

Chapter 5

Classification/Assessment of Projects Imports, Baggage and Postal Imports

1. Introduction:

- 1.1 For the sake of convenience, a special classification has been introduced in the Customs Tariff for project imports, baggage and postal imports. By virtue of this classification, the diverse goods that are imported for the purpose of execution of projects or as baggage and postal imports are classified under one heading and subjected to a uniform rate of duty. This facilitates assessment and ensures faster clearances since the alternative would be to classify each item distinctly and subject the same to the applicable duty.

2. Project imports:

- 2.1 'Project Imports' is an Indian innovation to facilitate setting up of and expansion of industrial projects. Normally, imported goods are classified separately under different tariff headings and assessed to applicable Customs duty, but as a variety of goods are imported for setting up an industrial project their separate classification and valuation for assessment to duty becomes cumbersome. Further, the suppliers of a contracted project, do not value each and every item or parts of machinery which are supplied in stages. Hence, ascertaining values for different items delays assessment leading to demurrage and time and cost overruns for the project. Therefore, to facilitate smooth and quick assessment by a simplified process of classification and valuation, the goods imported under Project Import Scheme are placed under a single Tariff Heading 9801 in the Customs Tariff Act, 1975. The Central Government has formulated the Project Import Regulations, 1986 prescribing the procedure for effecting imports under this scheme.
- 2.2 The Project Import Scheme seeks to achieve the objective of simplifying the assessment in respect of import of capital goods and related items required for setting up of a project by classifying all goods under heading 9801 of the Customs Tariff Act, 1975 and prescribing a uniform Customs duty rate for them even though other headings may cover these goods more specifically.
- 2.3 The different projects to which heading 9801 applies are; irrigation project, power project, mining project, oil/mineral exploration projects, etc. Such an assessment is also available for an industrial plants used in the process of manufacture of a commodity. The Central Government can also notify projects in public interest keeping in view the economic development of the country to which this facility will apply. Thus, a number of notifications have been issued notifying a large number of projects for assessment under Tariff Heading 9801. However, this benefit is not available to hotels, hospitals, photographic studios, photographic film processing laboratories, photocopying studios, laundries, garages and workshops. This benefit is also not available to a single or composite machine.
- 2.4 Goods that can be imported under Project Import Scheme are machinery, prime movers, instruments, apparatus, appliances, control gear, transmission equipment, auxiliary equipment, equipment required for research and development purposes, equipment for testing and quality control, components, raw materials for the manufacture of these items, etc. In addition, spare parts, consumables up to 10% of the assessable value of goods can also be imported.

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- 2.5 The purposes for which such goods can be imported under the Project Import Scheme are for 'initial setting up' or for 'substantial expansion' of a unit of the project. The 'unit' is any self contained portion of the project having an independent function in the project. A project would fall under the category of 'substantial expansion' if the installed capacity of the unit is increased by not less than 25%, as per the Project Import Regulations.
- 2.6 In view of decision of Hon'ble Supreme Court in the case of Commissioner of Customs, Mumbai vs. M/s. Toyo Engineering India Ltd., 2006(201) ELT 513 SC , the scope of the items eligible for import under the Project Import Regulations 1986, shall cover construction equipments as auxiliary equipment; if essentially required for initial setting up or substantial expansion of registered projects. The construction equipments may be permitted to be transferred to other registered project under CTH 9801, after completion of its intended use, on recommendations of sponsoring authority. The 'Plant Site Verification Certificate' required to be submitted for finalization of project as per Circular No. 14/2006-Cus., dated 17-4-2006 shall incorporate the details of construction equipments imported and used for the project, to ensure proper utilization of goods imported.

[Refer Circular No. 49/2011-Cus. dated 4-11-2011]

3. Registration of contracts:

- 3.1 In terms of Regulation 4 of the Project Import Regulations, 1986 (PIR) the basic requirement for availing the benefit of assessment under Tariff Heading No. 98.01 is that the importer should have entered into one or more contracts with the suppliers of the goods for setting up a project. Such contracts should be registered prior to clearance in the Custom House through which the goods are expected to be imported. The importer shall apply for such registration in writing to the proper officer of Customs.
- 3.2 Regulation 5 provides in the manner of registering contracts, as follows:
- (i) Before any order is made by the proper officer of Customs permitting the clearance of the goods for home consumption;
 - (ii) In the case of goods cleared for home consumption without payment of duty subject to re export in respect of fairs , exhibitions, demonstrations , seminars , congresses and conferences , duly sponsored or approved by the Government Of India or Trade fair Authority of India , as the case may be, before the date of payment of duty.
- 3.3 To expedite registration, the importers are advised to submit the following documents alongwith the application for registration:
- (i) Original deed of contract together with true copy thereof.
 - (ii) Industrial Licence and letter of intent, SSI Certificate granted by the appropriate authority with a copy thereof.
 - (iii) Original Import licence, if any, with a list of items showing the dimensions, specifications, quantity, quality, value of each item duly attested by the Licensing Authority and a copy thereof.
 - (iv) Recommendatory letter for duty concession from the concerned Sponsoring Authority, showing the description, quantity, specification, quality, dimension of each item and indicating whether the recommendatory letter is for initial set-up or substantial expansion, giving the installed capacity and proposed addition thereto.

