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WCO Programme Global Shield (PGS) – E-book No.03

[Training Material for Departmental Use]

# E-BOOK



Compulsory Compliance Requirement

For

Import/Export

of

Ammonium Nitrate

#### Note:

- 1. In this E-book, attempts have been made to explain **compulsory compliance requirement for import/export of Ammonium Nitrate**. It is expected that it will help departmental officers in their day-to-day work.
- 2. Though all efforts have been made to make this document error free, it is possible that some errors might have crept into the document. If you notice any errors, the same may be brought to the notice of the NACEN, RTI, Kanpur on the Email address: <a href="mailto:rtinacenkanpur@yahoo.co.in">rtinacenkanpur@yahoo.co.in</a>. This may not be a perfect E-book. If you have any suggestion to improve this book, you are requested to forward the same to us.
- 3. This e-book is one of the several e-books dealing with different aspects of WCO Programme Global Shield (PGS). The Programme Global Shield (PGS) is a long term law enforcement initiative of WCO alongwith its partner organizations, namely, United Nations Office on Drug and Crime (UNODC), International Police Organization (INTERPOL) and member countries. This Programme is aimed at combating the illicit diversion and trafficking of high risk precursor chemicals, which are commonly used by criminal elements/terrorist organizations to make Improvised Explosive Devices (IEDs).
- 4. It is acknowledged here that in preparing this e-book, the WCO training material as well as material from other sources including that available freely on internet have been used. Wherever possible, the source of material has been indicated in this e-book. It might be possible that for some material, we may not have specifically mentioned such source. This e-book is meant for education and training of Customs officers in India and is for non-commercial use. While it is not our intention to infringe any copyrights, if anybody has any issue with regard to any of the material used in this e-book, the same may kindly be brought to our notice on the email addresses mentioned above.
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Sd/-

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#### **Abbreviations**

AN Rules: Ammonium Nitrate Rules, 2012

CAS No: Chemical Abstract Service Number

[CAS numbers are used to provide a unique, unmistakable identifier for chemical substances and provide an unambiguous way to identify a chemical substances. A CAS No. is separated by hyphens into three partsthe first consisting of two to seven digits, the second consisting of two digits, and the third consisting of a single digit serving as a **check digit**].

CBEC: Central Board of Excise and Customs
CCR: Compulsory Compliance Requirement

DGFT: Director General of Foreign Trade

DIPP: Department of Industrial Policy and Promotion

FT (D &R) Act: Foreign Trade (Development & Regulation) Act, 1992

HS Code: Harmonized System of Commodity Description and Coding System

[It is an internationally standardized system of names and numbers for classifying traded products. It has been developed and maintained by the

WCO. It is based on HS Convention.]

IED: Improvised Explosive Devices

IMDG: International Maritime Dangerous Goods.

ITC(HS): Indian Trade Classification based on Harmonised System of Coding

MSDS: Material Safety Data Sheet (MSDS)

[These are documents provided by the manufacturer that contain information on physical and chemical properties of material, potential hazards of the material, and how to work safely with hazardous substances. They also contain information on the use, storage, handling, and emergency procedures related to hazards of the material. All MSDSs contain eight (8) sections, but most of them contain additional sections].

PESO: Petroleum and Explosive Safety Organisation.

PGS: Programme Global Shield (WCO programme for prevention of smuggling

and diversion of Precursor Chemicals for manufacture of IEDs)

RFID: Radio Frequency Identification

UN Code: United Nation Number

[UN numbers, or UN IDs, are four-digit numbers that identify hazardous substances and articles (such as explosives, flammable liquids, toxic substances,

etc.).

WCO: World Custom Organisation

#### 1. Introduction:

Ammonium Nitrate is one out of 14 precursor chemicals commonly used by terrorist groups to manufacture IEDs. Therefore, its import and export is monitored under **WCO Programme Global Shield** to prevent it falling into the hands of terrorists or such organisations. While its licit use is in agriculture as fertilizer, it is also widely used for manufacturing Improvised Explosive Device (IEDs).

