MEIS And It's Successor RoDTEP

JUNE 09, 2023

By Yash H Khandvilkar

Abstract:

AN incentive plan known as the Merchandise Export Incentive Scheme (MEIS) was developed in order to encourage businesses to export their goods. Exporters were eligible to receive their incentives in the form of duty credit scrips. The MEIS, like most of the other schemes was successful domestically and internationally but was with its own lacunae and operational problems which were addressed and taken care of by the Remission of Duties and Taxes on Exported Products Scheme (RoDTEP) subsequently. This article gives a retrospective review of the MEIS and few general key issues with reference to the major stakeholders of the scheme. It also provides a statistical overview and a conclusion to the working of the MEIS and its implications upon the international trade carried on under the scheme.

Introduction:

The Merchandise Export Incentive Scheme (MEIS) was created as an incentive programme for the export of products. Exporters were eligible to receive their incentives in the form of duty credit scrips. The Foreign Trade Policy (FTP) for the period 2015-2020 included the MEIS as one of its provisions and both, the DGFT (Directorate General of Foreign Trade) and the Ministry of Commerce and Industry were responsible for the notification and implementation of the MEIS. It was intended to take the place of a number of export incentive programmes that offered a variety of duty credit scrips including Focus Market Scheme (FMS), the Focus Product Scheme (FPS), the Vishesh Krishi Gramin Udyog Yojana (VKGUY), the Market Linked Focus Product Scheme (MLFPS), and the Agri Infrastructure incentive scheme. MEIS intended to encourage more investment in agricultural infrastructure. All of the duty credit scrips that were distributed through the previous incentive programmes were moved over to the MEIS.

Internationally, as a direct result of the United States of America's challenge of the Indian export subsidies granted under the MEIS, at the World Trade Organisation, Remission of Duties and Taxes on Exported Products Scheme (RoDTEP) replaced the MEIS. Following the decision that went against India by the WTO dispute panel, the RoDTEP was developed to ensure that India continues to comply with WTO regulations while also providing support for India's low-volume exports of commodities. Certain taxes, fees, and levies, such as the value-added tax (VAT) on gasoline used in the transportation of export goods, the mandi tax, and the tariff on energy used for manufacturing, among other things, were not returned or reimbursed for exports under the MEIS. The new RoDTEP scheme is intended to ensure the refund of duties and levies imposed by the central government, the state government, and the local government. These duties and levies include all embedded taxes, central and state taxes on fuel (petrol, diesel, CNG, PNG and coal cess, etc.) used for transportation of export commodities, duty levied by the state government on electricity used in the manufacture of export products, toll tax and stamp duty on import-export documentation and many more.

Lacunae and Challenges in MEIS:

MEIS was checkered with multiple challenges that were faced by both the Government & the exporters. Certain exporters have tried to take undue advantage of the MEIS to maximise their profits, all at the cost of the Government, which on the other hand tried dealing with said problems by clamping down on any such unfair practices by means of Litigation. A few of these challenges are as below:-

1. **Free-On-Board Export Value:** MEIS applies to products declared for the scheme's purposes. The incentives under the schemes are calculated as a percentage of 2%, 3%, or 5% of the realised FOB (free-on-board) export value in free foreign exchange or the FOB export value as per shipping invoices in free foreign exchange. The incentives are allotted through a MEIS duty credit scrip. FOB was, therefore, the primary factor in determining the value of the Duty Scrips.

2. **Valuation:** Commodity export valuation was utilised to take full advantage of the MEIS and consequently for receiving duty credit scrips which further effectively reduced the total cost of such commodities. Evidently, the common practice of over-valuation was observed among a large number of exports that lead to high prices of exported commodities and subsequently followed by high value of incentives received by exporters. Exporters justified this by providing proof of Cost Break-up Analysis including cost accounting heads of production cost, transport & logistics cost, marketing & branding expenses, premium pricing strategies etc. along with Market Surveys of contemporaneous exports which reinforced their valuation claims in real-time as per market conditions unless the same was contradicted outright by the Revenue in case of excessively dubious claims that were struck down by well-researched and undeniable evidence using National Import Data Base (NIDB) data, detailed coherent Surveys and reasoning coupled with Expert Opinions and multiple precedents from Customs, Excise & Service Tax Appellate Tribunal (CESTAT) and the Hon'ble High Courts and Supreme Court. On the flip-side, this also allowed extensive discretion to the Officers of the Revenue on-ground thus leading to ambiguity and at times, prejudice even before the matters reached the Tribunal or the Courts.

