RESOURCE PAPER 35

INDO-JAPAN CHAMBER OF COMMERCE & INDUSTRY

A Roadmap for Sustainable and Tax efficient Business Model to compete in Global Trade

by
P.S. Krishnan, N. Mallikarjun
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PREFACE

We, at the Indo-Japan Chamber of Commerce and Industry have immense pleasure in presenting the Resource Paper on the export schemes and incentives that are introduced by the Government of India for the betterment of Indian Trade activities by providing various incentives, rebates on the import of goods for the purpose of manufacturing them in India and to re-export the same. These schemes are in line with the “Make in India” initiative and “Atmanirbhar Scheme” which aims at transforming India into a manufacturing hub and to be a self-reliant economy, In this resource paper we will be discussing about the Export incentive schemes, concepts and it is impact in the working capital. IJCCI has jointly thought through with Grant Thornton Bharat LLP to bring a resource paper to understand how various exports incentive schemes plays a major role in making India a go to option to the exporters for manufacturing activities.Afewwords about the authors:

P.S. Krishnan: Partner in “Grant Thornton Bharat LLP”- He has around 30 years of work experience in Indirect Tax, was previously associated with a global multinational consulting firm. He possesses 16+ years rich experience in the Departments of Enforcement Directorate & Customs and Central Excise under the Ministry of Finance Government of India. His work significantly comprises advisory and project implementation in the indirect tax space. He has successfully represented clients from across sectors before the Central Board of Indi-rect taxes Drawback Directorate GST Sectoral committees and the Directorate of Goods and -ServiceTax.

N. Mallikarjun: Director in Grant Thornton Bharat LLP, He possesses a decade of work experience in handling Indirect Taxes. Prior to this he was associated with a global multinational consulting firm. He has been associated extensively in erstwhile law and Customs, Foreign Trade Policy, SEZ, EOU, AEO, Bonded Warehouse and GST including PLI related matters.

Ganesh. M : Assistant Manager in Grant Thornton Bharat LLP. He possesses work experi-ence around 8 years in handling Indirect Taxes. He has extensive experience in handling matters relating to Exports Incentive Schemes & Benefits under customs like Duty drawback, AEO, Refunds and under Foreign Trade Policy like SEIS & MEIS.

Hemalatha C R : Associate with Grant Thornton Bharat LLP. She joined the Indirect Tax and Regulatory Practice. She has working experience in GST compliances & GST refunds, FTP and Customs related matters.

This Resource Paper would serve as a ready reckoner on export incentive schemes that could be used to understand the various schemes available while choosing a scheme that is in line with the needs of a manufacturer/exporter.

September 2021

Suguna Ramamoorthy
Secretary General

GLOSSARY

AA	Advance Authorisation
BCD	Basic Customs duty
BTP	Biotechnology Park
DBK	Duty Drawback
DTA	Domestic Tariff Area
EHTP	Electronic Hardware Technology Park
EO	Export Obligation
EOU	Export Oriented Units
EPCG	Export Promotion scheme for Capital Goods
FDI	Foreign Direct Investment
FTP	Foreign Trade Policy
GDP	Gross Domestic Product
ITA	Information Technology Agreement
LOA	Letter of Authorisation
MOOWR	Manufacturing and Other Operation in Warehouse Regulations
NFE	Net Foreign Exchange
RA	Regional Authority
SEZ	Special Economic Zone
STP	Software Technology Park
SWS	Social Welfare Surcharge

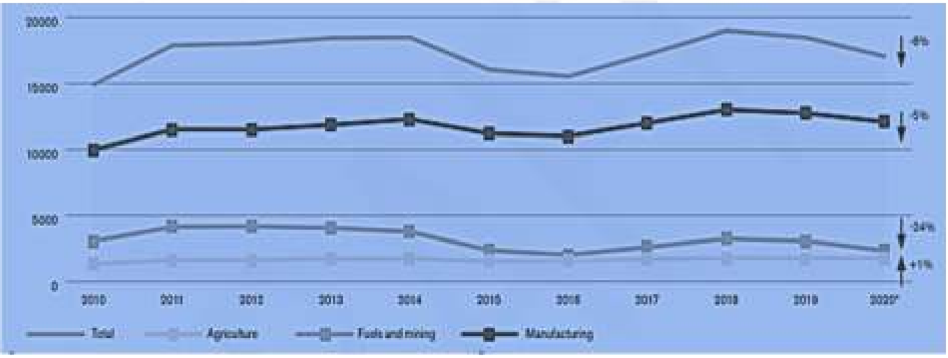
A Roadmap for Sustainable and Tax efficient Business Model to compete in Global Trade

A. Abstract

International trade is one of the major sources for the economic development of any nation, it allows countries to expand their markets and access goods and services that otherwise may not have been available domestically. As a result, the market is more competitive. This ultimately results in more competitive pricing and brings a cheaper product home to the consumer.

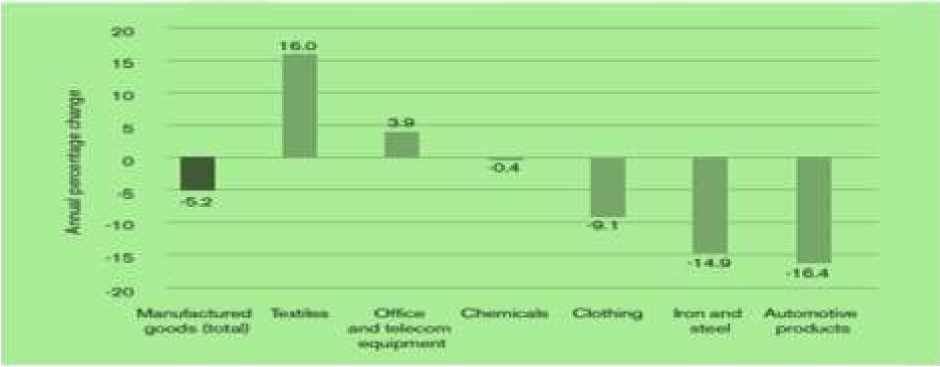
World trade in goods and services amounted to US$ 22 trillion in 2020, a 12 per cent decline compared with 2019. China, the top exporter of merchandise trade in 2020, accounted for 13 per cent of the world's total (up from 12 per cent in 2019), totaling US$ 2,323 billion.

