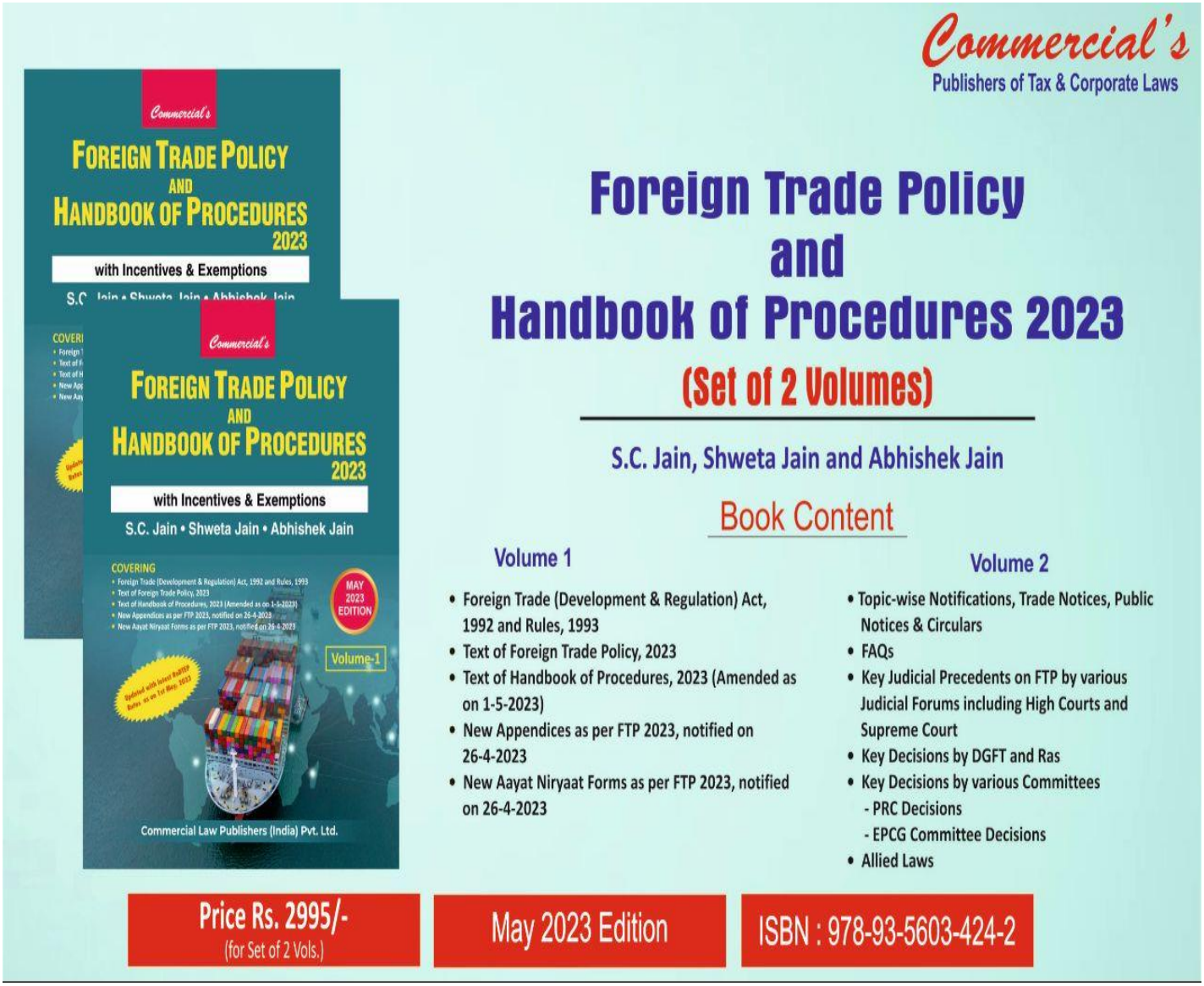
INDIRECT TAX NEWSLETTER

May, 2023 (updated till 30.04.2023)



We are proud to announce the launch of our new book titled **"Foreign Trade Policy and Handbook of Procedures, 2023"** published by Commercial Law Publisher and authored by SC Jain (Managing Partner), Shweta Jain (Partner) and Abhishek Jain (Partner) at RSA Legal Solutions. Key highlights of the book are:

- Foreign Trade Policy, 2023
- Handbook of Procedures, 2023
- Updated Appendices as per FTP, 2023
- Updated Aayat Niryaat Forms as per FTP, 2023
- Foreign Trade (Development and Regulation) Act, 1992 and Rules 1993
- Topic wise Notifications, Trade Notices, Public Notices and Circulars
- FAQs
- Key Judicial Precedents by High Courts and Supreme Court
- Key decisions by DGFT, RAs and various committees
- Allied Laws

The link to purchase the book is:

https://commerciallawpublishers.com/home/product_view/1141/Foreign-Trade-Policy-and-Handbook-of-Procedures-

ATTENTION

IEC HOLDERS!

ENSURE YOUR IEC IS UPDATED ELECTRONICALLY EVERY YEAR DURING APRIL-JUNE PERIOD TO AVOID DE-ACTIVATION.

BENEFITS OF UPDATING YOUR IMORTER EXPORTER CODE (IEC)

- Avoid deactivation of your IEC
- Continue to engage in export/import activities smoothly
- Maintain unique identity of your entity
- Timely address any risks flagged by the system

Don't wait! Update your IEC details now to avoid any inconvenience.

To know more contact: info@rsalegalsolutions.com

TABLE OF CONTENTS

For Regular Updates, please subscribe the following channels

https://www.linkedin.com/company/rsa-legal-solutions/

https://www.youtube.com/channel/UCsu_Qjz4Pkj8UjOq2hkUZnA

http://t.me/rsalegal

ARTICLES BY TEAM RSA LEGAL

❖ Article on "Impact of recent SC decision in Cosmos Films case" penned down by SC Jain (Managing Partner at RSA)

Recently, the Supreme Court has pronounced the verdict in the case of *Union of India Vs Cosmos Films & Ors in Civil Appeal No.290/2023* - 2023-TIOL-45-SC-CUS on the aspect of legality of pre-import condition inserted by No.79/2017-Cus dated13.10.2017 in Customs Notification No.18/2015-Cus dated 01.04.2015. By this Order, the Hon'ble Supreme Court has set aside the verdict of the Hon'ble Gujarat High Court wherein it was held by the Gujarat High Court that the pre-import condition inserted by Notification NO. No.79/2017-Cus dated 13.10.2017 is arbitrary and illegal since it is contrary to the Advance Authorization Scheme. Now, by the said Judgment, the Hon'ble Supreme Court has held that the pre-import condition inserted in Notification No.18/2015-Cus dated 01.04.2015 vide Notification No.79/2017-Cus dated 13.10.2017 is legal and cannot be said to be arbitrary. This decision of the Hon'ble Supreme Court is bound to create enormous litigation/ correspondence/ investigations in respect of the various exporters who have imported and exported the goods under the Advance Authorization during the period from 13th October 2017 (when the pre-import condition was inserted) to 10th January 2019 (when the pre-import condition was deleted).

Background:

2. Historically, Advance Authorization Scheme under the Foreign Trade Policy conferred exemption from various duties like Basic Customs Duty, Surcharge, Cess, CVD, SAD, Anti-Dumping duty etc. against the import of inputs subject to the condition that the goods manufactured as per norms are eventually exported out of India. This is why all types of customs duties on import of inputs were exempted under the Advance Authorization Scheme. There has always been a provision in the Foreign Trade Policy(currently paragraph 4.27/4.28 of Handbook) providing that the exports made prior to the import are also permissible under the Scheme to provide flexibility to the exporters so that they can fulfil their export commitment in time without waiting for the import of inputs. In such a situation, the exporter used to import the inputs as replenishment of the inputs used in the manufacture of the export goods. The Advance Authorization Scheme in the aforesaid manner was working smoothly throughout the length and breadth of the country

3. However, on introduction of the GST w.e.f. 1.7.2017, no exemption was provided on the IGST on the inputs imported under the Advance Authorization Scheme, even though rest of the duties continued to be exempted as earlier. Consequently, the inputs could be imported on payment of IGST even under the Advance Authorization Scheme w.e.f 1.7.2017. This resulted in working capital outflow and blockage of credit for a long period which created the liquidity issue for the exporters. After a lot of representations by the exporters and their associations, export promotion councils, NotificationNo.79/2017-Cus dated 13.10.2017 amending Notification No.18/2015 dated 01.04.2015 providing the exemption from IGST was issued. However, two additional conditions were inserted by the said Notification No.79/2017-Cus dated 13.10.2017 viz.
(i) pre-import condition and;
(ii) the export obligation shall be fulfilled only through physical exports.

