

DGFT clarifies treatment to be given for various export-import scenarios in respect of Advance Authorisation scheme issued on or after 13 October 2017 till 9 January 2019

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 the customs duty was paid).

Pursuant to the above, the Central Board of Indirect Taxes and Customs (CBIC) issued Circular No. 16/2023-Cus, dated 7 June 2023, highlighting the procedures that can be adopted for the imports that 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). In addition, the Directorate General of Foreign Trade (DGFT), vide Trade Notice No. 07/2023-24, dated 8 June 2023, clarified that all the imports made under the AA scheme on or after 13 October 2017 till 9 January 2019 (the relevant period), which could not satisfy the pre-import condition, may be regularised by making payment as prescribed in the circular stated above.

Considering the difficulties faced by the regional authorities, the DGFT, vide Trade Circular No. 27/2023, dated 25 September 2023, has clarified the treatment to be given for various export-import scenarios in respect of the AA scheme issued in the relevant period as under:

Issue	Clarification
Whether a violation of the pre-import condition be considered in the case of the AA under which exports have been made in the relevant period and imports have been made on or after 10 January 2019?	No violation of the pre-import condition.
Will the pre-import condition be applicable in case the AA has been issued on or before 9 January 2019 and the imports made on or after 10 January 2019?	The pre-import condition is not applicable.
Is the pre-import condition applicable to imports made on or after 10 January 2019 in the case of the AA, under which imports partly made up till 9 January 2019 and remaining on or after 10 January 2019?	Imports made on or after 10 January 2019 will not be subject to the pre-import condition.
Will the pre-import condition be applicable if the imports were made under the AA on payment of the IGST and Compensation Cess?	Imports will not be subject to the pre-import condition, irrespective of the date of import.