Chart – 1. Merchandise exports by major product group, 2010-2020 (US$ billion, annual)



Trade in manufactured goods represented 71 per cent of world merchandise exports in 2020, with a value of US$ 12.1 trillion. This in turn is popular in India and Indian government had announced various schemes to boost the trade of manufactured goods. The chart depicted above represents the Merchandise exports by major product groups (2010-2020, US $billion)

Chart – 2. World merchandise exports of manufactured goods, 2020 (Annual percentage change)



The merchandise exports of manufactured goods had a slump in the year 2020 due to the COVID pandemic as there were many trade restrictions across the globe which resulted in the slowdown of manufacturing activities in various sectors.

Even though the pandemic has not come to an end, world economieshave opened up the borders to boost the global trade activities and to protect themselves from a trade adversity. The post-pandemic trade recovery is already showing signs of revival across countries and regions. Merchandise export and import volumes in the first quarter of 2021 rose to new heights in Asia and reverted to pre-pandemic levels in Europe and North America but lagged in poorer, less industrialized regions, such as Africa and the Middle East.

B. Indo-Japan Relationship

Japan is regarded as a key partner in India's economic transformation. In the recent past, the India Japan relationship has transformed to a partnership of great substance and purpose. Japan's interest in India is increasing due to a variety of reasons including India's large and growing market and its resources, especially the human resources.

India has bilateral trade with Japan, totaled US$ 17.63 billion in FY 2018-19. Exports from India to Japan were 4.86 billion while the imports from Japan during this period were US$ 12.77 billion. The bilateral trade between India and Japan for FY 2019-20 (April - December) totaled to US$ 11.87 billion.India's exports to Japan amounted to US$ 3.94 billion while India's import from Japan amounted to US$ 7.93 billion.

India's primary exports to Japan have been petroleum products, chemicals, elements, compounds, non-metallic mineral ware, fish & fish preparations, metalliferous ores & scrap, clothing & accessories, iron & steel products, textile yarn, fabrics, and machinery etc. India's primary imports from Japan are machinery, electrical machinery, iron and steel products, plastic materials, non-ferrous metals, parts of motor vehicles, organic chemicals, metals, etc.

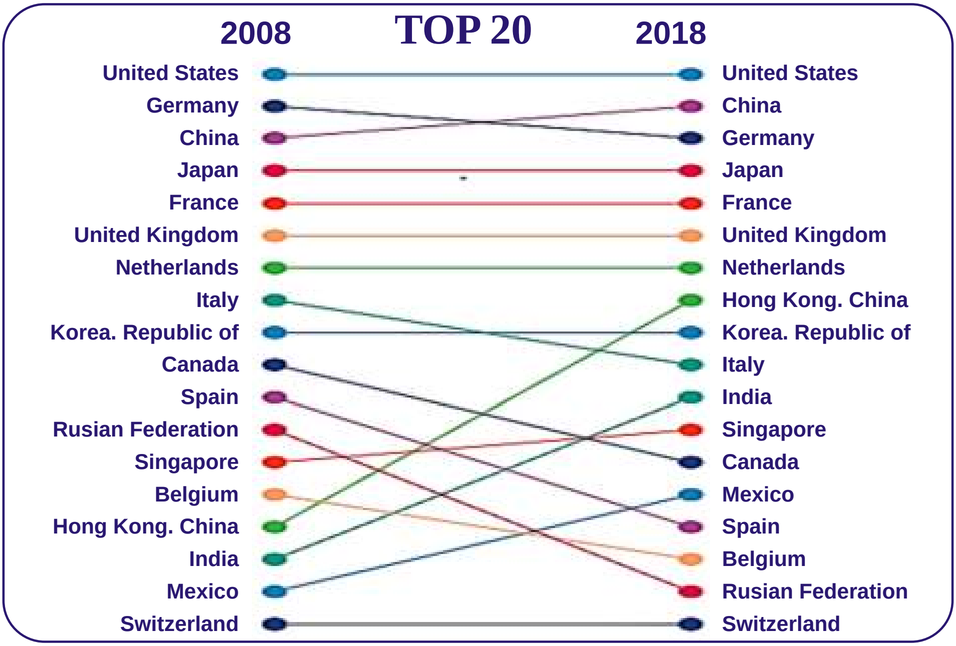
C. India the future hub for various manufacturing sectors:

Indian economy is opening to the export and import activities to boost up the economy. The growth in this sector has been significant in the past decade. The Government also has supported through various export incentives to compensate them for costs incurred while exporting & help them compete with the global market.

The chart - 3 shows the growth of export and import activities in Indian economy, over the past decade. India's share in the Globe trade has jumped from 16th Place in 2008 to 11th position in 2018 showing growthin both goods and services exports.

The incentives announced by the Indian government are in line with the 'Atmanirbhar' and 'Make in India' initiatives to attain self-sufficiency and ensure higher reach of local products. India's Foreign Trade Policy (FTP) 2015-20 advocates various export incentives that are offered by the government through the Directorate General of Foreign Trade (DGFT) 2019.

Chart – 3 - World's leading traders of goods and services, 2008 and 2018 (US$ billion)



India's overall exports (Merchandise and Services combined) in June 2021* are estimated to be USD 49.85 Billion, exhibiting a growth of 31.87 per cent over the same period last year and a growth of 17.17 per cent over June 2019. Overall imports in June 2021* are estimated to be USD 52.18 Billion, exhibiting a growth of 73.65 per cent over the same period last year and a growth of 1.08 per cent over June.

D. India initiatives to boost foreign trade:

In India, export incentives are in line with the government's flagship "Make in India" and "Atmanirbhar Bharat" (Self-sufficient India) programs. The former aims to transform India into a manufacturing major while the latter advocates self-sufficiency.

"Make in India" initiative was globally launched in September 2014 as a part of India's renowned focus on manufacturing. The objective is to promote India as the most preferred global manufacturing destination. The focus of Make in India program is on 25 sectors. Key sectors included under this scheme are automobile, chemicals,construction, IT & BPM, roads and highways, renewable energy textile, thermal power etc.,

"Athmanirbhar Bharath" or Self-Reliant India movement was introduced on 20th May 2020. As the name itself suggests the main objective to is make India a self-reliant economy. Special economic and comprehensive package of Rs.20 lakh crores equivalent to 10% of India's GDP is proposed for the scheme.

As a results of various export incentive scheme's under Make in India initiative and Athmanirbhar Bharath Scheme, India has attracted total FDI inflow of US$ 6.24 billion which is 38% higher as compared to April, 2020 (US$4.53 billion).

This research paper is majorly to discuss on the Export incentive, or the schemes available / introduced by GOI from Customs and GST perspective to understand how it will boost the export activities in India and help the industry in choosing tax efficient business to compete in global market.

Though there are various scheme announced by the Indian Government in the recent times such as Production Linked Incentive "PLI" Scheme covering 13 Sectors, Authorized Economic Operator "AEO", Free Trade Agreements "FTA" etc., in this resource paper we are going to discuss only on the schemes which influence the business model from Customs and FTP perspective.

