

## Recent changes under FTP and Customs

### Snapshot

- The Foreign Trade Policy 2015-20 and the Handbook of Procedures of 2015-2020 have been extended again up to 30th September, 2022.
- The exemption from IGST and Compensation Cess in case of import of goods under Advance Authorization, Export Promotion Capital Goods and by Export Oriented Units has been extended.
- Changes in the FTP pertaining to the granting relaxations in applying for extension in the period of export obligation etc.
- Under Customs law, Customs (Electronic Cash Ledger) Regulations, 2022 have been notified and made applicable w.e.f. 1 June 2022 for payment of duties, taxes, cess, interest, penalty, fees, and other amounts payable under the Customs law. However, the CBIC granted an exemption from applicability of the aforesaid regulations till further notice.
- In order to simplify and automate the procedures to avail the benefit of concessional duty on import of goods, the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 have been amended w.e.f. 1 March 2022.

### Extension of the Foreign Trade Policy 2015-2020 and other exemptions

#### Extension of FTP and the HBP

*Notification No. 64/2015-2020 dated 31 March 2022*

The validity of the Foreign Trade Policy 2015-2020 ('FTP') (both originally valid till 31st March 2020) has been further extended up to 30 September 2022.

*Public Notice No. 53/2015-2020 dated 31 March 2022*

Further to the extension of validity of FTP, the Handbook of Procedures ('HBP'), Appendices & Aayat Nirayat Forms, Standard Input Output Norms ('SION') as well as the Norms ratified by the Norms Committee, have also been extended up to 30 September 2022. However, the validity of status certificates under para 3.20(a) of the Handbook of Procedures 2015-20 has been extended only up to 30 June 2022.

#### Exemptions from GST in case of imports made under AA, EPCG & EOU schemes extended

*Notification No. 66/2015-20 dated 1 April 2022*

The exemption from Integrated Goods and Services Tax ('IGST') and Compensation Cess in case of the following imports (which was expiring on 31st March 2022) has been extended up to 30 June 2022:

- Import of goods under Advance Authorization ('AA'),
- Import of capital goods under Export Promotion Capital Goods ('EPCG') and

- Imports and/ or procurement under Export Oriented Unit ('EOU') scheme, from bonded warehouse in DTA or from international exhibition held in India.

### KCM Comments

The new Foreign Trade Policy is being eagerly awaited by the trade and industry since quite some time now as the current FTP 2015-20 which was set to expire on 31 March 2020, is getting repeated extensions from the government. While, due to the objection from the WTO, the Merchandise Export from India Scheme ('MEIS') has been replaced by Reimbursement of Duties and Taxes in Export Products ('RoDTEP) scheme, the future of the other schemes such as Service Export from India Scheme ('SEIS'), AA, EPCG and even EOU and SEZ does not seem to be very clear. It is to be noted that the exemption in respect of IGST and Compensation cess has been extended only up to 30th June, 2022, which is not in sync with the extension granted to the FTP. It is worthwhile to note here that the Finance Minister, in the budget speech in February 2022 did mention that the government is working on a new SEZ law. One hopes that the new FTP and the new SEZ law are brought in force at the earliest.

### Changes in the EPCG scheme to reduce the compliance burden and enhance ease of doing business

*Public Notice No. 03/2015-20 dated 13 April 2022*

#### Extension of EO period of first block

An authorisation holder can request for extension of Export Obligation ('EO') period of first block within 6 months from the date of expiry EO period of the first block along with composition fee of 2% on duty saved amount proportionate to unfulfilled portion of EO.

The RA may also consider the request for extension of block wise EO period, received after 6 months, but within 6 years from date of issue of authorization, with a late fee of Rs. 10,000/- per authorization. Application made beyond 6 years, for extension of block-wise EO period for regularization purpose, shall also be considered by RA concerned, with an additional late fee of Rs. 5,000/- for each year per authorization. Such late fee shall be over and above the 2% composition fee. Further, where the extension has not been granted, in case of non-fulfilment of the EO, the Authorization holder shall, within 6 months from the expiry of the block, pay the duties of customs along with the applicable interest.

Earlier, the authorisation holder was required to pay the amount within 3 months which has now been extended to 6 months.