4. As soon as this Notification No.79/2017-Cus dated 13.10.2017 was issued, I had written an article which was published in TIOL on dated 15.12.2017 titled as the *"Pre- Import Condition-cure is worse than the disease"*. The exemption was meant to provide relief to the exporters but obviously it was likely to create multiple problems

before the exporters as it was issued without analyzing its pros and cons. The said apprehension came to be true.

5. Several Advance Authorization holders imported goods under the Advance Authorization Scheme by availing the exemption from IGST without knowing/taking care of the pre-import condition. As a matter of fact, some of the exporters had already exported the goods and had imported subsequently as replenishment materials in accordance with the prevailing practice for the Advance Authorization Scheme. After analyzing the contravention of the said pre-import condition, the DRI and other Customs authorities at various places started investigations in the matter. A few Advance Authorization holders approached the Hon'ble Gujarat High Court. The Hon'ble Gujarat High Court while disposing of the bunch of petitions, held that the pre-import condition inserted vide No.79/2017-Cus dated 13.10.2017is arbitrary and struck it down.

6. However, in an identical matter, the Hon'ble Madras High Court in the case of *Vedanta Ltd Vs Union of India* reported in - 2018-TIOL-2893-HC-MAD-GST held that the pre-import condition is legal, and it is in no way arbitrary. Thus, there were conflicting decisions of the two High Courts in the subject matter. Union of India filed an SLP before the Supreme Court against the decision of the Gujarat High Court. Now, by the aforesaid decision, the Hon'ble Supreme Court has set aside the decision of the Gujarat High Court and upheld the validity of pre-import condition.

7. In the meanwhile, looking into the genuine problems of the exporters, the CBIC issued another Notification No.01/2019-Cus dated 10.01.2019 whereby the pre-import condition was removed/deleted. Now, the legal position would be that there was no pre-import condition in respect of the goods imported and exported prior to 13.10.2017 (before the introduction of NotificationNo.79/2017) and after 10.01.2019 (after deletion of pre-import condition). Thus, there remains a legal issue only for the intervening period of about 15 months.

8. The effect would be that for the limited period of about 15 months, the condition of pre-import will apply for the rest of the period this condition of pre-import would not apply.

Problems likely to be created by this decision:

9. Since the Supreme Court has upheld the validity of pre-import condition and there is no retrospective application of Notification No.01/2019-Cus dated 10.01.2019, hence the DRI and other Customs formations throughout the country would again start investigations against all the exporters who have exported the goods under the Advance Authorization Scheme. In case, it is observed that they have contravened the pre-import condition, the Customs authorities will *cajole* the exporters to pay the IGST along with interest. In some cases, the Customs authorities may propose penalties for violation of the condition of the Notification etc. It is quite likely that some customs formation/DRI also write to the DGFT office in the regard asking the DGFT office to take action under the Policy against the erring exporters. In such scenario, the exporters would get the notices from the offices of DGFT as well.

10. The exporters, without gaining a single penny out of the said exemption for pre-import condition would face the music which will continue for years together, both at the hands of the Customs/DRI and at the level of DGFT office. It is totally incomprehensible as to why this pre-import condition was inserted at the first instance particularly in the light of the fact that previously, all the duties have been exempted under the Advance Authorization Scheme. Further, once the Government realized the absurdity, the Notification No.01/2019-Cus dated 10.01.2019 was issued by deleting the pre-import condition. In order to provide the permanent burial to

the unwarranted problem, the Government should have amended it retrospectively (may be through Parliament route) so that the entire unwarranted litigation could be avoided.

Way Forward:

The various options available to the Advance Authorization holders can be summed up as under: -

(i) They should make detailed representations themselves and through their Associations/Export Promotion Councils to DGFT and also CBIC to amend the NotificationNo.01/2019-Cus dated 10.01.2019 retrospectively i.e. from 13.10.2017.

(ii) In our considered view after the multiple representations, the Government would realize the fallacy of the pre-import condition and would take steps for its withdrawal from its inception i.e.13.10.2017. There is no reason as to why the Government cannot provide retrospective application to this Notification in order to address the genuine grievance of the exporters. This will provide relief not only to the exporters but also to the Government itself.

(iii) In case the amount of IGST involved is small, then the Advance Authorization holder can take a call to pay the same along with interest @ 15% and then take credit of the IGST paid on the strength of the Challan/Re-assessed BE. In such a situation, the interest portion would be the net loss to the Advance Authorization holder.

(iv) In cases where the Advance Authorization holder chooses to pay the IGST with interest, through a Challan and then intends to take the credit on the strength of such Challan, then such credit, in our considered view, would be admissible as per Section 16 of the CGST Act read with Rule 36 of the CGST Rules. However, the Department may dispute the availment of credit on the grounds that the Challan is not the document prescribed for taking the credit. In order to obviate the litigation on this aspect, we would suggest that the advance authorization holders should request the Assessing Officers from where the inputs were imported to do the re-assessment of the Bills of Entry charging the IGST thereon in terms of Section 149 of the Customs Act, 1962.

(v) In our view, Customs should agree to the re-assessment as all the requirements of Section 149 of the Customs Act, 1962 are satisfied. Once the re-assessment is done, then the fresh Bill of Entry would be generated and there would be payment of IGST and interest on the said Bill of Entry and consequently there would not be any difficulty for availing the credit of IGST as per the GST law.

❖ Article on "A continuing saga of whether goods or services or both" Penned down by Shweta Jain Gupta (Partner at RSA)

In the case of M/s Suzlon Energy Ltd. - *2023-TIOL-35-SC-ST,* Supreme Court held that drawings and designs imported on paper would fall under the category of *"design services"* under Section 65(35b) read with Section 65(105)(zzzzd) of the Finance Act,1994 and accordingly would be subject to the levy of service tax.

Supreme Court upheld the principle that the same activity can be taxed as 'goods' as well as 'service', and the latter would attract the levy of service tax, provided the contract between the parties stands to be indivisible.

The Supreme Court further observed that merely because the designs and drawings imported were shown as 'goods' under the Customs Act and in the bill of entry, it would not preclude such services from also falling under the ambit of *"design services"* under the Finance Act, 1994.

The Hon'ble Apex Court relied on its decision in BSNL and upheld that there can be two different taxes/levies under different heads by applying the aspect theory.

The aim of this article is to examine the implications of this judgment under the GST regime.

Blurring lines

GST law has made a clear distinction between 'goods' and 'services' by clearly defining the scope of both. While Section 2(52) of the Central Goods and Services Tax Act, 2017 defines 'goods' to include every kind of movable property, other than money and securities, 'services' have been defined under Section 2(102) of the CGST Act as anything other than goods, money and securities. Further, to amplify the said distinction, the GST law has within Schedule II of the CGST Act also delineated certain activities that will be treated as either supply of goods or a supply of services. However, when the decision of the Supreme Court in the M/s Suzlon Energy Ltd case, is examined in light of the GST regime, this line of distinction gets blurred.

In this regard it is pertinent to discuss Sr. No. 5(c) of Schedule II of the CGST Act which classifies *"temporary transfer or permitting the use or enjoyment of any intellectual property right"* as a supply of service. Since intellectual property is a intangible creation of the human intellect and drawings and designs are a product of such intellect, they are appropriately classifiable under the aforementioned entry as 'supply of service'.

Further, Section 8(a) of the CGST Act defines 'composite supply' as a supply comprising of two or more goods or services, which in the ordinary course of business are naturally bundled and supplied in conjunction with each other. Further, tax liability in such a transaction will be the tax imposed on the principal supply, which is defined under Section 2(90) of the CGST Act as that supply of goods or services which forms the predominant element of such a composite supply and to which the other supplies are only ancillary. Therefore, the supply of the service of design and drawings on paper forms a composite supply.

