

Customs and trade newsletter

April 2023



Policy updates, notifications and instructions

1. Government notifies one-time Amnesty Scheme as a part of new FTP 2023¹

The Directorate General of Foreign Trade (DGFT) has notified a one-time Amnesty Scheme for regularisation of default on Export Obligation (EO) against authorisations issued under the Advance Authorisation (AA) Scheme and Export Promotion Capital Goods (EPCG) Scheme under specific Foreign Trade Policies (FTPs).

The coverage of this scheme is limited to the following –

- Authorisations issued under [FTP 2009-14](#) till 31 March 2015;
- For FTPs 2004–09 or before, authorisations whose EO period was valid beyond 12 August 2013.

The scheme will be in operation till 30 September 2023, and to avail the benefit, the exporter needs to register by 30 June 2023.

Moreover, the DGFT has also defined a step-by step guide or procedure² for user assistance to file such applications through the online mode with simplified requirements.

The DGFT has also provided an online help manual, FAQ section and helpdesk service including toll-free numbers for user assistance on its website, i.e. <http://dgft.gov.in/>.

Suitable amendments have been made in the notifications in respect of interest levy in case of default in EO³.

2. Aayat Niryat Forms and appendices applicable under FTP 2023 notified⁴

The DGFT has notified the formats and appendices required for different applications under FTP 2023. These have been made available on their website at <http://dgft.gov.in/>.

3. Clarification issued on procedure for issuance of EODC for AA and EPCG authorisation holders⁵

The DGFT has clarified that AA and EPCG authorisation holders are required to update the closure or redemption status of manually issued Export Obligation Discharge Certificate (EODC) if the same is incorrectly reflecting on the DGFT portal. Updation must be done through the online functionality on the DGFT website (<https://dgft.gov.in>).

In case of any physical submissions of documents required, the authorisation holder would still apply for redemption on the DGFT portal, and all the correspondence with the applicant will be undertaken online using the DGFT portal itself.

Moreover, it has been directed that no EODC will be issued manually in the future or through any legacy IT system (LEMIS System).

4. Extension in validity of ad-hoc norms ratified in respect of AA⁶

With an intent to reduce transaction cost as a part of the ease-of-doing business initiative, the DGFT has extended the validity of ad-hoc norms ratified from 1 April 2015 up to 31 March 2023 in respect of AA till 31

¹ Public Notice No. 02/2023 dated 1 April 2023

² Policy Circular No. 01/2023-24 dated 17 April 2023

³ Notification No. 32/2023-Customs dated 26 April 2023

⁴ Public Notice No. 10/2023 dated 26 April 2023

⁵ Trade Notice No. 01/2023-24 dated 6 April 2023

⁶ Public Notice No. 09/2023 dated 25 April 2023

March 2026. Consequential amendments have been made in para 4.12(vi) of the Handbook of Procedures (HBP) 2023 in respect of the AA issued under para 4.07 of HBP 2015–20.

5. Implementation date of the track and trace system for export of pharmaceuticals and drug consignments in the levels of packaging extended⁷

The system was introduced to track and trace export of drug formulations by maintaining the parent-child relationship in packaging levels, their movement in the supply chain and its subsequent uploading on the central portal at <http://dava.gov.in>.

Considering the technical difficulties, the implementation date has been extended from 31 March 2023 till 1 August 2023 for both small scale industry (SSI) and non-SSI manufactured drugs.

6. Notification of new HS codes for technical textiles items⁸

To avoid using any other or 'Others' category HS codes, the DGFT has clarified that all the importers or exporters should file their Bills of Entry (BoE) or Shipping Bills using the specific HS codes available for man-made fibre and technical textiles under ITC (HS) 2022, Schedule 1 (Import Policy) at the eight-digit level. For ease of reference, the industry has been facilitated with a list of such 32 HS codes for booking their imports and exports under the appropriate product category.

7. Phased implementation of ECL⁹

With effect from 1 April 2023, the Electronic Cash Ledger (ECL) functionality has been enabled for making any payment towards duty, interest, penalty, fees, etc. under Customs law in a phased manner. However, a few deposits were exempted from making payments through ECL till 30 June 2023. They are as below.

