

# Exporters Should Seek Retrospective Removal Of Pre-Import Condition To Ease Liquidity Issues

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Indian exporters should seek a retrospective amendment to ease the adverse impact of the recent Supreme Court verdict on their liquidity as it has deprived them of exemption from payment of IGST and compensation cess and thereby blocking their working capital, said Ratan Jain, Advocate and Partner, Lakshmikumaran and Sridharan Attorneys.

The Supreme Court on 28 April 2023 reversed the decision of the Gujarat High Court and held that the 'pre-import condition' stipulated in the grant of exemption from payment of IGST and compensation cess is not ultra vires.

"The adverse impact of this Supreme Court judgement on exporters could have been counteracted in two ways. One way is that the amendment made by the government vide Notification no 01/2019 dated 10.01.2019 ought to have been made retrospective i.e. from October 2017 itself. Now, in view of the law laid down by the Supreme Court in Cosmo Films, what will be the position is to be seen," said Jain said.

He was speaking at an interactive session on Foreign Trade Policy 2023 at MVIRDC World Trade Center Mumbai.

The second way to counter the impact of the SC judgement is to issue a clarification that assesseees who exported taxable finished goods under the letter of undertaking (LUT) are not required to surrender IGST exemption and they can be considered as complying with the pre-import condition, Jain suggested.

The situation can also be considered otherwise as revenue neutral so relief should be given from the levy of interest as well. In addition, while adjudicating the pending matters, lenient views may be taken by the department.

Jain also recommended the government to introduce a definition for 'pre-import' to prevent any ambiguity or arbitrary implementation of the above customs notification.

"On 13 October 2017, the CBIC and DGFT issued notifications on 'pre-import condition' without defining this term, which also causes ambiguity in interpretation among authorities and exporters," Jain pointed out.

In order to improve the global competitiveness of exporters, Jain suggested the government make the RoDTEP scheme applicable for export-oriented units, units in special economic zones (SEZs) and advance authorisation (AA) holders.

The government implemented the RoDTEP scheme in January 2021 to reimburse embedded indirect taxes and duties which are not refunded in the process of input procurement, manufacturing and export of finished goods.

However, this scheme is not applicable for units of export-oriented units, units in SEZs and Advance Authorisation (AA) holders, which hurts their cost competitiveness in the global market.

"Incidence of these taxes makes these units uncompetitive in the global market and hence the government may bring these units under the RoDTEP scheme," Jain suggested.

Vijay Kalantri, Chairman, MVIRDC WTC Mumbai said, "Last year, India attained USD 440 billion merchandise exports by surpassing the target of USD 420 billion. Indian MSMEs have managed to perform well despite complex policies and regulations, which affect their global competitiveness."

Kalantri added in order to attain the USD 2 trillion export target, the government should promote trade settlement in local currencies, expedite FTA negotiations and effectively implement the one district one product scheme. The government should expedite negotiation of FTAs with the EU, the UK and other prominent countries to attain the USD 2 trillion export target.