

**Baroda CPE STUDY CIRCLE  
Baroda Branch of WIRC of ICAI**

**Removal of goods  
(Central Excise)**

**&**

**Import of input with exemption  
[Foreign Trade Policy (2015-2020)]**

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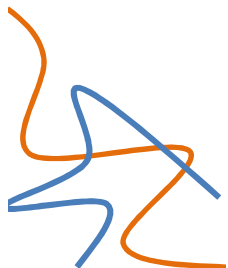
**08.09.2015**

## Background - Central Excise Act, 1944

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Few Important Concepts

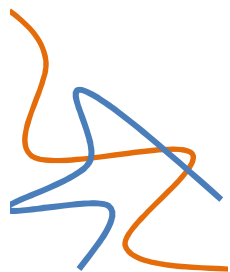
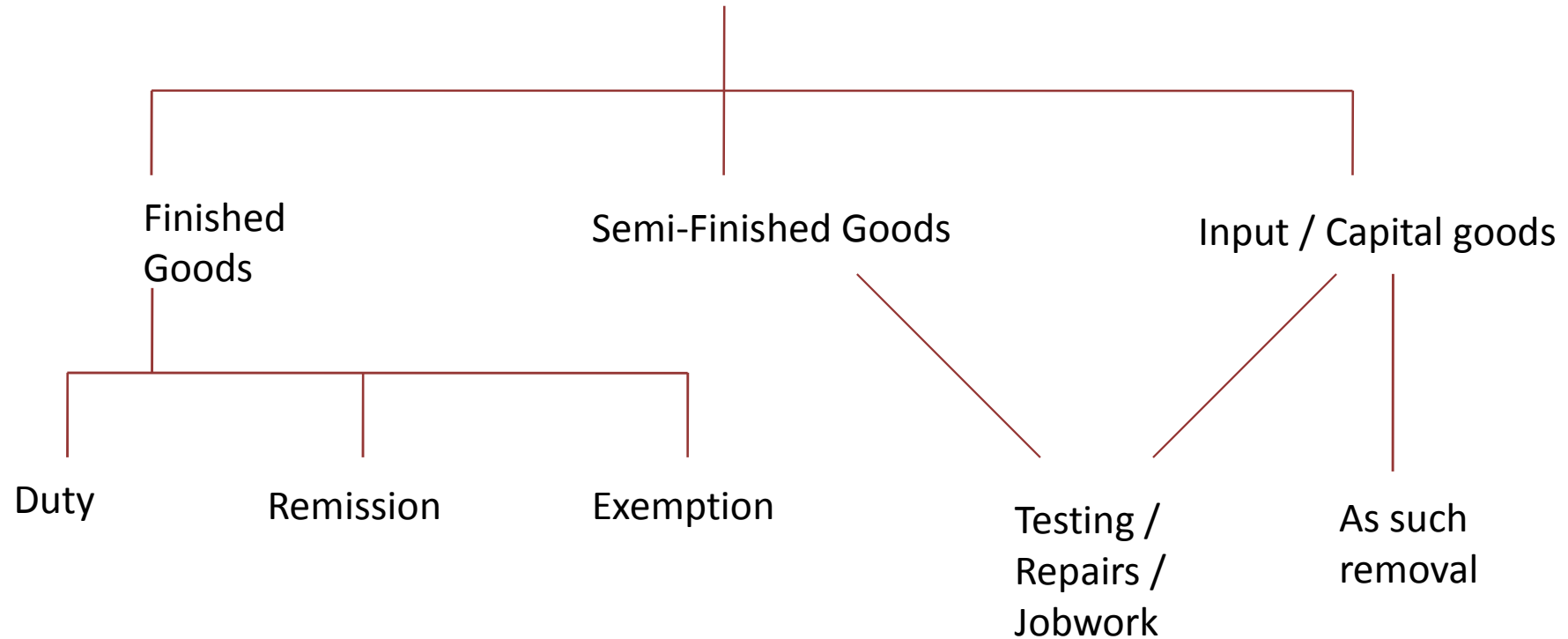
- ❖ Factory premise
- ❖ Levy of duty upon 'manufacturing' of 'goods'
- ❖ Collection of duty upon 'removal of goods'
- ❖ Central Excise Rules, 2002 and Cenvat Credit Rules, 2004 viz-a-viz removal



