



**(2023) 7 Centax 92 (Article)**

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## **'Pre-Import Condition' And 'Levy of IGST' - Imports Under Advance Authorisation**

**By**



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The Central Board of Indirect Taxes and Customs (CBIC), has issued instructions to Customs Formations, vide its Circular No. 16/2023-Cus dated 7th June, 2023 [2023 (384) E.L.T. (T57)], for implementation of Hon'ble Supreme Court direction in judgment dated 28.04.2023 passed in the matter of Civil Appeal No. 290 of 2023 (*UOI and others v. Cosmo Films Ltd.*) [(2023) 5 Centax 286 (S.C.) = 2023 (72) G.S.T.L. 417 (S.C.)] relating to 'pre-import condition' for claiming duty exemption on Imports made under Advance Authorisations.

Initially, Notification No. 18/2015-Customs dated 1-4-2015 exempted payment of basic customs duty ("BCD"), additional duty (countervailing duty ("CVD")), special additional duty ("SAD"), safeguard duty and anti-dumping duty leviable thereon, respectively under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, on inputs imported against a valid Advance Authorisation issued in terms of Para 4.03 of the Foreign Trade Policy 2015-20.

However, at time of introduction of the GST regime on 1-7-2017, no amendment was made to Notification No. 18/2015-Customs with respect to IGST and compensation cess, resulting in the collection of these levies for the inputs imported into India against Advance Authorisations.

Thereafter, Notification No. 79/2017-Customs dated 13.10.2017 was issued amending Notification No. 18/2015-Customs by granting IGST and compensation cess exemption, subject to the following two conditions:

"Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled **by physical exports** only."

"That the exemption from integrated tax and the goods and services tax compensation

cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the *said Customs Tariff Act shall be **subject to pre-import condition***"

But the exemption granted by Notification No. 18/2015-Customs was inadmissible where manufacturer-exporters, who undertook manufacturing and export of goods in a continuous cycle, could not prove compliance of the 'Pre-import Condition'. Exemption was also not admissible when goods manufactured were exported in anticipation of licence/authorisation, since there exports were made first, with duty-free import against the authorisation having been undertaken later. Consequently, the manufacturer-exporters aggrieved by this interpretation approached the Gujarat High Court.

The Gujarat High Court, in '*Jagdamba Polymers Ltd. v. Union of India*' [Special Civil Application No. 19324 of 2018], set aside the mandatory fulfilment of a 'pre-import condition' incorporated in the Foreign Trade Policy of 2015-2020 and Handbook of Procedures 2015-2020 by Notification No. 33/2015-20 and Notification No. 79/2017-Customs, both dated 13-10-2017. According to the High Court, such fulfilment in order to claim exemption of IGST and GST compensation cess on input imported on the strength of an Advance Authorization was arbitrary and unreasonable.

Now the Hon'ble Supreme Court, vide its judgement dated 28.04.2023 passed in appeal of '*UOI and others v. Cosmo Films Ltd.*', cited supra, observed that the FTP amended on 13.10.2017 and in existence till 09.01.2019 had provided that imports under Advance Authorization for physical exports are also exempt from whole of the integrated tax and compensation cess, as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition. The Hon'ble Supreme Court held that there is mandatory fulfilment of a 'pre-import condition' incorporated in para 4.14 of FTP 2015-20 vide Notification No. 33/2015-20 dated 13.10.2017 and reflected in the Notification No. 79/2017-Customs dated 13.10.2017, relating to Advance Authorization scheme. It was held that the relevant imports that do not meet the said pre-import condition requirements are to pay IGST and Compensation Cess to that extent. The Hon'ble Supreme Court has also directed the Revenue to permit claim of refund or input credit (whichever applicable and/or wherever customs duty was paid). For doing so, the Importers shall approach the jurisdictional Commissioner, and apply with documentary evidence within six weeks from the date of the judgment. The claim for refund/credit, shall be examined on their merits, on a case- by-case basis.

So now for carrying forward the Hon'ble Supreme Court's directions, the CBIC, vide Circular No. 16/2023 -Cus dated 7th June, 2023, has clarified that for the relevant imports that could not meet the said pre-import condition and are hence required to pay IGST and Compensation Cess to that extent, the Importer may approach the concerned assessment group at the Port of Import with relevant details for purposes of payment of the tax and cess along with applicable interest. On completion of the procedure by the Assessing Group at Port of Import in the EDI System, the Input Credit with respect to such assessed BE shall be enabled to be available subject to the eligibility and conditions for taking input tax credit under Section 16, Section 17 and Section 18 of the CGST Act, 2017 and rules made thereunder. Further, in case such Input Tax Credit is utilized for payment of IGST on outward zero- rated supplies, then the benefit of refund of such IGST paid may be available to the said registered person as per the relevant provisions of the CGST Act, 2017 and the rules made thereunder, subject to the conditions and restrictions provided therein.