E. An insight of various major scheme offered:

All export and import-related activities are governed by the Foreign Trade Policy (FTP), Customs Act and SEZAct which areaimed at enhancing the country's exports and use trade expansion as an effective instrument foreconomic growth and employment generation. The present Foreign Trade Policy (2015-2020) aims to keep in line with the 'Make in India' vision and support exports made by Special Economic Zones (SEZs), Custom & foreign trade policies etc. It also contains various export promotion schemes which involve either the exemption or remission of customs duty. The following chart - 4 depictsthe insights of major schemes offered by various authorities.

Chart – 4 – Type of incentives/ scheme.

F. Feasibility analysis based on viability of business:

At Present, there are various schemesunder the Customs Act and Foreign trade policy that extends various import-export benefits to the various industries. It is a fact that each business may have a different supply chain and a distribution network, different input output norms and business policies.Hence, it is very important for any business to undertake a feasibility study to evaluate the best supply chain model that would give them both the benefits of lesser working capital and efficient procurement pattern.

The following table portraits a high-level comparative feasibility analysis based on the viability of the business at a broad level considering the Import export trend.

The businesses should consider the ratio of import and export/ domestic sale with the suitable combination of the Scheme (for E.g., if a company imports more than 75% of the material and entire production is exported then the ideal scheme would be either opting SEZ/ EOU.)

Chart – 5 . A feasibility analysis based on import and export comparison.

S.No.	Export Range (Final Product)	Import Range (Raw material / components sourcing)				AA - Advance Authorisa-tion EPCG - Export Promotion scheme for capital Goods EOU - Export Oriented Unit SEZ - Special Economic Zone MOOWR - Manufacturing and Other Operations in Warehouse Regulations DBK - Duty Drawback
		0% - 25%	25% - 50%	50% - 75%	75% - 100%	
1	Only Exports	DBK / AA / EPCG	DBK / AA / EPCG	EOU / EPCG / AA	SEZ / EOU / EPCG / AA	
2	Partial Export & Partial Domestic	MOOWR / DBK / AA	MOOWR / DBK / AA	MOOWR / DBK / AA	MOOWR / DBK / AA / EOU	
3	Major Domestic, Less Exports	MOOWR / DBK / AA	MOOWR / DBK / AA	MOOWR / DBK	MOOWR / DBK	

The Chart -5 “Feasibility analysis based on viability of business” for choice of model is only a representative chart. Businesses might need to do this analysis on a customized basis and take a conscious decision

The list enumerates the factors to be considered while computing the benefits scheme:

i. Projected volume of imports for next 3 - 5 years with overall duty involved.

ii. Complete Input and Output Norms as per bill of material (BOM) to quantify the duty liability for both import & domestic items. iii. Duties and taxes involved in the supply chain.

iv. Quantifying the interest element on the duty/ tax saved portion.

v. Measuring the tax working capital impact based on projected imports.

vi. Plotting the overall lead time between import of goods and export of same after the process / storage.

vii. Limitation in claiming other existing export/ import benefits.

Having understood the key business factors that influence the different schemes, let us now analysethe schemes individually for detailed understanding which also give relevance to the summary given in chart - 5 above feasibility analysis table. The paper discusses about the features, benefits, and conditions. The paper does not cover the procedural and compliance aspects.

G. An insight of each scheme in detail:

1. Advance Authorization Scheme

a. Introduction

Advance Authorization (earlier known as Advance License) is input duties neutralization scheme under the ('FTP') intended to reduce the tax working capital requirements for exporters.

This Scheme allows the import of inputs to be made duty free (after making normal allowance for wastage if any) subject to physically incorporated in a product which is going to be exported. An export obligation is usually set as a condition for issuing Advance Authorization. The chart 6 explains the features of the scheme.

Chart – 6. Basics of the scheme.

Advance Authorisation Scheme

WHO	WHAT	WHEN	WHERE	WHY
• Eligible Person • Manufacturer exporter • Merchant exporter tied to supporting manufacturer	• Scheme under Foreign Trade Policy • To promote India as the manufacturing hub globally by allowing duty free imports on the export products	• Import entitlement - Validity period for import 12 months • Export entitlement - Period of Fulfilment of Export obligation is 18 months • Extention of validity period is allowed subject to payment of fee	• No geographical restriction • The goods could be imported and manufactured in India • The manufactured goods has to be exported	• Benefit of Customs Duties & GST Exemption • Duties exempted on Import of Inputs for export • Export obligations to be met (value of the export OR Minimum Value Addition)

b. Duties exempted

The inputs imported are exempt from duties like Basic Customs Duty, Additional Cus-toms Duty, Education Cess, Anti-dumping duty, Safeguard Duty and Transition Product Specific Safeguard duty, Integrated tax, and Compensation Cess, wherever applicable, subject to certain conditions.

c. Goods eligible to be imported for export

- Inputs that are physically incorporated in the product to be exported after making normal allowance for wastage
- Fuel, oil, catalysts which are consumed or utilized to obtain the export product.
- Mandatory spares that are required to be exported along with the resultant export product - up to 10% of the CIF value (Cost, Insurance and Freight) of Authorization
- Specified spices would be allowed to be imported duty-free only for activities like crushing, grinding, sterilization, manufacture of oil or oleoresin and not for simpler activities like cleaning, grading, re-packing, etc.

d. Ineligible categories of imports on Self declaration Basis

a. Import of following products shall not be permissible on self–declarations basis

- All vegetable / edible oils under chapter 15 and all types of oilseed classified under chapter 12 of ITC HS Book
- All types of cereals
- All spices other than light pepper having a basic customs duty of more than 30%
- All types of fruits and vegetables having a basic customs duty of more than 30%
- Horn , Hoof and any other organ of animal
- Honey
- Rough marble blocks/ slabs and rough Granite
- Vitamins except for use in pharmaceutical industry

b. For export of perfumes, perfumery components and various feed ingredients containing vitamins, no Authorisation would be issued by the RA and the appli-cants shall be required to apply to the Norms committee.

c. Where export and/or import of biotechnology items and related products are involved, Authorisation shall be issues by RA only on submission of a "No Objection Certificate" from Department of Biotechnology.

e. Grounds for issuing Advance authorization

i. Standard Input Output Norms (SION) notified: DGFT publishes SION norms which defines the amount of input required in the manufacture of a unit of the output product that will be exported

ii. No Norms / Self-declaration: When SION norms are not available then the exporters can import the goods based on self-declaration basis with a certificate from CE.

