

Staying Updated

Customs, FTP and WTO newsletter

October 2015: Volume 18 Issue 07

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Customs

Notifications and circulars

- The Central Government has notified Tirupati in the State of Andhra Pradesh as Customs Airport for unloading of imported goods and loading of export goods.
- As an initiative towards improving “Ease of Doing Business” in India, the Central Government has issued instructions for the implementation of electronic transmission of Delivery Order.

Case law

Valuation

- The value of imported goods held not to be re-determined in absence of cogent reason for rejection of invoice value.

Other

- Consideration paid for technical know-how for manufacture of products held not includible in value of imported capital goods, since it was not a condition of sale of imported goods, and was a post importation activity.
- Interest under section 27A of Customs Act held payable in case of delay in SAD

refunds; circular denying such interest held to be *ultra vires*.

Foreign trade policy

Notifications and circulars

- In relation to exports made between 01 April 2015 and 31 May 2015, MEIS benefit can be claimed by submitting physical copies of free shipping bills with DGFT after filing MEIS application. This benefit is available even if, at the time of export, intent to claim MEIS benefit was not made in shipping bill.
- The list of organisations that can import Aircraft and Helicopters (including used/second-hand aircraft and helicopters) without obtaining an import licence from DGFT has been updated.

Case law

- CENVAT credit of CVD paid through DEPB scrips held not to be denied in case there was no specific denial in exemption notification for taking credit of such duty.
- Amendment in Bills of Entry under Section 149 was allowed, in case the importer wanted to pay CVD in cash and get Credit back in DEPB scrips. Since he was an importer, he could not be deprived of credit by using either DEPB scrips or by paying CVD in cash.

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Notifications and circulars

- Levy of Anti-dumping duty extended on imports of Plain Medium Density Fibre Board of thickness 6 mm and above, originating in or exported from the Peoples Republic of China, Malaysia, Thailand and Sri Lanka, for a period of five years from 21 October, 2015.
- Levy of Anti-dumping duty extended on imports of Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles, originating in or exported from the People s Republic of China, for a period of five years from 21 October, 2015.
- Definitive Anti-dumping duty imposed on imports of Hexamine, originating in or exported from the People’s Republic of China and UAE, for a period of five years from 21 October, 2015.

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Notifications and circulars

- The Central Government has notified Tirupati in State of Andhra Pradesh as Customs Airport for unloading of imported goods and loading of export goods. (*Notification No. 99/2015-Customs (NT) dated 15 October, 2015*)
- The Central Government has invited comments from field formations in relation to initiatives for increasing ease of doing business, and reducing use of paper in Customs clearances. (*F.No. 450/25/2013 - Cus IV (Pt) dated 01 October, 2015*)
- The Central Government has mandated the use of digital signature for all importers and exporters using services of Customs brokers for submission of customs process documents, w.e.f from 01 January, 2016. (*Circular No. 26/2015 dated 23 October, 2015*)
- As a part of the Government's initiative for improving India's rank on the "Ease of Doing Business" survey, the Central Government has issued instructions for implementation of electronic transmission of Delivery Order. (*Circular No. 24/2015 dated 14 October, 2015*)

Case law

Valuation

- The Supreme Court of India, in *CC v Bayer Crop Science Ltd.* (2015-TIOL-252-SC-CUS), held that the value of imported goods could not be re-determined in absence of cogent reasons for rejection of invoice value.

Others

- In *CC v Denso Kirloskar Industries Pvt. Ltd.* (2015-TIOL-222-SC-CUS), the Supreme Court held that consideration paid for technical know-how for manufacture of products was not includible in value of imported capital goods, since it was not a condition of sale of imported goods, but was a post-importation activity.
- The Kerala High Court, in *Ruchi Infrastructure Ltd v Union of India* (2015-TIOL-2411-HC-Kerala), held that clearance of warehouse goods for home consumption under Section 68 of the Customs Act would be considered complete when the duty on warehouse goods was paid and "out of charge" order for home consumption was made by the proper officer. Duty cannot be demanded by Customs Authorities after "out of charge" order.

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- In *CC v Pfizer Products India Private Limited* (2015 (324) ELT 259), the High Court held that relevant date for computation of interest on delayed refund payment was date of expiry of three months from date of filing the initial refund claim.
- The Delhi High Court, in *CC v Riso India P Ltd* (2015-TIOL-2384-HC-DEL), held that interest under section 27A of Customs Act was payable in case of delay in SAD refunds, and that circular denying such interest was *ultra vires*.

