



The Institute of
Chartered Accountants of India

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Thrissur Branch of SIRC of ICAI

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EMPTY: CORONA EFFECT



Chairman's Message



Dear professional colleagues,

Covid 19 cases are increasing steadily in our country. India is at present in the second position in terms of number of affected people. However our death rate at 1.6% is a matter of relief. In Kerala even though we offered stiff resistance in the initial stage, all of a sudden the rate of spread has increased. This has affected the health of the economy very adversely.

The banks and financial institutions have extended moratorium to loans till 30.9.2020. The real impact would be surfaced from here onwards. However the Government has extended a great relief to common man by announcing that interest on interest would not be charged during the above period for loans up to a certain level.

However there are positive signals as well indicating that the economy is slowly recovering from the slump. This is evident from the GST collection in September which stood at Rs 95840 Crore as against Rs 91916 Cr during the corresponding month in last fiscal, which is a growth of 4%. In fact September is the first month in FY21 which showed a positive growth when compared to the corresponding months in FY 20. Also September data shows a growth of 10.4% over the Rs 86449 Cr collection in August.

Automobile companies started to show a positive growth. Where Maruti Suzuki reported growth of 34% in unit sale the Hyundai reported a growth of 24% Year-On-Year (YoY) in the month of September.

The most notable improvement however is in the manufacturing sector. The purchasing managers Index (PMI) for September hit an eight year high. The PMI for

September rose to 56.8 against 52 in August. This reading is the highest since January 2012. The share of manufacturing in India's GDP is almost 15%. Despite the lowest share, it employs the most people, directly or indirectly. So can we assume that the level of employment is slowly getting back to normalcy? However many data on employment suggest that the impact is not yet positive.

Also the Information Technology (IT) companies are seeing a huge increase in orders. The reason behind the spurt in NSE and BSE indices is mainly because of steep increase in prices of IT companies and of course Reliance Industries (RIL).

In short as a finance professional, there is every reason for one to be optimistic about future of Indian economy in spite of the pandemic situation.

Regarding the branch programs, the month of September started with a VCM on GST Returns and GST audit by CA Jathin Christopher from Bangalore on 2/9/2020. The program was attended by more than 150 members.

During the month we conducted a virtual program with Income Tax department on 7.9.2020 on the new e-assessment scheme on 7/9/2020. The chief commissioner of Income Tax, thrissur, Mr R Govindarajan IRS was the chief guest of the program. Senior officers from the Income tax department like Mr MV Rudran IRS, Mr M Muralidharan IRS and Mr Omprasad Menon IRS spoke on the occasion. Senior members CA V Venugopal, CA S Sivaramakrishnan, CA M Ramdas and CA CV Varghese also participated in the discussion.

Another VCM was conducted on 11.9.2020 on Import and Export of Goods and Services under FEMA. The faculty of the program was our past chairman CA Vipin K K. The program was attended by very large number of members.

I wish all the members an effective and successful tax audit season

Jai ICAI Jai Hind

CA. Anoop G

Chairman



Dear friends,

With online content is readily available, some predict the end of the giant lecture and seminar halls, especially in professional community. Some hybrid of online lectures combined with small-in-person discussion groups are more likely for the fall and, more significantly, possibly for the longer future. Big lecture hall tradition are open to possible long term changes.

Advantages of online classes are numerous, from lower costs to accessibility to flexibility. The most obvious advantage of online learning comes down to economics, it cuts many of the costs associated with traditional teaching printing materials, travel, booking a facility etc.. It's a boon to employed people who wants pursue higher education.

Online learning requires self-discipline and time management skills. Social life of a student is under threat and the younger generation may not be exposed to healthy social environment. Online learning is often theory based and lacks practice based learning.

Let us dream of the days our seminar hall are full and campuses are full, and using all the benefits offered by the online platform.

This month our past chairman writes about merchanting trade transactions under FEMA 1999.

