



Newsletter

Sharp View

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SEPTEMBER 2024



September is part of the monsoon season in India, which is crucial for agricultural harvest. The rains from July – September are determinants of good cultivation and harvest of Kharif crops like rice, maize and pulses. September witnesses various important festivals like Ganesh Chaturthi, Onam, Navaratri and Durga Pooja. Prominent days like Engineers' Day and 'World Tourism Day' are observed throughout the country.

Manufacturing and industrial output often see an uptick as companies prepare for the festive season demand. This period is crucial for sectors like automobiles, electronics, textiles, and consumer durables, which increase production to ensure sufficient stock. This is also an important period for exports as global demand tends to pick up ahead of the holiday season in major markets like the US and Europe.

On 3 September 2024, the World Bank published its 'India Development Update' and has forecasted India's real GDP growth for FY 2024-25 at 6.4%. The National Statistical Organisation (Government of India) has estimated that the economy has grown at the rate of 6.7% for Q1 of FY 2024-25 in real GDP terms, the major contributors being finance, real estate and professional services.



GRC

Employee welfare and well-being: A crucial aspect of ESG in India

Employee welfare and well-being play a crucial role in the background of increasing ESG importance in India. Employee welfare not only helps an organisation attain its sustainable development goals but also ensures that it is regulatorily compliant with labour and personnel laws. Ms Aarti Joshi (Pune office) discusses the key aspects of employee well-being, a few case studies and the possible challenges in implementing these initiatives in the Indian scenario.

Employee welfare and well-being: A crucial aspect of ESG in India

Introduction

In the evolving landscape of corporate responsibility, Environmental, Social, and Governance (ESG) frameworks have gained significant traction globally. In India, the emphasis on the 'Social' aspect of ESG, particularly employee welfare and well-being, is increasingly recognized as a vital component of sustainable business practices. Indian companies are now more than ever focused on creating work environments that not only comply with regulations but also foster a culture of care, inclusivity, and holistic well-being.

Understanding ESG: The social pillar

ESG encompasses a broad range of criteria that businesses use to measure their sustainability and societal impact. While the 'Environmental' and 'Governance' pillars focus on sustainable practices and ethical management, the 'Social' pillar emphasizes the importance of relationships with employees, customers, suppliers, and the communities in which companies operate.

In India, employee welfare and well-being are integral to the social dimension of ESG, reflecting the growing awareness that a healthy, motivated, and engaged workforce is essential for long-term success. This focus aligns with global trends where businesses recognize that their sustainability efforts are deeply intertwined with how they treat their employees and contribute to societal well-being.

Employee welfare and well-being in India

India's corporate sector has traditionally emphasized employee welfare, but the concept of well-being has expanded beyond basic benefits to include mental, physical, and financial health. Companies are increasingly adopting policies and practices that support their employees' overall well-being, recognizing that a happy and healthy workforce leads to higher productivity, lower turnover, and a stronger corporate reputation.

Key aspects of employee welfare and well-being

1. Health and safety

Workplace safety: Ensuring safe working conditions is fundamental. Indian companies, particularly in sectors like manufacturing, construction, and mining, are focusing on stringent safety protocols, regular health check-ups, and providing adequate protective equipment. For example, a leading Indian multinational company, engaged in EPC projects, Hi-Tech manufacturing and services implements comprehensive safety training programs and regular audits of their sites to maintain high safety standards.

Health programmes: Many organizations offer health insurance, regular medical camps, and wellness programs, yoga sessions for employees as well as contract labourers. Some of the renowned diversified Indian multinational companies invest in

–Preventive care, i.e. health check-ups

–Fitness programmes

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- Ergonomic assessments
- Mental health support services
- Wellness programmes to promote healthy lifestyles

2. Mental health initiatives

Counselling services: Certain leading software and IT companies have introduced employee assistance programs that offer confidential counselling services to employees and their families. These services help employees manage stress, anxiety, and other mental health issues, promoting a supportive work environment.

Awareness campaigns: Mental health awareness campaigns are gaining momentum, encouraging open discussions about stress, anxiety, and depression at the workplace. Many leading Indian companies in the IT and ITES sector have launched 'mental health initiatives like 'Mental Health First Aid' to educate employees and reduce the stigma associated with mental health issues.

3. Work-life balance

Flexible work arrangements: The COVID-19 pandemic accelerated the adoption of flexible work policies. Leading companies in IT, ITES and consulting sector have implemented hybrid work models, allowing employees' to balance their professional and personal lives more effectively. This flexibility not only enhances employee satisfaction but also increases productivity by reducing burnout.

Leave policies: Enhanced leave policies, including paternity leave, mental health days, and sabbaticals, are becoming more common, reflecting a deeper understanding of employees' diverse needs. For instance, a leading software company in India offers extended parental leave and encourages employees to take time off for personal well-being without fear of career repercussions.

