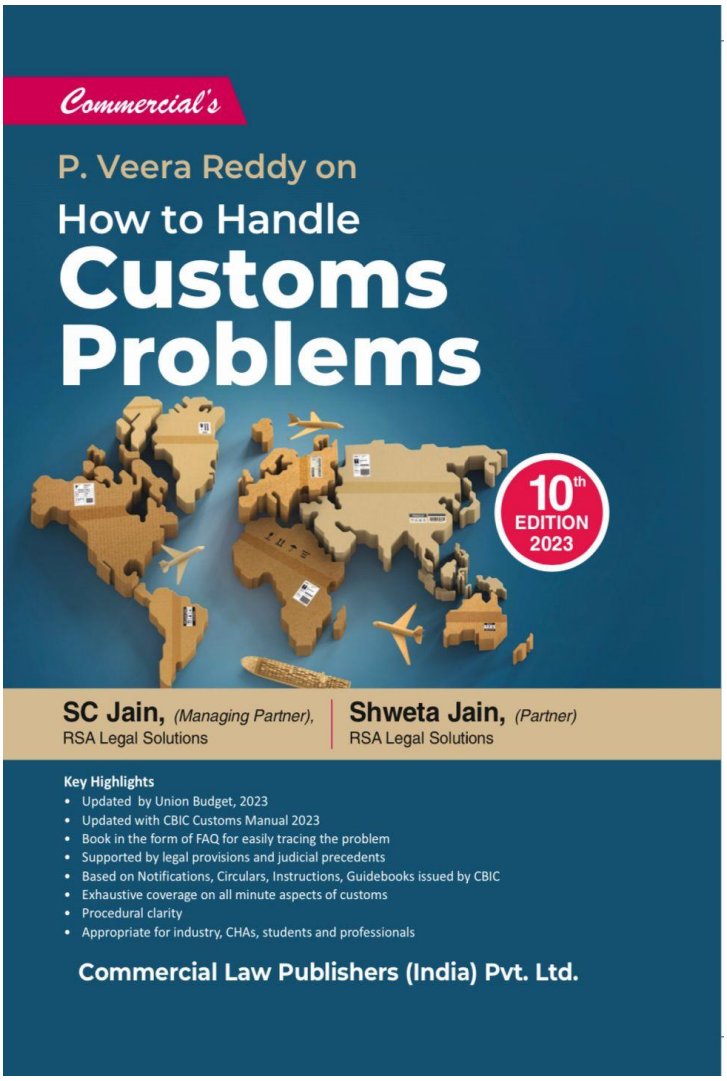
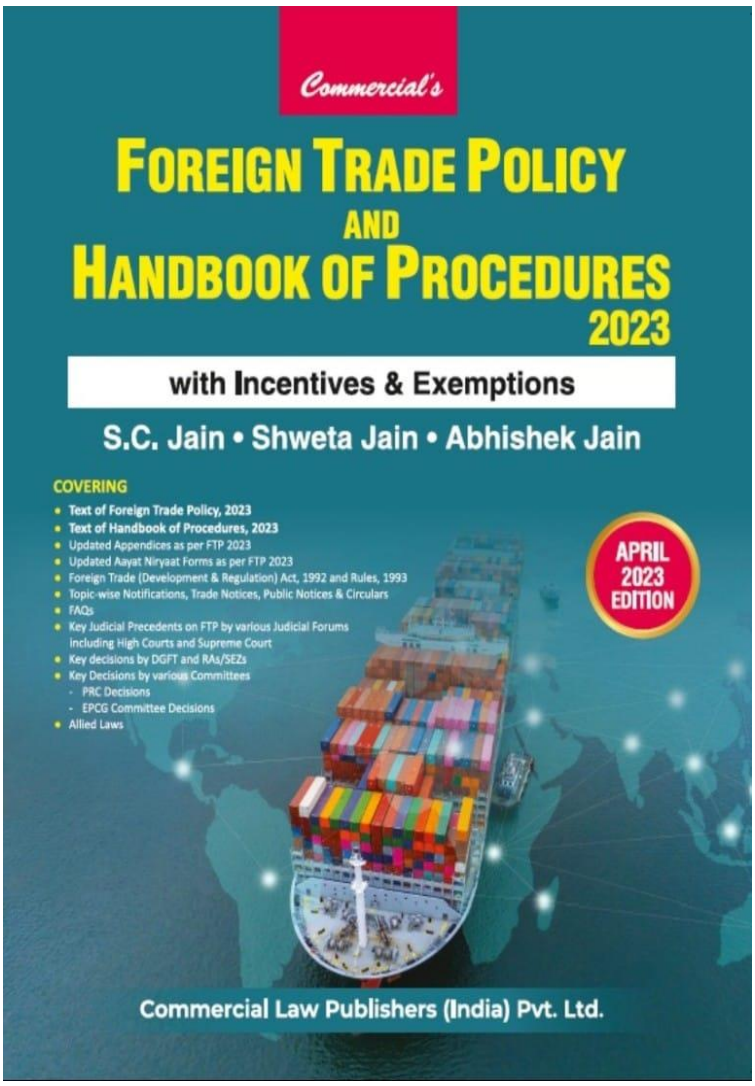
INDIRECT TAX NEWSLETTER

April, 2023 (updated till 31.03.2023)





We are proud to announce the launch of our new book **"How to Handle Customs Problems"** published by Commercial Law Publisher and authored by SC Jain (Managing Partner) and Shweta Jain (Partner) RSA Legal Solutions.

Key highlights of the book are:

- Updated by Union Budget, 2023
- Updated by CBIC Customs Manual, 2023
- Supported by legal provisions and judicial precedents
- Procedural clarity
- Appropriate for CHAs, industry, students and professionals

The link to purchase the book is https://commerciallawpublishers.com/home/product_view/1110/How-to-Handle-Customs-Problems

Releasing Soon!! It gives us immense pleasure to announce that we have authored a book titled **"Foreign Trade Policy and Handbook of Procedures, 2023"** that will soon be published by Commercial Law Publisher. 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

This book will launch soon to cater to your needs.

