



KNOWLEDGE BITE

The Ministry of Environment, Forest and Climate Change (MOEFCC) notified the Battery Waste Management Rules, 2022 to ensure environmentally sound management of waste batteries. These new rules will supersede the Batteries (Management and Handling) Rules, 2001.

Are you a manufacturer/producer/importer of batteries or battery-operated products:



Batteries Management (Polluter Pays)

- Battery Waste Management Rules, 2022, has been notified by the Ministry of Environment, Forest and Climate Change (MOEFCC)
- Replaces the Batteries (Management and Handling) Rules, 2001
- Covers all types of batteries, including Electric Vehicle batteries, portable batteries, automotive batteries, and industrial batteries.
- Extended Producer Responsibility (EPR) applicable
- Responsibility to collect and recycle/refurbish the waste batteries and to use the recovered materials for new batteries
- EPR prohibits disposal in landfills and incineration.
- Environmental compensation will be imposed for non-fulfilment of Extended Producer Responsibility targets

For more information, please write to us at anshul@rsalegalsolutions.com



GENERAL AUTHORIZATION FOR EXPORT AFTER REPAIR IN INDIA (GAER)

The DGFT has notified the procedure for **General Authorization for Export after Repair in India (GAER)** vide **Public Notice No. 31/2015-20 dated 14.10.2022**. A draft of the same was proposed by the DGFT vide the Circular dated 07.06.2022. The DGFT hereby makes amendment to the HBP 2015-20 of FTP 2015-20 by the inclusion of new paragraph 2.79 C (D) with immediate effect. A gist of the procedure for export of the same imported SCOMET (Special Chemicals, Organisms, Materials, Equipment and Technologies) items to same entity abroad under GAER:-

A. Export of the SCOMET items to the same identity abroad after repair in India are subject to the post reporting on a quarterly basis as issued by the DGFT, Subject to the following Conditions: -

- ✚ The SCOMET items imported to a designated facility in India should be under a Master Service agreement or contract of agreement between the Indian importer and the abroad entity defining the 'Statement of Work' with conditions for repair.
- ✚ The items imported should be exported to the same entity located abroad.
- ✚ The exporter has to apply only once and obtain General Authorization for export during the validity period.
- ✚ Bill of Entry is required while applying for GAER for the first shipment.
- ✚ Validity period will be of **ONE year** from the date of issue of General authorization, subject to post reporting(s) within 30 days from the date of export.
- ✚ The export will be allowed to the same entity and location on account of which the license has originally issued.
- ✚ There should be no change in characteristics and value of the SCOMET items after repair.
- ✚ No authorization will be granted if the initial export authorization has been suspended, modified or revoked by the importing country.
- ✚ No Authorization for UNSC sanctioned destinations or high risk countries as assessed by the IMWG.
- ✚ 'End Use' and 'End Use Certificate' is not required.
- ✚ The re-export should be of the same item and to the same entity as specified in the issued GAER. If the re-export is of a different item then, either a new GAER may be applied or file an application under para 2.79 C (C) of HBP.

B. Documents Required for GAER

- ✚ Proof of import of the item(s): -
 - ✓ Export License (if applicable) from the foreign country for importing items to India.
 - ✓ Documentary/Self-declaration for exemption from license or no license requirement for India.
 - ✓ First Bill of Entry
- ✚ Proof of Obligation for repairing damaged items: -
 - ✓ Agreement of Statement of work/ Master service agreement (MSA) between Indian exporter and abroad entity.
- ✚ Undertaking by Indian Exporter stating the following: -
 - ✓ Details of imported items to be exported after repair along with their SCOMET category specification. (Number, Category, Description)
 - ✓ Items will be exported to the same entity from whom the items were imported.
 - ✓ There is no change in characteristics and value of the SCOMET items after repair.



- ✓ The repair of defective goods should be allowed under the import conditions or in the agreement between both the entities.
- ✓ The Bill of Entry and Shipping bills into the subsequent re-exports shall be submitted to DGFT on quarterly basis.
- ✓ The items would not be used for military application to develop, manufacture, process, transport nuclear weapons or for missile capable of delivering such weapons.

C. Post reporting for re-export of items under GAER.

- ✚ The Indian exporter shall submit details of each export consignment of SCOMET items under GAER to the SCOMET Division of DGFT (Hqrs), New Delhi via E-mail (scomet-dgft@nic.in) or as per prescribed procedure by DGFT, on a quarterly basis, by the end of subsequent month of each quarter.
- ✚ Bill of Entry (wherever applicable), shipping bills and valid export license copy within the time limit as specified above.
- ✚ **Penalty** will be imposed or suspension of GAER and actions as per FTDR Act if conditions are not fulfilled.

