

F. No. 605/11/2023-DBK | 569

Government of India
Ministry of Finance: Department of Revenue
Central Board of Indirect Taxes and Customs
Drawback Division

New Delhi dated the 7th June 2023

To,
All Principal Chief Commissioners/Chief Commissioners,
All Principal Directors General/Directors General,
All Principal Commissioners/Commissioners,
under CBIC

Ma'am/Sir,

Subject: Implementation of Hon'ble Supreme Court direction in judgment dated 28.04.2023 in matter of Civil Appeal No. 290 of 2023 relating to 'pre-import condition' – Reg.

Attention is invited to Hon'ble Supreme Court judgment dated 28.04.2023 in matter of Civil Appeal No. 290 of 2023 (UOI and others vs. Cosmo Films Ltd.) relating to mandatory fulfillment of a 'pre-import condition' incorporated in para 4.14 of FTP 2015-20 vide the Central Government (DGFT) 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.

2. 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.

3. Hon'ble Supreme Court has allowed the appeal of Revenue directed against a judgement and order of Hon'ble Gujarat High Court which had set aside the said mandatory fulfillment of pre-import condition. As such, this implies that the relevant imports that do not meet the said pre-import condition requirements are to pay IGST and Compensation Cess to that extent.

4. While allowing the appeal of Revenue, the Hon'ble Supreme Court has however directed the Revenue to permit claim of refund or input credit (whichever applicable and/or wherever customs duty was paid). For doing so, the respondents 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. For the sake of convenience, the revenue shall direct the appropriate procedure to be followed, conveniently, through a circular in this regard.

5.1 The matter has been examined in the Board for purpose of carrying forward the Hon'ble Supreme Court's directions. It is noted that -

(a) ICES does not have a functionality for payment of customs duties on a bill of entry (BE) (unless it has been provisionally assessed) after giving the Out-of-Charge (OOC) to the goods. In this situation, duties can be paid only through a TR-6 challan.

(b) Under GST law, the BE for the assessment of integrated tax/ compensation cess on imports is one of the documents based on which the input tax credit may be availed by a registered person. A TR-6 challan is not a prescribed document for the purpose.

(c) The nature of facility in Circular No. 11/2015-Cus (for suo moto payment of customs duty in case of bona fide default in export obligation) is not adequate to ensure a convenient transfer of relevant details between Customs and GSTN so that ITC may be taken by the importer.

(d) The section 143AA of the Customs Act, 1962 provides that the Board may, for the purposes of facilitation of trade, take such measures for a class of importers-exporters or categories of goods in order to, inter alia, maintain transparency in the import documentation.

5.2 Keeping above aspects in view, noting that the order of the Hon'ble Court shall have bearing on importers others than the respondents, and for purpose of carrying forward the Hon'ble Court's directions, the following procedure can be adopted at the port of import (POI):-

(a) 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 (not limited to the respondents) may approach the concerned assessment group at the POI with relevant details for purposes of payment of the tax and cess along with applicable interest.

(b) the assessment group at POI shall cancel the OOC and indicate the reason in remarks. The BE shall be assessed again so as to charge the tax and cess, in accordance with the above judgment.

(c) the payment of tax and cess, along with applicable interest, shall be made against the electronic challan generated in the Customs EDI System.

(d) on completion of above payment, the port of import shall make a notional OOC for the BE on the Customs EDI System [so as to enable transmission to GSTN portal of, inter alia, the IGST and Compensation Cess amounts with their date of payment (relevant date) for eligibility as per GST provisions].

(e) the procedure specified at (a) to (d) above can be applied once to a BE.

6.1 Accordingly, 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.

6.2 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.

7. The Chief Commissioners are expected to proactively guide the Commissioners and officers for ironing out any local level issues in implementing the broad procedure described in para 5 and 6 above and ensuring appropriate convenience to the trade including in carrying out consequential actions. For this, suitable Public Notice and Standing Order should be issued. If any difficulties are faced that require attention of the Board, those can be brought to the notice.

Hindi version follows.

ck
07.06.2023.

(Chandan Kumar)
OSD (Drawback)