- Deposits with respect to goods imported or exported in customs stations where the Customs Automated System is not in place.
- Deposits with respect to accompanied baggage.
- Deposits with respect to goods imported or exported at international courier terminals, etc. (exemption for making payment through ECL for this category will be discontinued with effect from 1 July 2023).

8. Customs (Waiver of Interest) Order, 2023 – Interest waiver for specified period where import-duty is payable from ECL¹⁰

Keeping in view the technical difficulties being faced by importers on the common portal while making payments from their ECL, the Central Board of Indirect Taxes and Customs (CBIC) has issued an office order waiving off the applicable interest in the following manner –

- The interest waiver is applicable for BoEs filed from 1 April 2023 onwards.
- Such waiver is applicable for three days (including holidays) from the date of removal of such system inactivity at the common portal (which will be certified by the DG System).
- For the BoEs for which import duty payment has been made and integrated in ICES, a claim for refund of interest will be subject to the provisions of section 27 of the Customs Act, 1962 (Customs Act).

Pursuant to these orders from the CBIC, local Customs authorities have issued public notices¹¹ for facilitation purposes, allowing manual out of charge to all the importers in the following manner –

- The facilitation is subject to furnishing a certificate (in the format prescribed) from the banks indicating payment of customs duty to the credit of the government account.

⁷ Public Notice No. 03/2023 dated 3 April 2023

⁸ Trade Notice No. 02/2023-24 dated 17 April 2023

⁹ Notification No. 30/2023-Customs (N.T.) dated 26 April 2023 read with Notification No. 31/2023-Customs (N.T.) dated 26 April 2023

¹⁰ Order No. 01/2023-Customs (N.T.) dated 6 April 2023 read with Order No. 02/2023-Customs (N.T.) dated 11 April 2023 and Order No. 03/2023-Customs (N.T.) dated 17 April 2023

¹¹ Public Notice No. 31/2023 dated 12 April 2023 read with Public Notice No. 29/2023 dated 6 April 2023 and Public Notice No. 28/2023 dated 6 April 2023

- Moreover, the importers are required to submit an undertaking that in case the same is not paid to the government account, it will be deposited with interest immediately.
- In case the importer is unable to furnish the said certificate, import clearance is to be allowed on a case-to-case basis. However, the importer must submit proof of payment of customs duty along with an undertaking to submit the certificate from the bank.

9. Clearance of import of plastic packaging products while registration on the centralised EPR portal under process¹²

Import of plastic packaging, carry bags, multi-layered packaging, plastic sheets or the like require registration with the Central or State Pollution Control Board or the Pollution Control Committee. However, where such registration application is under process on the centralised Extended Producers Responsibility (EPR) portal, the CBIC has, as a temporary measure, allowed clearance of such import consignments based on the proof of registration under process.

Moreover, the provision for real-time status of the submitted applications has been made available in the National Dashboard section of the centralised EPR portal at <https://eprplastic.cpcb.gov.in/>.

¹² Instruction No. 14/2023-Customs dated 17 April 2023

Key judgments

1. LCD panels/ display boards are classifiable under Tariff Heading 9013 and not as parts/ components of television sets of Tariff Heading 8529 of the Customs Tariff¹³

The instant case pertains to the classification of liquid crystal devices (LCD) panels or display boards to be used in television sets. While the taxpayer sought classification under Tariff Entry 9013.80.10 as 'LCDs', Revenue sought to classify it under Tariff Heading 8529, as 'parts of goods covered under heading Tariff Heading 8528 (Television Sets)' of the Customs Tariff Act, 1975 (Customs Tariff).

