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Development of Laws in Foreign Trading

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India is a populated country. Business is a significant factor in economic development. Business within India is not very profitable for overall development. India cannot produce all kinds of goods. In such cases, foreign trading plays an important role in the business world. Foreign trading is not known by all. In the nineteenth century, it was not as developed as of now. In 1991, the concept of liberalization, privatization, and globalization (LPG) was laid down. This concept highly influences foreign traders in India. It is also developing with the changing business environment. E-commerce has been introduced in the recent business era. E-commerce increases the encouragement in foreign trading. This medium is cost-effective and easy to access. So, the laws are developed with the nature of foreign trading. Various laws are implemented for the smooth functioning of cross-border trading through e-commerce. The impact of previous laws of foreign trading and the development of laws are shown here. Foreign trading has two parts import and export. Export progresses the economy of the country. Imports affect a country's currency and economy. Laws play an effective role in reducing imports and providing exemptions in exports for encouragement. Indian taxation system provides benefits in foreign trading. Custom duty governs the rules and regulations of foreign trading. Indirect tax provides ample benefits to the exporters as well as puts restrictions on importers to reduce imports. Restrictions are also imposed for the infringement of export-import procedures. By fulfilling recent developments, laws, and guidelines have also been developed to ensure safe and secure foreign trading by keeping a check on imports.

Keywords: *gatt, cross-border e-commerce, epcg, foreign trade policy, double tax avoidance agreement.*

INTRODUCTION

Foreign trading is a way of economic development through globalisation commerce and industry. Trade is an important machinery for maintaining the harmony of a country's economy. Everything is not available in one country. A single country can't produce all products as per their requirement. Products are exchanged among various countries through trading. This kind of trading is known as foreign trade. International trade expands the trading circle of products rather than the domestic market. Foreign trade is purchasing or selling products from one country to another. Foreign trade generates income and employment opportunities. It increases earnings by selling products in the international marketplace and industrial activities in the country. This provides efficient market trading among various countries. Scientific and technological information is also exchanged through foreign trade. This kind of trading helps reach the products towards the various country customers. This helps a company to increase its brand value. Thus, a company can also spread its business from one country to another.[1] Foreign trade contributes towards the Gross Domestic Product (GDP) of countries. It contributes towards the economic welfare and economic development of countries. International trade is a crucial tool to reduce poverty and economic generation in a country. Poverty is a detrimental factor in any country that generates negative activities. Economic opportunities attract people to create inhabitants. It helps to increase the population of a low-populated country. So, proper maintenance and governance are required for foreign trade. India is an overpopulated country. So, foreign trading is needed to generate employment opportunities. It helps to increase the GDP as well as the economic growth of a country. This trading helps to improve the economic and living standards of the people of India. Previously, foreign trade was regulated by the Exports and Import (Control) Act, of 1947 in India. It is governed by the Foreign Trade (Development and Regulation) Act, of 1992. In this Chapter, we discuss the evolution of foreign trading laws and their impact on the Indian economy[2].

[1] 'Foreign Trade' (*Quickonomics*, 29 April 2024) <https://quickonomics.com/terms/foreign-trade/#:~:text=Foreign%20trade%2C%20also%20known%20as%20international%20trade%2C%20refers,selling%20of%20goods%20and%20services%20to%20foreign%20countries.> accessed 30 October 2024

[2] S Suriaganth and Dr A Mohamed Abdullah, 'Impact of Foreign Trade on the Economic Growth of India' (2021) 20(1) Indian Journal of Economics and Business

FOREIGN TRADING

When any economic transaction happens outside India, it is called foreign trading. Foreign trading expands their market to make more goods and services available in India. Foreign trading has two parts, namely, export and import. Export means when goods are sold outside India. When goods are purchased outside India, then it is called import. Export helps to generate the economy of the country. Sometimes, finished goods are imported. Raw materials are also imported to produce the finished goods. That finished goods can be exported to reach the ultimate customers. In this chain, producers, suppliers, and customers are all involved. So, this trading is complex. Thus, the markets become more competitive and products become standardized. Foreign trading is attached to the international financial system. Thus, the private and central banking systems are also involved in this trading. International trading helps consumers to outsource various products from foreign.[3] It provides businessmen and industrialists exposure to goods and services in the foreign market. This concept was proposed by Adam Smith in the 18th century. This theory states that specialized good production is required for huge demand and supply of resources. Thus, it develops cross-border commerce and the local economy of the country. It helps to outsource quality products and services and build recognition of products. Thus, consumers get access to the international markets. It provides various options to both buyers and sellers. Foreign trading is required for the expansion of the domestic economy of India. International trade is nothing but a give-and-take policy in exchange for economic transactions. Developing and maintaining a strategic relationship helps in the export and import of those countries.[4]

