

INDIA LEGAL UPDATE

June 16, 2023

CBIC circular on mandatory fulfilment of a 'pre-import condition' for advance authorization

Notification Date:

June 7, 2023

Effective Date:

June 7, 2023

Legal Framework:

Customs Act, 1962

Government Authority:

Central Board of Indirect
Taxes and Customs (CBIC)

Weblink:

[CBIC Circular](#)

[UOI and others v. Cosmo Films](#)

[Ltd.](#)

LEGAL UPDATE

The CBIC has issued a [Circular No. 16/2023-cus dated June 7, 2023](#), in light of the Supreme Court's direction in the case of [UOI and others v. Cosmo Films Ltd.](#) dated 28.04.2023 relating to mandatory fulfilment of a 'pre-import condition' for advance authorization.

The Foreign Trade Policy as amended on October 13, 2017, provided that imports under Advance Authorization for physical exports are also exempt from the whole of the integrated tax and compensation cess, subject to meeting the pre-import condition.

The Supreme Court while setting aside the HC's order has held that relevant imports that do not meet the 'pre-import condition' requirements must pay IGST and Compensation Cess to that extent. Further, a direction is issued to the Revenue to permit a claim of refund or ITC (Input Tax Credit). After considering the SC's order, CBIC has issued the following procedure to be adopted at the POI (Port of Import):

- For those imports that could not meet the pre-import condition, the importers may approach the concerned assessment group with relevant details for payment of the tax and cess along with applicable interest.
- The assessment group shall cancel the OOC (Out of Charge) along with their remarks.
- The BE (Bill of Entry) shall be re-assessed.
- The payment of tax and cess, along with applicable interest, shall be made against the electronic challan generated in the Customs EDI (Electronic Data Interchange) System.
- Upon completion of the payment, the port of import shall make a notional OOC for the BE on the Customs EDI System.
- The date of payment shall be considered as the relevant date for eligibility of ITC/refund as per GST provision.

CBIC also noted that:

1. The For payment of customs duties on a BE after giving the OOC to the goods, duties can be paid only through a TR-6 challan.
2. The BE for the assessment of integrated tax/compensation cess on imports is one of the documents based on which the ITC may be availed by a registered person and the TR-6 challan is not a prescribed document for the purpose.
3. The nature of the facility 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.

CLOSING REMARKS

- The above-mentioned procedure shall apply only once to a BE.
- In case such ITC 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 registered person as per the CGST Act, 2017.

Queries?

If you have any queries about this article, please reach out to our experts:



Mayank Srivastava (マヤンク スリバスタバ)
Director | Tax Practice

Mobile: +91-93-3536-3533
Email: Mayank@HLS-Global.in



Ejima Naoto (江嶋直人)
General Manager | Japan Desk

Mobile: +91-91-0803-0825
Email: nejima@HLS-Global.in



Priyanka Bhutani (プリヤンカブータニ)
Senior Manager | Knowledge Management

Mobile: +91-85-8797-2798
Email: Priyanka@HLS-Global.in

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

HLS Global in India

New Delhi (Corporate Office)

Vegas Mall, Office Block-B, 8th Floor, Unit No.883, Sector-14, Dwarka, New Delhi 110075 | India
Tel.: +91-11-6134-0450
Email: Info@HLS-Global.in
JapanDesk@HLS-Global.in

Gurugram

Level 1, Building No. 10A, DLF Cyber City, Gurugram
Tel.: +91-79-8266-6136
Email: Info@HLS-Global.in

Japanese Zone - Neemrana

Office No. 206, Regent Square Mall, CP-4, Japanese Zone, Neemrana, Rajasthan - 301705
Tel.: +91-73-5732-0237
Email: JapanDesk@HLS-Global.in

Lucknow

Office No. 22/181, Indira Nagar, Lucknow, Uttar Pradesh - 226016
Tel.: +91-93-3536-3533
Email: Info@HLS-Global.in

Mumbai

Plot C-20, G Block Near MCA, Bandra Kurla Complex, Bandra(East), Mumbai City MH 400051
Tel.: +91-93-3536-3533
Email: Info@HLS-Global.in

Ahmedabad

A - 413, Titanium Business Park, Beside Railway underpass, Makarba, Ahmedabad-380051
Tel.: +91-79-8266-6136
Email: Info@HLS-Global.in

Connect with us on Social Media



www.HLS-Global.in

Noida

304, 3rd Floor, Tradex Tower-1, Alpha Commercial Belt, Alpha-1, Greater Noida, Uttar Pradesh-201310
Tel.: +91-79-8266-6136
Email: Info@HLS-Global.in

Bangalore

Old Data Center, West Wing, North Tower, Level 6, ITC Green Centre, Dodda Banaswadi Main Rd, Bengaluru, Karnataka 560005
Tel.: +91-79-8266-6136
Email: Info@HLS-Global.in

HLS Global Worldwide

Japan Office

Tokyo

www.HLS-Global.jp

US Offices

Los Angeles (Headquarters)
New York
Indianapolis
Chicago
Atlanta
San Jose

www.HLS-Global.com

Mexico Offices

Mexico City
Irapuato

www.HLS-Global.mx

Germany Office

Stuttgart

www.HLS-Global.de



ASTHOM

A member firm of ASTHOM Partners, Japan

<https://asthom.co.jp/>

Germany

Hong Kong

India

Japan

Malaysia

Philippines

Singapore

Thailand

USA

Vietnam