Since the *"goods"* supplied has no use other than displaying the printed matter and the underlying transaction is actually the supply of intellect, the principal supply is the supply of service of drawings and designs.
In view of the above, even though the service of drawings and designs forms a 'supply of service' under the purview of GST, when reduced on paper and made to cross the customs frontier, the said goods become subject to levy of customs duty.

Sword of double taxation

Double taxation is a phenomenon leading to considerable increase in the tax liability of an individual or a corporation due to the imposition of taxes more than once, on the same asset, financial transaction or income. The High Court of Karnataka in the case of *Hubballi Dharwad Advertisers Association -2022-TIOL-662-HC-KAR-MISC* held that when there are two independent transactions and the incidence of tax on both are different, it would not amount to imposition of double taxation. Since, in the instant case, customs duty and GST would be levied on a single transaction of import of designs and drawings on paper, the said transaction could fall within the ambit of double taxation.

However, one may argue that the taxability under both the laws is based on different criteria and, hence levying of customs duty, considering it as *"goods"* and GST considering it as *"service"* would not amount to double taxation.
It would be prudent if CBIC comes up with a clarification in this regard.

❖ Why this haste to enforce E-Waste Rules? - By Anshul Mittal, Partner at RSA Legal Solutions

The E-Waste (Management) Rules, 2022, which came into effect from 1st April 2023, require producers of electronic and electrical equipment (EEE) to register with CPCB on the EPR (Extended Producer Responsibility) Portal. However, the portal is under upgradation and is expected to be operationalized only by 30th April 2023.

The CPCB has issued a letter to the Joint Secretary of the Custom department dated 13th April, 2023, requesting the release of imported consignments of producers of 85 EEE items (ITEW 17 to ITEW 27, CEEW 6 to CEEW 19, LSEEW 1 to LSEEW 34, EETW 1 to EETW 8, TLSEW 1 to TLSEW 6, MDW 1 to MDW 10 and LIW 1 to LIW 2) after taking an undertaking from the Producers (which includes Importers) as defined in the E-Waste (Management) Rules, 2022. The undertaking should be submitted at the email id (ewaste2.cpcb@gov.in) and the producers should also submit the computerized and online generated EPR Registration Certificate from the online portal concerned of CPCB not later than one month from the date of submission of the undertaking.

Despite the government's best efforts, the system is not yet online and neither is there any clarity on how the portal will work nor have any guidelines been issued. The government has not even provided a Q&A session to address the concerns of the industry. Despite all these limitations, the government is asking for compliance from the industry within one month of undertaking. The haste in implementing these rules without providing adequate infrastructure and guidelines is questionable.

The government should have provided more time and clarity to the producers before enforcing the rules. This would have given the industry time to prepare and would have enabled them to comply with the rules without any difficulties. The government should also provide detailed guidelines and FAQs to assist the producers in complying with the rules. Without such guidelines, the producers may find it challenging to comply with the rules, which could lead to delays and confusion.

While the E-Waste (Management) Rules, 2022, are essential in regulating the import and disposal of electronic waste in India, the short notice to the producers has caused confusion and stress. The government has failed to provide the online system on time, leaving producers with no option to comply with the regulations. This has put a burden on the producers who are already dealing with challenges related to supply chain disruptions and rising costs.

It is essential for the government to provide a reasonable timeline for the implementation of new regulations and ensure that the necessary infrastructure is in place before imposing new requirements on the industry. This will help to avoid disruptions in the supply chain and ensure that businesses can comply with regulations in a timely and efficient manner.

Moreover, the lack of clarity on the E-Waste (Management) Rules, 2022, has caused confusion among producers, especially small and medium-sized enterprises (SMEs) who may not have the resources to navigate the complex requirements. SMEs may struggle to comply with the regulations due to their limited resources, and this could lead to non-compliance and penalties, further affecting their business operations.

Additionally, the E-Waste (Management) Rules, 2022, require producers to collect and recycle a specific percentage of electronic waste generated by their products. However, there is no clarity on how this will be

implemented or how the cost of recycling will be shared among producers. This could lead to higher costs for producers, which may ultimately be passed on to consumers.

Furthermore, the lack of infrastructure to manage electronic waste in India is a significant challenge, and the government needs to invest in developing a robust e-waste management system. This would require significant investment in waste collection, recycling, and disposal infrastructure, as well as building awareness and education programs to encourage individuals and businesses to recycle their electronic waste responsibly.

In conclusion, while the E-Waste (Management) Rules, 2022, are a step in the right direction to address the growing problem of electronic waste in India, the government needs to ensure that the regulations are implemented in a way that does not cause undue hardship to producers. The government must provide adequate support and infrastructure to help producers comply with the rules and this must be done in a way that does not negatively impact their business operations. Only then can we ensure that electronic waste is managed responsibly and sustain ably, protecting both the environment and human health.

REGULATORY UPDATES

CUSTOMS

Notifications

- **Notification No. 21/2023-Customs dated 01.04.2023**

  By virtue of this Notification, the CBIC has provided the following conditions for availing the exemption from customs duty, additional duty, integrated tax, GST compensation cess, safeguard duty, countervailing duty and anti-dumping duty, on all the materials imported into India under a valid advance authorisation:

  - the authorization is to be produced before the proper officer of customs at the time of clearance for debit.
  - the authorisation is to contain details such as name and address of the importer; shipping bill number and date; description, quantity and value of exports of the resultant product in cases where import takes place both, before or after the fulfilment of the export obligation, etc.
  - materials imported to correspond to the description mentioned in the authorisation and the value and quantity are within the limits of the said authorisation.
  - a bond with surety and security in cases where the imports are made before the discharge of export obligation in full, binding the importer to pay on demand an amount equal to duty leviable together with interest, on the imported material, in case conditions mentioned in this notification are not complied with.
  - the importer to furnish at the time of clearance of the imported material a bond, binding himself to use the imported materials in his factory and to submit a certificate from the jurisdictional Central Excise officer or from a specified chartered accountant within six months from the said clearance certifying that the imported materials have been so used, in cases where imports are made after the discharge of the export obligation in full and the facility under Rule 18 or Rule 19(2) of the Central Excise Rules, 2017 or under Cenvat Credit Rules, 2017 has been availed. However, in cases wherein the imports are made after the discharge of export obligation in full and the facility under 18 or Rule

19(2) of the Central Excise Rules, 2017 or under Cenvat Credit Rules, 2017 has not been availed, the importer need not furnish a bond, provided he has submitted a proof to that effect.

- importer to furnish a bond, at the time of clearance of the imported materials, binding himself to use the imported materials in his factory and to submit a certificate from the chartered accountant within six months from the date of such clearance certifying that the imported material has been so used, in cases where import is made after the discharge of export obligation in full and the facility of input tax credit under the GST law on the inputs used for the manufacture and supply of goods exported has been availed. However, the importer need not furnish a bond, in cases wherein the import is made after the discharge of export obligation in full and the facility of input tax credit under the GST law has not been availed, provided the importer furnishes a proof to that effect.
- imports and exports are to be undertaken through either of the following:
  - seaports
  - airports
  - inland container depots
  - land customs stations
  - a special economic zone
- export obligation are to be discharged within the period specified in the said authorisation.
- the importer is to also produce evidence of discharge of export obligation within a period of sixty days of the expiry of the period allowed for fulfillment of the export obligation.
- the authorization must not be transferred and the said material to not be transferred or sold.

Further, the notification provides that if the materials are found defective or unfit for use, the said materials may be re-exported back to the foreign supplier within six months from the date of clearance of the said material.

