

Staying Updated

Customs, FTP and WTO newsletter

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- Merit and effective rate of BCD on specified goods amended.

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- Basic hormones used as ingredients for manufacturing Chemical Contraceptive (CC) preparations based on hormones would be classified under CTH 2973 23 00.
- Software cannot be classified as 'Packaged' or 'Customised' on the basis of retention of rights by the supplier, non-transfer of source code, or grant of non-exclusive right to use the software.

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- DGFT extended the period of prohibition on import of milk and milk products from China till 23 December, 2018.
- DGFT has done away with the requirement of Digital Signature Certificate (DSC) for online/digital payment through e-MPS.

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- Discontinuance of existing Anti-Dumping Duty (ADD) on import of the 'Digital Offset Printing Plates' originating in or exported from China.
- ADD on import of Hydrogen Peroxide originating in or exported from Bangladesh, Taiwan, Korea RP, Indonesia, Pakistan and Thailand amended.

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- Effective rate of BCD on various edible oils such as sunflower seed oil, cotton seed oil etc. has been increased.

(Notification No. 47/2018-Customs, dated 14 June, 2018)

- Merit and effective rate of BCD on various products like Bengal gram, almonds, walnuts, apples, phosphoric acid etc. has been amended.

(Notification No. 48/2018-Customs and 49/2018-Customs, dated 20 June, 2018)

- Suppressing the notification No. 72/2005-Customs dated 22 July, 2005, Central Board of Indirect Taxes and Customs (CBIC) has notified the preferential rates of duty for goods imported under APTA.

(Notification No. 50/2018-Customs, dated 30 June, 2018)

- Exports by Post Regulations, 2018 have been notified by CBIC effective from 21 June, 2018. These regulations apply to exporter holding valid Importer Exporter Code (IEC) and exporting from a notified Foreign Post Office (FPO). Entry for export of goods through FPO will be made in Postal Bill of Export (PBE). Pursuant to above CBIC has also notified procedure for e-commerce exports through post. Some key features are manual processing of PBE-

I in absence of EDI, capturing GST data through off-line facility (ICAN), goods exported through FPO may be zero rated/exempted/non-taxable, exports under MEIS declaration replaced by PBE-I, etc. CBIC has clarified that imports by a legal person or for trade, manufacture or agriculture, cannot be regarded as personal imports.

(Notification No. 48/2018-Customs (N.T.), dated 04 June, 2018 read with Circular No. 14/2018, dated 04 June, 2018 read with Circular No. 18/2018-Customs dated, 13 June, 2018)

- The IPR(IG)E Rules, 2007 has been amended by IPR(IG)E Rules, 2018 to amend the definition of IPR to exclude Patent as defined in the Patents Act, 1970 and insert the condition of informing the authorities under IP law about any amendment, cancellation, suspension or revocation of IPR at the time of registration of notice by Commissioner.

(Notification No. 56/2018-Customs (N.T.), dated 22 June, 2018)

- The restrictions on import of goods manufactured or obtained from process made or produced beyond the limits of India and the product or process is patented under the Patents Act, 1970 has been removed by amending the notification No. 51/2010-Customs (N.T).

(Notification No. 57/2018-Customs (N.T.), dated 22 June, 2018)

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- Rules of Origin under the of Asia-Pacific trade agreement (APTA) Rules, 2006, has been amended by inserting footnote for defining 'the aggregate content', interpreting provision of sub-clause (ii) of clause (b) of rule (6) "the products have not entered into trade or consumption there", inserting annexure C as Sectoral Rules of Origin (APTA).

(Notification No. 59/2018-Customs (N.T.), dated 30 June, 2018)

- The facility of officer interface has been extended to resolve invoice mismatches under SB005 for Shipping bills filed up to 30 April, 2018 where PAN provided in Shipping Bill is same as PAN of GSTR 1.

(Circular No. 15/2018-Customs, dated 06 June, 2018)

- RFID e-sealing facility has been extended to deposit & remove goods from Customs bonded warehouse, by using RFID anti-tamper one-time-locks (RFID OTL) w.e.f. 01 August, 2018. The Circular *inter alia* prescribe RFID OTL to be sourced from specified vendors, different types of RFID for different types of vehicle , data to be captured in web application, mandatory examination in case of tampering of RFID OTL, inapplicability of RFID OTL in case goods move under physical escort by Customs.