The concept of international trading is a General Agreement on Tariffs and Trade (GATT). At the end of the Second World War, GATT came into force in 1947 to liberalize the economy. After a long discussion, tariffs on industrial goods were reduced from 40% to 5%. The main aim is to reduce trade discrimination and the undesirable powers related to trade. This instrument brought the concept of arbitration to resolve the dispute. Till 1994, one hundred twenty-eight

<https://www.ashwinanokha.com/resources/81.%20S.%20Suriaganth_Vol.20.%20No.1%20(January-%20June%202021)%20(1).pdf> accessed 30 October 2024

[3] 'International Trade' (*WallStreetMojo*, 06 May 2022) <https://www.wallstreetmojo.com/international-trade/> accessed 30 October 2024

[4] Mark McCord, 'These 3 charts show how international trade works - and the current state it's in' (*World Economic Forum*, 04 October 2021) <https://www.weforum.org/stories/2021/10/how-international-trade-works-global-economy/> accessed 30 October 2024

countries are members of GATT.[5] Now, it has become the World Trade Organization (WTO) in 1995. India is also a participator in GATT as well as connected with WTO. This helps in the globalization of trading.[6]

EXPORT

Products are exported to the needs and demands of consumption. Cross-border transactions are a bit difficult. Quite a delay or quality variation has a serious impact on business. In export, delivery should be effective so that there would be no loss on either of the parties. Through export, international orders are received for selling goods. For exporting goods, exporters need to get permission from their registered country. There are various financial matters in foreign trade. At first, exporters need to take credit confirmation for getting value in respect of exported goods.[7] Currency is different in both countries in foreign trade. Exporters and importers need to fix exchange rates from foreign currency to home currency before delivery. The economic stability of small and large business entities relies on exports. The export customers of India are the United States of America (USA), the United Arab Emirates (UAE), the Netherlands, Mainland China, the United Kingdom, Singapore, Bangladesh, Singapore, Saudi Arabia, Germany, Hong Kong, Italy, and South Africa. A small percentage of customers are from Africa and Latin America.[8]

Last few years foreign trading has increased in India. A wide range of agricultural and manufacturing sectors are situated in India. Export is an unavoidable factor in the development of these sectors. The exported goods of India are leather and its products, petroleum products, gems, and jewellery, automobiles, and its equipment parts and electric goods, pharmaceutical products, organic and inorganic chemicals, dairy products, handlooms, and cotton yarns, textile

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[5] 'Home' (*World Trade Organization*) <https://www.wto.org/> accessed 30 October 2024

[6] Christina Majaski, 'What Is the General Agreement on Tariffs and Trade (GATT)?' (*Investopedia*, 28 June 2024) <https://www.investopedia.com/terms/g/gatt.asp#:~:text=The%20General%20Agreement%20on%20Tariffs%20and%20Trade%20%28GATT%29%2C,to%20boost%20economic%20recovery%20after%20World%20War%20II.> accessed 30 October 2024

[7] Sophia Ellis, 'Benefits of Import and Export: A Comprehensive Overview' (*The Knowledge Academy*, 14 January 2025) <https://www.theknowledgeacademy.com/blog/benefits-of-import-and-export/#:~:text=Importing%20allows%20consumers%20to%20access%20a%20broader%20variety,to%20expand%20their%20markets%20and%20increase%20their%20profits.> accessed 30 October 2024

[8] Troy Segal, 'What Are Exports? Definition, Benefits, and Examples' (*Investopedia*, 04 June 2024) <https://www.investopedia.com/terms/e/export.asp> accessed 30 October 2024

and apparel, and cereal[9]. In 2017, India exported a total of $538 billion alone. Till now, it is the top exported amount. After the Covid wave, India has exported a total amount of $499 billion. Indian leather and its products have a huge market vicinity of the world including Italy, China, Korea, and Hong Kong. Another highly demanded exported product is petroleum products. Conversion from refined petroleum products to petrochemicals, India has become a trusted resource partner for various countries. India is the fifth-largest exporter of jewellery gold, gemstones, pearls, diamonds, and any other forms. India earned a total amount of Rs. 17307.280 crores in April 2024 from these exported products. These goods are exported to the United States, Hong Kong, UAE, Switzerland, and the United Kingdom. In 2023, India exported electric machinery, equipment of total valued at eight billion USD. The export rate of Indian pharmaceutical products increased during the COVID wave. After that, it becomes India became third third-largest by volume and fourth-largest in value. In 2023, India has exported organic and inorganic products of Rs. 2.4 trillion INR. This is a notable rise in this segment. Indian dairy and agricultural products have huge popularity in the international market. This segment has significantly helped India's economic growth. India produced more than 23% of the global cotton demand. Various cotton items are produced and exported outside India. It acts as a key contributor to job creation. Wide range of fabrics and designs, it is a major participant in the worldwide textile and clothing sector. The value of the Indian clothing and textile industry is around $165 billion. India is popular for its huge production of wheat and refined flour. India produces various kinds of cereals like rice, wheat, maize, and millet. Cereals from India have played a significant role in every kitchen of various countries. Indian cereals are very famous in Saudi Arabia, UAE, Iran, Nepal, and Bangladesh[10].