D. Validity

- ✚ GAER issued for export of SCOMET material after repair shall be valid for **ONE YEAR** from the date of issue, subject to post reporting.
- ✚ GAER cannot be re-validated in terms of paragraph 2.80 of HBP of [FTP 2015-20](#).

E. Suspension/Revocation.

GAER shall be suspended by DGFT on receipt of an adverse report on proliferation concern or **non-submission of documents** within the prescribed timeline as specified in this public notice

F. General conditions

- ✚ GAER will not be issued if the items are supposed to be used to design, develop, manufacture, transport and/or used for chemical, nuclear weapons or for missiles capable of delivering weapons of mass destruction.
- ✚ **No GAER** for countries under UNSC sanctions or on assessment of proliferation concerns, or any national security considerations.
- ✚ DGFT has the right to **issue or deny** GAER without stating any reason.

G. The application for General authorization shall be approved by **Chairman IMWG**, without any consultation of their team members after the first shipment. In exceptional cases, the consultation can be taken from members prior to the issuance of GAER.

H. Such authorization shall be brought before IMWG in subsequent meetings for confirmation of approval, on ex-post facto basis.

(IMWG) Inter-Ministerial Working Group

(UNSC) United Nations Security Council



REGULATORY UPDATES

GST LAW

ADVISORY

- ❖ **The GSTIN has issued the advisory in relation to the implementation of mandatory mentioning of HSN codes in GSTR-1**

The CBIC issued the Notification No. 78/2020 – CT dated 15.10.2020 vide which it is mandatory for the taxpayers to report minimum 4 digit or 6 digit of HSN Code in table-12 of GSTR-1 on the basis of their Aggregate Annual Turnover (AATO) in the preceding Financial Year.

- ✓ To facilitate the taxpayers, these changes are being implemented in a phase-wise manner on GST Portal as below:

Phases		Taxpayers with AATO of upto 5 cr	Taxpayers with AATO of more than 5 cr.
Phase 1	Part I	Taxpayers are required to mandatorily report 2-digit HSN codes for goods & services. Manual user entry is allowed for entering HSN or description and warning or alert message shall be shown in case of manual HSN. However, taxpayers will be able to file GSTR-1 after manual entry.	Taxpayers are required to mandatorily report 4-digit HSN codes for goods & services. Manual user entry is allowed for entering HSN or description and warning or alert message shall be shown in case of incorrect HSN code. However, taxpayers will be able to file GSTR-1 after manual entry.
	Part II	Same as above	Taxpayers will now have to mandatory report 6-digit HSN code. No change in other conditions
Phase 2		Mandatory reporting of HSN at 4-digits;	No Change
Phase 3-4		To be Continued in due course	

- ✓ Part I & Part II of Phase 1 has already been implemented from 01.04.2022 & 01.08.2022 respectively and is currently live on GST Portal. From 01.11.2022, Phase-2 would be implemented on GST Portal and the taxpayers would need to report HSN in table 12 of GSTR-1 as per the below mentioned scheme.

Taxpayers with AATO of up-to 5 cr	Taxpayers with AATO of more than 5 cr.
<ul style="list-style-type: none"> ✚ Taxpayers would be required to mandatorily report 4-digit HSN code. ✚ Manual user entry would be allowed for entering HSN or description and in case of a wrong HSN reported a warning or alert message 	To Continue as it is



will be shown. However, taxpayers will still be able to file GSTR-1	
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- ✓ The taxpayers are advised to correct the HSN details where there is an error and a warning message is shown. However, it is not a mandatory validation for filing GSTR-1.
- ✓ Further phases would be implemented on GST Portal shortly and respective dates of implementation and nature of change would be updated from time to time.
- ❖ **The GSTIN has issued the advisory w.r.t. the Sequential filing of GSTR-1 & filing of GSTR-1 before GSTR-3B on GST Portal**

The CBIC has amended Section 37 & Section 39 of CGST Act, 2017 vide Notification No. 18/2022-CT dated 28.09.2022 with effect from 01.10.2022 According to Section 37(4) of CGST, Act, a taxpayers shall not be allowed to file GSTR-1 if previous GSTR-1 is not filed and as per sec 39(10) a taxpayer shall not be allowed to file GSTR-3B if GSTR-1 for the same tax period is not filed.

