



BEYOND BORDERS

The Customs and International Trade (C&IT) Journal

May 2019

EDITOR'S NOTE

Dear Reader,

The General Elections to the Indian Parliament are drawing to a close and the country is on the cusp of swearing-in of a newly elected government. With the brief period of inaction on policy making at the government level, imminent during election phase, finally coming to an end; the new government will have its task cut-out on bringing the growth momentum back into the economy, which had demonstrated clear signs of slow-down over the past 6 months or so, if not more.

Along with the country, the world also awaits the results of the much-sSpeculated General elections. This is evident through the negotiations on the Regional Comprehensive Economic Partnership (RCEP) Agreement, which have been deferred by other RCEP Participating Countries (RPCs), for India and Indonesia to have their new governments concur with the final contours of the agreement. The Regional Trade Bloc, by way of RCEP, that is likely to come into existence by end of this year will be a watershed moment having permanent impact on India's economy, primarily because of China's presence in the bloc. So how would India be dealing with the negotiations with the RPCs is what the trade community and economists are keenly watching. The outgoing government, on its part, appointed three different agencies to get buy-in of the trade on key points that should be taken-up during negotiations.

BDO India was part of one such discussion earlier this month in Pune with the Indian Council for Research on International Economics Relations (ICRIER) where many interesting points were discussed. Currently the industry in India is concerned about safeguarding the interests of domestic businesses across agriculture, manufacturing and services. In this issue, Beyond Borders, brings you a ring-side view of the action, as it happened in the corridors of the negotiating chambers.

Recently, the Directorate General of Foreign Trade (DGFT) discontinued the practice of issuing Scrips and Authorisations in paper form and moved-over to only electronic versions. Even the subsequent transfers (sale or purchase) of such scrips will be required to be registered on the DGFT website before the submission on the Customs ICEGATE portal for payment of customs duty thereunder. The section #Custechology, discusses how this initiative could possibly eliminate the circulation of fraudulent authorisations and scrips in the Indian market and the evasion of duty, resulting in billions of Indian rupees.

Beginning this issue, we are introducing a monthly feature titled, 'From the Bench'. It will highlight two relevant and interesting Customs & International Trade cases that were reported from Indian Courts and Tribunals during the month. We do hope you enjoy reading this feature as much as all the other regular features.



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China may have found a way to keep India in the dark over trade deficit

China may have found a perfect way to blunt India's charge regarding the ballooning deficit in bilateral trade. Trade numbers for 2018 showed India-China trade deficit falling by a significant \$10 billion, mainly because of a sizeable increase in exports by India. There is probably a big catch, though. It shows that during the same period, there was a sharp rise in Hong Kong's export to India of the same goods that New Delhi buys from Beijing. This has now given rise to serious doubts that China may have begun using Hong Kong to camouflage the real size of its sale to India.

A data deep dive

According to Commerce ministry data, China saw its trade surplus with India go down from \$59.3 billion to \$57.4 billion in 2018. During the same year, Hong Kong's trade deficit with India – which stood at \$3.9 billion in 2017 – turned into a \$2.7-billion surplus on the back of rising exports to India. Combined figures showed India's trade

deficit with Hong Kong and China expanded to \$60.1 billion in 2018 from \$55.4 billion the year before.

Data shows India's exports to China for 2018 stood at \$16.5 billion – a rise of 30.4 per cent over the previous year. During the same period, India's exports to Hong Kong fell from \$15 billion to \$13.3 billion. These two figures combined, it made for a \$900 million loss for India. In the analysis, data from calendar year 2018 is being used because complete sectionalised figures for the entire 2018-19 are not yet out. In most cases, full fiscal data generally follows the same pattern as calendar year data.

India's imports of mobile phone spare parts from China fell by 34.1 per cent in 2018, while the import of the same product from Hong Kong jumped by a whopping 728 per cent during the same period. China's export of LAN adaptor cards to India slipped by 32 per cent, but that of Hong Kong shot-up by 173 per cent. One of the

most significant figures in the story pertains to digital monolithic integrated circuits. Imports by India of the item from China rose too, but the rise in imports from Hong Kong was eye-watering – 6017 per cent. Of late, China's skewed policies have been under renewed focus, putting Beijing in a spot over burgeoning surplus with its trade partners. India is a case in point. To cut its massive trade deficit, India for some time has been pressuring China to open IT and pharma, among other sectors, for Indian companies. Recent years have witnessed India's trade deficit with China rising in an out-of-proportion manner, owing primarily to the shooting import of electronic goods.

Source:

https://economictimes.indiatimes.com/articleshow/68884958.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Scrapping India's trade privileges could hit US consumers

A U.S. plan to end preferential duty-free imports of up to \$5.6 billion from India could raise costs for American consumers, two U.S. senators have told their country's trade office, urging a delay in adopting the plan, and seeking more negotiations.

"While we agree that there are a number of market access issues that can and should be addressed, we do remain concerned that the withdrawal of duty concessions will make Indian exports of eligible products to the United States costlier," the senators, John Cornyn and Mark Warner, wrote. "Some of these costs will likely be passed on to American consumers".

In their Friday letter, the co-chairs of the Senate's India caucus of more than 30 senators called for withdrawal to be

delayed until the end of India's 39-day general elections, which began on Thursday, with results expected on May 23.

Allowing for talks to continue beyond the elections would underscore the importance of the trade ties, presenting an opportunity to resolve market access issues and improve the overall U.S.-India relationship for years to come, they added. If the United States scraps duty-free access for about 2,000 product lines, it will mostly hurt small and medium businesses in India, such as makers of engineering goods. Despite close political ties, trade between India and the United States, which stood at \$126 billion in 2017, is widely seen to be performing at nearly a quarter of its potential.

Trade relations suffered in the past few months after India adopted new rules on e-commerce reining in how companies such as Amazon Inc and Walmart Inc-backed Flipkart do business.

Last June, India said it would step-up import duties varying from 20 percent to 120 percent on a slew of U.S. farm, steel and iron products, angered by Washington's refusal to exempt it from new steel and Aluminium tariffs. But it has since repeatedly delayed implementing the higher duties.

Source:

<https://economictimes.indiatimes.com/news/economy/foreign-trade/scrapping-indias-trade-privileges-could-hit-u-s-consumers-senators-say/articleshow/68863919.cms>

India probes dumping of 'Aluminium, Zinc coated flat products' from China, Vietnam and Korea

India has begun a probe into alleged dumping of Aluminium and Zinc coated flat products from China, Vietnam and Korea following a complaint from a domestic player.

The commerce ministry's arm Directorate General of Trade Remedies (DGTR) initiated the investigation on an application filed by JSW Steel Coated Products. The company asked for an anti-dumping probe and imposition of duty on imports of flat rolled product of steel, plated or coated with alloy of Aluminium and Zinc, from these

countries. If established that dumping has caused material injury to domestic players, DGTR would recommend imposition of antidumping duty on the imports.

In a notification, DGTR said it has found "sufficient evidence" of dumping of the goods by these countries. "The authority hereby initiates an investigation into the alleged dumping, and consequent injury to the domestic industry to determine the existence, degree and effect of alleged dumping and to recommend the amount of antidumping

duty, which if levied, would be adequate to remove the injury to the domestic industry," it said. The product offers resistance to corrosion and is used in many applications and sectors including solar power projects, roofing, white goods and appliances, furniture and substrate for colour-coated steel.

Source:

https://economictimes.indiatimes.com/articleshow/68778791.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

RCEP Stakeholders Discuss Concerns with Government Agency ICRIER in Pune

Industry representatives, largely comprising of Agro based industries, Manufacturing units and Service Enterprises, based in and around Pune assembled in large numbers on 10th May, 2019 at the Board Room of the Maharashtra Chamber of Commerce, Industry & Agriculture in Pune to take-up their concerns regarding India's negotiations with other member nations of the Regional Comprehensive Economic Partnership (RCEP) Agreement that is likely to be concluded for signatures by end of this year.



Pic: Dr. Ms. Saon Ray, from ICRIER with Office Bearers of the MCCIA and the World Trade Centres at Pune and Mumbai and other dignitaries during Stakeholders' Consultations in Pune

The Government of India appointed agency, Indian Council for Research on International Economic Relations (ICRIER)'s representative Dr. Ms. Saon Ray met with the dignitaries representing the industry. Dr. Shrikant Kamat, Leader - Customs & International Trade & Partner - Indirect Tax at BDO

India led the discussion on behalf of the industry. He pointed-out the key internal and external changes that were desirable to be initiated forthwith by the Government to safeguard the interests of Farmers, Agro based Industries, Micro-Small-Medium Enterprises (MSMEs) and Service

Providing Enterprises in India before the RCEP Agreement is signed. Dr. Ray assured the gathering that the representations of all the stakeholders shall be conveyed to the Government and concerns of any affected parties shall be taken into consideration at the time of negotiations by the Government.



Pic: Dr. Shrikant Kamat, Leader - Customs & International Trade, BDO India addressing the industry representative at the RCEP Stakeholders' Gathering in Pune on May 10, 2019

Senior officials of RCEP countries to meet in Bangkok on May 24

Senior officials of the 16-member Regional Comprehensive Economic Partnership (RCEP) group, who are negotiating a mega free trade agreement, will hold meetings in Bangkok from May 24 to iron-out issues pertaining to the goods and services sector, an official said. "It is not a full-fledged round but an inter-sessional meeting, where senior officials would hold detailed discussions on issues of the proposed RCEP agreement," the official added.

The meeting assumes significance as the member countries are aiming to conclude the negotiations by end of this year. A joint statement issued after a ministerial meeting of RCEP trade ministers in March in Cambodia has said that in order to ensure progress is made towards meeting the leaders' mandate

for conclusion in 2019, the ministers agreed to intensify engagement for the remainder of the year (including by convening more inter-sessional meetings). The proposed free trade agreement, which is officially dubbed as RCEP, to cover goods, services, investments, economic and technical cooperation, competition and intellectual property rights to boost economic ties between the countries. Although the negotiations have entered the sixth year, negotiations on key issues are yet to be finalized. The member nations have yet to finalize the number of goods over which duties will be eliminated.