Wish you all the success

CA. JEEN PAUL

News letter in charge

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Chairman's message-

CA Anoop G

**Merchanting trade transactions
under FEMA 1999**

CA. VIPIN K K

Photo Gallery



MERCHANTING TRADE TRANSACTIONS

UNDER FOREIGN EXCHANGE MANAGEMENT ACT, 1999

INTRODUCTION

India had long time adverse balance of payment position in international trade i.e. imports were more than exports; due to which there was shortage of foreign exchange in India. Foreign Exchange Regulation Act (FERA) was introduced in 1947 and later this was replaced with the Foreign Exchange Regulation Act, 1973. Government initiated the liberalization of Indian economy in 1991 and foreign investment in various sectors were permitted. This increased the flow of foreign exchange flow to India and foreign exchange reserves have increased substantially. In view of this, FERA has been repealed and FEMA (Foreign Exchange Management Act, 1999) has been passed.

With the advent of new business models and ever growing world economy, new models of transactions were emerged. Merchanting Trade was one of these transactions and it has been regulated under FEMA.

In the case of **Merchanting Trade**, supplier of goods will be resident in one foreign country and, the buyer of the goods will be resident in another foreign country and the merchant or intermediary will be resident in India. The merchant will book order from the buyer, place order with the supplier, supervise and co-ordinate the shipment of goods from the supplier's country and deliver the same in the buyer's country. The merchant will be receiving payment from the overseas buyer and making payment to overseas supplier through an authorized dealer in foreign

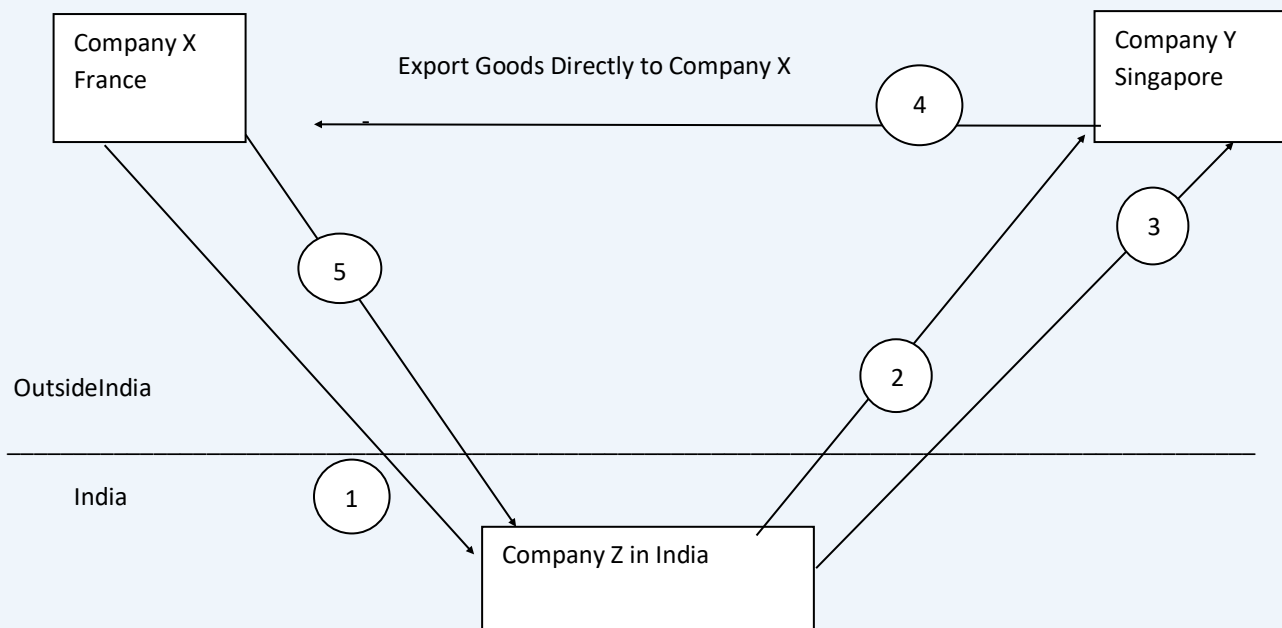
exchange in India. The difference between inward remittance and outward remittance will be profit for the merchant

Sometimes goods may be imported by a buyer in India from a seller in one country and exported to a buyer in another country. Such imports will be kept in bond and then exported. It is also possible that re-packing may be done under customs supervision and then exported. This is done basically to avoid foreign buyer to know the source from which goods are being bought and supplied to them.