- ✓ Section 37(4) & 39(10) of CGST Act, 2017 are reproduced below:
 - ✚ Section 37(4) : A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:
 - ✚ Section 39(10) : A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:
- ✓ These changes are being implemented prospectively and will be operational on the GST Portal from 01.11.2022. Accordingly, from the October 2022 tax period onwards, the filing of the previous period's GSTR-1 will be mandatory before filing the current period's GSTR-1.
 - ✚ Illustration: Filing of the October 2022 period GSTR-1 will be mandatory before filing GSTR-1 for November 2022 period.
- ✓ Further, from October 2022 tax period onwards, filing of GSTR-1 will also be mandatory before filing GSTR-3B.
 - ✚ Illustration: Taxpayer will not be allowed to file GSTR-3B for October 2022 period if GSTR-1 of October 2022 period is not filed.

CUSTOMS

NOTIFICATIONS

❖ **Notification No. 52/2022-Cus dated 03.10.2022.**

The CBIC has increased the rate of the BCD from 10% to 15% on the platinum. The same shall be effectuated w.e.f. 03.10.2022.

The CBIC has increased the aforesaid rate as the imports in September jumped multifold to a record high as refiners imported a large amount of gold containing small amounts of platinum but registered the purchases with customs as platinum alloy to avoid paying higher duties @ 15%. [For more information, please click on article penned by our partner Shweta Jain](#)

❖ **Notification No. 54/2022-Cus dated 19.10.2022.**

The CBIC has excluded solar power plants or solar power projects from the Power Plants and Transmission projects given in the Project Imports Regulations, 1986. The same will come in effect on 20.10.2022.



INSTRUCTIONS

❖ **Instruction No. 28/2022-Cus dated 27.10.2022.**

The CBIC has issued a clarification in relation to the acceptance of Electronic Certificate of Origin (e-CoO) issued under India-UAE CEPA. It is clarified that the e-CoO issued electronically by the Issuing Authority of UAE shall be valid document for the purpose of claiming preferential benefit under India-UAE CEPA. The same is to verify the genuineness / authenticity of e-CoO and it should be mandatorily uploaded on e-Sanchit portal by the Importer/Customs Broker for availing preferential duty benefit. A printed copy of e-CoO shall be presented to the Customs officer, who will verify the unique reference number and other particulars entered in the bill of entry with the printed copy of e-CoO for defacing purposes.

FOREIGN TRADE POLICY

NOTIFICATION

❖ **Notification No. 38/2015-2020 dated 12.10.2022.**

The DGFT has permitted an exports Quota of 3,97,267 MT for broken rice (covering under HSN Code 10064000), but only to the applicants whose LCs (Letter of Credit) were valid before the export ban order issued vide (N. No. 31/2015-2020 dated 08.09.2022) during the F.Y 2022-23..

PUBLIC NOTICE

❖ **Public Notice No. 27/2015-20 dated 29.09.2022.**

The DGFT has extended the time limit till 31.12.2022 for filing the return in relation to the fulfilment of export obligation under EPCG scheme for the year 2022-23.

❖ **Public Notice No. 28/2015-20 dated 06.10.2022.**

The DGFT has revalidated the validity period for TRQs allottees importing under tariff 7108 (Gold) for the 1st and 2nd Quarters (FY 2022-23) from 30.09.2022 to 30.11.2022. Further, the last date for the 3rd quarter (FY 2022-23) TRQ application under tariff 7108 has been extended from 31.08.2022 to 10.10.2022. The DGFT has delineated the process for revalidation.

❖ **Public Notice No. 32/2015-20 dated 20.10.2022.**

The DGFT has provided the instruction for the TRQ importer to follow the procedure set out in the Customs Import of Goods at Concessional Rate of Duty for specified end-use Rules (IGCR, 2022). Further, it has been clarified that the IGCR rules will apply to importers only till the supply of gold (7108) to the end-recipient and the restrictions on job work shall only be applicable to the importer and not the recipient (TRQ holder) who receives the goods on supply. However, TRQ holders can freely utilize the goods (7108) for manufacturing with or without job work.

