

EY Tax Alert

DGFT clarifies the issues pertaining to applicability of pre-import condition under Advance Authorization

Executive summary

EY Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

This Tax Alert summarizes a recent Trade Notice¹ issued by Directorate General of Foreign Trade (DGFT) pertaining to fulfilment of pre-import condition under Advance Authorizations (AA) issued during the period between 13 October 2017 to 9 January 2019.

Earlier the Supreme Court (SC) vide its judgement² held that pre-import condition would prevail for availing exemption of integrated tax (IGST) and compensation cess on goods imported against AA.

Consequently, a Circular³ and a Trade Notice⁴ were issued by Central Board of Indirect taxes and Customs (CBIC) and DGFT respectively, wherein it was clarified that IGST, and compensation cess was payable in respect of imports made against AA during the period between 13 October 2017 to 9 January 2019, in cases where the pre-import condition was not met.

The present Trade Notice clarifies fulfilment/ applicability of pre-import condition under different scenarios:

Sr. No	Issues	Clarification
I.	Exports made against AA during the period 13 October 2017 to 9 January 2019, and imports made on or after 10 January 2019.	Pre-import condition will be considered to have been fulfilled.
II.	AA issued on or before 9 January 2019 and imports made on or after 10 January 2019.	Pre-import condition will not be applicable.

¹ Trade Notice No. 27/2023 dated 25 September 2023

² Refer our alert "Supreme court upholds validity of pre-import condition under Advance Authorization scheme" dated 5 May 2023

³ Refer our alert "CBIC prescribes procedure for payment of IGST and cess on non-fulfilment of pre-import condition and manner of claiming ITC pursuant to SC order" dated 8 June 2023

⁴ Trade Notice No. 7/2023-24 dated 8 June 2023

III.	Against AA, imports partly made up to 9 January 2019 and remaining made on or after 10 January 2019.	Imports made on or after 10 January 2019 will not be subject to pre-import condition.
IV.	Imports made against AA on payment of IGST and compensation cess.	Pre-import condition will not be applicable irrespective of date of import.

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