

Foreign Trade Policy

For the sake of brevity, Foreign Trade Policy has been referred to as FTP at many places in this Chapter.

Question 1

What do you understand by the term 'Foreign Trade Policy' (FTP)? Which is the governing legislation for FTP? Which Government authorities administer FTP in India?

Answer

Foreign Trade Policy is a set of guidelines or instructions issued by the Central Government in matters related to import and export of goods in India viz., foreign trade. The FTP, in general, aims at developing export potential, improving export performance, encouraging foreign trade and creating favorable balance of payments position.

In India, Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade. The main legislation concerning foreign trade is the Foreign Trade (Development and Regulation) Act, 1992 FT(D&R) Act. In exercise of the powers conferred by the FT(D&R) Act, the Union Ministry of Commerce and Industry, Government of India announces the integrated Foreign Trade Policy (FTP) in every five years with certain underlined objectives. This policy is updated every year in April, in addition to changes that are made throughout the year.

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

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

- (i) Central Board of Excise and Customs (CBEC)
- (ii) Reserve Bank of India (RBI)
- (iii) State VAT Departments

Question 2

Briefly explain as to how FTP is linked with excise and customs laws.

Answer

The Foreign Trade Policy is closely knit with the Customs and Excise laws of India. However, the policy provisions *per-se* do not override tax laws. The exemptions extended by FTP are

given effect to by issue of notifications under respective tax laws (e.g., Customs Tariff Act). Thus, actual benefit of the exemption depends on the language of exemption notifications issued by the CBEC. In most of the cases the exemption notifications refer to policy provisions for detailed conditions. Ministry of Finance/ Tax Authorities cannot question the decision of authorities under the Ministry of Commerce (so far as the issue of authorization etc. is concerned).

Question 3

Enumerate the various matters in respect of which policies and regulations are framed under FTP.

Answer

The FTP covers the policies and regulations with respect to the following matters:

- (i) Policy for regulating import and export of goods and services
- (ii) Export Promotional Measures
- (iii) Duty Remission and Duty Exemption Scheme for promotion of exports
- (iv) Export promotion Capital Goods (EPCG) Scheme
- (v) Export Oriented Undertakings (EOU) / Electronic Hardware Technology Park (EHTP) / Software Technology Park (STP) and Bio Technology Parks (BTU) Schemes
- (vi) Special Economic Zones
- (viii) Deemed Exports

Question 4

Briefly explain the salient features of the Customs Act, 1962 relating to Special Economic Zones.

Answer

The salient features of Special Economic Zones (SEZ) are as follows:

- (i) SEZ is deemed as a separate island outside India where Inputs, Capital Goods and Input Services can be obtained without payment of duties and taxes such as Customs Duty, Excise Duty, Central Sales Tax, State VAT and Service Tax.
- (ii) For the sheer objective of ensuring consistent development of SEZ, an exclusive Act namely Special Economic Zone Act 2005 (hereinafter abbreviated as SEZ Act 2005) was passed. The twin prime purposes of foregoing Act are to ensure smooth operations in SEZ as well as Single Window Clearance with a view to set up either an SEZ or a Unit in SEZ.
- (iii) SEZ may be set up in the public, private or joint sector OR by the Central Government or State Government, jointly or severally [section 3(1) of SEZ Act 2005]

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- (iv) Any goods imported directly from outside India or procured from within India shall be authorized for admission to the SEZ. Goods admitted to SEZ are exempt from duties of customs subject to certain conditions.
- (v) Any goods admitted to SEZ from DTA shall be chargeable to export duties at such rates as are leviable on such goods when exported, subject to any rules made in this behalf. Any goods removed from the SEZ to DTA shall be chargeable to the duties of customs including antidumping, countervailing and safeguard duties as leviable on such goods when imported.
- (vi) SEZ could be set up for manufacturing goods, rendering of services, production, processing, assembling, trading, repair, re-making, re-conditioning and re-engineering, making of gold, silver and other articles of precious metals and jewellery.
- (vii) It shall be under the administrative control of the Development Commissioner. All activities in the SEZ, unless otherwise specified, shall be carried out through self certification procedure.
- (viii) Goods going into SEZ from DTA shall be treated as deemed exports. At the same time, goods coming from SEZ to DTA shall be treated as import of goods.

