

Staying Updated

Customs, FTP and WTO newsletter

July 2016: Volume 19 Issue 4

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- Procedure under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 simplified.

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Classification

- Parts of Hydro Electric Generator, i.e., epoxy stator coils, held classifiable under Customs Tariff Heading (CTH) 8503, as parts of generator instead of under CTH 8544, since they are solely and principally designed for power generators.

Valuation

- Royalty for technical know-how held not includible in the value of the imported raw material in a case where there was no condition to purchase raw material from related overseas supplier.

Foreign trade policy

Notifications and circulars

- The policy for import of Hazardous Waste has been amended to provide that the import of hazardous waste in India shall be subject to the provision of Chapter III of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.
- The prohibition on direct and indirect export to Iran or import from Iran has been removed, subject to United Nation Security Council Resolution 2231 (2015).

Case law

- Exports made after filing of application and before the date of issuance of Advance licence, held not to be considered for fulfilment of Export Obligation under the Advance Licence Scheme.

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- A Director General of Foreign Trade (DGFT) has full and wide statutory powers for reviewing orders passed by any officer subordinate to him.

Anti dumping/safeguard duty

Notifications and circulars

- Levy of Anti-dumping duty extended on import of Poly Vinyl Chloride Paste Resin originating in, or exported from, Korea RP, Taiwan, People's Republic of China, Malaysia, Thailand, Russia and European Union, for a period of five years from 23 June, 2016.
- Anti-dumping duty levied on import of Plain Medium Density Fibre Board having thickness of 6 mm and above, originating in or exported from Indonesia and Vietnam, for a period of five years from 14 July, 2016.

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Notifications and circulars

- The Central Government has appointed Honnavar port in the State of Karnataka for the purpose of unloading of imported goods and loading of export goods. *(Notification No. 97/2016-Customs (NT), dated 08 July, 2016)*

- The Central Government has introduced Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Second (Amendment) Rules, 2016. The following amendments have been made:
 - These Rules will now be applicable to a Service Provider as well.
 - The manufacturer/ service provider will now have the option to furnish a continuity bond with security (Bank Guarantee) as against the mandatory requirement of furnishing a surety bond earlier.
 - The time limit allowed to re-export imported goods has been increased from 3 months to 6 months.*(Notification No. 100/ 2016-Customs (NT), dated 14 July, 2016)*

- The Central Government has introduced simplified procedures under Single Window Interface for Trade for clearance of drugs, cosmetics and medical equipment, in order to avoid unnecessary

references to the Assistant Drug Controller.

(Circular No. 28/2016-Customs, dated 14 June, 2016)

Case law

Classification

- In Samsung India Electronics Pvt Ltd v CC (2016 (337) ELT 87), the Chennai Tribunal held that Liquid Crystal Device Panels were held classifiable under CTH 9013 80 10 as “Liquefied Crystal Devices” instead of under CTH 8529 90 90, as imported goods were most specifically covered under CTH 9013 80 10.
- In Karnataka Power Corporation Ltd v CC (2016 (337) ELT 104), the Chennai Tribunal held that parts of Hydro Electric Generator, i.e., epoxy stator coils, were classifiable under CTH 8503 as parts of generator, instead of under CTH 8544, since the same were solely and principally designed for power generators.
- In STJ Electronics Pvt Ltd v CC (2016 (337) ELT 140), the Delhi Tribunal held that fingerprint reader was classifiable under CTH 8471 as “Automatic Data Processing Machine”, instead of under CTH 8543, since the product was solely and principally used in automatic data processing systems, rather than as an electrical machine having individual function.

Valuation

- In *National Fruits Agency v CC* (2016 (337) ELT 232), the Chennai Tribunal held that the value of imported goods could not be enhanced merely on the basis of parallel set of invoices maintained by the overseas supplier's agent, and without considering the contemporaneous imports and remittances made by the importer in relation to such imports.
- In *Kalyani Brakes Ltd v CC* (2016-TIOL-1696-CESTAT-MUM), the Mumbai Tribunal, held that royalty for technical know-how was not includible in the value of imported raw material in case there was no condition in the import agreement to purchase raw material from related overseas supplier.
- In *Kyori Oremin Ltd v Chief Commissioner of Customs* (2016 (337) ELT 228), the Gujarat High Court held that mere pendency of proceedings on a similar issue before various Tribunals could not be a ground for keeping adjudication proceedings in abeyance in all cases. Facts and circumstances of each matter should be looked into for deciding the matter.
- In *Firdouse International Trading Co. v CC* (2016 (336) ELT 408), the Kerala High Court held that in case of import of goods covered under any other Act like FSSAI etc., the standards that are effective on the date of release of goods by Customs would be applicable, and not those that were effective at the time of import.

Others

- In *CC v Medreich Sterilab Ltd* (2016 (337) ELT 280), the Chennai Tribunal held that benefit of an exemption could not be denied merely on account of procedural lapses. The benefit of concessional rate of import duty had to be extended even if the compliance under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 was done post import of goods.
- In *Nexus International v CC* (2016 (336) ELT 667), the Delhi Tribunal held that the description of goods could not be challenged merely on the basis of assumption and presumption. Instead, it should be backed by test reports or an expert opinion. In this matter, the department disputed clearance of Heavy Melting Scrap alleging that it was hazardous slag.

