

# Staying Updated

## Customs, FTP and WTO newsletter

November 2015: Volume 18 Issue 08

**pwc**

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### *In the issue*

#### *Customs*

##### *Notifications and circulars*

- The Central Government has notified Village Tumb, Taluka Umbergaon, District Valsad in State of Gujarat as Inland Container Depots (ICD) for unloading of imported goods and loading of export goods.

#### *Case law*

##### *Valuation*

- Valuation of parts imported under rotatable exchange programme had to be according to invoice value; value of defective parts re-exported earlier to the supplier could not be considered, when import was on the declared list price.
- Goods of Chinese origin held not comparable with goods imported from Italy, since such goods did not qualify as “identical goods” or “similar goods” as defined in Indian Customs Valuation Rules. Value of imported goods could not be re-determined in the absence of cogent reason for rejection of invoice value.

#### *Other*

- Oxygen sensors of engines of vehicles, held not to be instruments or apparatus for physical or chemical analysis and were classifiable under CTH 9031 8000.

### *Foreign trade policy*

#### *Notifications and circulars*

- Export of finished leather, Wet Blue and EI Tanned leather has been permitted through the ICD at Jalandhar and Nagpur as well.
- Revised All Industry Rates of Duty Drawback have been notified effective 23 November, 2015.

#### *Case law*

- Conversion of free shipping bills into drawback shipping bills held permissible only when claim for duty drawback was beyond the control of the exporter.
- Where Export Promotion Capital Goods (EPCG) licence issued after date of clearance of goods, but approval of relevant Committee of Directorate General of Foreign Trade (DGFT) was given prior to clearance, the benefit could not be denied.
- In case delay in filing documents for claiming Duty Drawback claim was genuine, condonation of delay had to be granted.

#### *Anti-dumping duty*

##### *Notifications and circulars*

- Levy of Anti-dumping duty extended on imports of Carbon Black used in rubber applications, originating in or exported from Peoples Republic of China, Russia and Thailand, for a period of five years from 18 November, 2015.

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## Customs

### **Notifications and circulars**

- The Central Government has notified Village Tumb, Taluka Umbergaon, District Valsad in State of Gujarat as Inland Container Depots (ICD) for unloading of imported goods and loading of export goods.  
(*Notification No. 103/2015-Customs (N.T.) dated 3 November, 2015*)

### **Case law**

#### *Valuation*

- In *GMR Energy Ltd. v CC* (2015-TIOL-259-SC-CUS), the Supreme Court held that the assessable value of parts imported under rotatable exchange programme had to be according to the invoice value, and that value of defective parts re-exported earlier to the supplier could not be considered when import was made at the declared list price.
- In *CC v Jai Industries* (2015 (325) ELT 3), the Supreme Court held that goods of Chinese origin were not comparable with goods imported from Italy, since such goods did not qualify as “identical goods” or “similar goods” as defined in Indian Customs Valuation Rules.
- In *CC v Hindustan Lever Ltd.* (2015 (325) ELT 7), the Supreme Court held that the Customs Valuation Rules would be

applicable only when value of imported goods was not determinable under section 14(1) of the Customs Act, 1962.

- In *CC v Same Engines India Pvt. Ltd.* (2015 (325) ELT 241), the Supreme Court of India held that consideration paid for technical know-how and use of intellectual property rights for manufacture of goods in India was not includible in the value of imported goods, since it was post-importation activity.

#### *Others*

- In *Denso Haryana Pvt. Ltd. v CC.* (2015-TIOL-2316-CESTAT-DEL), the Tribunal held that oxygen sensors of engines of vehicles were not instruments or apparatus. Therefore, these were classifiable under CTH 9031 8000, instead of CTH 9027 1000.
- In *Vikram Ispat v CC.* (2015-TIOL-2419-CESTAT-MUM), the Tribunal held that supervision charges being a statutory levy, could not be collected in case these were not due. In case they were collected where not due, the amount had to be refunded.

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- In *CC v Crown International* (2015 (325) ELT 462), the Supreme Court held that value declared for goods exported under Duty Entitlement Pass Book (DEPB) Scheme could not be rejected unless the department had cogent reasons for rejection of declared value.
- In *CC v C.T. Cotton Yarn Limited* (2015 (325) ELT 194), the Delhi Tribunal held that in case of hire-purchase transactions, the liability to pay import duty was on the importer who had executed bond which obliged him to abide by the conditions of Notification No. 53/97 Customs dated 3 June, 1997, and not on the financier.