❖ **<u>Notification No. 22/2023-Customs dated 01.04.2023</u>**

By virtue of this Notification, the CBIC has exempted material required for the manufacture of the final goods when imported into India from customs duty, additional duty, safeguard duty, countervailing duty and anti-dumping, provided the following conditions are fulfilled:

- importer has been granted advance authorization for deemed export by the Regional Authority, permitting import of the said materials and thereafter the said authorization is produced before the proper officer of customs at the time of clearance for debit.
- the said authorization must contain endorsements specifying the description, quantity and value of the materials to be imported and the description and quantity of final goods to be manufactured out of or with the imported materials.
- importer at the time of clearance of the importer material must furnish a surety or security, binding himself to pay on demand an amount equal to the duty leviable together with interest from the date of clearance of the said material, in cases were imports are made before the discharge of the export obligation and the said imported material fails to meet the conditions specified in this Notification.
- importer at the time of clearance of the imported material must furnish a bond, binding himself to use the imported materials in his factory and to submit a certificate from the jurisdictional Central Excise officer or from a specified chartered accountant within six months from the date of such clearance, certifying that the imported material has been so used, in cases where import is made after the discharge of export obligation in full and the facility under Rule 18 or Rule 19(2) of the Central Excise Rules, 2017 or under the CENVAT Credit Rules, 2017 has been availed. However, the importer need not furnish a bond, in cases wherein the import is made after the discharge of export obligation in full

and the facility under Rule 18 or Rule 19(2) of the Central Excise Rules, 2017 or under the CENVAT Credit Rules, 2017 has not been availed, provided that the importer furnishes a proof to that effect.

- imports and exports are to be undertaken through either of the following:
  - seaports
  - airports
  - inland container depots
  - land customs stations
  - a special economic zone
- export obligation is to be discharged within the period specified in the said authorization.
- the importer to produce evidence of having discharged obligation to supply final goods within a period of sixty days from the expiry of the period allowed for fulfilment of the said obligation.
- the authorization to not be transferred and the said material to not be transferred or sold.
- the components and parts required for manufacture of final goods that are wholly exempted from payment of excise duty, when removed from the factory of production, may be taken directly from the port of import to the project site, subject to the condition that the description and quantity of such components and parts and the address of the site have been specified in the said authorization.

❖ **Notification No. 23/2023-Customs dated 01.04.2023**

The CBIC vide this Notification has exempted materials imported into India, against a valid Advance Authorisation for Annual Requirement with actual user condition, from the levy of customs duty, additional duty, integrated tax, GST compensation cess, safeguard duty and anti-dumping duty, provided the following conditions are fulfilled:

- the said authorization is produced before the proper officer of customs at the time of clearance for debit of the quantity and value of imports;
- the said authorization is issued with respect to the Standard Input Output Norms fixed and contains the name and address of the importer, shipping bill number and date, description, cost insurance, freight value and other specifications of the imported materials, etc.
- importer at the time of clearance of the imported material must furnish a surety or security, binding himself to pay on demand an amount equal to the duty leviable together with interest from the date of such clearance, in cases were imports are made before the discharge of the export obligation and the said imported material fails to meet the conditions specified in this Notification.
- the importer must at the time of clearance of the imported material must furnish a bond binding himself to use the imported materials in his factory and to submit a certificate from the jurisdictional Central Excise officer or from a specified chartered accountant within six months from the clearance of the materials, certifying that the imported materials have been so used, in cases where imports are made after the discharge of the export obligation in full and the facility of Cenvat Credit under the Cenvat Credit Rules, 2017 has been availed. However, the importer need not furnish a bond, in cases where imports have been made after the discharge of export obligation and the facility under Rule 18 or Rule 19(2) of the Central Excise Rules, 2017 or of Cenvat credit has not been availed, provided he submits a proof to that effect.
- importer at the time of clearance of the imported material is to furnish a bond, binding himself to use the imported materials in his factory and to submit a certificate from the chartered accountant within six months from the date of clearance of the material, certifying that the imported material has been so used, in cases where import is made after the discharge of export obligation in full and the facility of input tax credit under the GST law, on inputs used for the manufacture and supply of goods

exported has been availed. However, the importer need not furnish a bond, in cases where the imports are made after the discharge of the export obligation in full and the facility of input tax credit under the GST law has not been availed, provided he furnishes a proof to that effect.

- imports and exports must to be undertaken through any of the following:
  - seaports
  - airports
  - inland container depots
  - land customs stations
  - a special economic zone
- sourcing of the imported materials from private bonded warehouse is permitted.
- the importer is to ensure that the export obligation specified in the said authorization is discharged within the period specified by exporting resultant products manufactured in India, which are specified in the said authorization and in respect of which facility under Rule 18 of Rule 19(2) of the Central Excise Rules, 2017 has not been availed.
- the importer must produce evidence of discharge of export obligation within a period of sixty days from the expiry of the period allowed for fulfilment of the said obligation.
- exempt material must not be disposed of or utilized in any manner except for discharge of export obligation or for replenishment of such materials and the said replenished material is not to be sold or transferred to any other person.

The Notification also provides that the exemption from safeguard duty, transitional product specific safeguard duty, countervailing duty and anti-dumping duty shall not be available for the following imported material, which are used for supply of/for:

- goods against advance authorization or advance authorization for annual requirement or duty free import authorization;
- for supply of goods to Export Oriented Unit or Software Technology Parks or Electronic Hardware Technology Parks or Biotechnology Parks;
- for supply of goods against Export Promotion Capital Good Authorisation;
- marine freight containers by 100% EOU where the said containers are exported out of India within six months or such further period as may be permitted and;
- official use or to the projects funded by UN or International Organisation.

❖ **Notification No. 24/2023-Customs dated 01.04.2023**

By virtue of this Notification, the CBIC has exempted materials imported into India against an Advance Authorisation for export of a prohibited item from the whole of the customs duty, additional duty, integrated tax, GST Compensation cess, safeguard duty, countervailing duty and anti-dumping duty, provided the following conditions are fulfilled:

- the said authorisation is to be produced before the proper officer of customs at the time of clearance for debit.
- the said authorization must bear the name and address of the importer, the description and other specifications of the imported material and the description, quantity and value of exports of the resultant product.
- the imported material must correspond to the description and other specifications mentioned in the said authorisation and the value and quantity thereof are within the limits specified in the said authorisation.

- the export must be made subject to the pre-import condition under notified SION or under the prior fixation of norms in terms of Para 4.06 of the Handbook of Procedures;
- importer at the time of clearance of the imported material must furnish a surety or security, binding himself to pay on demand an amount equal to the duty leviable together with interest from the date of such clearance, in cases where the said imported material fails to meet the conditions specified in this Notification.
- the importer is to ensure that the exports for fulfilling the export obligation are undertaken only through the specified seaports or airports or Inland Container Depots or Land Customs Stations.
- the export obligations in respect of the said authorization is to be discharged within ninety days from the date of clearance of the imported materials by exporting the resultant product which is manufactured in India using the material imported and in respect of which the facility under Rule 18 or Rule 19(2) of the Central Excise Rules, 2017 has not been availed.
- the authorisation holder must fulfil the export obligation including the stipulated value addition.
- authorization holder must also give an undertaking that the resultant products that are exported against the said authorization, which is otherwise prohibited for export, has been manufactured from the material already imported under the said authorization and the said undertaking contains the details of the imports and exports made under the said authorization.
- the said authorisation must not be transferred and the imported material must not be subject to actual user condition, or be sold or transferred for any purpose or by any means, including by way of job work.
- the importer must also produce evidence of discharge of export obligation within a period of sixty days from the expiry of the period allowed for fulfillment of such export obligation.

Further, the notification provides that if the materials are found defective or unfit for use, the said materials may be re-exported back to the foreign supplier within thirty days from the date of clearance of the said material.

❖ **<u>Notification No. 25/2023-Customs dated 01.04.2023</u>**

The CBIC by virtue of this Notification has exempted the materials imported into India against a valid Duty Free Import Authorisation, from the levy of customs duty, provided the following conditions are satisfied:

- the said authorisation is to be produced before the proper officer of customs at the time of clearance for debit.
- the SION number, description, quantity and Free on Board value of the resultant product exported along with the shipping bill number and date are to be endorsed on the said Authorisation.
- the description and other specifications, value and quantity of materials imported are to mentioned in the said authorisation and the value and quantity thereof must be within the limits specified in the said authorization.
- the said authorisation must to be transferable subject to the conditions specified.
- imports and exports must to be undertaken through any of the following:
  - seaports
  - airports
  - inland container depots
  - land customs stations
  - a special economic zone
- the exports provided in the said authorization are to be fulfilled within the specified period by exporting resultant products, manufactured in India, which is mentioned in the said authorization.

