

CHAPTER - VI

Foreign Exchange Earning - Requirements and Monitoring

¹⁶⁸[53. Net Foreign Exchange Earnings.

The Unit shall achieve Positive Net Foreign Exchange to be calculated cumulatively for a period of five years from the commencement of production according to the following formula, namely:-

$$\text{Positive Net Foreign Exchange} = A - B > 0$$

Where, -

- A : is Free on Board value of exports, including exports to Nepal and Bhutan against freely convertible currency, by the Unit and the value of following supplies of their products, namely:-
- a. supply of goods against Advance Authorisation or Advance Authorisation for annual requirement or Duty Free Import Authorisation under the Duty Exemption or Remission scheme under the Foreign Trade Policy;
 - b. supply of capital goods to holders of licence under the Export Promotion Capital Goods Scheme under the Foreign Trade Policy;
 - c. supply of goods to projects financed by multilateral or bilateral agencies or funds as notified by the Department of Economic Affairs, Ministry of Finance, from time to time, under International Competitive Bidding in accordance with the procedures of those agencies or funds, where the legal agreements provide for tender evaluation without including the customs duty;
 - d. supply of goods to any project or for any purpose in respect of which the Ministry of Finance notifies from time to time, permitting import of such goods at zero customs duty;

¹⁶⁸ Substituted vide Notification No. G.S.R. 200(E) dated 07-03-2019



- e. supply of goods to United Nations or International Organisations for their official use or supplied to the projects financed by the said United Nations or an International Organisation approved by Government of India and the list of such organisations and conditions applicable to such supplies is notified by Ministry of Finance from time to time;
- f. supply of goods to nuclear power projects provided they are as per the conditions stipulated in Foreign Trade Policy;
- g. supply against special entitlements of duty free import of goods under the Foreign Trade Policy;
- h. export of services by services units including services rendered within Special Economic Zone or services rendered in the Domestic Tariff Area and paid for in free foreign exchange or such services rendered in Indian Rupees which are otherwise considered as having been paid for in free foreign exchange by the Reserve Bank of India;
- i. supply of Information Technology Agreement items and notified zero duty telecom or electronic items, namely, Colour Display Tubes for monitors and Deflection components for colour monitors or any other items as may be notified by the Central Government;
- j. supply to other Units and Developers in the same or other Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Unit or Bio-technology Park Unit provided that such goods and services are permissible for import or procurement by such Units and Developers;
- k. supply of goods against free foreign exchange by a Free Trade and Warehousing Zone Unit.

Explanation. - For removal of doubts, it is hereby clarified that the supplies under clause (j) shall be against procurement certificate, as applicable and the supplies under clauses (d) to (g) shall be as per the terms and conditions of the respective duty exemption as notified by the Central Government, in the Ministry of Finance.

B : consists of sum of the following-

- (a) sum total of the Cost Insurance and Freight value of all imported inputs used for authorised operations during the relevant period and the Cost Insurance and Freight value of all imported capital goods including goods purchased on



high seas basis even though paid for in Indian Rupees and the value of all payments made in foreign exchange by way of export commission, royalty, fees, dividends, interest on external commercial borrowings during the first five year period or any other charges;

- (b) value of goods obtained from other Unit or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Unit or Bio-technology Park Unit or from bonded warehouses or procured from international exhibitions held in India or precious metals procured from nominated agencies;
- (c) the Cost Insurance Freight value of the goods and services, including pro-rata Cost Insurance Freight of capital goods, imported duty free or leased from a leasing company or received free of cost or on loan basis or on transfer for the period they remain with the Unit; Explanation. - For the purposes of clause (a), the expression “inputs” mean raw materials, intermediates, components, consumables, parts and packing materials;
- (d) for annual calculation of Net Foreign Exchange, value of imported capital goods and lump sum payment of foreign technical know-how fee shall be amortised at the rate of ten per cent. every year from the first year to the tenth year;

C: Gems and Jewellery units shall achieve minimum Value Addition as laid down in prevailing Foreign Trade Policy or Hand Book of Procedures:

Provided that the Nominated agencies working as a service unit for precious metals supply within Special Economic Zone shall be subjected to the requirement of positive Net Foreign Exchange only; and

D: For Gems and Jewellery, the minimum Value Addition shall be in terms of prevailing Foreign Trade Policy or Hand Book of Procedures and it shall be calculated as under:-

$$VA = A - B / B \times 100$$

Where, -

A = Free on Board value of the export realised or Freight on Road and Rails value of supply received;

B = Value of inputs such as gold or silver or platinum content in export product plus admissible wastage along with



value of other items, such as gemstone etc. wherever gold has been obtained on loan basis, value shall also include interest paid in free foreign exchange to foreign supplies:

Provided that where a Unit is unable to achieve Net Foreign Exchange due to adverse market conditions or any ground of genuine hardship having adverse impact on functioning of the Unit, the five years block period for calculation of Net Foreign Exchange earnings may be extended by the Board of Approval for a further period of upto one year, on a case to case basis.]

¹⁶⁹[]

¹⁷⁰[53A.

Exemption.- Nothing contained in rule 53 shall apply to a Unit setup in an International Financial Service Centre providing financial service and regulated by the International Financial Services Centres Authority.

Explanation. - For the purpose of this rule, “financial service” shall have the meaning as assigned to it in clause (e) of sub-section (1) of section 3 of the International Financial Services Centres Authority Act, 2019 and “International Financial Service Centre” shall have the meaning as assigned to it in clause (g) of sub-section (1) section 3 of that Act].

54. Monitoring of performance. -

- (1) Performance of the Unit shall be monitored by the Approval Committee as per the guidelines given in Annexure appended to these rules.
- (2) In case the Approval Committee come to the conclusion that a Unit has not achieved positive Net Foreign Exchange Earning ¹⁷¹[or stipulated Value Addition as specified in rule 53] or failed to abide by any of the terms and conditions of the Letter of Approval or Bond-cum-Legal Undertaking, without prejudice to the action that may be taken under any other law for the time being in force, the said Unit shall be liable for penal action under the provisions of the Foreign Trade (Development and Regulation) Act, 1992.

¹⁶⁹ Inserted vide NOTIFICATION NO. G.S.R. 12(E) dated 31-12-2019

¹⁷⁰ Substituted vide GSR 334(E) dated 27-04-23 to earlier NOTIFICATION NO. G.S.R. 12(E) dated 31-12-2019

¹⁷¹ Inserted vide Notification No. G.S.R. 909(E) dated 19-09-2018

