

## A look at the Pre-Import condition under GST regime

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In, what is one of the most significant drive of GST Council to issue clarifications addressing ambiguities and showering rate reduction on several products, perhaps GST council's new year gift to tax payers, it has also extended the scope of Advance Authorization by removing the pre-import condition and by extending the benefit to deemed exports.

Historically, the benefit of Advance Authorization provided exemption from levy of all the additional duties under Section 3 of the Customs Tariff Act, 1975 (countervailing duty, additional countervailing duty, special additional countervailing duty). The scheme was strategically designed to keep exports free from any tax burden.

With the introduction of Goods and Service tax ("GST") scope of Section 3 was extended to levy Integrated Goods and Services Tax ("IGST") on import of goods, however, the benefit of Advance Authorization as notified *vide* Notification No. 18/2015 – Customs and Notification No. 20/2015 – Customs both dated 01 April 2015 was amended so as to disallow any such exemption from levy of IGST. In a nutshell, Scheme of Advance Authorization did not provide for exemption from IGST.

Such absence of exemption for levy of IGST was in line with GST council's agenda to keep exemptions at minimal in the interest of seamless levy across the supply chain, however it resulted in substantial increase in accumulation of credit, necessity of filing refund applications, increase in cash flow and associated costs such as additional working capital, interest cost, banking cost, etc. Needless to say, the discomfort created by this statutory framework resulted in widespread agitation across industries and eventually compelled the GST council to provide relaxation, which came in less than four months from the implementation of GST regime, albeit for a limited time till March 2018, which was later extended to October 2018, and thereafter to March 2019.

In October 2017, the provision of Foreign Trade Policy and corresponding provisions of Customs notification were amended to extend the benefit of Advance Authorization to exempt import of goods from levy of IGST. Although the relaxation addressed many of the issues being faced by the industry, the benefit came with a 'pre-import condition', meaning an exporter must first import

the goods, utilize it in the manufacture of export goods and physically export the goods so manufactured. The strict nexus between import of duty-free goods and physical export of goods manufactured using the same, was aimed at eliminating any possibility of misuse of the scheme.

With the pre-import condition, an exporter was thus restricted from availing the Advance Authorization on 'replenishment' basis in which an exporter could first undertake exports and then avail the corresponding benefit of exemption on subsequent imports. This facility, which was being widely utilized in erstwhile regime, provided a procedural ease from physical identification of the goods imported under Advance Authorization and independent book keeping of such stock. It is noteworthy that a number of assesses are facing proceedings, notably, proceedings initiated by 'Directorate of Revenue Intelligence', for lapse in the procedural requirements associated with 'pre-import condition', which were also identified to a large extent during departmental Audit of records and physical stock of the assessee availing Advance Authorization. As a result, the assessee's discharged IGST on all the imports under dispute and availed Input Tax Credit thereof, effectively leaving interest liability for delayed payment of IGST on imports and penalty, if any, in the clutches of dispute even though the entire transaction turns out to be revenue neutral.

Another, restrictive feature of Advance Authorization to provide exemption from IGST is that it was made available only in respect of physical export, unlike the erstwhile regime where the benefit was made available for deemed export as well.

With a restriction of 'pre-import condition', and 'physical export' the exemption benefit was reduced in its utility and felt short to effectively address the difficulties faced by assessee's. This led exporters and importers to move courts, including Delhi High Court, Gujarat High Court and Punjab and Haryana High Court. These Petitions challenged *vires* of the restrictions citing them as defeating the very purpose of the Advance Authorization scheme. Notably, Delhi HC in the case of Jindal Dyechem allowed the petition on the ground that, 'if the exporter has fulfilled export obligation pursuant to its Advance Authorization, then no further action is required', in effect, nullifying the pre-import condition. While the [Gujarat High Court](#) in its recent decision has held such pre-import condition to be arbitrary, *ultra vires* and violative of the Constitution of India.

With the series of agitations before Judiciary, the anguish being faced by the assessee was upfront which eventually compelled the GST council to further expand the scope of these benefits *Vide* [Notification No. 1/2019 -Customs](#) and [Notification No. 53/2015-20](#) both dated January 10, 2019 which withdrew the Pre-import condition, and also extended the benefit of Advance Authorization to deemed exports. This amendment however brought with it a necessity to furnish a bond binding the importer to use the imported material in his factory or in the factory of his supporting manufacturer if it has availed the facility of Input Tax Credit and thereafter furnish a certificate from Chartered Accountant to evidence that imported goods have indeed been used in the said manner. Even though, the widened scope of the benefit beings with it few compliance requirements, the step is by and large a welcome step and in line with GST council's approach to effectively address grievances of the assessees at large.

It is noteworthy that, withdrawal of pre-import and physical export conditions is only prospective, meaning, the benefits between October 13, 2017 and January 9, 2019 would continue to suffer



from these conditions, which leaves only a limited period between January 10, 2019 to March 31, 2019 during which the benefit of Advance Authorization can be availed free from these restrictive conditions. Even though discussions are being held to further extend the period of benefit, yet, until any such extension is brought to public information and duly notified, the importer-exporters will have to effectively manage their inventories to fully utilize the benefit.

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***The views are personal.***