- the importer must produce evidence of fulfilment of the export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

Further, the notification provides that if the materials are found defective or unfit for use, the said materials may be re-exported back to the foreign supplier within six months from the date of clearance of the said material.

❖ **Notification No. 26/2023-Customs dated 01.04.2023**

Through this Notification, the CBIC hereby exempts the following goods from the levy of customs duty, additional duty, integrated tax and GST Compensation cess, provided the conditions contained therein are fulfilled:

- capital goods for pre-production, production and post-production.
- capital goods in Semi Knocked Down/ Completely Knocked Down conditions to be assembled into capital goods by the importer.
- spare parts of goods specified as actually imported and required for maintenance of capital goods so imported, assembled, or manufactured.
- spare parts required for the existing plant and machinery of the importer.

Further the following are the conditions for availing the said exemption:

- the goods imported are covered by a valid authorization issued under the Export Promotion Capital Goods Scheme, permitting import of goods at zero customs duty.
- the authorisation is registered at the port of import specified in the said authorization and the same is to be produced for debit by the proper officer of customs at the time of clearance.
- the goods are to be imported within the validity of the said authorisation.
- the goods imported are not disposed of or transferred by sale or lease or any other manner till export obligation is complete
- the importer must execute a bond for such sum along with surety or security, binding himself to comply with all the conditions of this Notification as well as to fulfill the export obligation on Free on Board basis equivalent to six times the duty saved on the goods imported or such higher sum as may be fixed by the Regional Authority, within a period of six years from the date of issue of Authorisation in the following proportions:

S.No.	Period from the date of issue of Authorisation	Minimum export obligation to be fulfilled
1.	Block of 1st to 4th year	50%
2.	Block of 5th and 6th year	Balance EO

- if the importer does not claim exemption from additional duty, the said duty paid by him will not be used for computation of the net duty saved for the purpose of fixation of export obligation, provided the Input Tax Credit of additional duty paid has not been taken.
- the importer is to produce within thirty days from the expiry of each block from the date of issue of authorization, evidence to the Deputy/Assistant Commissioner of Customs showing the extent of export obligation fulfilled.
- if the importer fulfils 75 per cent or more of the export obligation as specified in the table above, within half of the period specified for export obligation, then his balance export obligation will be condoned and he will be treated to have fulfilled the entire export obligation.

- the capital goods imported, assembled or manufactured are to be installed and put to use, after their import, in the importer's factory or premises and a certificate needs to be obtained from the Deputy/Assistant Commissioner of customs or from an independent chartered engineer, within six months from the date of completion of imports, confirming such installation and use of the capital goods in the importer's factory or premises.
- imports and exports must to be undertaken through any of the following:
  - seaports
  - airports
  - inland container depots
  - land customs stations
  - a special economic zone

Further, the notification provides that if the said goods are found defective or unfit for use, they may be re-exported back to the foreign supplier within three years from the date of their clearance.

❖ **Notification No. 33/2023-Customs dated 27.04.2023**

In amending the Notifications Nos. 11/2022-Customs and 12/2022-Customs, both dated 01.02.2022, the CBIC has provided that the rate of duty specified in the said Notifications would continue to apply even when the PMP of wearable and hearable devices mentioned therein are presented together in a manner so as to attract the provisions of Rule 2(a) of the General Rules of Interpretation of the First Schedule of the Customs Tariff Act, 1975.

❖ **Notification No. 24/2023-Customs (N.T.) dated 01.04.2023**

By virtue of this Notification, the CBIC has notified the manner of issue of duty credit for goods exported under the Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP Scheme), under which the duty credit is issued in lieu of remission of any duty or tax or levy that is chargeable on any material used in the manufacture or processing of goods in India that are exported, subject to the following conditions:

- the Scheme has to be availed against the following:
  - export of goods notified in Appendix 4R of the Foreign Trade Policy, at the respective rate and cap notified therein
  - claim of duty credit under the scheme by an exporter, by providing the appropriate declaration at the item level in the shipping bill in the customs automated system
  - shipping bill presented under Section 50 of the Customs Act, 1962 where the order permitting clearance and loading of goods for exportation under Section 51 thereof has been made.
- the duty credit is to be issued after the claim is allowed by the Customs upon necessary checks and after filing of export manifest.
- the duty credit is to employed for the payment of the duty of customs leviable on goods imported into India.
- the duty credit against the export of goods notified in the Appendix will be permitted subject to the realization of sale proceeds in respect of such goods in India within the period provided under the Foreign Exchange Management Act. 1999, failing which such duty credit shall be deemed to be ineligible.
- the exporter is to realise the sale proceeds against the export of goods undertaken earlier, where the period allowed for realisation, has expired.

- the imports and exports must be undertaken through the seaports, airports or through the inland container depots or through the land customs stations which allow the bill of entry and shipping bill to be presented and processed electronically on the customs automated system

Further, the Notification also provides provisions relating to cancellation and recovery of duty credit under the said Scheme.

❖ **Notification No. 25/2023-Customs (N.T.) dated 01.04.2023**

The CBIC vide this Notification, notified the manner of issue of duty credit for goods exported under the Rebate of State and Central Taxes and Levies (RoSCTL) Scheme, which is subject to the following conditions and restrictions:

- The duty credit is to be issued against the following:
  - exports of garments and made-ups and their respective rate and cap as listed in Schedules 1, 2, 3 and 4 of the Ministry of Textiles' Notification No. 14/26/2016-IT (Vol.II), dated 08.03.2019, for the said scheme
  - claim of duty credit under the scheme by an exporter, by providing the appropriate declaration at the item level in the shipping bill in the customs automated system
  - shipping bill presented under Section 50 of the Customs Act, 1962 where the order permitting clearance and loading of goods for exportation under Section 51 thereof has been made
- the duty credit is to be issued after the claim is allowed by the Customs upon necessary checks and after filing of export manifest.
- the duty credit is to employed for the payment of the duty of customs levied on goods imported into India.
- the duty credit allowed under the said scheme against export of goods notified vide Notification No. 14/26/2016-IT (Vol.II), dated 08.03.2019, will be permitted subject to the realization of sale proceeds in respect of such goods in India within the period provided under the Foreign Exchange Management Act. 1999, failing which such duty credit shall be deemed to be ineligible.
- the imports and exports must be undertaken through the seaports, airports or through the inland container depots or through the land customs stations which allow the bill of entry and shipping bill to be presented and processed electronically on the customs automated system
- the exporter is to realise the sale proceeds against the export of goods undertaken earlier, where the period allowed for realisation, has expired.

Further, the Notification also provides provisions relating to cancellation and recovery of duty credit under the said Scheme.

❖ **Notification No. 30/2023-Customs (N.T.) dated 26.04.2023**

By virtue of this notification, payment towards interest, penalty, fees, etc. through the electronic credit ledger, for the following deposits have been exempted till 30.06.2023:

- deposits with respect to goods imported or exported in customs stations where the Customs Automated System is not in place.
- deposits with respect to accompanied baggage.
- deposits with respect to goods imported or exported at international courier terminals, etc. However, exemption for making payment through ECL for this category will be discontinued with effect from 01.07.2023.

❖ **Notification No. 03/2023-Customs (ADD) dated 06.04.2023**

The CBIC by virtue of this notification has extended the levy of ADD on import of fishnet/fishing nets originating in or exported from China PR till 09.09.2023, unless revoked, superseded or amended earlier.

- **Notification No. 04/2023-Customs (ADD) dated 10.04.2023**

  By virtue of this Notification, the CBIC seeks to impose anti-dumping duty on imports of Ursodeoxycholic Acid originating in or exported from China PR and Korea PR for a period of five years from the date of imposition of the provisional anti-dumping on the said goods, that is, 18.08.2022, unless revoked, amended or superseded earlier and shall be payable in Indian Currency.

- **Notification No. 05/2023-Customs (ADD) dated 19.04.2023**

  Through this Notification, the CBIC has imposed anti-dumping duty on the import of Vinyl Tiles, other than in roll or sheet form, originating in, or exported from the China PR and Taiwan, for a period of five years from the date of publication of this notification in the Official Gazette and shall be payable in Indian currency.

