

Staying Updated

Customs, FTP and WTO newsletter

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- Effective rates of basic customs duty (BCD) for certain products amended and notified.
- Mandatory sealing based on radio frequency identification device (RFID) for movement of goods under warehousing bond postponed to 01 October, 2018.

Case laws

- For quantification of duty under section 3(1) of Customs Tariff Act, 1975, goods not manufactured/produced in India shall be presumed to be manufactured/produced in India.
- Reuse of packing material marked with the name of country which is not a party to the India-Sri Lanka Free Trade Agreement (ISFTA) does not make the applicant ineligible to avail the preferential

rate of duty benefit.

- Burden to prove applicability of provision/ notification regarding entitlement of assessee to exemption is on assessee and in case of ambiguity, it would be interpreted in favour of the revenue.

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Notifications and public notices

- Import of oxytocin prohibited.
- MEIS scrips under Chapter 3 of [FTP 2015-2020](#) allowed for debit of import items, which were not allowed earlier under Appendix 3A.

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- Safeguard duty (SGD) imposed on solar cells (whether or not assembled in modules or panels) for a period of two years from 30 July, 2018 to 29 July, 2020.

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Notifications and circulars

- Export duty concession to MMTC Limited for export of goods originating from National Mineral Development Corporation (NMDC) to Japan and South Korea under Long Term Agreement has been extended till 31 March, 2021.

(Notification No. 51/2018-Customs, dated 9 July, 2018)

- BCD has been exempted on certain products such as cane, adhesive, compact fluorescent lamps (CFL) and bulbs of 120 volts, etc. by amending Serial No. 229 of Notification No. 50/2017-Customs dated 30 June, 2017.

(Notification No. 52/2018-Customs, dated 14 July, 2018)

- Notification No. 82/2017-Customs dated 30 June, 2017 has been amended to increase/ notify effective rate of BCD on textile and textile articles such as jute, rags, rope, etc.

(Notification No. 53/2018-Customs, dated 16 July, 2018 read with Notification No. 54/2018-Customs, dated 20 July, 2018)

- IGST on imports computed on value in excess of the value over and above which Ministry of Chemical and Fertilizers/ Department of Fertilizers sells urea, falling under tariff item 3102 10 00, to Fertilizer Marketing Entities (FMEs) on high sea sale basis (commonly known as “Pool Issue Price”) has been exempted.

(Notification No. 55/2018-Customs, dated 26 July, 2018)

- The enforcement date of Sea Cargo Manifest and Transshipment Regulations, 2018 has been extended up till 1 November, 2018.

(Notification No. 65/2018-Customs(N.T.), dated 30 July, 2018)

- Central Board of Indirect taxes and Customs (CBIC) has extended the cut off date for filing of shipping bills to avail the facility for rectification of SB003 error, SB005 errors and other cases that require officer interface, from 30 April, 2018 to 30 June, 2018.

(Circular No. 22/2018-Customs, dated 18 July, 2018)

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- In reference to Para 4.34 of FTP and Notification No. 57/2000-Customs dated 08 May, 2000 CBIC has expressed its views that there is no requirement of establishing one to one correlation between the consignment of gold/ silver/ platinum imported as an input for export under the scheme for 'Export against supply by Nominated agencies'.

(Circular No. 23/2018-Customs, dated 23 July, 2018)

- Mandatory implementation of RFID sealing for movement of goods deposited in a warehouse and removal therefrom under warehousing bond has been extended to 01 October, 2018 from 01 August, 2018.

(Circular No. 24/2018-Customs, dated 31 July, 2018)

Case laws

- In **2018-TIOL-302-SC-CUS-CB**, SC held that tax exemption provision/ notification with respect to entitlement of assessee for rate of tax to be applied should be construed strictly. The burden of proving applicability or notification would be on the assessee and when there is ambiguity, the benefit of such ambiguity should be given to the revenue.

