the first block of 4 years he must achieve 50% of EO and balance EO he may achieve in next block of 2 years.

Where EO of the first block is not fulfilled, Regional Authority may subject to payment of composition fee of 2% on duty saved amount proportionate to unfulfilled portion of EO pertaining to the block, extend the EO period. Otherwise, the Authorization holder shall, within 3 months from the expiry of the block, pay duties of customs (along with applicable interest as notified by DOR) proportionate to duty saved amount on total unfulfilled EO of the first block.

In cases where authorisation holder has fulfilled 75% or more of specific export obligation and 100% of Average Export Obligation within half or less than half the original export obligation period specified, remaining export obligation shall be condoned and the authorisation shall be redeemed by RA concerned. Also, in case of shortfall upto 5% in export obligation, RA concerned have the power to condone such shortfall, but this benefit shall not be permitted where incentive for early EO fulfilment has been availed.

Export proceeds shall be realized in freely convertible currency except for deemed exports.

Exports to SEZ units /Supplies to developers/ co-developers irrespective of currency of realization, would also be counted for discharge of Export Obligation. Realization in case of supplies to SEZ units shall be from foreign currency account of the SEZ unit.

Whenever a ban/restriction is imposed on export of any product, export obligation period would stand automatically extended for a period equivalent to duration of such ban, without any composition fee.

3.05 Export obligation of persons other than manufacturer exporter.

Since, EPCG scheme covers manufacturer exporters with or without supporting manufacturer(s), merchant exporters tied to supporting manufacturer(s) and

service providers. So they have to meet their EO themselves. For the same purpose, the name of supporting manufacturer(s) shall be endorsed on the EPCG authorisation before installation of the capital goods in the factory / premises of the supporting manufacturer (s). In case of any change in supporting manufacturer (s) the RA shall intimate such change to jurisdictional Central Excise Authority of existing as well as changed supporting manufacturer (s) and the Customs at port of registration of Authorisation.

Export Promotion Capital Goods (EPCG) Scheme also covers a service provider who is designated / certified as a Common Service Provider (CSP) by the DGFT, Department of Commerce or State Industrial Infrastructural Corporation in a Town of Export Excellence. So, in this case export by users of the common service i.e. actual exporter shall be counted towards fulfillment of export obligation of the CSP. Similarly the EPCG authorisation shall contain details of the CSP in the respective Shipping bills and concerned RA must be informed about the details of the Users prior to such export. Since this is fulfillment of specific export obligation on part of CSP, so such export shall not be counted towards fulfillment of specific export obligations in respect of other EPCG authorisations (of the CSP/User). Also in this case authorisation holder shall be required to submit Bank Guarantee (BG) which shall be equivalent to the duty saved. BG can be given by CSP or by any one of the users or a combination thereof, at the option of the CSP.

3.06 Post Export EPCG Duty Credit Scrip(s)

As discussed earlier, Post Export EPCG Duty Credit Scrips shall be available to the exporters who intend to import capital goods on full payment of duties in cash. These scrips shall be freely transferable like those issued under Chapter 3 of FTP. In case of Post Export EPCG Duty scrips, specific EO shall be 85% of

the applicable specific EO under the EPCG Scheme. Basic Customs duty paid on Capital Goods shall be remitted in proportion to the EO fulfilled.

All the other provisions for utilization of scrips issued under Chapter 3 of FTP and all provisions of the existing EPCG Scheme insofar as they are not inconsistent with this scheme shall also be applicable to Post Export EPCG Duty Credit Scrips.

3.07 Status of EPCG under GST

Since remission of only basic customs duty is available under EPCG Schemes, so under the GST regime EPCG can be used for payment of customs duties only and importers would need to pay IGST and take input tax credit as applicable under GST rules. Also, ARO facility shall not be available for sourcing of capital goods manufactured indigenously.

