



JOB WORK

Author Notes:-

Following Amendment was already applicable for May 22 examination, but it also covered in statutory updates of ICAI for Nov 22 examination.

Frequency of filing GST ITC-04 revised from quarterly to annual/half yearly [[Notification No. 35/2021 CT dated 24.09.2021]]

Form GST ITC-04 serves as an intimation that is furnished by a registered manufacturer (principal) giving the details of goods/capital goods dispatched to/received from job workers.

Existing Provision	Earlier, as per rule 45(3), Form GST ITC-04 was furnished on a quarterly basis. Said form was to be furnished for said period, on or before 25th day of the month succeeding the said quarter or within such further period as may be extended by the Commissioner by a notification in this behalf.
Amendment	With effect from 01.10.2021 , rule 45(3) has been amended. Now, Form GST ITC-04 is required to be furnished by the principal on annual/half yearly basis, depending upon the quantum of his aggregate turnover during immediately preceding financial year.

In respect of a principal whose aggregate turnover during the immediately preceding FY	Form GST ITC-04 is required to be furnished
> ₹ 5 crore	on half yearly basis, i.e., for April- September, due date will be 25th October and for October-March, due date will be 25th April
≤ ₹ 5 crore	on annual basis, i.e., for FY 2021-22, due date will be 25th April, 2022.

The aforesaid amendment can also be presented in the following manner-

Aggregate turnover of principal during preceding F.Y.	Form GST ITC-04 to be filed on	Due date(s) for filing Form GST ITC-04
Upto ₹ 5 crore	annual basis	25th April
₹ 5 crore or more	half yearly basis	25th October & 25th April



ACCOUNTS, RECORDS & E-Way Bill

Author Notes:-

Following Amendment was already applicable for May 22 examination, but it also covered in statutory updates of ICAI for Nov 22 examination.

E-way bill generation facility to be blocked only in respect of outward movement of goods, by the defaulting registered person [Rule 138E]

Notwithstanding anything rule 138(1), no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 ~~in respect of a registered person, whether as a supplier or a recipient, who,~~ **in respect of any outward movement of goods of a registered person who**

Substituted by
N/N 15/2021CT
dt 18/05/2021

(a) being a person paying tax under section 10, has not furnished the returns for two consecutive tax periods; or

(b) being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of **Two**

Tax Periods

(c) being a person other than a person specified in clause (a), has not furnished the statement of outward supplies for any two months or quarters, as the case may be.

(d) being a person, whose registration has been suspended under the provision of rule 21A(1) or 21A(2) or 21A(2A)

Earlier, a user was not able to generate e-way bill for a GSTIN if the said GSTIN was not eligible for e-way bill generation in terms of rule 138E. It implies that the GSTINs of such blocked taxpayers could not be used to generate the e-way bills neither as supplier (consignor) nor as recipient (consignee).

Said rule has been amended to relax such restriction. Blocking of GSTIN for e-way bill generation would only be for the defaulting supplier GSTIN and not for the defaulting Recipient or Transporter GSTIN. Suspended GSTIN cannot generate e-way bill as supplier. However, the suspended GSTIN can get the e-way bill generated as recipient or as transporter.

In other words, e-way bill generation facility is blocked only in respect of any outward movement of goods of the registered person who is not eligible for e-way bill generation as per rule 138E. E-way bills can be generated in respect of inward supplies of said registered person.

Example :- Mr. A, a registered person paying tax under regular scheme in Delhi, has not filed Form GSTR-1 for last 2 months. Mr. B, Haryana, (a regular return filer) wants to generate an e-way bill for goods to be supplied to Mr. A. As per earlier position of law, Mr. B would not have been able to generate e-way bill with Mr. A's GSTIN.

In terms of the amended position of law, there will be no more restriction in generating e-way Bill as Mr. B who is making outward movement of goods is a regular return filer.

Mr. A wants to generate an e-way bill in respect of an outward supply of goods to Mr. H. E-way bill generation is blocked in this case as it's an outward movement of goods of Mr. A who has not filed GSTR-1 for past 2 months.



DEMANDS AND RECOVERY

Proceedings under sections 129 and 130 delinked from proceedings under sections 73 and 74

Existing Provision	<p><i>As per clause (ii) of Explanation 1 to section 74</i>, where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections</p> <ul style="list-style-type: none">➤ 122 (penalty for specified offences),➤ 125 (general penalty),➤ 129 (detention, seizure and release of goods and conveyances in transit) and➤ 130 (confiscation of goods or conveyances and levy of penalty) <p><i>are deemed to be concluded.</i></p>
Amendment	<p><i>As per clause (ii) of Explanation 1 to section 74</i>, where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections</p> <ul style="list-style-type: none">➤ 122 (penalty for specified offences),➤ 125 (general penalty),➤ 129 (detention, seizure and release of goods and conveyances in transit) and➤ 130 (confiscation of goods or conveyances and levy of penalty) <p><i>are deemed to be concluded.</i></p>
Implication	<p>Thus, With effect from 01.01.2022, the said clause has been amended by the Finance Act, 2021. As per the amended position, on conclusion of proceedings under section 73/section 74, the proceedings under sections 122 and 125 will be deemed to be concluded but not the proceedings under sections 129 and 130.</p> <p><i>This makes detention, seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.</i></p>