(Circular No. 19/2018-Customs, dated 18 June, 2018)

- Clarification has been issued for the compliance of new set of warnings issued under Cigarettes and other Tobacco products (Packaging and Labelling) (COTP) Amendment Rules, 2018 along with the existing statutory requirements for the clearance of import consignments or disposal of seized/confiscated tobacco products, including Cigarettes.
- ***(Circular No. 20/2018-Customs, dated 20 June, 2018)***

Case laws

- ***Classification:*** In **2018-TIOL-1695-CESTAT-MUM**, the imported goods were basic hormones which were meant for further preparation of CC based on hormones and were not CC preparation readily consumable by humans. Therefore, Mumbai Tribunal held that the imported goods must be classified under CTH 2937 23 00 as basic hormones and not under CTH 3006 60 10 as CC based on hormones.
- In **2018-TIOL-1777-CESTAT-MUM**, the assessee declared goods as heavy metal scrap under CTH 7204 49 00 whereas the department was of the view that goods were other articles of iron and steel and classified under

CTH 7318 29 00. It was observed that pre-inspection certificate and the end use certificate issued by jurisdictional excise authority described goods as heavy melting scrap. Moreover, the revenue did not adduce any evidence to support the allegation that the goods is not heavy melting scrap. Therefore, the appellate tribunal set aside the order in appeal since revenue had classified the goods merely on assumptions and presumptions which was not permitted by law.

- In **2018-TIOL-1880-CESTAT-CHD**, assessee was engaged in manufacture of e-bike and imported e-bike parts. Rotor- one of the parts of motor performs dual function i.e. of motor and of rear wheel. As per the description, the assessee is claiming duty exemption under various notifications. Revenue classified the impugned goods as parts of e-bike and not of motor. It was decided that principle function of the rotor is electric motor as it is fixed on motor and it becomes rear wheel only after mounting the tyre. Therefore, the same merits classification in tariff item 8501 3119 as classified by assessee.
- In **2018-VIL-378-CESTAT-MUM-CUS**, it was that software imported is 'Packaged' or 'Customised' cannot be decided on the basis of (i) transfer of rights such as copyright, trade mark or any intellectual property rights by the supplier (ii) transfer of source code and (iii) grant of non

exclusive right to use the software since it is to the contracting party to decide the manner in which the rights are to be transferred. Thus these issues do not determine the nature of software. The case was remanded back to Adjudicating Authority to examine all the documents submitted by the appellant and give a clear finding on the "Customised" or "Packaged" nature of software.

- In **writ no. 11173 of 2018 (Madras High Court)**; Petitioner had received summons from DRI on grounds of wrong tariff item classification of imported goods. In the meanwhile, petitioner requested DGFT for amending the ITC-HS Code in the EPCG authorisation to 9022 14 90. DGFT replied stating that the petitioner has to produce a letter from the DRI that they have no objection for amendment in the EPCG authorisation license. The Madras HC held that the DGFT cannot insist for a no objection certificate from the DRI and should consider the petitioner's application independently.

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- **CESTAT jurisdiction:** In **2018-TIOL-1686-CESTAT-BANG**, Bangalore Tribunal placing reliance on the judgement of Chennai High Court in the case of (2017-TIOL-202-HC-MAD-CUS) decided that the tribunal does not have jurisdiction to decide baggage cases involving gold smuggling and the jurisdiction lies with the Revisionary Authority.
- **CVD concession:** In **2018-TIOL-1714-CESTAT-MAD**, the assessee imported ordinary portland cement and filed bill of entries claiming CVD concession in terms of Notification 4/2006-CE indicating the actual user condition. The bills were assessed and finalized extending CVD concession. Chennai tribunal decided that assessments were finalized satisfying actual user condition and thus accepting assessee's claim of concessional duty. It further held that revenue can initiate demand proceedings of differential duty by denying the exemption only upon unearthing evidence which deserves merit. Hence, eligibility to CVD concession claimed by the assessee during material time cannot be questioned much later without evidence.
- **Levy:** In **2018-TIOL-1754-CESTAT-MAD**, the Chennai bench of Tribunal held that clean energy cess on imported goods is levied as additional duty of Customs under Section 3(1) of Custom Tariff Act, 1975 and

thus becomes duty of Customs. Accordingly, education cess will also be levied on clean energy cess as being part of aggregate duty of Customs.

- **Bank guarantee:** In **2018-TIOL-1701-CESTAT-MUM**, the value of seized imported goods was Rs.41.45 crore and the differential duty amounts to Rs. 3.62 crore, therefore, the amount of bank guarantee as per circular no. 35/2017-Customs, dated 16 August, 2017 for the provisional release of seized imported goods would amount not more than Rs. 10 crore to recover differential duty, fine and penalty. Thus, Mumbai bench of the tribunal held that bank guarantee of 30% of value of goods would be harsh and goods must be provisionally released accepting bank guarantee of Rs.10 crore.