# Removal under Central Excise Act, 1944



Removal of goods under various circumstances



## Removal under Central Excise Act, 1944

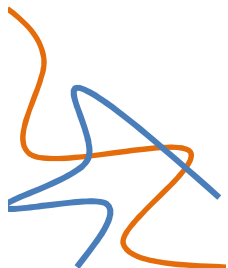
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### ❖ Effect of Removal - liability of making payment of excise duty

Taxable event in Central Excise is manufacture or production of goods where as the point of Collection of duty for the sake of convenience is on removal.

- Duty required to be paid upon removal of goods
  - No excisable goods on which duty is payable shall be removed from factory without payment of duty
  - Person manufacturing the goods liable to make payment of duty at the rate effective on date of removal of goods
  - Person who store excisable goods in ware-house
- ❖ Goods manufactured prior to its levy but cleared thereafter are not liable to tax. [CCE Vs Vazir Sultan Tobacco Co. Ltd. 1996 (83) ELT 3 SC]



## Removal under Central Excise Act, 1944 - Input

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### ❖ Removal of Inputs as such

- Whether Cenvat credit of availed on GTA service is required to be reversed?  
(Rule 21 of CER, 2002 – Remission; Reversal of input service also)
- Removal of scrapped input is not equal to ‘as such’ removal of input  
(no need to reversal of Cenvat Credit; clearance of waste / scrap of input cannot be said to be cleared ‘as such’) [Nagpal Electric V CCE 2005- 179 ELT 346 (Tri)]  
though the duty is required to be paid
- No bar on reversal of Cenvat credit for as such removal of input for export under bond. (Para 3.4 of Central Excise Manual as well as supported by judgements)

### ❖ Removal merely does not refer to physical removal of goods; It also includes captive consumption.

- Sale of factory is not removal of goods – no duty implication  
[Metzeller Automotive V CCE 2004 (167) ELT 208 (Tri)] – factory is not ‘goods’; It is a business which is sold.



# Removal under Central Excise Act, 1944

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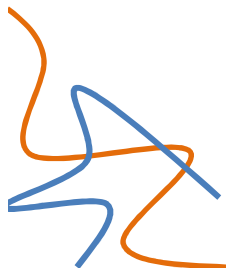


## ❖ Effect of Removal and Cenvat credit

- Whether Cenvat credit of availed on GTA service is required to be reversed? (A. R. Casting V CCE (2010) 256 ELT 420 (Tri)) [R. 3(5) of CCR, 2004]
- Removal of scrapped input is not equal to 'as such' removal of input (no need to reversal of Cenvat Credit; clearance of waste / scrap of input cannot be said to be cleared 'as such') [Nagpal Electric V CCE 2005- 179 ELT 346 (Tri)]
- No bar on reversal of Cenvat credit for as such removal of input for export under bond. (Para 3.4 of Central Excise Manual as well as supported by judgements)

❖ Removal refers to physical removal of goods. There must be delivery of goods outside the factory.

- Sale of factory is not removal of goods – no duty implication [Metzeller Automotive V CCE 2004 (167) ELT 208 (Tri)]



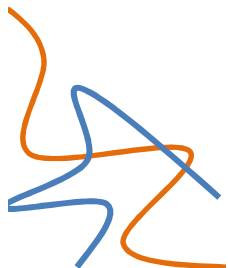
# Removal under Central Excise Act, 1944 – Capital Goods

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## ❖ Removal of Capital Goods

- Once used the provision of R 3(5) of CCR, 2004 is attracted – reverse duty / pay on assessable value
- Buyer is eligible to take credit of such second hand goods
- Clearance of Capital goods in first year it self – avail 100% credit and reverse there after



# Removal under Central Excise Act, 1944 – Job Work

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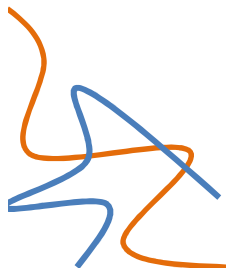


## ❖ Sending of input for Job Work

### ○ Rule 2(n) of CCR, 2004

Job work means processing or working upon of raw materials or semi-finished goods supplied to job worker so as to complete a part or whole of the process resulting in the manufacture or finishing of an article or any operation which is essential for the aforesaid process and the expression 'job worker' shall be construed accordingly.

