

**EXPORT PROMOTION COUNCIL FOR EOUs & SEZs**  
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NoEPC/SEZ/AM-18  
January 16, 2018

Offtg.

**EPCES CIRCULAR NO. 276**

- 1) Under erstwhile tax regime, there were **66 services** which had been permitted by Unit Approval Committees (UAC) as default authorized services. Same list has been prescribed under GST regime vide attached release bearing **ref No. D. 12/19/2013-SEZ dt. 2<sup>nd</sup> January, 2018** issued by the Department of Commerce.

In this regard, it is clarified that services referred to in list are part of input services procured by SEZ units / developers.

Relevance of releasing above list in GST regime can be emanating from Rule 89 of CGST Rules which prescribes conditions and procedures for obtaining GST refund by registered persons engaged in making supplies to SEZ units / developers. Relevant proviso reads as follows:

*Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –*

- (a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;*  
*(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.*

In terms of above, it appears that listed default services should not require specific endorsement for use in authorised operations as required in aforesaid proviso. However, nothing in this regard has been notified by Government yet.

In order to keep all our members updated with the latest announcements and amendments made in Law, we present to you a brief of updates that could be relevant for you all.

**E-Way Bill System**

- E-way bill is a document required to be carried by a person in charge of the conveyance carrying any consignment of goods of value exceeding fifty thousand rupees as mandated by the Government in terms of section 68 of the Goods and Services Tax Act read with rule 138 of the rules framed thereunder.
- Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees in relation to supply; or reasons other than supply; or inward supply from unregistered person shall generate e-way bill. It means, the consignor or consignee, as a registered person or a transporter of the goods can generate the e-way bill.
- To generate the e-way bill, it is essential that the person shall get enrolled on the common portal of e-waybill (<http://gst.kar.nic.in/ewaybill>) before generation of the e-way bill.
- E-way bill can be generated through various modes via Web, SMS through mobile, Android App, tool for bulk generation etc.
- Details for generation of e-way bill have to be furnished in Form GST EWB-01, consisting of two components i.e. Part A & Part B.
- The validity of e-way bill depends on the distance to be travelled by the goods. For a distance of less than 100 Km the e-way bill will be valid for a day from the relevant date. For every 100 Km thereafter, the validity will be additional one day from the relevant date.

- E-way bill may be cancelled electronically on the common portal within 24 hours of generation if the goods are not transported or incorrect details have been furnished in the E-way bill. However E-way bill cannot be cancelled if it has been verified in transit.

Some of the key Actionables which can be foreseen for a smooth transition and uninterrupted Supply Chain Management are as follows:

- Start enrollment on the common portal of e-waybill (<http://gst.kar.nic.in/ewaybill>) on a GSTIN level. (Enrollments has been started for Karnataka, Rajasthan & Uttarakhand). For other states, enrollments expected to start by next week.
- Defining roles and responsibilities of concerned personnel implementing this requirement, and provide training to them regarding implementation plan/process.
- Identify need for addition/ modification of any tax related fields in ERP and capturing E Way Bill No's in various reports (e.g. purchases, sales, etc.)

### **DGFT - Public Notice No. 52/2015-2020 dated 12th January, 2018**

In light of GST Implementation, the Director General of Foreign Trade has made amendments in AyatNiryat Forms (ANF) 4A, 4E, 4F, 4G, 4H & 4I of Handbook of Procedures:

- ANF 4A – Application for issue of Advance Authorization/Advance Authorization for Annual Requirement /Invalidation Letter / Advance Release Order (ARO)
- ANF 4E - Application for Advance Authorization / Advance Release Order (ARO) / Invalidation Letter for Pharmaceutical Products, manufactured through Non-Infringing (NI) process
- ANF 4F - Application for Redemption / No Bond Certificate against Advance Authorization
- ANF 4G - Application for issue of Transferable Duty Free Import Authorization (DFIA) (including for ARO and Invalidation Letter)
- ANF 4H - Application for GEM REP Authorization

Form ANF 4I “Application for Issue of Nominated Agency Certificate (NAC) / Renewal of Nominated Agency Certificate”, has been deleted. The captioned notice along with revised forms is attached.

