

Staying Updated

Customs, FTP and WTO newsletter

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Notifications and circulars

- Merit rate of Basic Customs Duty (BCD) on populated, loaded and stuffed printed circuit boards increased.
- Effective rate of BCD on camera module and connectors for use in manufacture of cellular mobile phones increased.
- Pre-notice Consultation Regulations, 2018 notified.
- Clarification on classification of remnant fuel and oils brought in vessels meant for ship breaking under Chapter 27 and not Chapter 89.
- Clarification regarding filing of intimation and not seeking approval by an export oriented unit (EOU) in terms of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCR Rules, 2017) to be sufficient compliance for duty free imports.
- Instruction issued to proper officer required to pass a speaking order

on the re-assessment within prescribed time.

- Clarification issued regarding classification of Solar Panel.

Case laws

- The Customs duty is to be charged only on the basis of the actual quantity of crude receipt in the shore tank and not basis quantity mentioned in the bill of lading.
- For the purpose of availing the benefit of exemption from levy of Additional Duty of Customs under section 3(5) of Customs Tariff Act, 1975 (SAD) in terms of notification no. 45/2005-Customs, dated 16 May 2005 with respect to goods cleared from SEZ to domestic tariff area (DTA), the goods must be produced or manufactured in the SEZ unit.
- Mere conversion of imported logs into sawn timber without loss of identity of the original product would not deprive the importer of the benefit of refund of SAD, where imported goods are meant for subsequent sale.

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Foreign trade policy

Notifications and public notices

- Import of radiation generating components falling under Chapter 90 of Schedule I to ITC HS (2017) subjected to prior regulatory clearance from Atomic Energy Regulatory Board (AERB).
- Transitional Arrangements under Para 1.05(b) of the Foreign Traded Policy 2015-20 (FTP) amended.
- Date of receipt of requests for one time condonation in relation to Export Promotion Capital Goods (EPCG) scheme extended.
- Online system for monitoring the progress of applications for export obligation discharge certificate (EODC) under Advance Authorisation (AA) and EPCG schemes implemented.
- Facility to check status of Importer Exporter Code (IEC) application made to Director General of Foreign Trade (DGFT) launched.
- DGFT clarified that only the service categories, which have been notified in Appendix 3D of the Service Exports from India Scheme (SEIS) are allowed for claim under SEIS irrespective of mode of delivery.

Anti dumping/safeguard duty

Notifications and circulars

- Phosphoric acid-Technical grade and Food Grade continue to be subjected to anti-dumping duty (ADD) originating in or exported from China post withdrawal of application for review by exporter.
- Phosphorus Pentoxide originating in or exported from China subjected to ADD for a period of five years.
- Levy of ADD on Fishnet or fishing net originating in or exported from China or Bangladesh.
- Levy of ADD to continue on import of Soda Ash originating in or exported from Russia and Turkey until the conclusion of the sunset review investigations or 16 April, 2019; whichever is earlier.
- Glassware originating in or exported from China and Indonesia subjected to ADD.
- Methyl Ethyl Ketone (MEK) originating in or exported from China, Japan, South Africa and Taiwan subjected to ADD for a period of three years.

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Notifications and circulars

- BCD on populated , loaded or stuffed printed circuit boards, falling under tariff item 8517 70 10 has been increased from Nil to 10%.

(Notification No. 36/2018-Customs, dated 02 April, 2018 and Notification No. 38/2018-Customs, dated 02 April, 2018)

- Effective rate of BCD on camera module and connectors for use in manufacture of cellular mobile phones increased from nil to 10%

(Notification No. 37/2018-Customs, dated 02 April, 2018, Notification No. 39/2018-Customs, dated 02 April, 2018 and Notification No. 40/2018-Customs, dated 02 April, 2018)

- Merit rate of BCD on whey and modified whey, whether or not concentrated or containing added sugar or other sweetening matter increased from 30% to 40%. Further, effective rate of BCD on whey, concentrated, evaporated or condensed, liquid or semi-solid and other whey maintained at 30%.

