Export of Goods from India

With the increasing pace of globalization and e-commerce, the world has truly become a 'global village'. Geographical distances between sellers and consumers are no longer a hindrance, thanks to e-commerce businesses and 'e-tailers' of the world.

Not only big-ticket brands, but also small and medium sellers in India are looking forward to do business in other countries using the e-commerce platform

With such a huge opportunity in existence, our bulletin for this month covers an insight into Export of Goods from India.

In case you are a business in India looking forward to leverage the global opportunity of doing business in other countries / supplying goods to other countries (especially using the e-commerce window), we hope that this issues of our newsletter will be a useful read for you.

India's Foreign Trade

India's Foreign Trade (Exports and Imports) is regulated by the Foreign Trade Policy notified by Central government. Presently Foreign Trade Policy 2015-20 is effective from 1st April, 2015.

As per law, export is defined as an act of taking out of India any goods by land, sea or air and with proper transaction of money.

Exports in India are reported by the Ministry of Commerce and Industry, India.

Exports from India went up 4.6 percent year-on-year to USD 22.8 billion in September of 2016.

In recent years, India has become one of the biggest refined product exporters in Asia with petroleum accounting for around 20 percent of total exports.

India also exports engineering goods, chemical and pharmaceutical products, gems and jewellery, agricultural and allied products, textiles and clothing.

India's main export partners are USA, UAE, Singapore, China, Hong Kong and Netherlands.

Export in itself is a wide concept and requires detailed preparation. To start with, one needs to have an entity in place and then apply for the registrations [namely current account with Authorized Dealer (AD) bank, Permanent Account No. and Importer Exporter code (IEC)]. The IEC code / AD bank code needs to be registered with the customs authorities.

Parallely of course, selection of market, products, finalizing of product costing along with finding buyers, negotiation and risk coverage is required. Once done, and after the package is ready, the export shipment is ready to be dispatched.

A) Pre-requisites for Export

Establishing an Entity, Opening bank account, Obtaining PAN and IEC

- To start the export business, first a sole Proprietary concern/ Partnership firm/Company has to be set up as per procedure
- A current account with a Bank authorized to deal in Foreign Exchange (Authorized Dealer or AD bank) should be opened.
- It is necessary to obtain PAN (Permanent Account No.) from the Income Tax Department.
- An IEC (Importer-Exporter Code) is a 10 digit number which is mandatory for undertaking export/ import. Application for obtaining IEC Number is to be submitted online to Regional authority of DGFT in form ANF 2A along with the documents listed therein. Only one IEC can be obtained against a single PAN.
- For availing authorization to import/ export or any other benefit or concession under FTP (Foreign Trade Policy) 2015-20, as also to avail the services/ guidance, exporters are required to obtain registration with Export Promotion Councils/ FIEO/Commodity Boards/ Authorities.

Selection of Product and Market, Finding Buyers, Negotiations and Product Costing

- All items are freely exportable except few items appearing in prohibited/ restricted list. After studying the trends of export of different products from India proper selection of the product(s) to be exported may be made.
- An overseas market should be selected after research covering market size, competition, quality requirements, payment terms etc. Exporters can also evaluate the markets based on the export benefits available for few countries under the FTP. Export promotion agencies, Indian Missions abroad, consultants, etc. might be helpful in gathering information.
- Participation in trade fairs, buyer seller meets, exhibitions, B2B portals, web browsing are an effective tool to find buyers. EPC's, Indian Missions abroad, overseas chambers of commerce can also be helpful. Creating multilingual Website with product catalogue, price, payment terms and other related information may also help.
- Providing customized samples as per the demands of Foreign buyers help in getting export orders. As per FTP 2015-2020, exports of bonafide trade and technical samples of freely exportable items shall be allowed without any limit.

Pricing/Costing, Negotiations with Buyers and Risk Coverage

- Product pricing is crucial in getting buyers' attention and promoting sales in view of international competition. The price should be worked out taking into consideration all expenses from sampling to realization of export proceeds on the basis of terms of sale i.e. Free on Board (FOB), Cost, Insurance & Freight (CIF), Cost & Freight(C&F), etc. Goal of establishing export costing should be to sell maximum quantity at competitive price with maximum profit margin. Preparing an export costing sheet for every export product is advisable.
- International trade involves payment risks due to buyer/ Country insolvency. Where the buyer is placing order without making advance payment or opening letter of Credit, it is advisable to procure credit limit on the foreign buyer to protect against risk of bad-debt.