- (v) Continuity Bond with cash security deposit equivalent to 2% of CIF value of contract sought to be registered subject to the maximum of Rs. 50 lakhs and the balance amount by the bank Guarantee backed by an undertaking to renew the same till finalization of the contract. The said continuity Bond should be made out for an amount equal to the CIF value of the contract sought to be registered.
- (vi) Process flow chart, plant layout, drawings showing the arrangement of imported machines along with an attested copy of the Project Report submitted to the Sponsoring authorities, Financial Institution, etc.
- (vii) Write up, drawings, catalogues and literature of the items under import.
- (viii) Two attested copies of foreign collaboration agreement, technical agreement, know-how, basic/detailed engineering agreement, equipment supply agreement, service agreement, or any other agreement with foreign collaborators/suppliers/ persons including the details of payment actually made or to be made.
- (ix) Such other particulars, as may be considered necessary by proper officer for the purpose of assessment under Heading No. 9801.

3.4 In regard to the requirement of registration of the contract (or contracts) and production of the 'original deed of contract', the Board noted that as per Section 10 of the Indian Contract Act, 1872 a valid contract contains certain essential elements viz. (a) it is entered into by free consent of parties competent to contract; (b) there should be lawful consideration; (c) there should be a lawful object; and (d) it is not expressly declared to be void under the statute. It is therefore decided that a purchase order that contains all the essential ingredients of a valid contract must be treated as one under the Indian Contract Act, 1872. Thus, such a purchase order can be accepted as a "deed of contract" for the purpose of Regulation 5 of Project Import Regulations, 1986.

[Refer Circular No. 31/2013-Cus. dated 6-8-2013]

3.5 After satisfying that goods are eligible for project imports benefit and importer has submitted all the required documents, the contract is registered by the Custom House and as a token of registration the provisional duty bond is accepted by the Assistant/ Deputy Commissioner of Customs, Project Import Group. The details of the contracts are entered in the register kept for the purpose and a Project Contract Registration Number is assigned and communicated to the importer. The importer is required to refer to this number in all subsequent correspondence.

4. Clearance of goods after registration:

4.1 On every Bill of Entry filed for clearance of goods under the Project Import Scheme, the importer/Customs Broker is required to indicate the Project Contract Registration Number allotted to it. After noting, the Bill of Entry is sent to the Project import Group, which is required to check the description, value and quantity of the goods imported vis-a-vis the description, value and quantity registered. In case these particulars are found in order, the Bill of Entry is assessed provisionally and handed over to the importer or his agent for payment of duty. The Project Import Group keeps a note of the description of the goods and their value in the Project Contract Register and in the file maintained in the Group for each project.

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5. Finalisation of contract:

- 5.1 Under Regulation 7 of the PIR, 1986 the importer is required to submit, within three months from the date of clearance of the last consignment or within such extended time as the proper officer may allow, the following documents for the purpose of finalization of the assessment:
- (i) A reconciliation statement i.e. a statement showing the description, quantity and value of goods imported along with a certificate from a registered Chartered Engineer certifying the installation of each of the imported items of machinery;
 - (ii) Copies of the Bills of Entry, invoices, and the final payment certificate is insisted upon only in cases where the contract provides that the amount of the transaction will be finally settled after completion of the supplies.
- 5.2 To ensure that the imported goods have actually been used for the projects for which these were imported, plant site verification may be done in cases where value of the project contract exceeds Rs.1 crore. In other cases plant site verification is normally done selectively.
- 5.3 In the normal course, after submission of the reconciliation statement and other documents by the importers, the provisional assessments are finalized within a period of three months where plant site verification is not required and within six months where plant site verification is required. In cases where a demand has been issued and confirmed on such finalization and importer has not paid the duty demanded, steps are taken as per law to realise the amount.