TABLE OF CONTENTS

ARTICLES BY TEAM RSA LEGAL 3
REGULATORY UPDATES 10
GST LAW 10
NOTIFICATIONS 10
CIRCULARS 11
CUSTOMS 12
NOTIFICATIONS 12
CIRCULARS 13
INSTRUCTIONS 13
FOREIGN TRADE POLICY 14
NOTIFICATION 14
PUBLIC NOTICE 14
TRADE NOTICE 15
RATIO DECIDENDI 15
GST LAW 15
CUSTOMS/ FOREIGN TRADE POLICY 16
NEWS NUGGETS 18
ABOUT THE FIRM 19

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We have already circulated the Detailed Update on new Foreign Trade Policy, 2023. Therefore, the same are not being repeated for the sake of brevity.

ARTICLES BY TEAM RSA LEGAL

❖ Article on "Battery Waste Management Rules, 2022: A Comprehensive Approach" penned down by Anshul Mittal (Partner at RSA)

Battery waste management is a significant concern in India due to the increasing use of batteries in various applications. To manage this issue, the Indian government introduced the Battery Management and Handling Rules of 2001, which primarily focused on lead-acid batteries.

Scope and Key Features of the 2001 Battery Management Rules

The 2001 Rules applied to a broad range of parties involved in the manufacture, processing, sale, purchase, and use of lead-acid batteries or their components. The key features of the 2001 rules included:

- Restrictions on the use of lead in batteries
- Obligation on manufacturers to provide detailed information on the composition and disposal of batteries
- Authorization and registration requirements for battery manufacturers, re-furbishers, recyclers, and dealers
- Obligation on consumers to return used batteries to authorized dealers for proper disposal

Scope and Key Features of the 2022 Battery Waste Management Rules

The Ministry of Environment, Forest, and Climate Change in India implemented the Battery Waste Management Rules in 2022 to replace the 2001 Battery Management and Handling Rules. The new rules apply to all types of batteries regardless of their chemistry, shape, volume, weight, material composition, and use.

The key features of the 2022 rules include:

- Extended producer responsibility (EPR) on battery producers
- Centralized online portal for the authorization process
- Obligation on producers, dealers, consumers, entities involved in the collection, segregation, transportation, refurbishment, and recycling of waste batteries
- EPR plan submission by producers to CPCB in Form 1C by 30th June of every year
- EPR targets for different batteries used across various applications

Implementation of Extended Producer Responsibility (EPR) in the Battery Waste Management Rules, 2022

The main highlight of the Battery Waste Management Rules 2022 is extended producer responsibility, which was previously limited to e-waste and plastic waste management. The producers will have to file for authorization through the centralized online portal of the Central Pollution Control Board (CPCB) and fulfill their EPR responsibility through the policy of buyback, deposit refund schemes or any other model. The producers can delegate the responsibility to other entities for proper and environmentally sustainable collection, segregation, recycling, or refurbishing of waste batteries. The EPR plan, which contains the details of the weight, quantity, and other information about the batteries, should be submitted by the producers to CPCB in Form 1C by 30th June of every year through the centralized online portal.

The newly amended rules introduce many provisions, including new key definitions, more responsibilities, EPR authorization, and a centralized online portal for the authorization process. The rules expand the responsibilities of the producers, manufacturers, and authorities involved in the management of waste

batteries. The key stakeholders in the rules are producers, recyclers, re-furbishers, other entities, and the CPCB, which defines the fee of handling, application for registration, and registration process.

EPR Plan and Targets for Waste Battery Management

The EPR plan for 2022 and 2023 is also required to be submitted under Form 1C to the CPCB. The plan includes EPR targets for different batteries used across various applications. Failure to comply with EPR responsibilities can result in penalties for stakeholders such as manufacturers, recyclers, and re-furbishers, among others. Non-compliance includes activities carried out without obtaining the necessary authorization or registration or providing false information in documents.

Penalties and Consequences for Non-Compliance with EPR Responsibilities

The penalties for non-compliance with EPR responsibilities are specified under Section 15 of the Environmental Protection Act of 1986. The stakeholders in violation of the EPR rule will be fined and required to pay environmental compensation. The amount of compensation will be decided by the CPCB or State Pollution Control Board (SPCB).

Conclusion

The Battery Waste Management Rules, 2022 represent a more comprehensive and updated approach to managing the increasing amount of battery waste in India. It is crucial for producers to take responsibility for the products they manufacture, ensuring their safe and sustainable disposal. EPR plans provide a framework for producers to manage the environmental impacts of their products effectively. By complying with EPR regulations, producers can contribute to creating a sustainable future while avoiding penalties and negative impacts on the environment.

❖ Article on "IGST & Compensation Cess benefit withdrawn: MOOWR Scheme" Penned down by Rajat Dosi (Partner at RSA)

The Finance Minister has proposed certain changes in the Customs Act, 1962, by making last minute addition in the Finance Bill, 2023. Incidentally, these changes were not a part of the Union Budget 2023 introduced in the Parliament in the month of February 2023. These changes / additions have been passed by both the Houses of the Parliament and would become a part of the law very soon, on its assent by the Hon'ble President of India.

As mentioned, certain crucial amendments have been made in the Customs Bonded Warehousing Scheme. This article seeks to highlight such changes and some issues wherein there is lack of clarity.

IGST and GST Compensation Exemption Withdrawn

A new provision, Section 65A, has been inserted in the Customs Act, which will be applicable once the said provision is notified by the Central Government. This provision *inter alia* seeks to withdraw IGST and GST Compensation Cess exemption currently made available to all imports made in a customs bonded warehouse undertaking manufacturing and other operations therein.