- In **2018-TIOL-2210-CESTAT-Chennai**, the Chennai bench of the Tribunal relying on 1992 (61) E.L.T. 352 (S.C.) and 1999 (108) E.L.T. 321 (S.C.) held that the duty chargeable under section 3(1) of Customs Tariff Act, 1975, would be the excise duty for the time being leviable on a like article if produced or manufactured in India. The words 'if produced or manufactured in India' do not mean that the like article should be actually produced or manufactured in India. If an imported article is one which has been manufactured or produced, then it must be presumed, for the purpose of section 3(1), that such an article can likewise be manufactured or produced in India.
- In **2018-TIOL-2168-CESTAT-Bangalore**, appellant had classified an equipment under Customs Tariff Heading 8424.20.00 as spray guns intended for industrial use. Revenue classified the same under Customs Tariff Heading 8516.79.90 as an appliance used for domestic cleaning purpose. Bangalore bench of the Tribunal observed that approximate weight of the equipment is given as 4.2 kg and the same are typical for domestic use. The equipment cannot be considered as spray guns for industrial use and the classification was held as 8516 79 and not 8424 20 00.

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- In **2018-TIOL-2086-CESTAT-Ahmedabad**, the revenue denied the benefit of concessional duty on the ground that beta-carotene content in the crude palm oil imported was below the prescribed threshold. It was observed on the basis of expert opinion that carotene content reduces due to lapse of time. Therefore, the conformity of goods with crude palm oil as per prescribed parameters should be checked at the time of import. Hence, in this case exemption benefit was granted.
- In **2018-TIOL-2131-CESTAT-Mumbai**, imported digital video projectors and decoders were leased out to theatre owners for use in displaying movies. The importer valued the goods under transaction value. The revenue asked assessee to declare MRP on package of the imported goods and contended that CVD should be charged based on MRP and not transaction value. Mumbai bench of the Tribunal relying on 2015-TIOL-1863-CESTAT-MUM held that the goods are not meant for retail sale but for leasing and to be valued as per transaction value for levy of CVD.
- In **2018-TIOL-2060-CESTAT-Chennai**, teak logs were imported on commercial invoices issued by a party in Dubai. Appellant claimed duty exemption under ASEAN-India Free Trade Agreement (AIFTA) certificates certifying that the goods consigned are from Myanmar. The authority rejected the claim of duty exemption on the grounds that the goods had been exported from Dubai which is in no way connected with the AIFTA certificates. Chennai bench of the Tribunal observed that the appellants have established that the impugned goods, though invoiced by UAE, are of very same ones which have been originally invoiced by Myanmar. Also, appellants sufficiently established the seminal connection and linkage with the imported goods and the AIFTA certificates submitted by them. Thus mere invoicing from Dubai cannot negate the benefit of AIFTA.
- In **2018-TIOL-2120-CESTAT-Chennai**, assessee filed bills of entry for clearance of 'Notebook Computer' on payment of counter veiling duty (CVD) on maximum retail price (MRP). Revenue valued the goods on transaction value, not on MRP. Nevertheless, the assessee paid the duty and subsequently, filed claim for refund without challenging the original assessment order. Chennai bench of the Tribunal held that refund claim cannot be denied on the grounds that original assessment order had not been challenged.

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- In **2018-TIOL-2162-CESTAT-Chennai**, the assessee imported latex gloves in bulk and cleared the same on payment of Special Additional Duty (SAD). Later, he filed refund claims of SAD. The Revenue contended that imported goods were subsequently put to certain processes like quality inspection, placing them in wallet/ pouches and further in boxes/ packages, sterilisation, which amounts to manufacture in terms of section 2(f)(iii) of the Central Excise Act. The assessee contended that the process of sterilisation is nothing but deactivation of micro-bacteria made after complete packing of gloves and there is no manufacture involved. The processes do not change the name, use and character of imported gloves. Chennai bench of the Tribunal held that there is no justification to hold that the gloves have undergone any change and there is no justification for denial of the refund of SAD.
- In **2018-TIOL-2153-CESTAT-Chennai**, assessee imported copper concentrates raising provisional invoices. After 3-4 months, the final invoices were issued at lower value, based on which refund claim of excess duty paid earlier was filed. Such claim was denied on grounds of unjust enrichment. The

Chennai bench of the Tribunal held that in as much as the final product price is being determined on London Metal Exchange prices, the unjust enrichment angle is not required to be examined.