- Goods can be sent to job work for its own unit
- Intermediate product (otherwise in nature of final product) can be sent out side for job work
- A job worker can further send the goods for job work – criteria is 'return' the goods and not 'directly return'
- Goods should be returned to factory – 180 days else reversal of credit follows (If part of goods is received in 180 days, there is obligation to debit the credit only in respect of attributable credit to that part of goods which are not received – Para 3.8 of Chapter 5 of CBEC manual)





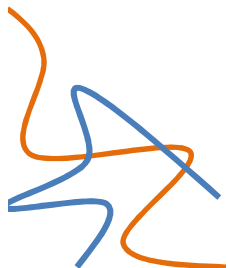
## Removal under Central Excise Act, 1944 – Job Work

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### ❖ Sending of input for Job Work

- Once the goods are removed for job work i.e. under Cenvat provision, there does not arise any duty liability on job-worker
- Direct dispatch of inputs to job-worker permissible (Rule 3(1) of CCR, 2204)
- Scrap and waste arising at the premise of job-work – whether required to be returned to supplier? – Not really; though the duty is payable [ Rocket Engineering Corporation V CCE 2006 (193) ELT 33 (Tri) and also followed in Fag Engineering V CCE (2011) 266 ELT 193 (Tri)]
- Job-worker him self is a ‘manufacturer’ of scrap and waste hence demand and penalty can be made on job-worker and not on raw material supplier [Preetam Enterprises V CCE (Tri)] / [Contrary view – KSH International V CCE (Tri) and Bajaj Auto V CCE (Tri) - held duty liability of scrap and waste is that of raw material supplier and not of job worker.]



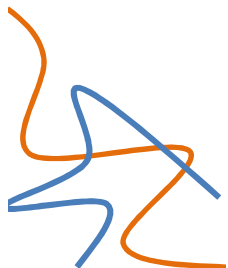
## Removal under Central Excise Act, 1944 – Job Work

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### ❖ Sending of input for Job Work

- The goods manufactured by job worker can be cleared directly from his premise without being need to receive it back – R. 4(6) of CCR, 2004 provides permission of AC/DC valid for a financial year.  
[Trade notice reference – CCE, Madurai TN 37/2001 Dt. 12-4-2002; CCE, Ahmedabad II TN 36/2003 Dt. 13-3-2003]



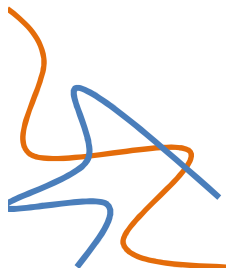
# Removal under Central Excise Act, 1944 – Export

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## ❖ Removal of goods for export

- Clearance to be made with payment of duty and subsequently filing of refund claim or without payment of duty under execution of Bond / LUT
- Clearance to be made without payment of duty and file a rebate claim of unutilised Cenvat Credit
- Procure for clearance with respect to documentation
  - Export invoice
  - Packing list
  - ARE-1
  - CT-1 (For export by merchant exporter)
  - Stuffing permission (Empty container intimation to range officer)



**DUTY EXEMPTION (INPUT)  
under  
FOREIGN TRADE POLICY (2015-20)**

## Foreign Trade Policy – Over view

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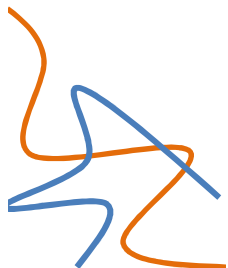


❖ Foreign Trade Policy (generally in force for 5 years) contains guidelines to boost the exports of the Country and generate the Free reserves for from there which helps to reduce the fiscal deficit to an extent by providing various incentive measures contained therein.