However, as discussed earlier, GST Council in its 22nd meeting held on 06th October 2017 at New Delhi announced the following package of relief and incentives for exporters with immediate affect, however official notification in this regard is still awaited as on 06-10-2017:-

Schemes for procurement of duty free inputs

e.Immediate relief is being given by extending the Advance Authorization (AA) / Export Promotion Capital Goods (EPCG) / 100% EOU schemes to sourcing inputs etc. from **abroad** as well as **domestic** suppliers. Holders of AA / EPCG and EOUs would not have to pay IGST, Cess etc. on imports.

f.Domestic supplies to holders of AA / EPCG and EOUs would be treated as **deemed exports** under Section 147 of CGST/SGST Act and refund of tax paid on such supplies would be given to the supplier.

g.Merchant exporters will now have to pay nominal GST of 0.1% for procuring goods from domestic suppliers for export. An important point to note here is that this facility is provided only to Merchant Exporters and not to manufacturer exporters.

h.Specified banks and Public Sector Units (PSUs) are being allowed to import Gold without payment of IGST. This can then be supplied to exporters as per a scheme similar to Advance Authorization.

Note : recommendations and approvals by GST council do not have any binding effect unless such provisions are notified under official notifications issued and published in official gazette in this regards.

To give effect to this announcement, Ministry of Finance, vide notification no. 79/2017-Customs dated 13-10-2017 made 4th amendment in notification no. 16/2015-Customs, dated 1st April 2015, whereby imports of capital goods under EPCG Scheme are made exempted from payment of IGST & Compensation cess(if applicable) upto 31st March 2018.

Earlier 3rd amendment was made in the principal notification no. 16/2015 vide notification no. 26/2017 dated 29-06-2017, whereby the exemptions was restricted to the whole of the duty of customs leviable thereon under the First-Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty, if any, leviable thereon under sub-sections (1), (3) and (5) of section 3 of the said Customs Tariff Act i.e. exemption was not available for IGST & Compensation cess.

Now vide notification no. 79/2017, this exemption has been extended to the integrated tax and compensation cess leviable thereon under sub-sections (7)

and (9), respectively of section 3 of the said Customs Tariff Act upto 31st March 2018.

However through this notification 79/2017, an amendment is also made to explanation C(II) regarding Export Obligation, the effect of this amendment is that, in case exemption from IGST & Compensation cess is availed by the registered person, following supplies which were earlier counted toward the discharge of export obligation, shall not be counted for Export Obligation of such person:

- (a) Deemed exports (subject to nature of supplies as mentioned in the notification itself)
- (b) Supply of ITA-1 items to Domestic Tariff Area, provided realization is in free foreign exchange;
- (c) Royalty payments received in freely convertible currency and foreign exchange received for Research and Development (R&D) services; and
- (d) Payments received in Rupee terms for such services as are specified in paragraph 5.04(h) of the Foreign Trade Policy.

Necessary amendments are also made in Foreign Trade Policy 2015-20 vide notification 33/2015-20 dated 13-10-2017, whereby following amendments were made in chapter 5 of FTP 2015-20:

1. Para 5.01(a) is replaced by this new para as below:

EPCG Scheme allows import of capital goods for pre-production, production and post-production at Zero customs duty. Capital goods imported under EPCG scheme for physical exports are also exempt from whole of the Integrated Tax and Compensation Cess leviable thereon

under the subsection (7) and subsection (9) respectively, of section 3 of the Customs Tariff Act, 1975(51 of 1975), as may be provided in the notification issued under Department of Revenue. Alternatively, the Authorisation holder may also procure Capital Goods from indigenous sources in accordance with provisions of paragraph 5.07 of FTP. Capital goods for the purpose of the EPCG scheme shall include:

- i. Capital Goods as defined in Chapter 9 including in CKD/SKD condition thereof;
- ii. Computer software systems;
- iii. Spares, moulds, dies, jigs, fixtures, tools & refractories for initial lining and spare refractories; and
- iv. Catalysts for initial charge plus one subsequent Charge

