

Staying Updated

Customs, FTP and WTO newsletter

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In the issue

Customs

Foreign trade policy (FTP)

Anti-dumping/Safeguard duty

Contacts

In the issue

Customs

Notifications and circulars

- The Customs Brokers Licensing Regulations, 2018 (Customs Brokers Regulations) notified.
- The Customs Audit Regulations, 2018 notified.

Case laws

- Franchise fee and worldwide advertisement cost being a condition of sale, includible in the assessable value in terms of Rule 10(1)(c) and 10(1)(e) of Customs Valuation (Determination of Value of Imported Goods) Rule, 2007 (CVR, 2007) respectively. Other advertisement expenditure incurred in India not satisfying conditions specified in rule 10(1)(e) of CVR, 2007, and hence not includible in assessable value.
- Discounts extended by the foreign supplier to the importer not includible in the transaction value (TV) of the imported goods since the importer is

the sole distributor of such products and the quantum of imports made justifies categorisation of the importer as a separate class of buyer.

- Where imported software is embedded in the hardware, the value of software cannot be included in the value of hardware.

Foreign trade policy

Notifications and public notices

- Rate of benefit under Merchandise Exports from India Scheme (MEIS) applicable to export of handicraft goods enhanced to 7%.
- Clarification issued regarding applicability of increased validity of scrips under chapter 3 of FTP.

Anti dumping/ safeguard duty

Notifications and circulars

- Provisional assessment recommended of all exports of jute products made by the specified exporters till the completion of the review.

In the issue
Customs
Foreign trade policy (FTP)
Anti-dumping/Safeguard duty
Contacts

Customs

Notifications and circulars

- Central Board of Indirect Taxes and Customs (CBIC) has notified BOE Regulations, 2018 effective from date of notification. These regulations apply to import of goods through all Customs stations, where the Indian Customs Electronic Data Interchange (EDI) System is in operation. The authorised person shall enter the electronic integrated declaration i.e. particulars of imported goods, and the supporting documents himself by affixing his digital signature certificate (DSC) on the Customs Automated System. Upon generation of BOE number, BOE shall be deemed to have been filed and self-assessment completed.

(Notification No. 36/2018-Customs (N.T.), dated 11 May, 2018)

- CBIC has notified the Sea Cargo Regulations effective from 01 August, 2018. These regulations *inter alia* prescribe procedure for registration of person required to deliver arrival/ departure manifest, delivery of arrival/ departure manifest, declarations to be made in respect of cargo, transshipment of imported goods or export goods between port and inland container depot or special economic zone.

(Notification No. 38/2018-Customs (N.T.), dated 11 May, 2018)

- CBIC has notified the Customs Brokers Regulations effective from the date of

notification. These regulations *inter alia* prescribe eligibility criteria to qualify as Customs broker, procedure to file application to obtain Customs broker licence, processing and granting of licence, execution of bond, obligations of Customs broker etc.

(Notification No. 41/2018-Customs (N.T.), dated 14 May, 2018)

- CBIC has notified the Customs Audit Regulations 2018 effective from the date of notification. These regulations *inter alia* prescribe procedure for selection of auditee, manner of conducting audit, opportunity to furnish evidence prior to issuance of audit report and penalty on auditee in case of contravention of these regulations.

(Notification No. 45/2018-Customs (N.T.), dated 24 May, 2018)

Case laws

- **Classification: In Sony India Private Limited v. Commissioner of Customs, New Delhi (2018-TIOL-1445-CESTAT-DEL)**, assessee had imported hard disk drives (HDD) and claimed concessional rate of CVD under Notification No. 12/2012-CE, dated 17 March, 2012. Delhi Tribunal placed reliance on the order of Supreme Court in *CC, New Delhi v. Supertron Electronics Private Limited (2017-TIOL-125-CESTAT-DEL)*. Tribunal decided that since the tariff heading under the exemption notification is

In the issue

Customs

Foreign trade policy (FTP)

Anti-dumping/Safeguard duty

Contacts

Customs

Case laws

specified upto six digit only with the description HDD without the words 'external' or 'internal', therefore, HDD would be classifiable under CTH 8471 70 20 and not under CTH 8471 70 30 as removable or exchangeable disc drive. Hence, the duty demands were not sustainable and the order was set aside.

- **Valuation: In Giorgio Armani India Private Limited v. Commissioner of Customs New Delhi (2018-TIOL-1521-CESTAT-DEL)**, Delhi Tribunal upheld the decision of Special Valuation Branch of Customs (SVB) to include in the assessable value, franchisee fee equal to 5% of net purchase value; and institutional advertising and promotional campaign at 2% without payment of which goods cannot be imported, as these form condition of sale as per Rule 10(1)(c) and Rule 10(1)(e) of CVR, 2007 respectively. Further, it was decided that the advertisement expense carried out in India for promotion of the brand, being incurred after import of goods, cannot be said to be incurred to satisfy the obligation of foreign principal. Accordingly, the condition of Rule 10(1)(e) of CVR, 2007 were not satisfied, and hence, such expense was not includible in the assessable value.
- **Levy of export duty: In Electrosteel Castings Limited v. Commissioner of Customs (Export), Chennai (2018-**

