



CHANGES IN FOREIGN TRADE POLICY AND GST IMPLICATIONS

SAURABH DIXIT, ADVOCATE

E-mail: info@saurabhdixit.in
Phone No. 0265-2986115 9033088865



DETAILS REGARDING AMNESTY SCHEME FOR EXPORT OBLIGATION DEFAULT



IMPACT ON GST COMPLIANCES AND POSSIBLE LITIGATION VIS-A- VIS THE CHANGES IN FTP



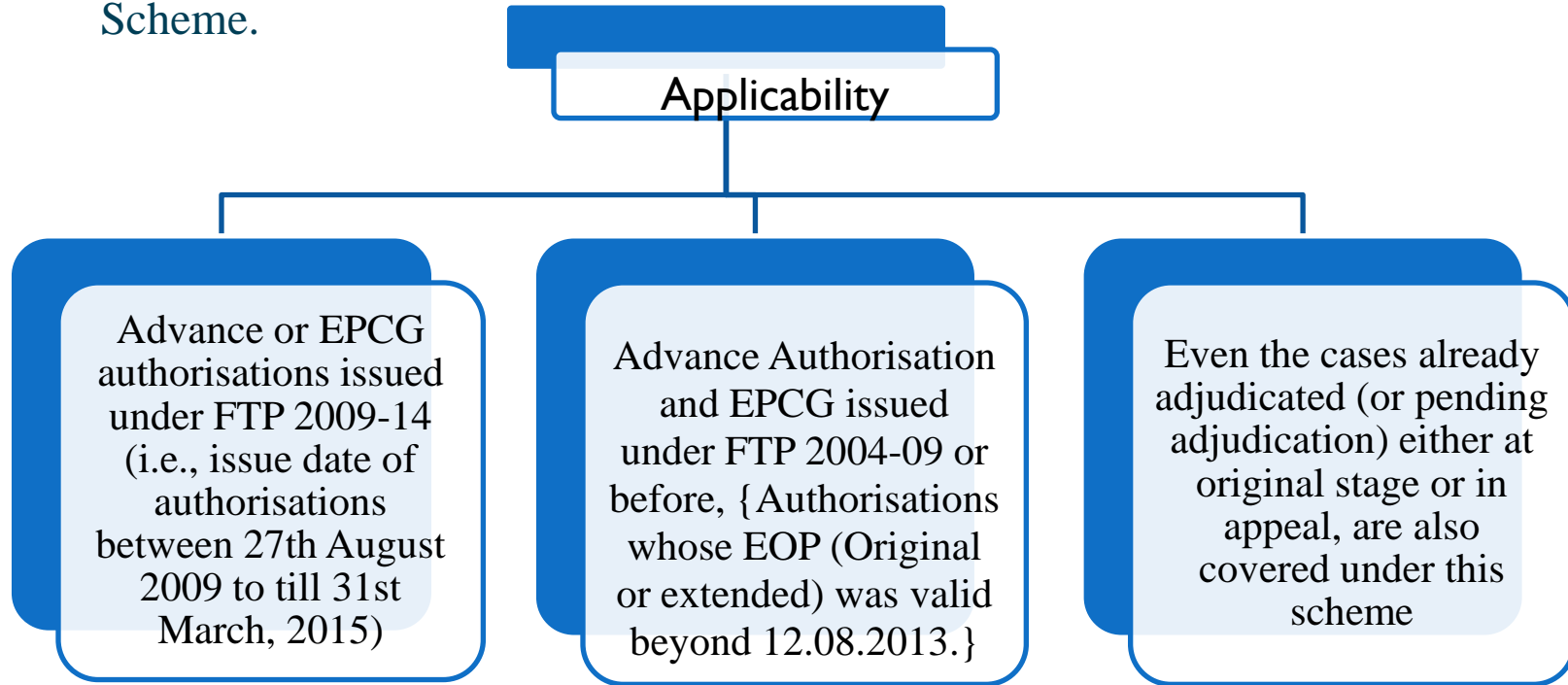
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Saurabh Dixit
Advocate

- Directorate General of Foreign Trade (DGFT) vide Public Notice No. 2/2023 dated 1st April 2023 has notified this very important Amnesty Scheme.



PROCEDURE AND TIME LIMIT:-

Authorization holders intending to opt under the scheme to register themselves on the DGFT portal by way of separate application.

Authorization holders shall apply for amnesty scheme on or before 30.06.2023.

Payment of Customs duty and the applicable Interest with the Jurisdictional Customs Authorities needs to be completed before 30.09.2023 and proof thereof be sent to the Regional Authority of the DGFT concerned.