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- **Redemption fine and Penalty:** In **2018-TIOL-1729-CESTAT-MUM**, Mumbai tribunal placing reliance on the judgement of the Larger Bench in 2009-TIOL-388-CESTAT-MUM-LB decided that the containers which were ordered to be confiscated were never seized and released provisionally nor are the containers available for confiscation, therefore, order of confiscation and redemption fine cannot be imposed. Also as the appellant violated the condition by not re-exporting the containers within 6 months therefore, penalty would be levied.

- **SAD refund:** In **2018-VIL-265-KAR-CUS**, the respondent's invoice did not include the words "no credit of additional duty of Customs levied under Sub-Section (5) of Section 3 of Customs Tariff Act, 1975, shall be admissible against this invoice" as per the Notification No.102/2007-Cus. dated 14 September, 2007 for claiming SAD refund. The Karnataka HC held that non-declaration of the duty in the invoice issued itself is an affirmation that no credit would be available, and the same satisfies the condition of the notification. Therefore, the assessee was justified in claiming the refund.

- **Rejection of Transaction Value** – In **2018-VIL-453-CESTAT-DEL-CUS**, the Delhi Tribunal held that the Department

has rejected the transactional value on some flimsy ground. In case, declared price of imported goods is proposed to be rejected by the Department, it is the onus of the Department to prove such rejection with acceptable and legal evidence.

- **Interest on Customs Duty** – In **2018-TIOL-1906-CESTAT-AHM**, Revenue attempted to levy interest on the duty assessed under section 30 of SEZ Act, 2005, from the date of initial import by the SEZ developer. The Ahmedabad tribunal placing reliance on the judgement of Supreme Court in case of 2002-TIOL-2656-SC-CT decided that interest on Customs duty under Section 47 of Customs Act, 1962 shall be levied in the event assessee fails to pay the duty within the specified period. Since there was no delay in discharging the duty assessed in assessment, the revenue's attempt to levy interest is not supported by the provisions contained either under SEZ Act or Rules made thereunder nor under the Customs Act, 1962. Consequently, impugned order was set aside.

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- **Contract with foreign supplier:** In **2018-TIOL-1882-CESTAT-MUM**, Mumbai Tribunal held that regulation 4 to Project Import Regulations (PIR), 1986 does not require the importer to enter into contract with foreign supplier, it merely requires existence of a contract under which imports are made. Since the PIR, 1986 do not mandate any such condition, the same cannot be imposed by para 3 of Chapter 5 of Customs Manual which states that the importer should have entered into contract with the foreign supplier.

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- Para 6.08(b) of FTP 2015-2020 has been amended to include, sale of services by EOU in DTA classified under Chapter Heading 9988 and 9989 under GST, under para 6.08(a). Also, at the time of DTA clearance, applicable GST and compensation cess as per GST classification would apply. **(Notification No. 10/2015-2020, dated 07 June, 2018)**
- Import policy conditions of Natural Rubber under EXIM Code 4001 has been amended to allow imports only through sea ports of Chennai and Nhava Sheva, but the above restriction is not applicable in case import is made under AA. **(Notification No. 11/2015-2020, dated, 12 June, 2018)**
- Para 4.29(vi) and 4.29(vii) of [FTP 2015-20](#) has been amended to enable exporters to make exports under DFIA from any port listed in Para 4.37 of the Handbook of Procedures. Also, exporters have to file single DFIA application for exports made from any EDI port and separate applications for exports made from each non-EDI port. **(Notification No. 13/2015-2020, dated 20 June, 2018)**

- The period of prohibition on import of milk and milk products from ` China is extended till 23 December, 2018 or until further orders whichever is earlier. **(Notification No. 14/2015-2020, dated 22 June, 2018)**
- Indian mackerel exported during the period 01 April, 2018 to 30 June, 2018 is eligible for MEIS benefit under any HS Code in Chapter 03 of ITC HS 2012/2017. However, Indian mackerel (Rastrelliger Kanagurta) exported on or after 01 July, 2018 will be eligible for MEIS benefit only under CTH 03 02 4900 and 03 03 5900 i.e.. S No. 8019 and 8020 of Table 2 Appendix 3B of FTP. **(Public Notice No. 13/2015-2020, dated 12 June, 2018)**
- A new application format (ANF3B) for grant of benefit under SEIS has been notified. The form will be applicable from immediate effect for all claims. **(Public Notice No. 15/2015-2020, dated 28 June, 2018)**