TIOL-1550-CESTAT-MAD), appellant exported cast iron pipes. Revenue alleged that such iron pipes were liable to export duty in terms of Notification No. 66/2008-Cus., dated 10 May, 2008. S. no. 15 of the Table in the aforesaid notification provides for levy of export duty at 10% on *Tubes and pipes of iron or steel*. Tribunal opined that when the export duty notification mentions tubes and pipes of iron or steel, then all tubes and pipes made up of iron or steel shall be liable to export duty. No exclusion or restriction is placed on such duty entry. Since, the appellant exported cast iron tubes, therefore, these will be liable to export duty.

- **Valuation: In Matrix Valve Private Limited v. Commissioner of Customs, ICD Tughlakabad, New Delhi (2018-TIOL-1467-CESTAT-DEL)**, Delhi Tribunal observed that import of various electrical and automobile parts was declared to be undervalued basis comparison of value declared with NIDB data. Hence, assessment for 52 BOEs were reopened invoking suppression clause in section 28 of the Customs Act, 1962. The declared value was enhanced on the basis of NIDB data without adducing any evidence. Delhi Tribunal while placing reliance on *Topsia Estates (P) Limited v. CC, Chennai (2015-TIOL-351-CESTAT-MAD)* decided that the transaction value of the impugned goods could not be enhanced

In the issue

Customs

Foreign trade policy (FTP)

Anti-dumping/Safeguard duty

Contacts

Customs

Case laws

solely on the basis of NIDB data. Moreover, the reopening of assessment of 52 BOEs was not justified in the absence of any investigation of the value of the goods covered under these BOEs.

- **Appellate proceedings: In Competition Team Technology India Private Limited v. 1) Union of India, Department of Revenue, Ministry of Finance, North Block 2) Assistant Commissioner of Customs, ICD Irungattukttai, Chennai (2018-TIOL-829-HC-MAD-CUS)**, Chennai High Court opined that the petitioner cannot bypass the appellate remedy since the matter clearly involved appreciation of the factual position, which cannot be undertaken by a writ court. Also the mandatory statutory condition to pre-deposit 7.5% of the disputed amount for preferring an appeal was upheld by the Court. Therefore, it was decided that the petitioner cannot seek a relief contrary to statutory provision.
- **Classification: In Vodafone Essar South Limited v. Commissioner of Customs, Chennai (2018-TIOL-1537-CESTAT-MAD)**, Chennai Tribunal while placing reliance on Commissioner of Customs, Mumbai v. Vodafone Essar Gujarat Limited (2017-TIOL-4586-CESTAT-Mum (LB)), observed that classification of optical fibres is based on

the manner of sheathing i.e. whether individually or bundled. Accordingly, it was decided that the optical fibre cable would be classified under tariff 9001 10 00 as 'Bundled optical fibre cable' and not under heading 8544 70 as '48 optical fibre cables'.

- **In Commissioner of Customs and Service Tax, Bangalore v. Jenoptik India Private Limited (2018-TIOL-1407-CESTAT-KOL)**, assessee imported goods from a related foreign supplier at discounts ranging from 12% to 30%. Kolkata Tribunal decided that the discounts offered were justified and were not includible in the TV, since, the assessee was the sole distributor of such products and also undertook activities of after sales service and various risk associated with it. Moreover, the quantum of imports made by the assessee justifies its categorisation as a separate class of buyers *vis-à-vis* other buyers.
- **Valuation: In Commissioner of Customs, Hyderabad-II Idea Cellular Limited v. Idea Cellular Limited. Commissioner of Customs Hyderabad (2018-TIOL-1526-CESTAT-HYD)**, assessee filed BOE for import of equipment and CD ROMs of software and claimed benefit of exemption notification no. 21/2002-Cus., dated 01 March, 2002 classifying software under chapter 8524. Hyderabad Tribunal while placing reliance on various judicial

Customs

In the issue

Customs

Foreign trade policy (FTP)

Anti-dumping/Safeguard duty

Contacts

Case laws

pronouncements such as Vodafone Essar Gujarat Limited (2008-TIOL-2861-CESTAT-MUM), Bharti Airtel Limited v. CC Bangalore (2012-TIOL-746-CESTAT-BANG) and Hewlett Packard (India) Sales Limited (2007-TIOL-154-SC-CUS), opined that separate sale of hardware and software is not the criteria for determining whether price of software to be included in the price of hardware. Thus, demand confirmed by the adjudicating authority by including value of software was unsustainable and hence, was set aside.

Foreign trade policy

Notifications and trade notices

- Directorate General of Foreign Trade (DGFT) has dispensed with the application of policy conditions on import of automotive mining equipments for R&D purpose subject to condition that these goods are either re-exported or scrapped under certification once purpose is served. Above condition is applicable to old/ used and new equipments with restriction on these equipments from plying on roads except for mobilisation or demobilisation.

