

F. No. CBIC-190354/96/2021-TO(TRU-I)-CBEC
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Indirect Taxes & Customs)

Room No.156, North Block, New Delhi.
New Delhi, dated 19th July, 2021

To,

All Principal Chief Commissioners/ Chief Commissioners of Customs/ Customs (Preventive),
All Principal Chief Commissioners/ Chief Commissioners of Customs & Central tax,
All Principal Commissioners/ Commissioners of Customs/ Customs (Preventive),
All Principal Commissioners/ Commissioners of Customs & Central tax

Madam/Sir,

Subject: Clarification regarding applicability of IGST on repair cost, insurance and freight, on goods re-imported after being exported for repairs, on the recommendations of the GST Council made in its 43rd meeting – reg.

References have been received seeking clarification on the issues of the applicability of IGST on repair cost, insurance and freight, on goods re-imported after being exported abroad for repairs.

2. Notification Nos. 45/2017-Customs and 46/2017-Customs, both dated 30th June, 2017, issued at the time of implementation of GST, prescribe certain concession from duty/taxes on re-import of goods exported for repair outside India. These notifications, specifically serial No. 2 *ibid*, clearly specify that goods exported (other than those exported under claim of benefits listed), when re-imported into India, are exempt from so much of the duty of customs leviable thereon which is specified in the said First Schedule of the Customs Act, 1962, and the integrated tax, compensation cess leviable there on respectively under sub-section (7) and (9) of section 3 of the said Customs Tariff Act, 1975 as is in excess of the *duty of customs* which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred for not), insurance and freight charges, both ways.

3. Therefore, the said notification prescribes that duties or taxes (including BCD, IGST, etc) at the applicable rates will be payable on such imports, calculated on the value of repairs, insurance

and freight, instead of the value of the goods itself. Similar concession existed in pre-GST period too, *vide* notification No. 94/96-Customs, whereby, the customs duty (BCD, additional duty of customs under section 3 of Customs Tariff Act, 1975, etc.) were payable on the value of repairs instead of the entire value of goods in such imports.

4. GST rate and exemptions are prescribed on the recommendation of the GST Council. The Council, at the time of roll out of GST decided to continue the concession as were available under the said notification No. 94/96-Cus, with only consequential amendment, i.e, replacing additional duties of customs with IGST and Compensation cess, as discussed in the 14th Meeting of the GST Council. Accordingly, under GST, IGST and Compensation cess were made applicable on the value of repairs, insurance and freight on re-import of goods sent abroad for repair.

5. Again, during the 37th GST Council Meeting, while examining the request to make available the credit of ITC paid on aircraft engines and parts exported for repairs and later re-imported, the leviability of IGST on such imports, on the cost of repairs, insurance and freight charges, was affirmed. In fact, this was never disputed in first place and the request was to allow credit of the IGST so paid. Similarly, while examining the question of GST rate on maintenance, repair and overhauling (MRO) services in respect of aircraft, aircraft engines and other components and parts, the leviability of IGST on such re-imports was again affirmed by the GST Council in its 39th meeting, making it explicitly clear that such goods reimported after repair from outside India attract IGST on the repair, freight and insurance value. In the said discussion, the IGST levied on such goods re-imported after being exported abroad for repairs was a significant factor considered by the GST Council while deciding the rate on MRO services. The above deliberations of the GST Council leave no doubt that the Council had consciously recommended for levy of IGST and cess, albeit at the repair, insurance and freight cost instead of the entire value of goods imports, on the basis of which the said notifications No. 45/2017-Cus and 46/2017-Cus were issued.

6. Recently, in the matter of *M/s Interglobe Aviation Limited versus Commissioner of Customs*, in its Final Order Nos. 51226-51571/2020 dated the 2nd November, 2020 {2020 (43) G.S.T.L. 410 (Tri. - Del.)}, the Hon'ble CESTAT Principal Bench, New Delhi on analysis of notification No. 45/2017-Customs, has interpreted that intention of legislation was only to impose basic customs duty on the fair cost of repair charges, freight and insurance charges on such imports of goods after repair. The Hon'ble CESTAT has thus concluded that integrated tax and compensation cess on such goods would be wholly exempt. An appeal has been preferred by the Department before the Hon'ble Supreme Court against the said Order.

7. In the above background, the matter was placed before the GST Council in its 43rd Meeting held on the 28th May, 2021. The GST Council deliberated on the issue and recommended that a suitable clarification, including any clarificatory amendment, if required, may be issued for removal of any doubt, to clarify the decision of the GST Council that re-import of goods sent abroad for repair attracts IGST and cess (as applicable) on a value equal to the repair value, insurance and freight.

8. Accordingly, as recommended by the GST Council, it is clarified that notification Nos. 45/2017-Customs and 46/2017-Customs, both dated the 30th of June, 2017 were issued to implement the decision of the GST Council taken earlier, that re-import of goods sent abroad for repair attracts IGST on a value equal to the repair value, insurance and freight. Further, in the light of the recommendations of the GST Council in its 43rd Meeting, a clarificatory amendment has been made in the said notifications, *vide* notification Nos. 36/2021-Customs and 37/2021-Customs, both dated 19th July, 2021, without prejudice to the leviability of IGST, as above, on such imports as it stood before the amendment.

9. The contents of this circular may please be brought to the notice of trade and industry through issue of Trade/ Public notices. The field formations may also be suitably sensitized in this regard. Difficulty, if any, in the implementation of this Circular may be brought to the notice of this office.

Yours faithfully,

(Gaurav Singh)
Deputy Secretary to the Government of India