



BIS on Captive Consumption

Bureau of Indian Standards (BIS) is tasked with formulating the Safety & quality standards related to Products and Services in India. The BIS Act, 2016 or any such similar acts are a part of the larger Consumer Protection Laws.

We have not delved into every part of every prevailing law but have tried to maximize on various aspects of the prevailing laws by being very precise and brief. Any omission may be treated as inadvertently left out or being out of context or any other reason as maybe.

The intent of the Legislation in enacting the BIS Act, 2016 is very clear as it reads as follow-

An Act to provide for the establishment of a national standards body **for the harmonious development of the activities of standardization, conformity assessment and quality assurance of goods, articles, processes, systems and services** and for matters connected therewith or incidental thereto.

Mandate of BIS:

The mandate given to the Bureau is clear in the provisions under section 9 & section 10 of the BIS Act, 2016.

Section 9(2)- The Bureau shall take all necessary steps **for promotion**, monitoring and management of the quality of goods, articles, processes, systems and services, as may be necessary, **to protect the interests of consumers and various other stakeholders.**

Section-10(2)(a)- establish, publish, review and **promote the Indian Standard**, in relation to any goods, article, process, system or service in such manner as may be prescribed;

In simple terms the Mandate of BIS is to establish, publish, review and promote the Indian Standard, but it cannot enforce the said BIS standards.

Adoption of BIS standards by nature is “voluntary”: *Section-13(1) reads as “A person may apply* for grant of licence or certificate of conformity, as the case may be, if the goods, article, process, system or service conforms to an Indian Standard.

Enforcement of BIS Standards:

BIS Standards can only be enforced by the Central Government in consultation with the Bureau.

Section-16(1): If the Central Government is of the opinion that it is necessary or expedient so to do in the **public interest** or for the **protection of human, animal or plant health, safety of the environment, or prevention of unfair trade practices, or national security**, it may, **after consulting the Bureau**, by an order published in the Official Gazette.

A careful reading of the “Explanation” (i) clarifies that enforcement under section-16 of the BIS Act, 2016 is applicable only on “scheduled industry” which shall have the meaning assigned to it in the Industries (Development and Regulation) Act, 1951. The list of “Scheduled Industry” can be referred in the First Schedule of the IDRA Act, 1951. This denotes that in case the Industry or the associated product must be covered under the First Schedule of the IDRA, 1951 otherwise BIS cannot be enforced otherwise.

Quality Control Orders (QCO) or the Omnibus Technical Regulations (OTR) are issued under the aegis of Section-16(2) of the BIS Act, 2016. Its reads as follows-

“The Central Government may, **by an order authorize Bureau or any other agency having necessary accreditation or recognition and valid approval to certify and enforce conformity** to the relevant standard or prescribed essential requirements under sub-section (1).

Effect of Enforcing the BIS Standard:

Once the BIS standards are enforced through QCOs or OTRs it immediately puts a **prohibition as per Section-17(1) of the BIS Act, 2016**. The section is reproduced below-

“No person shall manufacture, import, distribute, sell, hire, lease, store or exhibit for sale any such goods, article, process, system or service under sub-section (1) of section 16- **(a)** without a Standard Mark, except under a valid licence;”

A constructive and harmonious breakdown of the above provision should be read as follows-

- a. No Person shall manufacture for sale without a standard mark, except valid license
- b. No person shall import for sale without a standard mark, except valid license
- c. No person shall distribute for sale without a standard mark, except valid license
- d. No person shall sell (this ‘sell’ applies on Foreign Manufacturer) for sale without a standard mark, except valid license

The intent of the legislator was very clear that India should not become a dumping ground to “Sell” for sale sub-standard goods or services. It never intended to put any prohibition or restriction on Captive consumption by an Actual user or Industrial unit or an Institutional user.

An inference can be drawn from Chapter-II Section-3 of the LMPC Rules, 2011 which reads as follows-

3. Applicability of the Chapter- The provisions of this Chapter shall not apply to- (a) packages of commodities containing quantity of more than 25 kg or 25 litre excluding cement and fertilizer sold in bags up to 50 kg; and (b) **packaged commodities meant for industrial consumers or institutional consumers.** "Explanation": For the purpose of this rule,- i) "institutional consumer" means the institutional consumer like transportation, Airways, Railways, Hotels, Hospitals or any other service institutions who buy packaged commodities directly from the manufacturer for use by that institution. ii) **"Industrial Consumer" means the industrial consumer who buy packaged commodities directly from the manufacturer for use by that industry.**

Other Important Statutory Provisions under BIS Act, 2016:

1. Central Government's overriding powers:

Section-25 of the BIS Act, 2016 gives an overriding power to the Central Government which can direct the Bureau on Policy matters. The Extension/NOC related to any QCO's/OTRs are happening under the vested powers given under Section 25 (2) of the BIS Act, 2016.