RCEP members want India to eliminate or significantly reduce customs duties on maximum number of goods it traded with them. India's huge domestic market provides immense opportunity of exports for RCEP countries.

However, domestic industries from sectors including metals, pharma and food processing have raised serious concerns over the presence of China in the grouping, with which India has a huge trade deficit.

RCEP bloc includes 10 countries of ASEAN (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam) and their six free trade pact partners namely Australia, China, India, Japan, Korea and New Zealand.

India already has a free trade agreement with ASEAN group, Singapore, Japan and Korea. It is also negotiating separate agreements with Australia and New Zealand.

Source: <https://economictimes.indiatimes.com/news/economy/foreign-trade/senior-officials-of-rcep-countries-to-meet-in-bangkok-on-may-24/articleshow/68990059.cms>

No 'Gifts' at Mumbai customs, Chinese e-tailers look elsewhere

Courier shipments to Mumbai airport have halved since December 2018 following a government crackdown on packages shipped as "Gifts" by Chinese ecommerce companies to evade duties, a top customs officer told ET. "We've totally stopped these gifts and sample consignments, and to a large extent, what used to come as 'documents of no commercial value' too have come down dramatically," said the official, who did not want to be named. "General courier load in Mumbai terminal has come down by 40-50%."

India exempts items valued up to Rs.5,000/- from all taxes as a way of allowing non-resident Indians to send gifts to families back home. Customs officers at the Mumbai Air Terminal were directed not to grant clearances

to such shipments, as per a letter dated December 28, 2018 from the Office of the Commissioner of Customs for the Mumbai jurisdiction. This followed a government crackdown on such Chinese imports, according to an ET report published on April 5, 2019. The Mumbai Terminal was processing close to 2,00,000 packages monthly at the end of last year, but that has since dropped to around 1,00,000 packages, the official said.

Now, the Chinese e-tailers have begun diverting shipments to other ports, multiple people with direct knowledge of the issue said. The total volume of such shipments could not be independently verified. "This trade is like a balloon, if you pinch it at one place it expands in another direction,"

the official said.

Even consignments weighing 20-40 kg and with declared value less than Rs.5,000/- were being shipped as "gifts", he said. International courier charges to ship such items are significantly higher than the declared cost, indicating misuse. "While they've shifted out of Mumbai, we have also discovered another very disturbing trend. Instead of declaring something as a Gift, they are getting those in as low-value items and paying minimum or no customs duty at all," the official said.

Source:

<https://economictimes.indiatimes.com/industry/services/retail/no-gifts-at-mumbai-customs-chinese-etailers-look-elsewhere/articleshow/69051263.cms?from=mdr>

Asia-Pacific services exports won't make up for imports of goods

India is likely to gain only \$2-10 billion by exporting services to 15 Asia-Pacific countries under the proposed mega regional trade agreement, a premier think tank has told the government. The likely gains from services exports will not compensate for the higher amount of goods imports, especially from China, under the Regional Comprehensive Economic Partnership (RCEP) trade pact, it said.

India exported \$38 billion worth of services to the grouping last year. The government last year appointed Indian Institute of Management-Bangalore, independent think-tank Indian Council for Research on International Economic Relations and the Centre for Regional Trade, a think-tank under the Department of Commerce, to work separately to prepare a roadmap for negotiating RCEP by holding stakeholder consultations.

"The gains in services could only be in the range of \$2-10 billion. It is unrealistic to expect higher liberalization of services," said a member of one of the institutes. In the April-January period of 2018-19, India's merchandise exports to the region were \$55.3 billion while imports were \$145.9 billion, leaving a trade deficit of \$90.6

billion. The trade gap with China alone was \$53.4 billion for the whole of FY19.

"An assessment of the services negotiations indicates that the progress has been asymmetrical with disinterest in moving forward in services while in goods, the ambition continues to be at a significantly high level, quite contrary to what has been envisaged in the guiding principles," said an official aware of the negotiations.

India's major proposals, which have been rejected by the RCEP countries due to their fears over migration and loss of jobs, include a more business-friendly visa regime through a visa-fee waiver on a common reciprocal basis, and an RCEP Business Travel Card aimed at facilitating liberal movement of professionals and tourists in the region. "There is a lack of diversification of trade in this region, and even the gains in information technology, which is our largest service export, are limited," the member said.

Movement of professionals

Besides IT, there is scope to expand business services which include management and consultancy, hospitality, travel and tourism, health and education. However, India is not

competitive in infrastructure and manufacturing services such as logistics, transportation and construction, and is unlikely to make gains in these under the pact, as per the think tank. Another complication has arisen with Singapore, Malaysia and Japan joining the ranks of Thailand, the Philippines and Brunei to come-out with a negative list from the positive list. Under their respective 'negative' lists, countries will state the exceptions to services they want to open up.

"Although, India initially objected to this early transition on the grounds that the verification process is time consuming, we have also decided to transit from positive to negative list by mid-2019," the official added.

Given the situation, India has intensified its bilateral engagement with several countries in an attempt to seek further improvements in their offers, particularly on movement of professionals and IT-related Services.

Source:

<https://economictimes.indiatimes.com/news/economy/foreign-trade/apac-services-exports-wont-make-up-for-imports-of-goods/articleshow/68948318.cms>

Performance review of Export Promotion Councils to start soon

The government will soon begin a performance-based evaluation of over two dozen Export Promotion Councils (EPCs) in the country as a follow-up to the Prime Minister's Office's direction that it should ascertain ways to boost exports, according to a senior official. The EPCs found falling short of the export targets could face closure or undergo restructuring.

The official cited earlier told ET that the Prime Minister's Office (PMO) had some time ago suggested a check to see if any of the EPCs need support in order to boost exports. "The Niti Aayog then decided to rank these councils and a few meetings have been held. This is work in progress," the official said.

Another official ET spoke with said the governance and technical capabilities of EPCs are now being subjected to evaluation based on increasing the share of Indian exports in the product

markets covered by these EPCs. "Those EPCs unable to achieve mutually agreed upon targets for increasing market share could be closed down or restructured," the official said. Niti Aayog, the government's premier think tank, in collaboration with the commerce ministry, is evaluating the EPCs, following which it will rank them as part of its ongoing policy of developing indices and ranking on real-time basis. At present, there are 14 EPCs under the Department of Commerce and 11 under the Textile ministry. Besides promoting and developing Indian exports, these councils are also the registering authorities for exporters.

Each council is responsible for promotion of a particular group of products or projects or services. The government funds EPCs under the Market Access Initiative (MAI) and

Marketing Development Assistance scheme to help them promote exports. In 2018-19, the government spent Rs.270 crore on MAI and has earmarked Rs.300 crore for the current fiscal.

Some of the parameters being considered for evaluation include the increase in export share of these councils, the extent of penetration into existing markets, and efforts to explore and enter new markets. India exported \$331.02 billion worth of merchandise in FY19, surpassing the earlier peak of \$314.4 billion achieved in 2013-14, the commerce ministry had said earlier this month, attributing the lower exports in the intervening years to global slowdown.

Source:

<https://economictimes.indiatimes.com/news/economy/foreign-trade/performance-review-of-export-promotion-councils-to-start-soon/articleshow/69088869.cms?from=mdr>

Ecommerce on agenda at Delhi WTO meet

E-commerce negotiations at the multilateral level will be a key area of talks at the informal World Trade Organization (WTO) ministerial meeting which will take place in Delhi later this month.

At the informal ministerial, at least 20 developing countries and least developed countries will discuss how realistic it is to assume that they can "effectively and meaningfully influence" the outcome of negotiations on free flow of data across borders, server localisation and source code disclosure.

"There will be a session on implications of joining the negotiations on E-commerce at the WTO where a lot of pertinent questions on digital trade would be raised," an official told ET on condition of anonymity.

The participating countries will deliberate the concrete gains for them from negotiating binding rules on E-commerce and the revenue implications of a permanent moratorium on customs duty on electronic transmissions. They will also debate the pros and cons of retaining policy flexibility to nurture

their domestic digital firms or if they would be better off with binding rules.

In its draft National E-commerce Policy, India has proposed regulating cross-border data flows, locating computing facilities within the country to ensure job creation and setting-up a dedicated data authority for issues related to sharing of community data. It has stated that the data generated in the country is a national asset and citizens and the government have a sovereign right over it.

The Delhi ministerial meeting comes at a crucial time when a group of 76 countries including the United States, European Union nations, China, Japan and Australia have formed a plurilateral to develop trade rules on ecommerce, an idea that has been opposed by India and other developing countries.

India has argued that these discussions are not consistent with the mandate of the multilateral trading system and that these strike at its roots.