It is noteworthy that this exemption has been withdrawn only in respect of customs bonded warehouse which are undertaking manufacturing and other operations therein by taking permission to this effect under section 65 of the Customs Act including units registered under the MOOWRs Scheme (Manufacture and Other Operations in Warehouse (No. 2) Regulations, 2019). However, the said exemption will continue to be

applicable in respect of other public and private customs bonded warehouses registered under Section 57, 58 or 58A of the Customs Act, who have not obtained any permission under section 65 of the Customs Act for undertaking manufacturing and other operations therein.

In simple words, once this provision is notified, all customs bonded warehouses undertaking manufacturing and other operations therein including units registered under the MOOWRs Scheme will not be eligible to avail the exemption from IGST and GST Compensation Cess on its import into India. They will only be eligible to avail the benefit of exemption from payment of other types of customs duty and cesses (such as BCD, anti-dumping duty, etc). Of this GST and Compensation payment, these units will, however, be eligible to avail input tax credit (ITC), if otherwise available, under the GST law.

Bill of entry for home consumption in place of warehousing bill of entry

This provision further provides that at the time of import, such units will have to file a bill of entry for home consumption for making imports into India, in place of existing mechanism of filing a warehousing bill of entry.

Transition Mechanism

It has also been stipulated that this provision or withdrawal of IGST and compensation cess will not be applicable to any goods which have already been imported into India by such customs bonded warehouse prior to the notification of this provision.

Lack of Clarity on certain issues

In view of these changes, the following questions emerge for which as of now there is no clarity:

a. Whether any document is required to be issued on clearance of finished goods from such customs bonded warehouse (as earlier bill of entry for home consumption was required to be filed)?

b. Whether interest is payable on customs duty to be paid at the time of clearance of finished goods from such customs bonded warehouse (as earlier no interest was payable)?

Hopefully, at the time of notification of this new provision, the aforementioned issues will be clarified, by way of a circular, by the CBIC.

❖ Article on "Plastic Waste Management- GST E-invoice for EPR Compliance" Penned down by Anshul Mittal (Partner at RSA)

Introduction

India generates a massive amount of plastic waste, with an estimated 9.46 million tonnes produced annually. Unfortunately, a significant portion of this plastic waste is not properly collected or disposed of, resulting in serious environmental and health problems. To address this issue, India introduced the Extended Producer Responsibility (EPR) Guidelines.

On February 16, 2022, the Ministry of Environment, Forest and Climate Change (MoEF&CC) notified Guidelines on Extended Producer Responsibility (EPR) for Plastic Packaging, which were included in Schedule-II of the 4th amendment of the Plastic Waste Management Rules, 2018. These guidelines were further amended

later in July 2022. The EPR Guidelines have provided clarity on the obligations of various entities involved in plastic packaging and waste management. This article will explore the provisions of the EPR Guidelines related to Producers/ Importers/ Brand owners (PIBOS) and Plastic Waste Processors (PWPs).

The EPR Guidelines require producers, brand owners, and importers of certain plastic products to be responsible for managing the waste generated by their products, from collection to disposal. The aim of the EPR Guidelines is to shift the burden of managing plastic waste from municipalities and local governments to the producers, thereby incentivizing them to reduce their use of plastic and promote sustainable alternatives.

The EPR Guidelines are part of a larger framework of environmental regulations and policies in India aimed at reducing plastic waste and promoting sustainable practices. In 2014, India launched the Swachh Bharat Abhiyan campaign which aimed at making India a clean and litter-free country by 2019. Additionally, India has implemented a nationwide ban on single-use plastic products, including plastic bags, cups, and straws.

Coverage under EPR Guidelines

The EPR Guidelines state that producers, importers, brand owners, and waste processors are responsible for managing plastic waste. This includes those who produce plastic packaging, import plastic packaging or products with plastic packaging, and own brands that use plastic packaging. Waste processors are also responsible for managing plastic waste.

Registration of entities

Entities involved in recycling, waste to energy, waste to oil, and industrial composting, such as Producers, Importers, Brand Owners, and Plastic Waste Processors, need to register on a centralized portal developed by the Central Pollution Control Board. During registration, they must provide various details, including PAN Number, GST Number, CIN Number of the company, Aadhar Number, PAN Number of authorized person or representative, and any other necessary information required.

Once registered, the entities will be required to submit an annual report to the Pollution Control Board, online. The report will detail the amount of plastic waste generated, collected, and recycled during the previous year. It will also include information on the systems and processes put in place to manage plastic waste and any challenges faced during the process. Entities failing to comply with the reporting requirements may face penalties and other consequences as per the EPR Guidelines. The reporting requirements aim to ensure transparency and accountability in the management of plastic waste and to help track progress towards achieving India's environmental goals.

Calculation of EPR Targets

Section 7 of the EPR Guidelines provides further details for calculation of Extended Producer Responsibility (EPR) Targets to be fulfilled by the Registered PIBOS. To calculate the Extended Producer Responsibility (EPR) Targets, the quantity of plastic waste generated by a Producer, Importer, Brand Owner or Plastic Waste Processor must be determined. Then, the percentage of plastic waste collected by the entity must also be determined. Using these figures, the EPR Target can be calculated according to the guidelines.

Record Maintenance

According to the EPR Guidelines, Brand Owners must provide details of plastic packaging purchased from Producers and/or Importers separately, and the quantities will be deducted from the obligation of Producers

and Importers. Records of such purchases must be maintained separately by the Brand Owner. Producers and importers must also maintain records of the quantity of plastic packaging material made available to Brand Owners, or else they will have to fulfill their complete EPR obligation. The online platform will cross-check the transactions among Producers, Importers, and Brand Owners.

Registration of Plastic Waste Processors

All plastic waste processors must register with their respective State Pollution Control Board or Pollution Control Committee and the centralized portal developed by the Central Pollution Control Board. The registration process should follow the provisions of the Plastic Waste Management Rules, 2016.