(Notification No. 43/2018-Customs, dated 10 April, 2018 and Notification No. 44/2018-Customs, dated 10 April, 2018)

- The Central Board of Indirect Taxes and

Customs (CBIC) has notified the Pre-notice Consultation Regulations, 2018, which prescribe the procedure to be followed by the proper officer in relation to consultation (by way of written communication) with the person to whom notice is proposed to be issued.

(Notification No. 29/2018-Customs(N.T.), dated 02 April, 2018)

- CBIC has issued clarification that remnant fuel and oils brought in vessels meant for ship breaking do not form integral part of such vessels unlike fuel and oil contained in the vessel's machinery and engines, and hence, are classifiable under Chapter 27 and not Chapter 89. This clarification is based on Circular no. 37/96-Customs dated 03 July 1996 read with Notification no. 07/2015-20, dated 20 May 2015 issued by the DGFT.

(Circular No. 09/2018-Customs, dated 19 April, 2018)

- CBIC has clarified that an EOU importer need not get prior approval from jurisdictional AC/ DC of information submitted under Rule 5 of IGCR Rules, 2017 and information submitted with DC/ AC of Customs at Custom Station of importation shall be sufficient compliance for clearance of goods under Notification no. 52/2003-Customs, dated 31 March 2003.

(Circular No. 10/2018-Customs, dated 24 April, 2018)

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Notification and Circulars

- CBIC has issued instruction to proper officer requiring him to pass a speaking order on re-assessment within 15 days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

(Instruction No. 07/2018-Customs, dated 05 April, 2018)

- CBIC has issued instruction on the basis of nature of diode used in solar panel/ solar module (bypass diode or blocking diode) to control flow of current. The same has been outlined below:
 - solar panel equipped with bypass diodes are classifiable in heading 8541
 - Solar panel equipped blocking diodes are classifiable in heading 8501
 - Solar panel equipped with blocking diodes and bypass diodes are classifiable in heading 8501

(Instruction No. 09/2018-Customs, dated 06 April, 2018)

Case laws

- **Valuation:** In Commissioner of Customs Cochin *v.* Bharath Petroleum Corporation Limited **(2018-TIOL-1032-CESTAT-BANG)** regarding valuation of imported crude oil, which is pumped from vessel to shore tank, Tribunal observed that the matter was settled by the Supreme Court in the case of Mangalore Refinery and

Petrochemicals Limited (2015-TIOL-199-SC-CUS). Accordingly, it was decided that customs duty is to be charged only on the basis of actual quantity of crude receipt in the shore tank. Further, since the original authority had already perused copies of shore tank receipt certified and had finalised the provisional assessments, hence, appeal was dismissed by the Tribunal.

- **Exemption:** In Llyod Electric and Engineering Limited and Zamil Air Conditioners Private Limited *v.* Commissioner of Customs, Central Excise and Service Tax Noida-II **(2018-TIOL-1165-CESTAT-ALL)** Allahabad Tribunal observed that the assessee had created a camouflage of ‘subsequent clearance’ to evade payment of Additional Duty of Customs under section 3(5) of Customs Tariff Act, 1975 i.e. SAD. This was done by importing goods, filing into bond bill of entry and warehousing these imported goods in an FTWZ and subsequently, filing an Ex-Bond Bill of entry for clearance of goods from FTWZ to its factory. Further, the assessee did not have any unit in FTWZ and had imported goods for its own use for manufacture of finished goods. Accordingly, the benefit of exemption under the notification no. 45/2005-Customs dated 16 May, 2005 was denied.

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- **Refund of SAD:** In Commissioner of Customs *v.* Variety Lumbers Private Limited (**2018-TIOL-164-SC-CUS**), Supreme Court affirmed the orders of Tribunal and High Court that mere conversion of imported logs into sawn timber without loss of identity of the original product would not deprive the importer of the benefit of the exemption notification no. 102/2007-Customs, dated 14 September, 2007, which provides for refund of SAD paid by the importer on subsequent sale of the imported goods. Further, the bank guarantees deposited by the importer in lieu of refund were directed to be returned to them along with interest.