2. **Consumer:** The word "Consumer" has been defined under section 2(9) of the BIS Act, 2016 which means a person as defined in the Consumer Protection Act, 1986.
3. **Consumer:** The word "Consumer" has been defined in section 2(1)(d) of the Consumer Protection Act, 1986. It reads as follows-

"consumer" means any person who (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payments, when such services are availed of with the approval of the first-mentioned person; 2

"Explanation": For the purposes of sub-clause (i), ***"commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;***]- ***This amounts to Captive Consumption or a Captive Consumer in simple language.***

4. **Person:** The word "Person" is defined under section 2(25) as **"person" means a manufacturer, an importer, a distributor, retailer, seller or lessor of goods or article or provider of service or any other person who uses or applies his name or trade mark or any other distinctive mark on to goods or article or while providing a service, for any consideration** or gives goods or article or provides service as prize or gift for commercial purposes including their representative and any person who is engaged in such activities, where the manufacturer, importer, distributor, retailer, seller, lessor or provider of service cannot be identified;
5. **Sale:** The word "Sale" has been defined under Section 2(34) as- "sale" means to sell, distribute, hire, lease or exchange of goods, article, process, system or service ***for any consideration or for commercial purposes;*** This denotes that goods brought for Captive Consumption, which is not for "Sale" is out of the purview of Prohibition under section-17(1) of the BIS Act, 2016.
6. **Manufacture under GST Law:** The word Manufacture has been defined in Section 2(72) of CGST Act, 2017 as —***manufacture means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term*** —manufacturer shall be construed accordingly;

7. **Manufacture as defined in FTP:** Para 11.31 of FTP 2023 defines Manufacture as ““Manufacture” means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, re-packing, polishing, labeling, Re-conditioning repair, remaking, refurbishing, testing, calibration, re-engineering. Manufacture, for the purpose of FTP, shall also include agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining.
8. **Inputs for “Manufacture” under GST law:** Here inputs in any manner can be safely construed to be the Components, consumables, parts as defined under FTP 2023 as below-

Components- Para 11.10 of FTP 2023 defines component as “one of the parts of a subassembly or assembly of which a manufactured product is made up and into which it may be resolved. A component includes an accessory or attachment to another component”. **Components are exempted in some of the Quality Control Orders e.g. Recess Screw QCO, 2024 & Nut & Bolts QCO, 2024.**

Consumables- Para 11.11 of FTP 2023 defines Consumables as “any item, which participates in or is required for a manufacturing process, but does not necessarily form part of end-product. Items, which are substantially or totally consumed during a manufacturing process, will be deemed to be consumables. **E.g. Adhesives & Resins required in the manufacturing of Wind Turbine Blades. Nuts and Bolts or Recess screws will not be a consumable, per se the definition, as it will still form the part of the final Finished goods.**

Parts- Para 11.37 of FTP 2023 defines Parts as “an element of a sub-assembly or assembly not normally useful by itself, and not amenable to further disassembly for maintenance purposes. Apart may be a component, spare or an accessory. **E.g. The robotics arms of a robotic cleaning device forms a part of the larger industrial automation in an Automobile Manufacturing unit will be construed to be a Part and not a complete machine in this sense.**

LEGAL ANALYSIS AND CONCLUSION ON THE TERM "MANUFACTURE" AND ITS RELATIONSHIP WITH "SALE"

I. Synthesis of the Definition of "Manufacture":

1. Under GST Law – Section 2(72) of CGST Act, 2017:

“Manufacture” means processing of raw materials or inputs in any manner that results in emergence of a new product having a distinct name, character and use.

- **Key Elements:**
 - Must involve transformation of inputs
 - Resulting product must be distinct in identity, function, and utility

2. Under Foreign Trade Policy (FTP) 2023 – Para 11.31:

“Manufacture” includes making, producing, fabricating, assembling, processing or bringing into existence a product with a distinctive name, character or use, and includes value-addition processes like polishing, labeling, refurbishing, reconditioning, re-engineering, etc.

- Also includes primary sector activities like agriculture, aquaculture, mining, etc.
- Covers both discrete transformation and auxiliary processes that render goods fit for use or sale

3. Interpretation of Inputs for Manufacture (FTP 2023):

- *Components: Parts of a sub-assembly or assembly; form part of final product*
- *Consumables: Used in production but do not remain in final product*
- *Parts: Structural elements necessary for the function of a larger system/product*

II. Interrelation between “Manufacture” and “Sale”:

A. Legal Position on "Sale" – Section 2(34) of BIS Act, 2016:

“Sale” means to sell, distribute, hire, lease or exchange of goods or services for any consideration or for commercial purposes.

