

# *Staying Updated*

## Customs, FTP and WTO newsletter

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#### **Customs**

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

- Specified goods such as equipment for press, sound and television broadcasting equipment, etc. exempted from Basic Customs Duty (BCD) and Integrated Goods and Services Tax (IGST), under Customs Convention on the ATA carnet for Temporary Admission of Goods (ATA Convention) and subject to conditions specified.
- Effective rate of BCD and IGST increased from Nil to 5% for specified goods required for launch vehicles and satellites and payloads.
- Revised rate of drawback and drawback cap in INR per unit prescribed for specified goods.
- Amendments prescribed in the Authorised Economic Operator (AEO) Programme guidelines for maximising outreach for achieving the objective of trade facilitation and ease of doing business.

- Antenna used at Base Transceiver Station/ NodeB/ eNodeB in a wireless telecommunication network classifiable under Customs Tariff Heading (CTH) 8517 62 90.

##### ***Case Laws***

- Suite of equipments, which together constituted 'Head End', perform the function of transmission of TV channels over cable TV and hence, are classifiable under heading 8525.
- Resistor blower is classifiable under CTH 8533 40 90 in light of principles for classification as explained by HSN, section note 2(a) of section 16 and Rule 3(a) of Tariff Classification General Rules of Interpretation.
- In case of non-fulfilment of export obligation under Advance License, duty, interest and penalty can be demanded only from the co-authorisation holder/ importer of the goods, who has executed the bond with Customs authorities.

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- Imported electrical tricycle without battery in completely knocked down (CKD) condition only for the ease of import are also governed by the Motor Vehicle Rules.
- No importer can claim absolute exemption from Customs duty as a right. Person claiming exemption should satisfy the pre-conditions prescribed as it is part of exemption and should be strictly enforced.
- In respect of assessment in Electronic Data Interchange (EDI) system, filing of refund is in itself seeking amendment of Bill of Entry (BOE) and benefits otherwise available should not be denied.
- Imported Carbon Black N 330 against Advance Licence from China shall be subject to levy of Safeguard Duty since the levy of safeguard duty is country specific.
- Goods sold to Export Oriented Units (EOUs) upon payment of Excise duties, being deemed exports in terms of the FTP, were eligible for claim of refund of Terminal Excise duty (TED).

## Foreign trade policy

### Notifications and public notices

- Import of seconds/ defectives of steel items to be allowed through Nhava Sheva and ICD-Tughlakabad, New Delhi.

- Schedule 2 (Export Policy) of ITC (HS) 2018 notified.
- Transition period for registering under the Registered Exporters System (REX) for European Union (EU) Generalised Systems of Preferences has been extended upto 30 June 2018.
- Amendments in specified Ayat Niryat Forms in light of implementation of GST law and non-issuance of Exchange Promotion copy of Shipping Bills by Customs Authorities.

## Anti dumping/safeguard duty

### Notifications and circulars

- Withdrawal of order keeping Notification no. 30/2017-Cus. (ADD), dated 16 June 2017 in abeyance, pursuant to Final order of the Chennai High Court in respect of Writ Petition no. 12950 of 2017.
- Anti-dumping duty on Aniline originating in or exported from EU levied under Notification No. 40/2012-Cus. (ADD), dated 30 August 2012 rescinded upon completion of sunset period of 5 years.
- Toluene di-isocyanate subject to anti-dumping duty when imported from specified countries for a period of 5 years.

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### Notifications and circulars

- The Central Government has prescribed exemption from levy of BCD and IGST on specified goods i.e. Equipment for the press, Sound broadcasting equipment, Television broadcasting equipment, Sports Goods, and Equipment for testing or measuring or calibration, subject to provisions of the Customs Convention on the ATA carnet for Temporary Admission of Goods (ATA Convention).

*(Notification No. 4/2018-Customs, dated 18 January, 2018)*

- The Central Government has amended the Notification No. 50/2017-Customs, dated 30 June 2017, to increase effective rate of BCD and IGST for scientific and technical instruments, apparatus, equipment, accessories, parts, components, spares, tools, mock ups and modules, raw material and consumables required for launch vehicles and satellites and payloads from Nil to 5% respectively.

*(Notification No. 5/2018-Customs, dated 25 January, 2018)*

- The Central Government has amended the Notification No. 89/2017-Customs (NT), dated 21 September 2017, to revise rate of drawback and drawback cap in INR per unit for goods as follows: increased rate/ cap for marine products like fish and molluscs (in chilled form) and preparations

thereof, leather articles like belts, rubber articles like automobile/ bicycle/ rickshaw tyres, yarn and fabric of wool, glass handicrafts, bicycle and fishing/ sporting nets; decreased rate/ cap in case of organic chemicals such as para cresol; and omission of duplicate entry of polypropylene mats under 391802 and continue to be classifiable under tariff item 460101.

