

Customs and trade newsletter

December 2022



Policy updates, notifications and instructions

1. Rules of Origin for free trade agreement between India and Australia notified¹

A comprehensive Economic Cooperation and Trade Agreement (ECTA) by India and Australia has been operationalised with effect from 29 December 2022. Pursuant to the same, the coverage in terms of the list of goods that can be imported at the concessional rate have been notified² by the CBIC. However, the benefit is available subject to the goods conforming to the Rules of Origin which have come into force from 29 December 2022. Moreover, the Tariff Rate Quota for specified goods has also been notified³.

On the outbound side (i.e., for exports from India to Australia), the Director General of Foreign Trade (DGFT) has also operationalised the electronic platform for the issuance of Certificates of Origin (eCoO) with effect from 29 December 2022⁴. In this regard, the list of agencies authorised to issue eCoO (Preferential) has also been notified⁵.

For further guidance on registration and application submission, the Help manual and FAQs may be accessed on the landing page⁶.

2. Amendment in duty rates as per ASEAN-India Free Trade Agreement⁷

The CBIC has given effect to the 14th and final tranche of tariff concessions under ASEAN-India Trade Agreement. The following are the serial numbers of the principal notification (as amended periodically)⁸ with respective import duty rates applicable on import from the Philippines:

Sl. No.	Chapter, Heading, Sub-heading and Tariff item	Description	Existing effective rate of duty	Amended effective rate of duty
80	0901.11	All goods	52.00	45.00
81	0902.40		52.00	45.00
83	0904.11		52.00	50.00
124	1511.10		44.00	37.50
125	1511.90		54.00	45.00

The said notification will be effective from 1 January 2023.

¹ Notification No. 112/2022-Cus. (N.T.) dated 22 December 2022

² Notification No. 62/2022-Cus. dated 26 December 2022 and Notification No. 64/2022-Cus. dated 29 December 2022

³ Public Notice No. 46/2015-20 dated 28 December 2022

⁴ Trade Notice No. 23/2022-23 dated 22 December 2022

⁵ Public Notice No. 44/2015-20 dated 22 December 2022

⁶ <https://coo.dgft.gov.in>

⁷ Circular No. 24/2022-Cus. dated 28 November 2022

⁸ Notification No. 46/2011-Cus. dated 1 June 2011

3. List of countries having reciprocal arrangement for exchange of information facilitating trade updated⁹

With an intent to exchange information for trade facilitation¹⁰, the Indian Government has entered into an agreement or arrangement on Cooperation and Mutual Administrative Assistance with the Government of Japan in terms of the Comprehensive Economic Cooperation Agreement to set a practical approach on information exchange in customs matters and with the Government of the Republic of the Philippines on cooperation and mutual assistance in customs matters.

4. Inclusion of additional export items under RoDTEP Scheme¹¹

The DGFT has notified additional export sectors or items covered under Chapter 28 (inorganic chemicals, organic or organic compounds of precious metals, etc.), 29 (organic chemicals), 30 (pharmaceutical products) and 73 (articles of iron and steel) of the Customs Tariff for availing the Remission of Duties or Taxes on Export Products (RoDTEP) benefit¹². Moreover, the same will be applicable for exports made from 15 December 2022 till 30 September 2023.

5. Jurisdictions of EPCES expanded to include SEZs¹³

The jurisdiction of the Export Promotion Council for EOU and SEZ (EPCES) has been expanded in Appendix 2T so as to include the services with immediate effect. It also covers products and services by Special Economic Zones (SEZs) as well as Export Oriented Units (EOUs).

6. Amendment in import policies of certain items

The DGFT has extended the free import policy of the following items.