Foreign trade policy

Notifications and trade notices

- DGFT has amended Schedule I to ITC HS (2017) to permit import of radiation generating components such as computed tomography apparatus and Portable X-Ray machine falling under Chapter 90, subject to Atomic Energy Act, 1962 and rules made thereunder and prior regulatory clearance from Atomic Energy Regulatory Board (AERB).

(Notification No. 03/2015-20, dated 16 April, 2018)

- DGFT has amended Transitional Arrangements under Para 1.05(b) of the (FTP) in the context of change of policy for an item from “free” to “restricted/prohibited/ state trading” or “otherwise regulated” to provide that:
 - Where import/ export has already been made before such change in policy, then it will not be applicable to said items;
 - Above facility shall not be applicable to import under high seas sale;
 - Where import/ export is made after such change in policy, then it will be allowed provided importer/ exporter has a commitment through Irrevocable Commercial Letter of Credit (ICLC) before the date of imposition of such restriction/ regulation and shall be

limited to the balance quantity, value and period available in the ICLC;

- Any policy change introduced for an item shall be applicable prospectively, unless otherwise provided.

(Notification No. 05/2015-20, dated 25 April, 2018)

- DGFT has extended date of receipt of requests for one time condonation in relation to EPCG scheme till 30 September, 2018. Such requests pertain to obtaining extension/ block wise extension in export obligation and acceptance of installation certificate.

(Public Notice No. 01/2015-20, dated 26 April, 2018)

- DGFT has implemented an online system for monitoring the progress of applications for EODC under AA and EPCG schemes. The Licensing authority shall input data related to EODC applications submitted by exporters and update the status when either deficiency letter or EODC is issued. Further, exporters can also view status of their pending EODC applications and raise a query to seek clarification on status of EODC if not reflected in the system.

(Trade Notice No. 01/2018-19, dated 04 April, 2018)

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- DGFT has provided a facility to resolve problem inability of importer/ exporter to use IEC due to non-transmission of IEC issued by DGFT to ICEGATE (Customs) on account of technical problems. Importer/ exporter can now check the current status of IEC application basis its permanent account number details and the first three letters of its first name.

***(Trade Notice No. 02/2018-19,
dated 11 April, 2018)***

- Regarding eligibility of Information Technology (IT)/ IT enabled services under SEIS, DGFT has clarified that only those service categories, which have been notified in Appendix 3D of SEIS shall be allowed for claim under SEIS. It is immaterial whether these notified services are delivered on an information technology platform or otherwise.

***(Trade Notice No. 04/2018-19,
dated 25 April, 2018)***

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- The Central Government has recommended to continue imposition of ADD on Phosphoric acid-Technical grade and Food Grade, when originating in or exported from China. Further, post withdrawal of request for review of imposition of ADD on aforementioned goods by the concerned exporter, Notification no. 08/2017-Customs (ADD), dated 15 March, 2017, which provided for provisional assessment of the said goods until completion of review, has also been rescinded.

(Notification No. 18/2018-Customs (ADD), dated 06 April, 2018)

- The Central Government has imposed ADD on import of Phosphorus Pentoxide falling under tariff item 2809 10 00, when originating in or exported from China, for a period of five years.

(Notification No. 19/2018-Customs (ADD), dated 06 April, 2018)

- The Central Government has imposed ADD on fishnet or fishing net falling under the tariff item 5608 11 10, when originating in or exported from China or Bangladesh, for a period of five years.

(Notification No. 20/2018-Customs (ADD), dated 10 April, 2018)

- The Central Government has ordered the continued levy of ADD on Soda Ash,

when originating in or exported from Russia and Turkey, until the conclusion of the sunset review investigations or 16 April, 2019; whichever is earlier.

(Notification No. 21/2018-Customs (ADD), dated 17 April, 2018)

- The Central Government has imposed ADD on Glassware falling under tariff sub heading 7013, when originating in or exported from China or Indonesia.

(Notification No. 22/2018-Customs (ADD), dated 18 April, 2018)

- The Central Government has imposed ADD on Methyl Ethyl Ketone falling under tariff heading 2914 12 00, when originating in or exported from China, Japan, South Africa and Taiwan.

(Notification No. 23/2018-Customs (ADD), dated 24 April, 2018)

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