Circulars

- **Circular No. 10/2023-Customs dated 11.04.2023**

  The CBIC vide this Circular has announced the launch of Version 3.0 of the web-application for filing, real-time monitoring, and digital certification of AEO-LO applications. Though the updated version of the existing web application will be accessible for both applicants and the Customs officials from 11.04.2023, it has been decided that till 30.04.2023, the AEO-LO applicants would be allowed to physically file AEO application without registering on the AEO portal as a transitional measure. Further, from 01.05.2023, it will be mandatory for the AEO-LO applicants to register on the portal for AEO certification. The Circular further provides that AEO-LO application need not be filed online if it has been filed at the office of the jurisdictional Principal Chief Commissioner/ Chief Commissioner before 11.04.2023 and therefore it will continue to be processed manually, except in cases wherein the existing AEO-LO applicant requests for migration on the said web-application.

Instructions

- **Instruction No. 14/2023-Customs dated 17.04.2023**

  By virtue of this instruction, the CBIC has provided relief to the importers required to take registration under the provision of Plastic Waste Management Rules, 2016 and whose consignments were held up as the registration on the Centralised EPR portal was still under process. In this regard, the Central Pollution Control Board had requested the concerned authorities to consider clearance of the said consignments, based on the proof of submission of application for registration on the portal. Therefore, the said instruction was issued to all the concerned authorities to sensitize the officers under their jurisdiction to take necessary action in this regard.

Orders

- **Order No. 01/2023-Customs (N.T.) dated 06.04.2023**

  By virtue of this order, the CBIC passed the Customs (Waiver of Interest) Order, 2023, waiving the whole of interest payable on failure to pay import duty within the specified time in terms of Section 47(2) of the Customs Act, 1962. However, this waiver is applicable only in respect of the goods where the payment of import duty is made from the amount available in the electronic cash ledger, for the period from 01.04.2023 up to and including 10.04.2023. The CBIC further ordered that in respect of the bills for entry for which

import duty payment has already occurred and integrated in ICES, during the said period, a claim for refund of interest will be subject to Section 27 of the Customs Act, 1962.

❖ **Order No. 2/2023-Customs (N.T.) dated 11.04.2023**

In continuation with the Customs (Waiver of Interest) Order, 2023 dated the 06.04.2023, the CBIC observed that though the Directorate General of Systems are making efforts to stabilise the upgraded customs duty payments system, errors were still occurring in the System sporadically, which is affecting the timely completion of the sequential procedures by the users, leading to daily accumulation of interest in the technical system. Therefore, to mitigate these hardships, the CBIC by this order, waived the whole of interest payable under Section 47(2) of the Customs Act, 1962, in respect of the goods where payment of import duty is to be made from the amount available in the electronic ledger, for the period from 11.04.2023 till 13.04.2023.

❖ **Order No. 3/2023-Customs (N.T.)**

Owing to the difficulties faced by the taxpayers in making payment of import duty from the electronic cash ledger, due to the technical issues in the Common Portal leading to rejection coupled with an inability to re-initiate that payment, the CBIC has waived the whole of interest payable on failure to make the payment of such import duty within the specified time, in terms of Section 47(2) of the Customs Act, 1962 for the period from 14.04.2023, provided the following conditions are fulfilled:

- the duty and interest have been paid within three days from the date of removal of such inability at the Common Portal, which shall be certified by the DG Systems;
- the importer undertakes at the port of import to not pass on the incidence of such interest paid and;
- the provisions of Section 27 of the Customs Act, 1962 shall govern the consequential refund of such interest paid.

FOREIGN TRADE POLICY

Notification

❖ **Notification No. 03/2023 dated 06.04.2023**

By virtue of this Notification, the CBIC has streamlined the Halal Certification Process for meat and meat products by providing the policy conditions for the same, which is as under:

- Meat and meat products to be exported as "Halal certified" only if produced, processed, and/or packaged in a facility having a valid certificate under the "India Conformity Assessment Scheme (i-CAS)- Halal" of the Quality Council of India, issued by the National Accreditation Board for Certification Bodies.
- All existing Halal Certification Bodies will have only six months' time from the date of issue of this Notification, to seek accreditation from NABCN for i-CAS Halal.
- All existing Export Units will have six months' time from the date of issue of this Notification for registering themselves at the dedicated and integrated online portal for meat exports developed by APEDA.
- The producer/supplier/exporter, exporting consignments to countries where there is a Regulation on Halal, are required to meet the importing country's requirements/regulations and must hold valid certificates issued by the Halal certification bodies approved under the national halal system of the importing country.

Public Notice

❖ **Public Notice No. 2/2023 dated 01.04.2023**

By virtue of this public notice, the DGFT has permitted the following categories of authorisation holders to apply for amnesty scheme for One Time Settlement of Default in export obligations:

- Authorisations issued under the Advance Authorisation (AA) and Export Promotion Capital Goods (EPCG) of all categories of Applications, issued under Foreign Trade Policy, 2009-14 till 31.03.2015.
- Authorisations issued under the EPCG & AA Schemes of all categories of Applications, issued under Foreign Trade Policy, 2004-09 and before, provided the export obligation period granted by the said Authorisations was valid beyond 12.08.2013.

However, for availing the said scheme, it is essential for all authorisation holders to register themselves by filing a separate application form provided on the DGFT website on or before 30.06.2023. Further, the said amnesty scheme permits regularisation of all pending cases of default in meeting export obligation by payment of all customs duties that were exempted in proportion to unfulfilled export obligation and interest at the rate of 100% of such duties exempted, with the jurisdictional customs authorities concerned before 30.09.2023. The applicants thereafter have to submit proof of such payment to the regional authority of DGFT concerned. Based on the evidence of such payment, the concerned RA will examine the request and issue a letter granting the export obligation discharge certificate.

❖ **Public Notice No. 3/2023 dated 03.04.2023**

By virtue of this public notice, the DGFT has extended the date for implementation of Track and Trace system for export of drug formulations with respect to maintaining the Parent-Child relationship in packaging levels and its uploading on Central Portal upto 01.08.2023 for both SSI and non SSI manufactured drugs.

❖ **Public Notice No. 4/2023 dated 11.04.2023**

Vide the said Public Notice, the DGFT has provided the procedure for obtaining Registration Certificate (RC) for the import of Isopropyl Alcohol subject to Country-wise Quantitative Restrictions (**"QR"**), for the year 2023-24. The Indian importer is to apply online for a registration certificate on the DGFT Website (https://dgft.gov.in), on or before 20.04.2023, which will be valid till the end of the Financial Year 2023-24, by navigating to Services → Import Management System → Apply for Registration Certificate for Imports. Further, post obtaining the registration, the importer is to also comply with the following conditions:

- RC holders are to provide statement of their imports and quantities for surrender, by the end of each quarter of the Financial Years as the utilisation of the RCs shall be reviewed on a quarterly basis and may be revised based on the actual imports affected.
- total imports in a quarter to not exceed the total of that quarter and the subsequent quarter, as specified and any excessively utilised QR for a quarter is to be deducted from the QR for the next quarter.
- any unutilised QR for a quarter will be added to the subsequent quarter.
- if any country-specific QR is exhausted, the RC holder may seek available residual quantity vis-à-vis other country-specific QRs.
- the maximum quantity cap for any single RC to be fixed by the DGFT after due examination of the applications received.

❖ **Public Notice No. 6/2023 dated 17.04.2023**

By the said Public Notice, the DGFT has made amendments in Annexure IV of Appendix-2A on Imports of Items under TRQ under India-UAE CEPA, by waiving off condition (g) thereof which laid down provisions regarding the manufacturer requirement for import of gold under the said TRQ.

❖ **Public Notice No. 09/2023 dated 25.04.2023**

For ease of doing business and reducing the transaction cost, by virtue of the said public notice, the DGFT has amended Para 4.12(vi) of the Handbook of Procedures, 2023, to extend the validity of the norms ratified by any Norms Committee on or after 01.04.2015 and upto 31.03.2023, in respect of any Advance Authorisation obtained under Para 4.07 of the HBP, 2015-2020, upto 31.03.2026.

❖ **Public Notice No. 10/2023 dated 26.04.2023**

By virtue of the said public notice, the DGFT has notified the Appendices and Aayat Niryat forms of the Foreign Trade Policy, 2023.