IMPORT

When the goods and services are purchased in one country from another where it is produced. When import surpluses the export, then it is called a trade deficit. When a country does not produce the goods, then the country is imported outside India. The domestic market is incapable of providing goods. Goods or raw materials which is required for production are not available

[9] Sumana Sarmah, 'Top 10 Products to Export From India [2025]' (*Shiprocket*, 11 June 2024) <https://www.shiprocket.in/blog/top-10-most-exported-products-from-india-and-how-to-start-shipping-them/> accessed 30 October 2024

[10] Daniel Workman, 'India's Top 10 Exports' (*World's Top Experts*) <https://www.worldstopexports.com/indias-top-10-exports/> accessed 30 October 2024

within their border. When demand is more than the supply, then the price is increased. In such import is required. Free trade agreements and tariff schedules are pivotal for the import of less expensive goods and materials. If goods can be imported from either local traders or manufacturers or companies outside India. The person who purchased the goods is called an importer. When the amount of foreign currency leaving the country increased, the government banned imports. In the case of import, one country needs to pay the exporter in their foreign currency. In such cases, the importer needs to purchase their currency. It has negative effects on the domestic economy of the country. Import reduces the production cost[11]. Raw materials are outsourced cheaply outside India for low manufacturing costs. This leads to high profit efficiency for the company. Import is a very effective tool in the fulfilment of a shortage temporarily. In case of natural calamity, war, etc. country is not able to meet the demands of citizens. In such cases, the country imports the necessary goods to fulfil the scarcity. Import is dangerous for both the economy and currency of a country. If a company or industry fully depends on another country for raw materials. If that country bans the export, then that company incurs more loss rather than gain. It will also put pressure on the economy of that country. Imported goods adversely affect the domestic goods of a country. Domestic goods are more expensive rather than imported goods. So, consumers are less attracted to buying domestic goods. Then, domestic traders and investors become less interested in entrepreneurship. No goods will be produced in India. Ultimately, it will affect the export of a country. Without exports, the economy of the country becomes unstable[12].

India decreased their import expenditure from 137.3% to 53.2% in the year 2017 to 2020. India imports convenience products, shopping products, speciality products, etc. Fastest growing imported goods in India are Miscellaneous plastic items, glass bottles, and other containers, unstrung precious or semi-precious stones, electric motor generating sets, items produced from hot-rolled iron or non-alloy steel, palm oil, microphones, earphones, amplifiers, dishwashers, other cleanings, drying or filling machine, nuts, and ink. The worst declined imported goods are

[11] Segal (n 8)

[12] Vinish Parikh, 'Advantages and Disadvantages of Imports' <https://www.letslearnfinance.com/advantages-disadvantages-imports.html> accessed 30 October 2024

special hand or machine tools, grapes, cars, packaged insecticides or herbicides, dates, pineapples, mangoes, avocados, etc[13].

IMPACT OF E-COMMERCE

The changing business environment brings e-commerce to the business world. Online trading platforms easily connect one country to another. Cross-border e-commerce fueled the expansion of foreign trading. Technology provides efficiency in trading as well as expansion of business entities. Cross-border e-commerce provides flexibility in commercial transactions by reducing export costs and improving export efficiency. Online trading protects business entities from risk factors such as trade friction, natural calamities, etc. E-commerce reduces business expenditures. In e-commerce rank India is 44th and 48% Indian population is involved in online shopping[14]. Information Technology Act, 2000 has a crucial role in the governance of cross-e-commerce in India. This act ensures the legality of paperless commercial transactions. It validates the digital signature and electronic documents. It provides reasonable securities to protect the data of corporate bodies. There are various sections which protect consumers from harassment. Consumer Protection Act, 2019 ensures fair trading in online platforms. In 2020, there are various rules laid down regarding e-commerce. This rule expressly prevents the traders from the unfair trading platform. E-commerce traders should provide detailed information regarding their trading policy. Sellers should maintain transparency towards the customers. E-commerce traders should provide a grievance redressal platform online. After receiving complaints should be redressed within 48 hours and resolved within one month. Apart from those, e-commerce traders need to comply with the Foreign Exchange Management Act, 1999 and the Digital Person Data Protection Act, 2023. These laws are required for fair trading in e-commerce which has a significant impact on the development of the economy. The Foreign Exchange Management (Non-Debt Instrument), 2019 provides legal regulations with Foreign Direct Investment (FDI). It regulates the foreign investment in e-commerce. It protects the domestic market from the influence of e-commerce operators[15].

