

# *Staying Updated*

## Customs, FTP and WTO newsletter

July 2015: Volume 18 Issue 04

**pwc**

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#### **Customs**

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- Central Excise Commissioner Amitabh Kumar has been appointed as Joint Secretary (TRU-II) at CBEC

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

##### ***Valuation***

- Assessee's right to a speaking order could not be denied merely on the ground that loading had been done automatically by the computer system

##### ***Others***

- Amendment to exemption notification held to be prospective where it was not clarificatory in nature
- Customs Authority held not empowered to attach bank account under section 110 of the Customs Act

#### ***Foreign trade policy***

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

- The Area/ Region of Operations of specified PSIA designated for issuing certificate for import of metallic waste scrap has been amended

- The facility of online payment through Credit and Debit cards and electronic fund transfer from 53 banks has been operationalised in relation to DGFT matters

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

- The duty exemption under EPCG scheme could be withdrawn in case export obligation was not fulfilled
- The amendment and conversion of EPCG shipping bills into DEEC shipping bills held permissible in case invoices submitted with the shipping bills for export had both, EPCG Licence number and Advance Licence numbers

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

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

- Levy of anti-dumping duty extended on imports of steel and fibre glass measuring tapes and their parts and components originating in, or exported from, China for a period of five years
- Levy of anti-dumping duty extended on imports of Phenol originating in, or exported from, South Africa for a period of five years

## Customs

### Notifications and circulars

- The Central Government has appointed Central Excise Commissioner Amitabh Kumar as Joint Secretary (TRU-II) at the Central Board of Excise and Customs (CBEC).

*(Office order No. 99/2015-20, dated 17 July, 2015)*

### Case law

#### Valuation

- In *CC v Kruti Stainless Steel Pvt Ltd* (2015 (321) ELT 290), the Tribunal held that transaction value of imported goods could not be enhanced without a speaking order in case desired by the importer, since this is a justifiable right of importer.
- The Tribunal, in *CC v Foss India (P) Ltd* (2015 (321) ELT 323), held that the assessee's right to a speaking order could not be denied merely on the ground that loading had been done automatically by the computer system.
- In *CC v Saccha Souda Pedhi* (2015 (321) ELT 348), the Tribunal held that if contemporaneous import was available at higher price, then Authorities should re-determine the value of imported goods by sequentially

following the Customs Valuation Rules, and could not directly go to the residual method.

#### Others

- In *HCL Infosystems Limited v CC* (2015-TIOL-1363-CESTAT), the Tribunal held that disclosure in balance sheet as customs duty recoverable was sufficient evidence to pass the test of unjust enrichment.
- The Supreme Court (SC), in *Andhra Sugars Ltd v CC* (2015 (321) ELT 11), held that amendment to exemption notification was prospective in case it was not clarificatory in nature.
- In *M Z Handicrafts v UOI* (2015-TIOL-1446-HC), the Allahabad High Court (HC) held that under section 110 of the Customs Act, 1962, Customs Authority was not empowered to attach bank accounts.
- The Madras HC, in *CC v BSES Kerala Power Ltd* (2015-TIOL-1523-HC), held that the HC had no jurisdiction to deal with matters relating to rate of duty or valuation of goods under Customs Act.
- In *Fenwal India Pvt Ltd v CC* (2015 (321) ELT 333), the Tribunal held that for claiming SAD refund, limitation of one year had to be counted from the date of finalization of provisional

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Assessment, and not from the date of payment of duty under provisional assessment.

- The Madras HC, in *Terumo Penpol Ltd v CC* (2015-TIOL-1423-HC), held that Commissioner (Appeals) had no authority to direct payment of 5% Extra Duty Deposit (EDD) while remanding the matter to the Original Authority for fresh order.
- The Tribunal, in *Bharat Tissues Pvt Ltd v CC* (2015 (321) ELT 266), held that the assessee was liable to pay duty, interest, rent and penalty on expiry of warehousing period since it was considered as deemed removal.

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## Foreign trade policy

### Notifications and circulars

- The Central Government has amended the area/ region of operations of specified Pre-Shipment Inspection Agencies (PSIA) designated for issuing certificate for import of metallic waste scrap.

*(Public Notice No. 24/2015-20, dated 2 July, 2015)*

- The Central Government, in order to promote 'Digital India Vision' has operationalised the facility of online payment through credit and debit cards and electronic fund transfer from 53 banks in relation to DGFT (Director General of Foreign Trade) matters.

*(Trade Notice No. 07/2015, dated 9 July, 2015)*

- The Central Government has released a mobile application for DGFT related services as a trade facilitation measure.

*(Trade Notice No. 06/2015, dated 29 June, 2015)*

- The Central Government has made the following changes in the Merchandise Exports from India Scheme (MEIS):
  - Norway, Switzerland, Iceland, and Liechtenstein shifted from country group C to country group A;
  - Hong Kong shifted from country

Group C to country Group B;

- Some products have been removed, and some have been included in MEIS scheme; and
- Rates of many specified products have been amended.

*(Public Notice No. 27/2015-20, dated 14 July, 2015)*

### Case law

- The Delhi HC, in *Yum Restaurants (I) Pvt Ltd v Union of India* (2015 (320) ELT 781), held that entitlement of benefits of Served from India Scheme could not be denied to an Indian company which was a subsidiary of a foreign company.
- In *Dynamatic Technologies Ltd v CC* (2015 (320) ELT 616), the Tribunal held that the conversion of EPCG (Export Promotion Capital Goods) shipping bills into DEEC (Duty Exemption Entitlement Certificate) shipping bills was permissible in case invoices submitted with the shipping bills for export had both, EPCG Licence number and Advance Licence numbers
- The Delhi HC, in *Malik Tanning Industries v Union of India* (2015 (320) ELT 508), held that neither the Central Government nor DGFT had the power to amend FTP retrospectively.

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- In *CC v National Leather Cloth Mfg Co* (2015 (321) ELT 135), the Bombay HC held that redemption fine could not be imposed in case goods were not available for confiscation.
- The SC, in *Hindustan Organic Chemicals Ltd v Union of India* (2015-TIOL-142-SC-CUS), held that the 'Normal Value' determined by designated authority for Anti-dumping duty could be set aside when there was no strong basis for the same.
- In *Cerebra Integrated Technologies Ltd v CC* (2015 (321) ELT 297), the Tribunal held that the duty exemption under EPCG scheme could be withdrawn in case export obligation was not fulfilled in the prescribed period or extended period by DGFT, if any.

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

### ***Notifications***

- The Central Government has extended the levy of anti-dumping duty on imports of steel and fibre glass measuring tapes and their parts and components, falling under chapter 90 of Customs Tariff Act (CTA), originating in or exported from the People's Republic of China for a period of five years from 9 July, 2015.

*(Notification No. 31/2015-Customs (ADD) dated 9 July, 2015)*

- The Central Government has extended the levy of anti-dumping duty on imports of Phenol, falling under Customs Tariff Heading 2707 99 00 of CTA, originating in or exported from South Africa for a period of five years from 10 July, 2015.

*(Notification No. 32/2015-Customs (ADD) dated 10 July, 2015)*

- The Central Government has extended the levy of anti-dumping duty on imports of Glass Fibre and articles thereof, falling under Chapter 70 of CTA, originating in or exported from the People's Republic of China, up to 13 July, 2016.

*(Notification No. 33/2015-Customs (ADD) dated 13 July, 2015)*

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