WHAT IS MERCHANTING TRADE

In Indian context, the trade is called Merchanting Trade when,

- I) The supplier of goods will be resident of one foreign country
- II) The buyer of goods will be resident in another foreign country
- III) The merchant or the intermediary will be resident in India



For ease of understanding, buyer and seller is referred as company.

- 1) **Company X** of France places an order on **Company Z** in India for supply of certain goods and makes payment for the same.
- 2) **Company Z**, which trades in such goods, then places a purchase order with **Company Y** of Singapore
- 3) **Company Z** makes payment to **Company Y** in Singapore. This is import leg of the transaction
- 4) It also requires **Company Y** of Singapore to directly export the goods to **Company X** in France. Here, one can note that goods ordered with Indian Company will not enter the boundary of India but will be directly exported to **Company X** by **Company Y** on behalf of the Indian **Company Z**.
This is export leg of the transaction
- 5) The **Company X** makes payment to **Company Z** in India. With this Merchanting Trade Transaction is completed

REGULATIONS FOR MERCHANTING TRADE TRANSACTION (MTT) UNDER FEMA

There are two legs for MTT i.e. import of goods and export of goods. Reserve Bank of India issued the following Master Directions and Circulars for regulating Merchanting trade transactions under FEMA:

RBI FED Master Direction No.17/2016-17 dated 01-01-2016 – Master Direction for Import of Goods and Services – Para C.14

RBI FED Master Direction No.18/2015-16 dated 01-01-2016 – Master Direction – Reporting under FEMA – Part IX Annex VIII

A.P.(DIR Series) Circular No.20 dated 23-01-2020 – Merchanting Trade Transactions (MTT) Revised Guidelines (A.P. (DIR Series) Circular No.115 dated March 28, 2014 superseded)

A.P.(DIR Series) Circular No.4 dated 19-07-2003 – Merchanting Trade Transactions – Clarifications – Short Term Credit

CONDITIONS FOR CLASSIFICATION AS MERCHANTING TRADE

As per A.P.(DIR Series) Circular No.115 dated March 28, 2014, a trade to be classified as Merchanting Trade the following conditions should be satisfied:

Goods should not enter Domestic Tariff Area, and The state of goods should not undergo any transformation

Considering that in some cases, the goods acquired may require certain specific processing/value addition, the state of goods so acquired may be allowed transformation subject to the AD bank being satisfied with the documentary evidence and bonafides of the transactions. (A.P.(DIR Series) Circular No.20 Dated January 23, 2020)

PERMITTED GOODS

Goods involved in the Merchanting trade transactions would be the ones that are permitted for exports/imports under the prevailing Foreign Trade

Policy (FTP) of India, as on the date of shipment and all the rules, regulations and directions applicable to exports (except Export Declaration Form) and imports (except Bill of Entry), are complied with for the export leg and import leg respectively. AD bank should be satisfied with the bonafides of the transactions. Further, KYC and Anti Money Laundering guidelines should be observed by the AD bank while handling such transactions

ROUTING OF TRANSACTIONS

Both the legs of a Merchanting trade transaction are to be routed through the same AD bank. The bank should verify the documents like invoice, packing list, transport documents and insurance documents (if originals are not available, Non-negotiable copies duly authenticated by the bank handling documents may be taken) and satisfy itself about the genuineness of the trade.

The AD bank may, if satisfied, rely on online verification of Bill of Lading/ Airway Bill on the website of International Maritime Bureau or Airline web check facilities. However, the AD bank shall ensure that the requisite details are made available /retrievable at the time of Inspection/Audit/investigation of the transactions

TIMEFRAME FOR COMPLETION/OUTLAY OF FUNDS

The entire Merchanting trade transactions (both import and export) should be completed within an overall period of **nine months** and there should not be any **outlay of foreign exchange** beyond **four months**.

COMMENCEMENT/COMPLETION DATE

The commencement of Merchanting trade - would be the date of shipment/export leg receipt or import leg payment, **whichever is first**.

The completion date - would be the date of shipment/export leg receipt or import leg payment, **whichever is the last**

SHORT TERM CREDIT/LC

Short-term credit either by way of suppliers' credit or buyers' credit will be available for Merchanting trade transactions, to the extent not backed by advance remittance for the export leg, including the discounting of export leg LC by an AD bank, as in the case of import transactions. It should be ensured that the funds are utilised for merchanting trade only.

