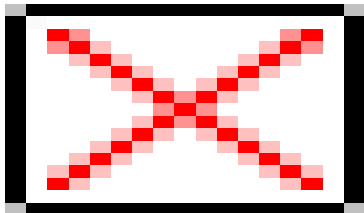


RoDTEP scheme - The glass half empty/full debate

SEPTEMBER 03, 2021

By Ranjeet Mahtani & Ruturaj Bhide, Dhruva Advisors LLP



EXPORT

incentives are ever so popular among exporters as they not only enhance competitiveness in the international market but also have a direct positive impact on the bottom line of organisations. Over decades, the Government of India has been providing various export incentives to give impetus to the country's exporters, and thereby to global trade capabilities.

With the Foreign Trade Policy ('FTP') 2015-2020, the Government introduced the Merchandise Exports from India Scheme ('MEIS'), which provided 3% to 5% export incentives in the form of duty credit scrips. In early 2018, the United States of America challenged the MEIS and certain other FTP schemes before the World Trade Organization ('WTO'). The final report of the WTO panel (**order dated 31 October 2019**) observed that MEIS is a **"prohibited subsidy"** and needs to be withdrawn, against which an appeal has been filed by India. The order essentially held that India had breached the Subsidies and Countervailing Measures Agreement.

Consequently, the Government of India was tasked with the dual challenge of continuing support to its exporters and, at the same time, doing this through the WTO complaint mechanism. Accordingly, in September 2019, the Government announced the RoDTEP scheme with an objective to refund currently unrefunded duties/taxes/levies at the Central, State and local level. The un-rebated levies contemplated to be covered under RoDTEP include excise and VAT on fuel, mandi tax on farm products, stamp duties on export products, electricity duty and other non-creditable portions of Goods and Services Tax ('GST').

In this regard, a committee was constituted in July 2020 which determined ceiling rates under the RoDTEP scheme. Now, nearly two years after the announcement, the Department of Commerce ('DoC') has notified the long-awaited RoDTEP scheme on 17 August 2021, **1** which would be effective from 1 January 2021.

The rebate (refund) under the scheme will be granted to eligible exporters at the notified rates as a percentage of the Free on Board ('FOB') value, with a cap per unit of the exported product. For certain export items, a fixed quantum of rebate amount per unit would be provided.

The RoDTEP scheme covers 8,555 products and offers a rebate at rates ranging from 0.01% to 4.3%. **2**

Over 80% of the products covered under the RoDTEP scheme have rates lower than 2%. The higher rates of 4% are typically provided for agricultural products. Further, for 138 select products, the benefit is provided in the form of a fixed amount per unit e.g. **motor vehicles other than petrol driven** are entitled to the RoDTEP benefit of INR 12,500 per unit.

The Scheme will be implemented through an end-to-end digital process, where the rebate amount will be credited in the form of a transferable duty credit/electronic scrip (e-scrip), which will be maintained in an electronic ledger by the Central Board of Indirect taxes and Customs ('CBIC'). The e-scrip can be used to pay Basic Customs duty on imported goods, and nothing else. The e-scrips can also be transferred to other importers. Exporters desirous of availing the benefit are required to declare their intention of claiming the benefit in the relevant shipping bill or bill of export. Further, the procedural aspects regarding the manner and timelines for application under the RoDTEP scheme are expected to be notified by CBIC soon. Such transfer of e-scrips will not attract GST.

The Scheme has, to some degree of surprise, provided a long list of categories of exports which are ineligible for rebate. The ineligible categories include units operating under section 65 of the Customs Act, 1962, i.e. Manufacturing and Other Operations in Warehouse ('MOOWR') Units.

Further, exports by exporters that have availed the benefit of Advance Authorization, Duty Free Import Authorization and Special Advance Authorization are yet to be brought within the fold of the RoDTEP scheme. Similarly, exports by an Export Oriented Unit ('EOU'), units under a Special Economic Zone ('SEZ')/Free Trade Warehousing Zone ('FTWZ')/Electronic Hardware Technology Parks ('EHTP') and Bio-Technology Parks ('BTP') are presently not entitled to a rebate, but a date will be notified for all these categories, from which date onwards the rebate will be payable to them as well.

Supplies of products manufactured by Domestic Tariff Area ('DTA') units to SEZ/FTWZ units also find a place in the ineligible categories, as do other categories of deemed exports.

Additionally, export products which are subject to a minimum export price or export duty, exports for jobbing and exports from non-EDI ports will also miss out on the rebate payment under the Scheme.

While announcement of the RoDTEP scheme is more than welcome for the pandemic-battered economy, when viewed through the lens of its predecessor (i.e. MEIS), the RoDTEP scheme has lower appeal.