Foreign trade policy

Notifications and circulars

- The Central Government has clarified that in relation to exports made between 01 April, 2015 and 31 May, 2015, Merchandise Exports from India Scheme (MEIS) benefit can be claimed by submitting physical copies of free shipping bills with Directorate General of Foreign Trade (DGFT) after filing MEIS application even if, at the time of export, intent to claim MEIS benefit was not made in the shipping bill. (*Public Notice No. 40/2015-20, dated 09 October, 2015*)
- The Central Government has authorised International Society for Small and Medium Enterprises (ISSME) to issue Certificate of Origin (Non-Preferential). (*Public Notice No. 39/2015-20, dated 01 October, 2015*)
- The Central Government has updated the list of organisations that can import Aircraft and Helicopters (including used/ second-hand aircraft and helicopters) without obtaining an import licence from DGFT. (*Notification No. 24/2015-2020, dated 09 October, 2015*)
- The Central Government has extended the eligibility of all services specified under Appendix 3D exported from India

for reward under Service Exports from India Scheme (SEIS) during the period 01 April, 2015 to 31 March, 2016 as against the originally announced period of 01 April, 2015 to 30 September, 2015. (*Public Notice No. 42/2015-20, dated 26 October, 2015*)

Case law

- In *R Krishan and Co. v CC (2015-TIOL-2103-CESTAT-MAD)*, the Tribunal held that the transaction value of exported goods could not be rejected in absence of contrary evidence to show that declared value was incorrect.
- The High Court, in *CCE v Havells India Ltd. (2015-TIOL-2399-HC-DEL-CUS)*, held that CENVAT credit of Countervailing Duty (CVD) paid through Duty Entitlement Pass Book Scheme (DEPB) scrips could not be denied in case there was no specific denial in exemption notification to take credit for such duty.

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- In *CC v Brakes India Ltd.* (2015-TIOL-2334-HC-MAD-CUS), the Madras High Court held that amendment in Bills of Entry under Section 149 was allowed in case importer wanted to pay CVD in cash and get credit back in DEPB scrips, since he could not be deprived of taking credit either by using DEPB scrips or by paying CVD in cash.
- The Supreme Court of India, in *CC v I.G. Petrochemical Ltd* (2015 (324) ELT 21), held that concessional rate for clearance from EOU to DTA could not be denied in a case where imported catalyst, which was not a raw material, was used, since condition of use of domestic raw material was not breached.
- In *Kapur K.C.P Packagings Ltd. v CC* (2015 (324) ELT 58), the High Court held that if drawback payable to the assessee was not paid within one month from the date of filing the claim, interest at the fixed rate had to be paid to the assessee after the expiry of the said period of one month.
- The Tribunal, in *CC v Sree Rayalaseema Hi-Strength Hypo Ltd.* (2015-TIOL-2239-CESTAT-MAD), held that “titanium sheets” required for reactors were capital goods defined in FTP. Further, once FTP allowed such goods as capital goods, then it was not open for the Customs to object to this.
- In *Kerala Hotels P Ltd v CC* (2015 (323) ELT 743), the High Court held that a Bank guarantee could only be encashed by Customs when a quantification of duty payable was made by the DGFT.
- The Tribunal, in *DHL Express (India) Private Ltd. v CC* (2015-TIOL-2174-CESTAT -MUM), held that second-hand SO₂ Analyser was capital goods as defined in FTP, and hence freely importable, and so no penalty could be imposed on the courier agency for mis-declaration or for not declaring restricted goods.

Anti-dumping duty

Notifications

- The Central Government has extended the levy of anti-dumping duty on imports of Plain Medium Density Fibre Board of thickness 6 mm and above, falling under Chapter 44 of Customs Tariff Act (CTA), originating in or exported from the People's Republic of China, Malaysia, Thailand and Sri Lanka, for a period of five years from 21 October, 2015. (*Notification No. 48/2015- Customs (ADD) dated 21 October, 2015*)
- The Central Government has extended levy of anti-dumping duty on imports of Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles, falling under Chapter 73 and 87 of CTA, originating in or exported from the People's Republic of China, for five years from 21 October, 2015. (*Notification No. 49/2015- Customs (ADD) dated 21 October, 2015*)
- The Central Government has imposed anti-dumping duty on imports of Hexamine, falling under Customs Tariff Heading (CTH) 2921 29 10 of CTA, originating in or exported from the People's Republic of China and UAE, for five years from 21 October, 2015. (*Notification No. 50/2015- Customs (ADD) dated 21 October, 2015*)

- The Central Government has extended the levy of anti-dumping duty on imports of all Fully Drawn or Fully Oriented Yarn/ Spin Draw Yarn/ Flat Yarn of Polyester (non-textured and non-POY), falling under Chapter 54 of CTA, originating in or exported from the People's Republic of China and Thailand, for five years from 21 October, 2015. (*Notification No. 51/2015- Customs (ADD) dated 21 October, 2015*)

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