It is an inorganic chemical and commonly used as high nitrogen fertilizer in Agriculture. The HS code or CTH for ammonium nitrate is 31023000. The CAS Code is 6484-52-2. It is also considered to be Hazardous chemical and its UN No. is 1942. [To know more about HS Code/CAS No/UN No., please refer to e-book on HS Code/CAS Code/UN Code].

It is responsibility of all regulatory and enforcement organizations in our country to ensure that this chemical is used for licit purposes only and should not be allowed to fall into the hands of criminal elements. Customs authorities, being placed at Border points, have important responsibility to ensure that all imports/ exports of Ammonium Nitrate are in compliance with statutory provisions. By carrying out our responsibilities with sincerity, we cannot only keep our country safe, but also help other countries being safe.

Table I: Details about Ammonium Nitrate at a glance

MMONIUM NITRALE CRYSTAL	Name Of Chemical	Other Names	Appearance
N.W: 28KGS G.W: 25.1 KGS VALIDITY DATE: 1YAER	Ammonium Nitrate	High Nitrogen	White Solid
MADE IN CHINA UN NO.1942-  ODGNATO328 PER BELL	Common Uses	Instant cold Nitrogen F agriculture	packs, High ertiliser in
	HS Code	310230	
	CAS No.	6484-52-2	
	UN No.	1942	

# 2. Summary of Legal provisions applicable to Import/ Export of Ammonium Nitrate

#### <mark>Table II</mark>

Sr. No.	Act/Section/Rules/ Notification/Circular	Subject
1.	Explosive Act, 1884  [Administrative Ministry: Ministry of Commerce & Industry, Department of Industrial Policy & Promotion]	This Act regulates manufacture, possession, use, sale, transport, import and export of Explosives. The term "explosive' has been defined under <b>4(d)</b> of the Act.
2.	Ammonium Nitrate Rules, 2012 as amended.	These rules have been issued under Section 5 and 7 of the Explosive Act, 1884. It regulates the manufacturing, conversion, <b>import</b> , <b>export</b> , stevedoring, bagging, transport and possession for sale or use of the Ammonium Nitrate.
3.	Notification No. S.O. 1678 (E), dated 21.07.2011 issued by the Department of Explosives, Department of Industrial Policy and Promotion.	Under section 17, the Government has declared ammonium Nitrate as deemed explosive within the meaning of the explosive Act. 1884.
4.	Manufacture, storage and Import of Hazardous Chemical Rules,1989 [in short, referred to MSIHC Rules, 1989] [Issued under the Environment (Protection) Act,1986]	It is considered as hazardous chemical under the Manufacture, storage and Import of Hazardous Chemicals Rules, 1989. It is listed at Sr. No.33 under Part II of Schedule I of MSIHC Rules, 1989] Chapter Note 1B of the Chapter IA of the ITC (HS) contains provisions regarding import of Hazardous Chemicals. It reads as under:-  Import of Hazardous Chemicals permitted without a licence in accordance with the provisions of the Manufacture, Storage and Import of Hazardous Chemicals Rules 1989 (made under the Environment (Protection) Act, 1986). Besides other conditions mentioned in the Rules, the importer shall, before 30 days but not later than the date of import, furnish the details specified in Rule 18 to the Authority specified in Schedule 5 of the said Rules.
5.	DGFT notification No. 34 (RE–2013)/2009-2014, dated 14.08.2013 [Issued under Para 2.1 of Foreign Trade Policy read with section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (Administrative Ministry: Ministry of Commerce & Industry, Department of Industrial Policy & Promotion).	It amends the ITC (HS) to provide that Import of Ammonium Nitrate of certain specification would require prior permission from the Chief Controller of Explosives.
6.	<b>CBEC Instruction</b> F.No.450/37/2014-Cus IV, dated 05.03.2014	Informed all field formations to strictly comply with the provisions of Ammonium Nitrate Rules, 2012