Although India is opposed to the plurilateral on E-commerce, it has told the WTO that it would pursue the

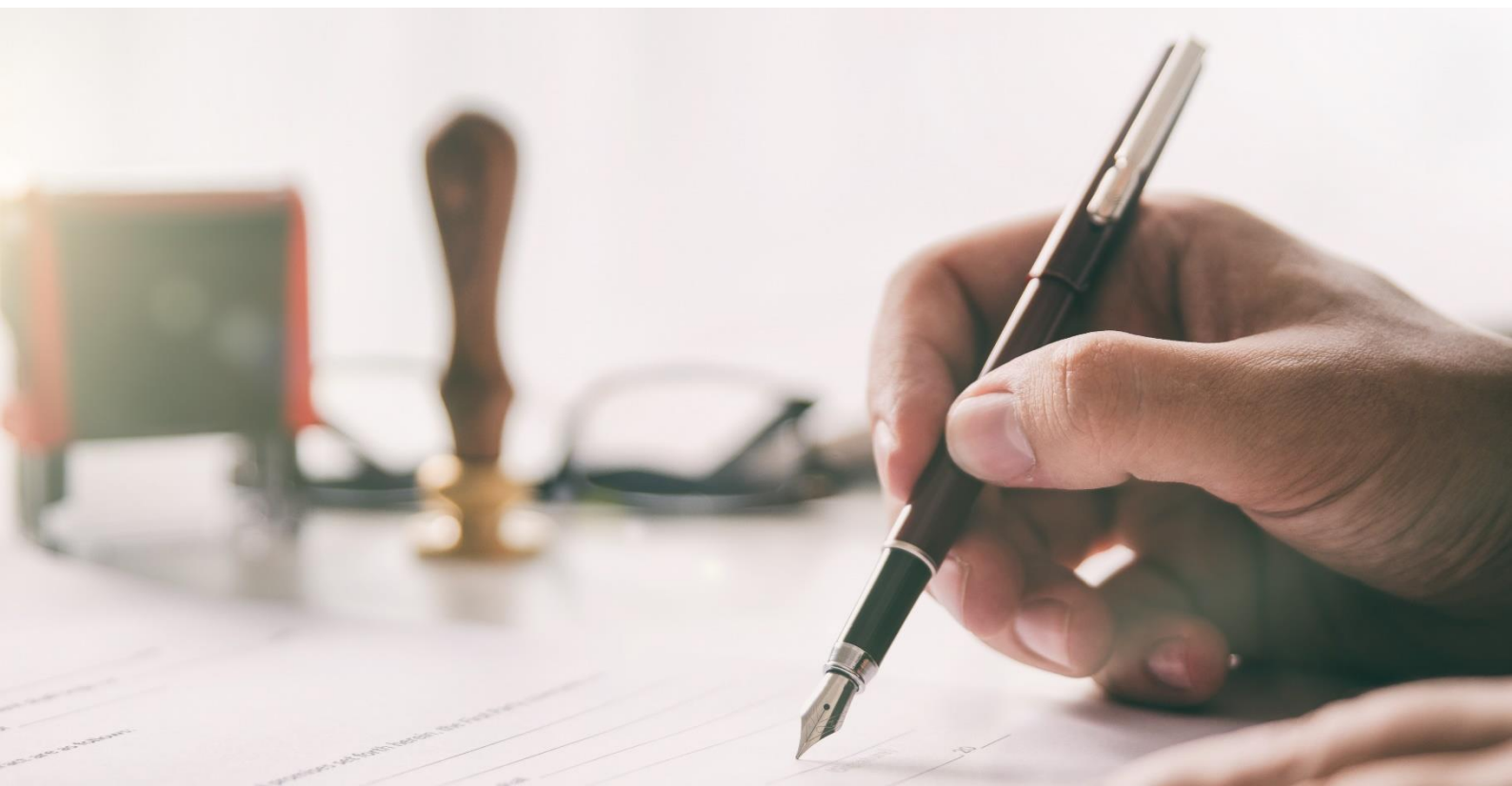
existing multilateral work programme that prohibits countries from imposing customs duties on electronic transmissions, something that India and South Africa have questioned, citing revenue loss to developing countries.

The two-day discussions are likely to culminate in a Delhi Declaration on development and WTO reforms as the organization's Director General, Roberto Azevedo, would attend the meeting on May 13. "There could be a declaration at the end of the meeting," said another official.

The declaration is expected to relate to critical issues including special and differential treatment for developing nations.

Source:

<https://economictimes.indiatimes.com/news/economy/foreign-trade/e-commerce-on-agenda-at-delhi-wto-meet/articleshow/69170191.cms>



The RCEP Agreement Negotiations - How can India get into a win-win situation?

India's strategy for negotiations with the other member countries of the Regional Comprehensive Economic Partnership (RCEP)- a sixteen-country trade grouping, slated to become the largest Free-Trade Area in the world, is emerging as one of the hottest point of debate amongst economists and the trade community in the country, at the moment. Apart from the 10-member countries of the Association of Southeast Asian Nations (ASEAN), other RCEP signatories include China, Japan, South Korea, India, Australia and New Zealand. Once concluded, this multilateral agreement will cater to half of world's gross domestic product (GDP) and half of the world's population.

The debate raging here is whether India should really be signing-up to the RCEP, and if it does so eventually, what can it achieve additionally during the final few remaining rounds of negotiations to maximise the potential gains for its economy.

Even though circumspect initially, India has now reportedly offered other RCEP

Participating Countries (RPCs), with the exclusion of China, elimination of tariffs (zero import duty) for 86 percent of total tariff lines. And for China, India has reportedly agreed for zero customs duty on 74 percent of the tariff lines. In fact, India's trade deficit with the RPCs in 2017-18 was well over USD 104 billion, as against the overall deficit of USD 162 billion.

India is well aware of the fact that dealing with China in the RCEP trading bloc is a challenge of different proportions as compared to other RPCs. Despite not enjoying preferential market access like the other major economies, China's presence in India's market has seen tremendous expansion. Its exports to India had increased from about USD 31 billion in 2009-10 to over USD 81 billion in 2018-19, while its imports from India increased from USD 11 billion to USD 15 billion. India's trade deficit with China is well above USD 60 billion even before it signs the RCEP. One can imagine the state of affairs if well over 75 percent of all goods are made duty-free by India in respect of exports from

China are concerned.

Currently, the Government provides Minimum Support Price (MSP) to farmers intending to sell their produce to Government agencies. For Micro, Small & Medium manufacturers and traders (MSMEs), there is no such scheme. But it is widely speculated that even the MSP mechanism is likely to be discontinued in the near future, given the challenges posed by other nations in the WTO as well as from the RCEP member countries. The Indian Government needs to first come-up with at least a couple of viable income support schemes for Indian Businesses, across all 3 sectors (agri, manufacturing & services) before agreeing to provide market access and zero tariffs to traders from RCEP member countries.

Points concerning the Agriculture Sector

A. Incorporation of reasonable protection measures for vulnerable sections in the farm sector

India's farm sector and the agro processing industry majorly comprises of millions of small farmers and micro, small & medium enterprises (MSMEs). The

Government of India has agreed to reduce Customs duty to zero on almost ninety percent of tariff lines over 20 years. This is likely to put India's agriculture, horticulture, plantation, dairy and food processing industries, in a vulnerable position especially with regard to rice and wheat coming from Australia, milk, milk products and meat coming from New Zealand & Australia and plantation products coming from the ASEAN region. Adequate protection measures or safeguards are required to be incorporated in the RCEP Agreement, which should provide a reasonable level of protection to the vulnerable sections in the farm sector against import competition from lower cost producers in other RCEP members countries.

B. Better market access in other RCEP member markets to agri produce from India

As stated above, quite a few of the member nations in the ASEAN region, Australia & New Zealand are strong in agri, plantation and dairy sector. The task before the Indian government is to ensure during the negotiations that small producers from India, engaged in agriculture, plantation and dairy activities are assured of better market access in these countries. India is the largest milk producer in the world. With reduction in import tariffs, Indian milk would be made available cheaply in other RCEP member nations. But non-tariff barriers such as stringent Food Safety Regulations in these countries could come in the way of Indian food exporters exporting to other RCEP members. Hard negotiations on uniformity of Sanitary & Phyto Sanitary Regulations to be implemented across all RCEP members, could go a long way in securing the future of Indian exporters in the farm and dairy sectors.

C. Protection of farmers' rights to seeds and plant variety

Seeds are one of the irreplaceable pillars of food production. Farmers in India, like anywhere else in the world, know how to save, store and share seeds. This has allowed crops to adapt to different conditions, climates and topographies and thus over the years have fed the country's growing population with a diversified diet. The Government of India and state governments have also been actively engaged in seed distribution, development and research.

However, the advent of the World Trade Organization (WTO) and the proliferation of Free Trade Agreements thereafter, over the past 25 years, have witnessed a passage of laws that have granted large corporations' ownership over life forms including seeds, micro-organisms, genes, cells, plants and animals. Laws related to seeds are intended to regulate trade and investments in seeds, health of plants, good agricultural practices related to marketing of seeds (Bio-safety regulations), etc. This could also imply that large corporations could be seen as holding all the rights to seed distributions, if laws grant these companies exclusive rights in such seeds. Empirical evidence suggest that few FTAs could have in-built provisions that decree peasant's seeds as illegal or brand them as inadequate or treat them as a source of risk required to be eliminated. In order that certain provisions that that could prevent farmers in India from saving seeds and are made to only buy seeds sold by large corporates in the open market or provisions that may require the Government of India, state governments and large Public institutions funded by Government to pull-out of plant breeding and seed production in favour of transnational corporations active in the other RPCs, are not incorporated in the RCEP Agreement, the Government needs to tread this path carefully, as these provisions once in place will have serious ramifications on policy making for the agri sector in particular as well as for the economy as a whole.

D. Creating a robust manufacturing base for exports for critical industries sectors

Serious concerns exist within the manufacturing fraternity in the country on how Indian manufacturers would be able to make any significant impact across various modes of the commodity value chain in the RCEP trading bloc. Unless India is used as a manufacturing base for exports in sectors such as chemicals, pharmaceuticals, automobiles, auto components, steel and steel products, engineering goods, food processing, etc. the country cannot hope to have a lower trade deficit with the rest of the world, even though its trade deficit with RCEP members may be higher.

India has recently acquired the

distinction of being the fastest growing economy in the world. Combined with China and EU's uncertain future in the US market, India is currently best placed to leverage its position in the world economy to negotiate with other RCEP members to benefit the manufacturing sector in the country.

Some clarity is required on how the Government intends to negotiate with other RCEP members to ensure a place of prominence for the Indian manufacturing industry in the commodity value chain.

E. Dealing with China

Over the past decade or so, China's presence in the Indian market has witnessed phenomenal expansion. Exports from China to India have increased from about USD 31 billion in 2009-10 to over USD 81 billion in 2018-19, while its imports from India for the same period have barely increased from USD 11 billion to USD 15 billion. Even in sectors such as textiles, which have traditionally been India's strongholds, trade has gone from a surplus in 2013-14 to a deficit of over USD 2 billion in 2018-19. This is clearly a worrying sign, especially since most of the affected sectors are employment intensive.

At USD 68 billion, China already accounts for nearly half of India's total trade deficit. Goods from China not only pose a threat to the large industrial goods manufacturers in the country but also to the millions of micro, small and medium manufacturing units in India.

