



FEMA Compliance on Export of Goods and Services



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Export can be understood as a process in which goods are sent outside India. Modes of transport for goods taken outside the country will include land, air and sea. The definition of export also consists of the term 'Consignment'. Consignment of Goods, lease, hire purchase, or any other form of arrangement would come under the meaning of export. Exporting a software product can be covered through electronic media or transmission. Therefore the export of goods and services from India has an in-depth meaning for the various types of goods and services sent outside India.

The meaning of Export of Goods and Services has to comply with the laws related to [Foreign Exchange Management Act, 1999](#). Apart from this law, the definition of export has come within the purview of the Foreign Exchange Management (Export of Goods & Services) Regulations 2015. Export transactions are governed by the Foreign Exchange Management (Current Account Transactions) Rules, 2000. The Director-General of Foreign Trade (DGFT) regulates the export of goods and services in India. Apart from this, the Foreign Trade Policy (FTP) has been amended from time to time. These institutions manage export transactions within India. RBI and FEMA governs export transactions in India. RBI has the authority to make specific rules related to export transactions outside India. These rules and regulations are circulated to **Authorised Dealers/ Authorised Person (AD/ AP) Category –I**. Authorized Dealers have to be compliant with the laws on the export of goods and services.

For construing compliance of export of goods and services from India, it is crucial to understand important terms related to Exports:

- **EXIM Bank**– This financial institution is known as the Export-Import bank which has been set up and established under the Export-Import Bank of India Law.
- **Software**- A Software would include any code, language, design, audio-video signals which are present in any form or medium other than physical form. Any type of electronic medium would come under the definition of software.
- **Vostro Account**- Vostro is considered a financial term that is used in the banking business. **Example of this form of account would be applicable when an Indian Bank has Indian Rupees (INR) Account of the branch of USA in India.**
- **Nostro Account**- Nostro account is considered as the opposite of the Vostro account. **An example of this is when an Indian Bank maintains a US Dollar Account in a branch office in USA.**

Export Declaration

Whenever an exporter wants to send goods outside India, then the same must be declared. This would take place where the goods are sent through the Customs Manual Ports. Declaration of goods would be for all types of goods, services, and software products. **Declaration of goods and services are not required when the export is made to Nepal and Bhutan.** Specific documents and evidence has to be provided when the goods are exported outside India. The following are the requirements which have to be stated regarding the export of goods outside India:

- **Value of the export of goods and services. The aggregate value would also cover this value.**
- If the **full amount cannot be ascertained at the time of export of goods and services, then the exporter has to determine the fair market value of the export of goods and services, which is prevailing at the time of export.** The market value at the time of export would have to be mentioned by the exporter.

Apart from this, the exporter would have to satisfy all the declarations. **Any form of realization of export proceeds or software from the third party must be mentioned in the declaration form.**

Exemptions on Declaration- Export of Goods and Services

An exporter would not have to declare the export of goods and services under the following circumstances:

- Any material or trade sample supplied which does not have any payment attached to it.
- Belonging of travellers- Personal Effects.
- Any form of ship storage or goods in transit.
- Any type of goods exported on behalf of the Central Government or goods which are sent by the Air Force, Navy, and Military of India for Military or Army requirements.
- Goods that are gifted with the declaration that such value of the goods does not exceed Rs. 5 Lakh.
- Spare parts of Airline Carriers such as- Turbines, Aircraft Engines, which are sent outside India for repair. These goods require to be re-imported back into India.
- Any form of leased aircraft/ helicopters.
- Goods which are imported on a free of cost from re-export basis.
- Export of Goods and Services from the Special Economic Zones, Electronic Hardware Technology Parks and Software Technology Parks, and Free Trade Zones. However, such goods require permission from the Development Commissioner. Goods under this category would include the following:
 - Imported Goods found Defective. Foreign companies or their collaborators would replace these goods.

- Goods imported on a loan basis.
- Goods imported freely from foreign companies, which is found surplus after production operations.
- Replacement of goods which are regulated by the Foreign Trade Policy (FTP).
- Goods and Services sent outside India for Research, Development, and Testing. These goods would be re-imported back into India.
- Goods that are permitted to be exported outside India after securing the required permissions from the Authorised Dealer and the Reserve Bank of India.
- Goods that have a certificate from the Authorised Dealer exempting them from being declared at the Customs.