4. Financial wellbeing

Employee Stock Option Plans (ESOPs): ESOPs are a popular method of enhancing financial security and aligning employee's interests with the company's success. Companies offer ESOPs as part of their compensation packages, providing employees with a stake in the company's growth.

Financial planning assistance: Some companies provide financial literacy programs and planning services, helping employees manage their finances better and plan for the future.

5. Diversity and inclusion

Inclusive workplaces: Indian firms are increasingly focusing on creating inclusive workplaces. For instance, creating a more equitable environment for women. The initiatives include mentorship programs, diversity training, and support groups that foster a sense of belonging among diverse employee groups.

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Equal opportunities: Companies are also committed to ensuring equal opportunities for career advancement and leadership roles, regardless of gender, ethnicity, or background.

6. Professional development

Training and Education: Continuous learning opportunities are essential for employee growth and satisfaction. Top IT giants invest heavily in training programs, certifications, and educational reimbursements to help employees advance their skills and careers.

Career pathing: Clear career progression paths and mentorship programs help employees visualize their future within the company, increasing their motivation and loyalty.

7. Employee engagement

Recognition programs: Regular recognition and reward systems boost morale and encourage high performance.

Feedback mechanisms: Open channels for feedback, such as regular surveys and suggestion boxes, allow employees to voice their concerns and contribute ideas for improvement. This participatory approach ensures that employees feel valued and heard.

Case studies

1. A leading Indian company in the iron and steel sector has long been a pioneer in employee welfare. Their initiatives include comprehensive health and safety programs, mental health support, and community welfare activities. Additionally, it invests in employee development through training programs and leadership development initiatives, ensuring that employees have opportunities to grow and succeed within the organization.
2. One of the largest Indian automobile manufacturer has integrated employee well being into their broader ESG strategy. Their employee welfare program encompasses various initiatives including fitness and relief from the workplace stress, maintaining physical and mental health, promoting work-life balance, and fostering a culture of continuous learning and development.
3. A renowned Indian IT/ITES corporate provides comprehensive health coverage, mental health counselling and flexible working arrangements to its people. It also emphasizes financial well-being through ESOPs and financial literacy programs.
4. One of the largest Consulting and IT Indian firms implemented a range of employee wellbeing initiatives as part of its ESG strategy. These included yoga and meditation sessions, and fitness challenges. Through generous leave policies and flexible working arrangements, it ensures and prioritises work-life balance.

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The future of employee welfare in India

As India continues to grow as a global economic powerhouse, the importance of employee welfare and well-being as part of ESG frameworks will only increase. Companies that prioritize these aspects will not only meet regulatory requirements but also gain a competitive edge by attracting and retaining top talent, enhancing employee engagement, and building a positive corporate image.

Certain challenges and solutions in implementing

While the benefits are clear, implementing effective employee welfare and well-being programmes in India comes with its own set of challenges:

1. **Cultural diversity:** India's diverse workforce requires tailored well-being programs that cater to different cultural, regional, and individual needs. Companies must design inclusive programs that respect and celebrate this diversity.
2. **Resource allocation:** Smaller companies may struggle to allocate sufficient resources for comprehensive well-being programs. The solution would be to prioritize key well-being initiatives with the most significant impact. Leveraging partnerships with wellness providers and utilising technology to deliver cost-effective solutions, such as virtual fitness classes or mental health apps may prove a cost-effective solution.
3. **The stigma around mental health:** Despite growing awareness, stigma around mental health issues persists, preventing employees from seeking help. The solution can lie in fostering an open and supportive culture where mental health is openly discussed and prioritised. Provide training for managers to recognise signs of mental distress and encourage a stigma-free environment through continuous education and awareness campaigns.

Conclusion

The integration of employee welfare and well-being into ESG strategies is not just a compliance but a critical factor in building a sustainable, resilient, and inclusive business environment. As the corporate landscape in India evolves, prioritizing employee welfare and well-being will remain central to the businesses aiming to thrive in a competitive and dynamic market. By focusing on comprehensive health and safety measures, mental health initiatives, work-life balance, financial well-being, and diversity and inclusion, Indian companies can set new standards for employee care.



TAXATION

Mere non-submission of 'Bill of Export' cannot be treated as non-fulfilment of export obligation, if supply to SEZ unit is otherwise proved

In Phoenix Industries Limited Versus UOI, DGFT & OTHERS, the Bombay HC decided that a mere failure to furnish 'Bill of export' by the assessee, who has supplied goods/services to a unit in a special economic zone will not render such supply as 'non-exports.' Mr. Shouvik Roy (Mumbai office) summarises this judgement.