❖ Other areas of FTP

- Duty free import of Inputs (Advance Authorisation)
- Duty free import of Capital goods (EPCG Licence)
- Merchandise Export from India Scheme (MEIS – Duty Scripts)
- Service Export from India Scheme (SEIS – Duty Scripts)

❖ One of such measure to boost the export is to source the material (input) either domestically / import without any payment of duty i.e. the exemption is granted for the import / supply of input through which the final product will be exported.

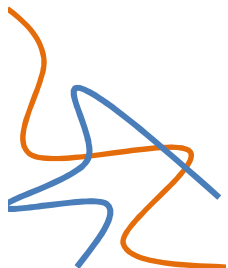


# Foreign Trade Policy – Advance Authorisation

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- Authorisation is nothing but an approval of application which is submitted by the applicant inter-alia containing the quantity and value of inputs to be imported for the export of goods / supply of goods
- Types of Authorisation
  - **Advance Authorisation**
  - Advance authorisation for Annual Requirement
  - Duty Free Import Authorisation
- Advance authorisation is granted for duty free import (Customs duty) of input which is physically incorporated in export product
- It is also granted for certain product to be consumed / utilised in the process of production of export product such as fuel /oil etc.



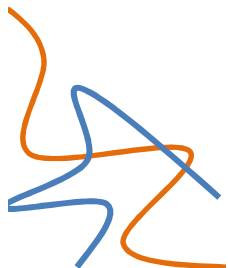
# Foreign Trade Policy – Advance Authorisation

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## ❖ To whom Authorisation is issued?

- For Physical export of goods including goods supplied to SEZ
- For intermediate supply for goods
- Supply of goods to specified categories mentioned at para 7.02 of FTP (such as supply to EOU/EHTP/STP; Supply of Capital goods against EPCG Authorisation; Projects funded and notified by Department of Economic Affairs; supply of goods under International competitive bidding]
- SION = Standard Input-Output put norms prescribed by Norms Committee (HQ DGFT)



# Foreign Trade Policy – Over view

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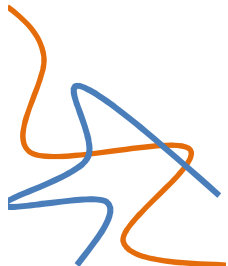
## ❖ Basis of issuance of Authorisation

- The authorisation is issued based on the quantity of input required to export the goods i.e. as per standard input output norms as prescribed;
- In the event no such standard is available, based on the self-declaration made by the applicant the authorisation may be issued.

## ❖ A manufacturer exporter or a merchant exporter tied to the manufacturer export is eligible for authorisation

## ❖ Requirements of Registration

- IE code certificate
- Valid RCMC with recognised export promotion council – this must contain address of branch; should be same as appearing in IE Code
- Digital Signature





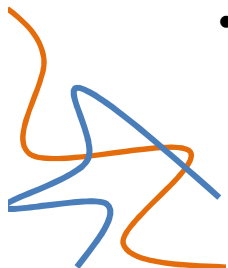
# Foreign Trade Policy – Advance Authorisation

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## ❖ Basis of issuance of Authorisation & Norms Committee

- Application in prescribed format to be filed along with uploading the relevant documents; to be signed digitally.
- In the event if SION is not available that request application in prescribed format to be uploaded online with the concern Norm Committee (NC) for fixation of norms. This is based on self-declaration filed by the applicant.
- Forward said application to concern Technical / Administrative ministry or any other agency approve by NC in DGFT HQ – time limit 3 days
- Such authority / ministry to communicate views /comments/ recommendation in 45 days; non receipt till 90 days, NC to view the same based on facts available on records.
- NC to function as recommendatory authority; NC can approach CBEC also.
- Mandatory for industry / manufacturer to provide production and consumption data for past three years as and when required by DGFT for review and fixation of SION