B) Elements of an Export

C) Processing an Export Order

Sr. No.	Steps	Description
1	Confirmation of order	On receiving an export order, it should be examined carefully in respect of items, specification, payment conditions, packaging, delivery schedule, etc. and then the order should be confirmed. Accordingly, the exporter may enter into a formal contract with the overseas buyer.
2	Procurement of Goods	After confirmation of the export order, immediate steps may be taken for procurement/ manufacture of the goods meant for export. The procurement should be strictly as per buyer's requirement.
3	Quality Control	In today's competitive era, it is important to be strictly quality-conscious about the export goods. Some products like food and agriculture, fishery, certain chemicals, etc. are subject to compulsory pre-shipment inspection. Foreign buyers may also lay down their own standards/ specifications and insist upon inspection by their own nominated agencies. Maintaining high quality is necessary to sustain in export business.
4	Finance	Exporters are eligible to obtain pre-shipment and post-shipment finance from Commercial Banks at concessional interest rates to complete the export transaction.
5	Labeling, Packaging, Packing and Marking	The export goods should be labeled, packaged and packed strictly as per the buyer's specific instructions. Good packaging delivers and presents the goods in top condition and in attractive way. Similarly, good packing helps easy handling, maximum loading, reducing shipping costs and to ensuring safety and standard of the cargo. Marking such as address, package number, port and place of destination, weight, handling instructions, etc. provides identification and information of cargo packed.
6	Insurance	Insurance policy covers risks of loss or damage to the goods while in transit.
7	Delivery	The exporter must adhere to the delivery schedule. Planning in advance should be there to let nothing stand in the way of fast and efficient delivery.
8	Customs Procedures and Customs House Agents	It is necessary to obtain PAN based Business Identification Number (BIN) from the Customs prior to filing of shipping bill for clearance of export good and open a current account in the designated bank for crediting of any drawback amount and the same has to be registered on the system. Exporters may avail services of Customs House Agents licensed by the Commissioner of Customs. They are professionals and facilitate work connected with clearance of cargo from Customs
9	Documentation	FTP 2015-2020 describes the following mandatory documents for import and export. • Bill of Lading/ Airway bill • Commercial invoice cum packing list • Shipping bill/ bill of export/ Other documents like certificate of origin, inspection certificate etc. may be required as per the case.
10	Submission of documents to Bank	After shipment, it is obligatory to present the documents to the Bank within prescribed time-limit for onward dispatch to the foreign Bank for arranging payment.
11	Realization of Export Proceeds	As per FTP 2015-2020, all export contracts and invoices shall be denominated either in freely convertible currency of Indian rupees, but export proceeds should be realized in freely convertible currency. Export proceeds should be realized in 9 months.

D) Compliances

a) Obtaining Import-Export Code (IEC)

- An exporter is required to obtain registration with the Director General of Foreign Trade (DGFT). Customs authority will allow clearance of goods only once the exporter has obtained an Import Export Code (IEC) with DGFT. A valid Permanent Account Number or PAN is necessary to apply for IEC code. Only one IEC can be issued against a single PAN.
- An IEC is a unique 10 digit code issued by DGFT, Ministry of Commerce and Government of India to Indian exporters. IEC code is mandatory for export from India. No person or entity shall make any export without IEC code number (unless specifically exempted).
- An IEC allotted to an applicant shall have permanent validity unless cancelled by the competent authority. The IEC will cover all branches / divisions of the applicant. Once an exporter has obtained an IEC code, he can export goods as per the terms and conditioned under IEC.

Process for obtaining IEC

- An application for grant of IEC number is required to be made online (www.dgft.gov.in) along with the prescribed documents i.e., those who have digital signatures can sign and submit the application online along with the requisite documents.
- IEC is normally dispatched within two working days of receipt of application. A copy of such IEC shall be endorsed to concerned banker (as per details given in ANF 2A).

b) Documents required for export

The following documents are mandatory for export of goods from India, as per the Foreign Trade Policy.

- Bill of Lading/Airway Bill;
- Commercial Invoice cum Packing List; and
- Shipping Bill/Bill of Export

c) Current account with AD Bank & registration of AD code with customs

- The exporter is also required to have a current account with a bank authorized by the Reserve Bank of India to deal in foreign exchange (Authorised Dealer Bank/ AD Bank).
- The AD Bank will issue a letter mentioning the bank's Authorised Dealer Code (AD Code) which is provided to each bank all over the country.
- The AD code is unique to an AD Bank and is the same for all its customers. An AD Code is provided by the Bank where the exporter holds the current account. Registration of the AD Code is required at the customs department to reconcile the value of goods exported by the seller against the proceeds received in the exporter's account.
- Commercial clearance of shipment from a given port cannot be done until the AD code is registered at that port.

Obtaining AD Code and registration of AD code with Customs authorities

- An exporter can obtain an AD Code by simply asking its AD Bank to provide it.
- Since the AD Code is unique to the AD Bank and is the same for all its customers, the exporter can request the AD Bank with whom it has a current account to provide the same.
- An exporter is required to mention the AD Code registration with the customs department in order to be able to export from any port.
- The AD Bank can by a letter addressed to the customs authority intimate them about its AD Code.