# 3. Detailed explanation of legal position on Import and Export of Ammonium Nitrate

- 3.1 The **Department of Explosives** under the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India is the administrative department for the purpose of Explosive Act, 1884.
- 3.2. In clause (d) of the Section 4 of the Explosive Act, 1884, the term 'explosive' has been defined. It provides as under:-
  - (d) "explosives" means gunpowder, nitrogycerine, nitroglycol, gun-cotton, di-nitro-toluenetrinitrotoluene, picric acid, di-nitor-phenol, tri-nitor-resorcinol (styphnic act), cyclotrimethylenetrinitramine,penta-erythritol-tetranitrate, tetry1, nitorguanidine, lead azide, lead styphynate, fulminate of mercury or any other metal, diazo-di-nitor-phenol, coloured fires or any other substance whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and includes fogsignals, fireworks, fuses, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosive as defined in this clause;
- 3.3 **Section 17 of the Explosive Act, 1884** empowers Central Government to extend definition of 'explosive' to other explosive substances. *The Section 17 of the Explosive Act, 1884 reads as under:*

Extension of definition of "explosive" to other explosive substances. –

The Central Government may, from time to time, by notification in the Official Gazette, declare that any substance which appears to the Central Government to be specially dangerous to life or property, by reason either of its explosive properties or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act, and the provision of this Act (Subject to such exceptions, limitations and restrictions as may be specified in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term "explosive" in this Act.

- 3.4. In exercise of this powers, the Central Government vide notification SO 1678 (E), dated 21.07.2011, has declared Ammonium Nitrate as an explosive within the meaning of Explosive Act, 1884.
- 3.5 The Section 6 of the Explosive Act, 1884, which deals with the Power for Central Government to prohibit the manufacture, possession or importation of specially dangerous explosives, provides as under:-
  - (1) Notwithstanding anything in the rules under the last foregoing section, the Central Government may, from time to time, by notification in the Official Gazette, (a) prohibit, either absolutely or subject to conditions, the manufacture, possession or <u>importation of any explosive</u> which is of so dangerous a character that, in the opinion of the Central Government, it is expedient for the public safety to issue the notification;
  - (2) The Customs Act, 1962 (52 of 1962), shall have effect in relation to any explosive with regard to the importation of which a notification has been issued

under this section and the vessel, carriage or aircraft containing such explosive as that Act has in relation to any article the importation of which is prohibited or regulated thereunder and the vessel, carriage or aircraft containing such article.

- 3.6 In exercise of powers under the Section 5 and 7 of the Explosive Act, 1884, the Government has issued **Explosive Rules, 2008** [notified vide GSR 907(E), dated 29.12.2008). Further, it has been provided that the **Explosives Rules, 2008 will not apply to Ammonium Nitrate or any combination thereof**, except for the materials or mixtures classified as explosives under said Explosive Rules, 2008 and Ammonium Nitrate or combination thereof will be regulated by separate rules issued under Section 5 and Section 7 of Explosives Act, 1884.
- 3.7 Accordingly, the Central Government has framed Ammonium Nitrate Rules, 2012 (notified vide notification GSR No. 553(E), dated 11.07.2012, issued by Department of Industrial Policy and Promotion) as amended vide notification No. 469 (E), dated 09/07/2013. The relevant and important provisions from Customs Officers Point of View are as under:-

#### 3.7.1 Scope and Applicability of Rules and Exemptions

- (1) These rules are applicable all over India for regulating the manufacturing, conversion, import, export, stevedoring, bagging, transport, and possession for sale or use of the Ammonium Nitrate.
- (2) Nothing in these rules shall apply to the possession, use, transport or import or export of Ammonium Nitrate by-
  - (a) any of the armed forces of the Union and Ordnance Factories or other establishment of such forces for own cause in accordance with the rules or regulations made by the Central Government;
  - (b) the Indian Railways and its authorized carriers while acting as carrier;
  - (c) the Port Authority;
  - (d) any person employed under the Central Government or State Government in exercise of any power under the Act or these rules;
  - (e) Nothing in these rules shall apply to the possession and use of ammonium nitrate of quantity not exceeding five kilograms by the established laboratories, educational institutions, medical institutions, hospitals and health clinics for scientific and educational purpose:

Provided the local police is informed of the quantity under possession for the aforesaid purpose.

