

Staying Updated

Customs, FTP and WTO newsletter

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Notifications and circulars

- Finance Bill, 2018 introduced to *inter alia* provide for amendments in duty rates of various goods and to propose amendments in Customs Act, 1962 and Customs Tariff Act, 1975.
- Amendment in effective rate of BCD applicable to motorcycles.
- Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between the Republic of India and Japan) Rules, 2011 (CEPA India Japan Rules) amended.
- E-Sanchit application extended to all Electronic Data Interchange (EDI) locations.
- Field formations can obtain Call Data Record (CDR) and Subscriber Data Record (SDR) directly from telecom service providers.

Case Laws

- Royalty payable on gross sale value of manufactured goods including value of imported goods; payment of fee for patent and software essentially required for functional utility of imported goods and finished goods are includible in the value of imported goods.
- For alteration of declared classification the pre-requisite of justification is absolute necessary. Further, erection, installation and commissioning charges not includible in assessable value of imported goods, if no evidence of condition implicit in the sale.
- Benefit of concessional rate of Additional Duty of Customs (CVD) levied in lieu of excise duty under serial number 5A of Notification no. 29/2004-CE, dated 09 July, 2004 is available to finished goods and not to inputs.

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- Amendments in definition of shelf life for imported edible/ foods products, the domestic manufacture and sale of which are governed by Food Safety & Standards (Import) Regulation, 2017.
- Amendments in Foreign Trade (Exemption from application of Rules in certain cases) Amendment Order, 2017 (FTAO, 2017) to provide for revised list of persons, which are exempt from application of the Foreign Trade (Regulation) Amendment Rules, 2015 (FTRA Rules, 2017).
- Amendments in Table 2 of Appendix 3B of Foreign Trade Policy 2015-20 (FTP) to align the goods with the ITC (HS) codes for 2017 for exports made with effect from 01 January 2017.
- Inclusion of additional seaports for availing benefits under Chapter 4 of FTP.
- Revised procedure for processing application for MEIS claims under FTP for specified goods to *inter alia* meet objective of ease of doing business.
- Amendments in specified Ayat Niryat Forms in light of implementation of goods and services tax (GST) law and non-issuance of Exchange Promotion (EP) copy of Shipping Bills (SBs) by Customs Authorities.
- Advice issued to exporters to promptly check Shipping Bill transmission status on ICEGATE and DGFT websites to ensure timely availment of benefits such as those under MEIS.
- Information on details of shipping bills sought from exporters, where they have inadvertently ticked “N” instead of “Y” in the reward column of EDI filed SBs for availing MEIS benefits.

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- Finance Bill, 2018 introduced on 01 February, 2018 to *inter alia* provide for amendments in duty rates of various goods and propose amendments in Customs law.
- Amendments made in Customs Act, 1962 from the perspective of ease of doing business and trade facilitation like revised guidelines for Advance Rulings, electronic ledger, customs automated system for clearances and dispute resolution.
- Rates of BCD increased for various goods such as radial tyres; buses, cars, truck and motorcycles in Completely Knocked Down (CKD) condition; mobile phones; and smart watches.
- Rates of BCD decreased for few goods such as inputs or parts for manufacture of PCBA/ moulded plastics of charger/ adapter of cellular mobile phones.

(Notification No. 06/2018-Customs, 14/2018-Customs, 22/2018-Customs, 23/2018-Customs, dated 02 February, 2018)

- Education Cess and Secondary and Higher Education Cess replaced with Social Welfare Surcharge to be levied on aggregate of duties of Customs except IGST and GST Compensation cess in addition to other duties.

(Notification Nos. 07/2018-Customs to 13/2018-Customs, dated

02 February, 2018)

- Amendments made in the taxation structure of petrol and high speed diesel by introducing Road and Infrastructure Cess without any change in effective rate of duty.
(Notification Nos. 15/2018-Customs, to 21/2018-Customs, dated 02 February, 2018)
- Both exemption/ concessional rate of BCD applicable to sugar such as raw sugar, refined, white sugar etc. as well as conditions applicable thereto withdrawn.
(Notification No. 24/2018-Customs, dated 06 February, 2018)
- Tariff rate of BCD applicable to chickpeas increased from 30% to 40%.
(Notification No. 25/2018-Customs, dated 06 February, 2018)
- Effective rate of BCD applicable to goods falling under Chapter heading 8711 (motorcycles) imported as CKD with engine or gearbox or transmission mechanism in pre-assembled form, not mounted on a body assembly decreased from 30% to 25%; and for motorcycles imported in any other form decreased from 60%/ 75% to 50%.
(Notification No. 26/2018-Customs, dated 12 February, 2018)

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- Amendment in S. No. 377 of Notification no. 50/2017-Customs, dated 30 June, 2017 pertaining to all goods under Chapter 73 and subject to effective rate of BCD of 10% to exclude screw under 7318 15 00 and SIM socket/ Other Mechanical items (Metal) under 7326 90 99 for cellular mobile phone, for which effective rate of BCD was increased from 10% to 15% *vide* Finance Bill 2018.