When goods are declared at the Customs Department, the [Import Export Code](#) has to be mentioned. The Director-General of Foreign Trade would allot this number. This code has to be mentioned on the copies of the declaration form. The exporter also has to mention this code on all correspondences with the RBI and Authorised Dealer.

Form for Declaration- Export of Goods and Services

Export of Goods and Services are declared on form EDF (Form Export Declaration Form). Form EDF has to be submitted to the Commissioner of Customs department. When software goods are exported the same has to be declared through the form SOFTEX. Three copies of form Softex must be submitted to the Ministry of Informational Technology.

Evidence for Export of Goods and Services

When the declaration form is submitted to the Commissioner of Customs or the Ministry of Informational Technology, the following evidence must be provided:

- The exporter has a business in India and is a person resident of India.
- The port of disembarkation is the final destination related to the export of goods and services.
- The export value of the goods and services contains the full value of the goods and services exported. However, if the value of the goods and services are not ascertainable, the fair market value or the current market value of the goods must be mentioned.

Manner of Payment- Export of Goods and Services

The payment can be made via the authorized dealer through normal banking conditions and channels. **The payment made has to be under the conditions under the [Foreign Exchange Management](#) (Manner of Receipt and Payment) Regulations, 2000.**

When foreign importers pay the value for the export of goods during their visit to India, then a copy of the Export Declaration Form (EDF) should be sent to the authorized bank. This would be carried out when the funds are received in the Nostro Account. If the authorized bank does not have a credit card servicing bank, then the exporter would have to produce a certificate from the Credit Card Servicing Bank in India.

Export Transaction Processing (OPGSPs)- Export of Goods and Services

Repatriation and realization are carried out by Authorised banks through the Online Payment Gateway Service Providers (OPGSPs). There are specific requirements which have to be followed by the exporter and the authorized bank:

- **This system would only be allowed for the export of goods and services where the total value of the export of goods and services is not more than USD 10,000.**
- **Authorized Dealers have to open Nostro Account to manage receipt of remittances for goods and services that are exported outside India.** In compliance with the requirements of the OPGSPs, exporters are required to open notional accounts. **The OPGSPs system ensures that the account opened by exporters do not have any funds retained in the accounts.**

Payment by a Third Party- Export of Goods and Services

Third parties are allowed to pay for export transactions. However, the following conditions have to be satisfied:

- **An agreement between three parties must be present (tripartite agreement). This will not be applicable if there is sufficient documentary evidence which states that a third party would be making the payment for exports.**
- **The bank should be satisfied with the bonafides that is made in the transaction.**
- **The bank must comply and understand the FATF rules and statements when such transactions are conducted.**
- **The payment made by the third party must be through proper banking channels.**

- The **exporter must make a declaration regarding the third party remittance. This must be declared in the Export Declaration Form (EDF).**
- The **exporter must conduct the realization and repatriation of the proceeds.**

Export Value Repatriation and Realisation – Export of Goods and Services

There are specific time limits on the export value of the goods. Export of goods and services are subject to adhere to these conditions. The following time limits are required for the realization and repatriation of goods and services:

- **Standard time for repatriation and realization of goods, services, and software would be nine months.**
- However, **the above period for realization and repatriation would be decided on a case to case basis.** The RBI stipulates these timelines:
 - **When goods are exported outside India, the value of the goods has to be paid immediately to the authorized dealer. The realization and payment must be made within 15 months.** The government of India would decide this period from the date of shipment of the goods.
 - **If the period is extended, then an application must be made to the Authorised bank.**
- **Goods exported from a Special Economic Zone or a Technology Hub the following conditions would apply:**
 - **The full amount of the goods or the software would be realized and repatriated within nine months.**
 - **Or the time stipulated by the Reserve Bank of India .This would be from the time of the export.**
 - **If the extension of time has been made, then there must be sufficient reason and cause for the extension of time.** The authorized dealer can extend the time for realization and repatriation. However, sufficient cause must be shown for carrying out the extension of time from the date of the export.

