

EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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Sub : Weekly updates on amendments made in law

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.

1) Notification S.R.O. No.61/2018 dated 08th February, 2018

The Government of Odisha rescinds its earlier Notification No. 24209-FIN-CT1-0043/2017/FIN., dated the 17th August, 2017 which stated -

“Following category of registered persons shall not be eligible for refund of ninety per cent of the total amount claimed as refund on account of zero-rated supply of goods or services or both on a provisional basis, namely:-

1. any registered person who has been granted a registration certificate under the said Act or under the existing law within a period of six months from the date of application for refund; or
2. any registered person who has not furnished the return for three consecutive tax periods immediately preceding the date of application for refund.”

2) D.O.F. No. 450/17/2017-Cus-IV dated 06th February, 2018

It has been clarified that LUT for exports would be accepted by GST officials. List of functions which would now be attended by Custom officers are as follows:-

- Customs functions at the international airport such as Madurai, Coimbatore, Tirupati, Nagpur etc.
- Functions at the Inland Container Depots such as ICD at Meerut, Moradabad, Indore, Dadri, Loni.
- Duty free imports by EOU/EHTP/STP units, issuance of re-warehousing certificate, bond to bond transfer, collection of duty of Customs in case of disposal of CG/ goods as such by the unit. Execution of B-17 bond (common bond for excise and Customs), demand of duty of Customs in case of default in NFE, non-accountal of goods etc, collection of cost recovery charges, MOT etc. (Notification no 52/2003-Cus dated 31.03.2003).
- Licensing of Private/Public/Special Customs Bonded Warehouses, Manufacture and other Operations in Warehouse Regulations 1966, Cost Recovery Charges, MOT fee.
- Installation certificate for goods imported under EPCG scheme;
- Duty free imports/ imports at concessional rate of duty subject to end-use condition under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 - Notification no 32/2016-Customs (N.T.) dated 01.03.2016, Execution of bond, monitoring of utilization and demand of Customs duty in case of default.

- Factory stuffing of containers for export.
- Recovery of dues under section 142 of the Customs Act, 1962
- Adjudication of offences and demand of Customs duty in respect of SEZs by the Central Excise Officers having jurisdiction over the SEZ.
- Brand rate fixation of Customs duties in case of export of goods- section 75 of the Customs Act 1962.
- Customs preventive operations at places other than major ports.

3) Filing GSTR – 3B made more user friendly w.e.f. 21st February, 2018

While filing the GSTR – 3B, a statement is appearing on GST portal prompting the following changes -

- User will have to fill either CGST or SGST/UTGST amount, other tax columns being similar in nature will be auto filled.
- The requirement of submitting the return to determine the status of liability has been dispensed with and the status of liability could be known before submission.
- The user can access the balance of cash and credit ledgers at the time of making the payment (Table 6.1 – Payment table).
- As soon as user confirm the ITC and cash utilization amount for payment of tax liability, shortfall in cash ledger (if any) will be automatically calculated.
- If user is fine with shortfall, pre-filled challan will be generated by the system automatically and would navigate to payment window.