ITC(HS) Code	Item description	Extended up to
15119010	Refined bleached deodorised palm oil	Beyond 31 December 2022 until further orders ¹⁴
15119020	Refined bleached deodorised palmolein	
15119090	Other	
07133110	Urad (Beans of the SPP Vigna Mungo (L.) Hepper	31 March 2024 ¹⁵
07136000	Tur/ Pigeons Peas (Cajanus Cajan)	

⁹ Notification No. 111/2022-Cus. (N.T.) dated 20 December 2022

¹⁰ In terms of Notification No. 58/2021-Cus. (N.T.) dated 1 July 2021 read with section 151B of the Customs Act, 1962

¹¹ Notification No. 47/2015-2020 dated 7 December 2022

¹² By revising the Appendix 4R (containing the eligible RoDTEP export items, rates and per unit value caps) under Para 4.59 of Foreign Trade Policy (FTP) 2015-20

¹³ Public Notice No. 45/2015-20 dated 27 December 2022

¹⁴ Notification No. 51/2015-20 dated 28 December 2022

¹⁵ Notification No. 52/2015-20 dated 28 December 2022

7. Amendment in list of STEs for FTP purpose¹⁶

The list of State Trading Enterprises (STEs) eligible for allocating the quota for import under Tariff Rate Quota has been revised by the DGFT¹⁷. Accordingly, while some new STEs have been notified, the following Central Public Sector Enterprises have been de-notified as STEs namely:

- Minerals and Metals Trading Corporation
- The State Trading Corporation of India Limited
- The Project and Equipment Corporation of India Limited
- Spices Trading Corporation Limited

Consequently, the aforementioned entities are not eligible for quota allocation.

8. Postal Export (Electronic Declaration and Processing) Regulations, 2022 and implementation of PBE Automated System¹⁸

With an intent to leverage the vast network of post offices across the country and enable MSMEs to export to global markets using e-commerce or other regular channels, the CBIC, in collaboration with the Department of Posts, has developed a dedicated Postal Bill of Exports (PBE) Automated System for postal exports.

Accordingly, the CBIC has notified the Postal Export (Electronic Declaration and Processing) Regulations, 2022, which are meant to facilitate the processing of commercial postal exports by automating the entire procedure and seamlessly connecting the postal network to the notified foreign post offices. An overview of the functionalities is provided below.

- PBE system is accessible using the online link¹⁹;
- Mandatory registration of every exporter through OTP-based authentication;
- Online booking of postal articles for export and facility to upload bulk documentation for multiple articles;
- Reference can be made to the details of the PBE on the PBE Automated System for assessment and final clearance;
- Online claim for export incentive once the postal consignment has been cleared by the customs authorities for export.

Moreover, the said regulations prescribe the minimum period of retaining records as five years pertaining to postal exports by the exporter or their agent and their production before customs authorities whenever required.

9. CBIC notifies Exports by Post (Amendment) Regulations, 2022²⁰

The CBIC has amended the definition of 'e-commerce' under Regulation 3 of the Exports by Post Regulations, 2018 by widening the mode of payments through various other electronic means which was limited to international credit and debit cards. Consequentially, the relevant forms for export of goods through e-commerce have also been amended.

¹⁶ Public Notice No. 40/2015-20 dated 8 December 2022 read with Public Notice No. 41/2015-20 dated 8 December 2022

¹⁷ By revising Appendix 2J under Para 2.61 of the Handbook of Procedures 2015-20

¹⁸ Circular No. 25/2022-Customs dated 9 December 2022 read with Notification No. 104/2022-Customs (N.T.) dated 9 December 2022

¹⁹ <https://dnk.cept.gov.in/customers.web>

²⁰ Notification No. 103/2022-Customs (N.T.) dated 9 December 2022

10. Extension in sunset clause in relation to concessional import duties on specified edible oils and lentils²¹

The CBIC has extended the existing concessional import duties up to 31 March 2024 (erstwhile 31 March 2023) on the following specified items.

- Basic Customs Duty on crude soyabean oil, soyabean oil, crude palm oil, refined bleached deodorised (RBD) palm oil, RBD palmolein, RBD palm stearin, crude sunflower seed oil and sunflower oil edible grade²².
- Agriculture Infrastructure Development Cess on crude soyabean oil, crude palm oil and crude sunflower seed oil²³.

11. Instruction regarding consolidated list of animal feed additives, premix and supplements for import into India²⁴

The Department of Animal Husbandry and Dairying had issued an office memorandum (OM) on 21 December 2022 to consolidate the list of animal feed additives, premix and supplements for imports into India.