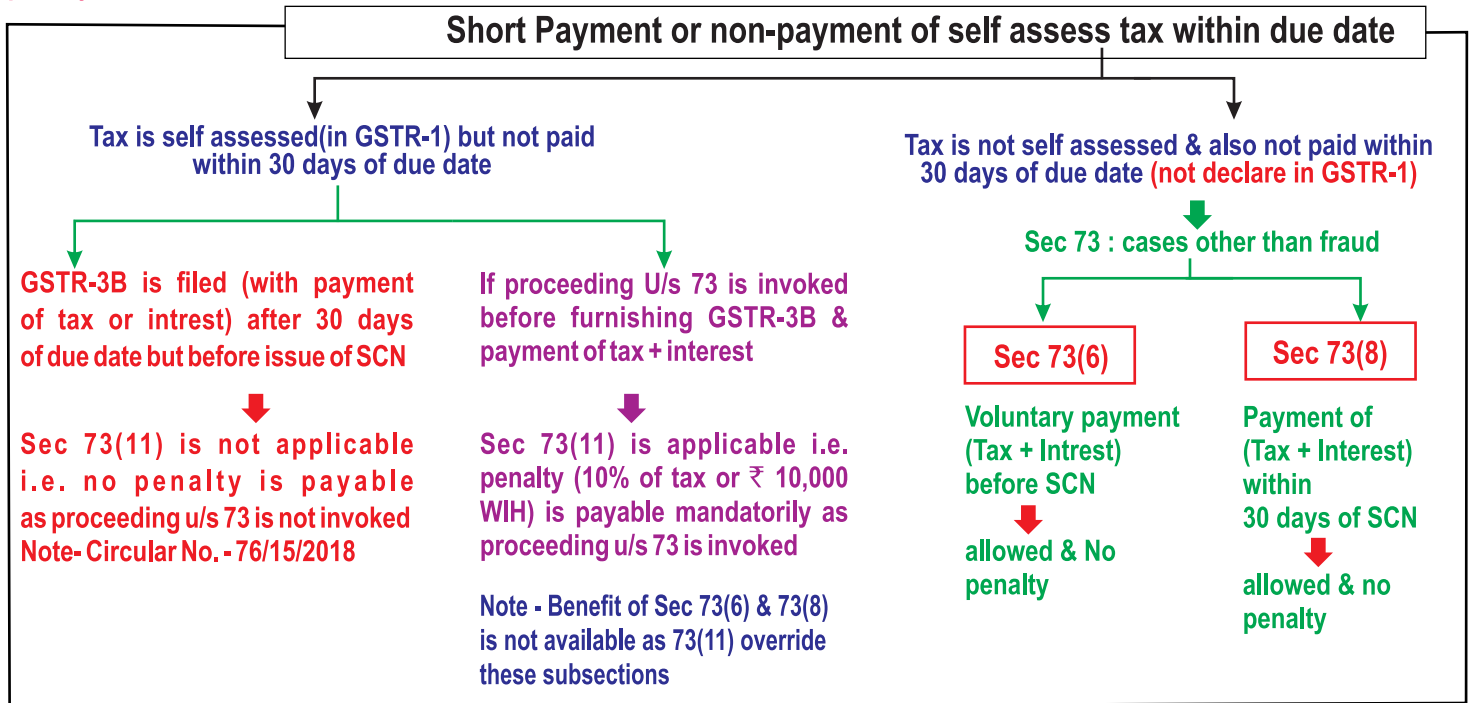
Self-assessed tax to include tax payable on outward supplies furnished in GSTR-1 but not included in return under section 39 [Section 75(12)]

Recovery of self assessed tax : Notwithstanding anything contained in section 73 or section 74,

where any amount of

- *self-assessed tax in accordance with a return* furnished under section 39 remains unpaid, either wholly or partly, or
 - *any amount of interest payable* on such tax remains unpaid,
- the same shall be recovered under the provisions of section 79 ^(Recovery Procedure).

Sec 73(11) :- Where amount of self-assessed tax is not paid within 30 days from the due date of payment of tax then **mandatory penalty = 10% of tax or ₹ 10,000 WIH**



Explanation:- "selfassessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

Discussion:- the scope of the term "self-assessed tax" has been widened and henceforth the recovery proceedings can straight away be initiated by the proper officer for the outward supplies shown in the GSTR-1, if not reflecting in GSTR-3B. In other words, where the tax payable in respect of details of outward supplies furnished in GSTR-1, has not been paid through GSTR-3B, either wholly/partly, or any amount of interest payable on such tax remains unpaid, then in such cases, the tax short paid on such self-assessed and thus self-admitted liability, and the interest thereon, are liable to be recovered under section 79.

However, the difference/mis-match between details of GSTR-1 and GSTR-3B may arise due genuine reasons: for instance,

- a typographical error/wrongly reported details in GSTR-1 or GSTR-3B which may be rectified in subsequent GSTR-1 or GSTR-3B, or
- where a supply could not be declared in GSTR-1 of an earlier tax period, though the tax on the same was paid by correctly reporting the same in GSTR-3B of said tax period; details may now be reported in the GSTR- 1 of the current tax period.

Therefore, Instruction No. 01/2022 GST dated 07/01/2022 provides that in case of mis-match between GSTR-1 and GSTR-3B, the proper officer may first send a communication to the registered person to pay the self-assessed tax short paid/not paid, or to explain the reasons for the same, within a reasonable time prescribed in the communication.

Recovery proceedings under section 79 will be initiated by the proper officer only when the said person either (i) fails to reply to the proper officer, or (ii) fails to make the payment of such amount short paid/not paid within the prescribed time or (iii) fails to explain the reasons for such amount short paid/not paid.

