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Customs Duty implications on import of Share Certificates for dematerialization

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1. **RECENTLY**, the Ministry of Corporate Affairs (MCA) has made far reaching amendments in the companies law¹, in terms of which all private companies will have to dematerialize their shares² by the end of September, 2024. All private companies, except small companies³ and government companies, can henceforth issue new securities only in dematerialized form. Also, it has been mandated that all private companies will have to facilitate dematerialization of existing securities and the time period allowed to conform to this latest directive of MCA is until the end of September 2024.

2. One of the key requirements for conversion of physical shares to dematerialized shares is submission of physical share certificates by the concerned shareholder to the concerned Depository Participant (DP)⁴. This has necessitated all NRIs or foreign shareholders who are currently residing outside India and holding such physical share certificates outside India, to send these share certificates physically to India, for conversion from physical shares to dematerialized shares. These share certificates are being sent either to their agent or relative or known person in India through courier mode. Also, there may be instances where shareholders carry these share certificates with them, as a part of their baggage, when travelling to India.

3. In the above background, one very pertinent question arises from customs law point of view i.e., when these share certificates are being brought into India (either through courier mode or as a part of baggage) for dematerialization - whether any customs duty will be payable on such import of share certificates into India. In this article, we have tried to analyze this issue from the customs law point of view.

Customs Tariff Classification - Share certificates

4. When any share certificate is imported into India, the same is classifiable under customs tariff item 4907 0090. This classification will be applicable when these share certificates are imported via the courier mode into India.

5. However, it is noteworthy that when such share certificates are imported into India as a part of baggage (i.e., a person carries such share certificates with him in his baggage when traveling to India), the customs tariff classification will be 9803 0000. In case of import of goods as a part of baggage, on which customs duty is payable, the concerned traveler is required to declare the same in the prescribed Indian Customs Declaration Form and pay applicable customs duty on passing through the red channel at the airport on arrival.

Rate of applicable customs duty - Import of Share Certificates

6. Basis the above customs tariff classification of share certificates, the rate of customs duty applicable can be identified. Rate of customs duty applicable for items falling under 4907 0090 and 9803 0000, including share certificates, has been provided below:

Customs Tariff Classification	Effective Rate of Customs Duty
4907 0090	Basic Customs Duty (BCD) - 10%; Social Welfare Surcharge (SWS) - 10%; and IGST - 12% (<i>Total Customs Duty Rate - 24.32%</i>)
9803 0000	Basic Customs Duty (BCD) - 35%; Social Welfare Surcharge (SWS) - 10%; and IGST - NIL (<i>Total Customs Duty Rate - 38.5%</i>)

7. In view of the above, it is clear that activity of import of share certificates into India is subject to payment of applicable customs duty. The same will be payable in terms of customs tariff item 4907 0090 (as indicated above) when imported through courier and when imported as a part of baggage, the

same will be payable under 9803 0000 (as indicated above). Unfortunately, no exemption has been provided specifically to exempt share certificates from applicable customs duty on their importation into India.

8. In respect of import of share certificates into India for dematerialization, the CBIC (Board) has also issued a Circular No. [60/2000-Cus](#) dated 12.07.2000 wherein it has been clarified that since this transaction is in the nature of re-import of shares certificates into India, the importer may avail the benefit of exemption from payment of applicable customs duty by availing the benefit of exemption notification no. 94/1996-Cus dated 16.12.1996 which permits duty free re-import of goods into India which were originally exported from India. This notification has been rescinded and replaced with another notification no. [46/2017-Cus](#) dated 30.06.2017.

9. This new notification no. [46/2017-Cus](#) also provides for duty free re-import of all goods into India and can be argued to cover even cases of re-import of share certificates into India for dematerialization. However, there are certain conditions attached to this notification which are required to be fulfilled for availing the benefit of this notification such as the re-import should be made within a maximum period of three years from the date of export⁵. There may be cases where the share certificates were taken outside India prior to this period, in which case this benefit will not apply and the above discussed rates of customs duty will be applicable and payable by the importer.

10. Also, there is another condition in this notification which very dangerous in this regard and may virtually make this benefit / exemption non-existent for all importers. Sl. No. 2 of this notification incorporates the following condition to be fulfilled for availing this benefit:

"(2) The notification will apply to the exports for which order permitting clearance and loading under section 51 of the Customs Act, 1962 has been given on or before 30th June, 2017."

11. Order under section 51 of the Customs Act is passed by the customs officer at the time of export of goods for which the exporter has filed a shipping bill. Practically, no person while taking the share certificates outside India, would have filed a shipping bill. On account of such an eventuality, the customs department may argue that if these share certificates have been taken outside without filing any shipping bill, the benefit of this exemption notification on re-import will not be available and thus, applicable customs duty will be payable thereon.

12. It is imperative that the Central Government should forthwith either issue an exemption notification to allow duty free import of share certificates into India for dematerialization or amend the above discussed notification to remove the condition of re-import within three years and the requirement of filing of shipping bill (or order under section 51) on export. Failing such notification or amendment, on import of share certificates into India applicable customs duty will be payable by an importer.

Valuation Issues

13. In this regard, there is another interesting area which may not have an easy or a quick answer - what will be the value on which this customs duty will be payable - the value of piece of paper on which the share certificate has been issued / printed or the face value of the share (INR 10/- or 100/-, as the case may be) or the intrinsic value of the share (a share may have a face value of INR 10/- but the existing market value may be in lakhs or crores).

14. Thus, any NRI or a foreign individual or company planning to send shares certificates to India for dematerialization, as mandated by MCA, should ponder over these questions of customs duty liability and valuation issues to avoid dispute at a later stage and a hefty financial liability.

[The views expressed are strictly personal.]

¹ Includes Amendment dated October 27, 2013 wherein a new clause to this effect has been inserted in the Companies (Prospectus and Allotment of Securities) Regulations

² Dematerialisation requirement is applicable to all securities be it equity shares, preference shares, debentures, warrants, etc

³ Small private companies with a capital of less than Rs.4 crore and turnover of less than Rs.40 crore

⁴ Along with the Dematerialization Request Form (DRF)

⁵ This period can be extended by the customs authorities for another two years on request by the importer.

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