

CBIC issues circular for implementation of SC's judgement in the matter of imposition of a pre-import condition on imports under Advance Authorisation

Recently, in the case of Cosmos Films Limited, the Supreme Court (SC) upheld the requirement of the 'pre-import condition' incorporated in the Foreign Trade Policy of 2015-2020 (FTP) and Handbook of Procedures 2015-2020 (HBP) to claim exemption of the Integrated Goods and Services Tax (IGST) and Compensation Cess on inputs imported for the manufacture of export goods, based on the Advance Authorisation (AA) scheme.

Further, the SC directed the Revenue to permit a claim of refund or input credit (whichever was applicable and/or wherever customs duty was paid). For doing so, the assessee shall approach the jurisdictional commissioner and apply with documentary evidence within six weeks from the date of the judgement. The claim for refund/credit shall be examined on their merits on a case-by-case basis. The SC further directed that the Revenue shall issue a circular regarding the appropriate procedure to be followed.

Pursuant to the above, the Central Board of Indirect Taxes and Customs (CBIC) has issued a Circular No. 16/2023-Cus dated 7 June 2023, highlighting the procedures that can be adopted for the imports, which could not meet the pre-import condition and are required to pay the IGST and Compensation Cess to that extent at the port of import (POI).

Key aspects for consideration

- The importer may approach the assessment group at the POI with relevant details for payment of tax, cess, and interest. Such payment shall be made through the electronic challan generated in the Customs EDI system.

- The assessment group shall cancel the out-of-charge (OOC) and indicate the reasons in remarks. The BE shall be assessed again so as to charge the tax and cess in accordance with the above judgement.
- Post the completion of payment, the POI shall make a notional OOC for the BE to enable the transmission to the GSTN portal. This procedure can be applied once to a BE.
- 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 the GST law.
- In case such input tax credit is utilised for the payment of the 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 under the GST law.