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Realization of export proceeds in times of COVID-19

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1) **THIS** unprecedented Covid-19 pandemic has disrupted the Indian exports industry. Danger not just looms on the future exports, but there is a very real and evident danger in terms of realizing the pending payments for exports already made. This makes it all the more relevant for the Indian exporters to be aware of the various legal compliances to be undertaken in case such export proceeds are not realized or only part payment is realized. This article highlights some statutory compliances required to be made in this regard.

Time period for realization of export proceeds

2) Section 7(2) of the Foreign Exchange Management Act ("**FEMA**") empowers the Reserve Bank of India ("**RBI**") to issue directions to the exporter of goods / services from India including the period within which the export proceeds are to be realized.

3) In terms of Regulation 9 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 read with the above quoted provision, a legal obligation has been cast on the exporter to realize the pending export proceeds, arising on account of export of goods / services / software, within a period of nine (9) months from the date of export. This period can be extended by the RBI or the Authorized Dealer (AD) category banks on sufficient and reasonable cause.

4) In view of the Covid-19 pandemic, the RBI vide its A.P.(DIR Series) Circular [No. 27](#) dated 01.04.2020 has extended this time period from nine (9) to fifteen (15) months, for all exports made up to or on **31.07.2020**.

Discounts / reduction in invoice value

5) In crises like this, where we see that most businesses are either facing or are anticipating a big hit in their liquidity (cash or cash equivalent) position in the near future, it is quite natural that some businesses (foreign buyers) may agree to pay to the Indian exporter but with some amount of discount / reduction in the original invoice value. Under the FEMA laws, such discounting / reduction in invoice value is possible after the exports have been made and the export invoice is pending collection.

6) In terms of paragraph C.15 of the Master Circular on Export of Goods No. 14/2015-16 dated 01.07.2015 (issued vide the RBI/2015-16/83) ("**Master Circular on Exports**"), an exporter can approach the AD category bank for reduction of the invoice value (or discount), after the goods / services have been exported and the invoice is pending for payment, to the maximum amount of 25% of the invoice value. While accepting this request of the exporter, the AD category bank is required to satisfy itself of the following conditions:

- a. genuineness of the exporter's request;
- b. the reduction does not exceed 25 per cent of invoice value;
- c. it does not relate to export of commodities subject to floor price stipulations;
- d. the exporter is not on the exporters' caution list of the RBI; and
- e. the exporter is advised to surrender proportionate export incentives availed of, if any.

7) Further, in terms of paragraph C. 15(ii) of this Master Circular, the exporters who are in export business for more than three years can reduce the invoice value without any percentage ceiling, subject to fulfillment of the:

- a. above stated conditions; and

b. export outstanding of the concerned exporter (at the time of making the application / or the time of consideration of the application) should not exceed 5 per cent of the average annual export realization during the preceding three financial years.

8) Thus, **discounts / reduction in export invoice value can be regularized on** obtaining the above permission from the AD category bank.

Change in buyer / consignee

9) In times like this, there is a real possibility that the initial foreign buyer to whom the goods have been exported refuses to accept the goods or refuses to pay for the exports already made, necessitating the Indian exporter to sell the same goods (already exported) to some other foreign buyer either at the same price or a reduced price. FEMA laws even allow such sort of arrangement / change in foreign buyer.

10) In terms of paragraph C.17 of the Master Circular on Export of Goods, such change in buyer is permissible. For this, no permission or approval is required from either the RBI or the AD category bank. The only condition to be satisfied for this facility is that:

- a. the reduction in value, if any, involved does not exceed 25 per cent of the invoice value; and
- b. the realization of export proceeds is not delayed beyond the period of 12 months from the date of export.

11) Thus, **change in foreign buyer for goods already exported is permissible** subject to the fulfilment of the above conditions.

Complete non-realization and write off of export proceeds

12) There may be situations wherein the Indian Exporter may not realize anything from the foreign buyer. In such situations, the following option of either self write off or write off by AD category banks is available with the Indian Exporter, under the FEMA laws.