Commissioner empowered to invoke provisional attachment after initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV and also against person specified in section 122(1A) [Section 83(1) and rule 159] w.e.f. 1/1/2022

Sec 83 : Provisional attachment to protect revenue in certain cases.

(1) Before Amendment	<p>Where during the pendency of any proceedings under</p> <ul style="list-style-type: none"> ☛ Best Judgement Assessment for non filers of return (Sec 62) or ☛ Best Judgement Assessment for unregistered person (Sec 63) or ☛ Summary Assessment in special cases (Sec 64) or ☛ Inspection, Search, Seizure (Sec 67) or ☛ SCN and DO for a cases other than fraud etc. (Sec 73) or ☛ SCN and DO for a cases of fraud etc. (Sec 74) <p>the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.</p>
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(1) After Amendment	<p>where, after the initiation of any proceeding under,</p> <ul style="list-style-type: none"> ☛ Chapter XII, (Assessment) ☛ Chapter XIV (Inspection, Search, Seizure and Arrest) ☛ Chapter XV, (Demands and Recovery) <p>the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified of section 122(1A), in such manner as may be prescribed.</p>
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2 Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

Rule 159 Provisional attachment of property.-

- (1) Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, he shall pass an order in **FORM GST DRC-22** to that effect mentioning therein, the details of property which is attached.
- (2) The Commissioner shall send a copy of the order of attachment to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect.
- (3) Where the property attached is of perishable or hazardous nature, and if the taxable person pays:
 - (i) an amount equivalent to the market price of such property or*
 - (ii) the amount that is or may become payable by the taxable person*

whichever is lower

then such property shall be released forthwith, by an order in prescribed form, on proof of payment.
- (4) Where the taxable person fails to pay the amount referred to in sub-rule (3) in respect of the said property of perishable or hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by the taxable person.
- (5) Any person whose property is attached may **within 7 days any time** of the attachment, file an objection to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order.
- (6) The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order.

Implications	<p>As a result of the aforesaid amendment, property including bank account can now be attached provisionally at any time after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV.</p> <p>Further, now the property of a person specified in section 122(1A) can also be provisionally attached apart from the taxable person.</p> <p>Thus, the powers of Commissioner to invoke provisional attachment have widened.</p> <p>Further, amendment in rule 159 is also effective from 01.01.2022. Further, a copy of the order of provisional attachment of the property including bank account shall also be sent to the person whose property is being attached.</p>
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REFUNDS

Refund of GST can be claimed on submitting the attested copy of tax invoice by the UIN holder, if UIN is not mentioned therein [Rule 95]

Before Amendment	Rule 95 contains the provisions relating to refund of taxes paid on the notified inward supplies to notified specialized agency of UNO or Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 or Consulate or Embassy of foreign countries or any other notified person/class of persons. One of the conditions prescribed therein for sanction of refund is that name and GSTIN/UIN of the applicant is mentioned in the tax invoice [Sub-rule (3)].
After Amendment	<i>A proviso has been inserted retrospectively, with effect from 01.04.2021, to said sub-rule to provide that where UIN of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorised representative of the applicant, is submitted along with the refund application in prescribed form.</i>
Implication	Thus, if UIN is not mentioned in the tax invoice, then refund shall be available to the applicant on submission of the attested copy of such invoice in the prescribed form.

Clarification on certain refund related issues [Circular No. 166/22/2021-GST dated 17/12/2021]

Clarification with regard to refund of excess balance in the electronic cash ledger

(a) No time period for filing refund claim	The provisions of section 54(1) regarding time period, within which an application for refund can be filed, would not be applicable in cases of refund of excess balance in electronic cash ledger.
(b) No certificate/ declaration required to establish that there is no unjust enrichment	In case of refund of excess balance in electronic cash ledger, neither a declaration by the applicant nor a certificate by a Chartered Accountant/ Cost Accountant is required to be furnished, to establish that there is no unjust enrichment (i.e. for not passing the incidence of tax to any other person).
(c) TDS/TCS deposited in electronic cash ledger can be refunded as excess balance in cash ledger	The amount deducted/collected as TDS/TCS by TDS/TCS deductors under the provisions of sections 51/52 and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose for discharging tax liability. The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per his choice and availability of balance in the said ledgers. Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under the CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to section 54(1) read with section 49(6).

Issue :- Whether relevant date for the refund of tax paid on supplies regarded as deemed export by recipient is to be determined as per clause (b) of Explanation (2) under section 54 of CGST Act and if so, whether the date of return filed by the supplier or date of return filed by the recipient will be relevant for the purpose of determining relevant date for such refunds?

Clarification:- Clause (b) of Explanation (2) under Section 54 of CGST Act reads as under: *“(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;”*

On perusal of the above, it is clear that clause (b) of Explanation (2) under section 54 of the CGST Act is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports, irrespective of the fact whether the refund claim is filed by the supplier or by the recipient.

Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier.