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[13] Dante Carlton, 'India's Top 100 Imported Consumer Products' (*Imported Consumer Products*) <https://importedconsumerproducts.com/india/> accessed 30 October 2024

[14] Haiyan Wu et al., 'Cross-border e-commerce, trade digitisation and enterprise export resilience' (2024) 65 Finance Research Letters <https://www.sciencedirect.com/science/article/abs/pii/S1544612324005439> accessed 30 October 2024

[15] Burgeon Law, 'E-commerce Laws and Regulations in India' (*Burgeon Law*, 01 May 2024) <https://burgeon.co.in/blog/e-commerce-laws-and-regulations-in-india/> accessed 30 October 2024

After COVID-19, customers' marketing ways are changed. Trading through e-commerce has significantly grown. Transformation into an online trading platform encourages cross-border e-commerce. E-commerce attaches to the sellers and buyers of different countries. To encourage Indian sellers, the India Government laid down various projects such as 'Make in India' and 'Aatmanirbhar Bharat'. The Indian Government encouraged the establishment manufacturing sector rather than depending on imports. After the pandemic, the earnings of 83% of sellers have increased significantly. In cross-border e-commerce, China is the main competitor of India. Chinese products are sold in India at 50% to 60% less than the price of Indian sellers. The product value of China is unbeaten. So, India has produced quality products rather than for the successful export. The main difficulties in cross-border e-commerce are low urbanization, improper internet connection, and income level. Still, 80% Indian population remains untouched by internet connection. After 2020, e-commerce traders need to register themselves for proper legal accountability. Display of products and services, order receipts, and dispatch all are very easy and cost-effective on the online platform. E-commerce has become a very effective instrument for foreign trading purposes[16].

IMPACT OF INDIAN TAXATION IN FOREIGN TRADING

Customs Duty: Only the Central Government is empowered to levy customs duty under the Seventh Schedule of the Union list of the Indian Constitution, 1950. Customs duty is charged in respect of exported and imported goods and services in India. The collection and rate of customs duty are governed by the Customs Act, 1962, and the Customs Tariff Act, 1975. Custom duty is levied under the Customs Tariff Act, 1975 at specified rates[17]. This duty is levied in respect of all goods whether belonging to the government or not. So, the Central Government is also liable for imported goods unless an exemption[18].

Taxable Events -

[16] 'Made in India for the world: the state of Indian cross-border E-commerce' *Payoneer* (04 July 2023) <https://www.payoneer.com/resources/research-reports/state-of-indian-cross-border-ecommerce/#:~:text=As%20a%20result%2C%20many%20cross-border%20businesses%20have%20undergone,well%20as%20shifting%20customer%20demands%20around%20the%20world.> accessed 30 October 2024

[17] CA Abhishek Soni, 'Customs Duty in India - Types, Calculation, & Latest Rates' (*Tax2win*, 21 May 2024) <https://tax2win.in/guide/customs-duty-in-india> accessed 30 October 2024

[18] Dr C H Sengupta, *Law And Practice Of Direct And Indirect Taxes 2021-22* (first published 1996, 26th edn, Dey Book Concern 2021)

Import duty is paid on imported goods in India. The Customs Act, 1962 deals with this matter. It stated that - [19]

i) When goods are entered for home consumption the rate of duty or tariff valuation is applicable on the date when the bill of entry is presented.

ii) When goods are entered in warehouses, the rate of duty or tariff valuation is applicable on the date on which the bill of entry or home consumption in respect of such goods is presented under section 68.

iii) In the case of other goods, the rate of duty or tariff valuation is applicable on the date when the duty is paid.

Export duty is paid on the exported goods. Section 16 of the Customs Act, 1962 stated that:

i) When goods are exported under section 50 of this act, the rate of duty or tariff valuation is applicable on the date when the clearance of the order is permitted and loaded for export under section 51.

ii) In the case of other goods, the rate of duty or tariff valuation is applicable on the date when the duty is paid[20].

Section 2(28) of the Indian Customs Act, 1962 states that 'Indian Customs Water' means the water of sea extends to the Exclusive Economic Zone under section 7 of the Territorial Water Continental Shelf, Exclusive Economic Zone, and other Maritime Zones Act, 1976 including bay, gulf, harbour, creek or tidal river.

- If any person committed any crime within the territory of the Indian Sea, the Customs Officers may arrest them under section 104 of this act.
- If Indian customs water is used for smuggling or carrying any smuggled goods, officers may search for such goods under section 106 of this act.

[19] Custom Act 1962, s 15
[20] Sengupta (n 18)

- If it fails to stop the above-referred conveyance, such conveyance shall be liable to confiscation under section 115(1)(a).
- Thus, the government tries to ensure smooth and effective foreign trading by avoiding all illegal activities[21].

Anti-dumping duty is levied on imported goods which have received subsidies or exemptions from the manufacturing countries. It is levied on the value of goods below the market price. It sustains domestic traders from facing unfair competition. It does not negatively affect the domestic market. This process reduces the price of export products to less than the price of the domestic market[22].