After the signing of the RCEP, with over 75 percent of tariff lines having zero customs duty, it is widely apprehended that India's trade with China will be even more one-sided than present.

If the government in China offers some forms of financial incentives to its domestic manufacturers that give them a competitive advantage over manufacturers in India, the Government should persuade Chinese authorities to reveal the details of all such incentives during the RCEP negotiations. This is very important, so that India is assured that there are built-in mechanisms under the RCEP that would not only deter domestic manufacturers in China from supplying goods at unreasonably lower prices to India but also discourage the Chinese Government and other agencies in China from subsidising exports to RCEP member countries such as India.

F. Integration of MSMEs in the Regional Value Chain

The 'Make in India' initiative of the Indian Government was conceived not only for attracting foreign investments into India's manufacturing sector but to also boost or encourage exports by the domestic manufacturers. Many experts argue that the RCEP will not only contribute to this government initiative by making intermediate goods cheaper for finished goods manufacturers in the country but will also facilitate effective integration of MSMEs into the regional value and supply chains.

In our view, there have not been any significant or radical changes to the export patterns over the past 4 years since the introduction of the Make-in-India initiative.

G. Concerns in relation to e-commerce and data security & protection

Electronic commerce (e-commerce) and data are emerging as key enablers and critical determinants of India's growth and economic development.

The draft e-commerce policy recently published by the government lays-down effective strategies to address sustained growth and development of the e-commerce sector in the country, while dealing with issues such as consumer protection, data privacy, maintenance of level-playing field for domestic as well as foreign participants, and the interest of all stakeholders, be it investors, manufacturers, MSME's traders, retailers, start-ups and consumers. The strategies envisaged in the draft policy are likely to provide a basis for unlocking productivity generating new-age jobs, protecting critical personal information, enhancing consumer awareness and facilitating on-boarding of domestic producers, manufacturers, traders and retailers.

Further, the draft policy also recommends a review for the current practice for non-imposition of Customs duties on electronic transmission basis a 2017 UNCTAD report that suggest that if the temporary moratorium on Customs duties on electronic transmission is made permanent, developing countries such as India would suffer the maximum loss in government revenue.

What the RCEP provisions say about the imposition of Customs duties on e-transmission would certainly have an

important bearing on the gains made by India out of signing the agreement.

H. Trade-off of goods for services exports to RCEP countries

There is a general perception building-up in the trade community that the Government is willing to waive customs duties on nearly 90 percent tariff lines in the hope that India's service sector will be able to make substantial gains and tilt the trade deficit with other RCPs in its favour.

A detailed cost-benefit analysis alone may not necessarily provide the desired answer to the question as to why tariff on goods needs to be waived for tapping the latent export potential of Indian services sector.

I. Stringent IPR protection regime may have adverse impact on MSMEs and consumers.

India is a signatory to the TRIPS Agreement on Intellectual Property Rights and pursuant to the same, India has brought about amendments to its various IP legislations to ensure a tight regime for IP rights protection and enforcement in the country. Having said that, India has also vociferously opposed any blanket IPR protection for large pharmaceutical, chemical, technology or engineering Multi National Enterprises (MNE's) that could jeopardise the interests of MSMEs in general and the consumers/public in India in particular.

A large section of generic drug manufacturers that produce and distribute drugs at affordable prices to the public, largely through the wide and deep network of Government hospitals and medical centres are concerned about how the relevant provisions under the RCEP in relation to IPR protection and enforcement would be formulated and whether these would adversely impact generic drug production in the country?

If India is out of the RCEP, it would make its exports price uncompetitive with other RCEP members' exports in each RCEP market, and the ensuing export-losses contributing to foreign exchange shortages and possible consequence of depreciation of the rupee can only be left to imagination. Some of the sectors that have been identified, could potentially impact India's export growth under RCEP to the extent of approximately USD 200 billion.

India is also likely to phase-out tariffs on certain sensitive items with China after 20 years. This will allow India to allay concerns of domestic industries such as steel and textiles, which fear that China will start dumping goods when RCEP takes effect.

There are more compelling trade and economic reasons for RCEP to become India-led in future, than otherwise. India would get greater market access in other countries not only in terms of goods, but in services and investments also.

One has to remember that a country with higher tariffs, such as India, after signing FTA with lower tariffs countries, such as the ASEAN countries, is likely to experience a bigger trade deficit with the member countries but lower deficit with the rest of the world as imports will be diverted towards the lower tariff member countries. What matters is the multilateral deficit. So, the above data on rising trade deficit with prospective RCEP members does not necessarily establish a case against RCEP. Similar protectionist arguments were advanced against import liberalisation in early nineties but subsequent events proved the sceptics wrong. Indian producers have shown that they can compete with established foreign producers by improving their efficiency as well as working-out strategic collaborations with foreign producers. Many of them have started exporting and setting-up production facilities abroad in a big way, e.g. steel producers and auto, IT & Pharma companies. The same may well happen after India becomes a member of RCEP, with adequate and suitable safeguards.



CUSTOMS

Extension of date of implementation of increased rate of customs duty for goods originating or exported from USA

Implementation of increased customs duty on import of specified goods originating or exported from USA has been deferred from May 02, 2019 to May 16, 2019.

(Refer Notification No. 14/2019- Customs dated May 01, 2019)

New Regulations for filing of shipping bills on ICEGATE

Government has notified Shipping Bill (Electronic Integrated Declaration and Paperless Processing) Regulations, 2019 and will apply to export of goods from all Customs stations where the Indian Customs Electronic Data Interchange (EDI) System is in operation. The new Regulations provides detailed procedures to be followed for filing of Shipping Bills and self-assessment by an authorized person on ICEGATE. The Regulations has also stipulated a time period of five years for retention of the copy of assessed Shipping Bill and documents used or relied during submission of the Shipping Bill in

digital form or otherwise. Any authorized person who contravenes the provisions of the Regulations or fails to comply with any provisions shall be liable to a penalty up to INR 50,000/- *(Refer Notification No.33/2019-Customs (N.T) dated April 25, 2019)*

Rescission of Anti-Dumping Duty (ADD) levied on import of 'Paracetamol' originating in or exported from China PR

Government has revoked the Notification No:39/2018 dated August 20, 2018, which had imposed ADD on import of "Paracetamol" originating in or exported from China PR based on final findings of the sunset review conducted by Directorate General of Trade Remedies (DGTR).

(Refer Notification No. 19/2019 dated April 16, 2019)

Extension of exemption granted to the Light Combat Aircraft Programme (LCAP) of the Ministry of Defence

Government has extended the

exemption granted under Notification No. 39/1996- Customs dated July 23, 1996, for import of machinery, equipment, instruments, software models and raw materials for LCAP of the Ministry of Defence, up to July 01, 2019.

(Refer Notification No. 12/2019- Customs dated April 11, 2019)

Continuation of Anti-Dumping Duty (ADD) imposed on import of ductile iron pipes from China

In pursuance of the order of Hon'ble High Court of Gujarat dated April 5, 2019, Government has continued the imposition of ADD on the import of ductile iron pipes originating or exported from China PR into India up to May 09, 2019.

(Refer Notification No.18/2019 (ADD) dated April 10,2019)

Imposition of Anti-Dumping Duty (ADD) on cast Aluminium alloy road wheels used in motor vehicles originating in or exported from China, Korea and Thailand

ADD has been imposed on cast Aluminum alloy road wheels used in motor vehicles originating in or exported from China, Korea and Thailand. ADD of USD 0.08 per kg and USD 2.15 per kg is imposed on goods originating from China, ADD of USD 1.18 per kg is imposed on goods originating from Korea and ADD of USD 1.06 per kg is imposed on goods originating from Thailand. The ADD imposed shall be effective for a period of five years, unless revoked, superseded or amended earlier, from the date of publication of the notification in the Official Gazette and shall be payable in Indian Currency.

(Refer Notification No. 17/2019 (ADD) dated April 9, 2019)

Rescission of Anti-Dumping Duty (ADD) imposed on Cast Aluminium Alloy Wheels or Alloy Road Wheels used in Motor Vehicles

Given that a fresh ADD has been imposed vide Notification No. 17/2019 (ADD) (supra), Government has revoked Notification No- 21/2015 (ADD) dated May 22, 2015 which had earlier imposed ADD on import of Cast Aluminium Alloy Wheels or Alloy Road Wheels used in Motor Vehicles from China PR, Korea RP and Thailand.

(Refer Notification no. 16/2019(ADD) dated April 9, 2019)

Foreign Trade Policy

Revision in the number of entries of Shipping Bills permitted to be filled in a single ANF 3D Form for claiming MEIS benefit

The DGFT has amended Form ANF 3D which will now enable the applicants to file 250 entries of Shipping Bills/Airway Bills in a single ANF 3D while filing an application for claiming benefit under Merchandise Export from India Scheme (MEIS). Earlier the users could file only 50 entries.

(Refer Public Notice No. 07/2015-2020 dated May 07, 2019)

Revised guidelines for filing an application to claim SEIS benefit

The DGFT has amended ANF 3B to revise the guidelines for applicants filing an application to claim the benefit under Service Exports from India Scheme (SEIS). The revised guidelines make it

mandatory for the applicant to submit a CA/CWA/CS certificate certifying payments received in Indian rupees for services rendered under Appendix 3E and have been scrutinized and approved under RBI guidelines as deemed to be received and earned in foreign exchange.

A new proviso has been added in Annexure B of ANF 3B for medical and dental services, hospital services and hotels and restaurant (including catering) services, where the invoice-wise matching with FIRC/proof of payment will no longer be required and only a consolidated statement of both invoices and FIRCs/proofs of payment can be submitted.

(Refer Public Notice No. 06/2015-2020 dated May 07, 2019)

Upgradation of online module for filing & tracking quality complaints/trade disputes related to International trade for both domestic and foreign entities

The Director General of Foreign Trade (DGFT) had introduced an online module for filing and tracking of complaints or trade disputes, which came into effect from February 11, 2019. However, this module only covered the filing and tracking of the complaints filed by foreign entities against domestic entities. The module has now been upgraded wherein domestic entities can also file and track complaints against foreign entities. The said trade notice further prescribes revised procedures to be followed by users and authorities.