iii. Application prior to fixation of the norm by the Norms Committee: When SION norms are not available application could be made for the same for fixing ad-hoc norms.

iv. Self-Ratification Scheme: Advance Authorization under this Scheme is available only to an exporter who holds the Authorized Economic Operator (AEO) Certificate under Common Accreditation Programme of CBEC. This Scheme can be opted for when there is no SION or valid ad-hoc norms for an export product.

v. Component net to net specified list of goods where the imported parts/components have 0% wastage.

vi. No Norms repeat basis: Since all decisions of the Norms Committees are available in the form of minutes on the DGFT website, all other applicants of Advance Authorization are also eligible to apply and get their authorizations based on such ratified norms on repeat basis during validity of these norms.

f. Export Obligation

Export Obligation (EO) in the case of Advance Authorization is the value of export that needs to compulsorily be achieved within a prescribed time (i.e., 18 Months).After achieving the EO, the entity must provide evidence of the same. Not achieving the EO in the prescribed time could result in penalties. Other export promotion schemes like the Export Promotion Capital Goods (EPCG) Scheme have different conditions when it comes to the export obligation.

g. Minimum value addition on the products to be exported

Minimum value addition required to be achieved under Advance Authorisation is 15%.

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

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 DBK is claimed or intended to be claimed.

h. Fulfilment of Export Obligation

Fulfilment of Export Obligation	
Redemption / No Bond certificate	Export Obligation Discharge Certificate (EODC)
• Bond Waiver in case Authorisation holder exports first before effecting imports using imported inputs / indigenously procured inputs • Pro-rata waiver of bond for not fulfilling export obligations. • In case EO has been fulfilled, Regional Authority shall issue • Bond Waiver Certificate (BWC)	• On completion of EO, the Regional Authority may issue EODC / Redemption Certificate to Authorisation holder • AA holder shall mention consumption and utilisation of duty free imported / domestically procured goods against each Authorisation as prescribed in Appendix 4H or 4I, as applicable • Action against Authorisation holder in case of non-submission ofproper Appendix 4H & 4-I

i. Domestic procurement of Inputs is allowed:

AA holder can procure inputs from indigenous supplier/ units monitored under FTP/ Customs "State Trading Enterprise/EOU/EHTP/BTP/STP" in lieu of direct import un-der an Application in ANF-4A.

- Domestic supplier can intend to obtain duty free material for inputs through AA for supplying resultant product to another AA holder through Invalidation Letter from Regional Authority.
- Advance Release Order (ARO), if the domestic supplier intends to seek refund of duties exempted through Deemed Exports mechanism (supplies against AAL will be considered as deemed exports under FTP and GST).

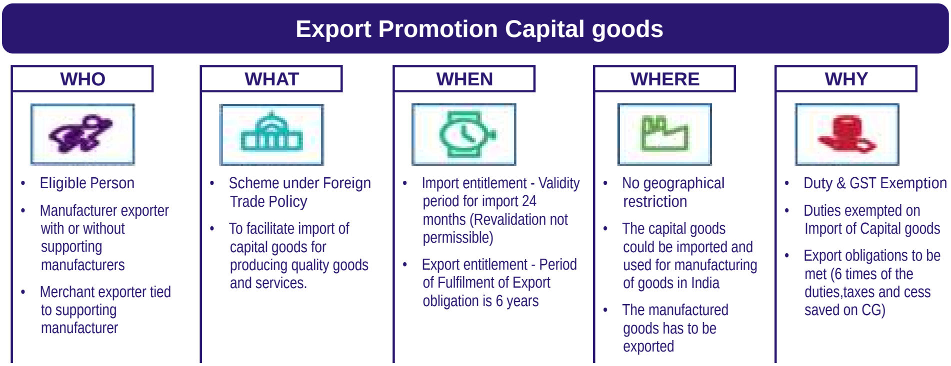
2. Export Promotion Capital Goods:

a. Introduction

Chapter 5 of FTP covers Export Promotion Capital Goods "EPCG". Export Promotion Capital Goods (EPCG) scheme allows an importer (being an export oriented business) to import capital goods including spares for preproduction, production, and postproduction at zero duty subject to an export obligation of 6 times of duty saved on capital goods imported under EPCG scheme, to be fulfilled in 6 years reckoned from Authorization issue date.

In a laymen term, there is a compulsion on the business to bring in foreign currency which is equal to 600 per cent of duty saved on such importation measured in domestic currency. Hence to qualify as Export Promotion Capital Goods, the commodity manufactured in India must be exported outside India. In this topic we are discussion only the pre-import EPCG license, the policy also provides post-export EPCG license the mechanism of the scheme and its conditions/ benefits.

Chart – 7. Basics of the scheme



b. Capital Goods allowed under EPCG Scheme

- Capital Goods as defined in Chapter 9 including in CKD/SKD condition thereof.
- Computer systems and software which are a part of the Capital Goods being imported.
- Spares, moulds, dies, jigs, fixtures, tools & refractories; and
- 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.
- Indigenous capital goods with a deemed export benefit to domestic supplier. Imported capital goods shall be subject to Actual User condition till export obligation is completed and EODC is granted.

The scheme also provides a list of capital goods that are not permitted/ permitted for import with specific conditions listed in Appendix 5 F to the policy. The list also contains that the import of secondhand capital goods is not permitted under the scheme.

c. Export Obligation (EO)

- Imported Capital goods (CG): 6 times of duty saved on CG to be fulfilled within 6 years from Authorization date
- EO shall be fulfilled by the authorization holder through export of goods which are manufactured by him
- In case of indigenous sourcing of Capital Goods, specific EO shall be 25% less than the EO Stipulated in para 5.01 of FTP 15-20.
- Shipments under Advance Authorization, DFIA, Drawback scheme or reward scheme; would also count for fulfillment of EO under EPCG Scheme
- Export shall be physical export, 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 Authorization 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 5D (services rendered in customs notified area to a foreign shipping liner) shall also be counted towards discharge of export obligation.

d. Calculation of EO

- 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.
- EO should also be over and above average level achieved in preceding 3 licensing years for the same and similar products.