GOODS AND SERVICE TAX (GST)

Goods and Service tax is levied on the trading of all goods and services. Goods and services are also traded by foreign trading. Export and importer both are liable under Goods and Service Tax, 2017. There are various types of GST in India. Import is governed by the Integrated Goods and Service Tax (IGST). The imported state is liable to pay IGST. Imported goods and services are taxable under GST only when-

a) Supplier located outside India and recipient resides inside India.

b) The place of supply should be within India.

c) Both supplier and recipient are separate persons.

The importer needs to file monthly GST returns by mentioning imported goods in Table 5 of the GSTR-2 form and imported services in Table 6 of the GSTR-2. There is no exemption under GST.

Export is attracted to the 'zero-rated supplies' under GST. The rate of GST is zero in supply. Export can be possible without payment of GST under a bond or letter of undertaking. Exporters can get a refund for export after paying IGST. Exporters should describe the GST invoice in the

[21] *Ibid*
[22] Will Kenton, 'Anti-Dumping Duty: What It Is, How It Works, Examples' (*Investopedia*, 06 October 2020) <https://www.investopedia.com/terms/a/anti-dumping-duty.asp#:~:text=An%20anti-dumping%20duty%20is%20a%20protectionist%20tariff%20that,charges%20in%20its%20home%20%28or%20its%20domestic%29%20market.> accessed 30 October 2024

shipping bill in both situations. Exporters must file the tax details and the GST invoice to claim the refund in Table 6A in the GSTR-1[23].

There are no special laws for foreign traders in the Income Tax Act, 1961. This act neither provides any benefits nor restrictions for exporters and importers. A person needs to pay tax based on earnings by the new tax regime[24].

Under taxation relief, another important instrument is the "Double Tax Avoidance Agreement" (DTAA). Foreign traders are also liable to pay taxes in all the countries involved in business. Under this agreement, traders need to pay taxes in one country. Traders also get credit from the tax payment. Without the agreement, traders need to pay double tax and do not get any credit for those payments. It reduces the tax burden and brings ease to business. Till now, India signed DTAA with eighty-five countries. This also encourages large sectors as well as small businessmen in international trading.

EXPORT AND IMPORT (CONTROL) ACT 1947

After the Second World War, a legal framework is needed to regulate foreign trade. Many Indian businessmen continued their trading and business activities during the war. Most of the goods are imported from British and British colonies. It was very hard to rely on them. As a result, the Export and Import (Control) Act 1947 came into force. This act was affected to control exports and imports for a limited period. After that, this temporary statute became a permanent statute.

Under this act, the importer needs to obtain prior permission mandatorily. They are provided import certificates and import quota certificates. Imported items and quantities are to be recorded by the government.

Two kinds of licence are provided by the Government, such as general licence (import from any country) and special licence (import from specific countries). License is provided to the established importer, actual user, and registered export. An application should be submitted to the controller of imports in proper format. Receipt of licence fees paid, Certificate from

[23] Dezan Shira & Associates, 'Impact of GST on Imports and Exports in India' (*India Briefing*, 15 March 2019) <https://www.india-briefing.com/news/impact-gst-imports-exports-india-14611.html/> accessed 30 October 2024

[24] CA Harsh Bhuna, 'Forex Tax in India: What You Need to Know for 2024' (*Tax Guru*, 20 June 2024) <https://taxguru.in/finance/forex-tax-india-2024.html> accessed 30 October 2024

Chartered Accountant of the total amount of imported goods, and verification certificate from income tax.

After obtaining the licence, the importer arranged the foreign currency in the Reserve Bank of India (RBI). If the imported value is paid in the exporter's currency, then the importer needs to apply for the foreign currency of that country. Then importer needs to apply for it along with an import licence in the prescribed format. After the verification of all documents, RBI granted the payment of the transaction. The foreign order is placed in three ways Open indent, close indent, and confirmatory indent. After dispatch, the importer got the confirmation letter from the exporter and allowed the bank to issue a letter of credit. After bill production, the importer's bank paid the exporter. In foreign trade, banks of both importers and exporters check the authenticity of each other. The exporter gives surety of the supply of goods and the importer confirms the payment. In international trading, banks assure the monetary transaction. The letter of credit is important for the payment to the exporter.

After that, there is a stage of customs clearance which is time-consuming, and very expensive. The importer can appoint a clearance and forwarding agent for this purpose. After getting the Letter of credit, the exporter sends the ordered goods along with an advice note. The advice note contained the shipment of goods, the date of dispatch, and the date of receipt of the order. Exporter needed to give documents of title of goods to the import country bank, for full payment within 24 hours. The importer bank retained the document for the delivery of the order. After accepting the goods, payment is made to the exporter. The documents could be retained for a maximum of thirty to ninety days[25].