## Foreign trade policy

### Notifications and circulars

- The Central Government has notified certain new products for benefit under the Merchandise Exports from India Scheme.  
*(Public Notice No. 44/2015-20, dated 29 October, 2015)*
- The Central Government has permitted export of finished leather, Wet Blue and EI Tanned leather through the ICD at Jalandhar and Nagpur.  
*(Public Notice No. 43/2015-20, dated 28 October, 2015)*
- The Central Government has notified revised All Industry Rates of Duty Drawback effective from 23 November, 2015. The revised rates factor in impact of increase in Central Excise Duty and Service Tax.  
*(Notification No. 110/2015-Customs (N.T.) dated 16 November, 2015)*

### Case law

- In Supper Spinning Mills Ltd. v CC (2015-TIOL-2621-HC-MAD-CUS), the High Court held that if the EPCG licence was issued after the date of clearance of goods, but the relevant Committee of DGFT had given its approval before clearance, then such provisional clearance of goods could not be held

against the importer to deny the benefit.

- In Cargill India Private Limited v CC (2015-TIOL-263-SC-CUS), the Supreme Court held that conversion of free shipping bills into drawback shipping bills was permissible only when claim for duty drawback was beyond the control of the exporter.
- In Alang Metal Exim Pvt Ltd. v CC (2015-TIOL-2339-CESTAT -AHM), the Tribunal held that the importer could not be held liable for import of restricted scrap where the authorised Pre-shipment Inspection Agency did not take the precautions required to be undertaken by them, as per the procedure prescribed by DGFT for examination of imported scrap.
- In Parasrampuriah Synthetics Ltd. v CC (2015 (325) ELT 221 (SC)), the Supreme Court of India held that for inclusion of exports made by the third party towards fulfilment of the Export obligation under EPCG licence, exports had to be in the name of the EPCG licence holder. In the present case, third party export was not under a licence held by the importer, and therefore were not includible for the purpose of determining fulfilment of export obligation.

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- In *Rainbow Silks v CC* (2015 (325) ELT 599), the Tribunal held that in case there was any mis-declaration on account of quantity, description or value of goods to be exported with an intent to claim ineligible benefits under DEPB scheme, Customs officer had the power to confiscate such goods.
- In *Acer India Pvt. Ltd. v Union of India* (2015 (325) ELT 519), the Karnataka High Court held that in case the delay in filing documents for claiming Duty Drawback claim was genuine, condonation of delay had to be granted.
- In *Meridian Industries Ltd. v CCE* (2015 (325) ELT 417), the Supreme Court held that if the product imported by an EOU was not used as a consumable, but as a raw material in manufacture of finished goods, the concessional rate on clearance of finished goods would not be available, since goods could not be said to have been manufactured from wholly domestically procured material.
- In *Balakrishna Industries Ltd. v CC* (2015 (324) ELT 705), the Tribunal held that the re-credit under the DEPB scheme eligible on re-export of goods, could not be denied on the ground that the permission was not sought from Commissioner, where the permission was once granted by the Deputy

Commissioner duly, since internal approval from Commissioner was the responsibility of subordinate officers.

## *Anti-dumping duty*

### **Notifications**

- The Central Government has extended the levy of anti-dumping duty on imports of Carbon Black used in rubber applications, falling under Chapter 28 of Customs Tariff Act (CTA), originating in or exported from the Peoples Republic of China, Russia and Thailand, for a period of five years from 18 November, 2015.

*(Notification No. 54/2015- Customs (ADD) dated 18 November, 2015)*

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#### **Delhi**

Vivek Mishra/Gautam Khattar  
Ph: +91 (124) 3306000

#### **Mumbai**

Dharmesh Panchal/S Satish  
Ph: +91 (22) 6689 1000

#### **Kolkata**

Pulak Saha/Gopal Agarwal  
Ph: +91 (33) 4404 3098/4404 6000

#### **Bangalore**

Pramod Banthia  
Ph: +91 (80) 4079 6000

#### **Hyderabad**

Ananthanarayanan S  
Ph: +91 (40) 4424 6363

#### **Chennai**

Harisudhan M  
Ph: +91 (44) 4228 5000

#### **Pune**

Nitin Vijaivergia  
Ph: +91 (20) 4100 4444

#### **Ahmedabad**

Dharmesh Panchal/Niren Shethia  
Ph: +91 (22) 6689 1000

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