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CUSTOMS

Impact of Coronavirus Lockdown: Frequently Asked Questions

- Customs Law Team, L&S





Due to Novel COVID-19, partial / complete lockdown has been imposed in various countries across the world. The Hon'ble Prime Minister of India on March 23, 2020 announced a complete lockdown throughout the country for 21 days, as a preventive measure to slow down the spreading of the virus. The Central Government, Supreme Court and other courts / tribunals have issued guidelines regarding the procedure to be followed in respect of proceedings before courts / tribunals and lower authorities during this period.

We at L&S have attempted to answer queries frequently received from our clients regarding the issues they may face in respect of clearance of goods from Customs and procedures concerning the proceedings before various judicial and *quasi-judicial* forums.



CUSTOMS CLEARANCE AND TIMELINES



1. Will customs clearances get delayed during the lockdown?

To address issues related to congestion, delay or surge in imports and exports, the Central Board of Indirect Taxes and Customs ('**CBIC**') had issued Instruction No. 02/2020 dated February 20, 2020 introducing 24 x 7 clearance at all customs formations until end of May 2020. The Ministry of Finance ('**MOF**') has also announced *vide* Press Release dated March 24, 2020 that the facility of 24 x 7 clearance at all customs formations shall now be available until June 30, 2020.



2. If my consignment has been denied clearance, what steps can be taken during the present situation? In case the goods are perishable in nature, is there a fast-track mechanism possible for the clearance of goods?

It is advisable to maintain an open channel of communication with the Customs Department ('**Department**') by phone / email. The endeavour should be to understand the Department's views in denying clearance and the steps that you may need to take to redress this. If you require time to provide explanation and documentation, communicate that promptly to the Department.

If even after providing suitable explanations and documentation, the Department denies clearance, you may consider clearing the goods provisionally in terms of Section 18 of the Customs Act, 1962 ('**the Act**'). You shall be required to furnish appropriate security to the Department for provisional clearance. However, arranging appropriate security may also take time as banks are operating for limited hours and with limited staff.



3. In view of COVID-19 pandemic, are there any new restrictions imposed on the import of goods into India or export of goods from India?

There are no new restrictions which have been imposed on the import of goods into India. Export of goods such as surgical / disposable masks, all ventilators, textile raw materials for masks and coveralls, and sanitizers have been prohibited *vide* Notification No. 52/2015-20 dated March 19, 2020 and Notification No. 53/2015-20 dated March 24, 2020. Further, export of hydroxychloroquine and its formulations have been prohibited (except under terms as mentioned in Para 2) *vide* Notification No. 54/2015-2020 dated March 25, 2020.



4. Will the extension of timeline *vide* Press Release dated March 24, 2020 be also applicable in cases where the export obligation period, authorisation validity period, etc. is expiring between March 20, 2020 to June 29, 2020? Will the present lockdown period be excluded for the purpose of calculating export obligation period?

Vide Notification No. 57/2015-2020 dated March 31, 2020, the Directorate General of Foreign Trade ('DGFT') has extended the Foreign Trade policy 2015-2020 ('FTP') till March 31, 2021. Further, *vide* Public Notice No. 67/2015-2020 dated March 31, 2020, various timelines (including export obligation period under various schemes, etc.) for compliance under the FTP and the Handbook of Procedures also stand extended.





5. Is there any extension of time period for realisation of export proceeds?

As a measure for dealing with the COVID-19 pandemic, the Reserve Bank of India ('RBI') has extended the time period for realisation and repatriation of export proceeds for exports made up to or on July 31, 2020 to 15 months from the date of export, *vide* RBI Press Release 2019-2020/2167 dated April 1, 2020.



6. Whether the importers / exporters would be liable to pay demurrage, ground rent, container detention charges, etc. in view of the delay in clearance of goods due to the lockdown?

The Directorate General of Shipping ('DGS') has issued DGS Orders No. 7 of 2020 and 8 of 2020, advising sea ports, shipping lines, carriers and their agents not to charge, levy or recover any demurrage, ground rent, additional anchorage charge, berth hire charge or vessel demurrage or any performance related penalties on cargo owners / consignees of non-containerised cargo for the period from March 22, 2020 to April 14, 2020. This shall be over and above the free service period as per the contract. Further, if a *force majeure* clause is present in the contract, the parties may discuss the same for the period beyond April 14, 2020.

Further, Ministry of Civil Aviation has issued an order dated April 1, 2020 to the airport operators / cargo terminal operators for a waiver of 50% demurrage charges on the clearance of specified cargo from the airport by 23:59 hours on April, 16 2020.



INVESTIGATIONS



7. The Directorate of Revenue Intelligence [or other investigating agency] is currently investigating my company. In view of the lockdown, what would be the status of such investigation?

The investigating agency may continue the investigation and maintain contact with the company under investigation by phone / email. The company may therefore continue to communicate with the Department.