ADVANCE PAYMENT FOR EXPORT LEG

Any receipts for the export leg, prior to the payment for import leg, may be parked either in Exchange Earners Foreign Currency (EEFC) account or in an interest-bearing INR account till the import leg liability arises. It shall be strictly earmarked/ lien-marked for the payment of import leg and the liability of the import leg, as soon as it arises, shall be extinguished out of these funds without any delay. If such receipts are kept in interest-bearing INR account, hedging thereof may be allowed by the AD bank at the request of its customer, as per extant regulations. No fund/non-fund-based facilities shall be extended against these balances.

ADVANCE PAYMENT FOR IMPORT LEG

Merchanting traders may be allowed to make advance payment for the import leg on demand made by the overseas seller. In case where inward remittance from the overseas buyer is not received before the outward remittance to the overseas supplier, AD bank may handle such transactions by providing facility based on commercial judgement. It may, however, be ensured that any such advance payment for the import leg beyond USD 500,000/- per transaction, should be paid against bank guarantee/LC from an international bank of repute except in cases and to the extent where payment for export leg has been received in advance.

Letter of credit to the supplier is permitted against confirmed export order keeping in view the outlay and completion of the transaction within nine months.

Payment for import leg may also be allowed to be made out of the balances in Exchange Earners Foreign Currency Account (EEFC) of the merchant trader.

AD BANK'S RESPONSIBILITY/REPORTING

AD bank should ensure one-to-one matching in case of each Merchanting trade transaction and report defaults in any leg by the traders to the concerned Regional Office of RBI, on half yearly basis, within 15 days from the close of each half year, i.e June and December – (RBI FED Master Direction No.18/2015-16 dated 01-01-2016 – Master Direction – Reporting under FEMA – Part IX Annex VIII)

The names of the defaulting Merchanting traders, whose outstanding reach 5% of their annual export earnings would be caution listed by RBI.

The Merchanting traders have to be genuine traders of goods and not mere financial intermediaries. Confirmed orders have to be received by them from the overseas buyers. AD banks should satisfy themselves about the capabilities of the Merchanting trader to perform the obligations under the order.

GST NOT PAYABLE ON MERCHANT TRADE TRANSACTION

The goods are liable to IGST when they are imported into India and the IGST is payable at the time of importation of goods into India. The applicant is neither liable to GST on the sale of goods procured from China and directly supplied to USA nor on the sale of goods stored in the warehouse in Netherlands, after being procured from China, to customers, in and around Netherlands, as the goods are not imported into India at any point.

As per Schedule III of CGST Act, 2017, Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India, are not treated neither as supply of goods nor a supply of services. Hence, merchant trade transactions are not liable to GST in India.

MERCHANTING TRADE TO NEPAL AND BHUTAN

As Nepal and Bhutan are landlocked countries, there is a facility of transit trade where goods are imported from third countries by Nepal and Bhutan through India under the cover of Customs Transit Declarations in terms of the Government of India Treaty of Transit with these two countries. In consultation with Government of India, it is clarified herein that goods consigned to the importers of Nepal and Bhutan from third countries under merchanting trade from India would qualify as traffic-in-transit, if the goods are otherwise compliant with the provisions of the India-Nepal Treaty of Transit and Indo-Bhutan Treaty of Transit respectively. [A.P.(DIR Series) Circular No. 97, April 30, 2015]

REGULARISATION OF MERCHANTING TRADE

When Merchanting trade is not done in defined timelines, then such transaction has to be reported to RBI for regularisation. While reporting to RBI for approval, AD bank should confirm KYC of customer and details of both legs of transactions.

AD bank may approach Regional Office (RO) concerned of the Reserve Bank for regularization of the MTT for deviation, if any, from the prescribed guidelines and the MTT shall be closed only after receiving approval from the RO concerned of the Reserve Bank.

WRITE-OFF OF UNREALIZED AMOUNT OF EXPORT LEG

AD bank may write-off the unrealized amount of export leg, without any ceiling, on the request made by the Merchanting trader, in the following circumstances:

The MTT buyer has been declared insolvent and a certificate from the official liquidator specifying that there is no possibility of recovery of export proceeds has been produced.