4) Judicial Pronouncements

- **Chennai CESTAT: M/S Meridian Industries Ltd Vs CCE & ST, Coimbatore** - Appellant is a 100% EOU engaged in the manufacture of Cotton Yarn - SCN invoking larger period demanding duty on the ground that cotton waste generated out of duty free imported raw cotton was over and above the permissible limit of 25% - duty demand on imported raw cotton by denying exemption under Notification No.53/97-Cus – aggrieved assessee in appeal - HELD - once the manufactured goods which are excisable are allowed to be sold in accordance with Exim Policy no demand of customs duty can be raised. In the present case cotton waste which is cleared to DTA is an excisable goods falling under Chapter heading 52.02 of CETA, 1985. The said clearance of waste is also permissible as per the Exim Policy 2002-07 within the overall limit of 50% of the FOB value. Hence the present demand of duty is untenable under the Notification No. 53/97-Cus. dated 03.06.1997 – further, the permissible waste as per Exim Policy has to be computed on the imported cotton and not on the imported cotton consumed . In absence of any malafide being brought on to record, appellant cannot be suspected to have made any undue gain - The impugned order is set aside and assessee appeal is allowed.
- **MUMBAI CESTAT: CCE Vs Mahindra and Mahindra Ltd** - Exempted goods can be exported under bond/undertaking in terms of rule 19 of CER, 2002 - Law settled by Bombay High Court in the appeal by Revenue by order dated 25.06.2014 - Revenue appeal dismissed and impugned order upheld - respondent is entitled to consequential benefit in accordance with law - Appeal dismissed.
- **CHENNAI CESTAT :CCE Vs Jeevan Diesels And Electricals Ltd-** Allegation of department is that subject goods namely base frame fitted with engines or alternators, fuel tank and acoustic enclosures and base frame fitted with engine, alternator fuel tank and acoustic enclosures cleared to 100% EOU are not goods manufactured by assessee - According to department, goods have been procured on the basis of invoices and goods have been cleared as such since the activity of fitting of base frame with acoustic enclosure does not amount to manufacture - As rightly pointed out by assessee as well as discussions made by Commissioner (A), department has taken contradictory stand with respect to subject goods cleared by assessee - Since for very same goods, after visit to

the factory for period 2006 - 07, department having accepted that process in factory amounted to manufacture and also for the reason that clearances of subject goods to independent buyers and DTA units are undisputedly made on payment of duty, allegation that activity does not amount to manufacture when very same goods are cleared to 100% EOU is not justified - Demand is hit by limitation - Assessee has been regularly filing ER-1 returns and subject goods have been cleared to 100% EOU on CT3 certificate - There has been communications from assessee to the department on said issue - Therefore, there is no evidence to establish any suppression of facts or willful mis-statement with intent to evade payment of duty on the part of assessee - On such score, demand invoking the extended period is unsustainable - Appeal filed by department is devoid of merit and impugned order calls for no interference: CESTAT - Appeal dismissed.

- **Bangalore CESTAT: CCE & ST Vs. SPAN INFOTECH INDIA PVT LTD**

It has been decided that in respect of export of services, the relevant date for purposes of deciding the time limit for consideration of refund claims under Rule 5 of the CCR may be taken as the end of the quarter in which the FIRC is received, in cases where the refund claims are filed on a quarterly basis.

By reference to the Service Tax Rules, 1994 as well as Export of Services Rules, 2005, we note that export of services is completed only with receipt of consideration in foreign exchange. Hence, the date of Foreign Inward Remittance Certificate (FIRC) is definitely relevant.

- **Chennai CESTAT: EID Parry India Ltd Vs. CCE & ST** - Assessee, 100% EOU engaged in manufacture of Neemazal formulation, Neem oil and Neem cake in their EOU Unit - The point of dispute is liability of assessee to pay duty on neem oil and neem cake which are by products emerging in process of using neem seeds and after extractions of Neemazal /technical/formulation in process - Assessee have discharged neem kernel for further processing and extraction of neem oil and neem cake which they have sold to their customers from premises of job worker - Assessee has used the facility of job worker to extract two of the products for which permission is granted to them as EOU - However, for these two products, the due process and conditionalities of EOU have not been adhered to which is a clear violation of LOP conditions and Foreign Trade Policy.

Regarding duty liability of assessee, clearly the product is manufactured within scope of LOP and assessee have been put to liability of accounting for it - Disposal of two of their products is not in terms of policy - Hence, the rate and quantification of duty liability have to be arrived at in terms of policy and applicable notification - These products are recognized for manufacture in LOP - By demarcation of by products, obligation cast on assessee cannot be waived - These are not scrap or waste - In these backgrounds, assessee is liable to duty as confirmed in terms of Section 3 (1) of CEA, 1944.

Assessee have not intimated the Revenue that part of the process for which permission is granted to them as EOU is out sourced and got done by a job worker - Though the same itself is a violation, further clearance of manufactured goods from the premises of the job worker, without due discharge of duty is a further serious offence - No reason found to interfere with the findings of lower authorities regarding confirmation of duty on longer period and penalties as imposed - Appeals dismissed

Hope the newsletter was useful for you all.

This issues with the approval of Oftg. Chairman EPCES.