Under section 4 of this act, if any order was placed under the rule eighty-four of Defense of India Rules or any rules are in force under Emergency Provisions (Continuance) Ordinance, 1946[26] Or any other laws, which will continue under this act.

Under section 4A of this act, any person needed to pay for making an application, grant, or renewal of a license under this act.

[25] Shafali Nagpal, '32. International Trade: Import Procedure in India' (*International Business Operations*) <https://ebooks.inflibnet.ac.in/mgmtp08/chapter/international-trade-import-procedure-in-india/> accessed 30 October 2024

[26] Trading with the Enemy (Continuance of Emergency Provisions) Act 1947

Under section 4B of this act, any authorized person can enter into the premises where the suspected imported goods or materials are confiscated under this act and any relevant books of account or other documents or things are seized for investigation.

Under section 4C of this act, any authorized person (including, Chief Controller, or any officer not below the rank of Deputy Chief Controller) has the power to search any place or secreted place where the imported goods or materials or related books of account or any other things or documents.

Under section 4D of this act, an authorized person confiscated any goods mixed with other goods, which were also ceased along with the suspicious goods. A notice should be served regarding confiscated goods within six months of such seizure. It may extend another six months after showing reasonable cause. If any notice was not served, the seized goods were returned to the person under whom the goods were kept.

The legally entitled person can make an application to the Central Government to return the seized articles. The Central Government passed a decree allowing being heard.

Under section 4E of this act, if any suspicious goods were imported using a vehicle, animal, or aircraft, those goods were liable to be confiscated. If such vehicle, animal, or aircraft contravened any provisions of this act, those conveyances were also liable to be seized. The Bhartiya Nagarik Suraksha Sanhita, 2024 applied for such search or seizure[27].

Under section 4G of this act, if the importer contravened any directions or conditions related to the utilization or sale of imported goods or materials, those are liable to confiscation. If those imported goods were mixed with any other goods, the other goods are also liable to confiscation. If any imported personal goods were with any person other than the person who ordered them, then those goods were also liable to be confiscated.

Under section 4H of this act, any conveyance or animal used for import purposes, without the knowledge of the owner or any person whose possession of goods or materials was. Then those were liable to confiscation.

[27] Bharatiya Nagarik Suraksha Sanhita 2023, s 105

Under section 4I of this act:[28]

a) If imported goods or materials were not used in such a manner which was prescribed in the letter of authority or licence;

b) If imported goods or materials were not used for delivery purposes;

c) If any declaration was made or amended for obtaining the licence or letter of allotment.

d) Any imported goods or materials contravened any provisions or any condition of licence or letter of authority.

e) Any imported goods or materials contravened the terms of allotment of the recognized agency.

f) If any person contravened the direction regarding the sale of imported goods or materials.

Then, that person will be penalized five times of value of goods or materials or one thousand rupees whichever is higher as well as confiscated the imported goods or materials. If any person abetted such an act, then that person was also liable for the same.

Under section 4J of this act, any other punishment could not be imposed, if any confiscation or penalty is imposed.

Under section 4L of this act, the owner of goods or materials should be served reasonable time for serving notice or hearing subject matter, before passing the order of confiscation or penalty imposition.

Under section 4M of this act, the aggrieved person can make an application to the officer of Additional Chief Controller to Chief Controller within forty-five days. It can extend another forty-five days after showing sufficient cause. No further appeal would be entertained unless the penalty was deposited.

Under section 5 of this act, any order could be made under this act or conditions of a license under the authority of foreign trade for the contravention, attempt to contravene, or abetment

[28] Imports and Exports (Control) Act 1947

to contravene. That person could be liable for confiscation or penalty under the Customs Act, 1962.

Under section 6 of this act, no court shall entertain any offence which is punishable under section 5 unless any complaint was made by the Central government. This complaint should be entertained by the Presidency Magistrate or the Magistrate of First Class[29].

Deputy Chief Controller of Export and Import filed a complaint against the petitioner under section 5 of the Exports and Import (Control) Act, 1947. Police also filed another complaint against him under section 338 of the Bhartiya Nyaya Sanhita, 2024 as well. The petitioner was a manager of Auto & Tools Agencies, and his partner was co-accused with him. The petitioner applied for an import licence to import new motor vehicle parts. The Joint Chief Controller also granted three licences. The petitioner applied for the endorsement of those licences. But, those were not permitted. Petitioner again applied for the duplicate of those licences. It was permitted. However, they imported some ordered goods before the grant of duplicate copies. The clearance agent of the petitioner cleared those from customs. There is a suspicion created in the mind of Custom authority. It was found that they placed the order by knowing the non-issuance of import licence by the Joint Chief Controller of Export and Import. This matter is tried before the Additional Chief Presidency Magistrate, Bombay High Court under section 207A of the Code of Criminal Procedure, 1973. The petitioner's application is dismissed[30].

FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992

There is a requirement of new legislature by the change of business environment. This enactment is the replacement of the Export and Import (Control) Act, 1947. This statute brought upgradation in international trading law. This act facilitates the import as well as expands export. It removes all incapacity of the previous enactment and gives efficiency in foreign trading. This act gives the Central Government ultimate power to regulate foreign trading. This act helps to sustain in global market as well as domestic consumers to consume goods at

[29] *Ibid*
[30] *Harnam Singh Sardar v The State and The Deputy Controller of Exports and Imports* (1973) CriLJ 1357

competitive price rates through import. This framework provides a standardized and developed foreign trade for economic growth[31].

Section 3(4) of this act defines the export and import which required no permission or license under this act unless the goods or materials are prohibited for foreign trading. The prohibited goods are defined under section 2(33) of the Customs Act, 1962. Any imported or exported goods need to comply with the conditions or provisions of the Customs Act, 1962, and be cleared by the officers of Customs by the procedure established by law. Export and import are governed under foreign trade policy under the Foreign Trade Act[32].

Every person should have an exporter and importer code for governing foreign trade in India. This code is mandatory for getting any benefit under the Foreign Trade Policy. This code can be cancelled for the violation of any provision of the Foreign Trade (Development and Regulation) Act, 1949. This cancellation happens only after the investigation and by giving appropriate notice. Foreign traders need to give reasonable time to be heard. The penalty is also imposed in such cases. This code is granted by the Director General of Foreign Trade (DGFT) under section 8 of this act and cancelled under section 9 of this act by giving the wide order of reason for suspension. No person can be involved in foreign trading after the suspension of this export and import code. Section 9A is inserted for imposing restrictions on imports to secure Indian domestic industrialists and manufacturers. Foreign trade is secured by imposing duty under section 8B of the Customs Tariff Act, 1975, and section 9A of this act. Sections 14A to 14E are incorporated to control the export of chemicals, organisms, materials, equipment, and technology.

This act gives the power to investigate and seize suspected exports and imports and violations of foreign trade. No person cannot conduct any foreign trading without authorization. The competent authority can impose a penalty for violation of guidelines of foreign trade policy. Any

[31] Abdul Hannan, 'Foreign Trade (Development and Regulation) Act, 1992' (*iPleaders*, 24 October 2017) <https://blog.ipleaders.in/foreign-trade-policy/> accessed 30 October 2024

[32] C Srivenkatesh Prabhu, 'The Foreign Trade (Development and Regulation) Act, 1992' (*Lawyerslaw.org*, 04 March 2015) <https://lawyerslaw.org/the-foreign-trade-development-and-regulation-act-1992/#:~:text=The%20Foreign%20Trade%20%28Development%20and%20Regulation%29%20Act%20was,Government%20to%20control%20Imports%20and%20exports%20of%20India.> accessed 30 October 2024

aggrieved person can also appeal to a higher authority against the order of a lower authority for further amendment[33].

FOREIGN TRADE POLICY

This policy is formulated for smooth regulation of foreign trading in India. It is a guideline regarding the directions and instructions for exporters and importers. It is renewed after every five years. Foreign trading connects India around the world as a global partner. This policy is prepared based on the principles of 'Atma Nirbhar Bharat' and 'Local goes global' to build up a business environment. This policy encourages the collaboration with State Government to increase exports. It will create business or employment opportunities for future generations. Previously, foreign trade is governed by the Export and Import Policy. Now, it is governed by the Foreign Trade policy which is formulated by the Director General of Foreign Trade under the Ministry of Commerce and Industry of the Government of India. It makes a strategy to enhance exports to maintain the economic balance of India. The main objective of this policy is to encourage exporters and restrict importers to reduce imports. Till now, Foreign Trade Policy, 2023 is the last policy[34].

This policy gives efficiency in the IT sector by reducing formalities. This policy gives export benefits to small and medium enterprises by reducing fees and simple procedures. Faridabad, Mirzapur, Moradabad, and Varanasi are called Towns of Export Excellence (TEE). These increase the export of products such as handlooms, handicrafts, and carpets. The TEE provides access to promote funds, and benefits of Common Service providers under the support of the Export Promotion Capital Goods Scheme (EPCG). Foreign trading increases the skills of Indian trading for economic growth. The District as Export Hub encourages export at the district level. This policy complies with international treaties to ensure the regulation of the export of special chemicals, organisms, materials, equipment, and technologies. This policy also lays down the simplified procedure for e-commerce. Dak Niryat Facilitation was established for artisans, weavers, and MSMEs to export their products to the international market. Capital goods are imported under the EPCG scheme to produce quality goods. Under this scheme, goods are

