[2024] 158 taxmann.com 477 (Article)

[2024] 158 taxmann.com 477 (Article)©

Date of Publishing: January 20, 2024

“Export of Service & Goods Under Fema“ Part-I

MAHI YADAV

Founder and Managing Director, Majesty Legal, Standing Counsel for Enforcement Directorate

Abstract:

In an era of globalized economies, the seamless flow of goods and services across borders is fundamental to the prosperity of nations. In the Indian context, the Foreign Exchange Management Act, 1999 (hereinafter referred as "**FEMA**") stands as the sentinel guarding the nation's financial integrity and regulating international trade. Specifically, within the expansive purview of FEMA lies a meticulous framework governing the export of services and goods. This intricate tapestry of regulations is overseen by the Directorate General of Foreign Trade (hereinafter referred as "**DGFT**")[1], which operates through regional offices under the Ministry of Commerce and Industry, Government of India. This centralized and decentralized structure ensures efficient regulation and implementation of foreign trade policies, contributing to the overall development of India's international trade relationships

This article embarks on a comprehensive exploration of the export of service and goods under FEMA, shedding light on the multifaceted dimensions including regulations, documentation, and compliance requirements.

Exports of Goods under FEMA:

Under the FEMA, the export of goods[2] refers to the sending of goods or merchandise from one country to another. FEMA regulates the export of goods to ensure compliance with foreign exchange regulations and to facilitate international trade.

The Reserve Bank of India (RBI)[3] plays a pivotal role in overseeing and regulating export transactions. It formulates and implements foreign exchange regulations and policies governing the export of goods, setting guidelines for the repatriation of export earnings and enforcing compliance with FEMA provisions. This regulatory oversight serves as a guiding thread, providing the framework within which export transactions must be conducted. They are authorised to –

i. Utilise the powers granted by sections 7(1a) and (3),8 of the FEMA of 1999,[4]

ii. Execute export transactions in compliance with the Foreign Trade Policy (FTP)[5] and the Rules framed and issued by the Reserve Bank from time to time.

Exports of Services under FEMA:

Whereas the export of services under the FEMA in India involves specific regulations and guidelines aimed at facilitating cross-border trade in services while ensuring compliance with foreign exchange management rules, the export of services encompasses the provision of a service from India to a person or entity located outside India. This broad definition covers a diverse range of services, including but not limited to consulting, IT services, professional services, educational services, and more. The geographical distinction is vital, emphasizing the cross-border nature of the service transaction[6].

There are four different modes in which services or technology are traded internationally. These modes include:

i. From India into the territory of any other country;
ii. In India to the service consumer of any other country;
iii. By a service supplier of India, through commercial presence in the territory of any other country;
iv. By a service supplier of India, through presence of Indian natural persons in the territory of any other country.[7]

Procedure of Export of goods & Services under FEMA:

Procedure of Export of goods & Services under FEMA involves various aspects such as –

1. Registration with Directorate General of Foreign Trade (DGFT):

   Step 1: Obtain Importer-Exporter Code (IEC):

   Businesses looking to engage in export activities must apply for and obtain an IEC from the DGFT. This code, consisting of a unique 10-digit number, serves as the identification for importers and exporters in India. The application is submitted online through the DGFT portal, and the IEC is typically issued within a specified timeframe.

2. Compliance with Customs Procedures:

   Step 1: Obtain Shipping Bill: Once the IEC is obtained, the exporter needs to prepare a shipping bill. This document includes details such as the exporter's details, consignee details, description of goods, quantity, value, and other essential information. The shipping bill is submitted to the customs authorities at the port of export.

   Step 2: Customs Clearance: Customs authorities review the shipping bill to assess the accuracy and completeness of the information provided. They verify the contents of the consignment and determine the applicable customs duties and taxes. If everything is in order, customs clearance is granted, allowing the goods to proceed for export.

   Step 3: Examination of Goods: Custom authority may physically examine the goods to ensure they match the details provided in the shipping bill. This step is crucial for maintaining the integrity of the export process and preventing any discrepancies.

3. Documenting the Export Transaction:

   According to Section 7 of the FEMA, the exporters are required to furnish a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value.[8] This form provides comprehensive details about the exported goods, the exporter, and the destination country. It serves as a key document for the realization and repatriation of export proceeds.[9]

Step 1: Commercial Invoice: The exporter prepares a commercial invoice, providing a detailed breakdown of the exported goods. The invoice includes information such as the nature of the goods, quantity, unit price, total value, and any other relevant details. This document is crucial for customs clearance and is often required by the buyer for import purposes.

