

Staying Updated

Customs, FTP and WTO newsletter

December 2017

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Notifications and circulars

- Increase in import tariff rate on specified electronic goods such as microwave ovens, push button cellular phones, television cameras, digital cameras, LED lamps, etc.
- Amendment in effective rate of Basic Customs Duty (BCD) on various goods.
- Additional tariff concession in respect of import of tariff item 8708 4000 (gear box and parts thereof, of specified motor vehicles) when imported from Japan under the India-Japan Comprehensive Economic Partnership Agreement (IJCEPA).
- Additional tariff concessions for specified goods imported from Korea RP under the India-Korea Comprehensive Economic Partnership Agreement (CEPA).
- Additional tariff concessions for specified goods imported from the Association of Southeast Asian Nations (ASEAN) under the India-ASEAN Free Trade Agreement.
- Additional tariff concessions for specified goods imported from Malaysia under the India-Malaysia Comprehensive Economic Cooperation Agreement (IMCECA).
- Clarification on Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 in respect of quantum of bank guarantee/ cash security and requirement of surety.
- Refund/ claim of Countervailing duty as Duty Drawback.
- Implementation of Electronic Sealing for Containers by exporters under self-sealing procedure.
- Customs procedure for export of cargo in containers and closed bodied trucks from ICDs/ CFSS through Land Customs Stations (LCSs) to Bangladesh and Nepal revised with effect from 01 February 2018.

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- Mere installing a firmware to restrict the video recording to less than 30 minutes does not make the imported digital video camera eligible to claim exemption notification.
- Since there is no restriction on import of second hand digital second hand digital multifunction print and copier machines, confiscation and consequent redemption fine not merited.
- Amendment seeking to correct an error in an enactment or provision of law can only have prospective effect.
- Writ petition against a Show Cause seeking to recover Anti-Dumping duty imposed by a notification issued subsequent to expiry of original notification is maintainable. Further, such a Show Cause Notice demanding Anti-Dumping duty is invalid.

Foreign trade policy

Notifications and circulars

- Mid-term review of the Foreign Trade Policy 2015-20 (FTP) was released on 05 December 2017. The Policy focuses on expanding market, alignment with Goods and Services Tax (GST) law, data analytics backed policy intervention and trade facilitation with specific emphasis on

MSME and labour intensive sectors.

Anti dumping/ safeguard duty

Notifications and circulars

- Anti-dumping duty levied on imports of on Phthalic Anhydride originating in or exported from Korea RP, Chinese Taipei and Israel.

Special Economic Zone (SEZ) Rules

Notifications and circulars

- In order to align the SEZ Rules, 2006 with the GST laws as well as for removal of various difficulties faced, a committee was constituted to review the SEZ Rules, 2006 and to make necessary recommendations. The recommendations of the Committee have been released to seek comments of the stakeholders.

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Notifications and circulars

- The Central Government has increased the import tariff rate on specified electronic goods primarily covered under Chapter 85, Chapter 90 and Chapter 94 such as microwave ovens, push button cellular phones, television cameras, digital cameras, LED lamps, lamps and light fittings, etc.
(Notification No. 91/2017-Customs, dated 14 December, 2017)
- The Central Government has amended the Notification No. 50/2017-Customs, dated 30 June 2017, prescribing effective rate of BCD on specified goods such as goods covered under tariff head 8521 9090 (All goods other than Digital video Recorder (DVR/ Network Video Recorder (NVR)), goods covered under tariff head 9028 30 (All goods other than smart meter), LCD, LED or OLED panels for manufacture of television, petroleum coke by omitting entry prescribing its effective BCD rate of 2.5%, pulses (other than Tur, Chickpeas or Masoor) etc.
(Notification No. 92/2017-Customs, dated 14 December, 2017 and Notification No. 93/2017-Customs, dated 21 December, 2017)
- The Central Government has amended Notification No. 69/2011-Customs, dated 29 July, 2011 to provide additional concessional rate of BCD by reducing effective rate from 7.50% to 6.88% in respect of tariff item 8708 4000 (gear box and parts thereof, of specified motor vehicles), with effect from 01 January 2018, when imported under IJCEPA.
(Notification No. 94/2017-Customs, dated 22 December, 2017)
- The Central Government has amended Notification No. 152/2009-Customs dated 31 December 2009, to provide additional tariff concessions in respect of specified goods imported from Korea RP under CEPA with effect from 01 January 2018.
(Notification No. 95/2017-Customs, dated 22 December, 2017)
- The Central Government has amended Notification No. 46/2011-Customs dated 01 July 2011 to provide additional tariff concessions in respect of specified goods when imported from ASEAN under the India-ASEAN Free Trade with effect from 01 January 2018.
(Notification No. 96/2017-Customs, dated 29 December, 2017)
- The Central Government has amended Notification No. 53/2011-Customs, to provide additional tariff concessions for specified goods imported from Malaysia under IMCECA.
(Notification No. 97/2017-Customs dated 29 December, 2017)