Certificate for Plastic Waste Processing

The EPR Guidelines require registered plastic waste processors to provide certificates for plastic waste processing, as stated in Section 11.5. These certificates are crucial for fulfilling Extended Producer Responsibility obligations, and only certificates provided by registered plastic waste processors will be accepted.

The certificate format will be developed by the Central Pollution Control Board and include important details such as the registered plastic waste processor's name and address, the date of processing, quantity of plastic waste processed, and destination of the processed plastic waste. This certificate serves as evidence that the plastic waste generated by the producer has been managed correctly by a registered plastic waste processor, and the producer has fulfilled their Extended Producer Responsibility obligations.

Producers are advised to obtain these certificates as they can be asked to provide evidence of compliance with EPR obligations during regulatory audits or inspections. This certificate can also demonstrate a producer's commitment to sustainability and responsible waste management practices to their customers, shareholders, and other stakeholders.

Standard Operating Procedure for EPR Registration

The EPR Guidelines in Section 12.1 state that the Central Pollution Control Plastic Board will prescribe the standard operating procedure for registration of Producers, Importers & Brand-Owners under Waste Management Rules, 2016. It is observed that verified details of all plastic waste/packaging transactions between PIBOs & PWPs are required for foolproof calculation of EPR targets of PIBOs, cross-checking of transactions, and generation of EPR certificates. Section 9 of the EPR Guidelines states that Environment Compensation (EC) will be levied by CPCB/SPCB/PCC on PIBOs for non-fulfilment of their EPR targets, responsibilities, and obligations, and EC of Rs.5000/- per ton will be levied for shortfall in EPR target on defaulting PIBOs. Non-fulfilment of EPR targets by PIBOs can have huge financial implications and severe adverse environmental impact.

Importance of GST E-invoice for EPR Compliance

GST invoice provides verified details of all transactions, including those related to plastic waste/packaging transactions, and PIBOs are mandated to provide details of sales & procurement of plastic packaging. The EPR portal developed by CPCB has provisions for cross-validation of transactions between PIBOs/PWPs and auto-generation of EPR targets based on real-time capture of procurement/sales of plastic packaging. The portal also allows for the generation of EPR certificates based on actual sales figures of PWPs/PIBOs and transfer of certificates between PWPs/PIBOs.

Compliance Requirements for PIBOs and PWPs

Under the Plastic Waste Management Rules, 2016, all PIBOs and PWPs are directed to upload GST E-invoice details of all transactions related to plastic packaging and waste on the centralized EPR portal to ensure compliance with the provisions contained in the Guidelines on Extended Producer Responsibility for Plastic Packaging. Non-compliance with these directions may result in action being taken against the PIBOs/PWPs.

Conclusion

In conclusion, the implementation of Extended Producer Responsibility (EPR) for plastic packaging is an important step towards sustainable waste management. The guidelines laid out by the Central Pollution Control Board and the Ministry of Environment, Forest & Climate Change provide a framework for Producers, Importers & Brand-Owners (PIBOs) and Plastic Waste Processors (PWPs) to take responsibility for the end-of-life management of their products. The use of GST E-invoice details and the centralized EPR Portal for registration and reporting of plastic waste and packaging transactions will enable effective monitoring, cross-checking and enforcement of EPR targets, and help minimize the environmental impact of plastic waste. It is essential for all PIBOs and PWPs to comply with these guidelines and take necessary actions towards sustainable waste management, failing which strict action will be initiated against the defaulting parties. It is the collective responsibility of all stakeholders to work towards a cleaner and greener environment for present and future generations.

Way forward

In addition to the EPR Guidelines, there may be other solutions worth considering for reducing plastic waste. It may be valuable to explore alternative approaches. Here are some examples for the same:

- Reducing plastic consumption: One of the most effective ways to reduce plastic waste is to reduce plastic consumption altogether. This can be done by using reusable bags, water bottles, and containers, and avoiding single-use plastic products like straws and cutlery which has been banned by the govt.
- Promoting the use of sustainable alternatives: There are many sustainable alternatives to plastic, such as bamboo, paper, and biodegradable plastics. Governments and businesses can promote the use of these alternatives by providing incentives, such as tax breaks, and investing in research and development.
- Implementing a deposit-return system: A deposit-return system involves paying a deposit on a product, which is refunded when the product is returned for recycling. This system has been successful in reducing plastic waste in countries like Germany and Denmark.
- Implementing a plastic tax: A plastic tax is a tax on plastic products, which can provide an incentive for producers to reduce their plastic use and develop more sustainable alternatives.
- Investing in recycling infrastructure: Investing in recycling infrastructure can help to increase the recycling rates of plastic waste, reducing the amount that ends up in landfills or the environment. This could include investing in new technology to improve the efficiency of recycling processes and expanding the capacity of recycling facilities.

❖ Article on "Authorized Economic Operator (AEO) Program" Penned down by Abhishek Jain (Partner at RSA)

Introduction

The Authorized Economic Operator (AEO) Program is a voluntary program established by the Government of India to promote the safe and secure facilitation of trade. The program is open to importers, exporters, warehouse operators, custodians, logistics service providers, and customs brokers who have fulfilled all the compliances with the customs laws and the World Customs Organization (WCO) SAFE Framework of Standards.

Background and Purpose

The AEO program was established in 2005 as part of the global effort to enhance supply chain security after the 9/11 attacks. It is a business-to-customs partnership for the secure facilitation of trade. The program is based on the principle of mutual recognition of customs controls and security measures between countries, which means that an AEO certified in one country is recognized and given benefits in another country. It is a certification program developed by the WCO to enhance international supply chain security and facilitate trade.

Categories and Validity of AEO Certification in India

In India, the AEO program was first implemented in the year 2016. The program for importers and exporters is classified into three categories - AEO T1, AEO T2, and AEO T3. For logistics service providers, warehouse operators, customs brokers, and terminal operators, there is the AEO-LO program.