Question 5

With reference to the provisions of FTP 2009-14, discuss giving reasons whether the following statements are true or false:

- (i) *If any doubt arises in respect of interpretation of any provision of FTP, the said doubt should be forwarded to CBEC, whose decision thereon would be final and binding.*
- (ii) *Authorization once claimed by an importer cannot be refused by DGFT.*
- (iii) *IEC is a unique 12 digit PAN based alphanumeric code issued by DGFT to Indian companies.*
- (iv) *Waste generated during manufacture in an SEZ Unit can be freely disposed in DTA on payment of applicable customs duty, without any authorization.*
- (v) *A Customs Clearance Permit (CCP) is required from DGFT in certain specific cases of import of gifts.*

Answer

- (i) **False.** If any question or doubt arises in respect of interpretation of any provision of the FTP, said question or doubt ought to be referred to DGFT whose decision thereon would be final and binding.
- (ii) **False.** No person may claim an Authorization as a right and DGFT shall have power to refuse to grant or renew the same in accordance with provisions of FT(D&R) Act, rules made thereunder and FTP.
- (iii) **False.** IEC is a unique 10 digit code issued by DGFT to Indian companies.

- (iv) **True.** Any waste or scrap or remnant including any form of metallic waste & scrap generated during manufacturing or processing activities of an SEZ Unit/ Developer/ Co-developer are allowed to be disposed in DTA freely, without any authorization, subject to payment of applicable customs duty.
- (v) **True.** A Customs Clearance Permit (CCP) for import of gifts is not required from DGFT if such goods are otherwise freely importable under ITC(HS). Thus, only when the goods imported as gifts are not freely importable under ITC(HS), a CCP is required.

Question 6

Mr. A wants to import a laptop from the USA which has been used by the seller for some time there. Mr. A contends that he can freely import such laptop without any restriction/ authorization. Examine the correctness of Mr. A's claim in the light of the provisions of FTP 2009-14.

Answer

As per FTP 2009-14, second hand (used) goods, except second hand capital goods, are restricted for imports and can be imported only in accordance with the provisions of FTP, ITC(HS), prescribed procedures, public notice or an Authorization in this regard.

Import of second hand capital goods, including refurbished/ re-conditioned spares is allowed freely. However, second hand personal computers/ laptops, photocopier machines, air conditioners, diesel generating sets will only be allowed against an authorization. Import of re-manufactured goods will also be allowed only against an authorization.

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

Question 7

AB Corporation, a manufacturer-exporter, has approached CD Corporation, a merchant exporter, to export one of its consignments as owing to some technical difficulties, AB Corporation could not export the consignment itself. The shipping bills relating to the consignment bear the name of CD Corporation. Bank Realization Certificate, GR declaration, export order and invoice are also in the name of CD Corporation. Comment whether AB Corporation would be deemed as the exporter under FTP.

Answer

The above scenario is a case of third-party exports.

Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). The conditions for being allowed as third-party exports under FTP are:

- (i) Export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and third party exporter(s).
- (ii) BRC, GR declaration, export order and invoice should be in the name of third party exporter.

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In the above case, though BRC, GR declaration, export order and invoice are in the name of CD Corporation (third party exporter), the shipping bill does not have the name of AB Corporation (manufacturing exporter). Therefore, AB Corporation will not be treated as the exporter in this case.

Question 8

Answer the following questions with reference to the provisions of Foreign Trade Policy:

- (i) *Flintex Manufacturers manufactures goods by using imported inputs and supplies the same under Aid Programme of the United Nations. The payment for such supply is received in free foreign exchange. Can Flintex Manufacturers seek Advance Authorization for the supplies made by it?*
- (ii) *XYZ Ltd. has imported inputs without payment of duty under Advance Authorization. The CIF value of such inputs is ₹ 10,00,000. The inputs are processed and the final product is exported. The exports made by XYZ Ltd. are subject to general rate of value addition prescribed under Advance Authorization Scheme. No other input is being used by XYZ Ltd. in the processing. What should be the minimum FOB value of the exports made by the XYZ Ltd. as per the provisions of Advance Authorization?*
- (iii) *'A' has used some duty paid inputs in its export products. However, for the rest of the inputs, he wants to apply for the Advance Authorization. Can he do so? Explain.*

Answer

- (i) Advance Authorization can be issued for supplies made to United Nations Organisations or under Aid Programme of the United Nations or other multilateral agencies and such supplies need to be paid for in free foreign exchange. Therefore, Flintex Manufacturers can seek an Advance Authorization for the supplies made by it.
- (ii) Advance Authorization necessitates exports with a minimum value addition of 15% value addition (VA).
$$VA = [(A - B)/B \times 100]$$

A = FOB value of export realized, B = CIF value of inputs covered by authorization.