(Refer Trade Notice No.08/2015-2020 dated April 26, 2019)

Amendment in Appendix 3 (SCOMET Items) to Schedule 2 of ITC-HS Classification of Export and Import Items- 2018

The Government has amended Appendix 3 (SCOMET Items) to Schedule 2 of ITC-HS Classification of Export and Import Items-2018 as notified in notification no.17/2015-2020 dated July 03, 2018. The new amendments pertaining to commodity identification note of the SCOMET, Glossary to the SCOMET list and addition of entry in the SCOMET category 1B shall come into force after 90 days of the issue of this notification.

(Refer Notification No. 03/2015-2020 dated April 24, 2019)

Prohibition on import of milk and milk products from China

The Government has amended ITC (HS) 2017, Schedule 1 (Import Policy), wherein the prohibition on import of milk and milk products including chocolates, confectionary, etc. with milk or milk solids as an ingredient, has been extended till such time the capacity of all the laboratories at the ports of entry have been suitably upgraded for testing of the ingredient "Melamine".

(Refer Notification No. 01/2015-2020 dated April 23, 2019)

Procedure for verification of documents for online IEC application

The DGFT has laid-down procedures for verification of documents for online Import Export Code (IEC) application. It is clarified that only two documents are required for filing of the application i.e.

- Address proof; and
- Cancelled cheque or Bank certificate.

IEC holder/applicant must rectify the deficiency, if any, communicated by the Regional Authority, within 15 days of the communication after payment of usual modification fee. Otherwise their application would be suspended.

(Refer Trade Notice No. 05/2019-2020 dated April 15, 2019)

Extension of Validity of Pre-shipment Inspection Agencies (PSIAs)

The DGFT has relaxed the provision of the Foreign Trade Policy (FTP) 2015-2020 of the Hand Book of Procedures (HBP) 2015-2020 which had notified the validity of recognition of Pre-shipment Agencies (PSIAs) included in Appendix 2G of Appendices and Aayat Niryat Forms (ANF) of FTP 2015-2020. Validity of PSIAs who have completed their tenure of three years as on date or whose validity would expire before June 30, 2019 is extended up to June 30, 2019.

(Refer Public Notice No.03/2015-2020 dated April 11, 2019)

Revised proforma of End User Certificates (EUC) for grant of permission for export of items under SCOMET control list

The DGFT vide the said notification has amended the proforma of EUC [Appendix 2S(i), 2S(ii), 2S(iii)] under para 2.74 of the HBP of the FTP 2015-2020. The new proforma shall substitute the older one in the HBP. The EUC must now be filled by all entities involved in the supply chain on their respective letterheads, duly signed and stamped by authorized signatory of the company. Any additional sheet to be attached with the EUC must also be on letter-head of the company and signed by the same person who has signed the EUC. The revised proforma of EUC will capture technical details, specific end-use of the product & complete contact details of the end-user, which will expedite the process for granting of Export Authorization for SCOMET items.

(Refer Public Notice No. 04/2015-2020 dated April 12, 2019)

Increase in the validity period of Export Authorization for restricted goods

The DGFT has amended para 2.16 (a) (i) of the HBP relating to Export Authorization for restricted (Non-SCOMET) goods. The validity period of Export Authorization has been increased from 12 months to 24 months.

(Refer- Public Notice No. 01/2015-2020 dated April 4, 2019)

Scale of fees for reimbursement of benefits under Transport and Marketing assistance is notified

The DGFT has notified the Scale of Application Fee for various services in Appendix- 2 K of the FTP 2015-20 as RS.1,000/-.

(Refer- Public Notice No.02/2015-20 dated April 5, 2019)

Management & Business Consultant Service is Authorized Service, by default, for SEZ operations, clarifies Commerce Ministry

"Management and Business Consultant Services" shall be included in the list of default authorized services, states the latest clarification from the Ministry of Commerce & Industry. However, it has also been clarified that such services would be limited to the extent of such value of services availed of / consumed by the SEZ entity only. It is further clarified that the SEZ unit shall produce evidence to the effect, to the satisfaction of the authorities concerned, that the said service was consumed in relation to their authorized operations only.

(Refer Instruction No. 94 dated May 8, 2019 issued by SEZ Division, Dept. of Commerce)





Why DGFT decided to digitise Authorisations and Scrips?



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In a recent Trade Notice¹, the Directorate General of Foreign Trade (DGFT) has clarified that in order to improve ease of doing business, it has been decided to discontinue the issue of physical copies of MEIS/SEIS scrips by DGFT Regional Authorities (RAs) with effect from 10 April 2019 for EDI ports initially, and later to non-EDI/SEZ ports. Going by the figures released by the Ministry of Commerce & Industry², over 20,000 scrips are issued by the DGFT every month.

The said trade notice further states that ‘Applicants will continue to apply for MEIS/SEIS as per current procedure on DGFT website (www.dgft.gov.in). However, RAs will not issue any hard copy of a scrip to the applicant. Instead, after approval, the applicant will get the following message on their mobile or email address (as indicated in the MEIS/SEIS application module) that, “Scrip no.....dated.... has been issued against RA FILE no no scrip on security paper is required to be issued. You can print/view scrip details at MEIS

ECOM module on DGFT website. Information relating to transfer of scrip has to be recorded on DGFT website (dgft.gov.in) before the scrip can be used.”

After logging in, all MEIS/SEIS scrips issued to the firm will be available in PDF form, so that the applicant can print/save the scrip for his own reference.

It is also stated therein that ‘the information about the new owner (transferee) has to be recorded on the DGFT website by the current owner (transferor), before the transferee can utilise the scrip. Thus, it is very important for both the transferor and transferee to ensure that information relating to transfer is recorded by the transferor.

It should be noted that the recording of information is for the purpose of DGFT and Customs. Unless recorded on DGFT website, the transferee will not be able to utilise the scrip for duty payment. Therefore, the transferee has to ensure that the scrip is recorded in his favour by the transferor’.

¹Trade Notice No. 03/2015-20 dated April 03, 2019

²F.No. 1/14/2019-EPL -1

Saga of frauds related to Scrips & Authorisations became an ordeal for genuine buyers

The recent initiative undertaken by the DGFT of digitising all Scrips & Authorisations is not merely to facilitate trade and ease of doing business; in fact, it is to curb the rampant circulation of fake/bogus duty credit scrips in the trade circle and to stop the large-scale evasion of Customs duty.

The modus operandi of fraudsters would be to sell fake scrips (which were not issued by the DGFT) to gullible importers at an attractive discount through a few dubious Customs House Agent (CHAs) or brokers. Customs formation all over India is working on ICEGATE, the EDI system. These duty credit scrips/licence/authorisations, on the strength of which various consignments of imports are cleared, were initially registered at different ports on the EDI system and were already utilised, in full, thus leaving no balance. After full utilisation, these duty scrips are re-registered in the EDI system at another port under the same scheme with same IEC code particulars for the same value or even for an inflated value by a fraudulent method. The Customs Broker then debits the Customs duties by utilising the forged duty scrips/licences by re-registering the same at the port of import.

The importer, mostly with the help of the dubious CHAs or other agents, use the duty credit scrips for debiting the customs duty without producing the hard copy of these scrips to the Customs Officer for debiting, before the clearance of consignment, for which these scrips have been used.

Thus, it is the dubious CHAs who sell the fraudulent scrips/licences, which were not issued by the DGFT in a real sense, to the importer and use them for clearance of their imported goods. The CHAs also do not produce the hard copies in contravention of the various notifications under which these licences/scrips are issued. Most of the times, it is found that the dubious CHAs use the fake scrips for payment of customs duty on behalf of the ignorant

importer, who is their client, without his express consent and knowledge.

How the Customs EDI system works for Scrips & Authorizations

The debiting of licence in EDI system is a very complex process and it cannot be performed without the intervention of the Customs officer at various levels as the officer is the holder of SSOID (Signal Sign On Identification).

As per procedure of registration of scrip/licence in EDI system, genuineness of scrip can be ascertained while it is registered in EDI system and once it has been registered in the EDI system and duty has been debited under the said scrip, there would arise no reason to doubt the genuineness of the said scrip. Details of registered scrips are available in the EDI system and debit of duty has to be made on the EDI system only, which appears to be verifiable on the system directly. Thus, genuineness of a scrip can now be ascertained at the time of registration of the scrip in the EDI system.

Additionally, it is important to have information about the current owner of the scrip online so that the current owner only can be allowed, to use the scrip for duty payment. Therefore, a facility has been created on the DGFT website to record the information about transfer of scrip. Before it is decided to discontinue with the physical issue of a scrip, each transfer of every scrip should be mandatorily recorded on this DGFT facility, and Customs Authorities will check the ownership information of the scrip, before the owner is allowed to use the scrip for payment of duty.

Transfer of MEIS/SEIS scrips, which have been issued on or after 14 January 2019 for ports with EDI facility are now mandatorily recorded on the DGFT website (www.dgft.gov.in). Detailed procedure for recording of transfer of MEIS/SEIS scrips is prescribed in an earlier DGFT Trade Notice³.

A MEIS/SEIS scrip owner will continue to 'transfer' the scrip to another IEC firm/company in the same manner as being done by them earlier i.e. as per the negotiated terms & conditions

between the buyer and the seller. However, the information about the new owner (transferee) has to be recorded on the DGFT website by the current owner (transferor), before the new owner (transferee) to ensure that information regarding transfer is recorded by the transferor. After the information is recorded on the DGFT website, the old owner cannot record further transfers, and only the new owner can record any further transfer, if any.⁴

One could argue that the DGFT has digitised the issuance and transfer of duty credit scrips as a part of the 'Digital India' initiative. Digital India is a campaign launched by the Government of India to ensure that Government services are made available to citizens electronically by improving online infrastructure and by increasing internet connectivity or by making the country digitally empowered in the field of technology. Digital India was launched on 1 July 2015. The initiative consists of three core components, namely -

- The creation of digital infrastructure
- Delivery of services digitally
- Digital literacy

The Indian Government, in 2016, also announced 11 technology initiatives that include the use of data analytics to curb tax evasion. Given the large number of fraudulent scrips circulating in the market and the resultant duty evasion that has plagued revenue collections consistently over the past decade, the digitalisation of duty credit scrips seems to have come at the right time for bona fide traders, who can be shielded against fraudsters who evade duty payment at their cost.