In case of deficiency in refund application, limitation period of 2 years for making refund claim to exclude the time period from the date of filing of the refund claim till the date of communication of the deficiencies [Rule 90(3)] [[Notification No. 15/2021 CT dated 18.05.2021]]

Existing Provision	<i>The time period for making an application for claiming refund of tax, interest or any other amount is 2 years from the 'relevant date' [Section 54(1)]. Further, as per rule 90(3), where any deficiencies are noticed in the application for refund claim, the proper officer shall communicate the deficiencies to the applicant in Deficiency memo, requiring him to file a fresh refund application after rectification of such deficiencies.</i>
Amendment	<i>A proviso has been inserted to the said sub-rule to provide that the time period from the date of filing of the refund claim till the date of communication of the deficiencies in the prescribed form by the proper officer, shall be excluded from the period of '2 years' as specified under section 54(1), in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.</i>

Facility of withdrawal of refund application by taxpayer introduced [Rule 90(5) and (6)] [[Notification No. 15/2021 CT dated 18.05.2021]]

Existing Provision	<i>Earlier the taxpayers had no option to withdraw their refund applications, if they had committed any mistakes, while filing the application.</i>
Amendment	<i>As per Rule 90(5) & 90(6), the applicant may, at any time before issuance of provisional refund sanction order or final refund sanction order or payment order or refund withhold order or show-cause notice, in respect of any refund application filed, withdraw the said application for refund by filing an application in the prescribed form. On submission of such withdrawal application, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing refund application, shall be credited back to the ledger from which such debit was made.</i>

Order for release of withheld refund to be issued where refund no longer liable to be withheld. Order for complete adjustment of demand for refund not required to be issued [Rule 92(1) and (2)]

Existing Provision	<i>Earlier, in case where refund is completely adjusted against any outstanding demand, an order giving details of the adjustment was issued [Proviso to rule 92(1)]</i>
Amendment	<i>. The said proviso has been omitted. Resultantly, no such order will now be issued. Further, proviso to rule 92(2) has been inserted to provide that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in prescribed form.</i>

In case of an applicant who becomes entitled to refund after being withheld, order for release of withheld refund to be passed before passing final refund sanction order [Rule 96(7)] [N/N 15/2021 CT dated 18.05.2021]

Existing Provision	Rule 96 contains the provisions relating to refund of IGST paid on goods or services exported out of India. Rule 96(7) of the said rule provides that in case where the claim for refund was withheld for specified reasons and subsequently, the applicant becomes entitled to refund of the amount withheld, the concerned jurisdictional officer shall proceed to refund the amount after passing refund sanction order.
Amendment	The said sub-rule has been amended. Now, the concerned jurisdictional officer is required to first pass an order for release of withheld refund and then he will pass refund sanction order in case of the applicant who becomes entitled to refund withheld.



OFFENCES AND PENALTIES

What are the consequences that may occur on transportation of goods without valid documents or have been removed without proper record in books?

OR

Explain the provision of Detention, Seizure & Release of Goods & Conveyances in transit (Sec 129)

Ans. (1) Notwithstanding anything contained in this Act, where any person –

- ➔ transports any goods or
- ➔ stores any goods while they are in transit –
- ➔ in contravention of the provisions of this Act or the rules made thereunder, then –
 - all such **goods** and
 - **conveyance** used as a means of transport for carrying the said goods and
 - **documents** relating to such goods and conveyance

shall be liable to detention or seizure

Release of goods detained or seized :

The Goods and/or conveyance after detention or seizure, shall be released,—

Where owner of the goods comes forward for payment of applicable tax and Penalty

In case of Normal goods :-

- (a) On payment of applicable tax and **penalty equal to 100% of the tax** payable on such goods
- (b) Upon furnishing a security equivalent to the amount payable under (a) above, in such form and manner as may be prescribed.

In case of exempted goods :-

- (a) An amount equal to **2% of the value of goods; or ₹ 25,000 whichever is less**
- (b) Upon furnishing a security equivalent to the amount payable under (a) above, in such form and manner as may be prescribed.

Amendment :-

In case of Normal goods :

- (a) On payment of **penalty equal to 200% of the tax** payable on such goods

In case of exempted goods :

- (a) An amount equal to **2% of the value of goods; or ₹ 25,000 whichever is less**

Where owner of the goods **does not comes** forward for payment of applicable tax & Penalty

In case of Normal goods :-

- (a) On payment of **applicable tax** and **penalty equal to 50% of the value of goods** reduce by tax amount paid there on
- (b) Upon furnishing a security equivalent to the amount payable under (a) above, in such form and manner as may be prescribed.

In case of exempted goods :-

- (a) An amount equal to **5% of the value of goods; or ₹ 25,000 whichever is less**
- (b) Upon furnishing a security equivalent to the amount payable under (a) above, in such form and manner as may be prescribed.

In case of Normal goods :

- (a) **Penalty equal to higher of the following**
 - ➔ 50% of value of goods or
 - ➔ 200% of the tax payable on such goods

In case of exempted goods :

- (a) An amount equal to **5% of the value of goods; or ₹ 25,000 whichever is less**

⇒ **No such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.** [Proviso to Section 129(1)]

2) ~~The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances i.e. The above release of goods and/or conveyance under shall be made on provisional basis on payment of applicable tax and penalty or on furnishing of security, as the case may be.~~



Author Notes:-

This implies that the detained/seized goods or conveyances shall not be released on provisional basis upon execution of bond and furnishing security.

3) ~~Notice to transporter : The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under sub-section (1) above.~~

Substituted Provision By F.A. 2021 :- The proper officer detaining/seizing goods or conveyance shall issue a notice within 7 days of such detention/seizure, specifying the penalty payable.

Thereafter, the proper officer shall pass an order within a period of 7 days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).



Author Notes:-

Thus, time-limit of 7 days each has been prescribed for issue of notice and passing of order for payment of penalty after detention/seizure of goods/conveyances whereas earlier, no time-limit was prescribed for the same.