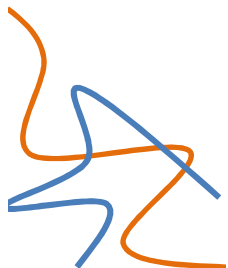
# Foreign Trade Policy – Advance Authorisation

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## ❖ Basis of issuance of Authorisation & Norms Committee

- In the event where application for issuance of authorisation is filed based on self-declaration, wastage claimed would be subject to wastage norms as decided by the Norms Committee and the applicant is required to furnish undertaking containing application in prescribed format to be filed along with uploading the relevant documents; to be signed digitally.
- Undertaking contains as under:
  - Applicant to abide by norms fixed by NC and accordingly take following action without any damur:
    - a. Pay Customs Duty and applicable interest on excess input as per norms fixed by NC. In case of lower norms for input, applicant may undertake additional export obligation to excess inputs;
    - b. In case application is reject, pay customs duty and interest. In case of domestically sourced input, amount to be paid on notional customs duty payable on input



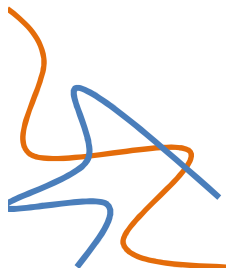
# Foreign Trade Policy – Advance Authorisation

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## ❖ Time Limit for fixation of norms

- If the application for norms as provided in self declaration is not finalised in four months from the date of receipt of complete application along with prescribed documents; norms applied for be treated as final
- If the application is rejected on the grounds of non-furnishing of required documents/ information, authorisation holder is liable to pay customs duty with interest.
- Representation against the decision of NC with regard to fixation of norms to be filed in 90 days from the date of hosting of decision on DGFT website.
- Representation beyond 90 days – with fees Rs. 5,000/-

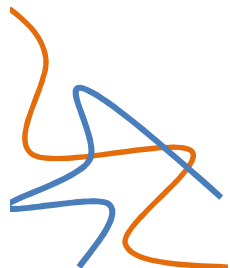


## Foreign Trade Policy – Value Addition

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- ❖ Minimum value addition required to be achieved under Chapter 4 of FTP is 15%
- ❖ The criteria to determine the value is driven by formula prescribed under Para 4.08 of FTP
- ❖ Specified products where value addition could be less than 15% are prescribed in Appendix 4D of HBP
- ❖ Failure to achieve the value addition will attract interest / penalty as provided in Para 4.49 of HBP



# Foreign Trade Policy – Advance Release Order

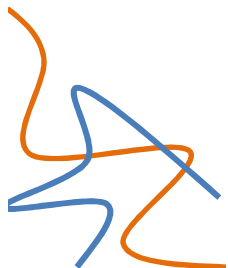
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For procurement of inputs indigenously

## **Contents of ARO**

- Name, Description including the specification and quantity of items and individual value of items to be procured
- ARO may be issued along with Advance authorisation or Duty Free Import Authorisation or subsequently. The validity of ARO shall be co-terminus with validity of Advance authorisation/ DFIA.
- Exporter may alternatively avail facility of Inland Letter of credit from bank in which Bank will open inland L/C in favour of indigenous supplier and the procedure is followed as per Para 4.34

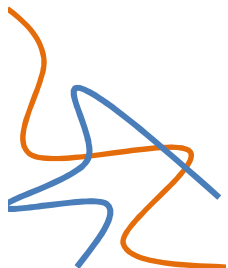


## Foreign Trade Policy – Intermediate Supplies

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- ❖ Advance authorisation / DFIA for intermediate supply can be made by making application on the basis of tie-up arrangements with an ultimate exporter holding valid Advance authorisation / DFIA
  
- ❖ Advance authorisation / DFIA for intermediate supply to be issued after making advance authorisation of ultimate exporter invalid.
  