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Notifications and circulars

- In order to reduce the burden of compliance costs, the Central Board of Excise and Customs (CBEC) extended the benefit of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 by simplifying the norms of taking bank guarantee/ cash security/ surety along with the Customs bond.
(Circular No. 48/2017-Customs, dated 8 December, 2017)
- The CBEC clarified that Countervailing duty leviable under section 9 of the Customs Tariff Act, are rebatable as drawback in terms of section 75 of the Customs Act. Drawback shall be admissible only where the inputs that suffered Countervailing Duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.
(Circular No. 49/2017-Customs, dated 12 December, 2017)
- The CBEC relaxed the requirement of mandatory e-seals in view of insufficient stock of e-seals with the empanelled vendors.
- The mandatory e-sealing procedure has been deferred to 01 April 2018 subject to conditions.
(Circular No. 51/2017-Customs, dated 21 December, 2017)

- The CBEC has decided to leverage the introduction of Electronic Cargo Tracking System (ECTS) to be provided under “Managed Service Provider” system to monitor and facilitate transshipment of consignments sealed at ICDs/ CFSs and destined for export to Nepal or Bangladesh. Exporters opting to avail the facility for export of goods to Bangladesh or Nepal may do so through the notified ICDs/ CFSs with effect from 01 February 2018.
(Circular No. 52/2017-Customs, dated 22 December, 2017)

Case laws

- In Sony India Private Limited, Canon India Private Limited, Nikon India Private Limited, Samsung India Electronics Private Limited v. Commissioner of Customs (2017 (12) TMI 1112 - CESTAT New Delhi), the New Delhi Tribunal held that a person who claims exemption or concession, has to establish that he was entitled to that exemption or concession. The impugned goods do not fulfill all the conditions specified in the explanation to S. No. 13 (Digital still image video cameras) of the notification No.25/2005-Cus., dated 01 March 2005, as imported digital cameras were capable of making a video of 30 minutes or more; it was the firmware specifically installed in the camera software that prevented it from doing so.

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- In *M/s. Wel-Tech Enterprises v. Commissioner of Customs (Port –Import), Chennai* (2017-TIOL-4073-CESTAT-MAD), the Tribunal held that since there was no restriction on importation of used digital multifunction print and copying machines, the confiscation and consequent redemption fine is not merited. Though, penalty on account of mis-declaration can be imposed. Pursuant to the observation, the redemption fine on account of import of other item and combined penalty was reduced.
- In *M/s Tarajyot Polymers Limited v. Union of India, Ministry of Finance, represented by Secretary Revenue, Commissioner of Customs (Appeals), Chennai and Commissioner of Customs, DFIA, Chennai* (2017-TIOL-2396-HC-MAD-CUS), the Hon'ble Court held that condition imposed by Notification No. 17/2009 requiring payment of Additional Customs duty along with interest in case CENVAT credit is availed is not tenable as the condition imposed vide the amending notification cannot be satisfied retrospectively. The Hon'ble Court in support of their judgment cited the past judgments' of Hon'ble Supreme Court.
- In *M/s Huawei Telecommunications (India) Company Pvt. Limited v. The Principal Commissioner of Customs,*