AEO T1 and T2 certifications are valid for 3 years, while AEO T3 and AEO-LO certifications are valid for 5 years. Any importer or exporter can apply for AEO T1 or T2 directly. However, to apply for AEO T3 status, they need to have and maintain the AEO T2 status for at least two years.

Eligibility Criteria for the Indian AEO Program

To be eligible for the Indian AEO program, a company should have been established in India and be engaged in custom-related activities. They should have filed at least 25 custom shipments in the previous financial year and fulfilled certain compliances, including general compliances, legal compliances, financial compliances, business partner security details, safety and security of the entity, transport and commercial records, security plans, and process maps.

Benefits of the AEO Program for Importers, Exporters, and Logistics Service Providers

There are several benefits of the AEO program for importers, exporters, and logistics service providers. Some of these benefits include a deduction in the bank guarantee, direct port delivery, deferred payment of duty, and higher priority for goods clearance. Additionally, AEO-certified companies receive the security that their goods will be facilitated at a much better rate than non-AEO-certified companies.

Reduction in Compliance for MSMEs in the AEO Program

Recently, the Government of India announced a reduction in compliance for Micro, Small, and Medium Enterprises (MSME) importers and exporters who are part of the AEO program. This means that MSMEs will be facilitated at a faster rate than non-MSMEs to provide them with higher opportunities for facilitating and securing global trade.

Nature of the AEO Program and Assistance Available

It is important to note that the AEO program is not mandatory but voluntary. However, companies that opt for the program are likely to benefit from the advantages that come with it. Companies can seek assistance from experts knowing the field to expedite their application process and achieve their goal of obtaining AEO certification.

Conclusion

In conclusion, the AEO program is a voluntary program established by the Government of India to promote the safe and secure facilitation of trade. The program is open to importers, exporters, warehouse operators, custodians, logistics service providers, and customs brokers who have fulfilled all the compliances with the customs laws and the WCO SAFE Framework of Standards. Companies can seek assistance from experts to expedite their application process and achieve their goal of obtaining AEO certification.

REGULATORY UPDATES

GST LAW

NOTIFICATIONS

- **Notification No. 02/2023-Central Tax dated 31.03.2023**

  By virtue of this Notification, the CBIC has introduced an amnesty scheme to provide persons who have failed to furnish return in FORM GSTR-4, for the quarters from July 2017 to March 2019 or for the financial years from 2019-2022, by the due date, but furnishes the said return between the period from 01.04.2023 to 30.06.2023, with the following relief:
  - waiver of late fee payable under Section 47 of the CGST Act, 2017 which is in excess of rupees two hundred and fifty rupees; and
  - complete waiver, where the total amount of central tax payable in Form GSTR-4, is Nil.

- **Notification No. 03/2023-Central Tax dated 31.03.2023**

  By virtue of this Notification, the CBIC has permitted registered person, whose registration has been cancelled by the Proper Officer before 31.12.2022 and who has failed to apply for the revocation of cancellation of registration within 30 days, to apply for such revocation upto 30.06.2023, provided the said registered person has furnished all the returns upto the effective date of cancellation of registration along with any amount payable towards interest, penalty and late fee in respect of such returns. Further, the scope of this relief has also been extended to those persons whose appeal against the order of cancellation of registration or the order rejection the application for revocation of cancellation of registration has been rejected on the ground of failure to adhere to the time limit.

- **Notification No. 04/2023 -Central Tax dated 31.03.2023**

  The CBIC has made it mandatory for an Applicant to undergo authentication of Aadhar Number, if he opts for such authentication, then the date of submission of the Application of Registration would be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST REG-01, whichever is earlier. Further, only for the State of Gujarat, the Aadhar authentication will be followed by Biometric Based Aadhar Authentication, taking photographs of the Applicant along with verification of the original copy of the documents uploaded with the application of registration, at one of the Facilitation Centres notified by the Commissioner, retrospectively w.e.f. 26.12.2022.

❖ **Notification No.06/2023-Central Tax dated 31.03.2023**

By virtue of this Notification, the CBIC has provided that the assessment order issued against a registered person for non-filing of a valid return within a period of thirty day from the date of service of the assessment order issued on or before 28.02.2023, may be withdrawn if such registered person furnishes the said return on or before 30.06.2023, along with the applicable interest, penalty and late fee payable in respect of such returns. Further, this benefit has been extended to even those registered persons who may have filed an appeal against such an assessment order or even obtained a decision in such an appeal.

❖ **Notification No.07/2023-Central Tax dated 31.03.2023**

By virtue of this Notification, the CBIC has rationalised the late fee payable for delayed filing of annual return in Form GSTR-9 from financial year 2022-2023 onwards, in the following manner:

Aggregate Turnover	Amount of late fee
Aggregate turnover of up to Rs. 5 crores.	Rs 25 per day, subject to a maximum of an amount calculated at 0.02% of the turnover in the State or Union Territory.
Aggregate turnover of more than Rs. 5 crores and up to Rs. 20 crores.	Rs 50 per day, subject to a maximum of an amount calculated at 0.02% of the turnover in the State or Union Territory.

Further, the registered persons who fail to furnish the return in Form GSTR-9 within the due date for any of the financial years from 2017-2022, but furnishes the said return between the period from 01.04.2023 to 30.06.2023, the amount of late which is in excess of ten thousand rupees, shall stand waived off.

❖ **Notification No.08/2023-Central Tax dated 31.03.2023**

The CBIC has waived the late fee payable which is in excess of five thousand rupees for registered persons who have failed to furnish the final return in Form GSTR-10 by the due date but furnishes the said return between the period 01.04.2023 to 30.06.2023.