DGFT has established a secure EDI message exchange system for the issue and transfer of duty credit scrips at all the EDI ports. It remains to be seen as to how successful this digital initiative over a reasonable period in time in effectively curbing the menace of fraudulent duty credit scrips and duty evasion.

³Trade Notice No. 42/2015-20 dated January 11, 2019

⁴DGFT Trade Notice No. 42/2015-20 (supra)



Case Title

Commissioner of Customs, Kandla Vs PMC Project India Private Limited (2019-VIL-254-CESTAT-AHM-CU)

Decided on: 25 April 2019

Case in question?

Whether the importer is eligible for refund of 4% Special Additional Duty (SAD) of Customs on goods imported under the Project Import Scheme after payment of Value Added Tax (VAT)/Central Sales Tax (CST) on such imported goods which have been imported for execution of Engineering, Procurement and Construction (EPC) contract and which have lost their identity during execution of the contract.

Brief Facts

- Respondent imported impugned goods by virtue of being appointed as the contractor for setting-up power sub-station including all equipment.
- The contract made by the Respondent (importer) with the buyer was registered for claiming project import benefits.
- Importer filed refund claim for SAD paid on the imported goods after

payment of VAT/CST on the sale of the same to the buyer.

- Tax authorities, the Appellant in this case, has challenged the refund sanctioned by the lower authority on the ground that all goods imported have lost their identity during execution of the project by the importer and hence the goods imported are different from what has been transferred to the buyer in execution of the EPC contract.

Arguments for the Appellant tax authorities

The Project Import Regulations, 1986 state that under Regulation 3(a), the goods which are single machine or a composite machine within the meaning assigned to it in Notes 3 & 4 to Section XVI of the First Schedule of the Customs Tariff Act, 1975 were excluded for the benefits of Project Import under heading No. 98.01 of the First Schedule of the Customs Act, 1975. Had the Respondent imported the goods as a single equipment for supply in terms of the EPC Contract, the same would not have been entitled for the benefits of project

import looking at the aforesaid exclusion clause. The Respondent has therefore imported the goods in capacity of an EPC contractor and shown the purported sale only on paper. Once the goods have been installed and the project commissioned, the identity of the imported goods changes and merges into a single unit of the power project. The price indicated in the Purchase Order is inclusive of all taxes and duties including SAD. The Respondent has recovered the VAT charged on them for the sale of the finished goods to the buyer and thus the refund is hit by the clause of unjust enrichment and therefore the Respondent cannot avail refund of 4% SAD paid by him.

Arguments for the Respondent taxpayer

The Respondent has imported goods in their own capacity as an EPC contractor and they were to supply goods only after making changes for erection and installation of the project till the completion of the project as per the terms of the contract. Copies of balance sheets and a CA certificate to show that SAD component has not been passed on

to the buyer and is recoverable, have been submitted. The Appellant has not cited a single instance of sale invoices not tallying with the Bill of Entries. The right to use the said goods was already transferred to the buyer by way of subsequent sale of such goods under commercial invoice for which the Respondent received payment from the buyer. Apart from EPC contractor, Respondent assumed the status of a supplier of all equipment required for the project. The project has been successfully completed and commissioned. Now the entire project is handed over to the buyer. The Respondent has submitted his CST payments challans, CST returns and sales invoices in support of his claim. The Respondent has not recovered SAD component from his buyer but only passed on the element of VAT.

Findings of the Court

The exemption under Notification No.102/2007-Cus from 4% SAD is available by way of refund mechanism wherein the importer has to pay 4% SAD at the time of importation of the goods and after submitting the evidence of payment of VAT/ Sales tax apply for a refund. Provisions of one statute i.e. Project Import Regulations, 1986 cannot be imported into provisions of Notification no:102/2007-Cus to interpret and deny the refund of SAD. Once the importer has paid CST/ VAT on sale of imported goods, there is no question of retaining the 4% SAD as the payment of such CST/ VAT is the only criteria for granting refund. It is on record that the imported goods on which SAD was paid, have been sold by the Respondent to their buyer on further payment of VAT/CST. The clause of unjust enrichment would apply only if the Respondent had passed the incidence of SAD, not the element of VAT levied to the buyer and recovered the same from the buyer. Each invoice raised by the Respondent and their buyer carries a declaration regarding non-eligibility of Cenvat Credit and thus compliance to the conditions specified under para 2 (b) of the subject notification was made. There was no prospect of subsuming the SAD component into the value charged by the Respondent in their sales invoices as such sales value (including CST amount) is much lower as compared to the total purchase value of goods (excluding SAD

component) and the refund claim is supported with collateral evidences in the form of a certificate issued by their statutory auditors.

Decision: Appeal filed by the tax authorities rejected and the Order-In-Appeal in favour of Respondent is upheld.

Case Title

Jindal Poly Films Limited Vs The Director General of Foreign Trade (DGFT), PRC Cell & Ors; 2019-VIL-178-DEL-CU

Decided on: 22 April 2019

Case in question?

Whether the exporter's request for extension of Export Obligation (EO) period for one Advance Authorisation (AA), made long after the extended time limit had lapsed combined with another request for clubbing that AA with two other AAs was valid?

Brief Facts

- Petitioner held three different AAs, EO for one of which remained unfulfilled till the expiry of that AA.
- Petitioner requested the PRC (Respondent) to permit clubbing of the expired AA with other two AAs so that EO of the expired AA could be subsumed into EO of the other two AAs by virtue of export undertaken after expiry of the AA
- Petitioner's request for extension of time period of expired AA as well as clubbing of expired AA with other two AAs was rejected by the PRC.
- Petitioner was subsequently declared as defaulter and placed under "Denied Entity List"

Arguments for the Petitioner

The Petitioner has relied upon paragraph 4.20 of the Hand Book of Procedure (Volume 1) (HOP) 2009-2014. The EO period must be considered in reference to the Authorizations sought to be clubbed. Prior to amendment of the HOP via Public Notice No. 79 (RE-2010)/2009-14 dated October 13, 2011, there was no restriction on clubbing of AAs and hence AAs issued beyond 36 months could also be clubbed with the prior issued AAs. The DGFT had, in the past, permitted clubbing of AAs wherein period between their issue was more than 36 months.

Arguments for the Respondent

The Petitioner has not made any application for extension of the EO for

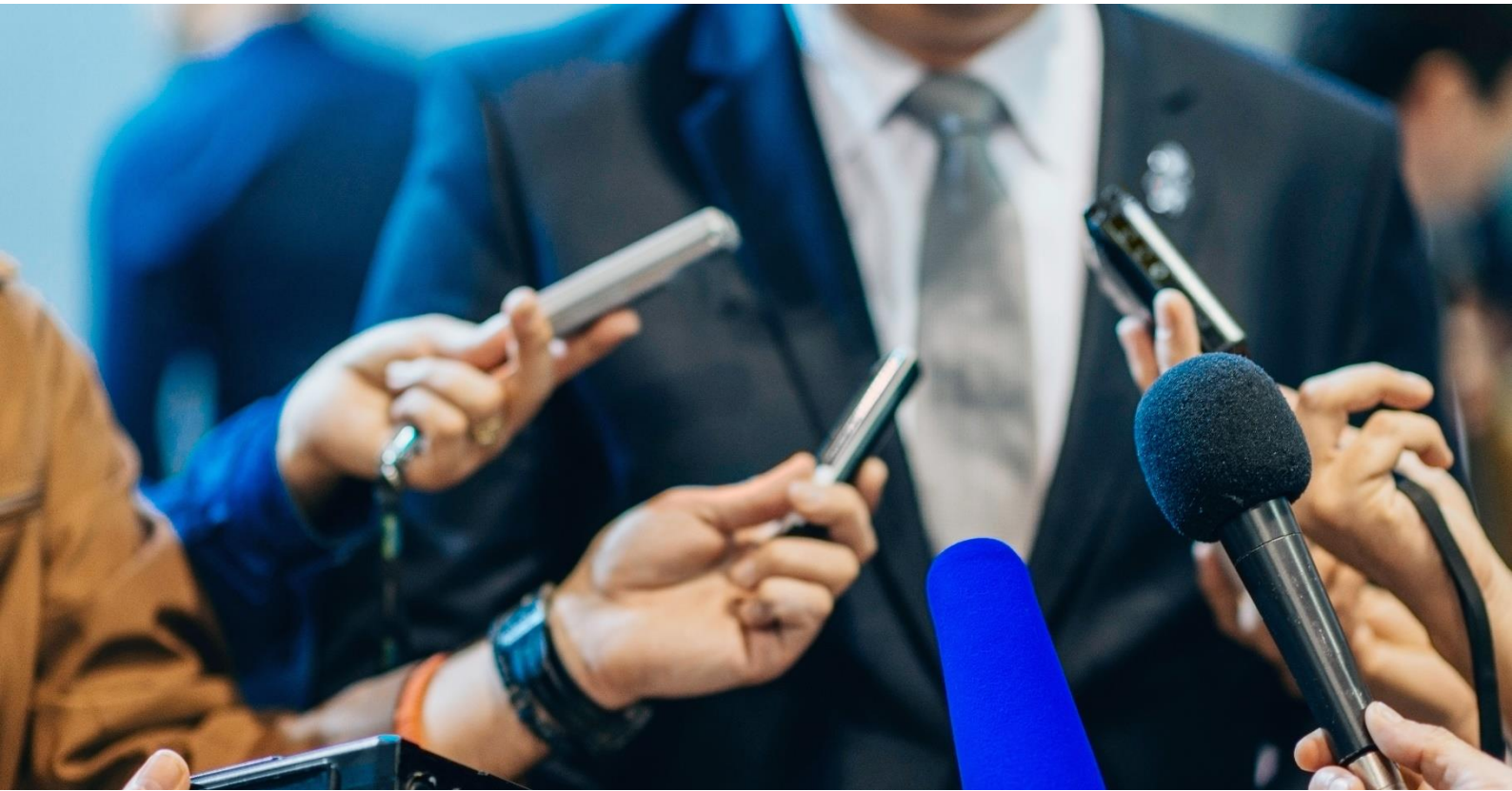
the impugned AA before expiry of the time period for the same. Further, the maximum period for which extension could have been granted has also expired. The time gap between the AAs, which are to be clubbed, is also substantial. Based on the above reasons the request for clubbing of the AAs cannot be accepted. The EO must be completed within 36 months as required under the law. The Petitioner neither submitted the documents evidencing fulfilment of the EO within 2 months of expiry of the license nor applied for extension of EO period before the lapse of the extension permitted under the HOP. Para 4.20.4 of the HOP clearly states that wherever the exports are effected beyond EO extension period of earlier AA, no clubbing shall be permitted. Hence Petitioner's request for clubbing has been rightly rejected.

