

# Customs and trade newsletter

October 2022



# Policy updates, notifications and instructions

## 1. Policy and procedure for GAER in India notified<sup>1</sup>

Import of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) items for repair and export to the same entity has been permitted by the Directorate General of Foreign Trade (DGFT) based on a one-time General Authorisation for Export after Repair (GAER) on fulfilment of the following conditions.

- The SCOMET items will be imported to a designated or authorised repair facility in India for the purpose of repair under a contract agreement or master service agreement.
- The items will be exported to the same entity and location abroad from which such items have been imported.
- The exporter is required to register and obtain GAER only once during the validity period, which is one year from the date of issue of GAER.
- Subsequent export or re-export is subject to post reporting, which is within 30 days from such export.
- The exporter will provide a bill of entry (BoE) for the first imported shipment while applying for GAER.
- There has been no change to the original characteristics or specifications of the item(s) after repair and no value addition has been done during the repair work.
- Export authorisation would not be granted when the initial export authorisation has been suspended, modified or revoked by the country of import.
- Export authorisation would not be granted for UNSC-sanctioned destinations or countries or entities with high risk, as assessed by the IMWG periodically.
- Details of 'End Use' and 'End Use Certificate' will not be required.

Moreover, the documents required, post reporting for re-export of items, software or technology; validity; suspension or revocation; and other miscellaneous aspects under the GAER have also been notified. These policies and procedures have come into force with effect from 14 October 2022.

## 2. Amendment in export policy of wheat flour<sup>2</sup>

The DGFT has amended the export policy of wheat flour (atta) covered under Customs Tariff Heading (CTH) 1101 of the Customs Tariff Act, 1975 (CTA, 1975) from 'Prohibited' to allowing export of wheat flour against advance authorisation by Export Oriented Units and Special Economic Zone units with certain policy conditions as mentioned below.

- Export of wheat flour will be subject to pre-import condition. Procurement of domestic wheat for the purpose of export of wheat flour will not be permitted.
- Import will be subject to actual user condition and transfer of imported raw material for the purpose of job work will not be permitted.
- The wheat flour will be exported within 180 days from the date of import of wheat consignment.
- The entire production needs to be exported except the wastage as approved by the Norms Committee.

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<sup>1</sup> Public Notice No. 31/2015-20 dated 14 October 2022

<sup>2</sup> Notification No. 39/2015-20 dated 14 October 2022

### 3. Clarification issued on implication of Westinghouse judgment for classification of 'Parts'<sup>3</sup>

In January 2022, the CBIC had issued a clarification<sup>4</sup> to align the divergent practices being followed on the assessment of 'Parts' after the Westinghouse judgment<sup>5</sup> was delivered. In this judgment, relays used in railway signalling equipment were classified as parts of railways instead of general use relays classified under Chapter 85. To align such divergent practices, the clarification instruction provided as follows:

- The Westinghouse judgment has decided the classification of relays used in railway signalling equipment and not parts of goods covered under Chapter 87.
- This judgment does not refer to its wider applicability to any other case or issue of similar nature.
- Classification of various parts of section XVII needs to be finalised considering all the material facts and details of individual cases including the conditions mentioned in the HS Explanatory notes, relevant section and chapter notes.

Now, the CBIC has issued a clarification that the law continues to remain the same, hence, the aforesaid instruction would remain valid without any changes.

### 4. e-CoO issued under India-UAE CEPA a valid document for the purpose of claiming preferential basic customs duty benefit<sup>6</sup>

The CBIC has issued an instruction to clarify that the electronic Certificate of Origin (e-CoO) issued under the India-United Arab Emirates Comprehensive Economic Partnership Agreement (India-UAE CEPA) will be treated as a valid document for the purpose of claiming preferential customs duty benefit, provided all the relevant conditions are satisfied.

Moreover, it has been clarified that importers or customs brokers will be mandatorily required to upload a copy of the e-CoO on e-Sanchit while filing the BoE for imports under the India-UAE CEPA.

### 5. Amendment in Project Imports Regulations, 1986 effective from 20 October 2022<sup>7</sup>

The CBIC has amended the Project Imports Regulations, 1986 with effect from 20 October 2022 for exclusion of solar power plants and certain other amendments according to the table below.