3. **Declaration:** Appropriate declaration under the specific commodities allowed by the MEIS was meant to be the key to the export incentives provided under this scheme. But as it turned out, the Revenue on multiple occasions observed discrepancies between the declaration and the actual commodities exported being in the nature of similar or parallel products and/or quality differences between the declared commodities and the exported commodities. Due to the practical limitations upon examination by officers of the Revenue pertaining to each and every commodity exported owing to their sheer quantity, stuffing and packing methods of containers and the randomised system of detailed scanning, unless specific information is received from Intelligence wings and suspicions of the officers themselves, such discrepancies often went unnoticed. In my opinion, better examination methods using fast, efficient and novel technologies can help reduce such problems in the near future.

4. **Frauds:** Outright frauds committed by certain exporters further shook the belief of egalitarian distribution of the incentives. Misdeclaration in terms of quantitative as well as qualitative aspects of the exports can lead to receipt of the incentives in a fraudulent and unfair manner. In certain cases, it was observed that overvaluation was conjugated with misdeclaration where the commodities were, in fact, absent or under quantified so as to derive maximum benefits at the

risk of invoking civil and criminal proceedings under The Customs Act 1962, The Code of Civil Procedure 1907, Code of Criminal Procedure 1973 and The Indian Penal Code, among others. The Revenue also had ad-hoc powers pertaining to suspension or cancellation of the Import Export Code (IEC) and other licenses but this also hampered the Principles of Natural Justice in case of mis-judgement of bonafide exports and genuine mistakes such as packaging mistakes, packing list errors, human error by in-house staff or Customs House Agents (CHA)/Customs Brokers (CB) etc.

5. **Role of CHAs/CBs:** A Customs Broker is the intermediary between the Indian customs and the parties trading internationally by means of Imports and Exports. A licence must be obtained from the National Academy of Customs, Indirect Taxes and Narcotics (NACIN) by any individual who functions as an importer-exporter's agent for the purpose of conducting business. To regulate the licensing of customs brokers, the Government of India (GoI) introduced Customs Brokers Licensing Regulations (CBLR, 2018). The regulations are issued in accordance with the Aadhar Act of 2016, the Companies Act of 2013, the Finance Act of 1994, and the CBDT Act of 2017. Any business involving the arrival or departure of assignments, the import and export of goods at any Customs unit, including audit, shall abide by the rules. No person may conduct business as a customs merchant without the licence issued in accordance with the regulations. Hence, the CBs who are trusted by and accountable to the department and the Government, play a pivotal role as a filter in ensuring genuine compliance and avoidance of any discrepancies, but the same trust can be misused to gain dis-proportionate benefits. It could be argued that the Revenue and the Judiciary shall maintain a scrupulous and heavy-handed approach to set precedents upon the misdoings by these agents due to the accountability they owe to the Government keeping in mind the practical limitations upon the CHAs/CBs regarding any malafide intentions of the parties or the respective Import Export Code holders.

6. **Bonafide Exports & CAG Audit report:** Bonafide exports with the right compliances by genuine exporters in the initial phase of the scheme gave impetus to a large number of exporters entering the said segment which gave a huge boost to the exports as envisioned in the genesis of the MEIS but the same was interlaced with numerous malafide players in the market. As per the CAG Audit report:

> *"Analysis of Pan India data received from DGFT for the period April 2015 to October 2018 revealed that 5,94,653 (5,84,650 MEIS and 10,003 SEIS) scrips amounting to Rs. 76,416 crore were issued by 38 RAs and Nine Development Commissioners (DCs) of SEZs.*
>
> *In addition to Pan-India data analysis, in view of prevalent manual processes, a sample of 25 RAs (66 per cent of total RAs) and seven DC offices (77 per cent of total DC offices) was selected for this audit to examine the manual checks being exercised by the RAs and DC offices. These 32 units covered 5,53,726 (5,43,803 MEIS and 9,923 SEIS) scrips amounting to `72,743 crore. The percentage scrips handled by the 32 selected units in terms of value and number worked out to 95.19 and 93.12 respectively (Appendix 2).*
>
> *Further, in these selected units, 6,205 Scrips (5747 MEIS Scrips and 458 SEIS Scrips), representing 1.7 per cent of total scrips in these units, were selected for detailed examination. Audit also selected Customs field offices from where exports relating to these sampled*

scrips were effected (Appendix 3).

