

# Staying Updated

## Customs, FTP and WTO newsletter

February 2016: Volume 18 Issue 11

**pwc**

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#### *Customs*

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

- The Central Government has comprehensively revised its instructions for examination of related party import transactions which were previously prescribed under circular no. 11/2001-Customs dated 23 February, 2001.
- The Central Government has extended the Indian customs single window clearance facility to other locations and other participating Government agencies.

##### **Case law**

###### *Classification*

- Fingerprint reader which works on optical technology and involves flat sensor held classifiable under Customs Tariff Heading (CTH) 8471 instead of CTH 8543.

###### *Other*

- Goods deemed to be improperly removed when they remained stocked in the Duty Free Shops beyond the permitted period.

### *Foreign trade policy*

#### **Notifications and circulars**

- Import of Capital Goods is not permitted under Export Promotion Capital Goods Scheme for generation/transmission of Power.
- Validity of recognition of those Pre-shipment Inspection Agencies (PSIA) who have completed their tenure of three years has been extended up to 31 May, 2016.
- In the interest of trade facilitation, Central Government has decided to close Advance Authorisation Licences issued under FTP 2009-14, where the supplies to SEZ have been made and proceeds realised in Indian Rupees.

#### **Case law**

- Held that the Government could extend the period for re-export of specified goods imported for display or use at any specified event by six months, if it was necessary to do so in the public interest.
- Non-production of supporting documents after completion of export obligation could attract penal provisions.

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### *Anti dumping/safeguard duty*

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

- Anti-dumping duty levied on imports of Mulberry Raw Silk (not thrown) of grade 3A and below, originating in or exported from the People's Republic of China, for a period of five years from 28 January, 2016.
- Anti-dumping duty levy extended on imports of Melamine, originating in or exported from the People's Republic of China, for a period of five years from 28 January, 2016.

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**Notifications and circulars**

- The Central Government has comprehensively revised its instructions for examination of related party import transactions as trade facilitation measures. Following are some of the relevant points:
  - The administrative control of the SVB section has been given back to jurisdictional Chief Commissioner/ Principal Commissioner/ Commissioner in place of the Director General of Valuation (DGoV);
  - In cases where the import takes place through Mumbai/ Delhi/ Chennai/ Kolkata/ Bengaluru, the importer will be free to select the SVB of the Customs House of import or the Customs House nearest to its corporate office;
  - For the sake of reducing transaction costs, no security in the form of extra duty deposit shall be obtained from importers, subject to a few exceptions;
  - All matters of renewal, where there is no change in facts, will be closed on the basis of specified declaration from the importer;
  - Pendency should be brought down by 10% in each month so that all existing cases (commenced upto 31 December, 2015) are disposed of latest by 31

October, 2016.

*(Circular No. 04/2016 & 05/2016- Customs, dated 9 February, 2016)*

- The Central Government has extended Indian Customs Single Window clearance facility to new ports, and made the following key improvements :
  - Facility of message exchange with Food Safety Standards Authority of India and Department of Plant Protection, Quarantine & Storage;
  - Lab Module has been introduced for online process of referring samples for testing;
  - Approvals/ NOC from other government agencies (if any) will also be obtained online.

*(Circular No. 03/2016- Customs, dated 3 February, 2016)*

- The Central Government has notified road connecting Sikta, District West Champaran, in the State of Bihar and Bhiswabazar in Nepal as Land Customs Station for the purpose of unloading of imported goods and loading of export goods.

*(Notification No. 26/2016-Customs (N.T.) dated 18 February, 2016)*

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## Case law

### Valuation

- In *Prayas Woollens Private Limited v CC* (2016 (332) ELT 376), the Mumbai Tribunal held that contemporaneous price was applicable when imported rags were of the same character, quantity, quality and country of origin, and value of imported rags could not be re-determined in the absence of cogent reason for rejection of invoice value.
- In *JMD Oils Private Limited v CC* (2016-TIOL-347-CESTAT-DEL), the Delhi Tribunal held that transaction value of imported goods could not be enhanced based on general statement of the indenting agents, when there is no evidence of payment over and above the invoice value.

### Classification

- In *STJ Electronics Private Limited v CC* (2016-TIOL-456-CESTAT-DEL), the Delhi Tribunal held that fingerprint readers which work on optical technology and involve flat sensors for compact design, would be classifiable under CTH 8471 as automatic data processing machine, and not under CTH 8543, since the product is more specifically covered under CTH 8471.