8. In an ongoing investigation, my company officials were issued summons requiring them to appear in-person before the Department officials, but they could not attend the summons proceedings due to the lockdown. Will there be any consequences for my company?

In such delicate situation, the company may inform the Department by phone / email the reasons for not attending the summons proceedings. The company must convey their willingness to the Department to attend such proceedings after the lockdown period. Where the Department requires the company to furnish documents, the company may provide such information by email, wherever possible. In our view, non-submission of information or non-appearance in summons proceedings owing to the country wide lockdown would not have any adverse impact on the company and the company official.

SHOW CAUSE NOTICES



9. My company is under an investigation / post import audit and the Department is likely to issue a show cause notice. Whether the period of limitation of two / five years under the Act would be impacted by the lockdown period?

Yes, in view of COVID-19 pandemic, the Supreme Court *vide* order dated March 23, 2020 in *Suo Motu* WP (C) No. 3/2020 has extended the period of limitation in all proceedings with effect from March 15, 2020 till further orders to be passed by the Supreme Court. Further, *vide* Press Release dated March 24, 2020, the MOF has extended the time-limit for any compliances under the Act and other allied laws until June 30, 2020, where such time-limit was expiring between March 20, 2020 to June 29, 2020. *Vide* The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 dated March 31, 2020 ('**Ordinance**'), the Press Release has been provided statutory backing. Therefore, limitation under the Act for issuance of a show cause notice would also stand extended.



10. My company has been issued a show cause notice, which provides a timeline of 30 days to file a reply. It is not possible to adhere to this timeline in view of the lockdown. Can a reply be filed after the lockdown?

First and foremost, the Act does not provide any statutory timeline of 30 days for filing a reply to a show cause notice. Further, *vide* the Ordinance, the MOF has extended the timeline for all compliances under the Act and other allied laws until June 30, 2020, where such time-limit was expiring between March 20, 2020 to June 29, 2020. In view of the extension in timelines for compliances, the company can file its reply to show cause notice after the lockdown period. However, the lockdown period may be suitably utilised for preparing the reply.



11. My company has been issued a show cause notice, but the Department has not provided the relied upon documents. Is it possible to obtain the relied upon documents from the Department?

The company may communicate its request for obtaining a soft copy of the relied upon documents by email to the Department.



12. My company has prepared a reply to a show cause notice. Is it possible to file the reply in the current scenario?

The company may submit the soft copy of the reply by email to the adjudicating authority while also mentioning that the hard copy of the reply along with annexures would be submitted after the lockdown period.



PROCEEDINGS BEFORE THE ADJUDICATING AUTHORITY



13. A personal hearing has been scheduled before the adjudicating authority during the lockdown period. What steps can be taken?

The company may seek clarification from the adjudicating authority by phone / email as to whether the hearing would be conducted during the lockdown. Where the company does not receive any response from the adjudicating authority, the company may inform by phone / email of its inability to attend the hearing in view of the lockdown. Although, the company is allowed to request for a maximum of three adjournments under the Act, in view of the current lockdown, the company may mention in its communication that this opportunity may not be treated as an adjournment. The company may request the adjudicating authority to schedule the personal hearing after the lockdown period and no orders may be passed in the matter without granting such opportunity.



14. Pursuant to a personal hearing, my company is required to file additional submissions with the adjudicating authority. What steps can I take to ensure that my submissions are on record before any order is passed by the adjudicating authority?

The company may submit the additional submissions by email to the adjudicating authority. The company may mention in such communication that it would submit the hard copy after the lockdown period.



15. The adjudicating authority has directed my company to file relevant documents in respect of a matter remanded by an appellate forum. What steps can be taken? Can the adjudicating authority pass an order before my company is able to submit such documents?

The company may submit the relevant documents by email to the adjudicating authority, wherever possible and mention in such communication that it would submit the hard copy after the lockdown period. If the company is unable to submit the documents by email, it is important to communicate this to the adjudicating authority by phone and preferably by email. The company must also request in its email that in the interest of natural justice, the adjudicating authority may not pass any adverse order before the company is able to submit the desired documents.

PROCEEDINGS BEFORE COMMISSIONER OF CUSTOMS (APPEALS) ['CC (APPEALS)']



16. My company is required to file an appeal against an order of the adjudicating authority before CC (Appeals) within 60 days from the date of communication of the order. The time-limit expires during the lockdown period. Is it possible to get an extension to file such appeal?

In view of COVID-19 pandemic, the Supreme Court *vide* order dated March 23, 2020 in *Suo Motu* WP (C) No. 3/2020 has extended the period of limitation in all proceedings with effect from March 15, 2020 till further orders. Further, *vide* the Ordinance, the MOF has extended the timeline for all compliances under the Act and other allied laws until June 30, 2020, where such time-limit was expiring between March 20, 2020 to June 29, 2020.