## 3.7.2 Rule 4: Control over manufacture, conversion, stevedoring and bagging, import, export, transport, possession for sale or use of Ammonium Nitrate.-

No person shall undertake manufacture, conversion, stevedoring, import, export, transport or possess for sale or use Ammonium Nitrate except as authorized or licensed under these rules.

#### 3.7.3. Rule 6: General Restrictions

#### Sub-rule (4): Restrictions on Import or export-

- (a) No person shall import or export any Ammonium Nitrate except under and in accordance with the conditions of licence granted under these rules;
- (b) No Ammonium Nitrate shall be imported or exported except at its port notified by the Central Government

#### **Precursor Chemical For Manufacture Of IEDs**

- (c). The Ammonium Nitrate shall not be imported into India by Sea except through the ports which are duly approved for this purpose by the Ministry of Shipping and Transport, Government of India, in consultation with the Chief Controller and declared as Customs Ports by the Commissioner of Customs.
- (d) The Ammonium Nitrate imported into India by Sea shall not be stored in the port.

#### 3.7.4 Rule 8: Packing of Ammonium Nitrate

No person shall import, export, transport, possess or sell Ammonium Nitrate unless:

- (a) it is duly packed in a suitable waterproof bag or container or is suitably bagged by stevedore or converter;
- (b) the container or package is marked in accordance with the provision of rule 8;
- (c) the packages conform to the relevant standard of Bureau of Indian Standards or other standards accepted and approved by the Chief Controller; and
- (d) the packages of Ammonium Nitrate for export or import conform to the requirements of the tests as specified under International Maritime Dangerous Goods Code (hereinafter referred to as the IMDG Code in these rules) or United Nations recommendations on the transport of Dangerous Goods.

#### 3.7.5. Rule 9 of the AN Rules, 2012 provides as under:-

#### 9. Marking on Ammonium Nitrate packages.-

- (1) Each bag or container containing Ammonium Nitrate shall be marked in conspicuous indelible characters, by means of stamping or painting with-
  - (a) the words "Ammonium Nitrate"
  - (b) purity in percentage;
  - (c) the name, address and licence number of manufacturer or converter or importer;
  - (d) identification number of the packages or bar coding;
  - (e) the net weight of Ammonium Nitrate;
  - (f) gross weight of the package;
  - (g) date of bagging and batch number;
  - (h) name, address, license number and unique identification number of stevedoring agent, if any.
- (2) The bags shall be serially numbered with date of bagging by means of stenciling, bar-coding, by RFID tags or any other means by the manufacturer or importer as directed by the Chief Controller.

### 3.7.6 Chapter IV of AN Rules: Provisions for Import and Export of Ammonium nitrate

Rules 16, 18 and 19 of AN Rules, 2012 deal with Import and Export by land/air and provides as given below.

#### Rule 16: Import and export by land

No licence for import or export of Ammonium Nitrate by land shall be granted without the previous sanction of the Central Government in each case, wherein the Central Government may impose conditions and restrictions in consultation with the Chief Controller.

#### Rule 18: Import of Ammonium Nitrate

- (1) Ammonium Nitrate shall preferably be imported in the bagged form and whenever Ammonium Nitrate is imported in bulk, it shall be bagged or packed suitably by stevedoring agency duly authorized in writing by importer and having valid license under these rules.
- (2) ....(5)
- (6) Restrictions on import by air.- The Ammonium Nitrate shall not be imported by Air.

#### Rule 19: Export of Ammonium Nitrate

- (1) Restriction on export by air.- The Ammonium Nitrate shall not be exported by air.
- (2) Declaration by exporter or his agent.- The exporter or his authorized agent shall give notice to the conservator of the port before forty eight hours that he intends to bring the Ammonium Nitrate to port for export and shall not bring the Ammonium Nitrate to any part of the port without prior permission in writing from the said officer.
- (3) Export of Ammonium Nitrate shall only be in the bagged form and marked in accordance with the provision of rule 9.
- 3.8. Import Policy for Import of Ammonium Nitrate under ITC (HS) issued under Para 2.1 of Foreign Trade Policy read with Section 5 of the Foreign Trade (Development & Regulation) Act, 1992. It provides that import of Ammonium Nitrate having the chemical formula NH4NO3 or any combination containing more than 45% of Ammonium Nitrate by weight including emulsions, suspensions, melts or gels (with or without inorganic nitrates), and classified as explosive under **Explosives Act, 1884**, is subject to licence from the Chief Controller of Explosives under **the Ammonium Nitrate(AN) Rules, 2012**.
- 3.9 The CBEC vide its **Instruction** F. No.450/37/2014-Cus IV, dated 05.03.2014 directed that considering the sensitive nature of import/export of Ammonium Nitrate, guidelines contained in Ammonium Nitrate Rules, 2012 for import/export of ammonium nitrate be scrupulously followed by the field formations. All Commissioners of Customs concerned should ensure that consignment of Ammonium Nitrate is allowed clearance only in bagged form as specified in the subject Rules and not in loose form.