Document Submission

Documents relating to the export have to be submitted to the Authorised Dealer. The documents which are mentioned in the Export Declaration Form (EDF) have to be submitted to the Authorised Dealer. This form must be submitted within 21 days of the date of the export. Documents can also be submitted on the date when the [SOFTEX Form](#) is certified. However, the Authorised dealer can accept documents even after 21 days, if there are circumstances which are beyond the control of the exporter.

Authorized dealer can accept documents which are subject to transfer, negotiation and collection. **These documents would include shipping documents, a copy of the invoices, shipping documents.** However, before accepting the documents related to the export of goods and service, the authorized dealer shall consider the following:

- **The value of the declaration of the exported goods and services is the same as the value of documents being sent for collection or negotiation.**
- **If the value of the declaration of the exported goods and services is lesser than the value of the document being sent for collection and negotiation, then the exporter would be required to sign the declaration.** On signing such declaration, the exporter is fully bound to the value of the export of goods and services.

Export payment

An individual without the prior permission of the RBI or the Authorised Dealer cannot deal with the payment related to the export of goods and services. The payment for goods and services exported has to be made according to the rules of the RBI. The following have to be adhered to:

- **Payment has to be made according to the manner prescribed by the Reserve Bank of India.**
- **The Authorised Dealer and RBI have to follow protocols in case there has been a delay in the payment for the export of goods and services.**
- **If sale proceeds of the goods exported do not represent the full value of the goods, then the payment would be allowed subject to the conditions prescribed by the RBI.**
- **If there is no declaration or form required for the export of certain types of goods and services, then the exporter can export the goods and services.**

Non Payment for the Export of Goods and Services

When there is a delay in payment for the goods and services, the RBI will provide an order regarding the delay. The following situations would arise:

- **Payment for the goods and services which have already been sold by the importer.**
- **If the goods haven't been sold, then the exporter would have to procure back the goods or re-import them into India for selling them in India. The exporter has to carry out this process within a specific period as per the directions of the RBI.**

Payment received in advance for the export of goods and services

There are circumstances where the exporter will receive advance payment for the goods and services exported. In such situations, the exporter has to fulfil the following:

- **The export/ shipment of goods must be made within one year from the date of receipt of the payment.**
- **The rate of interest on the payment received in advance does not extend more than the rate of interest, which is offered by the London Inter-Bank Rate (LIBOR) plus basis points, which equals a hundred.**
- **The shipment documents must be provided to the authorized dealer who has received such payment in advance.**

If the exporter is not able to pay, then no prior approval is required from the RBI regarding the remittance of advance payment or the payment of interest or the refund. The payment or refund has to be made after the expiry of one year. If there is an agreement between the exporter and the foreign importer provides a clause for advance payment, then the exporter is allowed to receive advance payment. The exporter has to follow specific conditions related to advance payment on the export of goods and services.

Export of Services- Export of Goods and Services

Exporters are not required by law to declare any form of export of service. **However, the exporter is required to realize and repatriate foreign exchange, which accrues on the export.**

Export Bills not realized- Export of Goods and Services

Exporters are allowed to write off any bills that are not paid or unrealized. An exporter can either write off the bills that are not realized. The exporter even has the option to approach the Authorised bank to write off unrealized bills. There are certain conditions related to write off of bills. The following terms have to be fulfilled:

- Foreign buyer has been declared insolvent and is not able to make the payment.
- Overseas buyer is not traceable for a long period.
- Goods exported have been destroyed by the customs authority.
- Amounts not realized represents some form of balance due in the case which is settled through an Indian Embassy.

Therefore an exporter has to comply with the above requirements before exporting goods and services outside India.

Conclusion

Exporting is the process in which an individual or a company sends goods outside India. The Foreign Trade Policy (FTP) governs the procedure-related to exports. Apart from this, the rules related to export are regulated by the RBI and FEMA. Exporters are allowed to export goods, services, and software. Export of Goods and Services are subject to several compliances which have to be adhered to by the exporter.

The RBI provides guidelines related to exports, which have to be followed by the authorized banks. Exporters have to declare their goods which are exported to another country. However, not all goods need to be declared. Payment related to the exports is through normal banking channels, which are regulated by the Authorised bank. **The RBI and Authorised Bank can deal with issues related to the export. The institutions that govern the export process have made the process of exports systematic.**

Thank You

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