

Staying Updated

Customs, FTP and WTO newsletter

May 2016: Volume 19 Issue 2

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Notifications and circulars

- Basic Customs Duty and Special Additional Duty exempted on import of charger, battery, wired headsets and speakers for use in manufacture of mobile handsets.
- Specific regulations for licensing and operationalisation of various kinds of CBW have been issued.

Case law

Classification

- Consumer Electronics PC with additional components of audio, video, multimedia, etc., classified under CTH 8471 30 10 as ADP machine.

Valuation

- Royalty related to manufacture of goods in India could not be included in the value of the imported raw material in case there was no restriction on purchasing raw material from related overseas supplier only.

Other

- Unjust enrichment could not be upheld in case where CA certificate was available to prove that differential duty burden had not been passed on.

Foreign trade policy

Notifications and circulars

- The criteria for recognition as status holder have been changed effective 1 April, 2016 from the existing criteria of exports of current and previous two financial years, to exports of current and previous three financial years.
- A list of services has been notified for which payments received in Indian Rupees is to be counted towards fulfilment of export obligation under Export Promotion Capital Goods Scheme.

Case law

- Importer held liable to pay applicable duty on goods found short in excess of prescribed wastage norms. Also, if the goods were not available for confiscation, then redemption fine could not be imposed.

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- In an exemption notification a genuine description of product held to cover all variants of such products. Accordingly, the expression, 'Laser Drilling Machines' also covered CNC-based Laser Drilling Machines having multi-function capabilities.

Anti dumping/safeguard duty

Notifications and circulars

- Anti-dumping duty levied on imports of Measuring Tapes originating in or exported from the Chinese Taipei, Malaysia, Thailand and Vietnam, for a period of five years from 2 May, 2016.
- Levy of Anti-dumping duty extended on imports of Digital Versatile Discs-Recordable (DVD-R) originating in or exported from Vietnam and Thailand, for a period of five years from 13 May, 2016.

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Notifications and circulars

- The Central Government has exempted Basic Custom Duty and Special Additional Duty on import of charger, battery, wired headsets and speakers for use in manufacture of mobile handsets, subject to compliance with specified procedures.

(Notification No. 30/2016-Customs and 31/2016-Customs dated 5 May, 2016)

- The Central Government, in the Budget 2016 announcements, proposed to amend the Customs Law to provide a shift from physical control of Customs Bonded Warehouses (CBW) to record-based control with sophisticated IT systems. In line with its proposals, the Central Government has now issued specified Regulations for licensing and operationalisation of various kinds of CBWs. A brief overview of these Regulations is given below:
 - *Warehouse Goods (Removal) Regulation, 2016*: This Regulation governs the procedure and requirements for movement of goods from one CBW to another CBW, or from customs station to CBW.
 - *Warehouse (Custody and Handling of Goods) Regulations, 2016*: This Regulation governs the procedures to be followed at the time of receipt/

removal of goods in/ from CBW and records to be maintained at CBW.

- *Special Warehouse (Custom and Handling of Goods) Regulations, 2016*: This Regulation governs the procedures to be followed at the time of receipt/ removal of goods from Special Warehouse, and records to be maintained in a Special Warehouse. The Special Warehouse shall be used for specified goods such as gold, silver, other precious metals and goods meant for supplies to Duty Free Shops (DFS).
- *Public Warehouse Licensing Regulations, 2016*: This Regulation governs requirement for obtaining a Public Warehouse License.
- *Private Warehousing Licensing Regulations, 2016*: This Regulation governs requirement for obtaining a Private Warehouse License.
- *Special Warehouse Licensing Regulations, 2016*: This Regulation governs requirement for obtaining a Special Warehouse License.

(Notification No. 66/2016-Customs (NT) to Notification No. 72/2016-Customs (NT), dated 14 May, 2016)

- The Central Government, amongst other things, has clarified that DFS cannot be licensed as a "warehouse" either under existing Rules or under the new Rules, since it is not able to fulfil CBW requirements.
(Circular No. 20/2016-Customs, dated 20 May, 2016)

Case law

Classification

- In *CC v HCL Info Systems Ltd* (2016 (335) ELT 190), the Chennai Tribunal held that consumer electronics PC with additional components of audio, video, multimedia etc. was classifiable under CTH 84713010 as Automated Data Processing (ADP) machine since its principal function was that of an ADP machine.
- In *Suyog Agro Poultry Products (P) Ltd. v CC* (2016 (335) ELT 350), the Chennai Tribunal held that 'Paddle wheel aerators and parts thereof for use in aquaculture' were classifiable under CTH 8536 as agricultural equipment since, as per Ministry of Agriculture, aqua farming is an integral part of agriculture.