Export Obligation under EPCG Scheme

Specific Export Obligation

Average Export Obligation

e. Block wise fulfilment of EO

Block wise Fulfillment of EO		
Period from the date of issue of Authorization	Minimum EO to be fulfilled	Extension by RA
Block of 1st to 4th year	50%	If Block I not fulfilled, extension allowed upto 2 years with 5% - 10% of Composition fee proportionate to unfulfilled duty saved amount (OR) Enhanced EO of 10/20% of total EO for 1 & 2 years with a fee of INR 10,000 Application within 90 days of Expiry
Block of 5th to 6th year	Balance of EO	Up to 180 days from date of expiry RA may consider request to up 180 Days with an additional fee of INR 5000

a. Sourcing of Capital Goods indigenously

- Invalidation letter / Advance Release Order for direct imports & deemed export respectively shall be obtained from RA in Quadruplicate Copy.
- Such indigenous manufacturer shall request RA for Advance Authorization for supply of CG inputs to EPCG holder.

b. Re-export of Import under EPCG

- Defective item or for repair shall be made within 3 years from date of import
- Replacement of CG within 2 years

At the time of exit of the scheme the license holder must pay the customs duty along with the interest, Duty credit scripts could be used to pay such duties.

EPCG is intended for promoting exports and the Indian Government with the help of this scheme offers incentives and financial support to the exporters. Heavy exporters could get benefit from this provision. However, it is not a suitable scheme for those who is not anticipated to supply majorly in domestic market (i.e., within the country), as it could become challenging to fulfil the obligations set under this scheme.

3. Export Oriented Units

a. Introduction

The purpose of the scheme was basically to boost exports by creating additional production capacity, earn Foreign Exchange to the country, transfer of latest technology, stimulate direct investment and to generate additional employment. The exporters are treated as a special class and given the required tariff, non-tariff and policy support to facilitate their export efforts, the export obligation for EOU shall be a positive net Foreign Exchange earnings.

A 100 per cent export-oriented unit is an industrial unit offering for export its entire production, excluding the permitted levels of domestic tariff area sales for manufacture of goods, including repair, re-making, reconditioning, re-engineering, and rendering of services. Trading units are not covered under this scheme.

<u>Chart – 8 Basics of the scheme</u>

Export Oriented Units (EOU)

WHO	WHAT	WHEN	WHERE	WHY
• Eligibility • Minimum investment of 1 crore in plant and machinery subject to few exceptions • EOU shall be set on approval by Board, LoP would be given for the same	• Director General of Foreign trade Policy / Development commissioner • To promote the exports by providing duty exemptions and concessions	• LoP is valid for initial 2 years for constrution and installation of plant and machinery (extension of 1 year) • Bonded Period for EOU is 5 years to manufacture and export the goods (extension of additional 5+5 years*)	• Location - should be altleast 25 kms away from standard urban limits • In an industrial area or dels in non-polluting product or service	• Duties exempted on Import / when procurred domestically • Input tax credit on goods and services • Taxes/ GST can be reimbursed

** Extension in bonded period - First 5 years by the development commissioner, Second 5 years if requested by the EOU to the Commissioner/Chief Commissioner of Customs.*

b. Benefits of EOUs

- EOUs are allowed to procure raw materials and capital goods through domestic sources or import without paying any duty on the procurement.
- EOUs are allowed to claim reimbursement on GST amounts they pay
- In case they have paid duty on the purchase of fuel from domestic oil companies, they can claim a refund on the same.

- EOUs enjoy priority-basis clearance facilities.
- EOUs are not required to obtain the industrial licensing which is required for manufacturing items that are reserved for the SSI sector.
- Supplies by DTA manufacturer are eligible for deemed export benefits and GST paid can be claimed as refund under deemed export category.
- The unit can import second hand capital goods and also permitted to use capital goods under leasing agreement without incurring taxes and duties.
- Units will be allowed to retain 100% of its export earnings in the Exchange Earner's Foreign Currency (EEFC) account.
- 100% Foreign Direct Investment (FDI) investment permitted through automatic route

c. Export Obligation

Under the EOU Scheme, no export obligation in terms of quantity or value of goods to be exported by the unit. However, EOUs shall have positive Net Foreign Exchange earnings, In other words, the net foreign exchange implies value of export (including deemed exports as prescribed in the Foreign Trade Policy) must be greater than value of import or foreign exchange outgo on other accounts.

While computing NFE following components are to be taken into consideration

- Amortised value of Capital Goods and technical know-how fee
- Value of import of Raw material, consumables and spares etc.,
- Other outflow of foreign exchange
- Value of exports: DTA sale made during the year are not to be accounted for / included.

  (Appendix-6F guidelines for monitoring the performance of EOU / STP / EHTP units).
- EOU to ensure a positive Net Foreign Exchange (NFE) which is computed as per the following formula.

NFE = (A-B) where

A is the sum of physical exports in free foreign exchange and deemed exports (as per para 6.09 of FTP)

B is the sum of the imported and domestic procured raw materials and consumables along with the amortised value (10% per year over a 10-year period) of the capital goods and foreign technical know-how fees

The failure to ensure positive NFE or to abide by any of the terms and conditions of LoP/ Industrial Licence (IL) / LUT shall render the unit liable to penal action under provisions of the FT (D&R) Act, as amended, and Rules and Orders made there under, without prejudice to action under any other law / rules and cancellation or revocation of LoP.

d. Compliance under EOU

The EOU must maintain the books of accounts to record the quantity and value of goods imported or exported as per the customs notification, the following table shows the compliance reports and time to file the same.

Reports	Periodicity	Due Date
Filing of QPR "Quarterly progress report"	Quarterly	30 days from the end of the Quarter
Filing of APR	Annually	90 days from the end of Financial Year
Quarterly return prescribed under IGCR	Quarterly	10th of the following quarter

e. The following table shows the duties and taxes saved under the scheme

Particulars	Customs Duty	GST	Working Capital
Present Duty Structure in India	BCD + SWS + Cess+ Other duties and Taxes (approx. 18-20%)	GST + Cess (approx. 18%)	Duty + Taxes
Import Procurement	Customs Duty exempted	Exempted	No Import Duty Payment - No Cash Outflow
Domestic Procurement	Nil	GST will be paid by s	GST Payment – (ITC eligible)
Export Clearance	Exempted – No outflow of Customs duties	Can claim refund of GST paid / ITC could be claimed	No Export Duty Payment - No Cash Outflow
Domestic Clearance	BCD + SWS + Cess (11-15%) on import value of goods used	GST + Cess (approx. 18%) to be Paid on import value of goods used – eligible to avail ITC. However, for service the maximum limit to provide to DTA customer is limited 50% on FOB / Forex received)	Duty + interest on duty Taxes payment – cash outflow is there

f. GST in Export Oriented Units

- At present, GST will be payable by the suppliers who make supplies to the EOU. However, the EOU unit shall be eligible to take Input Tax Credit of the said GST paid by its suppliers / they have option to claim Refund under accumulated ITC.
- On the other hand. the supplies from EOU will not be exempted from GST, except in the case of zero-rated supplies defined under section 16 of the IGST Act, i.e. Supplies made by EOU in the form of physical export or supplies to a SEZ unit or SEZ Developer for authorized operations.
- It must be noted that GST is applicable even in case of sales from one EOU to another, as such a transaction is considered as a taxable supplyunder the GST law.