The Supreme Court held that LCD panels are classifiable under Tariff Heading 9013 and not as parts of televisions sets, based on the following –

- Rule 1 of the General Rules of Interpretation (GRI) provides that classification is to be determined according to the 'terms of the Tariff Headings', and Tariff Entry 9013.80.10 explicitly covers 'Liquid Crystal Displays';
- Rule 3(a) of the GRI provides that a more specific heading will prevail over a general one, i.e. Tariff Heading 9013 is more specific heading for LCD panels as compared to Tariff Heading 8529;
- Note 1(m) to section XVI of Customs Tariff clearly excludes articles of Chapter 90 from Chapter 85;
- The 'sole and principal use test', as mentioned in Note 2 of section XVI of the Customs Tariff cannot be attracted to classify LCD panels or display boards as parts of television sets, as Note 2 must be read sub-ordinate to Note 1 of section XVI of the Customs Tariff. Since Note 1 excludes the goods of Chapter 90 from Chapter 85, LCD panels or display boards get excluded from Chapter 85.

Therefore, LCD panels or display boards merit classification under Tariff Entry 9013.80.10 of the Customs Tariff as 'Liquid Crystal Devices'.

2. Plastic bottle mounts used on bottles top for spraying classifiable under Tariff Entry 9616.10.10 of the Customs Tariff¹⁴

The instant case pertains to the classification of 'bottle mounts' which can be screwed on top of any bottle to dispense or spray its contents. While the importer sought classification under Tariff Entry 8424.20.00 as 'Spray guns and similar appliances', it was contended by the Revenue that the appropriate classification is under Tariff Entry 9616.10.10 as 'Scent sprays and similar toilet sprays' of the Customs Tariff.

The New Delhi bench of the Customs Excise & Service Tax Appellate Tribunal (CESTAT) observed that the goods are merely mounts that can be attached to any bottle for spraying or dispensing hand gel. The said goods do not merit classification under Tariff Heading 8424 as Chapter 84 covers mechanical appliances for projecting, dispersing, or spraying liquids or powders and fire extinguishers, whether or not charged. The appropriate classification is under Tariff Heading 9616 as 'Scent sprays and similar toilet sprays', which covers goods receiving pressure from bulb pressure or piston action.

3. 12V SMPS consisting of main PCBs, lightening protector, DC/ AC cables, fuse/ fuse holders correctly classifiable under Tariff Entry 8504.90.90 of the Customs Tariff as 'parts of SMPS',¹⁵

The instant case pertains to the classification of '12V switch mode power supply (SMPS) consisting of main PCB, lightening protector, DC/ AC cables, fuse/ fuse holders and others' (imported product). The said product can be used solely with Integrated Fixed Wireless Telephones (IFWT) in the following manner –

- a. For converting the alternating currents from mains to regulated direct current to the IFWT;
- b. Maintain the voltage at 12V.

¹³ 2023-TIOL-25-SC-CUS

¹⁴ 2023 (4) TMI 219

¹⁵ 2023-VIL-295-CESTAT-CHE-CU

- c. Charge the 12V VRLA battery placed inside the SMPS cabinet for the battery to take over the supply of DC power to IFWT in case of a main power supply cut.

While the importer sought to classify the said product under Tariff Entry 8529.90.90 as 'parts of IFWTs' operating on cellular technology and claim benefits of customs duty exemption¹⁶, it was the Revenue's contention that the imported product merits classification under Tariff Entry 8504.90.90 of the Customs Tariff as 'parts of SMPS'.

The Chennai bench of the CESTAT noted that SMPS is simply an electrical power supply which incorporates a switching regulator to convert electrical energy more efficiently, and imported products are essential to make or assemble such SMPS. Thus, merely because SMPS may be used for IFWT, it cannot be said that parts that go into making SMPS are accessories of IFWT (cellular phones). Additionally, from specifications, function and use perspective, it cannot be said that SMPS are a vital and integral part of IFWT as IFWT can function even if directly plugged to an energy source.

Therefore, imported goods are neither parts nor accessories of IFWT and are appropriately classifiable under Tariff Entry 8504.90.90 as 'parts of SMPS'.

4. In a classification matter, third-party technical expert report cannot be doubted or challenged¹⁷

In the instant case, an importer claimed exemption from customs duty¹⁸ on import of 'PLC Splitter Module' (not having lenses). The imported goods were examined 100% on first-check basis, and a sample was sent to Indian Institute of Technology, Delhi for a third-party technical expert opinion. Post issuance of the report, the Revenue questioned its authenticity and veracity and denied the exemption benefit to the importer.

