

ETPrime

How exporters are getting steamrolled by a six-decades-old law



Synopsis

The government is streamlining systems to make trade easier. But the Customs Act of 1962 has many loopholes and ambiguities that puts exporters and importers at a disadvantage.

“Getting tagged a risky exporter came as a bolt from the blue. But the turn of events after that was disheartening,” says Anant Srivastava, describing his ordeal of dealing with the Customs Department after the government flagged up his business dealing.

A Ghaziabad-based SME exporter of textiles and home furnishings, Srivastava says that the government tagged his firm “risky” in 2022 because of someone else’s inaction. “One supplier submitted his **GST** (goods and services tax) refund filing late, and we had to bear the ramifications of that. Our duty refunds and government incentives were suspended. It took us about 1 year of fact-finding to understand the source of the problem.”

The GST law says in case a supplier files delayed tax returns, no input tax credit would be available to the recipient of the supplies.

The Central Board of Indirect Taxes and Customs (**CBIC**) identifies an entity as a “risky exporter” when it notices certain discrepancies, such as excess refund claims. All export consignments of the firm concerned are then scrutinised closely and its refunds frozen until the tag is removed. It becomes a problem for manufacturers and **exporters** when domestic suppliers do not file their GST claims on time.

This is what happened to Srivastava, who has been running Skier Exports since 2009 and exports home furnishing items to about 70 countries. He claims his shipment worth “crores of rupees” was stuck as the risky exporter tag froze all refunds and incentives till he managed to resolve the issue a year later. The call centre under the Central Board of Indirect Taxes and Customs (CBIC) — the Indian Customs Electronic Data Interchange Gateway or **ICEGATE**, which acts as an “interface between the trade users and the Customs Department” — was not able to help, he says. They did not even know of the problem, let alone helping with the issue.

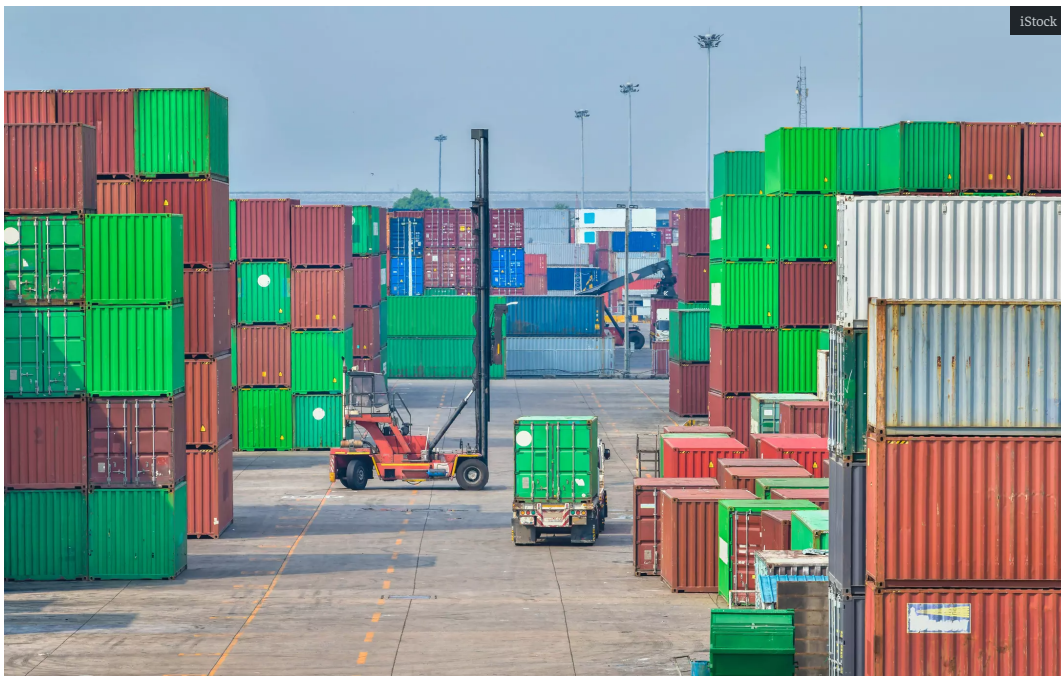
Experts say such issues do occur but in a handful of cases, and traders can move a court for relief. On why Srivastava did not opt for legal recourse, he clarifies that whenever he contacted various government departments, he was assured of a speedy redressal. So, he waited, and the issue was finally addressed a year later.

