



THE COTTON TEXTILES EXPORT PROMOTION COUNCIL

(Sponsored By Government of India)

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Sub : Implementation of Hon'ble Supreme Court direction in judgment dated 28.4.2023 in matter of Civil Appeal No.290 of 2023 relating to 'pre-import condition'

Dear Member,

Exporters utilizing Advance Authorization Scheme (AA) (which allows duty free import of inputs, which are physically incorporated in the manufactured export products), must be aware that subsequent to introduction of GST Act w.e.f. 1.07.2017, IGST was applicable on import of inputs under AA Scheme as well. Since the relevant Notification was not amended to provide for IGST exemption, requests were made to the concerned Ministries.

Subsequently, CBIC Notification No.79/2017-Cus dated 13.10.2017 and DGFT Notification No.33/ 2015-20 dated 13.10.2017 were issued, thereby allowing exemption from IGST and Compensation Cess. However, a 'pre-import' condition of inputs was inserted for permitting duty free import under AA license.

Consequent to representations, CBIC vide Notification No.1/2019-Cus dated 10.1.2019, removed the 'pre-import' condition prospectively. Hence, the pre-import condition was bound to be complied with by the manufacturer-exporter for the period from 13.10.2017 to 9.1.2019.

Further, the condition regarding mandatory fulfillment of "pre-import" condition was challenged and the Hon'ble Supreme Court of India (against the favourable decision of the Gujarat High Court) upheld the contention of the department, with a direction to the department to prescribe appropriate procedures to enable the importing-manufacturers to claim refund / avail input tax credit (ITC). Accordingly, CBIC vide Circular No.16/2023-Cus dated 7.6.2023 ([enclosed](#)) has prescribed the following compliance procedures to be followed at the Port of Import (POI):

-- For relevant imports that could not meet the said pre-import condition and hence, required to pay IGST and Compensation Cess to that extent -

Importer may approach the concerned assessment group, at the POI with relevant details for payment of tax and cess along with applicable interest.

-- Assessment Group at POI shall cancel the Out-of-Charge (OOC) order and indicate

the reasons in remarks.

-- Thereafter, BE will be re-assessed so as to charge the tax and cess in accordance with the judgement;

-- Payment of tax and cess along with applicable interest shall be made against the electronic challan generated in the Customs EDI System;

-- Upon payment, POI shall make a notional OOC Order for the BE on the Customs EDI System (so as to enable transmission to GSTN Portal of, inter alia, IGST and Compensation Cess amounts with their date of payment for eligibility as per GST provisions);

-- The above procedures can be applied once to a BE.

-- ITC of IGST and Cess as well as refund shall be available subject to the conditions specified in CGST Act and rules made thereunder;

In this regard, DGFT has also issued Trade Notice No.7 dated 8.6.2023 ([enclosed](#)).

You may kindly make a note of the above.

Regards,

Dr. Siddhartha Rajagopal
Executive Director

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