

Caught between And/Or Applicability of IGCR Rules, 2022 for Specified End Use



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The Government of India has introduced new Customs (Import of Goods at Concessional Rate of Duty or for specified end use) Rules, 2022 (hereinafter referred to as the IGCR Rules), which have superseded the 2017 rules on IGCR. These rules have come into force from 10th Sep 2022 for which the notification was released on 9th Sep. Important point to note is that it was on 1st Feb 2022 itself when major changes were brought in IGCR Rules 2017 which were made effective from 1st March 2022. So, these are very frequent changes happening and now with the new rules in place, it has completely superseded these rules as well. In Feb 2022, there were major changes introduced in the procedure which was completely made online for better tracking purposes and where the chances of misuse were tried to be minimalised.

In these new rules, the concept of online controls and filing of monthly returns has been kept intact. The major change that is sought to be brought by these rules is the 'introduction of IGCR for specified end use'. Till now, the applicability of IGCR was restricted to the importers who intended to import the goods for use in their manufacturer or for provision of outward service where the notification required for specific compliance. But now, the government seeks to expand the scope for specified end use other than manufacture or provision of output service which is typically trading wherein as per the provisions also, the importer can import the goods, avail the benefit, comply with IGCR and sell the goods to the 'specified end use recipient'.

As per Rule 2, IGCR rules are applicable where –

- a. *A notification provides for observance of these rules;*
- b. *An importer intends to avail the benefit of any notification and such benefit is dependent upon the use of the goods imported being covered by that notification for the manufacture of any commodity or provision of output service or being put to a specified end use.*

Thus, there are two situations prescribed where the new IGCR rules would be applicable. It is interesting to note that it does not specify whether both the conditions are to be simultaneously satisfied or getting covered under any one situation would suffice for the applicability of IGCR rules. Hence, the moot question is whether the above two conditions have to be read with the conjunction "or" or with "and".

Repercussions of reading with "or"

The plain reading of Rule 2 as mentioned above indicates that any one of the conditions would suffice for the applicability of IGCR rules. This is specifically in the light of the fact that in clause (b), it refers to the importer availing the benefit of **any** notification. It does not directly or indirectly give any reference towards the fact that the notification should be the one which provides for observance of these rules. This is specially in the light of the fact that when the two conditions do not use any conjunction.

If we finally settle with "or", it has its own set of grave repercussions. It would typically tantamount to mean that wherever the import of an item is subject to an end use condition for taking the benefit of the complete exemption or partial exemption, the importer would have to comply with IGCR rules without there being a specific condition in the benefit notification that IGCR rules need to be followed. There are a number of exemptions in customs law which provide for end use like Sr. No. 451B of Notification No. 50/2017-Cus dated 30th June 2017 as amended from time to time, provides for "*coffee roasting, brewing or vending machines for use in the manufacture or processing of coffee*". There is a partial exemption on this entry and is subject to without any conditions. There are many other exemptions like this. So are we saying that in all such situations, the IGCR rules will have to be complied with as there is an end use attached to it. Also, a moot question arises, who will decide whether there is a specified end use or not. Can situations like import of goods under advance authorisations or EPCG also come under IGCR rules for the purposes of compliance since imports under these schemes also is for a specified end use. This will create complete chaos as department officers will start demanding the compliance of IGCR rules in all such situations.

This could even interpretational issues, wherein for some exemption, the department may say that there is a specified end use and the importer may be of the view that there is no specified end use.

Repercussions of reading with "and"

Reading both the conditions with "and" is no simple. It has its own set of problems. So, if we read them together to say that both the conditions should be simultaneously satisfied, then to cover the exemptions and benefits which have the specified end use, there needs to be specific amendments in all such notifications. Without such amendments, the new rules are of no good use. So there should be a plethora of amendments carried out in order to effectively bring those importers under IGCR rules. As of now, only two notifications i.e. 56/2000 and 57/2000 have been amended which are in respect to gold and other precious metals. No other amendments have been carried out till now.

In fact, the earlier version of IGCR rules was a little differently worded but it required both the conditions to be satisfied. However, the application of IGCR also was narrower. It appears that government has some thought process while introducing "specified end use" or that the goods can be sold to specified end use recipient. We believe the conditions should be read as "and" and the government should accordingly bring out changes in those notifications where it is of the view that goods can be transferred to specified end user who may be a manufacturer also. This would avoid any type of ambiguity in interpretation and all possible disputes while interpreting such provisions. Else, availing of any benefit of any exemption notification where there is any specified use mentioned for that product, would become a herculean task.

To summarise, there are still lot of clarifications needed in new IGCR rules and one issue has already

been pointed above. There are many other issues in which we are not going in detail as of now. We hope that government brings clarity and provide a better framework for "Ease of Doing Business" and "Make in India" since all these changes are ultimately aimed to the task.

We hope some clarity is provided on this by the government either by way of amendment to the rules or by way of issuance of some clarificatory circular.

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