(Chennai Air Cargo), Development Commissioner, MEPZ-SEZ, Chennai, Specified Officer, Flextronics SEZ, Sriperumbudur and Authorized Officer, Flextronics SEZ, Sriperumbudur (2017-TIOL-2407-HC-MAD-CUS), the Hon'ble Court while examining the issue of maintainability of Writ Petition against a Show Cause notice seeking demand of Anti-Dumping duty basis the amended notification issued after lapse of principal notification and validity of such a Show Cause Notice held that given the exceptions carved out by the Hon'ble Supreme Court, the present writ is maintainable and since the amendment notification was issued after the lapse of principal Notification, the Show Cause Notice is not sustainable.

Foreign trade policy

Notifications and circulars

- Mid-term review of the Foreign Trade Policy 2015-20 was released by the Government on 05 December, 2017.
- Self-ratification scheme notified for export products with no notified Standard Input Output Norms/ *adhoc* norms or where exporter intends to use additional inputs. Exporter, in such cases, shall be eligible to seek authorisation on self-declaration and certification basis. Scheme presently extended to exporters holding Authorised Economic Operator status with Customs.
- Restriction for Export Oriented Units (EOUs) to undertake domestic sales upto 50 percent of FOB value of exports dispensed with.
(Notification No. 41/2015-20, dated 05 December, 2017)
- Mid-term review of the Handbook of procedures of the Foreign Trade Policy, 2015-2020 was released by the government on 05 December 2017.
(Public Notice No. 43/2015-20, dated 05 December, 2017)
- Incentives under Merchandise Exports From India Scheme (MEIS) under Appendix 3B increased by two percent for major sectors *viz.*, leather, agriculture, carpets, hand tools,

scientific products and telecom equipment/ components etc.

- The revised rates are applicable for exports made with effect from 01 November, 2017 to 30 June, 2018. No changes in the rates for export of motor vehicles or parts thereof.
(Public Notice No. 44/2015-20, dated 05 December, 2017)
- Incentives under Service Exports From India Scheme (SEIS) under Appendix 3D increased by two percent for eligible services for exports effected from 01 November, 2017.
- Amendment of Appendix 3E to extend benefit to ground handling services as part of Air Transport Services. Benefit restricted to specified payments, which are approved by Reserve Bank of India as deemed foreign exchange payments.
(Public Notice No. 45/2015-20 and Public Notice No. 46/2015-20, dated 5 December, 2017)
- The Director General of Foreign Trade (DGFT) issued new Appendix 5E (Computation of Annual Average Export Obligation under EPCG Scheme) and Appendix 5F (List of Capital Goods not permitted/ permitted subject to specific conditions for import under EPCG Scheme) of FTP 2015-20.
(Public Notice No. 47/2015-20, dated 6 December, 2017)

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Anti-dumping/ Safeguard duty

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- The CBEC extends the applicable anti-dumping duty on imports of Phthalic Anhydride originating in or exported from Korea RP, Chinese Taipei and Israel till 23 December 2018.

(Notification No. 56/2017-Customs (ADD), dated 21 December, 2017)

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Notifications and circulars

- In order to align the SEZ Rules, 2006 with the GST laws as well as for removal of various difficulties faced, a committee under the Chairmanship of Dr. L. B. Singhal, Development Commissioner, Noida SEZ was constituted by the Department of Commerce, Ministry of Commerce and Industry to review the SEZ Rules, 2006 and to make necessary recommendations.
- The Committee has recently submitted their recommendations, on which the Ministry of Commerce had sought comments by 31 December 2017.
- The recommendations inter alia can be divided into:
 - Procedural relaxations;
 - Operational flexibility;
 - Encouraging exports and employment generation with closer monitoring;
 - Timely dispute resolution through alternative mechanism.

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