PROCEDURE AND TIME LIMIT:-

The Customs duties paid under the scheme are not eligible for Refund or Cenvat Credit. The Authorization holder applying for the amnesty scheme shall furnish an Undertaking stating that no CENVAT credit or refund for the duty paid under the said scheme shall be claimed before any authority and/or before any court of law.

After examining the request and verifying all the supporting documents, RA shall issue EODC under its letter.

INELIGIBLE AUTHORIZATION HOLDERS:-

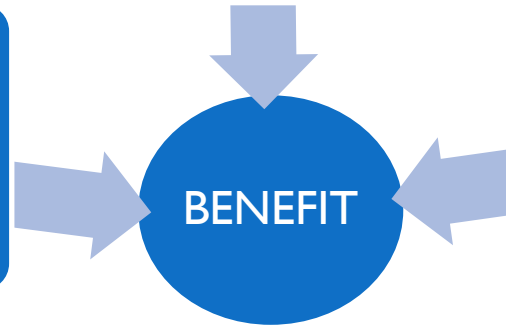
- Authorization holder whose cases are under investigation / cases already adjudicated (involving fraud, misdeclaration or unauthorized diversion of material and/or capital goods) are ineligible to apply under this scheme.
- Authorization holder who have already deposited duty alongwith applicable interest in full.

(If any amount not fully paid - whether can be covered under the scheme?)

BENEFIT UNDER THE SCHEME:-

The Amnesty Scheme provides for interest @ 100% of duty exempted, excluding Addl. and Special Addl. Customs duty(CVD/Special CVD) but in example states this is the maximum interest(actual or 100% whichever is lower???).

In the normal course, Mandatory interest @ 15% on differential duty saved initially towards EO shortfall.



Interest calculated from date of import till date of payment

AMOUNTS TO BE PAID UNDER THE SCHEME:-

- Authorisation holder will pay full duty saved (BCD+CVD+SAD etc) on the export shortfall.
- Authorisation holder will pay interest only on BCD (no interest on CVD/SAD etc).
- Interest as per scheme is fixed @ 100% of duty amount (BCD)
- Example in the Public Notice suggest interest is “capped @ 100% of BCD amount”, i.e. actual interest or maximum 100% of BCD amount, whichever is lower
- Fixing interest @ 100% BCD simpliciter may be ultra vires the provisions contained in Customs Act, 1962.

When entire EO not fulfilled

- If the licence holder has not fulfilled the entire export obligation, under the amnesty scheme, the applicant shall pay suo motu (since amount already known) with Customs authorities and proof to be submitted to RA, DGFT

When EO partially not fulfilled

- If the Authorisation holder has not fulfilled partial EO, an application to be made to RA, DGFT, who will intimate proportionate default for duty + interest liability. The same will be paid with Customs authorities and proof to be submitted to RA, DGFT

CASES PENDING ADJUDICATION/APPEAL:-

Authorization holder whose cases are already adjudicated/under adjudication/in appeal

If not in appeal, the closure letter from RA, DGFT to be submitted to Adjudicating Authority.

If in appeal, closure letter from RA, DGFT to be submitted to the Appellate authority, who will decide on closure of case/appeal based thereon, under intimation to Applicant/RA, DGFT concerned.



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- ❑ Only Physical export + supplies to SEZ are treated as Zero rated under GST.
- ❑ FTP considers deemed exports/third party exports on same footing as physical exports.
- ❑ Unless specified for physical export as a condition, whether physical or deemed, both exports qualify for DGFT benefits (AA/EPCG/deemed duty DBK etc).

- Deemed Export is domestic supply and attracts GST. Refund mechanism provided in Rule 89(1)-second proviso to CGST Rules, 2017.
- Merchant export- recent legal controversies based on SC judgment in the case of Unicorn Industries & Ors.
- GST retrospective Changes vis-a-vis Rule 96(10) of CGST Rules, 2017.

- Rule 96(10) and protection till 9.10.2018- avoidable controversy.
- Rule 89 (4)/ (4A)/(4B) of CGST Rules, 2017 controversies.
- Requirement of goods being physically contained in FG.
- Cosmo Films – doors opened to reintroduce pre-import/physical export condition.

- Advance Intermediate Authorisation – impossible to fulfil physical export condition.
- Ocean freight and GST under RCM.
- Recent changes in Section 12(8)/13(9) of IGST Act, 2017.

Thank you



B-216/217 Monalisa Business Centre,
Manjalpur, Vadodara, Gujarat-390011



0265-2986115
9033088865



info@saurabhdixit.in



www.saurabhdixit.in



Saurabh Dixit
Advocate