

Judicial Update on Custom Law

Recently, the Supreme Court put to rest the controversy as to whether in cases of inadvertent or clerical errors in the self-assessed Bill of Entries (**BoEs**), the only option available to the importers was to challenge this self-assessed BoE by way of an appeal within the prescribed timelines of 60 days; absent which, the importer had no recourse.

Actually, the confusion arose from the Supreme Court ruling in *ITC Ltd (2019)* wherein in the context of refunds, it was *inter alia* held that all orders, self-assessed or otherwise, are appealable orders. Indian customs authorities sought to indiscriminately apply ruling of ITC in all scenarios including situations of inadvertent error or clerical mistakes etc. Such an approach had created major hindrances for Indian importers. Amongst the multiple writs, the Bombay High Court in *Dimension Data India (2021)* distinguished ITC and held that it merely applies to situations of refund. Finally in a major relief to importers, the Supreme Court has upheld the High Court ruling in *Dimension Data (2022)*.

Last year, the Supreme Court in *Canon India (2021)* had held that Directorate of Revenue Intelligence (DRI) (premier Indian investigative agency) is not the “proper officer” to issue notices demanding customs duty from importers. Notices can be issued only by those customs officer who had originally assessed and cleared the goods as they alone qualify as “proper officer” under the Indian customs law. Post *Canon*, multiple High Courts had struck down similar notices/orders issued by DRI. *Canon* came as a shock to the Indian Government as thousands of crores of revenue were at stake. A review (May 2021) was swiftly moved, and it was not until March that the Supreme Court agreed to hear such review – however without staying the *Canon* ruling. In a pre-emptive move, the Indian Government has simultaneously, through Finance Act, 2022, made amendments ostensibly to override *Canon*. However, last week, the vires of amendment itself has been challenged in Delhi High Court. The final outcome of this conundrum is an interesting wait.

Revamp of existing Special Economic Zone regulations

The Indian Government has finally decided to revamp the Special Economic Zone Act (SEZ). Enacted in 2006 with the aim to make India an export hub, boost manufacturing and attract Foreign Direct Investment, with time the SEZ Act had lost its sheen for industries/investors. One of the chief criticisms has been that SEZ Act has been able to keep pace with changing realities of business across sectors. The final nail appears to be the WTO decision (2020) which held India’s SEZ scheme violative of its guiding principles. The pandemic has hit business operations and changed nature of business in many sectors.

The proposed SEZ law intends to involve the states to become partners in development of enterprise and service hubs. The proposed SEZ Act will ensure to optimally utilize available infrastructure of all large existing and new industrial enclaves and enhance competitiveness of exports. New customs administration under SEZ will be undertaken in line with ease of doing business in India, i.e., completely IT driven and higher facilitation of risk-based check. It is expected that the new reform will be implemented by September 30, 2022, which will improve efficiency of doing business in India and will create more efficient and better business opportunities in international as well as domestic markets.

It is an opportune time now for the current SEZ units/developers to put forth their concerns which may get addressed in the proposed SEZ law.

Tarrifisation of Customs Tariff and Phasing out Benefits qua Import

The Indian Government has taken various measures to increase & encourage local production of capital goods. Consistent with this objective, the Indian Government has decided to phase out exemptions on several products. Resultantly, Basic Customs Duty (**BCD**) on capital goods has been increased.

Applicable BCD rate on import of capital goods under the project import scheme has been increased to 7.5% from the existing range of 0% to 5%. The government has also announced a gradual phasing out of import duty exemptions on capital goods specifically linked to sectors such as power, fertilizer, textiles, leather, footwear, food processing and fertilizers amongst others. The Government has also taken various steps for simplification of the Indian Customs Tariff by

moving the unconditional exemptions to tariff, withdrawal/phasing out of various Customs duty exemptions, amendments in the Customs tariff to reduce classification issues and to further align with ITC HS code. These actions of the Government emphasize GOI's commitment to promote 'AtmaNirbhar Bharat' and 'Make in India'.

Update on SCOMET & BIS Regulations

The Foreign Trade Policy 2015-20 applicable till March 31, 2022, has been further extended for six months and would be operational till September 30, 2022. Consequently, all SCOMET related policies and procedures under the existing policies would continue as it is till September 30, 2022.

The Bureau of Indian Standards (BIS) has published several new standards and issued revisions in the various existing standards. The new standards/revisions *inter alia* pertain to Information Technology cloud computing, methods for testing of tar and bituminous materials, etc.

