


Commercial's

P. Veera Reddy on
How to Handle
Customs Problems



10th EDITION 2023

SC Jain, (Managing Partner),
RSA Legal Solutions

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RSA Legal Solutions

Key Highlights

- Updated by Union Budget, 2023
- Updated with CBIC Customs Manual 2023
- Book in the form of FAQ for easily tracing the problem
- Supported by legal provisions and judicial precedents
- Based on Notifications, Circulars, Instructions, Guidebooks issued by CBIC
- Exhaustive coverage on all minute aspects of customs
- Procedural clarity
- Appropriate for industry, CHAs, students and professionals

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Commercial's

FOREIGN TRADE POLICY AND HANDBOOK OF PROCEDURES 2023


with Incentives & Exemptions

S.C. Jain • Shweta Jain • Abhishek Jain

COVERING

- Text of Foreign Trade Policy, 2023
- Text of Handbook of Procedures, 2023
- Updated Appendices as per FTP 2023
- Updated Aayat Niryaat Forms as per FTP 2023
- Foreign Trade (Development & Regulation) Act, 1992 and Rules, 1993
- Topic-wise Notifications, Trade Notices, Public Notices & Circulars
- FAQs
- Key Judicial Precedents on FTP by various Judicial Forums including High Courts and Supreme Court
- Key decisions by DGFT and RA/SEZs
- Key Decisions by various Committees
 - PRC Decisions
 - EPCG Committee Decisions
- Allied Laws

APRIL 2023 EDITION



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We are proud to announce the launch of our 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

It gives us immense pleasure to announce the launch of our book titled **“Foreign Trade Policy and Handbook of Procedures, 2023”** published by Commercial Law Publishers 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

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REGULATORY UPDATES

GST

NOTIFICATIONS

❖ **Notification No. 06/2024- Central Tax dated 22.02.2024**

CBIC has notified “Public Tech Platform for Frictionless Credit” as the designated system with which information furnished by the taxable person, may be shared by the common portal based on consent. “Public Tech Platform for Frictionless Credit” has been defined under the said notification as an enterprise-grade open architecture information technology platform, conceptualised by the Reserve Bank of India as part of its “Statement on Developmental and Regulatory Policies”.

CUSTOMS

NOTIFICATIONS

❖ **Notification No. 10/2024- Customs dated 19.02.2024**

CBIC has exempted the following goods when imported into India from so much of the customs duty leviable under the First Schedule of the Customs Tariff Act, 1975, which is in excess of the amount calculated as per the standard rate provided below:

Description of Goods	Standard Rate of Duty
Meat and edible offal, of turkeys, frozen	5%
Cranberries, fresh; Blueberries, fresh	10%
Cranberries, frozen; Blueberries, frozen	10%
Cranberries, dried; Blueberries, dried	10%
Cranberries, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included	5%
Blueberries, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included	10%
Other: of staple length exceeding 32.0 mm	Nil

❖ **Notification No. 11/2024- Customs dated 19.02.2024**

CBIC w.e.f. 20.02.2024 has exempted all goods (other than goods of staple length exceeding 32.0 mm) covered under Heading 5201 (other than tariff item 5201 00 25), which is on “Cotton, not carded or combed” from levy of Agriculture Infrastructure and Development Cess.

❖ **Notification No. 12/2024- Customs dated 21.02.2024**

CBIC has amended Notification No. 55/2022 - Customs, dated 31.10.2022 to remove the end date on export duty applicable on Parboiled Rice, falling under tariff item 1006 30 10. Previously, the export duty on Parboiled Rice was subject to a specified end date, however with this recent amendment that restriction has been lifted.

Further, through this notification the CBIC has also amended Notification No. 64/2023-Customs dated 07.12.2023 to provide that Yellow Peas imported under tariff item 0713 10 10 would be exempted from



levy of Agriculture Infrastructure and Development Cess, provided that the Bill of Lading of Yellow Peas is issued on or before 30.04.2024.

INSTRUCTIONS

❖ **Instruction No. 03/2024- Customs dated 19.02.2024**

Department officers have been requested to take necessary action to sensitize officers under their jurisdiction to undertake checking of all imported consignments of Boric Acid to ensure strict compliance with the specifications prescribed in Bureau of Indian Standards IS 10116:2015 (Reaffirmed in 2020) for Boric Acid (Technical Grade), which are as:

- ✚ Presence of polishing compounds comprising of sulphate and chloride in boric acid (technical grade) within the specified range.
- ✚ Packing of Boric Acid (Technical Grade) in jute bags with suitable liner inside.