4) **Opportunity of being heard :** ~~No tax, interest or~~ **No penalty** shall be determined under sub-section (3) without giving the person concerned an **opportunity of being heard**

5) **Conclusion of proceeding after payment :** On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

6) **Failure to make payment leads to confiscation and penalty :** ~~Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within~~ **Fourteen** days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Substituted Provision By F.A. 2021 :- Where the person transporting any goods/ owner of such goods fails to pay the specified amount of penalty within 15 days from the date of receipt of the copy of the order levying penalty, the goods or conveyance so detained/seized shall be liable to be sold or disposed of otherwise, in the prescribed time and manner, to recover the penalty so payable.

However, where the detained/seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of 15 days may be reduced by the proper officer.

Thus now, in case of failure of payment of penalty within 15 days of receipt of penalty order, said goods or conveyance shall be liable to be sold/disposed of.

Further, now, the transporter can get the conveyance released on payment of:

⇒ penalty under sub-section (3)

or

⇒ ₹ 1 lakh

whichever is less.

Proceedings under section 130 delinked from proceedings under section 129 [Section 130]

Briefly state the provisions pertaining to confiscation of goods or conveyances & levy of penalty? (Sec 130)

Ans. As per section 130,

1) Notwithstanding Where anything contained in this Act, if any person—

- (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
 - (ii) does not account for any goods on which he is liable to pay tax under this Act; or
 - (iii) supplies any goods liable to tax under this Act without having applied for registration; or
 - (iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
 - (v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,
- then, **all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.**

2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an **option to pay in lieu of confiscation**, such fine as the said officer thinks fit subject to –

➤ Amount of fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:

➤ **Aggregate of fine and penalty leviable shall not be less than the amount of penalty leviable under 129(1)**

➤ **Aggregate of fine and penalty leviable shall not be less than the amount of penalty equals to 100% of tax payable on such goods**

Where any such conveyance is used for the carriage of the goods or passengers for hire, *the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.*

3) Where any fine in lieu of confiscation of goods or conveyance is imposed the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, ~~be liable to any tax, penalty and charges payable in respect of such goods or conveyance.~~

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an **opportunity of being heard.**

(5) Where any goods or conveyance are confiscated under this Act, **the title of such goods or conveyance shall thereupon vest in the Government.**

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and **every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.**

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and **after giving reasonable time not exceeding three months to pay fine in lieu of confiscation**, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

Sec 154:- Disposal of proceeds of sale of goods or conveyance and movable or immovable property [N/ No. 40/2021 CT dated 29.12.2021]

1	The amounts so realised from the sale of goods or conveyance, movable or immovable property, for the recovery of dues from a defaulter or for recovery of penalty payable under section 129(3) shall,-
	a first , be appropriated against the administrative cost of the recovery process;
	b next , be appropriated against the amount to be recovered or to the payment of the penalty payable under section 129(3), as the case may be;
	c next , be appropriated against any other amount due from the defaulter under the Act or the IGST Act, 2017 or the UTGST, 2017 or any of the SGST, 2017 and the rules made thereunder; and
d the balance , if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance as the case may be, in case the person is registered under the Act, and where the said person is not required to be registered under the Act, the said amount shall be credited to the bank account of the person concerned;	
2	where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of 6 months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund.



APPEALS & REVISION

Pre-deposit of 25% of the penalty amount appeal filed to AA against penalty order passed for release of detained/seized goods and conveyance in transit [Proviso to section 107(6)]

Explain the provision of 'Mandatory Deposit' as required before filing an appeal [Sec 107]?

Ans.

Pre-Deposit before AA

Section 107(6) provides that no appeal shall be filed before the AA, unless the appellant has paid—

- (a) **full amount of tax, interest, fine, fee and penalty** arising from the impugned order, **as is admitted by him; and**
- (b) **a sum equal to 10% of the remaining amount of tax in dispute arising from the said order subject to a maximum of ₹25 Cr.**

Provided that, no appeal shall be filed to (AA) against an order under section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.

Author Notes:-

This amendment is subsequent to the amendment in section 129(3) which provides that in case of detention/seizure of goods and conveyance during transit, only penalty is payable for release of the goods. Consequently, aforesaid proviso has been inserted which provides that in case of appeal filed against penalty order passed for release of detained/seized goods and conveyance, predeposit amount shall be 25% of the penalty.



MISCELLANEOUS PROVISIONS

FURNISHING , COLLECTION AND PUBLICATION OF INFORMATION

Sec 151 : Power to collect Statistics

~~Section 151 lays down as under:~~

- ~~☛ If the Commissioner considers necessary to do so, he may direct that statistics be collected relating to any matter dealt with, by or in connection with the Act.~~
- ~~☛ It may be noted that the statistics can be collected only for the purpose of better administration of the Act.~~
- ~~☛ Upon such notification being issued, the Commissioner, or any person authorized by the Commissioner in this behalf may call upon all concerned persons to furnish such information or returns as may be specified therein relating to any matter in respect of which statistics is to be collected.~~

New Amended Provision by F.A. 2021

The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified herein.