17. If my company is unable to file an appeal within the period of 60 days and further condonable period of 30 days falling within the lockdown period, can the CC (Appeals) condone the delay beyond this period?

As explained in answer to question no. 16, the Supreme Court has extended the limitation period for filing appeals before the CC (Appeals) with effect from March 15, 2020. The MOF, *vide* the Ordinance has also allowed filing of appeals until June 30, 2020 where the last date to file the appeal was between March 20, 2020 to June 29, 2020. Therefore, reading together the Supreme Court's order and the Ordinance issued by the Central Government, where the condonable period of 30 days was to begin from March 15, 2020, an appeal can still be filed until June 30, 2020.



18. A personal hearing has been scheduled before the CC (Appeals) during the lockdown. What steps can be taken?

The company may seek clarification from CC (Appeals) by phone / email as to whether the hearing would be conducted during the lockdown. Where the company does not receive any response from CC (Appeals), the company may inform by phone / email of its inability to attend the hearing in view of the lockdown. Although, the company is allowed to request for a maximum of three adjournments under the Act, in view of the current lockdown, the company may mention in its communication that this opportunity may not be treated as an adjournment. The company may request CC (Appeals) to schedule the personal hearing after the lockdown period.

PROCEEDINGS BEFORE THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL ('CESTAT')



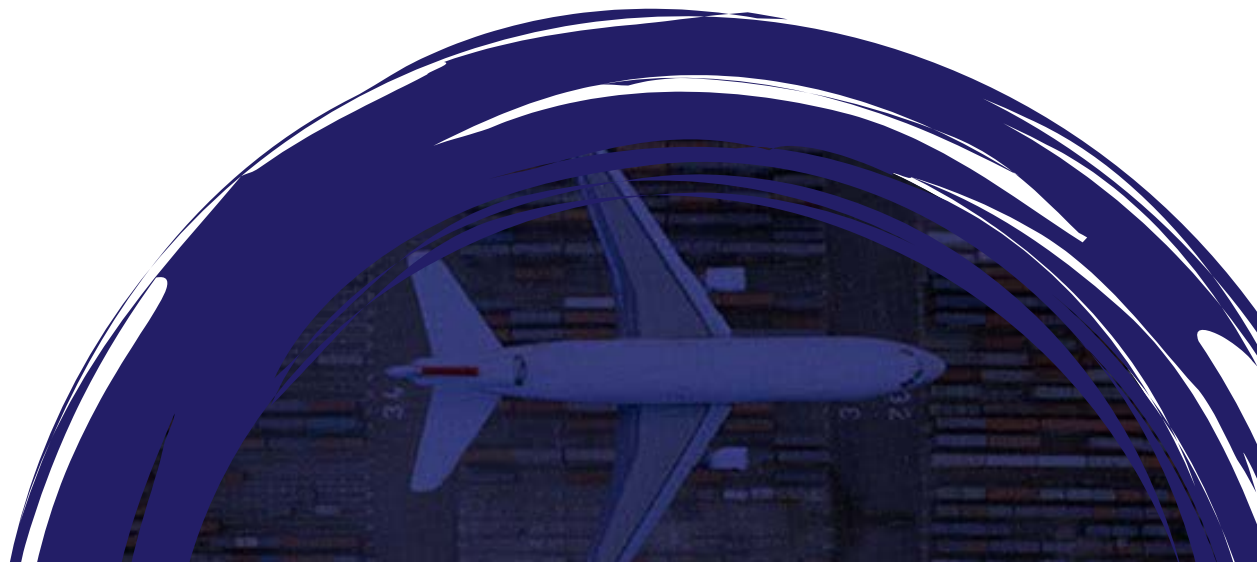
19. The time-limit to file an appeal before the CESTAT is ending during the lockdown period. Can an appeal be filed after the said period?

The CESTAT, *vide* Notification dated March 26, 2020, following the Supreme Court's order dated March 23, 2020, has extended the period of limitation for filing appeals and applications with effect from March 15, 2020 till further orders by the Supreme Court. The MOF *vide* the Ordinance has also allowed filing of appeals until June 30, 2020 where the last date to file the appeal was between March 20, 2020 to June 29, 2020. Therefore, an appeal can be filed by the company once the lockdown period is over and CESTAT resumes its normal operations. However, the lockdown period may be suitably utilised for preparing the appeal.



20. My company has been issued with a final hearing notice by the CESTAT. The hearing is scheduled during the lockdown period. What can be done in this regard?

The CESTAT *vide* Notifications dated March 19, 2020 and March 26, 2020, has notified that there will be no sitting of its benches pan-India during the period starting from March 23, 2020 until April 17, 2020. Therefore, the matter listed for final hearing during the said lockdown period shall stand adjourned.