Specific Sl. No.	Amendment or insertion	Existing provisions	Proposed change
2	Name of the plant or project	All power plants and transmission projects	All power plants and transmission projects, other than solar power plants or solar power projects
3	Name of the plant or project	Power plants and transmission projects other than those mentioned at Sl. No. 2 above	Power plants and transmission projects, other than solar power plants or solar power projects and other than those mentioned at Sl. No. 2 above
3FF	Name of the plant or project	-	(xii) Bhopal Metro Rail Project (xiii) Indore Metro Rail Project

<sup>3</sup> Instruction No. 25/2022-Cus. dated 3 October 2022

<sup>4</sup> Instruction No. 01/2022-Cus. dated 5 January 2022

<sup>5</sup> 2021 (376) E.L.T. 14 (S.C.)

<sup>6</sup> Instruction No. 28/2022-Cus. dated 27 October 2022

<sup>7</sup> Notification No. 54/2022-Customs dated 19 October 2022

3FF	Sponsoring authority	-	Managing Director, Madhya Pradesh Metro Rail Corporation Limited
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**6. Clarification issued on the requirement of health certificate to be accompanied with import of certain food consignments<sup>8</sup>**

In September 2022, it was notified that import of milk, pork, fish and its products into India must be accompanied with a health certificate issued in the exporting country.

Now, the CBIC has issued an instruction clarifying that an integrated or single certificate incorporating food safety-related requirements or attestations will also be accepted by the Food Safety and Standards Authority of India at the time of import clearance, as long as it incorporates all the requisite information as per the prescribed format.

**7. Draft Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2022 for stakeholder consultations notified**

The CBIC has notified draft Customs (Assistance in Value Declaration of Identified Imported Goods) Rules, 2022 for stakeholder consultation for suggestions, views, comments and feedback. These draft rules propose a mechanism for the CBIC to determine the class of goods to be notified for the additional obligations and checks related to undervaluation.

Through these regulations, the customs authorities are trying to address the concern of undervaluation of imported goods impacting the customs duty assessment on such goods. A brief<sup>9</sup> of the new provisions has been provided.

<sup>8</sup> Instruction No. 26/2022-Cus. dated 6 October 2022

<sup>9</sup> Please click [here](#) to refer to our Tax Insights dated 6 October 2022

# Key judgments

## 1. 'Antenna' for base stations classified as 'Parts' under CTH 8517.70.90 and not as 'complete machine or apparatus' under CTH 8517.62.90<sup>10</sup>

The instant case pertains to the classification of 'Antenna' imported for base stations. The importer sought classification of the imported goods as 'Parts' under CTH 8517.70.90 of the CTA, 1975, whereas the customs authorities sought to classify the same as 'Machine for reception, conversion and transmission or regeneration of voice, images or other data' under CTH 8517.62.90.

The Mumbai bench of the Customs Excise and Service Tax Appellate Tribunal (CESTAT) held that imported goods can only transmit and receive signals. They cannot perform other functions such as conversion or regeneration of voice, images or other data signals and switching or routing of signals. Therefore, 'antenna' for base station is classifiable as 'Parts' under CTH 8517.70.90 and cannot be considered as complete machine or apparatus for reception, conversion or transmission or regeneration of voice images or other data under CTH 8517.62.90.

## 2. 'Routers' capable of performing switching as an ancillary function classifiable under CTH 8517.62.90<sup>11</sup>

In the instant case, the applicant sought an Advance Ruling on classification and eligibility to claim basic customs duty exemption on the import on various models of modular and fixed routers under CTH 8517.62.90 of the CTA, 1975. These goods, though identical in functioning, were different in specifications, to meet different customer requirements. The applicant made the following submissions:

- Imported goods are capable of performing the function of switching, but the principal function is routing.
- Note 3 to section XVI of CTA, 1975 provides that the classification of a machine designed for performing two or more complementary or alternative functions ought to be made with respect to its principal function and in the present case, the principal function is routing, while the switching function is ancillary.
- The imported goods in general and commercial parlance are referred to as IP routers and are installed to perform routing functions.