## Others

- In *CC v Birla Furukawa Fiber Optics Ltd.* (2016-TIOL-327-CESTAT-MUM), the Mumbai Tribunal held that an importer would be allowed SAD refund by way of re-credit in Reward Scrips, when SAD was paid by using such Reward Scrips. The principle was that a right given under any exemption notification could not be taken away by issue of a Circular.
- In *India Tourism Development Corporation v CC* (2016-TIOL-418-CESTAT-MUM), the Mumbai Tribunal held that goods stocked in a Duty Free Shop beyond the expiry of permissible period were deemed to be goods improperly removed, and were liable to Customs Duty.
- In *Huawei Technologies Co Limited v CC* (2016-TIOL-454-CESTAT-HYB), the Hyderabad Tribunal held that the value of software preloaded on hardware at the time of import had to be included in the value of hardware for the purpose of levy of Custom Duty.

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## Foreign trade policy

### Notifications and circulars

- The Central Government has notified that import of Capital Goods for generation/ transmission of Power (including captive plants and power generator sets of any kind) is not permitted under the Export Promotion Capital Goods Scheme.  
*(Notification No. 35/2015-2020, dated 29 January, 2016)*
- The Central Government has notified that only three documents (i.e., Digital photograph of the signatory applicant, copy of PAN card and cancelled cheque) need to be uploaded along with the application, for obtaining Importer Exporter Code.  
*(Notification No. 34/2015-2016, dated 29 January, 2016)*
- The Central Government has notified that all imported motorcycles which meet the EURO III and EURO IV emission norms as defined in EU Directive 2003/77/EC shall be allowed to be imported till 31 March, 2017, and only imports of EURO IV compliant motorcycles would be allowed thereafter.  
*(Notification No. 36/2015-20, dated 2 February, 2016)*
- The Central Government has extended the validity of recognition of those Pre-

shipment Inspection Agencies that have completed their tenure of three years, upto 31 May, 2016.

*(Public Notice No. 57/2015-20, dated 27 January, 2016)*

- The Central Government has decided, in the interest of trade facilitation, to close Advance Authorisation Licences, where supplies to SEZ had been made and proceeds realised in Indian Rupees in relation to Advance Authorisation scheme under FTP 2009-14.  
*(Trade Notice 16/2015-20, dated 10 February, 2016)*
- The Central Government has decided to adopt an online processing system for SCOMET application in addition to online filing of such application. Further, the list of requisite documents to be uploaded with DGFT along with SCOMET application has also been notified.  
*(Trade Notice 20/2015-20, dated 19 February, 2016)*

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### ***Case law***

- In *CC v LNG Security Services Private Limited* (2016-TIOL-445-CESTAT-DEL), the Delhi Tribunal held that Government could extend the period of re-export of specified goods imported under ATA Carnet for display or use at any specified event, if it was necessary to do so in the public interest, since this was specifically provided for in the notification.
- In *Air India Ltd. v CC* (2016-TIOL-323-CESTAT-MUM), the Mumbai Tribunal held that conversion of free shipping bill into drawback shipping bill was possible, subject to establishing the identity of the goods.
- In *TT Ltd. v Union of India* (2016 (332) ELT 400), the Delhi High Court held that Government was empowered to withdraw or amend retrospectively any concessions or incentives granted by it as a privilege.
- In *Shreeji Industries Ltd. v Additional Directorate General of Foreign Trade* (2016 (332) ELT 251), the Gujarat High Court held that non-production of supporting documents after completion of export obligation could attract penal provisions; and that production of an FIR for loss of documents could not be a substitute for such statutory requirement.

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## ***Anti-dumping/Safeguard duty***

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

- The Central Government has levied anti-dumping duty on imports of Mulberry Raw Silk (not thrown) of grade 3A and below, falling under CTH 500200 10 of Chapter 50 of Customs Tariff Act (CTA), originating in or exported from the People's Republic of China, for a period of five years from 28 January, 2016.

*(Notification No. 1/2016- Customs (ADD) dated 28 January, 2016)*

- The Central Government has extended the levy of anti-dumping duty on imports of Melamine, falling under CTH 293361 00 of Chapter 29 CTA, originating in or exported from the People's Republic of China, for a period of five years from 28 January, 2016.

*(Notification No. 2/2016- Customs (ADD) dated 28 January, 2016)*

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