The regulations for Mandatory Testing and Certification of the Telecom Equipment in India (MTCTE) mandate one time certification of various telecommunication products (manufactured in India or imported). In continuation of the phased manner implementation started from 2018, the MTCTE certification (for all Essential Requirements parameters) would be mandatory for all Phase III and Phase IV products from July 01, 2022. The products covered under Phase III *inter alia* include base station for cellular networks, smart camera, smart watch, IoT Gateway, equipment operating in 2.4 GHz and 5 GHz band, etc. The products covered under Phase IV *inter alia* include optical fibre (single mode), IP security equipment, router, LAN switch, point of sale devices, base station controller, optical fibre cable, etc.

Recent Update on India's Bilateral Trade Agreements

After deciding against joining the Regional Comprehensive Economic Partnership (RCEP) in 2019, the world's largest trade deal of 15 nations, the Indian Government has shifted its focus and strategy towards foreign trade policy. The new approach is targeted at forming strategic bilateral ties and developing relations which are far encompassing than mere trade.

This approach was manifested in the landmark Comprehensive Economic Partnership Agreement

(CEPA) inked with UAE on February 18, 2022, in a record span of 88 days. CEPA is set to reduce tariffs for 80% of the goods and will give zero-duty access to 90% of the Indian exports to UAE. This will aid in providing momentum to 'Make in India' program.

Additionally, the Indian Government has also signed an Economic Co-operation and Trade Agreement (ECTA) with Australia on April 2, 2022. This deal is expected to help India forge deeper ties with the raw material rich nation, as India seeks to become a manufacturing hub.

The Commerce and Industry Ministry has recently stated that similar talks with Israel, European Union and Britain are also progressing well and has indicated that several agreements will be inked by the end of 2022.

Various companies are now analyzing the benefit that can be tapped under the above agreements. It is an opportune time to reach out to Government through policy advocacy and make representations under early harvest scheme(s), to ensure coverage of products and avail maximum benefits under the trade agreements. Opportunities also exist for inter-governmental cooperation on easing out on regulatory norms when dealing in trade *inter-se* between participating nations that could probably be the biggest game changer perhaps in how two associate nations trade with each other.

New trade deals, coupled with MNC's China+1 supply chains model, Production Linked Incentive Scheme and revamped Foreign Trade Policy (expected to be announced from October 1, 2022) will certainly propel manufacturing activity and export trade from India.

Impact of Russia-Ukraine crisis

The prolonged Russia – Ukraine war has stoked uncertainty in global trade. While India has been walking a tight rope and has refrained from taking sides, it is unlikely that any country may be able to completely shield itself from the adverse consequences a war of such scale will generate, as global supply chains have become increasingly inter-linked and inter-dependent.

Overall, the country is witnessing volatility / increase in the commodity prices such as oil, metals, raw materials etc. Given the situation and rising Current Account Deficit, the thrust now is to incentivize and promote Make in India with a determined focus. In addition to negotiating more free trade agreements. India is

already witnessing a surge in exports in the fiscal year FY 2021-2022. Companies with plans to invest in India therefore have a unique opportunity to avail the benefit of the Government policies.

Separately, incentives on exports to Russia could be leaned/ denied in times to come given the concerns on realization of export proceeds in ‘convertible foreign exchange’ as Russian Rubble is not recognized as one. Policy advocacy around this is already in progress though the fate remains uncertain for the time being.

About Us

Economic Laws Practice

Economic Laws Practice (ELP) is a leading Tier 1 full-service law firm in India assisting clients on advisory, litigation and regulatory matters.

ELP’s Customs and trade regulatory practice is considered as one of the most well-respected trade practices in India.

We assist with matters involving import/export policies, tariff classification, valuation, country of origin issues, export controls, trade regulations such as BIS, ROHS, e-waste regulations, legal metrology etc. and compliances. The team works closely with Indian policy makers in policy formulation, tariff rationalization and advocacy assistance.

Members of the firm are regularly invited to be part of high-level advisory committees formed by the Ministry of Commerce & Ministry of Finance (Recently, ELP was invited to participate by the Government of India for the RCEP negotiations in Vietnam; Appointed as a member of a legal committee for its flagship program “Invest India”, The National Investment Promotion and Facilitation Agency of India has appointed ELP to assist with the entire compliance module for doing business in India).

We have the distinction of successfully representing the Government of India in several disputes at the WTO.



If you desire a nuanced & a deeper view on any of the theme(s) covered in this edition, kindly reach out to our Customs & Regulatory Practice Partners:

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