4. Provisions of Customs Act, 1962 applicable in case of Import and Export (including attempt to import/export) of Ammonium Nitrate in contravention of Statutory Provisions.

#### For Imports

- 4.1 Section 111 of the Customs Act, 1962: Any goods which are imported or attempted to be imported or are brought within the Indian Customs Waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, are liable for confiscation under Section 111 (d) of the Customs Act, 1962.
- **4.2 Section 112 of the Customs Act, 1962:** Further, on such person, who in relation to such goods, does or omits to do any act or abets the doing or omission of such act, or who acquires possession of or in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any manner dealing with any goods which he knows or has reasons to believe are liable for confiscation under Section 111 of the Customs Act, 1962 is liable for imposition of penalty.

#### For Exports

- **4.3 Section 113 of the Customs Act, 1962:** Any goods which are attempted to be exported or are brought within the limit of any Customs Area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, are liable for confiscation under Section 113 (d) of the Customs Act, 1962.
- **4.4 Section 114 of the Customs Act, 1962:** Further, on such person, who in relation to such goods, does or omits to do any act which act or omission would render such goods liable for confiscation under Section 113 of the Customs Act, 1962 is liable for imposition of penalty.

Note: In case of any contravention of statutory provisions in case of import/ export of Ammonium Nitrate by any importer or exporter, the action against the goods or Importer/exporter under Customs Act, 1962 is without prejudice to any action which may be taken against him under FT (D & R) Act, 1992 or under Explosive Act, 1884 by respective administrative departments/ Ministries.

- 5. Reference Material: Text of Notifications /Circulars/Instructions
- 5.1 The notification No.1678 (E), dated 29.12.2008 reads as under:-

S.O. 1678 (E), dated 21.07.2011. In exercise of the powers conferred by Section 17 of the Explosives Act, 1884 (IV of 1884), the Central Government hereby declares that the Ammonium Nitrate having the Chemical Formula NH4NO3 or any combination containing more than 45 per cent of Ammonium Nitrate by weight including emulsions, suspensions, melts or gels (with or without organic nitrates) shall be deemed to be an explosive within the meaning of the said Act:-

Provided that such Ammonium Nitrate or any combinations thereof shall not include those fertilizers from which Ammonium Nitrate cannot be extracted by any physical or chemical process.

Note: The Explosives Rules, 2008 shall not be applicable to Ammonium Nitrate or any combination thereof, as referred to in opening portion of this notification, except for the materials or mixtures classified as explosives under said Explosive Rules, 2008 and there shall be framed separate rules for regulating the Ammonium Nitrate, or combination thereof under Section 5 and Section 7 of Explosives Act, 1884.

#### 5.2 DGFT Notification No.34 (RE-2013)/2009-2014, dated 14.08.2013

The DGFT notification No. 34 (RE-2013)/2009-2014, dated 14.08.2013 reads as under:-

#### Subject: Amendment in the Policy for import of Ammonium Nitrate.

- S.O.(E) In exercise of powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992), read with paragraph 2.1 of the Foreign Trade Policy, 2009-2014, as amended from time to time, the Central Government hereby notifies the following amendment in Chapter 31 of the ITC(HS), 2012 Schedule 1 (Import Policy):
- 2. The following Policy Condition shall be inserted in Column 4 against Exim Code 3102 30 00:

"Import of Ammonium Nitrate having the chemical formula NH4NO3 or any combination containing more than 45% of Ammonium Nitrate by weight including emulsions, suspensions, melts or gels (with or without inorganic nitrates), and classified as explosive under Explosives Act, 1884, is subject to licence from Chief Controller of Explosives under the Ammonium Nitrate Rules, 2012."