B. Analytical Link Between "Manufacture" and "Sale":

Aspect	Manufacture	Sale
Objective	Creation of a new product	Transfer of goods for value
Phase	Production stage	Post-manufacture commercial activity
Nature	Internal consumption or for external trade	Always outward movement involving transfer of ownership or possession
Legal Implication	May not trigger regulatory control unless sold	Triggers BIS prohibition under Section 17(1) if done without license

C. Critical Inference:

- *Manufacture does not necessarily imply sale.*
- *Captive consumption of manufactured goods (e.g., using imported components or consumables internally) does not amount to sale unless the product is sold or commercially transferred.*
- *Therefore, mere manufacture for self-use (without engaging in "sale") falls outside the BIS prohibition under Section 17(1).*

III. Final Legal Conclusion:

1. **The term “manufacture” under both GST and FTP regimes** encompasses a wide range of transformative and value-addition processes, including inputs such as components, consumables, and parts, whether or not they remain in the final product.
2. **However, “manufacture” is legally distinct from “sale.”** While manufacturing may eventually lead to sale, manufacture for captive use (i.e., internal industrial consumption) does not constitute sale, especially when no consideration or outward commercial transaction is involved.
3. **As such, where goods (including imported components, parts, or consumables) are utilized in a manufacturing process for captive consumption only, and not sold, the regulatory trigger under Section 17(1) of the BIS Act, 2016 does not apply, since there is no “sale” as defined under Section 2(34).**

This interpretation is vital in defending exemption claims under BIS regulations for industrial units importing goods not intended for market distribution, but solely for internal manufacturing processes.

Legal Conclusion (in short):

Importers may legitimately claim that **BIS compliance is not applicable** on goods **imported for captive consumption**, i.e., not intended for “*sale*”, under the **BIS Act, 2016**, since the prohibition under **Section 17(1)** is expressly linked to goods meant for “**manufacture, import, distribution, sale, hire, lease, or storage for sale**”, and not to goods **consumed internally** by industrial or institutional users.

The legislative intent, statutory definitions, and principles from allied laws such as the **LMPC Rules, 2011** and the **Consumer Protection Act, 1986** support this interpretation.

Applicable Clauses of BIS Act, 2016 Supporting Exemption for Captive Consumption:

Relevant Provision	Legal Language/Principle	Inference for Captive Consumption
Section 17(1)	Prohibits import “ <i>for sale</i> ” without a Standard Mark	Does not apply to captive imports not intended for <i>sale</i>
Section 2(34) – Definition of “Sale”	Includes sell, distribute, hire, lease or exchange for consideration	Captive use, not involving any such transaction, is excluded
Section 2(9) – Definition of Consumer	Refers to the Consumer Protection Act	Excludes those using goods for resale or commercial trading
Section 13(1)	BIS licence application is <i>voluntary</i>	Implies enforcement arises only via QCOs/OTRs under Section 16
Section 16(1) & Explanation (i)	BIS enforceability applies only to “scheduled industry”	Captive use by non-scheduled industries may fall outside the enforcement net
Section 25(2)	Central Government has policy discretion to issue directions	Importers can seek policy-based NOC/exemption for captive imports

Corroborative Interpretation from LMPC Rules, 2011:

- **Rule 3(b) of the Legal Metrology (Packaged Commodities) Rules, 2011:** Explicitly excludes packaged goods **meant for industrial or institutional consumers** from its scope.
- This **statutory precedent reinforces** the notion that **regulations framed for consumer protection do not apply to captive or institutional use**, aligning with the BIS Act’s purpose.

Suggested Remedy cum conclusion:

Importers can claim **exemption from mandatory BIS compliance** for **imports meant exclusively for captive consumption** on the grounds that:

- Such imports do **not fall within the meaning of “sale”** under Section 17(1) of the BIS Act, 2016;

- Enforcement of BIS standards is intended to **protect end-consumer interest** and **regulate trade**, not internal industrial consumption;
- Statutory definitions and policy intent support the **exclusion of captive/institutional use** from the BIS enforcement mechanism unless specifically notified.

For formal representation, such claim may be placed before BIS or the concerned nodal Ministry under **Section 25(2)** seeking a **clarificatory exemption/NOC** for captive use imports. ***In case the Line Ministry or the Bureau is unrelenting then the Captive Consumer/Importer also has the right to approach the court of law under appropriate jurisdiction and on valid grounds of inaction or incorrect interpretation of the statute or rejection of the NOC.*** Traders will surely not get any relief even from the courts, hence they must desist from any such misadventure.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: BIS Act, 2016, Consumer Protection Act, 1986, FTP 2023 & CGST Act, 2017

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