21. The CESTAT had directed my company to file a letter / application / make pre-deposit in order to cure the defect in the appeal filed on behalf of the company. In view of the lockdown, what steps can my company take to comply with such order?

As explained in answer to question no. 20, the CESTAT has extended the period of limitation for filing applications with effect from March 15, 2020 till further orders of the Supreme Court. Further, *vide* the Ordinance, the MOF has extended the time-limit for any compliances under the Act and other allied laws until June 30, 2020, where such time-limit was expiring between March 20, 2020 to June 29, 2020. Such extended timeline is applicable in case of filing any applications or documents. Therefore, any such letter / application / proof of pre-deposit may be filed by the company at the earliest available opportunity after the lockdown period.



22. My company had attended the final hearing consequent to which the CESTAT reserved its final order. What is the time-limit for the CESTAT to pass the final order after the order has been reserved?

The CESTAT is required to pass final order within six months from the date such order is reserved on conclusion of arguments as per CESTAT Order No. 4/2009 dated July 17, 2009. However, *vide* Notification dated March 26, 2020, the CESTAT has notified that if the last date for pronouncement of any order is on or before April 17, 2020, it may pronounce such order on the next working day. Further, *vide* the Ordinance, issuance of any order which was due between March 20, 2020 till June 29, 2020 has been extended to June 30, 2020 or such other date as may be notified by the Central Government in this regard.

PROCEEDINGS BEFORE THE HIGH COURTS / SUPREME COURT



23. The time-limit to file an appeal / petition before the High Courts / Supreme Court is ending during the lockdown period. Can an appeal be filed after the lockdown period?

As the Supreme Court *vide* order dated March 23, 2020 has extended the period of limitation in all proceedings pending before all courts and Tribunals with effect from March 15, 2020 till further orders, appeals / petitions can be filed before the High Courts / Supreme Court after the lockdown period. Further, *vide* the Ordinance, the date for filing of the appeal has been extended to June 30, 2020, where such due date for filing was between March 20, 2020 till June 29, 2020.



24. My company has filed an appeal / petition before a High Court / Supreme Court. Will the hearing be scheduled during the lockdown period?

The Supreme Court and various High Courts such as in Delhi, Bombay, Gujarat, Karnataka, etc. have permitted that only in matters of extreme urgency, parties may approach such court. In our view, the courts may not consider matters pertaining to taxation as urgent for listing purposes. Further, recently the High Court of Bombay has imposed costs when a petitioner could not satisfy the High Court of the urgency in the matter.



25. The High Court / Supreme Court has allowed my company time to file counter / rejoinder or other additional documents. Can such counter / rejoinder or additional documents be filed after the lockdown period?

Considering that it is not allowed for parties to approach the courts during the ongoing COVID-19 pandemic and country wide lockdown, the High Courts and the Supreme Court have done away with the requirement of filing of documents for the time being. The courts are accepting filings only in matters of extreme urgency. Therefore, any counter / rejoinder or additional documents may be filed after the lockdown period where there is no extreme urgency in the matter.



26. If the High Court / Supreme Court has granted stay in a matter which is set to lapse within the lockdown period, what steps can be taken?

A few High Courts such as in Delhi, Bombay and Allahabad have passed orders allowing interim order / stay to continue in all pending matters until further orders. In our view, same approach would be followed in other States also. However, the Supreme Court has not yet issued any such order.



27. The High Court / Supreme Court had begun final hearing before the lockdown and the next date of hearing falls during the lockdown period. Will the High Court / Supreme Court hear the matter at such next date?

As mentioned earlier, a few High Courts and the Supreme Court have restricted their functioning to hearing only those matters where there is extreme urgency. As taxation matters may not be considered as urgent, hearings in such matters would continue only after the courts resume their normal operations after the lockdown period.



28. My company had attended the final hearing consequent to which the High Court / Supreme Court reserved its judgment. What is the time-limit for the High Court / Supreme Court to pass the judgment after the judgment has been reserved?

Normally, the High Court / Supreme Court would pronounce judgments within six months from conclusion of arguments in a matter. *Vide* the Ordinance, issuance of any order which was due between March 20, 2020 till June 29, 2020 has been extended to June 30, 2020 or such other date as may be notified by the Central Government in this regard.

NOTE

1. *Vide* Press Release dated March 24, 2020, the MOF has extended the time-limit for any compliances under the Act and other allied laws until June 30, 2020, where such time-limit was expiring between March 20, 2020 to June 29, 2020.
 2. *Vide* the Ordinance, the Press Release dated March 24, 2020 has been provided statutory backing.
 3. Where an assessee is sending soft copy of reply / additional submissions / appeal / application, etc. to any authority, they should mention that the hard copy will be submitted as and when the present lockdown is over, and that the hard copy will be the exact replica of the soft copy of such document.
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