FOREIGN TRADE POLICY

NOTIFICATIONS

❖ **Notification No. 60/2024 dated 13.02.2024**

DGFT has notified Chapter 01-39 of Schedule-2 (Export Policy) of Indian Trade Classification (Harmonised System) of export Items, 2023 that contains current export policy of items indicated along with their policy conditions to be fulfilled, if any. The same is available on the DGFT website under heading captioned ITC (HS) based Export Policy (Chapter 01-39).

❖ **Notification No. 61/2024 dated 23.02.2024**

DGFT has provided that the import of Yellow Peas under ITC(HS) 0713 10 10 is "Free" without the Minimum Import Price (MIP) condition and without Port Restriction, subject to registration under the Import Monitoring System, with immediate effect for all import consignments where the Bill of Lading (Shipped on Board) is issued on or before 30.04.2024.

❖ **Notification No. 62/2024 dated 29.02.2024**

DGFT amended Para 2.39 of the Foreign Trade Policy, 2023, to permit merchanting trade carried out within one specific foreign country subject to compliance with RBI guidelines, except for the goods listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Appendices, or under Special Chemicals, Organism, Materials, Equipment and Technologies (SCOMET).

PUBLIC NOTICE

❖ **Public Notice No. 40/2023 dated 12.02.2024**

Vide this public notice, the DGFT amended Para 4.36 of the Handbook of Procedures (HBP), 2023 to ease the clubbing provisions in respect of Advance Authorizations Scheme for ease of doing business. The para describes that only such authorizations shall be clubbed which have been issued within 24 months from the date of issue of earliest authorization that is sought to be clubbed, whether such authorizations are valid or not. This is further subject to condition that upon clubbing only imports made within 30 months from the date of issue of earliest authorisation shall be considered.



Furthermore, any imports made beyond 30 months of earliest authorisation is to be regularized under Para 4.49 of the HBP. This is further subject to condition that upon clubbing only exports made within 48 months from the date of issue of earliest authorisation shall be considered and any exports made beyond 48 months of earliest authorization shall not be acceptable for clubbing.

CIRCULAR

❖ **Circular No. 10/2023-24 dated 22.02.2024**

DGFT issued this Circular in order to provide relief to exporters of the sectors where the total exports in that sector has declined by more than 5% as compared to the previous year, by requesting all the regional authorities to re-fix the Annual Average Export Obligation for EPCG Authorizations for the year 2022-23 accordingly.

RATIO DECIDENDI

ERSTWHILE LAW

❖ **M/s Gopi Chenna vs. Commissioner of Central Tax Medchal, CESTAT Hyderabad**

In the instant case, the issue relates to the two appeals filed by the appellants against the impugned order confirming service tax demand along with interest and penalty. While the first appeal was based on the difference in values of “income from sale of service” shown in Balance Sheet and ITR, the second appeal was based on the difference in the values of Form 26AS and ITR/ST3 returns. The revenue contended that based on negative list regime introduced on 01.07.2012 in the Finance Act, 1994, which changed the taxation system of services from tax on the specified services to tax being levied on all services, other than those mentioned in the Negative List or which were exempted by a notification, the authority is not obliged to prove the provision of a particular service to demand service tax. Further, as per the Revenue, the Appellants could not explain the said difference satisfactorily. The Hon’ble Tribunal observed that the correct approach to determine the service tax demand depends on the service provider, service rendered, service recipient and the consideration thereof and the department cannot solely rely on ITR/26AS discrepancies to shift the burden of proof to the taxpayer. Further, information from other statutory documents like ITR/26AS, while valuable, cannot be the sole basis for service tax demands. Therefore, unless the aforementioned elements have been connected logically, demand cannot be confirmed merely on the basis of the figures reflected in other statutory records. By relying on the judgments of *M/s Raj Mohan vs. Commissioner of CGST, Panchkula* and *Indian Machine Tools Manufacturers Association vs. CCE, Panchkula*, the Hon’ble tribunal accordingly held that in the absence of such elements the service tax demand cannot be confirmed and accordingly set aside the impugned orders.