The goods exported have been auctioned or destroyed by the Port / Customs/Health authorities in the importing country and a certificate to that effect has been produced.

The unrealized amount of the export leg represents the balance due in a case settled through the intervention of the Indian Embassy, Foreign Chamber of Commerce or similar Organization;

Provided, the MTT is in adherence to all other provisions except the delays in timelines (either for outlay or completion period of MTT or both) attributed to reasons mentioned at a,b and c above.

In addition to above, write-off as at (i) shall be subject to following conditions:

AD bank shall satisfy itself with the bonafides of the transactions and ensure that there are no KYC/AML concerns.

The transaction shall not be under investigation under FEMA by any of the investigating agency/ies.

The counterparty to the merchant trader is not from a country or jurisdiction in the updated FATF Public Statement on High Risk & Non-Cooperative Jurisdictions on which FATF has called for counter measures.

PAYMENT OF AGENCY COMMISSION

Agency commission is not allowed in MTTs. However, AD banks may allow payment of agency commission up to a reasonable extent by way of outward remittance under exceptional circumstances, subject to the following conditions:

MTT has been completed in all aspect

The payment of agency commission shall not result in the MTT ending into a loss

The Merchanting trader shall make s specific request to the AD Bank in this regards

CHECKLIST FOR MERCHANTING TRADE

Obtain Credit Report both on the seller and the buyer from the approved Credit Information Agencies if required. The credit information report should be satisfactory.

Check that the seller and the buyer are not in any sanction list of the US, UNSC, SDN or any other sanction list imposed by any other country/organisation.

Check whether Goods involved in merchanting trade transactions would be the ones that are Freely Permitted for exports/imports under the prevailing Foreign Trade Policy of India, as on the date of shipment and all the rules, regulations and directions applicable to export (except Export Declaration Form) and imports (except Bill of Entry), are complied with for the export leg and import leg respectively.

Check the documents like invoice, packing list, transport documents and insurance documents (if original is not available Non-negotiable copies duly authenticated by the Bank handling documents may be taken) and satisfy itself about the genuine-

ness of the trade.

Both the legs of the merchanting trade transactions to be routed through the same AD Category Bank.

There should be profit element in entire trade.

The entire Merchanting trade transactions should be completed with an overall period of nine months and there should be outlay of foreign exchange beyond four months.

Short-term credit either by way of buyers' credit or supplier' credit will be available for the Merchanting trade transactions, to the extent not backed by advance remittance for the export

No eBRC to be issued as exports under merchanting trade does not rank for any incentive / benefits to the exporters as per FTP. Accordingly, the branches shall mark No eBRC in system while lodging the export bill.

No Packing Credit advance to be allowed for merchanting trade.

Letter of credit to the supplier is permitted against confirmed export order keeping in view the outlay and completion of the transaction within nine months.

Export bill under Transfer LC where 2nd Beneficiary is from other country will be covered under Merchanting Trade Guidelines of RBL

Third party payments for export and import legs of the MTT are not allowed.

Author is a member of the institute and past chairman of Trichur Branch of SIRC of ICAI.

PHOTO GALLERY



Carrer counselling programme for foundation MAY



Zoom Meeting

Participants (105)

Find a participant

- THRISSUR ICAI 3 (Co-host, me)
- THRISSUR ICAI 3 (Host)
- SHBHAD MOIDEEN (Co-host)
- SHBHAD (Co-host)
- G Anoop

Invite Mute All

Chat

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good morning sir

From Athira s nair to Everyone:
good morning sir

From Althaf u s to Everyone:
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From Althaf u s to Everyone:
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To: Everyone File

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G Anoop

CA RAMDAS M.

M.Muralidharan

Sivaramakrishnan

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Omprasad U Menon

Cheeran Verghese

R Govindarajan (Pr...

CA Ajith Kaimal R, ...

M.V.Rudran (Addl C...

THRISSUR BRANCH OF SIRC OF ICAI

IMPORT AND EXPORT OF GOODS AND SERVICES UNDER FEMA

FOREIGN EXCHANGE MANAGEMENT ACT

Export of Goods and Services

Vipin K K, FCA

VIPIN K K AND CO
Chartered Accountants

CA. VIPIN KK

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THRISSUR BRANCH OF SIRC OF ICAI