❖ **Notification No.09/2023-Central Tax dated 31.03.2023**

The CBIC has extended the time limit for the issuance of an order for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised, as provided below, for the following financial years:

Financial Year	Extended Time Limit for issuing order
2017-2018	31.12.2023
2018-2019	31.03.2024
2019-2020	30.06.2024

CIRCULARS

❖ **Circular No. 191/03/2023-GST dated 27.03.2023**

The CBIC vide issuance of this Circular has given effect to the recommendation of the 49th meeting of the GST Council in notifying the following GST Rates that would be applicable on Rab w.e.f. 01.03.2023:

Good	Previous GST Rate	Current GST Rate
Rab	18%	5%- if sold pre-packaged and labelled

		Nil- if sold otherwise

Further, due to prevailing divergent interpretations and genuine doubts regarding the applicability of GST rate on Rab, it has been recommended to regularize the applicability of GST rate thereon during the past period on 'as is basis'.

CUSTOMS

NOTIFICATIONS

❖ **Notification No.15/2023- Customs, dated 03.03.2023**

The CBIC through this notification has decided to amend Notification No. 30/2022-Customs dated 24.05.2022, which exempted import of crude Soya-bean oil and Crude Sunflower seed oil, in specified quantity in a financial year (Tariff Rate Quota (TRQ) quantity) from the whole of the customs duty and Agriculture Infrastructure and Development Cess leviable thereon, by discontinuing the specified TRQ for the said goods after 31.03.2023.

❖ **Notification No.19/2023- Customs, dated 31.03.2023**

The CBIC through this notification has amended the notification No. 25/2021- Customs, dated 31.03.2021 to substitute the table specifying the goods eligible for exemption from customs duty at specified rate when imported into India from Republic of Mauritius. This notification gives effect to the third tranche of India-Mauritius CECPA.

❖ **Notification No.20/2023- Customs, dated 31.03.2023**

The CBIC through this notification has amended the notification No. 22/2022- Customs, dated 30.04.2022 to substitute the table specifying the goods eligible for exemption from customs duty at specified rate when imported into India from the United Arab Emirates. This notification gives effect to the second tranche of India-UAE CEPA.

❖ **Notification No.18/2023- Customs (N.T.), dated 30.03.2023**

By virtue of this Notification, the CBIC has exempted the following deposits from being made in the Electronic Cash Ledger for the purposes of making payment of any duty, interest, penalty, etc. from 01.04.2023 till 30.04.2023:

- deposits with respect to goods imported or exported in customs stations where customs automated system is not in place;
- deposits with respect to goods imported or exported in International Courier Terminals;
- deposits with respect to accompanied baggage;
- deposits other than those used for making electronic payment of:
  - any duty of customs, including cesses and surcharges levied as duties of customs;
  - integrated tax;
  - GST Compensation Cess;
  - interest, penalty, fees or any other amount.

❖ **Notification No.22/2023- Customs (N.T.), dated 31.03.2023**

The CBIC through this notification has amended Courier Imports and Exports (Clearance) Regulations, 1998 to increase the ceiling of application of the said Regulations to export goods with consignment value from Rs. 5 Lakhs to Rs. 10 Lakhs.

❖ **Notification No.23/2023- Customs (N.T.), dated 31.03.2023**

The CBIC through this notification has amended Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 to increase the ceiling of application of the said Regulations to export goods with consignment value from Rs. 5 Lakhs to Rs. 10 Lakhs.

CIRCULARS

❖ **Circular No. 09/2023-Customs dated 30.03.2023**

The CBIC by way of issuance of this circular has decided to enable the Electronic Cash Ledger (ECL) functionality in the following two phases w.e.f. 01.04.2023:

- First phase: certain notified deposits have been exempted from the ECL functionality that has been envisaged in Section 51A of the Customs Act, 1962.
- Second Phase: w.e.f. 01.05.2023, the exemptions for the said notified deposits would continue, except for courier shipments, wherein payments relating to it would be required to be done through ECL.

Further, the CBIC has also provided the functionalities relating to registration for availing ECL; deposit to ECL; payment of liabilities using ECL, etc. that shall be developed after the introduction of the second phase in the ECL.

INSTRUCTIONS

❖ **Instruction No. 10/2023-Customs dated 10.03.2023**

The CBIC has issued instructions in relation to implementation of origin procedures under India-Australia Economic Cooperation and Trade Agreement (ECTA). The CBIC has clarified that even electronic certificates of origin (e-COO) would be recognized for claiming preferential benefit under the said agreement. The CBIC has clarified that the specimen seals and signatures, circulated in advance, shall continue to be used to verify the authenticity of such e-COO. Further, the customs broker/importer must ensure that the e-COO has been uploaded on e-Sanchit for availing preferential benefit, and the e-COO particulars such as unique reference number and date, originating criteria etc. have been carefully entered while filing the bill of entry. For defacement purposes, a printed copy of e-COO is to be presented to the Customs officer, who will cross-check the unique reference number and other particulars entered in the bill of entry with the printed copy of e-COO. This will be in lieu of defacing the original hard copy of a certificate of origin.

❖ **Instruction No. 13/2023-Customs dated 31.03.2023**

The CBIC has provided the instructions in relation to acceptance of e-COO issued under India-Japan CEPA. With regards to issuance of e-COO, instructions have been given to verify the authenticity of the details mentioned in the e-COO through the relevant tab of "CO Reference System" of the Ministry of Economy, Trade and Industry of Japan. Further, in case of doubts, the matter will be referred to the FTA Cell (under the Directorate of International Customs) for initiating verification process with the issuing authority of exporting country. The e-COO has to be mandatorily uploaded on e-Sanchit by the importer/Customs Broker for availing preferential benefit, and the e-COO particulars such as unique reference number and

date, originating criteria etc. are to be carefully entered while filing the bill of entry. For defacement purposes, a printed copy of e-COO is to be presented to the Customs officer, who will cross-check the unique reference number and other particulars entered in the bill of entry with the printed copy of e-COO.

FOREIGN TRADE POLICY

NOTIFICATIONS

- **Notification No. 60/2015-2020 dated 14.03.2023**

  In amendment of import policy condition, the DGFT has provided that the import of 10000 MT of marble, falling under ITC(HS) Codes 2515 and 6802, shall be allowed from Bhutan without Minimum Import Price each year, subject to valid Registration Certificate issued by the DGFT.

