



A Much - Awaited Relief to Indian Exporters on Remission of Duties

Shampa Bhattacharya – Partner (Taxation) Practice Group

Kochhar & Co.

The World Trade Organization ('WTO') has always been of the view that Indian export subsidy schemes like Merchandise Exports from India Scheme ('MEIS'), Export Oriented Units ('EOUs'), Service Export Incentive Schemes are principally in violation to the Subsidies and Countervailing Measures Agreement ('SCM Agreement'). The SCM Agreement addresses two separate but closely related topics: multilateral disciplines regulating the provision of subsidies and the use of countervailing measures to offset injury caused by subsidized imports. The pressure has always been mounting on India to withdraw the existing export incentives as directed by the various trade forums and WTO directives. However, India has appealed against these directives before the WTO's Appellate Body, which as of now is pending final decision.

In order to adhere and be compliant with the objectives of the SCM Agreement, India decided to discontinue the MEIS Scheme and replace it by introducing a new incentive scheme for products exported - the Remission of Duties and Taxes on Exported Products ('RoDTEP Scheme').

The Cabinet Committee on Economic Affairs had approved for introduction of the scheme for RoDTEP in March 2020. This Scheme has been made a part of the duty exemption / remission schemes of the Indian Foreign Trade Policy ('FTP') 2015- 20 which shall be effective retrospectively for all exports made from 1 January 2021. The Government has now after 8 months of announcement of the RoDTEP Scheme in January 2021 notified the rates under the scheme along with certain guidelines.

The objective of the scheme is to refund the duties or taxes which are currently not being refunded. These would primarily include duties/ taxes/ levies at the central, state, and local level, borne on the exported product, including prior stage cumulative indirect taxes on goods and services used in the production of the exported product and such indirect taxes / levies in respect of distribution of exported product.

The rebate shall not be available in respect of duties and taxes already exempted or remitted or credited. Under the RoDTEP Scheme, a rebate would be granted to eligible exporters at the notified rate as a percentage of FOB value with a value cap per unit of the exported product. However, for certain export items, a fixed quantum of rebate amount per unit may also be notified. The rebate amount shall be granted in the form of a transferable duty credit/ electronic scrip (e-scrip), which will be maintained in an electronic ledger. The scrips can be used only for payment of Basic Customs Duty.

The notified rates under this Scheme range from 0.3% to 4.30% vis a vis 2% to 7% available earlier under the MEIS Scheme. Surprisingly, there are multiple products such as iron and steel products, chemicals and pharmaceuticals which are conspicuously missing from the notified rebate list, thereby indicating that no benefit will be available on export of such products.

The overall budget for the scheme would be finalized by the Ministry of Finance in consultation with the Department of Commerce (DoC). The scheme will operate in a budgetary framework for each

financial year. Necessary calibrations and revisions shall be made to the scheme benefits, as and when required to ensure that quantum of benefit remains within budgeted outlay. The rebate allowed

will be subject to the receipt of sale proceeds within time allowed under the FEMA, failing which, such rebate shall be deemed never to have been allowed. This indicates that a robust in-built audit check shall be implemented to identify cases where export proceeds are not realized. There shall be no carry forward of arrears or contingent liability for RoDTEP Scheme to next FY.

DoC shall decide the sequence of introduction of RoDTEP Scheme across sectors, prioritization of sectors, degree of benefit, ceiling within prescribed rates and so on. It is appalling that RoDTEP Scheme is driven by budgeted outlay than export promotion. If the actual exports in India exceed the Government's estimates, then the exporters shall be entitled to lesser benefit because of the stringent budget allocation. The outcome may be that exporters may not have any certainty on availing benefit at prescribed rates on account of reductions basis budget allocation.

The Scheme does not provide a blanket benefit to all exporters. Broadly the following categories of exports/ exporters shall not be eligible for rebate under the scheme:

- Export of imported goods covered under paragraph 2.46 of FTP (import for export)
- Exports through trans-shipment
- Export products which are subject to minimum export price or export duty
- Products which are restricted/ prohibited for export
- Deemed Exports
- Supplies of products manufactured by units in Domestic Tariff Area to Special Economic Zone (SEZ)/ Free Trade Warehousing Zone (FTWZ) units
- Products manufactured in Electronic Hardware Technology Park (EHTP) and Bio-Technology Park (BTP)
- Products manufactured partly or wholly in a customs warehouse
- Goods which have been taken into use after manufacture
- Products manufactured or exported in discharge of export obligation against an Advance Authorization (AA) or Duty-Free Import Authorization (DFIA)
- Products manufactured or exported by 100% Export Oriented Unit
- Products manufactured or exported by any of the units situated in Free Trade Zones or Export Processing Zones or SEZ

The Government has presently not provided the benefit of RoDTEP Scheme for exports made by SEZ / EOUs / AA holders etc. This has resulted in an anomalous situation as an exporter can claim RoDTEP benefit along with Duty Drawback but not with Advance Authorization though both Duty Drawback and AA provides for refund / exempt custom duties on imported inputs.

The scheme, which covers around two-third of the export of the country, is likely to help in easing the liquidity of the exporters, ensuring stability. Rates once prescribed would also enable in determining the competitive export prices. The budgeted allocation under RoDTEP is much lower as compared to the government's annual outlay under MEIS. The notified lower rates under this Scheme as compared to the erstwhile MEIS Scheme has been very disappointing for the exporters as the rates have not been proposed on the basis of actual incidence of taxes incurred in relation to export goods. This effectively means that even after introduction of RoDTEP Scheme, exporters shall not be entitled to receive full compensation of various taxes incurred in relation to production and distribution of export goods.

Looking at the brighter side, the benefit of RoDTEP scheme if considered for exports made by EOUs, Advance Authorisation holder, SEZ unit and customs warehouse would certainly boost the Indian export industry.