Step 2: Export Declaration Form (EDF): The exporter submits the Export Declaration Form (EDF) to the authorized dealer bank. This form contains comprehensive details about the exported goods, the exporter, and the destination country. The EDF is a key document for tracking and monitoring export transactions.

4. Realization and Repatriation of Export Proceeds:

   Section 8 of FEMA emphasizes the repatriation of foreign exchange earned through the export of goods back to India within a specified time frame. This is crucial for maintaining a stable balance of foreign exchange reserves and supporting the overall economic stability of the country.

   Exporters are required to follow the prescribed procedures for realizing export proceeds, which typically involve presenting the shipping documents and the commercial invoice to the authorized dealer bank. The realization of export proceeds in foreign currency contributes to the strength of India's external sector.[10] Whereas Section 9 of the FEMA pertains to exemptions from the requirement of realization and repatriation of foreign exchange in certain cases.[11]

5. Compliance with FEMA Provisions:

   The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security[12]

   Step 1: Adherence to FEMA Guidelines:

   Throughout the export process, the exporter ensures compliance with FEMA regulations, covering documentation, procedural requirements, and adherence to specified timelines. This includes following the guidelines set forth by FEMA to facilitate smooth foreign exchange management.

   Step 2: Possession of Foreign Currency[13]: The exporter abides by the limits set by the Reserve Bank of India (RBI) for the possession of foreign currency. This adds a layer of flexibility for businesses engaged in global trade, allowing them to hold a certain amount of foreign currency within specified limits.

6. Reporting to Reserve Bank of India (RBI):

   Exporters are required to produce to any officer making an inspection under Section 12(1) of FEMA, such books, accounts and other documents in his custody or power and to furnish any statement or information relating to the affairs of such person, company or firm as the said officer may require within such time and in such manner as the said officer may direct. This will contribute to the overall monitoring and regulation of foreign exchange transactions.[14]

7. Continuous Monitoring and Updates: Exporters engage in continuous monitoring of changes in FEMA provisions, customs regulations, and any updates from the DGFT. Staying informed is crucial for adapting to evolving regulatory frameworks and ensuring ongoing compliance with the latest guidelines.

Conclusion:

FEMA, as the guiding force behind these processes, plays a pivotal role in shaping India's engagement with the global marketplace. The framework provides a structured pathway for businesses to operate within, emphasizing the importance of transparency, accountability, and adherence to established norms. It serves as a safeguard against potential pitfalls in the intricate landscape of international trade, ensuring that businesses operate within legal parameters and contribute positively to the nation's economic standing.

In the contemporary context, where India actively participates in the global marketplace, a robust understanding of FEMA regulations emerges as a linchpin for fostering a vibrant and sustainable international trade environment. As businesses strive to expand their horizons and tap into global opportunities, compliance with FEMA becomes not just a legal obligation but a strategic imperative. It is a proactive approach that not only safeguards the interests of individual businesses but also contributes to the overall economic resilience and credibility of India on the global stage.

In essence, the conclusion underscores the transformative power of a well-informed adherence to FEMA regulations. It positions businesses not merely as participants in international trade but as conscientious contributors to a global economic landscape built on integrity, legality, and sustained growth.

---

1. Section 2(d) of the Foreign Trade (Development & Regulation) Act, 1992
2. Section 2(l) of the FEMA, 1999.
3. Section 2(z) of the FEMA, 1999.
4. Section 7(1a) and (3), 8 of the FEMA, 1999.
5. Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992) [FT (D&R) Act], as amended, Subs. by s. 5, ibid. for section 5 (w.e.f.27-8-2010).
6. Section 2(zb) of the FEMA, 1999.
7. Section 2(e (II)) of the Foreign Trade (Development & Regulation) Act, 1992, Subs. by Act 25 of 2010, s. 2, for clause (e) (w.e.f.27-8-2010)
8. Section 7(1a) of the FEMA, 1999.
9. Section 7(1b) and (3) of the FEMA, 1999.
10. Section 8 of the FEMA, 1999.
11. Section 9 of the FEMA, 1999.
12. Section 11 of the FEMA, 1999.
13. Section 2(h) of the FEMA, 1999.
14. Section 12(2) of the FEMA, 1999.