❖ **M/s Sharda Rerollers Private Limited vs. Commissioner of CGST, CX & Customs, CESTAT Kolkata**

In the instant case, during the search conducted at the premises of the appellant, the departmental officers seized rough papers, including some invoices, which were in possession of the employees of the appellant. Further, statements of the said employees were recorded which appeared to the department to be in contradiction to the statement of the Managing director. It is on this basis that a show cause notice was issued, demanding duty from the appellant on the allegation that the appellant



had cleared some goods without payment of excise duty. The same was also confirmed and upheld by the impugned order. On being aggrieved by the said impugned order, the appellant approached the Hon'ble CESTAT. At the outset, the tribunal observed that no investigation was carried out with respect to the invoices on the basis of which the demand was confirmed against the appellant. That is investigation was neither conducted at the end of the buyer mentioned in the said invoice nor with the transporter of the said goods. Moreover, no effort was made in order to find as to who is the author of the said invoices. In this regard, the CESTAT observed that it is a settled principle of law that mere factum of two set of invoices is not sufficient to prove the charge of clandestine removal in the absence of positive evidence with regard to the same. Accordingly, merely on the basis of the invoices and some rough papers seized during the search was not sufficient to hold the demand against the appellant. Furthermore, the tribunal observed that no cross examination of the employees was granted to the appellant which is in gross violation to the principles of natural justice, especially when the statement of that person has been relied upon to raise demand against the appellant. Accordingly, in view of the above, the tribunal dropped the demand as well as the penalty imposed against the appellant.

GST LAW

❖ KM Food Infrastructure Private Limited vs. The Director General DGGI, Delhi High Court

In the instant case, the Department seized the cash amount of Rs. 1,90,66,000/- from the residential premises of the Petitioner as he could not provide any satisfactory reply for the possession of the said amount. But during the course of investigation, no evidence could be unearthed that the cash so seized was representing the sale proceeds of unaccounted goods as per the CGST Act, 2017. However, the Income Tax Authorities were intimated to take over the custody of fixed deposit of the seized amount with request to take requisite action as deemed fit under the Income Tax provisions. The aggrieved parties filed writ petitions before Hon'ble High Court praying for issuance of directions declaring resumption of currency as illegal, arbitrary and contrary to the provisions of law and for further directions to the respondents to return the resumed currency to the petitioners. The Hon'ble High Court observed that the investigation has found no evidence indicating that the seized cash represented proceeds from the sale of unaccounted goods. Therefore, it was not justifiably seized under the CGST Act, 2017 which specifically pertains to goods liable for confiscation. Consequently, there is no valid reason for the respondents to retain the cash. Furthermore, as per the provisions of subsection (7) of Section 67 of the CGST Act, if no notice regarding the seized goods is issued within six months, they must be returned to the person from whom they were seized. Based on this provision, the Hon'ble High Court held that the petitioners are entitled to the return of the seized cash.

❖ M/s Hawkins Cookers Limited vs State of U.P. & Ors., Allahabad High Court

The petitioner had purchased raw materials for the manufacturing of pressure cookers from various suppliers situated in Maharashtra and stock transferred them from Maharashtra itself for being delivered to its factory situated at Satharia, Jaunpur. However, even though in four of the eight e-waybills generated for the purpose of such stock transfer, the place of supply has been correctly mentioned to be the factory of the Petitioner, in other four e-way bills, the place of supply has been wrongly mentioned to be the principal place of business situated at Kanpur, where no manufacturing activity is done. Thereafter the goods were intercepted and seized and the impugned order was passed, imposing penalty under Section 129 of the CGST Act, 2017 for contravention of the e-way bill provisions enumerated under Rule 138 of the CGST Rules, 2017. Further, the Petitioner filed a writ petition,



requesting the Hon'ble High Court to quash the order of penalty. At the outset, the High Court observed that it is a settled principle of law that an intention to evade payment of tax should be present for imposition of penalty under Section 129 of the CGST Act, 2017. Such an intention may be presumed by the department in cases where there is wholesale disregard to the Rules, for instance, in the event the goods are not accompanied by the invoice or the e-way bill, a presumption may be raised that there is an intention to evade tax. However, when most of the documents are accompanying the goods and there is some typographical or clerical error, a presumption to evade tax does not arise. In the instant case, the goods were accompanied with the relevant invoices, *bilty* documents and e-way bills. Furthermore, the invoices and the *bilty* documents contained the correct address of the destination and only four of the eight e-way bills had the incorrect address, which is actually the registered office of the Petitioner. Therefore, the High Court observed that in such a case, no presumption to evade tax arises at all and a mere technical error committed by the Petitioner cannot result in imposition of such a harsh penalty. Accordingly, the impugned order was set aside.

