

# ***Staying Updated***

## Customs, FTP and WTO newsletter

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**pwc**

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- Transaction value could not be rejected only for the reason of high selling price of the imported goods in India

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- Refund of SAD was admissible where declaration about non-availment of SAD was not made on sales invoice when dealer was a non-registered dealer under excise
- The limitation period for demanding interest in respect of 'warehoused goods which could not be cleared within the prescribed time' would be 6 months

#### ***Foreign Trade Policy***

##### ***Notifications and circulars***

- MLFPS amended to give additional incentive to identified products

##### ***Case law***

- Benefit of project import scheme not available in case materials imported by one unit were transferred to another unit
- Deemed export to be taken into account for the purpose of computation of entitlement of DTA clearances at concessional rate under EOU scheme

#### ***Anti-dumping duty***

- Central Government extended levy of anti-dumping duty on imports of Acetone, originating in, or exported from, EU, South Africa, Singapore and USA for a further period of five years from 11 March, 2014

## Customs

### Notifications and circulars

- The Central Government has instructed Customs authorities to ensure that import of Ammonium Nitrate is allowed clearance on compliance with the Ammonium Nitrate Rules, 2012.

*(Instruction F. No. 450/37/2014 dated 5 March, 2014)*

- The Central Government has issued guidelines to the Customs authorities at the airport regarding import of gold by eligible passengers. Gold (up to 1 kg) in form of bars and ornaments is allowed to be imported by eligible passengers on payment of 10% customs duty.

*(Circular No. 06/2014-Customs dated 6 March, 2014)*

- The Central Government has clarified that all incoming international passengers will be required to declare the content of their baggage in the form notified under Customs Baggage Declaration Regulations 2013 with effect from 1 March, 2014. Further, the Ministry of Home Affairs (MHA) has decided that arrival (disembarkation) card of MHA would be given to foreign nationals only.

*(Circular No. 05/2014-Customs dated 27 February, 2014)*

- The Central Government has clarified that due to Electronic Data Interchange (EDI) system restriction, exporters cannot opt for higher rate of duty drawback in the absence of “non-availment of CENVAT certificate” at the time of export and they have to opt for lower rate to get ‘Let Export Order’ (LEO). However, this practice does not prevent the exporter from subsequently claiming higher drawback on following the due procedure. The Central Government has directed customs authorities to allow such higher drawback on following the prescribed procedure.

*(Instruction No. 609/156/2013 dated 13 March, 2014)*

### Case law

#### Valuation

- The Delhi High Court, in *Kirat International v Union of India* (2014-TIOL-254-HC-DEL), held that the different valuation approach for freight and insurance calculation for identical goods imported from different countries could not be adopted in the absence of any justifiable reasons.
- In *IMCD Group B V India v CC* (2014 (301) ELT 259), the Mumbai Tribunal held that the transaction value could not be rejected merely on the basis of high selling price of the imported goods in

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India, where the importer was able to justify its import price on account of expenses incurred in India such as customs duty, local clearance, logistics cost, insurance, etc.

- The Delhi Tribunal, in *CC v Data Enterprises* (2014 (301) ELT 257), held that the value of imported goods could not be rejected in the absence of legally permissible grounds prescribed under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- In *Rehau Polymers Pvt Ltd v CC* (2014 (301) ELT 116), the Mumbai Tribunal held that the importer's transaction value could not be rejected for price difference with third party imports where the price difference was on account of quality and there was no flow-back of money to the supplier.

### *Others*

- In *ZTE Corporation v CC* (2014-TIOL-249-HC-DEL), the Delhi High Court held that the foreign supplier's request for re-export of goods from India could not be denied by the Customs authorities where ownership of goods remained with the exporter and these were virtually abandoned by the importer.
- The Delhi Tribunal, in *SK Enterprises v CC* (2014-TIOL-364-CESTAT-DEL),

held that where the importer informed the Customs authorities of the wrongly shipped goods not conforming to BIS standards before filing of Bill of Entry, re-export of the same could not be denied on ground of mis-declaration.