E) Some FAQs relating to Export of Goods

Export benefit schemes available to exporters in general and ecommerce sellers in specific

Export benefit Schemes are issued in accordance with the Foreign Trade Policy. Generally, all export benefit schemes are available to exporters. However, the applicability of the schemes would depend on the nature of goods being exported.

For example, goods falling in certain categories are entitled for Merchandise Exports from India Scheme (MEIS) benefit. Apart from the MEIS, the Government of India has several schemes in place that allow the exporters to import inputs/ capital goods at concessional rates of import duty.

The Schemes are as Export Promotion Capital Goods Scheme (EPCG), Duty Free Import Authorisation Scheme, and Duty Exemption Passbook Scheme (DEPB). Their applicability would depend on the goods being exported.

If export revenue is received in INR in bank account, Can sellers still claim export benefits?

To claim export benefits, a Foreign Inward Remittance Certificate (FIRC) must be issued to the exporter. Thus, if FIRC is issued to the exporter, he can claim export benefits whether he receives INR or foreign currency in his bank account.

What are the documents needed to prove the INR money received in account is against exports?

The exporter can present the following documents to prove that the INR money received in his account is against exports:

- Invoice issued by the exporter to the consignee attested by customs;
- Airway Bill No. / Dispatch document; and
- The Export Declaration form.

Do sellers need to pay for importing unsold inventory back into India?

Where the seller is able to satisfy the Customs Authority that the goods imported are unsold inventory, the Seller would not have to pay for importing unsold inventory back into India. The seller would need to submit the following documentation to satisfy the Customs Authority:

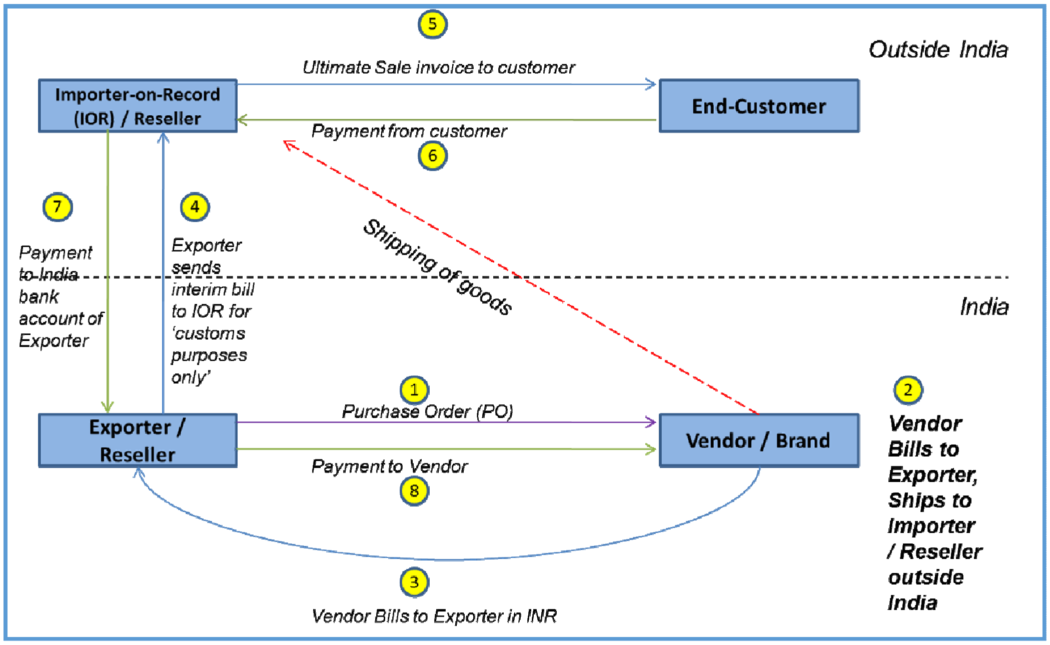
- List of exported goods;
- Invoices raised; and
- Stock of inventory unsold etc.

However, if the seller is unable to satisfy the Customs Authority that the goods imported are unsold inventory, seller would need to pay for such import.

F) Sales tax / Value Added Tax (VAT) implications

No VAT is payable on export of goods from India. Duties payable on import into the foreign country are payable at the time of import. Apart from these, sales tax / VAT liability in the foreign country are Seller's responsibility.

When goods are acquired form vendor in India for the purpose of penultimate export, the arrangement usually adopted is a 'Bill To – Ship To' arrangement, wherein the Exporter on records is the applicant while the Vendor (from whom goods are purchased in India for the purpose of penultimate export) ships the goods directly to the importer on records / customer outside India. In other words, the Vendor 'Bills To' the Indian Exporter and 'Ships To' the foreign customer.