Findings of the Court

The Petitioner has made application for extension of the EO well after the expiry of the time period permitted under the HOP. The exports made under the later authorization could be clubbed with the EO of the earlier AA, provided the exports were effected within the EO period of the earlier AA as extended under para 4.22 of the HOP. Thus, in case of the Petitioner, exports effected beyond the EO period of an earlier AA could not be clubbed. The Petitioner has not responded to the SCN issued to him by DGFT, dated July 04, 2011, but only made an independent request for clubbing of AA and approval for extension of the EO by letter dated August 23, 2011. The Petitioner has not discharged his EO as required. The impugned order passed by DGFT on October 14, 2014 declaring the Petitioner as defaulter and placing him on "Denied Entity List" on the ground that the Petitioner did not put any documents on record to prove that he has fulfilled the EO against AA No. 0510136637 dated August 27, 2004, is valid and requires no interference by this Hon'ble Court.

Decision

The petition lacks merit and is dismissed.



? We are a manufacturer cum exporter of wax candles, diffusers and incense sticks and our unit is located in Kandla Special Economic Zone (KASEZ). The finished goods manufactured in KASEZ are exported to Asian countries and also sold in the domestic market i.e. Domestic Tariff Area (DTA). We have another manufacturing unit located in the DTA in the state of Gujarat that caters to domestic supplies. In 2015, we had transferred some of the finished goods from KASEZ to our DTA unit under multiple transactions after filing Ex-bond Bill of Entry for each clearance from KASEZ. During clearance of the goods from KASEZ, along with other applicable duties, we have also paid Special Additional Duty (SAD) at the rate of 4%. Subsequently we sold the goods from our unit in DTA to various buyers in the domestic market. Payment of applicable sales tax/VAT was made for all the local sale transactions. We had applied for refund of SAD in terms of Notification no:102/2007-Cus after fulfilling relevant conditions. However, our application was rejected by the Adjudicating authority on the grounds that there is no such statutory provision in the SEZ Act 2005 and SEZ Rules 2006 for refund of

SAD in case of transfer of goods from SEZ unit to a DTA unit. In addition, Customs have further pointed-out that we have also not fulfilled the condition mentioned in point (vii) of Circular no:16/2008-Cus related to unjust enrichment and hence refund of SAD cannot be granted to us. Kindly guide us in this matter as we feel that the rejection of our SAD refund claim is arbitrary and without legal basis.

A. From the above stated facts, it is evident that during clearance of goods from KASEZ, you have paid 4% SAD and goods were subsequently sold in the domestic market on payment of applicable sales tax/VAT. Transfer of goods from your SEZ unit to your DTA unit is to be treated as import by the DTA unit under the SEZ Act 2005 and the legal fiction provided therein. {This issue is also covered by a Tribunal judgement in the case of Adinath Trade Links vs CC, Kandla; 2013 (293) ELT 746 (Tri. AMD).}

It is undisputed that Special Additional Customs Duty (SAD) is a duty of customs which is leviable on the goods which are

imported. Your DTA unit paid the SAD at the time of clearance of goods from KASEZ. Hence, the goods transferred by you from KASEZ to a DTA unit is eligible for exemption under Notification no:102/2007-Cus and consequently the DTA unit which is the importer, is entitled for refund of SAD paid, as Sales tax/VAT was charged to independent buyers on subsequent domestic sale. Let us look at second point raised by Customs for rejection of the refund claim, relating to non-fulfilment of the conditions mentioned in point (vii) of Circular 16/2008-Cus. In our view, since the goods were transferred from SEZ unit of your company and received by DTA unit of your company, consignment agent or third party does not exist in this case. However, you need to establish in an objective manner that your DTA unit neither availed the Cenvat credit of such SAD paid nor was it recovered from the buyers during subsequent domestic sale. This is to be established by presenting a certificate from a Chartered Accountant. As per the information given by you, the Adjudicating Authority appears to have

overlooked certain important aspects of the transaction and rejected the refund claim. Hence, it can be challenged. You can consider filing of an appeal against the order passed by the Adjudicating Authority rejecting the refund claim.

? We are a trading company importing inorganic and organic compounds which we supply to our customers in Chemical and Pharmaceutical Industries. We have been importing a product named "ALYCYLICOL" from our overseas supplier based in China from the past five years. Since it is an organic compound, we file the Bill of Entry for customs clearance applying the Customs Tariff Heading (CTH) 2942 0090 under the broad heading of "other organic compounds". Similarly, few other trading companies known to us also import identical products from other Asian countries and apply the same classification i.e. CTH 2942 0090 during import clearance. All these years Customs have not raised any objections with reference to the above-mentioned classification and the applicable exemption benefit under Notification no:21/2002-Cus dated 1 March 2002, which reduces the Basic Customs Duty (BCD) from 10% to 7.5%. In the first week of May 2019 we again imported few shipments of the product and have filed the Bills of entry after applying the CTH 2942 0090 as per current practice. We now understand from our Customs broker that during the assessment, Customs have raised a query and insisted for change in classification for the aforesaid product to CTH 3003 9090 under the broad heading of "Medicaments". Since, the CTH 3003 9090 doesn't have any exemption under any notification, the applicable BCD on the product will be 10%. During our meeting with Customs Appraising officer, we have provided all relevant technical documents to justify the classification under which we have cleared the aforesaid product for all these years. However, the Customs Appraising officer and the concerned Assistant Commissioner have rejected our explanation and have asked us to clear the product under CTH 3003 9090. Neither has Customs issued any written communication, nor have said Customs officials provided any reason for insisting on change in classification. We work on

small margins and if the duty component increases, it will have an adverse impact on our business. Kindly throw some light on the matter and guide us on further course of action.

Based on the facts provided above, it is evident that Customs department has been consistently assessing the aforesaid product under CTH 2942 0090 over the years, not only in your case, but also in case of other importers without raising any objection or query with reference to the classification. Therefore, Customs cannot suddenly insist on change in the classification of the product. When it was an established practice, not only in your case, but also with regard to other importers, to classify the aforesaid product only under CTH 2942 0090, there cannot be any peremptory change in classification as insisted by Customs without providing adequate reasons in writing in the form of issuing a notice to your company to show cause why such change in classification should not be effected.

Even in cases where Customs have sufficient reasons or grounds to change the established classification, natural justice demands that your company should be issued a notice intimating the intention for change in classification with basis thereof.

There are various Court rulings pertaining to the issue of classification of imported commodities, which have held that the classification is not reversible unless there is a change in circumstances and such change cannot be implemented unless there is substantial evidence for effecting such change, but not before providing a reasonable opportunity to the importer to contest such a change (Birla Corporation Ltd. Vs. CCE; 2005 (186) ELT 266 (SC)). You may file a letter addressed to the Assistant Commissioner of the concerned appraising section expressing your objections and basis thereof.

In the given circumstances, you also have an option to file an appeal against the arbitrary change in classification with Commissioner (Appeals). You will be given an adequate opportunity to

present the facts in support of the classification used by your company for the aforesaid product for all these years. Due reliance will also be placed on the established practice of deriving a classification and the relevant HSN notes. If you do not receive a favourable order from Commissioner (Appeals), you can further appeal against the order by approaching the Tribunal (CESTAT).

? We are a manufacturer cum exporter of resins and industrial adhesives. We export resins and industrial adhesives to our overseas buyers based in Asia and Africa. A very small percentage of finished goods are also supplied to the domestic market. We claim duty exemption for import of raw materials under the Advance Authorization (AA) scheme. Since the past two years, after fulfilling the Export Obligation (EO) we are also using some of the duty-free material, which was excess, for manufacturing finished goods to be sold in the domestic market. We import the goods under Advance Authorization as permitted under Standard Input Output Norms (SION). During manufacture of export goods some sub-standard quality goods and waste which is produced is subsequently sold in the domestic market.

Recently, we received a show cause notice from Customs highlighting the fact that after fulfilling the EO under various Advance Authorizations, we were left with certain quantity of duty-free imported material/ inputs which were utilized in the manufacture of finished goods which in turn is sold in the domestic market. In the show cause notice, it was alleged that the materials imported duty free which were in excess of the actual requirement for fulfilment of EO were not exempted from payment of duty and were liable for custom duty. The said material was not required to be used for manufacture of goods for domestic market without paying duty thereon.

In our reply to the show cause notice, we have submitted that the quantum of inputs used in manufacture of export goods is different from goods sold in the domestic market. We have further stated that, after fulfilment of the EO, goods produced from such imported material were sold in the domestic market, and we

have made applicable payment of Goods and Services Tax (GST). It was also submitted that that in our GST returns we have not differentiated between export products and other grades and all are clubbed and shown as manufactured products. However, adjudicating authority issued an order demanding duty along with penalty and also imposed a redemption fine as the imported goods were no longer available for confiscation. Kindly provide your opinion in this regard and whether we have enough grounds to contest the order issued by Adjudicating Authority demanding duty, penalty and redemption fine.