The Delhi bench of the CESTAT has held that the competency of the test report by an expert opinion cannot be questioned because it is provided by the expert in that field of trade. Rather, it is essential that due importance be given to the said report or opinion. It was also clarified that if at all, there are two contrary expert opinions, then the matter should be referred to the third technical expert.

5. Technical know-how fee paid on import of capital goods for setting up of plant or its running is not a condition of sale¹⁹

This matter pertains to whether or not technical know-how and license fee paid by the importer is in relation to the imported capital goods. In other words, it pertains to whether or not such fees is a condition of sale for the imported goods.

The Chennai bench of the CESTAT noted that the assessable value of the imported goods must be determined at the time and place of importation. It would be the amount or payment required to be made by the importer as a condition of sale.

It was also clarified that if any amount is to be paid after completion of import, *inter alia*, by way of transfer of license or technical know-how for the purpose of setting up of a plant from the imported machinery or its running thereof, the same would not be included in the assessable value of such capital goods.

6. Reduced or re-negotiated price of the imported goods can be accepted as assessable value where the genuineness of price reduction is not under dispute²⁰

In the instant case, the importer and exporter reduced or re-negotiated the price of the imported goods after clearance for home consumption. The price adjustment was due to the difference in the agreed quality standards of imported goods.

The Ahmedabad bench of the CESTAT held that if there was a genuine cause for reduction in the price of the imported goods and the seller was also convinced about the same, then it will be unjustifiable for the importer to pay customs duty on an amount more than the consideration amount for the transaction.

¹⁶ Notification No. 21/2005-Cus dated 1 March 2005 and Notification No. 06/2006-CE dated 1 March 2006

¹⁷ 2023-VIL-246-CESTAT-DEL-CU

¹⁸ Notification No. 12/2012-Cus dated 17 March 2012

¹⁹ 2023 (3) TMI 1215

²⁰ 2023 (4) TMI 669

This is because section 14 of the Customs Act specifically mentions that the transaction value is the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation.

7. Adjudicating authority has no jurisdiction to review its own order and reassess BoE once again after the imported goods are cleared on payment of duty²¹

The matter involved a question on whether the adjudicating authority is justified in reassessing the imported goods once cleared for home consumption.

The New Delhi bench of the CESTAT highlighted that the re-assessment is permitted only in relation to the 'imported and dutiable goods' under section 17 of the Customs Act. Whereas, once the goods are cleared for home consumption, they cease to be 'imported and dutiable goods', and there can be no assessment or re-assessment of duty on such goods under section 17 of the Customs Act.

Moreover, reliance was placed on the decision of the Supreme Court²² wherein it was clarified that self-assessment could be altered only through appeal proceedings and not through re-assessment under section 17 of the Customs Act. Therefore, in case an error is noticed in the assessment including self-assessment, the option available to the importer is only to file an appeal before the Commissioner (Appeals).

8. Chartered Accountant's certificate submitted for refund claims – sufficient to contradict 'Unjust enrichment'²³

In the instant case, the importer's claim of customs duty exemption was denied, leading to payment of excess duty under protest. Post issuance of a favourable order by the Supreme Court, the importer filed a refund application. The said application was denied by the Revenue on the ground of 'unjust enrichment'.

The New Delhi bench of the CESTAT held that the Chartered Accountant's certificate, to the effect that the burden of excess duty paid was not passed on to the customer, is sufficient evidence to pass the test of unjust enrichment and consequentially be eligible for refund where the –

- amount stood as a receivable in the importer's books of accounts;
- certificate is inconsistent with the books of accounts such as the Balance Sheet and Profit and Loss statement; and
- Revenue did not produce any evidence to the contrary.

²¹ 2023-VIL-279-CESTAT-DEL-CU

²² 2019-VIL-32-SC-CU

²³ 2023-VIL-284-CESTAT-DEL-CU

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