- In **2018-TIOL-2167-CESTAT-Chennai**, Chennai bench of the Tribunal held that when the duty is paid under the orders of court, whether by way of an order granting stay, suspension, injunction or otherwise pending an appeal, reference or writ petition, it would certainly be a payment under protest.
- In **2018-TIOL-2107-CESTAT-Bangalore**, respondents imported goods duty free and transferred it to another entity. The revenue contended that assessee have not complied with the 'actual user' condition. Bangalore bench of the Tribunal observed that the Commissioner issued adjudication order confirming the duty and interest, but no show cause notice had been issued proposing confiscation and imposition of penalty. Therefore, in absence of notice, the recovery of duty in itself is contentious. Hence, penalty imposed and confiscation of goods were held unsustainable.

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- In **2018-TIOL-2152-CESTAT-Chennai**, assessee was a registered software technology park of India (STPI) unit. It imported lead acid batteries for the functioning of UPS to ensure continuous supply of power. The Revenue took a view that assessee has violated the rules as it did not have the registration under Batteries (Management & Handling) Rules, 2001 to import the subject goods. The goods were confiscated & duty demand was raised. Chennai bench of the Tribunal held that as per rule 5 of the said rules, only a person who imports lead acid batteries for the purpose of sale is required to furnish a certificate. The assessee was the actual user and the lead batteries had not been imported for the purpose of sale. It was held that the confiscation as well as penalty imposed was unwarranted.
- In **2018-TIOL-2219-CESTAT-Delhi**, betel nuts were imported from Sri Lanka. A search was conducted at the business premises where gunny bags having marks 'Produce of Indonesia' were found. The Department has denied the benefit of the FTA and demanded duty along with penalty and interest. Delhi bench of the Tribunal observed that for packing of the material, old gunny bags can be reused

and it is not a ground to deny the benefit of country of origin. The Tribunal held that in the instant case the country of origin is Sri Lanka and there is no mis-declaration filed by the assessee, especially when all the transactions were held through the banking channel.

- In **2018-TIOL-1360-HC-DEL-Customs**, the petitioner sought direction that the goods, which were sought to be confiscated by customs authorities subject to payment of redemption fine and subsequently warehoused, ought to be released after payment of redemption fine and demurrage charges. The court had appointed a local Commissioner who visited the site and confirmed that no goods were in existence at the place and warehouse keeper has also lodged an FIR for the same. In the light of the above observations, the Delhi HC held that relief of release of goods, which are no longer in existence cannot be granted.

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- Appendix 3 [relating to Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET)] items to Schedule 2 of ITC(HS) classification of export and import items, 2018 has been amended.
(Notification No. 17/2015-20, dated 3 July, 2018)
- Import policy conditions under Chapter 29 and 30 of ITC (HS) 2017, Schedule- I (Import Policy) have been amended to prohibit the import of Oxytocin.
(Notification No. 19/2015-20, dated 12 July, 2018)
- Import policy of pepper classified under EXIM code 0904.11 has been amended to make import of pepper under Advance Authorisation Scheme, imports by 100% EOUs and units in the SEZ “free” and to exempt such imports from the compliance of minimum import price condition.
(Notification No. 21/2015-20, dated 25 July, 2018)
- Para 2.47 and 3.05 of FTP 2015-20 have been amended to notify the limit for export through registered courier service or post at INR 5,00,000 and eligibility criteria for entitlement under merchandise Exports for India scheme (MEIS) for courier/ post has been increased to INR 500,000 per consignment from the earlier limit of

INR 25,000 per consignment. Also, the limitation on the port of exports for courier exports for the purpose of incentivisation under MEIS has been done away.