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- The Central Government has amended the Policy for Import of Hazardous Waste to provide that the import of Hazardous Waste in India shall be subject to the provision of Chapter III of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. *(Notification No. 14/2015-20, dated 14 July, 2016)*
 - The Central Government has notified that there is no requirement to obtain a licence from DGFT for persons who have been granted permission to operate scheduled or non-scheduled air transport services by the Ministry of Civil Aviation, based on which the Directorate General of Civil Aviation has granted permission to import aircraft for such air transport service. *(Notification No. 10/2015-20, dated 20 June, 2016)*
 - The Central Government has removed the prohibition on direct and indirect export to Iran, or import from Iran,
- subject to United Nation Security Council Resolution 2231 (2015). *(Notification No. 13/2015-20, dated 29 June, 2016)*
- The Central Government has extended the prohibition on import of milk and milk products (including chocolate and chocolate products and candies/ confectionery/ food preparation with milk or milk solids as an ingredient) from China till 23 June, 2017. *(Notification No. 12/2015-20, dated 24 June, 2016)*
 - The Central Government has laid down the procedure to process application of authorisation for export to Iran of specified items in SCOMET list. *(Public Notice No. 19/2015-20, dated 29 June, 2016)*
 - The Central Government has included Inland Container Depots located at Hosur (Tamil Nadu) and Nattakkam Village (Kottayam Taluk and District) in the list of Registered Ports for availing export promotion benefits under Advance Authorisation Scheme. *(Public Notice No. 20/2015-20, dated 01 July, 2016)*

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- The Central Government has clarified that entitlement of Served From India Scheme/ Service Export from India Scheme shall be calculated only on the basis of receipt of foreign exchange earned by exporters after deduction of state/ central tax collected from customers.
(Trade Notice No. 11/2015-20, dated 21 July, 2016)

Case law

- In Indian Immunologicals Ltd. v CC (2016-TIOL-1808-CESTAT-BANG), the Bangalore Tribunal held that the conversion of Free Shipping Bills into Export Promotion Scheme Shipping Bills could not be rejected if there was a technical problem in EDI system at the time of filing Shipping Bill. Further held that conversion had to be allowed under Section 149 of Customs Act on the basis of documentary evidence in existence at the time of export of goods that the goods were eligible for such export benefit.
- In Micro Metals v CC (2016-TIOL-1642-CESTAT-HYD), the Hyderabad Tribunal held that confiscation and imposition of penalty was illegal even in case the Pre-shipment Inspection Certificate was not obtained from an

authorised agency of the exporting country, provided no objectionable items were found at the time of post-shipment inspection in India.

- In Rotomac Electricals Ltd. v Union of India (2016 (336) ELT 390), the High Court of Delhi held that exports made after filing of application and before date of issuance of Advance Licence could not be considered in fulfilment of Export Obligation under the Advance Licence scheme.
- In Auto Ignition Ltd. v Union of India (2016 (336) ELT 398), the High Court of Delhi held that an *ex-parte* Adjudication Order for non-fulfilment of export obligation under Export Promotion Capital Goods Scheme could not be passed without considering the Export Obligation Discharge Certificate duly obtained from DGFT office and submitted to Customs Authorities.
- In Studio 24 Frames v CC (2016 (336) ELT 532), the Hyderabad Tribunal held that if imported second hand goods were the basic infrastructure and machinery for revenue generation, then such goods had to be considered as “Second hand Capital goods” and be allowed for imports without any licence in terms of the Foreign Trade Policy.

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- In *Pan Parag India Ltd. v DGFT* (2016 (336) ELT 625), the High Court of Delhi held that a DGFT had full and wide statutory powers for reviewing the orders passed by any officer subordinate to him.
- In *Blueline Foods (India) Pvt. Ltd. v Union of India* (2016 (337) ELT 63), the High Court of Karnataka held that the claims under Incremental Exports Incentivisation Scheme could not be denied on the basis of a Public Notice in case all required documents were in place, and all requirements under the scheme had been fulfilled.

Anti-dumping/Safeguard duty

Notifications and circulars

- The Central Government has extended the levy of anti-dumping duty on imports of Poly Vinyl Chloride Paste Resin, falling under Chapter 39 of Customs Tariff Act (CTA), originating in or exported from Korea RP, Taiwan, People's Republic of China, Malaysia, Thailand, Russia and European Union for a period of five years from 23 June, 2016.

(Notification No. 27/2016-Customs (ADD), dated 23 June, 2016)

- The Central Government has levied definitive anti-dumping duty on imports of "Purified Terephthalic Acid" falling under Chapter 29 of CTA, originating in or exported from the People's Republic of China, Iran, Indonesia, Malaysia and Taiwan, for a period of five years from the date of imposition of provisional anti-dumping duty, i.e. 10 December, 2015.

(Notification No. 28/2016-Customs (ADD), dated 05 July, 2016)

- The Central Government has extended the levy of anti-dumping duty on imports of 1,1, 1, 2-Tetrafluoroethane or R-134a, falling under Chapter 29 of CTA, originating in or exported from People's Republic of China, for a period

of five years from 11 July, 2016.

(Notification No. 30/2016-Customs (ADD), dated 11 July, 2016)

- The Central Government has levied definitive anti-dumping duty on imports of Plain Medium Density Fibre Board having thickness of 6 mm and above, falling under Chapter 44 of CTA, originating in or exported from Indonesia and Vietnam, for a period of five years from 14 July, 2016.

(Notification No. 34/2016-Customs (ADD), dated 14 July, 2016)

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