- In *Fossil India Pvt Ltd v CC* (2014 (301) ELT 268), the Bangalore Tribunal held that refund of Special Additional Duty (SAD) of Customs was admissible even though declaration about non-availment of SAD was not made on sales invoice when the dealer was a non-registered dealer under excise.
- In *Firmenich Aromatics (India) Pvt Ltd v CC* (2014-TIOL-338-CESTAT-AHM), the Ahmedabad Tribunal held that in the absence of any specific period of limitation, the limitation period for demanding interest in respect of 'warehoused goods which could not be cleared within the prescribed time' would be 6 months in terms of section 28 of the Customs Act, 1962.
- The Mumbai Tribunal, in *Seli Societa Esecuzione Lavori Idraulici Spa v CC* (2014-TIOL-348-CESTAT-MUM), held that the test of unjust enrichment was not applicable on refund claim of cash security post finalization of assessment in case of goods imported under Project Import Scheme as the test applied to duty and interest thereon.

## **Foreign trade policy**

### **Notifications and circulars**

- The Central Government has modified appropriate body to certify quality of steel in terms of Steel and Steel Products (Quality Control) Second Order, 2012. Earlier, the requirement was to obtain quality certification from the recognised Quality Certifying Board of the Country of Origin, which shall now be quality certification from International Standard Certifying Body.

*(Notification No. 74(RE-2013)/2009-14 dated 13 March, 2014)*

- The Central Government has amended Market Linked Focus Products Scrip (MLFPS) to give incentive to the specified products in addition to any benefit to which the said product may be entitled.

*(Notification No. 71(RE-2013)/2009-14, Public Notice No. 53(RE-2013)/2009-14 and Public Notice No. 54(RE-2013)/2009-14 dated 27 February, 2014)*

- The Central Government has introduced an online system for Export Obligation Discharge Certificate (EODC)/Redemption for Advance Authorization (AA) and Duty Free Import Authorisation (DFIA) with effect from 1 June, 2014. This will reduce processing time and transaction cost.

*(Public Notice No. 55(RE-2013)/2009-14 dated 14 March, 2014)*

### **Case law**

- In *Bharat Bijlee Ltd v CC* (2014-TIOL-374-CESTAT-MUM), the Mumbai Tribunal held that benefit under Project Import Scheme was not available in case materials imported by one unit were transferred to another unit.
- The High Court of Delhi, in *Kandoi Metal Powders Mfg Co Pvt Ltd v UOI* (2014-TIOL-230-HC-DEL-EMIM), held that refund of Terminal Excise duty (TED) was available on supplies to Export Oriented Unit (EOU) in terms of erstwhile FTP.
- In *Marvellous Marble & Granite v CC* (2014-TIOL-332-CESTAT-AHM), the Ahmedabad Tribunal held that higher penalty and redemption fine was justifiable when lower fines and penalties had not deterred the importer from importing restricted and sensitive commodity.
- The High Court of Delhi, in *Aval Exports v UOI* (2014 (301) ELT 14), held that advance licence was to be issued in accordance with policy in force on the date of issuance of license, and not on the basis of policy as on the date of receipt of application.

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- In CC v Gujarat Fashions P Ltd (2014-TIOL-328-HC-AHM-CX), the Gujarat High Court held that deemed exports were to be taken into account for the purpose of computation of entitlement of DTA clearances at concessional rate under EOU scheme.

## **Anti-dumping duty**

### **Notifications**

- The Central Government has extended the levy of anti-dumping duty on Plain Medium Density Fibre Board of thickness 6 mm and above, falling under Custom Tariff Heading (CTH) 4411, originating in, or exported from the People's Republic of China, Malaysia, Thailand and Sri Lanka, till 26 February, 2015.

*(Customs (ADD) Notification No. 12/2014 dated 12 March, 2014)*

- The Central Government has levied anti-dumping duty on imports of Meta Phenylene Diamine, falling under chapter 29, originating in, or exported from, the People's Republic of China, for a period of five years from 22 March, 2013.

*(Customs (ADD) Notification No. 11/2014 dated 11 March, 2014)*

- The Central Government has extended levy of anti-dumping duty on imports of Acetone, falling under CTH 2914 11 00, originating in, or exported from, EU, South Africa, Singapore and USA for a further period of five years from 11 March, 2014.

*(Customs (ADD) Notification No. 10/2014 dated 11 March, 2014)*

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CENVAT

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