Pursuant to the above, the CBIC has issued instructions that the manufacturers will have to put a label on the final pack about its ingredients and the mandatory requirements of respective withdrawal period, if any, as indicated against a particular item, in terms of the said OM.

²¹ Notification No. 65/2022-Cus. dated 29 December 2022

²² By amending Notification No. 48/2021-Cus. dated 13 October 2021

²³ By amending Notification No. 49/2021-Cus. dated 13 October 2021

²⁴ Instruction No. 34/2022 dated 30 December 2022

Key judgments

1. Oil inside the bunker tanks of vessels imported for breaking up classifiable with the vessel itself under CTH 8908²⁵

The matter involved a question of whether the oil contained in bunker tanks of the engine rooms of vessels imported for breaking up are classifiable independently as 'oil' under CTH 2710 or under CTH 8908 as 'part of the vessel'. The Ahmedabad bench of the Customs Excise and Service Tax Appellate Tribunal (CESTAT) held that the oil contained in the bunker tank is connected and associated with the machinery and engine of the ship, thus regarded as forming an integral part of the vessel. Therefore, the oil is appropriately classifiable under CTH 8908.

2. Cattle feed machinery imported for industrial use classifiable under CTH 8479.89.99 of the Customs Tariff as 'other machines and mechanical appliances'²⁶

The instant case pertains to the classification of 'machinery for preparing cattle feed'. While the appellant sought classification under CTH 8436.10.00 of the Customs Tariff as 'machinery for preparing animal feeding stuff', the Revenue sought to classify the same under CTH 8479.89.99 as 'other machines and mechanical appliances'.

The Kerala High Court noted that machineries covered under CTH 8436.10.00 are referred to those which have individual function. However, in the instant case, the machinery so imported is an assorted equipment with many parts, including mixtures, grinders, dust filter, pellet presser, etc. which have independent functions. Moreover, the machinery so imported is used on an industrial scale. Thus, imported machinery cannot be considered as a single machinery for cattle feed and thus will not be classifiable under CTH 8436.10.00.

3. Goods imported a month later cannot be considered as contemporaneous in value for the purpose of customs valuation²⁷

In the instant case, the declared transaction value of the imported goods was rejected under rule 12 of the Customs Valuation Rules, 2007 (CVR, 2007) due to the reason that contemporaneous imports of goods were at higher prices.

The New Delhi bench of the CESTAT held that the rejection of transaction value is not justified since the bill of entries (BoEs) filed based on which declared values were rejected were filed more than a month after the disputed BoE. Moreover, the assessable value in BoE was given in Indian rupees, whereas the declared values in the disputed BoE were in US dollars. The rate of exchange applied to convert Indian rupees into US dollars to re-determine the assessable value under rule 5 of the CVR, 2007 was not clear.

Therefore, rejection of the transaction value is not in accordance with the law; consequently, its re-determination under rule 5 of the CVR, 2007 cannot sustain.

4. SAD duty refundable even when duty paid through debit in DEPB scrip²⁸

The matter involved a question on whether refund is entitled in respect of additional customs duty paid through Duty Entitlement Passbook (DEPB) scrips or license.

The Mumbai bench of the CESTAT has held that additional duty of customs paid through DEPB scrip is also refundable as per Notification No. 102/2007- Cus. based on certain conditions and exemption. Moreover, it is well-settled that the debit of any amount under the DEPB scheme is a mode of payment of duty; thus, refund of duty which was paid by debiting the DEPB cannot be debarred.

²⁵ 2022-TIOL-1165-CESTAT-AHM

²⁶ 2022-VIL-814-KER-CU

²⁷ 2022-VIL-933-CESTAT-DEL-CU

²⁸ 2022-VIL-913-CESTAT-MUM-CU

5. DFIA license available against intermediate goods used in manufacture of exported goods and section 28AAA of the Customs Act, 1962 not applicable unless DGFT challenges the duty credit instrument²⁹

In the instant case, the appellant exported Liquid Glucose Concentrate (LGC) and claimed Duty Free Import Authorisation (DFIA) license against such exports for the duty-free import of 'Maize Starch' in the future. The customs authorities questioned the DFIA license on the ground that 'Maize Starch' is not a raw material for the manufacture of LGC.