#### Extension of total EO period

Earlier application for extension of EO period was required to be made within 90 days from the date of expiry. An extension could be granted for a further delay of another 90 days on payment of an additional composition fee of Rs. 5000.

Now, such application can be made within period of 6 months from the date of authorisation without any additional fee. Further, an application after 6 months but within 8 years from the date of authorisation can be made with a late fee of Rs. 10,000. Applications made after a period of 8 years shall also be considered with an additional late fee of Rs. 5000. The EO period shall not be extended beyond 8 years from the date of authorisation in any case.

#### Monitoring of Export Obligation

Currently, the Authorisation holders are required to submit by 30 April of every year, a report on

fulfilment of EO by e-filing using digital signatures/ or hard copy. The report shall now be required to be filed by 30 June of every year online only. Delay in filing such an annual report shall be regularised on payment of Rs. 5000/- late fees for each financial year per authorisation.

### **Payment of additional fee in respect of excess import made**

In case of import under EPCG for an amount up to 10%, authorisation is allowed automatically. The additional fee in respect of the excess import made which is currently to be paid within 1 month and up to 2 years from the date of such excess import can now be paid at the time of application of EODC.

### **Exit from the scheme**

In case of default or if the authorisation wishes to exit the EPCG scheme, he could do so by paying the applicable duty along with interest. Earlier such payment could be made by furnishing valid duty paying scrips which is now withdrawn.

### **Forwarding the copy of EODC to customs**

The Copy of EODC shall be forwarded online on the ICEGATE portal instead of the current practice of forwarding the physical copy.

## **Changes to the law under the Customs Act**

### **Implementation of Customs (Electronic Cash Ledger) Regulations, 2022**

*Notification No. 20/2022-Customs (N.T.) dated 30 March 2022*

Customs (Electronic Cash Ledger) Regulations, 2022 have been notified to be effective from 1 June 2022.

#### **1. Maintenance of ECL:**

- ECL will be maintained in Form ECL-1 on the common portal for each person for deposit

and payment towards various duties, taxes, cesses, surcharges, interest, penalty, fees or any sum payable under Customs Act, Customs Tariff Act or the rules & regulations made thereunder.

- The deposit made in ECL will not accrue any interest.
- A Unique Identification Number (UIN) will be generated on the common portal when any debit or credit is made in the ECL and the said UIN shall be indicated in the relevant customs declaration.
- Deposit in ECL shall be made by generating challan in Form ECL-2 which shall be valid for 15 days on the common portal.
- The amount may be deposited through, (i) Internet banking, (ii) NEFT / RTGS, (iii) Over the counter payment through authorised bank.
- Over the counter payment cannot exceed INR 10,000 per day. However, the said limit does not apply to deposits made by the Government Department or where the Jurisdictional Commissioner of Customs authorises a higher amount to be deposited.
- In case of deposit through NEFT/RTGS or over the counter payment, a mandate form along with the deposit challan shall be generated on common portal and the same will be required to be submitted to the bank within 15 days.
- On successful credit of the amount, a Challan Identification Number (CIN) will be generated and the same will be indicated on the deposit challan and the amount will be credited to the ECL.

#### **2. Manner of making payment from the ECL:**

- A person may use the amount available in ECL for making payment towards duties,

interest, penalty, fee, or any other sum payable through payment challan in Form ECL-3 generated:

- a) By the customs automated system in accordance with the provisions of the Customs law; or
  - b) By the person on the basis of his own ascertainment of the amount payable
  - The amount shown in the challan will be automatically debited from the ECL:
    - a) In case the consent for auto-debit has been provided
    - b) The amount available in the ECL is sufficient for payment of the entire amount of challan.
  - The successful debit of the amount will be visible in the ECL and the credit of the same will be shown in Electronic Duty Payment Ledger maintained in Form ECL-4.
3. Refund:
- A person can make an application for refund of balance in the ECL, after payment of different liabilities, in Form ECL-5 on the common portal.
  - The amount applied for refund shall not be available for use once the application is made. The amount shall be refunded to the bank account registered with customs automated system within thirty days from the date of application on the common portal.