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[33] 'The complete guide to Foreign Trade (Development and Regulation) [FTDR] Act 1992' (*CSJM University*) <https://gyansanchay.csjmu.ac.in/wp-content/uploads/2021/12/Foreign-Trade-Development-and-Regulation-FTDRAct-1992.pdf> accessed 30 October 2024

[34] 'Foreign Trade or Export Import (EXIM) Policy in India PDF: Check Definition, Objectives, Impact and More' (*Guidely*, 24 December 2024) <https://guidely.in/blog/foreign-trade-policy> accessed 30 October 2024

imported at zero rates of customs duty. PM MITRA scheme added for expansion of benefit of this scheme. This scheme exempts the dairy sectors and products of green technology. Advance Authorisation Scheme provides the duty-free import for manufacturing. These benefits are available for the 2-star and above status holder. This policy enables the trading of restricted items to create a merchandise trade hub for the international market. Amnesty Scheme lays down to provide relief to the exporter from the burden of protocols along with interest. Exporters need to pay the interest for the registration of pending cases.

Foreign Trade Policy transfers entire formalities and legal procedures into digital mode by bringing technologies which provide efficient custom clearance. It shorted the release time of cargo. This policy has some prohibitions regarding imports. It only allows the imports of life-saving drugs or medicines and Rakhi[35].

This policy facilitates the ease of export and import to involve more persons in international trading. It encourages innovation, teamwork, etc. This policy provides benefits to encourage exporters for economic progress as well as creates a strong presence in the global market.

SUGGESTIONS AND RECOMMENDATIONS

From the above discussion, it can be said that foreign trading has a significant impact on economic development. Pre-independence period, only British traders are involved in the business as well and goods are imported from British colonies. Inter-war period many Indians are also involved in trading. The Defence of Indian Rules, 1939 restricted the import of sixty-eight products. This rule also continued this import control at the end of the Second World War. The Government of India Act, 1935 gave the power to enact The Export and Import (Control) Act, 1947 to replace the Defence of Indian Rules, 1939. Post-independence, the Indian Government took several measures for industrial establishment and business development. The government enforced the Imports (Control) Order 1955 for issuing import licenses against imports. Several amendments were made to control and develop foreign trading. The Exports (Control) Order 1988 brought for economic liberalization. Foreign Exchange and Regulation Act, 1973 regulates the currency and securities in foreign trading. The Foreign Trade (Development and Regulation) Act, 1992 came into force to meet the development of the business

[35] Annapoorna, 'Foreign Trade Policy of India 2023: Objectives, Highlights & Impact' (*ClearTax*, 19 June 2024) <https://cleartax.in/s/foreign-trade-policy-2023> accessed 30 October 2024

environment[36]. Foreign trading has two components import and export. From the above, it is clear that export is more benefited than import. Import generates negative consequences in the economy. Recent Foreign Trading Policy provides a lot of benefits to the exporters. The government lays down various schemes for the encouragement of ground-level traders, MSME sectors, etc. This policy also restricts the importers in foreign trading. Import also disturbs the banking system of the country. Indian taxing system also provides concessions to the exporters. Importers have no such kind of concessions. There is a chance of dispute in international trading. Indian Government also entered into a Double Tax Avoidance Agreement to provide benefits in foreign trading. The Arbitration and Conciliation Act, 1996 comes into force to provide speedy settlement of disputes. Previously, traders needed to follow the cumbersome procedures. Now, they can apply to the Supreme Court for the enforcement of arbitral awards[37]. E-commerce provides a significant change in foreign trading. E-commerce brings ease to cross-border trading. These facilities have both advantages and disadvantages. Order can be placed very easily through these facilities. Products are also reached within time. There is also a chance of cheating and fraud. Consumers suffer from these issues severely. Various laws are enforced for these purposes. Various difficulties are faced for investigation purposes. Still, these issues are unresolved. Cooperation is required between various countries for overall development. India entered treaties with other countries and prioritized customs to ensure safe business in e-commerce. More laws should be developed to build up trust and confidence in foreign trading.

CONCLUSION

Foreign is important for various reasons. Foreign trading is a factor in economic prosperity. Foreign trading not only expands business but also generates income opportunities. Foreign trading exchanges the skills between the countries. Foreign trading laws are improved with the development of the business environment. Foreign trading is important for the employment generation. It helps to create a significant presence in the global market. The foreign trading policy provides guidelines for importers and exporters. Various laws are implemented to ensure safe trading and encourage businessmen of all sectors. Importers are restricted to securing the domestic market. Thus, the Government tries to create India a huge platform of merchandise trading materials in the international market. India is a huge populated country. All are not very

[36] *Handbook on Foreign Trade Policy and Guide to Export and Import* (Sahitya Bhawan Publications 2008)
[37] Arbitration and Conciliation Act 1996, s 31

much aware of it. The procedure of foreign trading and related laws should be simple. It will be clear to all. So, small, medium, and large sectors are encouraged in foreign trading.