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RATIO DECIDENDI

GST LAW

❖ **In Re: M/s Vadilal Industries Ltd., Advance Ruling(Appeal) No. GUJ/GAAAR/APPEAL/2022/20: Gujarat Appellate Authority for Advance Ruling**

In the instant matter, the Applicant sought for advance ruling in respect of the classification and GST rates of the various varieties of parathas. The appellant contended that parathas are akin to roti or chapatti, which are classifiable under Heading 1905 and liable to 5% GST. In this regard, the AAAR held that the parathas are different from plain chapatti or roti and cannot be treated as or covered under the category of plain chapatti or roti. The appropriate classification of parathas would be under Chapter Heading 2106. Therefore, GST @ 18% will be applicable on paranthas.

❖ **Asia (Chennai) Engineering Company Private Limited V/s The Assistant Commissioner (ST) (FAC): W.P.(MD).Nos.13851 and 13870 of 2022: Madras High Court**

The central issue involved in the instant matter is whether the electronic filing of a reply to the SCN in form GST-DRC-06, is mandatory for the Petitioner or not. In this regard, the Hon'ble Madras High Court held that the filing of a reply to the show-cause notice in form GST-DRC-06 is not mandatory under Sections 73(9), 74(9) and 76(3) of the CGST Act and the reply so filed through post shall also be treated as valid. The Court directed the assessing authority to fix the personal hearing date for the assessee, give him an opportunity, and receive any documents produced by the assessee

❖ **Balaji Enterprises Versus Principal Additional Director General 2022 LiveLaw (Del) 986: Delhi High Court**

In the present matter, the Petitioner/assessee assailed the order cancelling its GST registration. The order was based on the show-cause notice. The SCN revealed that there is next to nothing stated as to the reason why the concerned authority proposed the cancellation of registration. The department, ironically, puts the onus on the petitioner to demonstrate that registration has not been obtained by fraud, willful misstatement, or suppression of facts. In this regard, the Hon'ble High Court held that the SCN did not mention the facts, which were referred to in the order by which the petitioner's registration had been cancelled. Further, it has been observed that the department was unable to give a satisfactory answer as to whether or not the verification report had been uploaded on the designated portal. The court directed the department to restore the registration of the petitioner.

CUSTOMS/ FOREIGN TRADE POLICY

❖ **M/s. Vivo Mobile India Pvt. Ltd. Versus Commissioner Customs, Customs Appeal No. 51045 Of 2020: CESTAT New Delhi**

The appellant has imported microphones pasted and soldered on the PCBA and, as such, are parts of the PCBA and paid 10% Basic Customs Duty (BCD) on a Microphone for a Cellular Mobile Phone, classifying it under CTH 85181000. Simultaneously, the benefit of entry at S.No. 18 of Notification No. 50/2017 dated 30.6.2017 was claimed. Post clearance of some of the bills of entry, the department contended that the appellant had short-paid the duty while wrongly claiming the exemption. In this regard, the CESTAT opined that the Commissioner (Appeals) has committed an error while declining the exemption benefit to



the appellant despite Notification No. 50/2017 being in existence on the date of the period. The benefit of notification has to be extended in favour of the appellant.

❖ **Ms/. M J Gold Pvt. Ltd. Versus Principal Commissioner Of Customs (Import), Customs Appeal No. 50726/2021: CESTAT New Delhi**

The Appellant, in the instant matter, has imported the 22K assorted jewellery (481 pieces) from Indonesia. The provisional office in Surabaya, Indonesia has issued the Country of Origin Certificate as is required in terms of Rule 13 of Notification No. 046/2011 dated 01.06.2011. In this regard, the department alleged that the appellant had given incomplete information about the origin of the gold from which the 481 pieces of assorted jewellery had been crafted and ordered the re-assessment of the bill of entry, denying the benefit of under the aforesaid notification. The Hon'ble CESTAT, while quashing the order, held that denying the benefit of customs duty exemption despite the valid country of origin certificate is not sustainable. Further, it is opined that it will hinder the free flow of trade between agreeing nations if the exemption requested under the applicable rules is denied on one or the other pretext, especially if it is based only on assumptions and presumptions.

NEWS NUGGETS

- ❖ [Government Is Likely To Mandate E-Invoices For Businesses Having Annual Turnover Of More Than Rs. 5 Crores.](#)
- ❖ [India-UK free trade deal on the verge of collapse](#)
- ❖ [GST Decriminalisation To Be A Boon For Small Businesses.](#)
- ❖ [CBIC to implement paperless Customs Compliance for Exports soon](#)
- ❖ [India likely to start next month free trade pact negotiations with Gulf Cooperation Council](#)
- ❖ [DGGI promises monetary reward to informers aiding in tax recovery](#)

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