- **Notification No. 61/2015-2020 dated 22.03.2023**

  In amending the import policy condition, the DGFT has clarified that the import of Urea (Agricultural Grade), falling under Exim Code 31021000 of the ITC (HS) 2022, Schedule-I (Import Policy), on Government account is allowed through Indian Potash Limited (IPL) subject to Para 2.20 of the Foreign Trade Policy, 2015-2020 till 31.03.2024.

- **Notification No. 62/2015-2020 dated 22.03.2023**

  In amending the export policy condition, the DGFT has clarified that the export of biofuel from Special Economic Zones / Export Oriented Units, are allowed for Fuel as well as Non-Fuel purposes without any restriction, when produced using only imported feed stock.

- **Notification No. 1/2023 dated 31.03.2023**

  Vide this Notification the DGFT has notified the Foreign Trade Policy, 2023 w.e.f. 01.04.2023. The highlights of the new FTP had already been circulated the same day for quick reference.

PUBLIC NOTICES

- **Public Notice No. 60/2015-2020 dated 01.03.2023**

  By virtue of this public notice, the DGFT has ended the TRQ facility available to the imported Crude Sunflower Seed Oil, falling under ITC (HS) 15121110 for Financial Year 2023-2024 and has revised that the last date for import of the said goods under TRQ to 31.03.2023.

- **Public Notice No. 61/2015-20 dated 20.03.2023.**

  By virtue of this public notice, the DGFT has notified the following procedure for obtaining Registration Certificate (RC) for import of marble and fresh (green) areca nut without minimum import price condition from Bhutan:

  - The Indian importer has to apply for a RC on the DGFT Website (https://dgft.gov.in) by navigating to Home page →Services → Import Management System → Apply for Registration Certificate for Imports.
  - Thereafter, details of imports affected against any RC availed earlier shall be provided as part of the application.

- After due examination of the applications received, the concerned authorities will fix the maximum quantity cap for any single RC, pursuant to which registration will be granted that will remain valid till the end of the financial year;
- The RC holders are to submit via email statement of their imports and quantities for surrender, if any, by the end of each quarter of the financial year.

Further the DGFT has also clarified that though the last date for filing of online application for RC for the financial year 2023-2024 will be 10.04.2023, however, the last date for filing applications for annual allocation from the next financial year that is 2024-2025 shall be 28th February of the previous financial year.

TRADE NOTICES

❖ **Trade Notice No. 27/2022-2023 dated 28.03.2023**

By virtue of this trade notice, the DGFT has extended the deadline for mandatory electronic filing of Non-Preferential Certificate of Origin through the e-CoO Platform to 31.12.2023. The Online Application process has not been made mandatory till the extended date and therefore during the interim period, the existing manual/paper mode application processing system will continue to operate. Further, vide this trade notice the DGFT has also directed the Non-Preferential CoO Issuing Agencies to sensitize the exporting community and their constituents regarding the online eCoO platform and its registration requirements and encourage the exporters to use the online eCoO platform.

RATIO DECIDENDI

GST LAW

❖ **Shabu George v. State Tax Officer, High Court of Kerala**

The Appellant preferred an Appeal to the High Court of Kerala against an order passed by the Single Judge, who rejected his contention that the seizure of cash by the Respondent during an investigation conducted under the GST Act is unwarranted especially when the investigation itself was for alleged evasion of tax. The High Court observed that though Section 67(2) of the CGST Act, 2017 authorises the seizure of things including cash in appropriate cases, the power of any authority to seize any 'thing' while functioning under the provisions of a taxing statute must be guided and informed by the object of the statute concerned. The fact that the authorities seized that cash which did not form part of the stock of the quarry business conducted by the Appellant shows the extent to which the authorities under the GST Act are misinformed of their powers and the limits of their jurisdiction. Moreover, the fact that the Respondent had retained the seized cash for more than six months and was yet to issue a show cause notice to the Appellant, the High Court directed the Respondent to forthwith release the said amount to the Appellant.

❖ **M/s Marubeni India Pvt Ltd, Karnataka Authority for Advance Ruling**

The Applicant intends to enter into a new business transaction in which it would be engaged in supplying domestically procured goods to customers outside India. In terms of the agreement with the Applicant, the Indian manufacturer will directly ship the goods from its factory to the overseas customer and along with it complete all the export compliances, including filing of the shipping bill as an exporter and also receiving the bill of lading from the shipper. The Applicant has sought an advance ruling on whether the supply of goods from the Applicant to the overseas customer is taxable under GST as a zero-rated supply. At the outset, the Karnataka Authority for Advance Ruling observed that the present scenario involves two transactions, the supply of goods by the manufacturer to the Applicant and the supply of the same goods

by the Applicant to the overseas customer. For the first transaction, the advance ruling authority referred to Section 2(60) of the Customs Act, 1962 to observe that the exporter is the owner of the goods. Since, in the instant case, the manufacturer files the shipping bill as an exporter and also gets the bill of lading issued to him, he is the owner of the goods and holds the title to them till they cross the customs frontier of India. Since, the manufacturer takes the goods from India to a place outside India while he is holding title to the goods, the said transaction falls within the definition of 'export of goods' under Section 2(5) of the IGST Act, 2017 and accordingly, the place of supply of the said goods shall be outside India. Further, in respect of the second transaction involving the supply of the goods by the Applicant to the overseas customer, it was observed that the goods are being supplied from a location outside India to a location outside India, i.e. the supply of goods is being undertaken from a place in the non-taxable territory to another place in the non-taxable territory, without such goods entering into India. Therefore, the said transaction would be covered under Entry 7 of Schedule III of the CGST Act, 2017 as a supply that shall be treated neither as a supply of goods nor a supply of service.

