



NITYA'S INSIGHT

Update | Writ petition challenging pre-import condition

August 10, 2018

Dear Reader,

We have shared the following update with our clients.

This is to update you regarding a recent writ petition admitted by Delhi High Court in the case of **Narendra Plastic Private Limited** challenging the constitutional validity of an amendment in Foreign Trade Policy 2015-20 ('FTP') relating to advance authorisation scheme and corresponding amendment in customs Notification No.18/2015-Cus dated April 1, 2015 ('Notification 2015'). The issue in brief is as under:

The advance authorisation scheme exempts inputs imported for use in the manufacture of export goods subject to the fulfilment of specified export obligation. An assessee can opt for the scheme in following two methods:

- **Pre-import:** An assessee imports inputs duty free first for use in the manufacture of export goods. The export obligation is discharged by exporting finished goods manufactured from imported inputs; and
- **Post-import:** An assessee exports the finished goods first and then imports the inputs duty free as replenishment of inputs used earlier.

Initially, under the Goods and Services Tax regime, IGST was not exempt on the goods imported under an advance authorisation. This resulted in blocking of working capital for the exporters. The government accordingly amended FTP and Notification 2015 on October 13, 2017. The amendment exempted IGST on imports, subject to the condition that the benefit will be admissible in a pre-import scenario only.

The revenue authorities have been raising a contention against many exporters that **IGST will not be exempt** where the goods are imported under advance authorisation in a **post-import scenario**. The Directorate of Revenue Intelligence ('DRI') has been conducting investigations and issuing notices to such importers demanding IGST.

Recently, some of the exporters preferred writ petition in Delhi High Court challenging the constitutional validity of this amendment. The Delhi High Court has admitted the petition and posted the matter for further hearing on January 16, 2019.

NITYA's Comments:

The Government has given various benefits including advance authorisation to neutralise the effect of taxes on export goods. These benefits are issued with an intention to incentivise exports.

At the same breadth, the advance authorisation scheme permitted both mechanisms, pre-import as well as post-import. Both these options are equally preferred by exporters. The amendment restricting IGST exemption to pre-import cases only is contrary to the interest of such exporters' community at large.

Considering the present scenario, the aggrieved exporters may also consider filing a similar writ petition before their respective jurisdictional High Courts challenging the vires of the aforesaid amendment.

Trust you will find the above useful. In case of any clarifications, please feel free to revert.

Regards,

Team NITYA



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