4. Special Economic Zone (SEZs)

a. Introduction

Special Economic Zone (SEZ) is a specifically delineated duty-free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs. The SEZ economic regulations tend to be conducive to - and attract - foreign direct investment (FDI).

When a country or individual conducts business in an SEZ, there are typical additional economic advantages for them, including tax incentives and the opportunity to pay lower tariffs.

Chart – 9 Basics of the scheme

Special Economic Zones (SEZ)

WHO	WHAT	WHEN	WHERE	WHY
• Eligibility • State governemnt/ Central Government • Any person (Company / Individual) for the purpose of manufacture of goods or rendering services	• The SEZ act of 2005 • Promote export & invetment Create employment opportunities • Development of infrastructure facility	• LOA for setting up SEZ is 3 years (atelast one unit should commence operation) • LOA for SEZ unit • 1 year for commencement • extension of 2+1 years • 5 years after commencement of activity	• Depending upon the type of SEZ the requirement for the land would differ • Land equirement for setting up an SEZ would be between 10 Hectares to 1000 Hectares (refer types of SEZ)	• Duty exempted for authorised operations • Supplies made to SEZ is considered as Zero rated under IGST Act • Taxes/ GST can be reimbursed

b. Key Entities in SEZ Scheme:

- **SEZ Developer:** Person who has LOA to develop, operate and maintain SEZ in-cluding infrastructure facilities
- **Co-Developer:** Person granted approval to develop SEZ in support with devel-oper for setting up facilities in the non-processing area
- **SEZ units** are the units set up for the manufacture of goods or rendering of ser-vices.

c. Types of SEZ

- **Multi sector SEZ:** These involve in manufacturing of two or more goods in a sector or goods falling in two or more sectors (OR) rendering of two or more ser-vices in a sector or services falling in two or more sectors (requiring a minimum of 1000 hectares of land);
- **Sector specific SEZ:** manufacture of one or more goods in a sector (OR) ren-dering of one or more services in a sector (requiring a minimum of 100 hectares);
- **Free Trade and Warehousing Zone (FTWZ):** Special category with focus on trading & warehousing covering import and export of goods and services (requir-ing a minimum of 40 hectares);
- IT/ITES/handicrafts/biotechnology/non-conventional energy/gems and jewellery SEZ (requiring a minimum of 10 hectares).
- Gujarat International Finance Tec- City (GIFT) has been formed to allow Multi Services SEZ at Gandhinagar with the prime focus on development of International Financial Services Centre “IFSC” and allied activities in SEZ.

d. Validity of LOA in case SEZ unit

- Validity for commencement of authorized operations
  - a) The unit should commence the operation within 1 year from the date of provision of LOA
  - b) The validity may be extended for further 2 years by DC for valid reasons
  - c) Further it can be extended by 1 year, provided 2/3rd of setting up & construction activity completed
  - d) In the event of non-commencement of production or service activity, LOA deemed to be lapsed.
- Validity after commencement of authorized operations.

LOA valid for 5 years after commencement of activity, can be extended by another 5 years subject to fulfilling the NFE conditions.

e. SEZ Benefits

For Developers	For Units
• Exemption from customs duties for Authorized operations. • Supply to SEZ Developer is treated as Zero rated, IGST Act	• Duty free import / domestic procurement of goods. • Single window clearance for Central and State level approvals • Supply to SEZ Unit is treated as Zero rated, under IGST Act.

Apart from the benefits available to the developers and SEZ units, there are some common advantages which increases its significance and importance in the export activities

- "Write-off" of unrealized export bills is permitted up to an annual limit of 5% of their average annual realization.
- Setting up Off-shore Banking Units (OBU) allowed in SEZs.
- Since SEZ units are considered as 'public utility services', no strikes would be allowed in such companies without giving the employer 6 weeks prior notice in addition to the other conditions mentioned in the Industrial Disputes Act, 1947.
- The Government has exempted SEZ Units from the payment of stamp duty and registration fees on the lease/license of plots.
- External Commercial Borrowings up to $ 500 million a year allowed without any maturity restrictions.
- No routine examination of export and import cargo.

f. Obligation by SEZ

Unlike other schemes, SEZ units do not have an export obligation in terms of quantity or value of goods to be exported by the unit. The SEZ units has to be a net foreign exchange earner (NFE). The unit should have a Positive NFE and the unit have to submitMonthly & Annual Performance report (APR) in Form -I.

Positive NFE = A – B > 0

A includes	B excludes
• Value of export against Advance Authorisation and supply of Capital goods under EPCG Scheme • Supply made to DTA in Forex	• CIF value of all imported inputs & Capital Goods • Royalty, Commission etc., in Forex • FOC Imports

g. Special Economic Zone and Duty Drawback

- As discussed earlier the members / entities of the SEZ has various benefits when it comes to imports and exports of goods and services provided by them, further, they are also eligible to claim Drawback / Reimbursement of Duty in lien of Drawback for the supplies received from DTA unit for performing authorized operations.
- Drawback benefits can be claimed by either of the party SEZ unit/ developer or by the DTA supplier based on the disclaimers.
- Reimbursement of Duty (RoD) in lien of Drawback is available in case SEZ developer

Chart – 10 the drawback facility that is available for the Unit/ Developer

h. Growth of SEZ units in India

There has been an exponential growth in SEZs in India According to the Ministry of Commerce and Industry:

- SEZ exports increased from INR 228.40 billion (US$3.07 billion) in 2005-06 to INR 7595.24 billion (US$102.24 billion) in 2020-21.
- Investment in SEZs increased from INR 40.355 billion (US$0.54 billion) in 2005-06 to INR 6174.99 billion (US$83.12 billion) (cumulative basis) by 2020-21.
- Operations in SEZ units provided jobs to 134,704 persons in 2005-06 - which in-creased to 2,358,136 persons (cumulative basis) by 2020-21.

5. Duty Drawback scheme

a. Introduction

Duty Drawback scheme was introduced by the Ministry of Finance as a rebate for duty chargeable on any imported materials or excisable materials used in manufacture or processing of goods, manufactured in India, and exported.The concept of drawback exists in the trade policies of nearly all economically developed nations. After implementation of GST the drawback of duties covers only the customs duties levied under Customs Tariff Act which includes Basic Customs Duty and Cess, Safeguard Duties, Antidumping duties etc., the drawback of duties does not cover IGST and Compensation cess.