CUSTOMS/FOREIGN TRADE POLICY

❖ Vivo Mobile India Pvt. Ltd. vs Principal Commissioner, CESTAT Delhi

In the instant case, one of the integral issues before the Hon'ble CESTAT was whether the impugned order confirming the order of confiscation of the front cover, middle cover and back cover along with a few other parts of the mobile phone, imported by the appellant, under Section 111(m) of the Customs Act, 1962 on the grounds that the appellant had mis-declared their classification, is valid. The Hon'ble CESTAT ruled that even if the importer's classification differed from the reassessment by the proper officer or was deemed incorrect in appellate proceedings, it did not warrant confiscation under Section 111(m) of the Customs Act, 1962. Further, the tribunal was of the view that it would lead to absurd results if Section 111(m) is to mean that goods can be confiscated if classification of the goods and the exemption notification claimed by the importer self-assessing the duty under Section 17 of the Customs Act do not match with what the proper officer may apply after re-assessment or later. Accordingly, in view of the above, the order of confiscation of goods was set aside.

❖ Friends Cargo Service vs. Commissioner of Customs, CESTAT Delhi

In the instant case, the appellant being a Customs Broker handled consignments of some exporters whose premises could not be verified physically or were untraceable by the department. Post conduct of inquiry, the impugned order was passed ordering for revoking the license, forfeiture of deposit and imposition of penalty, on the grounds that the appellant had violated Regulation 10(n) of the Customs Brokers Licensing Regulations (CBLR), 2018 by not following KYC guidelines. On appeal, the Hon'ble CESTAT observed that the obligation under Regulation 10(n) involves a two step verification, that is (a) verification of the correctness of the IEC number and the GSTIN; and (b) verifying the identity and functioning of the client using reliable, independent, authentic documents, data or information. The IEC and GSTIN are issued by the Government department and apart from verifying the copies of these documents, the department cannot expect the appellant to also ensure the correctness of the actions of the Government department which have issued these certificates. Furthermore, Regulation 10(n) also requires the Customs Broker to know who the client is and this identity can be established by using independent, reliable, authentic documents, data or information. This means that it is not mandatory on the Customs Broker to conduct a physical verification as long as any of the aforementioned methods



are used by the Customs Broker to verify the identity of the client as well as its functioning at the declared address. The tribunal further observed that both the GSTIN as well as the IEC indicates the address of the client which in itself forms an independent data to verify the correctness of the identity/address of the client. Since, in the instant case, the appellant verified the exporter's identities using reliable documents as mandated by Regulation 10(n) of the CBLR, 2018, the Hon'ble Tribunal quashed the impugned order revoking the Customs Broker license of the appellant, forfeiting their security deposit and further imposing penalty on the appellant.

NEWS NUGGETS

- ❖ [GSTN clarifies GST registration process will take 30 days post successful aadhar authentication.](#)
- ❖ [GST e-Invoice Portal Update: Government Launches Enhanced System with Quick Action e-invoice Features](#)
- ❖ [GST Council may consider Biometric-Based Registration across India to curtail Fake Registrations](#)
- ❖ [GST Portal Alert: File Form CMP-02 to opt for Composition Levy Scheme by March 31, 2024](#)
- ❖ [CBIC issues verification guidelines in case of Fraud Summons for GST Violations](#)
- ❖ [Central Government unlikely to extend customs duty for e-commerce operators](#)

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ABOUT THE FIRM

RSA Legal Solutions is a top-tier Tax and Commercial 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 “5 Highly Recommended Law Firms to Watch in 2024” by Leaders Globe Magazine. We also featured in “Highly Recommended Law Firms, 2022” by the Leaders Globe Magazine in 2022. 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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