### **Judicial Pronouncements**

- Customer Operational Services (Bangalore) Pvt Ltd Vs. Commissioner of Customs and Service Tax Bangalore-Cus: Appellant is a Software Technology Park (STP) – denial of duty-free import in terms of Customs Notification No.52/2003 dt 31/03/2003 – HELD - once the approval has been taken from the STPI authorities, for import of certain goods, the benefit of duty free clearance has to be necessarily given by the Customs authorities. In case the Customs Department was of the opinion that the benefit is not entitled for certain goods, it is necessary for the Customs Department to take it up with the Commerce Ministry - In the present case, there is no dispute to the fact that the goods have been covered by valid certificate from the STPI and also the goods were still found in the bonded warehouse - once the goods are imported with valid certificate, subsequently the benefit cannot be denied – assessee appeal is allowed.
- Ahmedabad CESTAT: Freshcap Investment Pvt Ltd Vs. CCE & ST - Interest on delayed refund - It is undisputed that clearance effected by assessee to 100% EOU to be considered as deemed export, the matter was decided in favor of assessee - Undisputedly, the assessee had filed refund claim on 24.9.2008 - Judgment of Apex Court in case of Ranbaxy Laboratories Limited would directly apply in the case in hand - The law has now been settled by the Apex Court stating that the liability arises on the Revenue after three months from the date of filing of the refund claim - The said law needs to be followed by lower authorities - Following the law as laid down by the Apex Court in said case, assessee is eligible to interest as per the provisions of Section 11BB of CEA, 1944 on the amount which has been sanctioned to them by the lower authorities - The said interest needs to be calculated as per law settled by Apex Court - Appeal allowed
- Bangalore CESTAT: Blue Star Ltd Vs. CCE, C & ST : ST - Appeal filed against impugned order whereby Commissioner (A) has denied the CENVAT credit used for providing services to Special Economic Zone; Assessee had not maintained separate accounts of input service meant for

consumption in relation to taxable and exempted services provided by them - Issue has been considered by Tribunal in cases of Tata Consulting Engineers Ltd. and Sobha Developers Ltd. wherein it has been consistently held that there is no need to reverse any CENVAT credit of input and input services used in relation to providing of services to SEZ Unit/Developer of SEZ - Therefore, by following the ratio of said decisions, denial of CENVAT credit is set aside.

- Madras High Court: Data Field India Pvt Ltd Vs. CCE: Petitioner is a 100% Export Oriented Unit (EOU), engaged in the manufacture of telephone cords. The Development Commissioner, after verifying the documents submitted by the petitioner, granted permission for the Domestic Tariff Area (DTA) sales for a total value of Rs.204.34 lakhs on the total ex-factory value of production of Rs.552.59 lakhs for the year 1997-98. Petitioner submitted that they have paid a total of Rs.74.35 lakhs in terms of Notification no.2/95-CE dated 4.1.1995 – petitioner further submitted that they are not liable to pay SCD and ACD, which amount to Rs.41.58 lakhs and that the said amount is liable to be refunded to them – while so, the respondent issued a SCN dated 24.4.2002 alleging irregularity in the availment of concession under the DTA sales by furnishing inflated exports – petitioner before High Court seeking to prohibit the respondent from proceeding with the said SCN.

HELD: Essentially, the impugned SCN is sought to be challenged on technical grounds without meeting the allegation as pointed out in the impugned SCN – however strong the case of the petitioner would be on legal grounds, while examining the applicability of the same, it is essential and necessary to go into the factual matrix -the allegation against the petitioner being one of irregularity in the availment of concession under the DTA sales furnishing inflated export sales, is purely a factual issue, which has to be agitated by the petitioner before the Adjudicating Authority - whether or not there has been inflation and whether the respondent was justified in arriving at the actual Net Foreign Exchange Profit at 3.95% is correct or otherwise, has to be thrashed out before the Adjudicating Authority - after the factual scenario becomes clear, then only a situation arises for applying the legal principle. The allegation against the petitioner is one of wilful mis-statement of relevant facts by an act of fraud with an apparent intention to evade payment of duty, therefore, the decision in Norton Intec Rubbers (P) Ltd. is distinguishable on facts. A Writ of Prohibition cannot be issued to prohibit the respondent from proceeding with the adjudication of the SCN. In the result, the writ petition is dismissed as not maintainable/premature – Petitioner to submit reply to SCN and the adjudicating authority to follow principles of natural justice and conclude adjudication process expeditiously. - Writ Petition dismissed

Hope the newsletter was useful for you all.

In case of any queries, feel free to connect with the council.

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