Therefore, the minimum FOB value of the exports made by XYZ Ltd. should be ₹ 11,50,000.
- (iii) Yes, 'A' can do so. In case of part duty free and part duty paid imports, both Advance Authorization and drawback will be available. Drawback can be obtained for any duty paid material, whether imported or indigenous, used in goods exported, as per drawback rate fixed by DoR, Ministry of Finance (Directorate of Drawback). Advance Authorization can be used for importing duty free material. Drawback allowed must be mentioned in the application for Advance Authorization.

Question 9

What are the salient features of Duty-Free Import Authorization Scheme (DFIA)? Which duties are exempted under this scheme?

Answer

DFIA is issued to allow duty free import of inputs, fuel, oil, energy sources, catalyst which are required for production of export product. DFIA is of two types:

- (i) Pre export Authorization and
- (ii) Post export Authorization

Pre-export DFIA is issued with actual user condition. In case of actual user DFIA and where CENVAT credit facility on inputs have been availed for the exported goods, even after completion of export obligation, the goods imported against such DFIA should be utilized in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer). In case of Post-export DFIA, a merchant exporter is required to mention only name(s) and address(s) of manufacturer(s) of the export product(s).

DFIA or the inputs imported against it can be transferred after the fulfillment of the export obligation.

Inputs imported against DFIA are exempt from payment of basic customs duty, additional customs duty/ excise duty, education cess, anti-dumping duty and safeguard duty.

Question 10

Two exporters namely, Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. have achieved the status of Star Export House (SEH) and Trading House (TH) respectively in the financial year 2013-14. Both the exporters have been regularly exporting goods every year. What would have been the minimum export performance of the two exporters to achieve such status?

Both the exporters want to establish export warehouses in accordance with the applicable guidelines. However, Black Night Pvt. Ltd. contends that it, being a Trading House, is only entitled to establish export warehouses and that a Star Export House (SEH) cannot do so. Explain whether the contention of Black Night Pvt. Ltd. is correct.

Answer

Status recognition depends upon export performance. An applicant is categorized as status holder upon achieving export performance indicated in table below. The export performance is counted on the basis of FOB value of export proceeds realized during current plus previous three years (taken together). For Export House (EH) Status, export performance is necessary in at least two out of four years.

Status Category	Export Performance FOB / FOR Value (Rupees in Crores)
Export House (EH)	20

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Star Export House (SEH)	100
Trading House (TH)	500
Star Trading House (STH)	2,500
Premier Trading House (PTH)	7,500

In view of the above discussion, minimum FOB value of the exports made by Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. (TH) during the year 2013-14 plus the preceding three years would have been ₹ 100 crores and ₹ 500 crores respectively as they have achieved the status of SEH and TH in the year 2013-14.

SEHs and above are permitted to establish export warehouses as per DoR guidelines. Therefore, Red Sky Pvt. Ltd. being a SEH is eligible to establish an export warehouse and thus, the contention of Black Night Pvt. Ltd. is not correct.

Question 11

Examine whether benefit of Served From India Scheme (SFIS) can be availed in the following cases:

- (i) *Foreign exchange earned by Mr. Aniket, a service provider, in the current year is ₹ 3 lakh.*
- (ii) *Foreign exchange earned by Mr. Samrat, a manufacturer, in the current year is ₹ 6 lakh.*
- (iii) *X and Y Brothers, a firm of service providers, has earned foreign exchange to the tune of ₹ 12 lakh in the current year.*
- (iv) *Mr. Ishaan, a service provider, has earned foreign exchange of ₹ 5.10 lakh in the current year. Out of such ₹ 5.10 lakh, ₹ 3.5 lakh has been paid to Mr. Ishaan through the credit card of the foreign client.*

The services provided by all the above service providers are eligible for the Scheme.

Answer

All Indian Service Providers who have free foreign exchange earning of at least ₹ 10 Lakh in current financial year qualify for SFIS Scheme. For individual Indian Service Providers, minimum free foreign exchange earnings are ₹ 5 Lakh. Free foreign exchange earned through International Credit Cards and other instruments as permitted by RBI for rendering of service are also be taken into account for computation of Duty Credit Scrip.

In the light of the above provisions, the cases are examined as under:

- (i) Mr. Aniket is not eligible for SFIS Scheme as his foreign exchange earnings are less than ₹ 5 lakh (minimum limit for individuals).
- (ii) The Scheme is available only for service providers. Manufacturers are not entitled for this Scheme. Thus, Mr. Samrat cannot avail the benefit of SFIS Scheme.

- (iii) X and Y Brothers are eligible for the Scheme as their foreign exchange earnings exceed the limit of ₹ 10 lakh (minimum limit for firms).
- (iv) Foreign exchange earned through credit cards is counted for the purpose of computing the limit of minimum foreign exchange required for being eligible to SFIS Scheme. Thus, Mr. Ishaan is eligible for SFIS Scheme.