Exporters across industries have expressed their displeasure on three counts. Firstly, the rate of benefits under the Scheme is much lower compared with those under MEIS. Secondly, the Scheme is circumscribed by a budgetary allocation, and the total budgetary allocation for RoDTEP for FY 2021-22 is INR 12,454 crores, whereas the annual outgo for the Government in respect of the MEIS scheme used to be close to INR 40,000 crores. Therefore, the total kitty has reduced substantially, and this will impair the support to Indian exporters. Lastly, a considerable portion of the exporter fraternity has been left high and dry due to non-coverage or 'kept in abeyance' in the scheme. The rationale for excluding most categories appears counter-intuitive in most cases.

It is noteworthy that the export turnover of excluded categories adds up to a huge amount. For FY 2019-20, the FOB value of exports under Advance Authorization was INR 3,19,346 crores, and for the same period exports by EOU and SEZ units were INR 1,02,492 and INR 7,96,669 ₃ respectively. Evidently, a significant value of exports will miss out on the benefits under RoDTEP, and there is insufficient rationale in the public domain to explain the 'kept in abeyance' class.

Another surprising exclusion is that of MOOWR units. The MOOWR scheme, which is a flagship programme under Indian Customs, has been designed to incentivise manufacturing activity in India. The MOOWR scheme categorically allows simultaneous claim of benefits under FTP, which made MOOWR an attractive option. However, with the restriction prescribed in the RoDTEP scheme, manufacturers may well reconsider their move toward MOOWR owing to the loss of rebate (read as cash payback).

The objective of the RoDTEP scheme is to refund the currently unrefunded taxes and levies. Moreover, at the time of devising the scheme and determination of rates, the RoDTEP committee had called for data from different export associations and bodies (and exporters) in forms R1, R2 and R3. On perusal of these forms, it can be gathered that details of non-rebated duties, *viz.*

excise and VAT on fuel, electricity duty, stamp duty on export documents, mandi tax, blocked credit under GST, road tax, etc. were explicitly called for and used. Therefore, the coverage under the RoDTEP scheme and rates prescribed ought to have been a function of the quantum of unrebated duties for different exports. In this light, exclusion of sectors such as steel, pharma, and chemical, and exclusion of exports by MOOWR units, and also having abeyance for advance authorization holders, etc. appears unreasonable, where the chief reason for this is presumably budgetary constraints.

Nevertheless, instead of merely focusing on the perceived shortcomings of the RoDTEP scheme, the exporters need to proactively strategise their way forward, as there are several actions exporters need to take.

Those exporters who are eligible to claim benefits under the RoDTEP scheme are required to take care of a number of aspects apart from making applications for e-scrips. Firstly, as the benefit of RoDTEP is contingent on the eight-digit HSN code of the product, it is imperative to be certain about this code. Therefore, exporters need to validate the classification adopted in respect of their export products.

Another to-do for exporters would be to revisit pricing of export goods. As mentioned earlier, the rates of RoDTEP benefit are significantly lower than rates under MEIS. Therefore, costing and pricing considerations may undergo a change pursuant to claiming benefit under RoDTEP. Accordingly, exporters need to go back to the drawing board and analyse changes required in product pricing and may initiate price renegotiations if necessary.

Further, since claiming benefits under RoDTEP will preclude exporters from claiming other FTP benefits, it is crucial to undertake a detailed analysis comparing the benefits of various schemes under FTP as soon as possible. This analysis would entail scrutinising different benefits available to the exporters, simulating various combinations and undertaking a cost-benefit analysis in order to make an informed choice of the benefit to be availed.

Exporters who are disentitled from RoDTEP benefits owing to their exports being undertaken from non-EDI ports can evaluate the possibility of exporting goods from an EDI port.

As regards the seemingly disgruntled section of the export fraternity, it needs to be noted that future inclusion of exports made against Advance Authorisation/Duty Free Import Authorisation/ Special Advance Authorisation and by units in an EOU, SEZ or FTWZ would be dependent on recommendations of the RoDTEP Committee. Exporters need to make a cohesive effort in the form of representation and advocacy before the RoDTEP Committee as well as Government agencies to make the necessary changes in the RoDTEP Scheme.

Besides this, the above exporters who have not been afforded a rate (chemicals, iron & steel, etc. and also MOOWR units) would do well to evaluate the legal remedies,

chiefly on the basis of discrimination. At the same time, an interesting issue that arises is whether such exporters (who are excluded and are suitably repenting their case for inclusion) should continue to mark their shipping bills as for RoDTEP, when there is no rate prescribed for their products and no visibility of any rebate.

In conclusion,

the RoDTEP scheme was birthed against the backdrop of an international dispute questioning export incentives provided by India, and it can be said that, in response, the Government of India has tactfully sought to comply with WTO norms and support its exporters. Significantly delayed and with a blow for many exporters who expected that the new scheme would provide same benefits as MEIS, considering the present economic milieu it is expected that the RoDTEP scheme will evolve and the Government, after considering representations, will suitably tweak the scheme and rates.

[The views expressed are strictly personal.]

¹Refer to Notification No. 19/2015-2020

² Refer to Appendix 4R

³Source: Department of Commerce - Annual report FY 2020-21

(DISCLAIMER : The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same. Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in the articles being hosted on the site)