❖ **Public Notice No. 12/2023 dated 28.04.2023**

Vide this public notice, the DGFT has invited new applications for TRQ for imports under tariff head 7108 under India -UAE CEPA for FY 2023-24 from 28.04.2023 up to 07.05.2023, online through the DGFT website (https://dgft.gov.in). The DGFT has also clarified that new applications that may be received shall be considered together with the earlier applications already received for TRQ allocation of a total of 140 MTs under tariff head 7108 for FY 2023-24.

Circular

❖ **Policy Circular No. 1/2023-24 dated 17.04.2023**

The DGFT has laid down the following procedure for applying for the amnesty scheme for one-time settlement of default in export obligations by Advance and Export Promotion Capital Goods (EPCG) authorization holders:

- The application for AA/EPCG discharge or closure shall be filed online by logging onto the DGFT website and navigating to Services –> Advance Authorisation/DFIA –> Closure of Advance Authorisation.
- Thereafter, the applicant shall select the checkbox for 'Amnesty Scheme for One-Time Settlement of Default in Export Obligation' and proceed to file an application for closure against the concerned EPCG or AA authorization as per the online proforma.
- Further, the applicant as per their calculations, shall indicate the duty and interest values to be paid under the "Redemption Matrix" tab and submit their application online.
- On receipt of the online application, the RA concerned shall examine and confirm the shortfall through an online letter.
- Thereafter the applicant is to make the required payment of duty and interest to the jurisdictional customs authority and provide proof of payment in response to the said letter online. Based on the evidence of payments and other relevant documents prescribed, the concerned RA may examine and consider granting an Export Obligation Discharge Certificate (EODC) online.

Trade Notice

❖ **Trade Notice No. 01/2023-24 dated 06.04.2023**

By virtue of the said Trade Notice, the DGFT has issued further instructions regarding the online functionality available to AA/EPCG authorisation holders to update closure/redemption status on the DGFT website of the manually issued EODC in cases, where it has been incorrectly reflected on the DGFT

portal. The DGFT has directed that since such AA/EPCG closure applications can be submitted with or without data validations, no EODC are to be issued manually or through any legacy IT systems. The benefit of this online functionality is that it will enable the EODC issued online to be transmitted to the Customs ICEGATE System in near-real time and will also facilitate discharge of Customs bond and other related activities at the Customs port.

- **Trade Notice No. 02/2023-24 dated 17.04.2023**

  Vide the said Notification, the DGFT had inter alia notified total 32 New HSN Codes for Technical Textiles under Chapter 39, 54, 55, 56, 59, 60, 62, 63, and 68 of ITC(HS) 2022, Schedule 1 (Import Policy) in reference to the PLI Scheme notified by the Ministry of Textiles for Textiles, covering Man Made Fibre (MMF) and Technical Textiles as focus areas of growth under the Scheme. The DGFT observed that despite having specific HS Codes for Technical Textiles, imports/exports are not being booked under correct HS Codes. Accordingly, the DGFT has clarified that all importers/exporters should file their Bill of Entry/Shipping Bill with specific HSN codes available for Man Made Fibre (MMF) and Technical Textiles under ITC(HS) 2022, Schedule I (Import Policy) at 8 digit level, and to avoid using any other or 'Others' category codes. Moreover, the DGFT has also invited suggestions of appropriate HS Codes at 8 digit level in case the existing 32 HS Codes are not sufficient to cover the Technical Textiles goods being imported/exported.

- **Trade Notice No. 03/2023-24 dated 20.04.2023**

  By virtue of this trade notice, the DGFT has clarified that all exporters seeking benefits under the Interest Equalisation Scheme w.e.f. 01.05.2023 are required to submit an Acknowledgement consisting of Unique Identification Number (UIN), associated with a particular bank for a ONE-TIME disbursement. Moreover, the DGFT has also directed the beneficiaries of the said scheme to submit a new UIN for each disbursement to the concerned bank. This direction has also been made applicable to situations where the credit is rolled over as well, wherein a new UIN is to be generated by the exporter for each such roll over.

- **Trade Notice No. 04/2023-24 dated 21.04.2023**

  Due to operational challenges expressed by the Interest Equalisation beneficiaries and the banks, the DGFT by this trade notice, has deferred the applicability of the Trade Notice No. 03/2023-24 dated 20.04.2023, which w.e.f. 01.05.2023, mandated such beneficiaries to submit an Acknowledgement consisting of UIN that would be associated with a particular bank only for a ONE-TIME disbursement. In place of the deferred trade notice, the DGFT has revised the said guidelines and clarified that an acknowledgement consisting of UIN, valid for a financial year shall be unique to a specific bank and if a beneficiary desires to take advantage of the benefits of the scheme from multiple banks, a new UIN needs to be provided for each bank.

RATIO DECIDENDI

ERSTWHILE LAW

- **M/s Lupin Limited vs. Commissioner of Central Goods & Service Tax & Central Excise, CESTAT Delhi**

  The Appellant is engaged in the manufacture and export of pharmaceutical products at their SEZ unit and receives various input services from the Head office located in Mumbai. Under Notification No. 12/2013-ST dated July 01.07.2013, the appellant filed applications in Form A-4 claiming refund of service tax paid on input services received in the SEZ unit, part of which stood rejected for being time barred. At the outset

the Hon'ble CESTAT observed that the Appellant fulfilled all the criterias of eligibility to claim refund of the service tax paid on input services in terms of the Notification No. 12/2013-ST. The Tribunal held that once the substantive conditions of fulfilling the eligibility criteria are complied with, the time limit for making the claim of refund under the said notification, being only a procedural requirement need not be construed liberally. Further, the CESTAT observed that the intention of the legislature behind not levying any duty or tax on the units in the SEZ was to boost the said units and was to ensure that they function burden free. Therefore, considering this and the fact that delay in filing for refund was neither exorbitant nor unreasonable, the Hon'ble CESTAT held that a minor procedural lapse cannot overshadow the beneficial policy of establishing the SEZ tax-free, without any burden of duties. Therefore, the CESTAT allowed the refund claims of the Appellant.

- **Commissioner of Customs, Central Excise & Service Tax vs. M/s Suzlon Energy Ltd., the Supreme Court of India**

  In the instant case, the Supreme Court held that drawings and designs imported on paper would fall under the category of "design services" under Section 65(35b) read with Section 65(105)(zzzzd) of the Finance Act, 1994 and accordingly would be subject to the levy of service tax. Further, the Supreme Court upheld the principle that the same activity can be taxed as 'goods' as well as 'service', and the latter would attract the levy of service tax, provided the contract between the parties stands to be indivisible. Following the said principle, the Supreme Court held that merely because the designs and drawings imported were shown as 'goods' under the Customs Act and in the bill of entry, it would not preclude such services from also falling under the ambit of "design services" under the Finance Act, 1994 and thereby also being subject to the levy of service tax.

GST LAW

- **M/s Swati Poly Industries Pvt Ltd vs. State of U.P., Allahabad High Court**

  The Petitioner approached the Allahabad High Court, challenging the demand quantified against the Petitioner under Section 74 of the U.P. GST Act, 2017, without affording any opportunity of hearing. At the outset, the High Court observed that the manner of decision making, when proceedings are initiated under Section 74 of the U.P. GST Act, 2017, is provided under Section 75(4) thereof. Further, on perusing Section 75(4) of the said Act, it transpires that an opportunity of hearing has to be mandatorily granted by the authorities when an adverse decision is contemplated against such a person. Since no personal hearing was accorded to the Petitioner, prior to the passing of the impugned order, the High Court ordered for quashing the same.

- **Dharmendra M. Jani vs. Union of India, High Court of Bombay**

  In the instant case, the Petitioner undertook activities of marketing and promotion of goods sold by its overseas customers in India and received payments in the form of a commission, in foreign exchange. The Petitioner challenged the constitutional validity of Sections 13(8)(b) and 8(2) of the IGST Act, 2017 on the contention that while on the one hand the transaction entered into by it with the foreign customer fell within the category of "export of services", however, on the other hand, when the said provisions are read into the context of the CGST Act, such supply also becomes an intra-state transaction. The Hon'ble Bombay High Court while confirming the legal validity of the said provisions, held that, Sections 13(8)(b) and 8(2) of the IGST Act are confined in their operation to the provisions of IGST Act only and since no reference of the same is made under the CGST Act, the same cannot be made applicable thereon.

