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## Pre-import condition in Advance Authorization scheme creating unintended havoc

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**By S C Jain, Managing Partner, RSA Legal Solutions**



1. **ON** implementation of the GST law with effect from 01-07-2017, no changes were made in the Customs [Notification No. 18/2015-Cus](#) dated 01.04.2015 for granting exemption from IGST to the inputs imported against the Advance Authorization Scheme. In other words, a person importing goods against an advance authorization was required to pay the applicable IGST on the imported inputs and was eligible to take the 'input tax credit' as per the provisions of the GST law.

2. As apprehended, there was lot of hue and cry from the trade, industry, export promotion councils, which made several representations to the DGFT and also to the Ministry of Finance highlighting their woes because payment of IGST for export would result in blockage of their 'working capital' and would adversely affect the exports. Further it would also result in 'interest cost' because of the said working capital. More so, it was feared that practically it would not be so easy to take refund of IGST from the department.

3. Bowing down to the said pressure, the Government issued a [Notification No. 79/2017-Cus](#) dated 13.10.2017 whereby the inputs imported against the Advance Authorization Scheme were made exempt from IGST as well. However, simultaneously, it was provided that the said exemption shall be subject to **pre-import condition**. Similar amendments were made in the Foreign Trade Policy, 2015-20.

4. Looking into this unjust, unwarranted and illogical nature of this pre-import condition, I had written an article on TIOL titled "[Pre-import condition in advance authorization - Cure is worse than disease](#)". In this article, I had apprehended the dire consequences of the said condition for availing exemption from IGST. My apprehension came true. All persons who imported goods against an advance authorization, even after the coming into effect of this amending notification dated 13.10.2017, were allowed clearance by the customs without payment of IGST throughout the length and breadth of the country at all customs ports without any exception. **Even a single customs officer did not question the eligibility of the exemption from IGST.** Likewise, every advance authorization holder took it for granted as if he was eligible for the exemption from IGST on the imported inputs, without paying any attention to the said pre-import condition.

5. DRI has issued letters/summons to several importers who imported inputs without payment of IGST after 13.10.2017, under the advance authorization scheme. A large number of such persons had already exported the goods (before 13.10.2017) towards fulfilment of their export obligation and the inputs were imported as replenishment of the materials already used in the export product. The main arguments put forth are:

- Para 4.03 of the FTP provides that an Advance Authorization is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage).
- Relying on the above provision it has been argued by the DRI that, in all cases, pre-import condition is must; though a post export replenishment scheme is also available, that as per the DRI is an exception and not the rule and hence every authorization holder has to follow the pre-import condition;
- As per DRI nearly all exporters have violated this condition even before the GST regime and the DGFT was allowing it without raising too many objections as it was good for the economy; that the exception is Advance Authorization in gems and jewellery sector, as per para 4.33, 4.34, 4.35 read with Appendix 4F which allows for replenishment authorization for gems;

- They also rely on the fact that import period is only 12 months and export period is 18 months, which as per them shows the intention of the Government that the export should be done using the imported goods, otherwise, both would have been of the same time period itself;
- They also contend that the DGFT cannot override the contentions of the Customs Department.

6. In my considered view the approach of the DRI seems incorrect on account of the following reasons:

A. The investigation being done by the DRI is apparently pre-mature because it is the DGFT Office which would eventually decide as to whether the pre-import condition prescribed under the Policy has been satisfied or not. There is a set mechanism to implement the provisions of the advance authorization scheme. **The customs notification is issued just to provide the legal shape, under the customs law, to implement the provision of the FTP.** For this purpose, an advance authorization holder after completion of his import-export submits the documents to the DGFT office towards the discharge of its export obligation. In a situation, where the export obligation is not completed, the authorization holder is asked by the DGFT office to pay the duty with interest to regularise the same. In a situation where the licensing authority refuses to issue Export Obligation Discharge Certificate (EODC), only then the customs authority can take the action to recover the customs duty with interest, penalty etc.

B. Section 28 of the Customs Act empowers the custom officer (including the DRI) to issue a show cause notice proposing to demand the short levy/non-levy.

C. There is no contravention in cases where the goods have been imported without payment of IGST and the corresponding export are yet to be made because by default in all such cases pre-import condition gets automatically satisfied.

D. Even in cases where an advance authorization holder has already exported the goods before 13.10.2017 towards discharge of export obligation and has imported the goods after 13.10.2017 without payment of IGST, still he can regularise the entire transaction by getting an extension in export obligation period and re-validation period (if needed) of advance authorization and proportionate quantities of export obligation and import entitlement in such a manner that quantity of the goods imported after 13.10.2017 without payment of the IGST get exported after 13.10.2017, so that pre-import condition gets fulfilled. The letter and spirit of the customs notification and also of the FTP gets satisfied even if this methodology is adopted.

7. I would, therefore, suggest and request the DGFT and the CBIC to issue a suitable clarification immediately so that the unnecessary harassment of exporters may be stopped and the exporter community gets relief in doing its business.

**(The views expressed are strictly personal.)**

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