Sec 152 : Bar on disclosure of information

~~Section 151 lays down as under:~~

- ~~☛ No information of any individual return with respect to any matter given for the purpose of sections 150 or 151 shall, without the previous consent in writing of the concerned person or his authorised agent, be published in such manner as to enable any particulars to be identified as referring to a particular person.~~
- ~~☛ No such information shall be used for the purpose of any proceedings under the Act **without giving an opportunity of being heard to the person concerned.**~~

Tenure of National Anti-profiteering Authority increased to 5 years from 4 years [Rule 137] [Notification No. 37/2021 CT dated 01.12.2021]

Existing Provision	National Anti-profiteering Authority is constituted by the Central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him, this is to ensure that the consumer is protected from arbitrary price increase in the name of GST. The authority was established under section 171 on 01.12.2017. Rule 137 specifies the tenure of the said authority.
Amendment	With effect from 30.11.2021, rule 137 has been amended to extend the tenure of the Authority to 5 years from existing 4 years, from the date on which the Chairman enters upon his office (unless the Council recommends otherwise), in view of the pendency of the cases. Thus, the term of such authority has now been extended till 30.11.2022.

**PART II:
CUSTOMS &
FOREIGN
TRADE
POLICY**

Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, amended [N/N07/2022 Cus (N.T.) dated 01.02.2022 and Circular No. 04/2022 Cus dated 27.02.2022][Effective from 01.03.2022]

<p>RULE 1 Short title and commencement</p>	<p>(1) These rules may be called the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.</p> <p>(2) They shall come into force on the 1st day of July, 2017</p>
<p>RULE 2 Application</p>	<p>(1) These rules shall apply to an importer,</p> <ul style="list-style-type: none"> ➤ who intends to avail the benefit of an exemption notification issued under sub-section (1) of section 25 of the Customs Act, 1962 and ➤ where the benefit of such exemption is dependent upon the use of imported goods covered by that notification for the manufacture of any commodity or provision of output service. <p>(2) These rules shall apply only in respect of such exemption notifications which provide for the observance of these rules.</p>
<p>RULE 3 Definition.</p>	<p>In these rules, unless the context otherwise requires, -</p> <p>(a) "Act" means the Customs Act, 1962 (52 of 1962);</p> <p>(b) "exemption notification" means a notification issued under sub-section (1) of section 25 of the Act;</p> <p>(c) "Information" means the information provided by the manufacturer who intends to avail the benefit of an exemption notification;</p> <p>(d) "Jurisdictional Custom Officer" means an officer of Customs of a rank equivalent to the rank of Superintendent or an Appraiser exercising jurisdiction over the premises where either the imported goods shall be put to use for manufacture or for rendering output services;</p> <p>(e) "manufacture" means the processing of raw materials or inputs by the importer in any manner that results in emergence of a new product having a distinct nature or character or use or name; and the term "manufacturer" shall be construed accordingly.</p> <p>(f) "output service" means supply of service excluding after-sales service, utilizing imported goods.</p> <p>(g) "Capital goods" means goods, the value of which is capitalised in the books of account of the importer.</p> <p>(h) "Job work" means any treatment, process or manufacture, consistent with the exemption notification undertaken by a person on goods belonging to the importer except gold, jewellery and articles thereof, and other precious metals or stones; and the term "job worker" shall be construed accordingly.</p> <p>The following new definitions have been inserted in Rule 3 containing definitions</p> <p>(i) "Common portal" means the common customs electronic portal as referred to in section 154C of the Act. CBIC has notified ICEGATE (https://www.icegate.gov.in) as common Customs electronic portal.</p> <p>(ii) "Customs automated system" means the Indian Customs Electronic Data Interchange System.</p> <p>(iii) "Date of import" means the date of the order made under section 47 of the Act permitting clearance of such goods.</p>

RULE 4 Importer to give prior information	Existing Provision	<p>The importer intending to avail benefit of concessional rate of duty on the goods imported, was required to provide information to the Deputy Commissioner of Customs or Assistant Commissioner of Customs of the place where imported goods would be put to use for manufacturing or rendering of services except after sales services.</p>
	Amendment	<p>However, now the importer is required to provide one-time information on common portal in the prescribed form consisting of the following particulars namely:-</p> <ul style="list-style-type: none"> (i) the name and address of the importer and his job worker, if any; (ii) the goods produced or process undertaken at the manufacturing facility of the importer or his job worker, if any, or both; (iii) the nature and description of goods imported used in the manufacture of goods at the premises of the importer or the job worker, if any; (iv) particulars of the exemption notification applicable on such import ; (v) nature of output service rendered utilising the goods imported; and (vi) the intended port(s) of import <p>On acceptance of the above information, an Import of Goods at Concessional Rate Identification Number (IIN) shall be generated against such information furnished.</p> <p>The importer also has an option to update the prescribed form in case of any change in the details on the common portal.</p> <p>The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, having jurisdiction over the premises where the goods imported shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of import, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of import of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.</p> <p>The requirement to submit the continuity bond shall continue to exist in the amended regulations.</p>
RULE 5 Procedure to be followed	Existing Provision	<p>The importer was required to furnish the details of estimated quantity and value of goods to be imported on an annual basis before undertaking the imports, to the Deputy Commissioner/Assistant Commissioner of Customs having jurisdiction over the premises where imported goods shall be put to use.</p> <p>Such information was also required to be intimated to Deputy Commissioner/ Assistant Commissioner of Customs at the Custom station of importation.</p>
	Amendment	<p>The importer who intends to avail the benefit of an exemption notification shall now mention IIN and continuity bond number while filing bill of entry.</p> <p>Accordingly, the Deputy/ Assistant Commissioner of Customs at the Custom Station of importation, shall allow the benefit of the exemption notification to the importer.</p> <p>Once a Bill of Entry is cleared for home consumption, the bond submitted by the importer gets debited automatically in the customs automated system and the details shall be made available electronically to the Jurisdictional Custom Officer.</p> <p>The new process aims at removing manual intervention and simplifying the procedure with focus on automation and faceless procedure to avail the benefit of concessional rate of duty</p>