(Notification No. 22/2015-20, dated 26 July, 2018)

- Import policy of industrial/ non-agricultural/ technical grade urea falling under EXIM code 3102.10.00 has been amended to make it free subject to actual user condition.

(Notification No. 23/2015-20, dated 27 July, 2018)

- Procedures and forms for ‘No incentive certificate’, certifying that the exporter has not availed incentives under MEIS for shipments, which is being re-imported has been notified.

(Public Notice No. 17/2015-20, dated 3 July, 2018)

- Inter ministerial working group (IMWG) guidelines for export and import of SCOMET items prescribed under Paragraph 2.74 of Handbook of Procedures (HBP) of [FTP 2015-2020](#) has been amended to include ‘warning list on awareness raising guidelines’ of Australia group under clause (f). Also, paragraph 2.79A has been amended to allow export of Category 1C chemicals under ‘stock and sale’ policy.

(Public Notice No. 19/2015-20, dated 3 July, 2018)

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- Paragraph 2.79 of the HBP of FTP 2015-2020 has been amended to widen the scope for issue of authorisations for repeat orders of SCOMET items.

(Public Notice No. 20/2015-20, dated 12 July, 2018)

- Appendix 3B for MEIS has been amended to increase the benefit rate of certain products to 10 percent for a certain period. Also, certain new products have been notified in the list with rate of 10 percent for a period from 13 July, 2018 to 12 January, 2019.

(Public Notice No. 23/2015-20, dated 13 July, 2018)

- Items at Serial No. 01 to 07 of Appendix 3A of MEIS have been deleted. Henceforth, scrips issued under Chapter 3 of FTP shall be allowed for payment of import duties of items which were earlier not permitted for goods mentioned in Appendix 3A.

(Public Notice No. 24/2015-20, dated 26 July, 2018)

- A viewing facility is under development phase to enable regional authorities to view shipping bills online in Director General of Foreign Trade (DGFT) servers. In the interim, for ease of doing business self-certified copy of shipping bills can be furnished along with the

application for export obligation discharge certificate Export Obligation Discharge Certificate (EODC) in ANF-4A where exports were made on or after 23 November, 2016.

(Policy Circular No. 09/2018-19, dated 9 July, 2018)

- DGFT has expressed its views on issuance of EODC, where input used in final products are imported as component on net-to-net basis. Exporter has to submit accountability statement along with the declaration on shipping bills. Also, a certificate from chartered engineer is required for the certification of exported quantity and input quantity consumed.

(Policy Circular No. 10/2018-19, dated 13 July, 2018)

- In reference, to Public Notice 15/2015-20 dated 28 June, 2018, E-Com module for applying for service export from India scheme (SEIS) on the new ANF3B would be available from 01 September, 2018 as the back-end software and its architecture is being re-designed as per the new format of ANF3B.

(Trade Notice No. 22/2015-20, dated 30 July, 2018)

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- The Central Government has imposed Anti-Dumping Duty (ADD) on import of High Tenacity Polyester Yarn falling under tariff item 5402.20.90, when originating in or exported from China, for a period of five years.

(Notification No. 35/2018-Customs (ADD), dated 9 July, 2018)

- The Central Government has continued imposition of ADD on grinding media balls (excluding forged grinding balls), when originating in or exported from People's Republic of China and Thailand.

(Notification No. 36/2018-Customs (ADD), dated 13 July, 2018 and Notification No. 37/2018-Customs (ADD), dated 13 July, 2018)

- Safeguard duty has been imposed on import of solar cells (whether or not assembled in modules or panels) falling under heading 8541 or tariff item 8541.40.11 for a period of two years at the following rates:
 - 25 percent *ad valorem* minus anti-dumping duty (if payable) from 30 July, 2018 to 29 July, 2019.
 - 20 percent *ad valorem* minus anti-dumping duty (if payable) from 30 July, 2019 to 29 January, 2020.
 - 15 percent *ad valorem* minus anti-dumping duty (if payable) from 30 January, 2020 to 29 July, 2020.

(Notification No. 01/2018-Customs (SG), dated 30 July, 2018)

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