- **Deepa Traders v. Principal Chief Commissioner of GST & Central Excise, High Court of Madras**

  The inadvertent carelessness of a part-time accountant, who was employed by the Petitioner led to certain errors being committed in few of the GST returns of the financial year 2017-18. The Petitioner filed a writ before the High Court of Madras asking for rectification of such returns on the grounds that the unfamiliarity with the procedure and the newness of the GST system itself led to the commission of such errors. The High Court observed that when an assessee commits an inadvertent error and no malafide can be attributed to them, they should be in a position to rectify the same, particularly in the absence of an effective enabling mechanism in the statute. Since, the Petitioner had clearly committed inadvertent errors, the remedy of rectification would allow proper reporting of the turnover and input tax credit and accordingly will enable claims to be made in an appropriate fashion by the Petitioner and the connected assessees.

- **Ishwar Chand v. Union of India, Delhi High Court**

  The Petitioner has challenged the impugned order levying penalty for the late filing of the returns due to its registration being cancelled. The Hon'ble High Court held that from the date when the application for revocation of cancellation of registration is filed, the Petitioner cannot be held responsible for not filing the GST returns during the period when the registration stood cancelled. Thus, no penalty can be levied on the Petitioner for late filing of the said returns during the said period.

CUSTOMS/ FOREIGN TRADE POLICY

- **Commissioner of Customs (Airport & General) v. M/s R P Cargo Handling Services, High Court of Delhi**

  The Department preferred an appeal before the High Court of Delhi, on being aggrieved by the order of the Tribunal which held that the show cause notice under Regulation 20 of the Customs Brokers Licensing Regulations, 2013 is required to be received by the customs broker within a period of ninety days of the receipt of the offence report and it is not sufficient that the notice is 'issued' within the said period of ninety days. The Commissioner of Customs observed that in terms of Regulation 20(1) of the said Regulations, the Commissioner has ninety days from the date of receipt of the offence report to issue a notice to the Customs Broker, before triggering the procedure for revoking the licence or imposing penalty therein and therefore, the expression 'issue' must necessarily be construed to mean the action of preparing the notice and despatching the same. The court further held that the meaning of the word 'issue' is to be construed as 'to

set forth' or 'to emit' and by no stretch of imagination can it be interpreted to mean 'serve' or 'receipt'. Since, there is a distinction between issuance of notice and service of notice, the High Court held that the said regulation cannot be interpreted to mean that the customs broker is to receive the Notice within the period of ninety days.

- **M/s SK Rasayan Udyog Pvt Ltd v. Commissioner of Customs (Import), CESTAT, New Delhi**

  The Appellant had imported goods and pursuant to re-sale of the goods claimed refund of Special Additional Duty (SAD) paid, which was denied for being time barred in lieu of the amendment to the Principal Notification No. 102/2007-Customs dated 19.02.2019. On Appeal, the Hon'ble CESTAT held that period of limitation for the first time cannot be introduced through subordinate legislation or notification and therefore when the Principal Notification never prescribed a time limit, the Petitioner cannot be denied the refund of SAD on the grounds of being time-barred.

- **M/s Kanam Latex Industries Pvt Ltd v. Commissioner of Customs, CESTAT, Chennai**

  In the instant case, the original authority had assessed the imported rubber gloves to impose additional duty of customs. Though the said goods were cleared on payment of duty, the Appellant approached the Commissioner (Appeals) seeking refund of the excess duty collected, who rejected the plea of the Appellant on the ground that the duty was neither paid under protest nor the Bills of Entry were assessed provisionally. On appeal, the Hon'ble CESTAT observed that in terms of Section 17(5) of the Customs Act, 1962, where any assessment done is contrary to the claim of the importer, then in cases other than those where the importer confirms his acceptance in writing, the Proper Officer is to pass a speaking order within fifteen days from the date of such assessment. Therefore, when the Appellant was directed by the Original Authority to take steps for assessing the goods, the Commissioner (Appeals) should have examined whether there was a written acceptance of that direction by the Appellant and in its absence, the Proper Officer should have passed a speaking order. The Hon'ble CESTAT held that without a written acceptance, the Commissioner (Appeals) should not have accepted the assessment of the BOE and therefore, the matter was remanded back to the lower authority for issuance of a speaking order.

NEWS NUGGETS

- GST dept to scrutinise I-T, MCA data to identify entities not paying taxes
- Lack of CCI quorum impedes GST anti-profiteering drive
- GSTN issues Advisory on HSN Code Reporting in GST e-Invoice on IRPs Portal
- GSTN enables PAN-Linked Inter-GSTIN Cash Ledger Amount Transfer through For GST PMT-09 in Portal
- Maharashtra Govt notified Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2023
- GSTN issues Advisory for the taxpayer wishing to register as "One Person Company" in GST
- Banks from 18 countries get RBI's nod to trade in rupee: Centre in RS

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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**.

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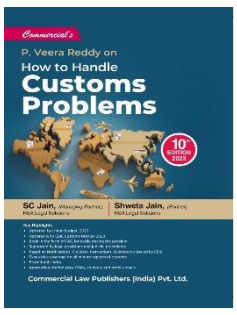

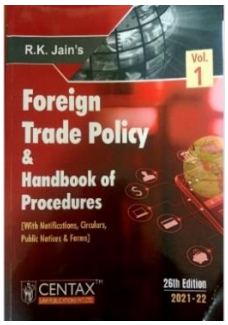

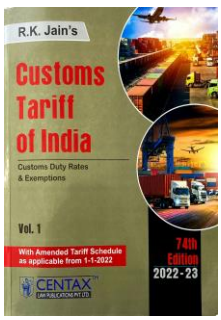

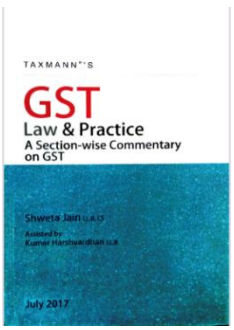

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