3. The revised import policy of item 'Ammonium nitrate, whether or not in aqueous solution' under Exim Code 3102 30 00 in Chapter 31 of the ITC(HS), 2012 Schedule 1 (Import Policy) shall be as under:

Exim Code	Item  Description	Policy	Policy Conditions
3102 30 00	Ammonium nitrate, whether or not in aqueous solution	Free	"Import of Ammonium Nitrate having the chemical formula NH4NO3 or any combination containing more than 45% of Ammonium Nitrate by weight including emulsions, suspensions, melts or gels (with or without inorganic nitrates), and classified as explosive under Explosives Act, 1884, is subject to licence from Chief Controller of Explosives under the Ammonium Nitrate Rules, 2012."

(Issued from 01/89/180/0070/AM-03/PC I (A)/PC 2(A))

#### 5.3. CBEC Instruction F. No.450/37/2014-Cus IV, dated 05.03.2014

The CBEC Instruction F. No. 450/37/2014-Cus. IV, dated 05.03.3014 reads as under:-

Subject: Import of Ammonium Nitrate-Compliance of Ammonium Nitrate Rules, 2012- reg.

Attention is invited to provisions of Ammonium Nitrate (AN) Rules, 2012 which lays down the guidelines for import /export of Ammonium Nitrate.

2. Rule 8 of the AN Rules, 2012 stipulates standard and procedure for packing of Ammonium Nitrate as under:-

No person shall import, export, transport, possess or sell Ammonium Nitrate unless;

- (i) it is duly packed in a suitable waterproof bag or container or is suitably bagged by stevedore or converter;
- (ii) the container or package is marked in accordance with the provisions of rule 8;
- (iii) the package conform to the relevant standard of Bureau of Indian Standards or other standards accepted and approved by the Chief Controller; and
- (iv) the packages of Ammonium Nitrate for export or import conform to the requirements of the tests as specified under International Maritime Dangerous Goods Code (hereinafter referred to as the IMDG Code in these rules) or United Nations recommendations on the transport of Dangerous Goods.
- 3. Further, <u>Rules 16 to 19</u> under Chapter IV of the said Rules lay down restrictions on transport, delivery/dispatch, handling and also provide for recovery of spillage during handling for import and export of Ammonium Nitrate.
- 4. Considering the sensitive nature of import/export of Ammonium Nitrate, Board desires that guidelines contained in Ammonium Nitrate Rules, 2012 for import/export of ammonium nitrate be scrupulously followed by the field formations. All Commissioners of Customs concerned should ensure that consignment of Ammonium Nitrate is allowed clearance only in bagged form as specified in the subject Rules and not in loose form.
- 5. Difficulty, if any, in implementation of these guidelines may be brought to the notice of the Board.

#### 5.4 Text of Explosive Act, 1884

[If necessary, may be downloaded from the website of DIPP]

#### 5.5 Text of Ammonium Nitrate Rules, 2012

[If necessary, may be downloaded from the website of DIPP]

#### 6. Important Websites for Reference

- (i) Website of Department of Industrial Policy and Promotion (www.dipp.nic.in) for Explosive Act, 1884, Explosive Rules, AN Rules, 2012; and notification issued under the Explosive Act and Rules etc.
- (ii) Website of CBEC (www.cbec.gov.in) for provisions of Customs Act, 1962 and Instructions issued by CBEC relating to import/export of Ammonium Nitrate.
- (iii) Website of DGFT (www.dgft.gov.in) for provisions of Foreign Trade (Development & Regulation) Act, 1992, Foreign Trade Policy, ITC (HS), notification/circulars/Public Notices issued by DGFT.
- (iv) Website of Chief Controller of Explosives (www.peso.gov.in) for procedural aspects relating to manufacture, import and export of explosives. PESO stands for petroleum and Explosive Safety Organization.

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