*(Notification No. 8/2018-Customs (NT), dated 22 January, 2018 read with Circular no. 4/2018-Customs, dated 24 January, 2018)*

- The Central Board of Excise and Customs (CBEC) has made modifications in the AEO Programme guidelines to maximise its reach by way of decentralisation of the processing of AEO applications so as to meet the objective of trade facilitation and ease of doing business. These include eligibility to avail advance authorisation on self-declaration and ratification basis, new authority for filing application (jurisdictional Chief Commissioner of Customs) and increase in validity of Tier 1 certificate from 2 years to 3 years.

*(Circular No. 3/2018-Customs, dated 17 January, 2018)*

- CBEC has issued instruction to classify antenna used at Base Transceiver Station/ NodeB/ eNodeB in a wireless telecommunication network under CTH 8517 62 90 because such antenna works as

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both transmit antenna as well as receive antenna.

*(Instruction No. 1/2018-Customs, dated 15 January, 2018)*

### Case laws

- In *Deepak Enterprises v. Union of India and Ors* (2018-TIOL-199-HC-DEL-CUS), the petitioner had supplied goods to EOUs upon payment of Excise duties. Being deemed exports in terms of the FTP, the petitioner had claimed refund of TED in terms of the FTP. The DGFT had rejected the claim of the petitioner citing that the refund of Excise duty could be claimed under the Central Excise laws and also cited minutes of meetings of the Policy Interpretation Committee in this regard. The Delhi High Court highlighted the settled position that unless the statute conferring the power to make delegated or subordinate legislatures expressly provide that the same can be made with retrospective operation, no such power would be inferred. Thus, it is apparent from the above that the Central Government is not empowered to make any retrospective changes in the policy. It was also highlighted that the Central Government could not make any change in the FTP that had the effect of taking away any vested right. It also highlighted that the role of DGFT was limited to advising the Central

Government in formulation of import and export policy, but it cannot amend or frame the FTP. Thus, the Delhi High Court held that there is no dispute that the petitioner has discharged Excise duty on the goods supplied to the EOUs, and hence, in terms of para 8.3(c) of the FTP, the petitioner was eligible for claim of TED.

- In *Jotindra Steel and Tubes Limited v. Commissioner of Customs, New Delhi*, (2018-TIOL-426-CESTAT-DEL), the Delhi Tribunal observed that the Advance Licence was issued in favour of the appellant (merchant-exporter) and endorsed in favour of two supporting manufactures-cum-importers of raw materials, who had not fulfilled the export obligation. Further, the merchant-exporter along with one of the supporting manufactures-cum-importers had jointly, executed the bond with the Customs authorities. The Tribunal held that since the appellant did not import the subject goods and is only a merchant exporter, therefore the proceedings should have been initiated against the co-authorisation holder/ importer only. Accordingly, the appeal of the assessee was allowed.
- In *C AND C Product v. Commissioner of Customs New Delhi*, (2018-TIOL-375-CESTAT-DEL), the Delhi Tribunal observed that the assessee imported electrical tricycle without battery in CKD condition only for the ease of import. Further, it observed

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that these vehicles necessarily intended to be used as motor vehicle and hence, are governed by the Motor Vehicle Rules. Thus, the Tribunal held that the goods imported in CKD condition were in violation of the import policy, which stipulated various conditions such as furnishing of Type Approval Certificate. Since, the assessee has not complied with the import policy applicable to the subject goods, therefore, the Tribunal dismissed the appeal holding that the goods were liable for confiscation subject to reduced penalty as pleaded by the assessee.

- In *Shri Dinesh Mills Limited v. Commissioner of Customs Ahmedabad* (2018-TIOL-125-CESTAT-AHM), it was observed that the assessee had filed EDI BOEs without claiming refund by way of exemption from SAD under notification no. 21/2012-Cus., dated 17 March, 2012. Subsequent to assessment of the EDI filed BOEs, assessee filed for refund of SAD in the terms of the said notification, which was granted by the lower authorities. The Revenue filed an appeal against the said order stating that the assessee had not challenged the assessment of BOEs. The Tribunal while placing reliance on the ratio in the case of *Steel Authority of India Limited*, held that in respect of assessment in EDI system by filing of refund, is in itself

seeking amendment of BOEs and benefits otherwise available should not be denied.

