

Pre-import condition for Advance Authorization

The Central Board of Indirect Taxes and Customs ('CBIC') has issued Circular No. 16/2023-Cus dated 7 June 2023 ('Customs Circular') in the backdrop of Honourable Supreme Court's ('Hon'ble SC') direction in the case of UOI versus Cosmo Films Limited (*Civil appeal No. 290 of 2023 dated 28 April 2023*).

The Foreign Trade Policy 2015-20 was amended on 13 October 2017 (Notification No. 33/2015-20 dated 13 October 2017) and relevant Notification No. 79/2017-Customs dated 13 October 2017 was issued to grant exemption from payment of Integrated Tax and Compensation Cess on imports under Advance Authorization scheme subject to meeting the pre-import condition. This exemption was in existence till 9 January 2019.

The Hon'ble SC set aside the Gujarat High Court's decision and inter alia held that pre-import condition for Advance Authorization is a mandatory condition. Therefore, in cases where the condition is not met, the importers are required to deposit applicable Integrated Tax and Compensation Cess. The Hon'ble SC also directed the Revenue to issue procedural directions to enable such importers to avail Input Tax Credit ('ITC') of Integrated Tax/ Compensation cess paid on such imports in line with the order of the SC.

In this regard, the CBIC has issued Customs Circular providing the below guidelines:

- 1) The importers who have not met the pre-import condition in respect of imports under Advance Authorization should approach their respective assessment group with requisite details for payment of Integrated Tax and Compensation Cess along with interest
- 2) The assessment group shall cancel the original 'Out of Charge' ('OOC') with appropriate remarks; the Bill of Entry ('BoE') shall be re-assessed to charge Integrated Tax and Compensation Cess (in line with the SC order)
- 3) The Integrated Tax, Compensation Cess and interest shall be paid against the electronic challan generated in the Customs Electronic Data Interchange ('EDI') system
- 4) Once payment is done, a notional OOC shall be made for the BoE on the Customs EDI system. This will enable transmission of taxes so paid to the GST portal for credit availment by the importer. The date of payment shall be considered as the 'relevant date' for ITC availment/ refund under the GST provisions.

The above procedure in the specified cases shall be applicable only once to the BoE.

The Directorate General of Foreign Trade has issued Trade Notice No. 07/2023-24 dated 8 June 2023 to inform Trade that all imports made under Advance Authorization Scheme on or after 13 October 2017 up to and including 9 January 2019 ('specified period') which could not meet the pre-import condition may be regularized by making payments as prescribed in the Customs Circular.

CNK comments:

- The Customs Circular is silent on the time frame for making an application for regularization of BoEs where pre-import condition is not met for Advance Authorization issued during the specified period.
- This is an opportunity for the affected importers to regularize the breach of pre-import condition for Advance Authorizations issued during the specified period.
- Adequate and complete information with supporting documents should be filed while applying for re-assessment of BoE.
- The Integrated Tax and Compensation Cess paid by the affected importers shall be available as ITC/ refund claim as per the provisions of the GST legislation.

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