RULE 6 Importer to give information regarding receipt of imported goods and maintain records	Existing Provision	<p>The importer was required to provide information of goods received in premises within 2 days to the jurisdictional custom officer. The importer was also required to maintain the specific details in respect of goods imported and file return on a quarterly basis by 10th of the following quarter.</p>
	Amendment	<p>However, now the importer shall not be required to intimate the jurisdictional officer regarding receipt of goods imported.</p> <p>Further, the importer shall maintain an account in such manner to clearly indicate the quantity-</p> <ul style="list-style-type: none"> (i) and value of goods imported; (ii) and date of receipt of the goods imported in the relevant premises; (iii) of such goods consumed; (iv) of goods sent for job work, nature of job work carried out; (v) of goods received after job work; (vi) of goods re-exported, if any, under rule 7; and (vii) remaining in stock, according to Bills of Entry <p>and shall produce the said account as and when required by the Deputy/ Assistant Commissioner of Customs, having jurisdiction over the premises or where the goods imported shall be put to use for manufacture of goods or for rendering output service:</p> <p>Further, in case of non-receipt or short receipt of goods imported in the relevant premises, the importer shall intimate such non-receipt or short receipt immediately on the common portal in the prescribed form.</p> <p>The importer shall submit a monthly statement on the common portal in the prescribed form by the 10th day of the following month.</p>
RULE 6A Procedure for allowing imported goods for jobwork	Existing Provision	<p>The importer was required to intimate the jurisdictional customs officer prior to sending an imported goods (except gold, jewellery and articles thereof) for jobwork specifying the name and address of job-worker, quantity and description of goods intended to be sent to job-worker.</p> <p>The copy of intimation was then forwarded to Customs officers under whose jurisdiction the premises of job-worker is situated. The importer was required to send the goods under a challan specifying description and quantity of the goods.</p> <p>The maximum period for which the goods can be sent to the job worker was 6 months from the date of issue of challan.</p> <p>Thereafter, completion of job-work, processed goods had to be sent to the importer under challan or challan of principal manufacturer duly endorsed by him.</p>
	Amendment	<p>However, now the importer is no longer required to intimate jurisdictional customs officer about his intention of sending goods to job-worker.</p> <p>Further, the importer shall maintain a record of the goods sent for job work during the month and mention the same in the prescribed monthly statement.</p> <p>The importer shall send the goods to the premises of the job worker under an invoice or wherever applicable through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.</p> <p>The maximum period for which the goods can be sent to the job worker shall be 6 months from the date of invoice or an e-way bill.</p> <p>In case the importer is not able to establish that the goods sent for job work have been used as per the particulars mentioned under rule 4, the Jurisdictional Custom Officer shall take necessary action against the importer under rules 8 and 8A. The job worker shall,-</p> <ul style="list-style-type: none"> (i) maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process; (ii) produce the account details before the Jurisdictional Custom Officer as and when required by the said officer; and (iii) after completion of the job work, send the processed goods to the importer or to another job worker as directed by the importer for carrying out the remaining processes, if any, under the cover of an invoice or an e-way bill.

<p>Rule 6B Procedure for allowing imported goods for unit transfer</p>	<p>Newly Inserted</p>	<p>Newly introduced rule 6B prescribes procedure for transfer of imported goods to interunit. The importer shall maintain a record of the goods sent for unit transfer during the month and mention the same in the specified monthly statement.</p> <p>The importer shall send the goods under an invoice or wherever applicable through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.</p> <p>The importer shall in relation to transfer of goods to another unit,-</p> <ul style="list-style-type: none"> (i) maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process; (ii) produce the account details before the Jurisdictional Custom Officer as and when required by the said officer; and (iii) after completion of the said process, send the processed goods back to the premises of the importer from where the goods were received or to a job worker for carrying out the remaining processes, if any, under the cover of an invoice or an e-way bill. 	
<p>RULE 7 Re-export or clearance of unutilised or defective goods.</p>	<p>Existing Provision</p>	<p>The importer was allowed to re-export the unutilized or defective imported goods within 6 months from the date of import pursuant to obtaining permission of jurisdictional Deputy Commissioner of Customs/ Assistant Commissioner of Customs having jurisdiction over the premises where imported good are put to use.</p> <p>The value of such re-export not to be less than value of such goods at the time of import</p>	
	<p>Amendment</p>	<p>However, now rule 7 is substituted to provide for the following:</p> <ul style="list-style-type: none"> ◆ The importer who has availed the benefit of an exemption notification shall use the goods imported in accordance with the conditions specified in exemption notification within 6 months of date of import. ◆ The importer is allowed to suo moto decide to either re-export or clear the unutilized goods for home consumption within 6 months from date of import. <p>The importer who opts to re-export such goods shall record the details of necessary export documents in the monthly statement. Further, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.</p> <p>The importer who opts to clear the unutilised or defective goods for home consumption, shall pay the duty along with interest on the common portal and the particulars of such clearance and the payment of duty shall be recorded by the importer in the monthly statement.</p> <p>As per the clarification provided by the circular, the period for calculation of such interest would start from the date of import of such goods and end with the date of actual payment</p> <p>The importer has an option to clear the capital goods imported, after having been used for the specified purpose, on payment of duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by the notification issued under section 28AA of the Act, on the depreciated value allowed in straight line method, as specified below, namely: —</p> <ul style="list-style-type: none"> (i) for every quarter in the first year @ 4%; (ii) for every quarter in the second year @ 3%; (iii) for every quarter in the third year @3%; (iv) for every quarter in the fourth and fifth year @ 2.5%; (v) and thereafter for every quarter @ 2%. <table border="1" data-bbox="509 1878 1533 2153"> <tr> <td data-bbox="509 1878 688 2153">Explanation</td> <td data-bbox="688 1878 1533 2153"> <ul style="list-style-type: none"> i) For the purpose of computing rate of depreciation for any part of a quarter, a full quarter shall be taken into account. (ii) The depreciation shall be allowed from the date when the imported capital goods have come into use for the purpose as specified in the exemption notification upto the date of its clearance. <p>The importer shall, record the particulars of such clearance and payment of duty in the monthly statement.</p> </td> </tr> </table>	Explanation
Explanation	<ul style="list-style-type: none"> i) For the purpose of computing rate of depreciation for any part of a quarter, a full quarter shall be taken into account. (ii) The depreciation shall be allowed from the date when the imported capital goods have come into use for the purpose as specified in the exemption notification upto the date of its clearance. <p>The importer shall, record the particulars of such clearance and payment of duty in the monthly statement.</p>		