Question 12

Answer the following questions with reference to the provisions of SFIS Scheme:

- (i) *Rishita provides services eligible for SFIS Scheme. She wants to sell SFIS scrips earned by her. Can she do so?*
- (ii) *Can a service provider, instead of importing the inputs, source the same indigenously without payment of excise duty?*
- (iii) *What is the rate of entitlement under the Scheme?*
- (iv) *An upcoming Hotel chain wants to use SFIS scrip for import of cement to be used in the construction of a new Hotel. Is it possible?*

Answer

- (i) **No.** Entitlement/ goods (imported/ procured) are non transferable and subject to actual user condition. However, the scrip earned by a company can be utilized by other companies of the same group. Similar is the case of managed hotels also.
- (ii) **Yes.** Utilization of duty credit scrip is permitted for payment of excise duty for procurement from domestic sources, of items permitted for imports under SFIS Duty Credit Scrip.
- (iii) Eligible service providers are entitled for duty credit scrip of 10% of the net free foreign exchange earned during current financial year.
- (iv) **No.** Following items can be imported under the SFIS Scheme:
 - (a) Import must relate to service sector business of the applicant, should be freely importable and/or restricted under ITC(HS) and must belong to following categories:
 - Any capital goods including spares,
 - Office equipment
 - Professional equipment
 - Office furniture
 - Consumables.
 - (b) Only such vehicles, which are in the nature of professional equipment to the service provider can be imported using the scrip. Motor cars, SUV's and all purpose vehicles can be imported/sourced domestically as professional equipment by Hotels, Travel agents, Tour operators or Tour Transport operators and companies

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owning/operating golf resorts. Such vehicles (operating on road and requiring registration) will have to be registered for tourist purpose only.

- (c) Hotels; clubs having residential facility of minimum 30 rooms; golf resorts and stand-alone restaurants having catering facilities can also import consumables including food items and alcoholic beverages.
- (d) Service providers who are also engaged in manufacturing activity can use their SFIS scrip for importing / domestic sourcing of capital goods including spares related to the manufacturing sector business of the service provider.

Question 13

- (i) *Mention the reward scheme provided under FTP which aims to compensate high transport costs and offset other disadvantages in the export of specified agricultural and village industry products. What is the general rate of entitlement under the Scheme? How can the duty scrips issued under the Scheme be utilized?*
- (ii) *State the scheme provided under FTP to primarily penetrate Latin American, African and Eastern European markets. What is the general rate of entitlement under the Scheme? Can diamonds and other precious, semi precious stones be exported under this Scheme?*

Answer

- (i) Vishesh Krishi and Gram Udyog Yojana (VKGUY) has been provided under FTP to compensate high transport costs and offset other disadvantages in the exports of specified agricultural products. Eligible exporters are entitled for duty credit scrip equivalent to 5% of FOB value of exports realized in free foreign exchange. The scrip can be utilized for payment of customs duties of all freely importable items as well as for procurement of domestic items without payment of central excise duty as well as service tax. Further, it can also be utilized for payment of application fee to DGFT for obtaining any Authorisation.
- (ii) Focus Market Scheme (FMS) has been introduced under FTP to penetrate those markets [primarily Latin America, Africa, Eastern Europe, etc.] which Indian exports have been neglecting (owing to high freight costs and other externalities). Eligible exporters to notified countries are entitled for duty credit scrip equivalent to 3% of FOB value of exports (in free foreign exchange) for exports. No, export of diamonds and other precious, semi precious stones is not eligible for duty credit scrip, under FMS scheme:

Question 14

XP Pvt. Ltd., a manufacturer, wants to import capital goods in CKD condition from a foreign country and assemble the same in India. The import of the capital goods will be under Project Imports. The capital goods will be used for pre-production processes. The final products of XP Pvt. Ltd. would be supplied in SEZ. XP Pvt. Ltd. wishes to sell the capital goods imported by it as soon as the production process starts.

XP Pvt. Ltd. seeks your advice whether it can avail the benefit of EPCG Scheme for importing the intended capital goods.

Note – Base your opinion on the facts given above assuming that all other conditions required for being eligible to the EPCG Scheme are fulfilled in the above case.

Answer

Export Promotion Capital Goods Scheme (EPCG) permits exporters to procure capital goods at concessional rate of customs duty/zero customs duty. In return, exporter is under an obligation to fulfill the export obligation. Export obligation means obligation to export product(s) covered by Authorisation/permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority.

The license holder can either procure the capital goods (whether used for pre-production, production or post-production) from global market or domestic market. The capital goods can also be imported in CKD/ SKD to be assembled in India.