Results of data analysis carried out on Pan-India data and the audit findings based on test check carried out in selected units and sampled scrips were suitably included in the report."

7. **Statistical Overview:** The Comptroller and Auditor General's Audit report on the MEIS throws light upon the statistical results of the MEIS. From Financial Year 2014–15 (FY 15) to Financial Year 2019 (FY 19), an analysis of incentives offered for exporting goods and services showed that amounts forgone in the form of incentive scrip increased from 19,031 crore to 744,305 crore. The pro-rata tax expenditure for earning foreign exchange under MEIS and prior schemes dropped to 3.14 percent in FY 19 from 3.15 percent in FY 15. SEIS Scheme information (Scrips, duty credit, and FOB value of exports) for FY 16 and earlier scheme (SFIS) were not provided in Director General of Foreign Trade (DGFT), Management Information System (MIS) Report, so pro-rata tax expenditure could not be calculated. The following table from the CAG Audit report shows that scrips issued grew from 1.80 lakh in FY 15 to 3.02 lakh in FY 19:

Year	Criteria	FY 15	FY 16	FY 17	FY 18	FY 19
Five pre-existing Schemes	No. of Scrips	180002	123858	32053	9250	4159
	Duty Credit	17731	11028	2337	702	550
	FOB (₹ in cr)	562589	334247	64687	21268	20775
MEIS	No. of Scrips		31375	159446	218402	298350
	Value of Scrips (₹ in cr)		4104	18117	25994	39298
	FOB (₹ in cr)		138014	688473	978286	1246772
Total of MEIS and pre-existing schemes	No. of Scrips	180002	155233	191499	227652	302509
	Value of Scrips (₹ in cr)	17731	15132	20454	26696	39848
	FOB (₹ in cr)	562589	472261	753160	999554	1267547
Ratio of scrip value to FOB		***3.15***	***3.2***	***2.72***	***2.67***	***3.14***
YoY of ratio of scrip value to FOB		***(-) 12.25***	***(+) 1.58***	***(-) 15.00***	***(-) 1.83***	***(+) 17.60***

<u>Conclusion:</u>

The objective of the Merchandise Exports from India Scheme (MEIS), which was introduced in the Foreign Trade Policy (FTP) 2015-20 with effect from April 1, 2015, was to offset the infrastructural inefficiencies and associated costs involved in the exporting of goods/products which are produced/manufactured in India, including products produced/manufactured by the MSME Sector which was accomplished with the help of the Foreign Trade Policy (FTP) 2015-20. To boost Indian exports, the new RoDTEP automates GST Input Tax Credit (ITC) starting January 2020 and will compensate all Central/State/Local taxes/duties/levies incurred during manufacturing and distribution that are not currently repaid under any plan. The Ministry of Finance had formed a committee under former commerce and home secretary GK Pillai to draft RoDTEP rates that will reimburse exporters for all embedded taxes and local levies on inputs. It can be inferred that initially there was the issue of insufficient data being available for the RoDTEP to replace the MEIS due to the fact that the migration to and implementation of RoDTEP took place amidst the COVID-19 pandemic period when industries were facing obstacles in providing the requisite data due to frequent local lockdowns, a heavily affected supply-chain and labour / manpower problems; it was also the lack of conveyance and ineffective auditors, all of which needed a holistic approach which has been considered and accordingly tweaked in recent times so as to make the new RoDTEP scheme more efficient in replacing the MEIS and to be an updated, internationally compliant, functionally efficient and comprehensively beneficial replacement to the predecessor.

[The author is a Judicial Intern at Bombay High Court and the views expressed are strictly personal.]

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

Click to Print **Click to Close**