- ❖ Intermediate Authorisation holder has option as under:
  - Direct supply intermediate product to authorisation holder; or
  - Directly export; or
  - Directly supply to port for export by ultimate exporter (i.e. tied-up authorisation holder). In such case, shipping bill should endorse name of intermediate supplier – in part of fulfilment of EO

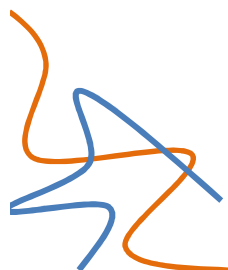


## Foreign Trade Policy – A.A. for annual requirement

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- ❖ Advance authorisation for Annual Requirement is issued only to Exporter having past export performances (at least last 2 financial year)
  - The entitlement of authorisation in terms of CIF value / DFIA for intermediate supply can be made by making application on the basis of tie-up arrangements with an ultimate exporter holding valid Advance authorisation / DFIA
  - By having annual requirement, Company can procure the input for inter-group without obtaining specific permission.
  
- ❖ Entitlement – Advance authorisation
  - Status holder – up to 300% of FOB and/or FOR value of preceding year's export / supply
  - Other than Status holder – up to 300% of FOB and or Rs. 10 Crores and/or FOR value of preceding year's export / supply whichever is higher



## Foreign Trade Policy – Entitlement / contents

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- ❖ In addition to the limits specified, the applicant can enhance the limit of authorisation by providing 100% Bank Guarantee to Custom Authority to cover the exemption from duty.
- ❖ The RA concern may consider the request from authorisation holder for enhancement or the reduction in CIF value of advance authorisation or for the quantity of input, FOB value and quantity of export as the case may be.
- ❖ Fees to be paid for enhancement would be difference in CIF value of original and final authorisation. No fees if value of authorisation is reduced.
- ❖ Validity of Advance Authorisation – the inputs are to be procured within 12 months from the date of authorisation and the EO is to be fulfilled in 18 months.
- ❖ Contents of the authorisation
  - Name, Description including the specification and quantity of items imported and exported / supplied;
  - Quantity of each item to be imported and where quantity no possible, the value thereof. However, under SION where quantity and value are both limiting factors, the same shall apply;
  - Aggregate CIF value of import
  - FOB / FOR value and quantity of export / supply.





# Foreign Trade Policy – Advance Autho. – Records

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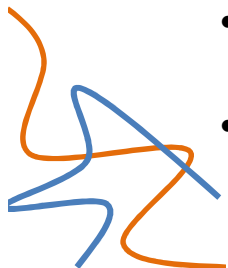


## ❖ Port of registration

- Authorisation is issued for import / export through sea route / land route or through air or ICDs.
- The authorisation holder shall register authorisation at the port specified in authorisation and thereafter all imports to be made against said port only. A separate permission be obtained from Customs Authority concerned to import through other port.
- Export may be made from any port in India.

## ❖ Proper Maintenance of Records

- Every Advance Authorisation holder maintain true and proper account of consumption and utilisation of duty free imported / domestically procured input against each authorisation (Appendix 4-I)
- Such records should be duly verified and certified by jurisdiction excise authority and shall be submitted to concerned RA at the time of filing of application for redemption / bond waiver
- Cross verification of records with the authorisation with reference to its utilisation and other details before grant of redemption / bond waiver
- Records to be preserved *at least* for 3 years

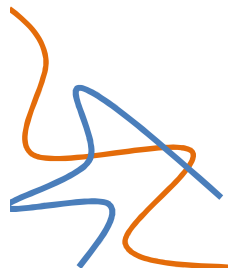


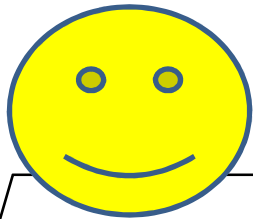
## Foreign Trade Policy – Revalidation of Authorisation

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- ❖ Regional Authority may consider the request for revalidation and grant one time validation for the period of six months from the date of expiry of authorisation.
- ❖ For getting the extension, the authorisation holder is required to make payment of composition fees of 0.50% of short-fall in EO and the same is required to be paid along with the request. In event of failure, interest and penalty implication will be followed.





# ***THANK YOU***

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