An EPCG Authorization can also be issued for import of capital goods under Scheme for Project Imports. Export obligation for such EPCG Authorizations would be 6 times of duty saved. Duty saved would be difference between the effective duty under Project Imports and concessional duty under the EPCG scheme.

However, import of capital goods is subject to 'Actual User' condition till export obligation is completed.

Therefore, based on the above discussion, XP Pvt. Ltd. can import the capital goods under EPCG Scheme. However, it has to make sure that it does not sell the capital goods till the export obligation is completed.

Question 15

With reference to the provisions relating to EOU, EHTP, STP, BTP & SEZ Schemes as contained in FTP, answer the following questions:

- (i) *A unit intending to trade in handicrafts wants to set up an EOU. Is it allowed?*
- (ii) *An EOU has started production after 3 years 10 months from the date of grant of Letter of Permission (LoP)/ Letter of Intent (LoI). Is it correct?*
- (iii) *A EOU wants to import a second hand capital goods which is prohibited under ITC (HS). Can it do so?*
- (iv) *An existing DTA Unit wants to convert into an EOU. It has invested ₹ 68 lakh in plant and machinery. It exports goods valuing ₹ 52 crores annually. Which authority has the power to approved the application for conversion of such unit?*
- (v) *An EOU wants to sell 45% of its rejects in DTA on payment of applicable duties on prior intimation to Customs authorities. Can it do so?*

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Answer

- (i) **No.** Units undertaking to export their entire production of goods and services (except permissible sales in DTA), may be set up under the Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme for *manufacture of goods, including repair, re- making, reconditioning, re-engineering and rendering of services*. Trading units are not covered under these schemes.
- (ii) **No.** EOU/ BTP/ EHTP/ STPs should start production within 3 years from the date of grant of Letter of Permission (LoP)/ Letter of Intent (LoI). In other words, LoP/ LoI have an initial validity of 3 years, by which time unit should have commenced production. Its validity may be extended further up to 3 years by competent authority. However, proposals for extension beyond six years shall be considered in exceptional circumstances, on a case to case basis by BoA.
- (iii) **No.** Though an EOU is permitted to import duty free second hand capital goods, without any age limit, it cannot import capital goods that are prohibited items of import in the ITC(HS).
- (iv) The application for conversion into an EOU from existing DTA unit having an investment of ₹ 50 crores and above in plant and machinery or exporting ₹ 50 crores and above is placed before Board of Approval for a decision.
- (v) **Yes.** Rejects within an overall limit of 50% may be sold in DTA on payment of duties as applicable, on prior intimation to Customs authorities. Such sales are counted against DTA sale entitlement. Sale of rejects upto 5% of FOB value of exports are not subject to achievement of NFE.

Question 16

Are supplies made by the sub-contractors eligible for deemed export benefits under FTP? Discuss.

Answer

Yes, the supplies made by the sub-contractor are eligible for deemed export benefit.

Normally, in order to be eligible for deemed export benefits, supplies are to be made directly to designated Projects/Agencies/Units/Advance Authorization/EPCG Authorization holders. However, FTP allows a sub-contractor to make supplies to main contractor, instead of supplying directly to designated Projects/Agencies. Such supplies are eligible for deemed export benefits if the main contractor makes payment to sub-contractor and issues payment certificate.

Supplies made by an Indian sub-contractor of an Indian or foreign main contractor directly to the designated Projects/Agencies are also eligible for deemed export benefits provided the name of the sub-contractor is indicated either originally or subsequently in the main contract (but before the date of supply of such goods) and payment certificate is issued by Project Authority in the name of sub-contractor.

Exercise

1. Explain the salient features of Foreign Trade Policy.
2. Write a short note on 'Board of Trade'.
3. What are the features of Advance Authorization Scheme? Enlist the items which can be and which cannot be imported against Advance Authorization.
4. Discuss the benefits granted under FTP to Status Holders.
5. Explain the significant features of Zero Duty EPCG Scheme. Which type of capital goods cannot be imported under such Scheme?
6. Write short notes on the following with reference to the provisions relating to EOU/EHTP/STP/BTP as contained in the FTP:
 - (i) Entitlement for supplies from DTA
 - (ii) Inter-unit transfer
 - (iii) Sale of unutilized material
 - (iv) Replacement/repair of imported/indigenous goods
 - (v) Exit from EOU Scheme
7. What is a Special Economic Zone? What does the SEZ rules provide for?
8. What is 'deemed exports'? Which type of supplies are regarded as deemed exports?
9. What kind of benefits are available to suppliers under the deemed exports scheme?
10. Write short notes on penalties under FTP.