Taxation

Mere non-submission of 'Bill of Export' cannot be treated as non-fulfilment of export obligation, if supply to SEZ unit is otherwise proved

Bombay HC Judgment dated 19 August 2024

Phoenix Industries Limited Versus UOI, DGFT & OTHERS

Summary

The Bombay High Court has held in a recent judgment that if the party (claiming to be an exporter) is able to show proof of supply to the Special Economic Zone (SEZ) Unit, then solely mere non-submission of the 'Bill of Export' cannot be treated as non-discharge of proof of export obligation (EO).

The Division bench of Justice K. R. Shriram and Justice Jitendra Jain has observed and ruled that failure to produce a copy of the assessed bill of export in respect of the supplies made to SEZ would not necessarily result, by itself, in establishing that there was a failure to discharge the export obligation where the party can establish the supplies made to SEZ by the production of copies of ARE-1.

Facts

- The petitioner/assessee is in the business of manufacturing, refining, and exporting non-ferrous metal alloys from its units situated in Dadra-Nagar Haveli, Silvassa.
- The petitioner had received purchase orders from Ideal Fasteners (India) Pvt. Ltd., located in SEZ, for the manufacture and supply of zinc alloy ingots (Zamak-5).
- The petitioner procured an advance authorization ('AA') for the purpose of duty-free import of goods. The AA stated that the said imports were to be used in the export of final products Zinc Alloy Ingots (Zamak-5 brand name) to its customers located in the SEZ.
- The petitioner was permitted to import goods of CIF value against which an export obligation of FOB value was under the AA. As claimed rightly and lawfully by the petitioner, the supply of goods to units located in the SEZ is 'deemed export' and treated as a valid discharge of the export obligation for the purpose of the AA in terms of Foreign Trade Policy ('FTP').
- The final products of the petitioner were exported or supplied to its customer within the SEZ, but due to an inadvertent error while supplying the goods, neither the petitioner nor the buyers on behalf of the petitioner prepared and filed the 'Bills of Export' corresponding to the said supplies made by the petitioner under the said licences.
- However, except for the Bill of Export, Petitioner had supplied all other documents, including the application in ARE-1, duly assessed by the proper officer having jurisdiction over the factory of Petitioner and the authorised officer having jurisdiction over the units located in SEZ. There was also no dispute that the supplies had indeed been made to the petitioners customer within the SEZ .
- As the export obligation period expired, the petitioner sought an extension to the Additional Director General of Foreign Trade, which was granted, and the licence validity date was amended from 24 June 2017 to 23 December 2017.

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Mere non-submission of 'Bill of Export' cannot be treated as non-fulfilment of export obligation, if supply to SEZ unit is otherwise proved

- The Petitioner also requested that the supplies it made to the SEZ, be treated as valid discharge and fulfilment of its export obligation (EO) as stipulated in AA, despite not being able to furnish only the 'Bill of Exports', by seeking redemption of the AA, vide its application dated 26 November 2018.
- The request of the petitioner was not accepted by Policy Relaxation Committee ('PRC'), and after a few personal hearings and a few deficiency letters, the petitioner received the order by way of the minutes of the meetings dated 21 June 2022 and 26 June 2023. By the minutes, the Committee decided to reject the petitioner's request to condone the procedural lapse in not preparing the 'Bill of Exports' and to consider documents in lieu of the 'Bill of Exports' towards the fulfilment of the EO against AA.
- The petitioner then challenged (before the HC in a Writ Petition) the legality and validity of decisions taken by the PRC in its meeting rejecting the petitioner's request, by ruling that the 'Bill of Export' is a mandatory document in terms of FTP for discharge of the Export Obligation (EO) of AA, even in the case of supplies to the SEZ unit.
- The Petitioner challenged in its petition, the legality of the action and decision on part of the Department/ Govt, in not accepting the supplies made by Petitioner to units located in the SEZ in discharge of EO against AA issued to Petitioner solely on the ground of non-submission of 'Bills of Export', despite other substantive evidence on record substantiating Petitioner's claim of export, .
- The petitioner also relied upon the Circular no 4/2024 dated 3 June 2024 issued by Director General of Foreign Trade, and earlier judgments of the Bombay HC in the case of **Larsen & Toubro Ltd vs UOI**, and **Eletromech Material Handling System (I) Pvt Ltd vs UOI**. All of these laid down that sole failure of submission of Bill of Export cannot, by itself, vitiate discharge of export obligation, if it is otherwise proven that the supply indeed took place to SEZ.

Ratio Decidendi of Judgment

The Honourable Bombay HC, while allowing the petition, directed the petitioner to submit the other documents within two weeks. The Court directed that the same will be examined by the Department, and if the documents are in order, the Export Obligation Discharge Certificate (EODC) should be issued within four weeks of the submission of the documents. If the Department has any queries, it shall give a personal hearing, and notice shall be communicated at least 3 working days in advance.

Implications

The above judgment is beneficial to exporters who supply to SEZs in similar circumstances, as it lays down the law that a mere technical infraction in non production of a single document like 'Bill of Exports' does not make the export invalid, where other documents are produced as evidence of the export supply.

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