Valuation

- In *Rhone Poulenc (I) Ltd v CC* (2016 (335) ELT 122), the Mumbai Tribunal

held that royalty related to manufacture of goods in India was not includible in the value of imported raw material if there was no restriction in the import agreement to purchase raw material necessarily from related overseas supplier.

- In *Mohit Overseas v CC* (2016 (335) ELT 18), the Delhi High Court held that amendment of Bill of Entry was permissible even after clearance of goods, provided that the amendment was based on documentary evidence which existed at the time of clearance of goods, and exemption notification was clearly a document present at the time of import.

Others

- In *Becton Dickinson India Pvt Ltd v CC* (2016-TIOL-1111-CESTAT-MAD), the Chennai Tribunal held that the authorities had to act only within the parameters of law and had to carry out the object of the statute without imposing any extraneous grounds not known to law. The Tribunal held that refund of Additional Duty of Customs (ADC) could not be denied due to non-submission of board resolution and, Chartered Accountant (CA) appointment letter, for grant of refund.

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- In *Trimula Bearings (P) Ltd v CC (Appeals)* (2016 (335) ELT 145), the Bangalore Tribunal held that in case of refund of differential duty, CA certificate was good evidence to prove that the duty burden had not been passed on to the customer, and allegation of unjust enrichment could not be upheld.
- In *Union of India v Engee Industrial Services Co. Ltd* (2016 (335) ELT 197 (SC)), the Supreme Court held that when excise duty was exempt, there was no question of payment of ADC on ship imported for breaking in India.

Foreign trade policy

Notifications and circulars

- The criteria for recognition as status holder have been changed effective 01 April, 2016 from the existing criteria of exports of current and previous two financial years, to exports of current and previous three financial years.
(Notification No. 4/2015-20, dated 29 April, 2016)
- The Central Government has made certain amendments in categories 0, 3 & 4 of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) list.
(Notification No. 5/2015-20, dated 29 April, 2016)
- The Central Government has notified an amended list of services, for which payments received in Indian Rupees will be counted towards fulfilment of export obligation under Export Promotion Capital Goods Scheme.
(Notification No. 6/2015-20, dated 3 May, 2016)
- The Central Government has now permitted free import of radio remote control apparatus, subject to issuance of licence by Wireless Planning and Coordination Wing of Department of

Telecommunication, Ministry of Communication and Information Technology.

(Notification No. 7/2015-20, dated 9 May, 2016)

- The Central Government has made the following changes in Merchandise Exports India Scheme (MEIS):
 - Additions of markets in 2787 line items;
 - Landing Certificate will not be required under MEIS; and
 - Separate application is required to be filed for exports made prior to date of issue of the Public Notice and exports effected from the date of issuance of this Public Notice.
(Public Notice No. 6/2015-20, dated 4 May, 2016)
- The Central Government has simplified the procedure for declaration of intent in Electronic Data Interchange (EDI) shipping bill to claim rewards under MEIS. Marking/ Ticking of 'Y' (for Yes) in 'Reward' column of shipping bills shall be treated as declaration of intent to claim benefit.
(Public Notice No. 9/2015-20, dated 16 May, 2016)

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- In *CC v S.B & T. International Ltd.* (2016 (335) ELT 83), the Mumbai Tribunal held that importer was liable to pay applicable duty on imported platinum found short in excess of prescribe wastage norms. Further, it was also held that when goods were not available for confiscation, then redemption fine could not be imposed.
- In *S. Narendra v CC* (2016 (335) ELT 172), the Mumbai Tribunal held that for the purpose of exemption notification, a genuine description of product would cover all variants of such product. Accordingly, the Entry referring to 'Laser Drilling Machines' under the exemption notification, would also cover CNC-based Laser Drilling Machines having multi-function capabilities of sawing, kerfing and drilling.

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Anti-dumping/Safeguard duty

Notifications and circulars

- The Central Government has levied anti-dumping duty on imports of Measuring Tapes, falling under Chapter 90 of Customs Tariff Act (CTA), originating in or exported from the Chinese Taipei, Malaysia, Thailand and Vietnam, for a period of five years from 2 May, 2016.

(Notification No. 16/2016-Customs (ADD) dated 2 May, 2016)

- The Central Government has extended the levy of anti-dumping duty on imports of Digital Versatile Discs-Recordable (DVD-R), falling under Chapter 85 of CTA, originating in or exported from Vietnam and Thailand, for a period of five years from 13 May, 2016.

(Notification No. 17/2016-Customs (ADD) dated 13 May, 2016)

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