Chart – 11 Basics of the scheme

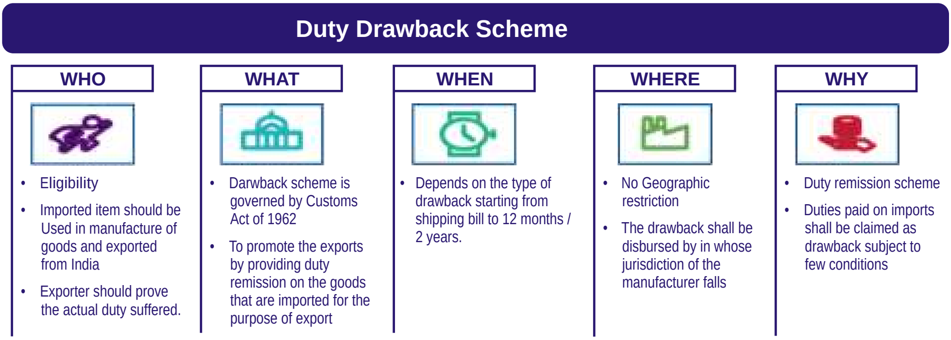
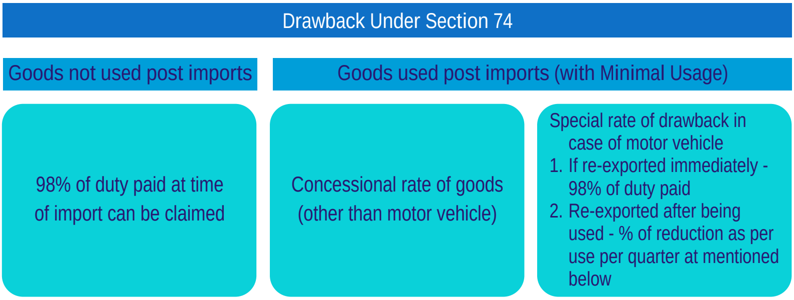


Chart – 12 Types of Drawbacks under Customs:

Chart – 13 Section 74: Re-Export of Duty paid Imported goods in unused condition



b. Section 75: Duty paid on Imported materials used in the manufacture of Exported goods

As per section 75, the drawback can be claimed if the export of goods manufactured or processed out of imported material with value addition. Under this scheme, actual customs duty incurred on the inputs can be availed as a refund.

c. Types of Duty Drawback under Section 75

- **All Industry Rate (AIR):** AIR is covered under Rule 3 of The Customs and Central Excise Duties Drawback 2017, AIR is essentially an average rate based on the average quantity and value of inputs and duties (both Excise & Customs) borne by them and Tax suffered by a particular export product. The AIR is notified by the Government in the form of a Drawback Schedule every year, The AIR of Duty Drawback is generally fixed as a percentage of FOB price of export product.
- **Brand Rate of Duty Drawback (BR):** BR is covered under Rule 6 of Drawback Rules, BR is allowed only at situation where no amount or rate of drawback has been determined in respect of goods exported.
- **Special Brand rates:** SBR is covered under Rule 7 of Drawback Rules, SBR is allowed where the exporter finds the amount or rate of drawback for the goods is low. The benefit of SBR would be available only when AIR is less than 80% of the actual duty suffered.
- **Vendor drawback:**Exporter can apply Vendor portion of import duties in support with the main claim filed, A declaration need to be

submitted regarding the intent to claim the drawback on duties paid by vendors that are used in final product to the OEM which in-turn used in manufacture of export goods.

d. Time limit to claim drawback

Time Limit to Claim Drawback		
Section 74: Re-Export of Duty paid on Imported goods in unused condition	Section 74: Re-Export of Duty paid Imported goods in used condition	Section 75: Duty paid on Imported materials used in the manufacture of Exported goods
• The goods should be entered for export within 2 years from the date of payment of duty on the importation thereof.	• The time limit for filing the claim is three months from the date of let export order	• The time limit for filing the claim is three months from the date of let export order
• Provided the period of 2 years maybe be extended on sufficient cause know by the by the Central Board of Customs and Central Excise by such period as it may deem fit	• AC/DC of Customs may extend by a period of three months with condonation. If the exporter was prevented by sufficient cause FORM filing the claims within three months	• AC/DC of Customs may extend by a period of three months with condonation. If the exporter was prevented by sufficient cause FORM filing the claims within three months
	• Principal Commissioner may further extend the period of six months with condonation.	• Principal Commissioner may further extend the period of six months with condonation

6. Manufacturing and other operations in warehouse regulations (MOOWR)

a) Bonded warehouse in India:

The scheme allows the deferred duty payment on manufacturing and other operations allowed, and at the same time, allows cargo to be stored under the relatively cheaper option.

The provisions related to warehousing are discussed under Chapter IX of the Customs Act,1962. The said provisions provide facilities to deposit imported goods, without payment of duty and types of warehouse licenses which are permitted to operate. The types of warehouses are Public bonded Warehouse, a Private Bonded Warehouse, or a Special Bonded Warehouse. One of the significant aspects of bonded warehousing is the permissibility to undertake manufacturing and other operations, which is setout under Section 65 of the Customs Act. These provisions offer the owner of the goods to carryout manufacturing process or other operations in a warehouse.

However, In July 1966, the Central Board of Excise and Customs (CBEC) [at present called as, Central Board of Indirect Taxes and Customs (CBIC)] notified the first set of regulations dealing with manufacturing and other operations in a warehouse Manufacture and Other Operations in Warehouse Regulations (MOOWR) and these Regulations continued to prevail till June 2019. Surprisingly, The CBIC cameup with a simplified and more industry-friendly approach to revamp all such regulations and to boost the manufacturing activity in the country. hence, Manufacture and Other Operations in Warehouse Regulations, 2019 were brought into force.

b) Manufacturing and Other operations in Warehouse (no.2) Regulations 2019

However the said scheme has been given new lease of life by altering certain key compliance requirements, by CBIC notifying the Manufacture and Other Operations in Warehouse (no. 2) Regulations, 2019 ('New Regulations') vide Notification No 69/2019-Cus. (NT), dated October 01, 2019 in supersession of the Old Regulations.

c) Highlights of the Scheme:

This MOOWR Scheme has gained impetus with recent clarifications in July 2020. Some of the key benefits for the person who opt for Bonded warehouse with permission of manufacturing and other activity are listed as under:

Annexure A

Seeking grant of license

Annexure B

Maintenance of records

Annexure C

Triple Duty Bond

Approval for Transfer of Goods

movement to another warehouse / Exports

Forms

- Single point of approval
- Automatic enhancement in work-ing capital
- No geographical restriction
- Deferred customs duty on im-ported capital goods and raw ma-terials/ components until it is sup-plied to domestic markets.
- Seamless transfer within ware-houses with prior approval from bond officer
- No investment threshold or export obligation or positive net foreign exchange (NFE) condition.