13) In terms of paragraph C.19 of the Master Circular, where the exporter is not able to realize outstanding export dues, the exporter can self-write-off or approach the concerned AD category banks.

Self "write-off" by an exporter (Other than Status Holder Exporter)	5%*
Self "write-off" by Status Holder Exporters	10%*
Write-off by AD Banks	10%*
* of the total export proceeds realized during the previous calendar year	
<i>The above limits <u>will be cumulatively available in a year</u></i>	

14) It is to be noted that the write-off will be allowed subject to condition that the relevant amount has remained outstanding for more than one year and satisfactory documentary evidence is furnished by the exporter to the AD bank in support of the exporter having made all efforts to realize the dues.

15) Paragraph C.19(V) of the Master Circular further stipulates that the exporter would be required to submit to the concerned AD category bank a CA certificate indicating the export realization in the preceding calendar year, the amount of self-write-off availed during the year, relevant invoice / shipping bill number, etc. The AD category bank would allow the self-write off on the basis of the said CA certificate. *(There are few more ancillary conditions in this Paragraph C.19(V) of the Master Circular subject to which AD category bank will grant permission for self-write off, which can also be considered while self-write off) .*

16) For write off of an amount (of un-realized export proceeds) beyond the above 5% or 10%, an application can be made to the AD-category bank, which is empowered to allow write off of 10% of export proceeds (made in the preceding year). For write off beyond this amount, permission will have to be sought from the concerned regional office of the RBI (Paragraph C.19(ix) of the Master Circular).

17) Thus, **for amount / export proceeds not realized, the Indian exporter can either avail the above facility of self write off** or write off by AD category bank or RBI.

Compliance under other laws

- a. **Customs Laws** - Section 75 of the Customs Act provides for *inter alia* payment of All Industry Rate of duty drawback (AIR) to an exporter on export of goods outside India. This is an automatic payment made in the bank account of the exporter once the export is

complete. The shipping bill itself is considered as a claim for duty drawback. This duty drawback benefit is however subject to the condition that the export proceeds are realized and in case the export proceeds are not realized this benefit is to be surrendered back to the customs authorities. *Thus, this benefit of duty drawback, along with applicable interest, should be surrendered back to the customs authorities in proportion to the export proceeds not realized.*

b. MEIS / SEIS/ ROSCTL benefit under the FTP - On export of goods, the benefit of duty credit scrips under the Merchandise Exports from India Scheme (MEIS) is made available under the Foreign Trade Policy (FTP). Similarly, on export of services outside India, benefit under the Services Exports from India Scheme (SEIS) is made available. Both these benefits are subject to realization of export proceeds. *Thus, application for obtaining this benefit should not be made for exports where payment will not be received by the exporter or if already made then the same should be withdrawn.* This applies even for exports which qualifies for the ROSCTL scheme benefit.

c. IGST refund - In terms of Section 16 of the IGST Act, on export of goods and services an option has been given to the exporter to pay applicable IGST and later claim refund of the said IGST (which is made available in cash to the exporter). In terms of Rule 89 and recently introduced Rule 96A of the CGST Rules, this refund is subject to realization of export proceeds. *Thus, the Indian exporter will be required to surrender such refund of IGST, along with applicable interest, in proportion to the unrealized export proceeds.*

d. Export obligation under the Advance Authorization and EPCG Scheme - In terms of Para 2.54 of the FTP, only those exports will be counted for fulfilment of export obligations in respect of which payment has been realized from the foreign buyer. *Therefore, exports for which no payment is received will not be eligible for being counted towards fulfilment of export obligations arising under the advance authorization scheme and the EPCG Scheme.*

18) The above statutory compliances should necessarily be complied by the Indian exporters in case of reduced payment or no payment from the foreign buyer to avoid penalties or other complications arising under the FEMA laws, FTDR Act and other indirect tax laws.

[The views expressed are strictly personal.]

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