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- Para 9.03 of [FTP 2015-2020](#) has been amended to clarify that manufacturing and other services classified under chapter heading 9988 and 9989 but covered in LOP as manufacturing of goods will continue to be covered in para 6.08(a) of [FTP 2015-2020](#) for DTA sale. At the time of DTA clearance, applicable GST and compensation cess as per GST classification would apply

(Public Notice No. 16/2015-2020, dated 28 June, 2018)

- SFIS/SEIS benefits to steamer agents is only available for the services exclusively rendered by them and payments retained by them on their account but, not for the free foreign exchange earnings simply routed through them for making payment of service charges. Additionally, actual service provider is required to get a certificate of receipt of payment from entity receiving foreign exchange earnings in its account in India.

(Policy Circular No.08/2018, dated 21 June, 2018)

- The facility for digital payment for miscellaneous applications (e-MPS) launched vide trade notice no. 25/2018, dated 14 March, 2018 required exporters to have DSC for making digital payment. Keeping in view the difficulties faced and

for the convenience of the exporters DGFT has done away with the requirement of DSC for login purpose. Now, a person desiring to make online/digital payment can login in e-MPS using his PAN details only.

(Trade Notice No. 15/2018, dated 04 June, 2018)

- DGFT, pursuant to Supreme court's order, has withdrawn the clarification issued under Trade Notice No. 11/2015, dated 14 December, 2015 stating unavailability of FPS benefit under [FTP 2009-14](#) to the items under 8481 which are not parts of bicycle. Hence, parts other than those used in bicycle under ITC HS 8481 would also be eligible for benefit under FPS
- (Trade Notice No. 16/2018, dated 07 June, 2018)**
- DGFT has organised special EODC camps at 9 regional offices between 11 June, to 22 June, 2018 to facilitate expeditious issuance of EODC for AA and EPCG authorizations licenses. Regional Authorities (RA) were to ensure that processing and disposal takes place on the same day in presence of applicant. If the case is not decided at spot the same is taken up for subsequent examination. However, in no case, it should take more than 3 days to dispose off the case.
- (Trade Notice No. 17/2018, dated 07 June, 2018)**

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- Importers/exporters seeking license to import/export restricted items, having paid applicable fees, will w.e.f 21 June, 2018 submit online application and subsequently send their application through 'email' with copy of online application (with proof of application fees paid) in 'pdf format' to either import-dgft@nic.in (for import license) or export-dgft@nic.in (for export licenses). Additionally, applications to be submitted in prescribed pro-forma ANF-2M (for import license) and ANF-2N (for export license) along with ANF-1 (Applicant's Importer Exporter Profile), copy of IEC and other supporting documents, as applicable.

(Trade Notice No. 18/2018, dated 20 June, 2018)

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- ADD on imports of Digital Offset Printing Plates originating in or exported from China has been discontinued in accordance with the final findings of the Directorate of Anti-dumping and allied duties.

(Notification No. 32/2018-Customs (ADD), dated 01 June, 2018)

- Department of Revenue, in pursuant to CESTAT order which re-determines the NIP of Hydrogen Peroxide, has amended the ADD on import of Hydrogen Peroxide under CTH 2847 00 00 originating in or exported from Bangladesh, Taiwan, Korea RP, Pakistan and Thailand.

(Notification No. 33/2018-Customs (ADD), dated 01 June, 2018)

- The producers/exporters have requested to review the imposition of ADD (vide notification no. 45/2017-Customs (ADD), dated 18 September, 2017) on new/unused pneumatic radial tyres in terms of Rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. The goods will be

subject to provisional assessment till the review is conducted.

(Notification No. 34/2018-Customs (ADD), dated 25 June, 2018)

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Delhi

Pratik Jain/ Gautam Khattar/ Rahul Shukla
Ph: +91 (124) 3306000

Mumbai

Dharmesh Panchal
Ph: +91 (22) 6689 1000

Kolkata

Pratik Jain/ Gopal Agarwal
Ph: +91 (33) 4404 3098/4404 6000

Bangalore

Pramod Banthia/ Kunal Wadhwa
Ph: +91 (80) 4079 6000

Hyderabad

Ananthanarayanan S
Ph: +91 (40) 4424 6363

Chennai

N Madhan
Ph: +91 (44) 4228 5000

Pune

Nitin Vijaivergia
Ph: +91 (20) 4100 4444

Ahmedabad

Jatin Arora
Ph: +91 (22) 6689 1000

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