The Customs Authority for Advance Ruling relied on the technical opinion of Telecommunication Engineering Center, Department of Telecommunication, to conclude that the imported products are capable of performing both switching and routing functions. However, their primary function appears to be routing. Therefore, the subject goods merit classification under CTH 8517.62.90 as routers.

S. No. 13N of Notification No. 24/ 2005 dated 1 March 2005 as amended, exempts routers from 100% basic customs duty. This entry describes goods as 'Routers' and does not specify indentation, conditions or capacity and capability for such routers. Moreover, the notification does not distinguish routers based on intended use or capability. Therefore, the imported goods are also eligible to claim benefit under the aforesaid notification.

## 3. Alloy steel forging rings not being ready to use classifiable under Tariff Heading 7326<sup>12</sup>

In the instant case, an exporter was engaged in the export of alloy steel forging rings under CTH 7326.19.90 of CTA, 1975 as 'articles of Iron and Steel including forged and stamped, but not further worked', as opposed to CTH 8482.99.00 of CTA, 1975 determined by the customs authorities. The exporter was also claiming duty drawback under section 75 of the Customs Act, 1962 on such exports.

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<sup>10</sup> 2022-VIL-774-CESTAT-MUM-CU

<sup>11</sup> CAAR/Mum/ARC/34/2022

<sup>12</sup> 2022-VIL-770-CESTAT-AMH-CU

The Ahmedabad bench of the CESTAT held that the exported goods are unfinished articles of iron and steel which require additional processing at the buyer's end before being used in the manufacture of ball or roller bearings. Therefore, the exported goods not fit for being ready to use are appropriately classifiable under Tariff Heading 7326 as 'articles of Iron and Steel including forged and stamped, but not further worked' and not under Tariff Heading 8482 as 'parts of the ball or roller bearings'.

**4. Used mild steel plates imported to be used as feedstock for manufacture of ingots classifiable under CTH 7204.49.00 as 'waste and scrap'<sup>13</sup>**

In the instant case, the importer was engaged in the import of used mild steel plates and classified the same under CTH 7204.49.00 of the CTA, 1975 as 'waste and scrap'. These plates were imported for use in the furnaces for manufacture of 'ingots'. However, the customs authorities sought to classify them under CTH 7208.25.10 as 'plates of a thickness 4.75 mm or more' in a prime condition.

The Mumbai bench of the CESTAT examined the facts and held that the classification adopted by the customs authorities does not relate to the description of goods as imported and presented. It was remarked that there was no need to substitute the classification of the goods as they have industrial significance only as 'waste and scrap' to be used as feedstock for melting in furnaces.

**5. Benefit of customs duty exemption notification cannot be denied on the ground that it was not claimed at the time of import<sup>14</sup>**

In the instant case, the importer was engaged in the import of 'Microphones for Cellular Mobile Phones' and claimed basic customs duty exemption<sup>15</sup> as available to parts of Printed Circuit Board Assembly (PCBA). However, it was alleged that the imported goods are not parts of PCBA, but parts of cellular mobile phones.

The Delhi bench of the CESTAT examined the facts and relied upon the expert opinion taken by the customs authorities, whereby it was concluded that components which require soldering are PCBA components and all other components that are only mechanically attached to the PCB without soldering are cell phone parts. Since, in the instant case, the imported microphones are soldered and pasted on the PCBA, they are exempted from basic customs duty in terms of Entry No. 6A of the said exemption notification.

It was also remarked that the importer, if eligible to claim basic customs duty exemption under another notification<sup>16</sup>, cannot be debarred, prohibited, or estopped from claiming such benefit at a later stage, even if it was not claimed at the initial stage, i.e., at the time of import.

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<sup>13</sup> 2022-TIOL-952-CESTAT-MUM

<sup>14</sup> TS-437-CESTAT-2022-CUST

<sup>15</sup> Notification No. 57/2017-Cus. dated 30 June 2017

<sup>16</sup> Entry No. 427 of Notification No. 50/2017-Cus. dated 30 June 2017

Data Classification: DC0 (Public)

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