(Notification No. 07/2015-20, dated 08 May, 2018)

- DGFT has amended para 3.08(b) of FTP on SEIS to clarify that the threshold level of minimum net foreign exchange earnings of US\$ 15,000 for service providers other than individual or sole proprietorship, and US\$ 10,000 for individual or sole proprietorship service provider, shall be considered in the year of rendering service and not in the financial year preceding the said year for assessing eligibility for obtaining benefit under SEIS. This implies that newly formed entities shall be eligible for SEIS subject to the above said threshold.

(Notification No. 8/2015-20, dated 24 May, 2018)

- DGFT has amended Table 2 of Appendix

3B of the FTP to enhance rate of benefit from 2%-5% to 7% under the MEIS for specified goods falling under the Handicrafts sector. This enhanced rate shall be applicable to exports made during the period 01 November, 2017 to 30 June, 2018.

(Public Notice No. 02/2015-20, dated 01 May, 2018)

- DGFT has dispensed with the requirement of pre-inspection certificate in case of import of metallic waste and scrap from the USA, the UK, Canada, New Zealand, Australia and the EU, if consignments are cleared through Chennai, Tuticorin, Kandla, JNPT, Mumbai and Krishnapatnam ports having portal monitors and container scanner.

(Public Notice No. 04/2015-20, dated 09 May, 2018)

- DGFT has notified that drug formulations manufactured by SSI and non-SSI units on or before 15 November 2018 is exempted from maintaining data of parent-child relationship between 3 levels of packaging and uploading in central portal as required under the track and trace system. However, for drugs manufactured after 15 November, 2018, export will be allowed only if secondary and tertiary packaging has the requisite barcoding and the relevant data as required is uploaded in central portal.
- (Public Notice No. 05/2015-20,**

In the issue

Customs

Foreign trade policy (FTP)

Anti-dumping/Safeguard duty

Contacts

Foreign trade policy

Notifications and trade notices

dated 09 May, 2018)

- MEIS benefit, which was applicable to exports made till 30 June, 2018 has now been extended by DGFT to exports beyond 30 June, 2018.

(Public Notice No. 07/2015-20, dated 11 May, 2018)

- DGFT has made amendments in the AA Scheme, some of which are outlined below:
 - Facility of obtaining AA on self-declaration basis extended in case of no *ad hoc* norms.
 - Submission of manual Bank Realisation Certificate form for redemption of AA permitted.
 - Option to submit self-attested copy of Exporter Copy of shipping bill permitted.

(Public Notice No. 09/2015-20, dated 14 May, 2018)

- DGFT has permitted offsetting of excess exports obligation made towards average export obligation in a particular year against EPCG authorisation in a subsequent year including a block, provided that the overall average export obligation is maintained as required under the above authorisation.

(Public Notice No. 10/2015-20, dated 22 May, 2018)

DGFT has clarified SFIS/SEIS benefits to actual not aggregator (ports). Thus aggregator (ports) eligible for services exclusively rendered by them and payments retained by them but cannot claim benefits to the extent of free foreign exchange earnings simply routed through them as receipt of service charges.

(Policy Circular No.06/2018, dated 22 May, 2018)

- DGFT has clarified that the increased validity of the scrips issued under chapter 3 of FTP applies to all scrips issued under the said chapter 3 irrespective of the period of FTP.

(Trade Notice No. 08/2018, dated 15 May, 2018)

- DGFT had launched the facility for digital payment for miscellaneous applications (e-MPS) *vide* trade notice no. 25/2018, dated 14 March, 2018. The exporters are required to have DSC for making digital payment. Non possession of such DSC makes it impossible for the exporters to make payment. Thus, DGFT has made changes to e-MPS by delinking it from DSC for login purpose for the convenience of the exporters. Accordingly, the date of mandatory digital payment through e-MPS is extended to 01 June, 2018.

(Trade Notice No. 11/2018, dated 18 May, 2018)

In the issue

Customs

Foreign trade policy (FTP)

Anti-dumping/Safeguard duty

Contacts

Anti-dumping/ Safeguard duty

Notifications and circulars

- With reference to ADD imposed on Jute products *vide* notification no. 01/2017-Customs (ADD), dated 05 January, 2017 specified producers/ exporters have requested for review 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. 24/2018-Customs (ADD), dated 07 May, 2018)

- Central Government (CG) has extended the date of imposition of ADD on import of Peroxosulphates (Persulphate) originating in or exported from China till 14 May, 2019.

(Notification No. 26/2018-Customs (ADD), dated 14 May, 2018)

- CG has imposed levy of definitive ADD on Ceramic rollers falling under sub-heading 6903, when originating in or exported from China, for a period of five years.

(Notification No. 27/2018-Customs (ADD), dated 17 May, 2018)

In the issue

Customs

Foreign trade policy (FTP)

Anti-dumping/Safeguard duty

Contacts

Contacts

In the issue

Customs

Foreign trade policy (FTP)

Anti-dumping/Safeguard duty

Contacts

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