Important but not updated

The Ghaziabad-based SME exporter is now among the importers and exporters who insist that the custom operations and the **Customs Act** of 1962 need an overhaul to keep up with the times. Stakeholders say they have to deal with a complex maze by running after officers to prove their innocence in such cases.

The Customs Act and the Customs Tariff Act of 1975 are crucial laws for cargo operations. But the rules are outdated and insufficient to deal with the changing economic and technological landscape, say traders.

Take, for example, the case of Ritesh Bhansali, Director at Mumbai-based exporting firm Picaso Trade Enterprises. After the enterprise was labelled as risky, Bhansali claims to have gone from pillar to post for months to prove the mistake wasn't at his end. “The local GST officer would assure me that my name has been cleared from the list. But the Customs Department would not release my refunds. This went on for months.”



India is looking to strengthen its merchandise trade, but several provisions of the Customs Act are arbitrary and archaic.



In most cases, traders are irked that they aren't even told where and why their file is stuck. They also criticise the customs act for its inadequacy in dispute resolution, which has led to a backlog and delays in trade. This increases the costs for the traders and the government.

Problems in digitisation

The absence of real-time information exchange is a headache, and it becomes acute when dealing with issues relating to the global Harmonised System (HS) codes or getting refunds after filing export general manifests (EGMs), a comprehensive shipping document obtained after loading of goods at a port. The information filed by all parties in the supply chain of the goods exported has to be in sync with the EGM drawn up while shipping the products.

Srivastava claims to have been caught in the loopholes here as well. “Last September, we sent a shipment to Libya. It was flagged up with an EGM error. We were told that we have to first get it rectified at our dry port, in our case the container freight station (CFS), and then throughout the entire logistics chain, all the way to the shipping company. We finally got it resolved only at the end of January. Through these 3-4 months, all our refunds got stuck,” says the exporter.

The government does take some action now and then, but these do not serve the purpose in the long run, claim stakeholders. For example, the government had last year introduced the seventh edition of the HS nomenclature to reduce disputes with respect to various commodities' trade classifications. It gave products such as drones and smartphones more visibility, among other measures. The move was supposed to bring clarity to the way the government looks at certain issues of traders. Industry players laud the move but add that isn't enough.

Amrit Manwani, CMD of Noida-based Sahasra Electronics, says, “Reclassification

of HS codes will help to an extent. But even now, there are a lot of grey areas that are left to the interpretation of the customs officers dealing with the cargo.” Some of the officers’ “anti-industry stand” then comes in the way of doing business.

Exporters say they want better rules so that the fate of an export order is not dependent on the mindset of an official.

Problem in interpretation?

Shoeb Ishak, CEO of Mumbai-based Fem Exports, uses the example of terry towel to explain his point. His ordeal started in August when a Dubai-bound shipment was stuck at the Nhava Sheva port. “The HS code we always use is 63026090. However, customs officials have been asking us to use the HS code 63049250. The issue is that Dubai customs officials say the goods can be imported only if we use 63026090 as that is what the comprehensive economic partnership agreement (CEPA) states. Else the goods will not get duty-free import status. Because of this mismatch, the merchandise is now subject to burdensome clearance issues,” says Ishak.



Exporters have to run from pillar to post to find solutions to their problems under the Customs Act.



This confusion arises, as blended items can be categorised in two or more ways. The use of “others” or “similar” adds to the ambiguity. For example, “carpets and other textile floor coverings” is an area that leads to confusion in classification of certain items because of the word “other”.

In case a shipment gets blocked due to some reason, it leads to a physical examination of goods before every shipment, leading to delays and cancellation from overseas buyers.

“The Custom Department comes up with arbitrary explanations now and then. There is no consistency in their approach,” Ishak says. “There are some officers

who allow a certain HS code at certain ports while others don't at other places. Also, the officials on duty are changed 2-3 months. The new officer often comes with his own understanding of the rules."

The exporter says there is an urgent need to further simplify and harmonise these codes.

Ishak says he has flagged this issue with the Cotton Textiles Export Promotion Council (TEXprocil). The industry body is said to have raised this matter with the authorities, but it has not been resolved.

Urgent update needed

Industry observers assert that the emergence of e-commerce and digital trade has further highlighted the need for a thorough makeover of the laws made in 1962.

The current legislation has become outdated, says Tanushree Roy, Director-Indirect Taxes, Nangia Andersen India. "It has not been able to keep up with the changing economic and technological landscape. The legislation is struggling to curb trade fraud. It has several loopholes. An updated customs legislation will ensure compliance with international trade norms and economic regulations," says Roy.