Benefits

Chart – 14 Basics of the scheme.

Manufacturing & Other Operations in Warehouse (2.0) Regulations, 2019 – Synopsis

WHO

- Eligible person
- Citizen of India or is an entity incorporated in India
- Submits an undertaking to comply with such terms and conditions as per Sec 58 & 65 of customs act.

WHAT

- Another initiative by the CBIC
- To promote India as the manufacturing hub globally and the commitment towards ease of doing business.

WHEN

- Unlimited period of warehousing
- Capital goods, Raw materials, components etc. can remain inside warehoused until clearance or consumption

WHERE

- No geographical restriction
- New manufacturing facility can be set up or an existing facility can be converted into a bonded manufacturing facility irrespective of its location in India

WHY

- Duty Deferment
- Deferred Duty on Import of Inputs & Capital goods.
- Seamless transfer to warehouse & movement for Jobwork is allowed No export obligations

One of the most distinctive features of the new regulations is waiver of interest liability on inputs and capital goods warehoused for bonded manufacturing. The fact that importer under MOOWR scheme will enjoy interest free storage period and that there are no restrictions to store the goods till the time raw materials are used in manufacturing facilities will help provide working capital savings the same is explained in the table for ease of reference.

Particulars	Customs Duty	GST	Working Capital
Present Duty Structure in India	**BCD + SWS + Cess (approx. 11-15%)**	**GST + Cess (approx. 18%)**	**Duty + Taxes**
Import Procurement	Customs Duty Deferred	Deferred	No Import Duty Payment – no cash outflow
Domestic Procurement	Nil	GST + Cess (approx. 18%)	GST Payment – (ITC eligible)
Export Clearance	Exempted – No outflow of Customs duties	Deferred duty – Zero Rated	Deferment of duty is waived off – no cash outflow
Domestic Clearance	BCD + SWS + Cess (11-15%) on import value of goods used	GST + Cess (approx. 18%) to be Paid on import value of goods used – eligible to avail ITC.	Payment of Customs duties and tax – (Cash outflow impact however, Interest cost Savings on duty deferment from import till

H. Macrolevel Comparison

A Macro level comparison issummarized in the following table to give a better understanding with each of the schemes. However, the businesses should do a feasibility study individually based on the nature of the business activity.

Particulars	Advance Authorization scheme	EPCG	EDU	*SEZ Unit	Duty Drawback scheme	MOOWR
Authority	Director General of foreign trade policy	Director General of foreign trade policy	Director General of foreign trade policy / Development Commissioner	Development Commissioner	Assistant Commissioner of customs	Principal Commissioner of customs / Commissioner of customs
Concept	AA shall be granted with 'Actual user' condition for duty free imports	Enables an importer to import capital goods at zero rates of customs duty	Similar to SEZ, where manufacturing / service operations are allowed	Designated duty-free enclave where manufacturing / service operations allowed	Duty Drawback of customs duties paid imported goods used in the manufacture of export goods - AIR / Brand rate	Imported goods are stored under Customs bonded premises without payment of import duties till their clearance.
Eligibility criteria	Only available for specific products based on rules under FTP	Only available for capital goods with export obligation	Minimum investment of INR 10 for new unit. For conversion of DTA unit to EOU the investment limit is subject to BOA	Requires minimum hectares of land (Normally 50 hectares land (this may vary based on Sector specific SEZ unit)	Duty incurred on import of goods	Any existing or new factory can be converted to a bonded Premise
Benefit	Customs Duty & GST exemption inputs for which license is issued	Customs Duty & GST exemption on capital goods for which license is issued	Customs Duty Exemption	Customs Duty and GST Exemption	Duty drawback of Customs duty paid on import	Duty Deferment till the goods are cleared for domestic market
Validity of benefit	12 months from the date of issuance of license for import of goods and 18 months for export of manufactured goods.	18 months the issuance of license	60 months form grant of LOP	Limited to certain period based on LOA: (e.g., 5/10 years)	Available as long as duty is paid and goods are exported	No such limitations
Export obligation	Minimum 15% value addition required, and export obligation needs to be fulfilled within 18 Months from the date of issue of authorization	Export obligation equivalent to 6 times of duty saved value of exports to be satisfied within 6 years from date of issue of EPCG authorization	Positive Net Foreign Earning (NFE) requirement in 5 years from commencement of operations and renewal	Positive Net Foreign Earning (NFE) requirement in 5 years from commencement of operations and renewal	None	No obligations of Positive NFE No minimum thresholds for exports
Monetary impact / Blockage of Working Capital	No Import Duty Payment and No GST Payment for domestic sourcing (if opted for Invalidation)	No Import Duty Payment and No GST Payment for domestic sourcing(if opted for Invalidation)	Monetary Impact due to payment of duties and tax at the time of Domestic sale	None	Blockage of working capital for the period of 12 - 15 months On Import & Domestic Procurements.	Monetary Impact due to payment of duties and tax at the time of Domestic sale
Compliance requirement	On completion of exports Obligation need to apply for EODC mapping Input & Output	On completion of exports Obligation need to apply for EODC mapping Input & Output	Softex, Monthly Performance Report, QPR, APR etc.	Softex, Monthly Performance Report, QPR, APR, DTA Proc Documents etc.	NIL	Monthly reporting In Annexure B & Maintenance of Bond as per Annexure C

I. Conclusion:

At the outset, all the schemes which are discussed (supra) not only extends the benefits in the form of cost reduction of customs duty/ IGST but also provides the benefit of working capital savings and interest savings by way of exemption / deferment on import of inputs/ components and Capital goods.

The unique features of these schemes discussed above can be adopted with the existing set-up except in the case of SEZ. Apart from the scheme discussed, the Government is also taking more initiatives to achieve the vision of Atmanirbhar Bharat or self-reliant India.

- As a part of these initiatives, the Government has introduced Production linked Incentives Scheme (PLI) covering 13 sectors;
- Embarked on increasing the FTA relationship with member countries,
- Introduced anAuthorized economic Operator "AEO" scheme;
- Notified refund of the embedded taxes Remission of Duties and Taxes on Export Products (RoDTEP) scheme

With these initiatives the Indian manufacturing industry is primed to scale their businesses to create a niche for themselves in the global market.

INDO-JAPAN CHAMBER OF COMMERCE & INDUSTRY

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