2. Para 5.01 (c) 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 date of issue of Authorisation.
3. Para 5.01 (e) which read as *“In case countervailing duty (CVD) is paid in cash on imports under EPCG, incidence of CVD would not be taken for computation of net duty saved, provided CENVAT is not availed”* is deleted.
4. 5.07 (Indigenous Sourcing of Capital Goods and benefits to Domestic Supplier) is replace by new para as below:

A person holding an EPCG authorisation may source capital goods from a domestic manufacturer. Such domestic manufacturer shall be eligible for deemed export benefit under paragraph 7.03 of FTP and as may be provided under GST Rules under the category of Deemed Exports. Such domestic sourcing shall also be permitted from EOUs and these supplies

shall be counted for purpose of fulfilment of positive NFE by said EOU as provided in Para 6.09 (a) of FTP.

4.0 Pre-Import Condition under Advance Authorisation in GST Regime

An advance Authorisation license entitles the holders to import goods duty-free for the purpose of exports. Earlier, the government had restricted the use of these licenses by imposing condition of “pre imports”. This pre-import condition in respect of imports made under Advance Authorization was imposed under:

- Notification no. 79/2017-Cus dated October 13, 2017
- Paragraph 1 of DGFT Notification No. 33/2015-20 dated October 13, 2017
- Notification No. 48/2017-Central Tax dated October 18, 2017.

This condition was not there in the pre-GST tax regime.

Pre-Import basis means that

- These licenses are valid only if goods have been imported.
- These licenses could only be used for only those lots of exports for which imports are made and not afterward.

Earlier, under the advance authorization scheme

- a person can import the inputs first and make the export of resultant products later on

or alternatively

- he can export the goods and then import the inputs as replenishment of the inputs used in the manufacture of the export products.

So, by putting this “*Pre imports*” condition, the option of replenishment was not available to them.

Based on the pre-import condition, the directorate of revenue intelligence (DRI) started issuing notices to exporters which have used the licenses but have not so far imported goods. This new restrictions defeat the very purpose of the licenses. The notices asked exporters to pay integrated GST in cases where raw material was imported only after goods were partially or fully exported. The condition essentially denies IGST benefits to those imports which had happened after exports. As per them all imports need to be made prior to exports, and imports and exports need to be made under the **same** advance licence.

A two-judge bench of the Gujarat High Court invalidated this provision in the Central GST Act that restricts utilization of advance authorization licenses and held them as violative of the provisions of the Constitution. Allowing the

contentions of the petitioners, the bench comprising Justice Harsh Dewani and Justice A P Tahker struck down the condition as arbitrary, ultra vires and violative of the Constitution.

Though the condition of pre-import was effective from October 13, 2017, however, as the petitions rose in courts, the government lifted the condition from the perspective effect as follows:

or from January 10, 2019, onwards.

- Notification no. 01/2019-Customs, dated 10-01-2019.
- Paragraph 3 of DGFT Notification No. 53/2015-20 dated January 10, 2019.
- Notification No. 01/2019-Central Tax dated January 15, 2019.

5.0 Status of EPCG and Advance Authorisation schemes from 1st April 2018 onwards

As discussed earlier, through notification no. 79/2017-Customs, benefit of GST under both these schemes were provided only up to 31st March 2018 only. However, from time to time this benefit was extended to a further date by various notifications. On 28.03.2018 all these benefits were extended up to 01.10.2018 vide notification no. 35/2018 – Customs. Then these were extended up to 31.03.2019 on 26.09.2018 vide notification no. 66/2018 – Customs. Thereafter on 25.03.2019 another notification no. 08/2019 – Customs was issued to extended these benefits up to 31.03.2020. since these benefits were expiring on 31.03.2020 so once again on 30.03.2020 another notification no. 18/2020 – Customs was issued and these benefits are eventually again made available to the exporters till 31st March 2021.