- **Profisolutions Private Limited, AAR Tamil Nadu**

  The applicant approached the Hon'ble AAR seeking a ruling on whether the support services provided by its Chennai branch office to the Bangalore based Head Office, though common employees, will attract GST. The Applicant has contended that the services by employees are covered by Schedule III, Para I of the CGST Act, 2017 and therefore no GST will be charged in case of cross charge of services provided by the employees working for the company as a whole. The AAR observed the service rendered by an employee deployed in a branch office to the head office is in his representative capacity as an employee of the branch office. Therefore, the services provided by employees of a company's branch office to its head office and vice versa located in different state will attract GST as the employees are treated as 'related person' in terms of explanation to Section 15 of the CGST Act, 2017 and accordingly treated as supply by virtue of Entry 2 of Schedule I of the CGST Act, 2017.

- **M/s KW and Jasim Traders vs. The State of Bihar, Patna High Court**

  The Petitioner was desirous of availing the statutory remedy of appeal, against the impugned order, before the GST Appellate Tribunal. However, due to non-constitution of the said Tribunal, the Petitioner was deprived from availing the benefit of stay of the recovery proceedings for the balance amount of tax, in terms of Section 112(9) of the Bihar Goods and Services Tax Act, 2017, upon the deposit of the amounts provided under Section 112(8) thereof. The High Court held that the Petitioner cannot be deprived of the benefit due to non-constitution of the Tribunal by the respondents themselves and therefore, any recovery of the balance amount and any steps that may have been taken in this regard will be deemed to be stayed. However, this would be subject to the deposit of a sum equal to 20% of the remaining amount of tax in dispute, if not already deposited, in addition to the amount deposited earlier under Section 107(6) of the Bihar Goods and Services Tax Act, 2017. Further, the Court held that since the relief of stay, on the deposit of the statutory amount cannot be kept open ended, the Petitioner would be required to file an appeal before the Appellate Tribunal once it is constituted and made functional.

CUSTOMS/ FOREIGN TRADE POLICY

- **Union of India vs. Cosmo Films Limited, Supreme Court of India**

  A pre-import condition was incorporated in the FTP by Notification No. 33/2015-20 and the Notification No. 79/2015-Customs, both dated 13.10.2017, which provided that exemption from payment of the IGST and the GST compensation cess would be available to advance authorisation holders only on establishing that the inputs imported against a particular authorisation were utilised in the manufacture of products that were physically exported. On being aggrieved by the decision of the Gujarat High Court that upheld the validity of the said notifications, the Department approached the Supreme Court. At the outset, the Hon'ble Supreme Court observed that the concept of pre-import condition was not alien to the FTP as Appendix 4J listed several articles on which the 'pre-import condition' was applicable, prior to the GST regime. Furthermore, the retention of the power of DGFT to impose such pre-import condition under Para 4.13(i) of the FTP, on articles other than those specified, meant that the DGFT could exercise such power in relation to any goods. Therefore, the Supreme Court held that the High Court has completely ignored the said provision and proceeded on the incorrect assumption that only specified goods can be subject to the said pre-import condition. Further, on the contention of the Respondent that there was no intelligible differentia for subjecting only IGST and Compensation cess and not other types of duties, such as basic customs duty to the "pre-import condition, the Supreme Court observed that since both the taxes in essence

are different, there is justification for a separate treatment of both the levies. Furthermore, the Supreme Court observed that only on the ground that the introduction of the 'pre-import condition' will cause hardship to the exporters, is not sufficient to characterize the said notifications as arbitrary or unreasonable as hardship is not relevant in pronouncing on the constitutional validity of a fiscal statute or economic law. Therefore, on the aforementioned grounds the Apex Court upheld the validity of the said notifications.

- **M/s. Pravin Tex vs. Commissioner of Customs (Seaport-Export), CESTAT Chennai**

  In the instant case, a show cause notice and consequently an adverse order was passed against the Appellant for failure to fulfil the export obligation in terms of the EPCG licence, as exports made through third parties could not be established by the required endorsements on the shipping bills. However, the Appellant has challenged the said impugned order on the grounds that *firstly*, though the show cause notice has alleged that the Appellant had manipulated 162 shipping bills, the department was not able to furnish these documents to the Appellant and *secondly*, that the department refused to allow the cross-examination of the witnesses whose statements have been relied upon by the department in issuing the said show cause notice. In this regard, the Hon'ble CESTAT observed that the department cannot confirm the demand on the basis of assumptions and presumption and the allegations raised in the show cause notice has been to be established by evidence. Therefore, for failure to furnish the relied-upon documents and allowing the cross-examination of the said witnesses relied, the impugned order was set aside for being issued without proper evidence and without following the principles of natural justice.

NEWS NUGGETS

- GST revenue collection for April 2023 highest ever at Rs 1.87 lakh crore
- GSTN Introduces Facility to verify Document Reference Number on Offline Communications of State GST Authorities
- GSTN Issued Updated Advisory on time limit for reporting on the IRP Portal
- West Bengal GST Department implemented Document Identification Number (DIN) System
- GSTN issued advisory on Bank Account Validation

****

ABOUT THE FIRM

RSA Legal Solutions is a top-tier Tax Law firm committed to providing world-class advisory, litigation, and compliance services to businesses, and is singularly focused on serving the needs of business clients. The firm specializes in GST, Customs, Foreign Trade Policy, SEZ laws, FEMA, Income Tax, Corporate laws, and other allied laws. RSA has partners from top law firms and Big 4s.

Our firm has recently been awarded with the "**Highly Recommended Law Firms, 2022**" by the Leaders Globe Magazine. RSA has successfully found a place in the list of Finalist for **"Tax Law Firm of the Year 2021" by Asian Legal Business (ALB) Awards**. RSA recently featured in the Top **20 recommended lawyers in India** by **Business Connect magazine in 2019-2020**. RSA has been chosen in top 5 finalist in the category of "**Best Start up law firm of the year**" award by the prestigious **IDEX Legal Awards**. Also, the firm was awarded with the "**Top 10 GST Consultants Award"** by the famous **Insight Success Magazine**.

KEY PERSONS

S.C. Jain (Managing Partner)
scjain@rsalegalsolutions.com

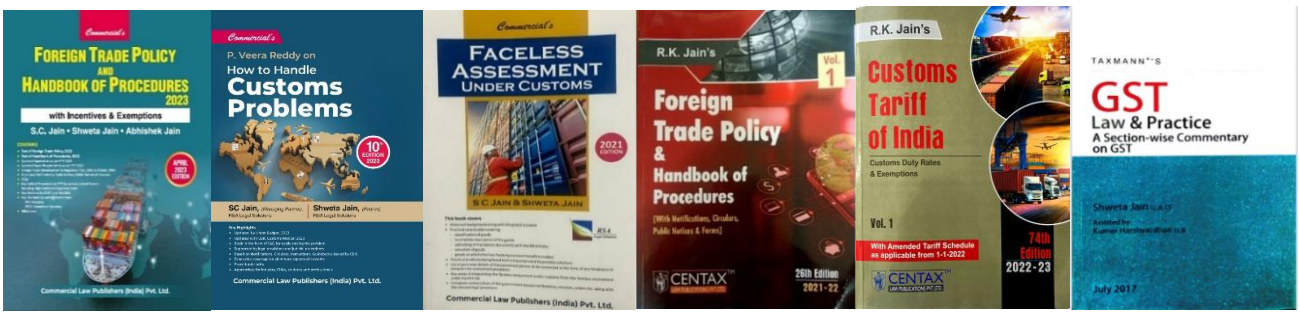
Shweta Jain (Partner)
shweta@rsalegalsolutions.com

Rajat Dosi (Partner)
rajat@rsalegalsolutions.com

Abhishek Jain (Partner)
abhishek@rsalegalsolutions.com

Anshul Mittal (Partner)
anshul@rsalegalsolutions.com

PUBLICATIONS BY RSA LEGAL



****