Option 1: Removal of goods under bond

- Transaction between Exporter and Vendor treated as local sale in India
- Exporter to provide **Form H** to the Vendor for 'penultimate export'. Vendor to apply 0% VAT / CST on its invoice
- Exporter to enroll with Excise authorities for obtaining **Form CT-1** and provide the same to the Vendor
- Based on the Form CT-1, Vendor would execute a general bond with the Excise authorities and remove the goods from factory without paying Excise Duty
- Vendor has the option to furnish a letter of undertaking instead of executing the bond
- Goods must be removed from the factory under the cover of an Excise invoice along with Form **ARE-1**
- While exporting the goods from customs port / airport, Shipping Bill to be filed by Exporter must also include name of the Vendor

Option 2: Removal of goods under claim of rebate

- Under this option, goods can be removed from the factory of the Vendor on payment of Excise Duty
- Goods must be removed from the factory under the cover of an Excise invoice along with Form ARE-1
- Upon export of goods, claim to be filed for rebate (refund) of Excise Duty paid with the Excise authorities

G) Income-tax implications in India

Where India has entered into a double taxation avoidance agreement (DTAA) with the country to which export is made, the Indian exporter is safeguarded from taxation in the country of export as long as its activities do not constitute a 'Permanent Establishment' (PE) in that country. Generally a DTAA defines a PE using the following 2 general tests:

- Where the exporter has a 'fixed place of business' in the country of export
- Where the exporter operates in the country of export through a dependent agent that habitually exercise authority to conclude contracts on behalf of the exporter in the country of export

A specific treaty should always be examined for exceptions or differences from standard language.

'Fixed place of business'

A Fixed place of business has been defined to commonly include the following locations.

- Place of management
- Branch / Office
- Factory / Workshop

There are, however, exceptions that do not constitute PE for DTAA purposes. They are:

a. the use of facilities solely for the purpose of storage, display, or occasional delivery of goods or merchandise belonging to the enterprise ;

b. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or occasional delivery

c. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise ;

d. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise

e. the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for other activities which have a preparatory or auxiliary character, for the enterprise.

Given the above, an organization has many options for doing business in a target country without triggering PE implications for DTAA purposes. The analysis is highly fact-specific for each case considering the language of the particular DTAA.

A PE may also be created in the country of export if the exporter operates in that country through a dependent agent. Typically, DTAAs provide the following addressing the use of agents in a target country.

An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and the transactions between the agent and the enterprise are not made under arm's length conditions, he shall not be considered an agent of independent status within the meaning of this paragraph.

Typically, the analysis to determine whether an agent is working as an independent agent can be determined by examining whether the agent is:

- Acting in the ordinary course of business
- Economically & legally independent from the exporter

When examining the agency relationship, it is helpful to identify the category of agent that has been hired by the exporter. For example, agent has been considered any one of the following.

- An importer or distributor agent
- General sales commission agent
- A consignment agent

Each type of agent must always be operating in the ordinary course of business and must meet the economic and legal independence tests to protect the exporter from being considered as operating a business through PE in the target country. In all cases, consideration of the above issues must be made when a exporter is expanding his operations in a foreign country

About KrayMan

KrayMan Consultants LLP is a Professional Services Firm rendering services in the realm of Accounting, Audit, Tax, Regulatory, Compliance, Outsourcing and HR advisory to International and Domestic Clients.

KrayMan is founded by professionals from eminent Consulting and Industry background. We are a Firm comprising of around 20 Business Consultants, Chartered Accountants, Company Secretaries & MBA's having diverse skill set, work experience and specialization.

We are one of the prestigious firms in India to be a member of Prime Advisory Network - an international network of accounting firms across the globe.

We cater to multinationals operating in India as well as domestic corporates including start-ups.

Our International client-set includes companies from Japan, Singapore, Thailand, China, Denmark etc. We assist them in exploring Indian Market by setting-up their presence in India in the form of liaison office / branch office / Company, etc.

We serve a portfolio of clients in various sectors like Real Estate, Automation, Construction & Housing, Beverages, Charitable Institutions, Import/ Export, Industrial products, Logistics etc.

Connect with us

Manan Agarwal
Managing Partner
manan.agarwal@krayman.com

Kratika Agarwal
Partner
kratika.agarwal@krayman.com

Nidhi Agarwal
Director
nidhi.agarwal@krayman.com

A.J. Majumdar
Advisor – Taxation

KrayMan Consultants LLP

1170A, 11th Floor, Tower B1
Spaze i-Tech Park
Sector 49, Sohna Road
Gurgaon – 122001 (India)
T: +91 124 4309418
Web: www.krayman.com