(Notification No. 27/2018-Customs, dated 23 February, 2018)

- The Central Government has amended CEPA India Japan Rules to enhance the period for issuance of Certificate of Origin retroactively from 9 months to 12 months from the date of shipment.

(Notification No. 14/2018-Customs(NT), dated 19 February, 2018)

- Central Board of Excise and Customs (CBEC) has extended e-Sanchit application to all EDI locations on a voluntary basis. All ICEGATE users are required to develop the capability to use e-Sanchit as envisaged in Circular no. 40/2017-Customs, dated 13 October 2017, to enable CBEC to make this facility mandatory.

(Instruction No. 02/2018-Customs, dated 07 February, 2018)

- CBEC has observed that field formations

approach the Directorate of Revenue Intelligence (DRI) to seek CDR and customer details from telecom service providers (TSPs) because as per TSPs, field formations are not designated as 'Law Enforcement Agency' like DRI under section 5(2) of the Indian Telegraph Act, 1885. CBEC has clarified that the field formations, like DRI, can obtain CDR and SDR details directly from TSPs under section 108 of the Customs Act, 1962, which empowers Gazetted Officer of Customs to summon any person to give evidence or produce documents.

(Instruction No. 03/2018-Customs, dated 16 February, 2018)

Case laws

- **In Fujitsu Ten India Private Limited v. Commissioner of Customs** (2018-TIOL-606-CESTAT-DEL), while placing reliance on the Supreme Court decision in the case of Matsushita Television & Audio Co. (2007-TIOL-64-SC-CUS), the Delhi Tribunal decided that royalty for right to use intellectual property right and know-how, which is payable on gross sale value of manufactured goods (including value of imported goods), shall be includible in the assessable value. Further, the Tribunal decided that obligatory payment of fee for patent and software, which are essentially required for functional utility of imported goods and finished goods, is also includible in the value of imported goods.

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- **In the case of Nirma Limited v. Commissioner of Customs (Import) ACC, Mumbai** (2018-TIOL-591-CESTAT-MUM), the Mumbai Tribunal observed that the appellant had imported Rommelag Bottle Packing Machine classifying it under heading 8422 30 00 and claimed benefit under Notification no. 21/2002-Customs. These goods were a composite machine that simultaneously sealed the pharmaceutical product and made it ready for distribution. The original authority had classified these goods under heading 8477 30 00 contending that their primary function was production of plastic container from resins of polyethylene/ polypropylene. The Tribunal, in the absence of any evidence from the original authority decided that for alteration of declared classification the pre-requisite of justification is absolute necessary. Further, it was decided that erection, installation and commissioning charges were not includible in assessable value of imported goods, if no evidence of condition implicit in the sale was on record.
- **In the case of SRF Polymers Limited v. Commissioner of Customs (Export) Chennai** (2018-TIOL-599-CESTAT-MAD), it was observed that the appellant imported nylon filament yarn and availed of concessional rate of CVD under serial number 5A of Notification no. 29/2004-CE,

subject to specified conditions. The Chennai Tribunal while placing reliance on the decisions of the Supreme Court in various cases such as Thermax Private Limited, observed that CVD is leviable on goods as if such goods have been manufactured in India. In the instant case, the imported 'nylon filament yarn' was being used as an input by importer, in their own factory for subjecting to some process. The Tribunal decided that it is only the resultant of imported yarn after such processing in factory (provided that such resultant goods also fall under Chapter 54), which will attract the benefit of reduced duty liability under Entry 5A of the notification.

Foreign trade policy

Notifications and public notices

- The DGFT has amended Para 4(A) of General Notes Regarding Import Policy of ITC (HS) 2017, Schedule - I (Import Policy) to provide that the shelf life of edible/ food products, the domestic sale and manufacture of which are governed by Food Safety & Security Standards (Import) Regulation, 2017, shall be not less than 60% of its original shelf life or three months before expiry, whichever is less at the time of import.