### KCM Comments

The Finance Act 2018 hinted about the concept of electronic cash ledger ('ECL') under the Customs law, by introducing 'Chapter VIIA – Payment through electronic cash ledger' in the Customs Act, 1962. This has now been notified by the government as a matter of facilitation for the trade & industry. The concept of ECL under Customs is

similar to the ECL maintained under the GST law. While these regulations have been notified w.e.f. 1 June 2022, the implementation of the same has been kept in abeyance by way of an exemption. It seems that the Government wants the portal to stabilise before making this mandatory. It is also not clear as to whether this would be allowed on a voluntary basis for importers who want to avail this option.

### Simplification and automation of procedures to avail benefit of Import of Goods at Concessional Rate of Duty

*Notification No. 07/2022-Customs (N.T.) dated 1 February 2022*

Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 have been notified to be effective from 1 March 2022.

The gist of the Notification has been summarised below:

1. Furnishing of information and procedure to be followed:
  - An importer shall be required to provide one-time information on common portal as prescribed under Form IGCR-1 as against the existing system of manually furnishing the said information to the Deputy/ Assistant Commissioner of Customs.
  - On acceptance of the above information, an Import of Goods at Concessional Rate Identification Number ('IIN') shall be generated.
  - An importer shall be required to submit a continuity bond in Annexure -I to the Deputy / Assistant Commissioner of Customs with an undertaking to pay the amount equal to the difference between

the duty leviable on inputs and the amount already paid, if any, at the time of import along with the interest. Further, the bond details shall be filled on the common portal in part B of the Form IGCR-1.

- While filing Bill of Entry, the importer shall mention the allotted IIN along with the continuity bond number. The benefit of such exemption will be allowed by the Deputy / Assistant Commissioner of Customs at the time of import. Further, the bond shall be automatically debited in the customs automated system and the same shall be made available to the jurisdictional customs officer electronically.

### 2. Maintenance of records

- The importer will be required to maintain records related to import of goods, goods consumed, goods sent/received to/from job work, goods re-exported and goods remaining in stock.
- The importer shall intimate about the short receipt or non-receipt of imported goods in the relevant premise, on common portal in Form IGCR-2. This intimation shall be on the basis of the IGCR Identification Number and details shall be provided against each bill of entry, invoice and item.
- A monthly statement in Form IGCR-3 shall be submitted by the 10th of the following month, on the common portal.

### 3. Re-export or clearance of unutilised or defective goods

- The goods imported shall be required to be consumed within six months from the date of import. In case unutilised or defective goods, the importer has an

option to either re-export them or clear the same for home consumption within the six months from the date of import.

- In case an importer opts to re-export such goods, he shall record the details of export documents such as shipping bill number, shipping bill date and the port of export against the bill of entry, invoice and item details of the goods imported. Additionally, the same shall also be recorded in the monthly statement.
- The importer also has the option to clear the unutilised or defective goods on payment requisite duty and interest and record such details in the monthly statement.
- The importer may also export the capital goods imported after being utilised for the specified purpose, on payment of differential duty on the depreciated value allowed in straight line method as:
  - i. for every quarter in the first year @ 4%;
  - ii. for every quarter in the second year @ 3%;
  - iii. for every quarter in the third year @3%;
  - iv. for every quarter in the fourth and fifth year @ 2.5%;
  - v. And thereafter for every quarter @ 2%.

### 4. Recovery of duty amount and Penalty

- In the event of any failure on the part of the importer to comply with the specified conditions, the Assistant/ Deputy Commissioner shall invoke the bond to initiate the recovery proceedings of the amount equal to the difference between the duties leviable on import of such goods along with interest.

- An importer or the job worker who contravenes the provisions of these rules shall be liable to a penalty up to two lakh rupees.

### KCM Comments

1. In order to simplify the procedures to avail the benefit of concessional duty by removing the existing ambiguities and to largely automate the entire process right from availment till reporting in one consolidated monthly return, the CBIC has amended Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (herein after referred to as "IGCR") vide Notification No. 07/2022 - Customs (N.T.) dated February 01, 2022.

2. The amendments under the custom law in the past few years seem to be more focused on digitalizing the records and maintenance of documentation. The implementation of electronic cash ledger is one of such step, while digitalizing the entire report under the IGCR is yet another leap towards digitalizing the procedures under customs. The Government is expected to come out with such type of changes under the Customs law and bring the compliance under Customs at par with GST so far as digital compliance is concerned.

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*For further analysis and discussion, you may please reach out to us.*

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