If India wants to be an export powerhouse, it is important that the rules here are in sync with global norms and emerging trends. Else the country won't be able to achieve the export target of \$2 trillion by 2030, say stakeholders.

For example, the customs act has imposed anti-dumping and safeguard duties on specified imports. However, dumping continues to happen. Chinese exporters have traditionally been found to use a variety of means to evade India's anti-dumping laws. Sometimes they send the goods to another country before exporting them to India from there. Some overseas exporters shift their production facilities to another country to avoid anti-dumping duties. For example, Chinese companies set up production facilities in Bangladesh or Vietnam to avoid anti-dumping duties on their products. Another issue is undervaluation of the export product to avoid paying high anti-dumping duties. Misclassification of products remains a menace, too. There have been reports that Chinese exporters often misclassify their products to avoid anti-dumping duties. For example, a product subject to anti-dumping duties may be classified as another product that is not subject to such duties.

Risk-based targeting

India's trading community wants the customs act to have more "more teeth" to effectively tackle all the issues. But there has to be a better targeting of corrupt practices, say traders.

To combat frauds, Nangia Andersen's Roy suggests that customs authorities undertake risk-based targeting. "Strengthen the use of intelligence-led investigations and collation of evidence to build a strong case against offenders.

Using technology-based solutions should be increased to reduce paperwork. Further, shipments can be screened prior to crossing the customs frontiers. We should encourage seamless flow of data sharing between customs authorities and other law enforcement agencies for early detection of fraud," she says.

The government has been saying that its various departments, including the Customs Department, are proactively working towards going digital to weed out malpractices. The Customs Department is continuously modernising its procedures through the adoption of electronic data interchange (EDI) and global best practices to meet the evolving needs of businesses, say officials.

Queries sent to the Customs Department remain unanswered till the time of publishing this story.

The real face of faceless assessment

Saloni Roy, Partner at Deloitte India, says, "These technological reforms are assisting in improving competitiveness in Indian trade. Trading partners and others engaged in international trade are no longer required to prepare and submit voluminous paperwork. The digital initiatives reduce interface with governmental agencies, reduce time and cost of doing business."



If India wants to be an export powerhouse, it is important that the rules are in sync with global norms and emerging trends.



But industry players say the faceless assessment scheme has created more chaos than before, instead of easing trade processes. "Faceless assessment still does not work," says Manwani, whose Sahasra Electronics has two factories in special economic zones (SEZs) in Noida. "SEZ units have to file documents online and then get physical approval by going to customs officials."

After the pandemic, the government introduced the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR) to streamline

the import process. Deloitte's Roy says certain requirements under **CAROTAR** are cumbersome for importers, even though such compliances may not have been envisaged in the free-trade agreement between countries.

These provisions cover aspects such as the classification of goods, the country of origin, the valuation of goods and the documentation required for imports. The burden of proof is on the importer to prove that the goods meet the origin criteria of the FTA. This makes it very complex, says a wholesale trader of electronic goods in Delhi's Nehru Place.

Burden of proof

"We face lots of issues while importing electronic products and computer peripherals. The government says to claim a preferential rate of duty, we must include information about the certificate of origin (CoO) in the bill of entry and make a declaration. The onus is on us to give evidence of how the origin criteria has been met. Also, we need to keep supporting documents for at least five years from the date of filing the bill of entry. This adds to the paperwork. If there is a suspicion that the origin criteria has not been met, the customs officer can ask for documents even after customs clearance. This happens often and is a disabler of trade," says the trader on condition of anonymity.

There have been instances of delay in clearance of goods, and importers are forced to provisionally assess the goods despite submitting the technical details, datasheets and clarifications. "The special valuation branch (SVB) processes still take a long time. Importers need to furnish bonds and clear goods on a provisional basis until the process is completed. The Union Budget 2023 proposed to provide a time limit of 9 months to the **Settlement Commission** to aid in dispute resolution," Roy says, adding that she would also like to see measures to improve dispute resolution, CAROTAR formalities and SVB processes.

The Settlement Commission is an alternative dispute resolution mechanism available to importers and other parties involved in customs processes. It has the power to issue binding rulings and reduce or waive penalties and interest.

It is evident that policymakers have to take a long and hard look at the customs rules to actualise the government's "make in India, make for the world" objective.

Edited by Ram Mohan.