(Notification No. 49/2015-20, dated 05 February, 2018)

- DGFT has amended FTAO, 2017 to provide that exemption from applicability of FTTRA Rules, 2015 shall be available to import of any goods by the Central Government or agencies, undertakings owned and controlled by the Central Government for 'Security' purposes as well. Further, the amendment also withdraws exemption from application of the FTTRA Rules, 2015 on any goods imported by Central Government, Statutory Corporation, public body or Government Undertaking run as a joint stock company; and by the Central Government, any State Government or any statutory corporation or public body or Government Undertaking run as a joint Stock Company, orders in respect of

which are placed through the Directorate General Supplies and Disposals, New Delhi.

(Notification No. 51/2015-20, dated 20 February, 2018)

- Application for amendment of IEC on account of modification or change in Head Office or Registered Office involving shift in the jurisdictional regional authority (RA) of the applicant shall now be filed with and processed by the new RA to whose jurisdiction the applicant is shifting the office instead of jurisdictional RA of the existing office.

(Public Notice No. 58/2015-20, dated 05 February, 2018)

- Amendments to Table 2 of Appendix 3B of FTP have been made to align certain goods with the ITC (HS) codes for 2017 for exports made with effect from 01 January 2017. Goods such as Fish Heads, Tails and Maws have been added; ITC (HS) codes of goods such as dried leguminous vegetables of Heading 0713 (excluding of Gaur seeds) and Caffeine, and Salts thereof have been updated as per ITC HS) 2017; and some duplicate entries have been deleted.

(Public Notice No. 60/2015-20, dated 15 February, 2018)

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- Seaports located at Dhamra Port and Diggi Port have been included under Para 4.37 of Hand Book of Procedures 2015-20 (HBP) HBP as Port of Registration for the purpose of availing benefits under Chapter 4 of FTP.

(Public Notice No. 61/2015-20, dated 16 February, 2018)

- DGFT has released a list of ITC (HS) codes (such as articles of apparel, ceramic products, specified machinery, swords etc.), for which MEIS applications shall continue to be processed by RAs after matching both ITC (HS) codes as well as description of goods as per SBs with those mentioned in Table 2 of Appendix 3B. For all goods other than those specified above, the MEIS applications shall be processed by RAs only on the basis of ITC (HS) code mentioned in the SBs.

(Public Notice No. 62/2015-20, dated 16 February, 2018)

- DGFT has issued amended ANFs 4F and 4G in light of implementation of GST law and non-issuance of EP copy of Shipping Bills by Customs Authorities.

(Public Notice No. 63/2015-20, dated 22 February, 2018)

- DGFT has been informed that sometimes while filing MEIS application, the

relevant SBs do not get reflected on the DGFT website, which delays availability of MEIS benefits to exporters. Exporters have been advised to first check SB data on ICEGATE website and then on DGFT website after 72 hours from integration with ICEGATE; and then intimate DGFT authorities at the helpdesk, if SBs are not reflected.

(Trade Notice No. 23/2018, dated 06 February, 2018)

- DGFT has sought details of SBs (where Let Export Order is issued between 01 October, 2015 and 21 March, 2016) in prescribed format from all such exporters, who have inadvertently ticked “N” instead of “Y” in the reward column of EDI filed SBs for availing MEIS benefits, but have declared the intent in affirmative (in wordings). These details should exclude those SBs, where Customs authorities have later on permitted declaration of intent through manual amendment.

(Trade Notice No. 24/2018, dated 21 February, 2018)

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- The Central Government has imposed definitive Anti-dumping duty (ADD) on Ceramic Tableware and Kitchenware, excluding knives and toilet items falling under chapter heading 6911 and 6912, when imported from China, for a period of five years. The period of five years for levy of definitive ADD shall commence with date of levy of provisional ADD (i.e. 12 June, 2017), but shall exclude the period between date of lapse of provisional ADD (i.e. 11 December, 2017) and the date immediately preceding the date of publication of the notification for levy of definitive ADD on aforementioned goods.

(Notification No. 04/2018-Customs (ADD), dated 21 February, 2018)

- The Central Government has amended Notification no. 3/2018-Customs (ADD), dated 23 January 2018, which provides for levy of definitive ADD on Toluene Di-Isocyanate for a period of five years. The amendment provides for levy of definitive ADD from the date of levy of provisional ADD i.e. 05 June, 2017, but the period of five years for levy of definitive ADD shall exclude the period between the date of lapse of provisional ADD (i.e. 05 December, 2017) and 22 January, 2018.

(Notification No. 05/2018-Customs (ADD), dated 23 February, 2018)

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