- In *Metro Tyres Limited v. Commissioner of Customs Ludhiana* (2018-TIOL-54-CESTAT-CHD), it was observed that the assessee had imported Carbon Black N 330 against Advance Licence from China without payment of duties of Customs. However, the Revenue contended that the goods were subject to levy of Safeguard Duty when imported from China and raised demand of duty along with interest. The Tribunal while relying on the ratio of *Mumbai High Court* in case of *Balkrishna Industries Limited*, held that levy of safeguard duty is country specific and hence, the assessee was required to pay the said duty. It was also observed that even though the aforementioned decision of *Mumbai High Court* was stayed by the *Supreme Court*, yet it does not deface the underlying basis of the decision itself i.e. the reasoning. Accordingly, the appeal of the assessee was dismissed.
- In the case of 1) *Brigadier R Deshpande*, 2) *Indusind Media and Communication Limited v. Commissioner of Customs New Delhi* (2018-TIOL-52-CESTAT-DEL), the *Delhi Tribunal* held that the suite of equipments, which together constituted 'Head End', performed the function of transmission of TV channels over cable TV and hence, are classifiable under the heading 8525. In this context, reliance

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was placed on the judicial pronouncements made in the cases of Set India Private Limited and Multi Screen Media Private Limited (2015-TIOL-169-SC-CUS). Further, it was held that since, software is already incorporated in the imported goods and purchase order also provides for installation charges, therefore, such charges were includible in the value of the imported goods. Accordingly, the matter was remanded to the adjudicating authority for re-computing the amount of differential duty and deciding on the penalty leviable.

- In Commissioner of Customs Patparganj v. Subros Limited (2018-TIOL-404-CESTAT-DEL), the Delhi Tribunal observed that opinion of Department of Electronics and Information Technology relied upon by the Revenue was not relevant in the presence of principles of classification explained by the HSN, which explain that the resistor fall under CTH 8533. It also observed that Note 2(b) to section 16 could be resorted to only after examining and exhausting Note 2(a) to section 16. Thus, the Tribunal held that resistor blower is classifiable under CTH 85334090 in light of principles for classification as explained by HSN, section note 2(a) of section 16 and Rule 3(a) of Tariff Classification General Rules of Interpretation. Accordingly, the appeal filed by the Revenue was dismissed.

- In K M H Memorial Hospital v. Commissioner of Customs (2018-TIOL-204-CESTAT-BANG), the Bangalore Tribunal observed that the appellant had imported CT scanners without payment of duty under exemption notification, but had failed to furnish records to substantiate that it had fulfilled the conditions mentioned in the notification. Given that, the Tribunal, while placing reliance on decision of Supreme Court in the cases of Mediwell Hospital and Healthcare Private Limited and Medical Relief Society of South Kanara, held that the in the absence of any records as evidence of fulfilment of conditions under the exemption notification, the original authority was correct in initiating the recovery proceeding and that such proceedings for ineligible exemption were not subject to period of limitation.

## **Foreign trade policy**

### **Notifications and public notices**

- The DGFT has amended policy condition number 3 of Chapter 72 of ITC (HS) 2017 –Schedule I (Import Policy) to provide that import of seconds/ defectives of steel items shall also be allowed through Nhava Sheva (JNPT) and ICD-Tughlakabad, New Delhi, besides existing Customs sea port at Mumbai, Chennai and Kolkata.  
*(Notification No. 44/2015-20, dated 18 January, 2018)*
- DGFT has notified Schedule 2 (Export Policy) of ITC (HS) 2018, which contains current export policy of items indicated along with conditions to be fulfilled, if any.  
*(Notification No. 47/2015-20, dated 31 January, 2018)*
- DGFT has extended the transition period for registering under the REX for EU Generalised Systems of Preferences upto 30 June 2018.  
*(Public Notice No. 51/2015-20, dated 9 January, 2018)*
- DGFT has issued amended ANFs 4A, 4E, 4F, 4G, 4H and 4I in light of implementation of GST law and non-issuance of EP copy of Shipping Bills by Customs Authorities.  
*(Public Notice No. 52/2015-20, dated 12 January, 2018)*

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

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

- The Central Government has withdrawn the earlier order, which kept Notification no. 30/2017-Cus. (ADD), dated 16 June 2017 in abeyance. The said notification provided for levy of anti-dumping duty on Clear Float Glass of nominal thickness ranging from 4mm to 12 mm (both inclusive), originating in or exported from Pakistan, Saudi Arabia and UAE. The withdrawal of the said earlier order was made pursuant to the final order of the Chennai High Court in respect of Writ Petition no. 12950 of 2017. Thus, the effect of levy of anti-dumping duty under the aforementioned notification has been reinstated.

*(Notification No. 1/2018-Customs (ADD), dated 12 January, 2018)*

- The Central Government has rescinded Notification No. 40/2012-Cus. (ADD), dated 30 August 2012, which levied anti-dumping duty on Aniline originating in or exported from EU, pursuant to completion of sunset period of 5 years. Further, it has provided that the anti-dumping duty paid on and after 29 August, 2017 under the aforementioned notification shall be refunded to the person, who in fact paid such duty, without passing on the burden of the same, in accordance with law.

*(Notification No. 2/2018-Customs (ADD), dated 17 January, 2018)*

- The Central Government has imposed levy of anti-dumping duty on Toluene diisocyanate, when imported from China PR, Japan and Korea RP for a period of 5 years.

*(Notification No. 3/2018-Customs (ADD), dated 23 January, 2018)*

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