Rule 8 Recovery of duty in certain cases	Existing Provision	Rule 8(1) provides for recovery of duty in case of non-compliance of condition of exemption notification or failure to take action by re-export or clearance of unutilized or defective goods under rule 7.
	Amendment	<p>The Deputy Commissioner of Customs or the Assistant Commissioner of Customs, having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service shall continue to take action and recover duties in the event of:</p> <ul style="list-style-type: none"> ◆ Failure by the importer to comply with the conditions to avail the benefit of exemption notification ◆ Failure by the importer to make prescribed payment <p>By invoking the bond to initiate the recovery proceedings of the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any at the time of importation, along with interest at the prescribed rate starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.</p>



Chapter

FOREIGN TRADE POLICY

Applicability of FTP extended till 31.03.2022 [Notification No. 33/2015-2020 dated 28.09.2021]

Foreign Trade Policy (FTP), 2015-2020, (as updated) incorporating provisions relating to export and import of goods and services will now remain in force upto 30.09.2022, unless otherwise specified.

Exemption from IGST and GST compensation cess extended upto 31.03.2022, in case of imports under Advance Authorisation, EPCG, EOU/EHTP/STP/BTP units [Notification No. 33/2015-2020 dated 28.09.2021]

Earlier	<p>imports against Advance Authorizations for physical exports were exempted from Integrated Tax and Compensation Cess upto 31.03.2022.</p> <p>The exemption from Integrated Tax and Compensation Cess in case of imports against Advance Authorisations for physical exports has now been extended upto 30.06.2022.</p>
Earlier	<p>Capital goods imported under EPCG Authorization for physical exports were exempted from IGST and Compensation Cess upto 31.03.2022.</p> <p>The exemption from IGST and Compensation Cess in case of capital goods imported under EPCG Authorisation for physical exports has now been extended upto 30.06.2022.</p>
Amendment	<p><i>In case of goods imported by EOU/EHTP/STP/BTP units from DTA, IGST and GST compensation cess were exempt upto 31.03.2022. The exemption from IGST and GST Compensation Cess in case of goods imported by EOU/EHTP/STP/BTP units from DTA has now been extended upto 30.06.2022.</i></p>

Principles of restrictions and prohibitions for imports/exports revised to be in line with international agreements [[Notification No. 17/2015-2020 dated 10.08.2021]]

With effect from 10.08.2021, principles of restrictions and prohibitions for imports/exports have been revised as follows:-

a.	on export of foodstuffs or other essential products for preventing or relieving critical shortages;	
b.	on imports and exports necessary for the application of standards or regulations for the classification, grading or marketing of commodities in international trade;	
c.	on imports of fisheries product, imported in any form, for enforcement of governmental measures to restrict production of the domestic product or for certain other purposes;	
d.	on import to safeguard country's external financial position and to ensure a level of reserves.	
e.	on imports to promote establishment of a particular industry;	
f.	for preventing sudden increases in imports from causing serious injury to domestic producers or to relieve producers who have suffered such injury;	
g.	for protection of public morals or to maintain public order;	
h.	for protection of human, animal or plant life or health	
i.	relating to the importations or exportations of gold or silver;	
j.	necessary to secure compliance with laws and regulations including those relating to the protection of patents, trademarks and copyrights, and the prevention of deceptive practices	
k.	relating to the products of prison labour	
l.	for the protection of national treasures of artistic, historic or archaeological value	
m.	for the conservation of exhaustible natural resources	
n.	for ensuring essential quantities for the domestic processing industry	
o.	essential to the acquisition or distribution of products in general or local short supply;	
p.	for the protection of country's essential security interests:	
	i.	relating to fissionable materials or the materials from which they are derived;
	ii.	relating to the traffic in arms, ammunition and implements of war;
	iii.	taken in time of war or other emergency in international relations; or
q.	in pursuance of country's obligations under the United Nations Charter for the maintenance of international peace and security. The aforesaid principles of restrictions and prohibitions for imports/exports have been amended to be in line with international agreements.	