From the facts shared by you above, we understand that Customs have demanded duty on the grounds that since the actual use of imported material is less than what is shown in SION and the excess imported material has been used in manufacture of goods sold in the domestic market, you are liable to pay customs duty on such excess material. You had procured the goods under Advance Authorizations as per SION and the imported material was used in manufacture of export goods. You have also fulfilled the EO against the Advance Authorizations. SION is publicised to avoid disputes pertaining to consumption of inputs. Once the norms are fixed, it is imperative for you to follow such norms. If you are unable to produce the goods as per the said norms and fail to fulfil the export obligation, you are liable to pay the customs duty on imports covered by the Advance Authorizations. In your case the imported goods were used in manufacture of export goods and the EO was fulfilled. During the manufacture of export goods, the off - grade goods/substandard goods were also manufactured and the same were also considered as waste and sold in the domestic market. Your company has also shown the output for both categories as consolidated and therefore the yield shown in GST returns cannot be a benchmark to fix the input output ratio for export goods.

Once the SION is fixed and your company has manufactured the goods under the said norms and the EO stands fulfilled,

Customs authorities cannot demand duty on the ground that the actual consumption was less than SION. The SION has been fixed after taking into consideration all the relevant factors and hence cannot be overlooked. The primary objective of fixing the SION is to avoid physical check of actual consumption of inputs in the manufacture of final products. Hence there is no separate mechanism provided to check or audit the actual consumption of imported goods as covered under the SION. It is impossible to ensure actual consumption of imported materials will be exactly equal to the SION. Once the export quantity and quantity of imported goods is as per the SION, and the EO stands fulfilled, question of duty payment doesn't arise. It is a foregone conclusion that in case of export products, your company takes all necessary precautions to maintain the quality of the product as per the buyer's specification, which may be a better quality than the products sold in domestic market. Therefore, domestic market yield cannot be compared with the yield of export. Further, it is also to be noted that you have imported material as per the condition of actual user to be followed in case of Advance Authorisation. You have not transferred the imported material and once the EO is fulfilled, you have the option to dispose of the products manufactured by using duty free material. Moreover, your company has not suppressed any fact related to utilisation of the imported material and manufacture of finished goods as evident from the monthly GST returns. There are Tribunal and High Court judgements on similar issues which have held that once the importation of goods was permitted in terms of SION and the EO was fulfilled, the importer is entitled to use the remaining imported material in manufacture of goods to be sold in the domestic market. Therefore, you have very strong grounds to defend the case. You may file an appeal against the order issued by the Adjudicating Authority.

? We are a manufacturer of industrial chemicals, adhesives and compounds. We import specific grade of "Polyester

resins (a hot-melt glue)", under Advance Authorization (AA) scheme. In March 2017, we closed all AAs by fulfilling the Export Obligation (EO). During the same period, we had obtained a new AA from the Director General of Foreign Trade (DGFT). We had imported "Polyester resins" under the said AA, but due to the changes in the global markets, there was a decline in our export orders. Hence, we were unable to fulfil the EO within the stipulated period. Kindly advise, whether we can get an extension of the period to fulfil the EO and will it have any impact on the value of the EO. Secondly, what will be the further course of action to redeem the said AA, as we do not wish to carry any liability in the future?

DGFT issues AA subject to actual user condition. You can submit a request to the Regional Authority (RA) of DGFT for an extension of the period to fulfil EO. RA may consider your request for one extension of EO period up to six months from the date of expiry of EO period, subject to payment of a composition fee of 0.5% of the shortfall in EO. You will also have to submit a self-declaration to the RA stating that the unutilized imported/domestically procured inputs are in your possession.

Further, you also have an option to make an additional request for another extension of six months after the first extension. Such request for another extension may be considered by the RA, provided you have fulfilled minimum 50% EO in quantity as well as in value, on pro-rata basis. This will be subject to payment of composition fee @ 0.5% per month on unfulfilled Free on Board (FOB) value of the EO. Thereafter, no further extension is allowed by the RA. At the time of filing application for the second extension, you will also have to submit a certificate from an independent Chartered Accountant/Chartered Engineer certifying that the unutilised imported/domestically procured inputs are in your possession. Extension of EO fulfilment period has no impact on the value of EO.

Post fulfilment of the EO, for redemption of AA, along with the application you need to submit the relevant shipping bills, invoices and Bank Realization Certificate

(BRC) reflecting the details of AA to the RA.

? We are a manufacturer cum exporter of copper contact tape since two decades. We have a good market presence both in domestic and international markets. As part of our growth strategy, we plan to expand our export business to east European countries. In order to increase our production capacity, we intend to import machinery and equipment under the Export Promotion Capital Goods (EPCG) scheme. Recently, we have secured a bulk export order from Poland and Croatia. However, even after importing additional machinery under EPCG scheme, it will be difficult for us to fulfil the export order as per contractual obligations, without the support of other manufacturer(s). We do not want to lose the order and further lose our reputation in the European market. Therefore, we intend to sub-contract part of order to another manufacturer i.e. Company A. Company A who is also a manufacturer will further sub-contract the manufacturing activity to another manufacturer i.e. Company B, as Company A will also not be able to fully support us in executing the export order. The main machinery unit imported under the EPCG scheme will be installed at our premises and some of the capital equipment will be installed at the premises of the supporting manufacturers to boost their production capacity. Kindly advise how to make a

correct declaration of the supporting manufacturer while applying for EPCG license so that we do not face any issue in the fulfilment of the Export Obligation (EO). Can the supporting manufacturers directly export the goods on our behalf?

From the above facts, it is known that your company has secured a confirmed export order and without installation of additional machinery and support of other manufacturers you are unable to execute the export order and fulfil the EO. Under the provisions of the EPCG scheme, you have an option to take support of other manufacturer(s) known as “supporting manufacturer” to fulfil the EO. However, the name of the supporting manufacturer(s) needs to be declared while making an application to obtain an EPCG license. In your case, both Company A and Company B will be supporting manufacturers who can directly export the goods on your behalf. During exports, the supporting manufacturers must declare the name of your company and the EPCG license number while filing the shipping bill. If they fail to do so, exports made by them won't be accounted for EO purpose.

We are a manufacturer cum exporter of Nickel products and one of our large buyers is based in the United Kingdom. We have signed a contract for export of goods with the condition that the remittance against the goods will be made by the buyer based on prevailing rate of the London Metal Exchange on

the date when they receive the goods. We have received a remittance against one of the shipping bills which is higher than the Free on Board (FOB) value declared in the shipping bill. We want to apply for MEIS and claim incentive against the full amount of e-BRC, which is higher than the FOB value declared in the shipping bill. Kindly advise whether this is possible?

As per Para 3.04 of the FTP 2015-2020, the MEIS reward can be claimed on the realized FOB value of exports in free foreign exchange or on FOB value of exports as given in the shipping bills, whichever is less. In your case since the remittance received in the specific shipping bill is on higher side as compared to FOB value declared in the shipping bill, you are eligible for MEIS benefit based on the FOB value declared in the shipping bill. However, for future transactions you have an option to declare the export value as provisional and ask for provisional assessment of the shipping bill. Subsequently, when the payment towards export goods is remitted to your Authorized dealer, you must get the shipping bills finalized based on the actual amount realised. This will ensure that you will be able to claim the MEIS benefit based on actual amount realised.

Questions related to Customs and Foreign Trade Policy are answered by Sachin Shenvi
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MEET THE TAXPERT



Abhinav Srivastava
Partner/Indirect Tax
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Q. Hello Abhinav! Readers of 'Beyond Borders' would like to know more about your journey as a Customs & International Trade Professional.

My journey in the field of indirect taxation has been for over 12 years which included all areas of indirect taxes including customs. I have been part of the indirect tax practice of large accounting firms where I gained experience in handling complex situations under customs and international trade, including advisory to enable clients maximise their benefits under the various schemes under the FTP and the Customs Law.

Q. What are your views on India's progress on trade facilitation measures thus far in your professional journey?

There has been a conscious effort from the government to increase the measures taken for trade facilitation to transform the cross-border clearance eco-system as an efficient, transparent and technology driven system. The aim of the government has been to enhance the ease of doing business by

simplifying the procedures and make a paradigm shift from being regulators to facilitators of trade.

Pursuant to the ratification of the WTO agreement on Trade Facilitation by the Indian government, a National Trade Facilitation Action Plan has been formulated and the government has been actively engaged in the implementation of the same with primary focus to reduce the time and cost of doing business by making it a paperless regulatory environment. This action plan adopted by the government and measures taken for ensuring there is a single window eco system is India's step in the right direction to ensure ease of doing business.

Q. Abhinav, what according to you could be the new technology initiatives that could impact cross border trade in India significantly?

It cannot be denied that digital integration of all the platforms and creating a single point for all cross-border transactions is the foremost focus in ensuring ease of doing business.

Thus, ensuring a robust single window interface which ensures licenses and permissions under various laws including GST should impact the cross-border trade in India positively.

One of the major impediments for international trade faced by developing countries is high trade costs which is a result of lack of digital trade facilitation. The end to end digital facilitation and integration of all the platforms will reduce the cost of compliance with various laws for trade and put India in the forefront in International Trade.

Q. What are the various services in Customs and International Trade that you are currently engaged in providing to your clients?

We have been assisting clients regularly on benefits under FTP, facilitating various refund mechanisms under customs and on minimising the tax exposure by structuring transactions in light of the new GST regime.

We are also advising clients on availability of exemption under the MEIS scheme for levies such as social welfare surcharge. That apart, assistance for obtaining customs refund and enabling clients to avail benefits under various export incentive schemes is carried out on a continuous basis.

Q. What could be the game changers for India's foreign trade in the near future from a Customs and Trade Policy perspective?

An attempt to implement the National

Trade Facilitation Action Plan as adopted, would put India ahead of the other emerging economies. Key areas which require focus would be, in ensuring certainty in law for importers/exporters, effective coordination between various government agencies, paperless regulatory environment, better infrastructure at the ports, strengthening the advance ruling mechanism and single window interface for facilitating trade.

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