The Ahmedabad bench of the CESTAT held that the DFIA license is rightly available to the appellant for import of Maize Starch in as much as Maize Starch is an intermediate input, since 'Starch slurry' is used as an immediate input in the manufacturing of its export item.

It is further held that the duty recovery under section 28AAA of the Customs Act, 1962 can be invoked only when an instrument issued to a person has been obtained by means of 'collusion' or 'willful mis-statement' or 'suppression of facts'. Since the DGFT has not initiated any proceedings alleging the procurement of the DFIA license in a fraudulent manner, section 28AAA of the Customs Act, 1962 cannot be invoked.

6. Project import benefit available even after filing warehousing BoE but before filing the ex-bond BoE³⁰

In the instant case, the appellant imported the capital goods and warehoused the same by filing the into-bond BoE. Subsequently, the appellant filed the ex-bond BoE clearing the warehoused goods claiming project import benefit and changed the classification to CTH 9801, i.e., for 'project imports'. The matter involved the following questions:

- i. Whether the project import benefit is available after filing the warehousing BoE; and
- ii. Whether the change in classification is permissible while filing the ex-bond BoE.

In response, the Ahmedabad bench of the CESTAT clarified that as per Regulation 4 of the Project Import Regulations, 1986 (PIR, 1986), the project import benefit will be available as long as the contract is registered as project imports prior to an order for the clearance of goods for home consumption. Since, in the instant case, the contracts were registered before an order of clearance of home consumption was passed, there is no contravention of PIR, 1986; thus, the project import benefit will be available.

Secondly, in respect of change in classification, the CESTAT held that the assessment takes place at the time of ex-bond BoE. Thus, the error can be rectified, clearance can be effected under the correct classification, and it would not be justified to disallow the classification change in the ex-bond BoE.

7. IEC not required at the time of export of services to claim SEIS benefit³¹

The matter involved a question whether the denial of SEIS benefit merely on account of not having the Importer-Exporter Code (IEC) at the time of export of services is valid.

The Delhi High Court held that the requirement of IEC is applicable only at the time of filing of SEIS application. It is not necessary that the IEC should be there at the time of export of services.

8. Retrospective application of duty rate notifications issued or uploaded post import of goods not maintainable³²

In the instant case, the importer filed self-assessed BoE and paid customs duty, but prior to clearance, later on the same day, a notification with higher duty rate was issued or uploaded. Accordingly, customs authorities sought to apply the higher rate.

The Punjab and Haryana High Court held that giving effect to the impugned notification which is issued or uploaded after the import of goods and after the working hours would be tantamount to retrospective

²⁹ 2022-VIL-923-CESTAT-AHM-CU

³⁰ 2022-VIL-934-CESTAT-AHM-CU

³¹ 2022-VIL-799-DEL-CU

³² 2022-TIOL-1535-HC-P&H

application. Therefore, the goods were allowed customs clearance as per the notification existing at the time of filing BoE.

9. Notification effective from date of e-publication in the Official Gazette³³

The matter involved a question on whether the notification becomes effective from the 'date of e-publication' or from the 'date of its issue for publishing' in the Official Gazette.

The Gujarat High Court placed reliance on the Supreme Court's stance³⁴ wherein it was categorically held that the revised rate of duty will be applicable when the notification is uploaded in the e-gazette. Therefore, it was held that the notification will be deemed to have come into force only on the 'date when it is published' in the gazette.

10. Charging late fees for re-filing the BoE due to system error in the ICEGATE portal not maintainable³⁵

In the instant case, the first BoE filed by the importer got purged or removed due to technical error in the system, and the importer filed the second BoE the very next day as per the instructions of the authorities since retrieving the first BoE from the said system is not possible. Consequently, the late fee was imposed.

The Mumbai bench of the CESTAT held that the imposition of late fees for filing BoE due to technical fault or glitch of the ICEGATE system is not justified since error in the computer system was under the control of the customs authorities.

³³ 2022-VIL-758-GUJ-CU

³⁴ 2020-VIL-33-SC-CU

³⁵ 2022-VIL-961-CESTAT-MUM-CU

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