EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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EPCES CIRCULAR NO. 280

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.

Circular No. 34/8/2018-GST dated 1st March, 2018

The circular gives clarifications regarding GST in respect of the following services:

1. **Whether activity of bus body building, is a supply of goods or services?**
   It is a case of composite supply and classification as supply of goods or service would depend upon which supply is the principal supply, determined on the facts and circumstances of each case.

2. **Whether retreading of tyres is a supply of goods or services?**
   It is a case of composite supply, where the pre-dominant element is the process of retreading which is a supply of service. The principal supply part must be determined considering the nature of supply involved; which element of supply imparts essential nature to the composite supply. Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods (retreaded tyres under heading 4012 of the Customs Tariff attracting GST @ 28%).

3. **Whether the activities carried by DISCOMS against recovery of charges from consumers under State Electricity Act are exempt from GST?**
   Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under NN. 12/2017- CT (R). Other services such as:
   - Application fee for releasing connection of electricity
   - Rental Charges against metering equipment
   - Testing fee for meters/ transformers, capacitors etc
   - Labour charges from customers for shifting of meters or shifting of service lines
   - charges for duplicate bill

   provided by DISCOMS to consumer are taxable.

4. **Whether the guarantee provided by State Government to state owned companies against guarantee commission, is taxable under GST?**
   The service provided by Central Government/State Government to any business entity including PSUs by way of guaranteeing the loans taken by them from financial institutions against consideration in any form including Guarantee Commission is taxable.

JUDICIAL PRONOUNCEMENTS

- **CHENNAI CESTAT:RR Donnelley Publishing India Pvt Ltd Vs CC:**Assessee, 100% EOU, after due authorization of procurement Certificate from jurisdictional Central Excise Officer imported various items without payment of customs duty - Based on subsequent verification, jurisdictional Central Excise Officer initiated proceedings against assessee on the ground that some of items imported by assessee may not qualify as capital goods - Impugned order independently examine the liability of assessee for certain goods and held these are not eligible for exemption - Apparently, the terms of bond by assessee was invoked - Goods were duly assessed as capital goods by competent officer at the port of entry - Same has not been varied by that officer - In case of *Verifone India Pvt. Ltd.*, Tribunal examining the scope of the very same notification for EOU held that when the goods were in the warehouse without invoking the provisions of Section 72 of the Customs Act, proceedings cannot be held against them - Denial of exemption under notfn 52/2003-Cus is not sustainable - Appeal allowed.

- **HYDERABAD CESTAT: Photon Energy Systems Ltd Vs CC, C & ST:** Assessee manufactures solar photovoltaic modules in their 100% EOU - In adjacent plot, they set up a service unit registered in respect of Erection, Commissioning and Installation, GTA, works contract and management and Business Consultant Service - Upon enquiries, authorities noticed that assessee paid Rs. 10,04,379/- as service tax, on reverse charge on commission paid to a foreign agency for rendering marketing service; and this amount shown as input credit and shown on ER2 returns and debits were shown - The debits to an extent of Rs. 7,53,963/- relate to the proportionate input credit in respect of inputs involved in goods used in manufacture of DTA clearances and Rs. 2,50,416/- was in respect of service tax liability in other service tax unit - Discharge of Central Excise/Customs Duty to the tune of Rs. 10,04,379/- in cash would mean that Revenue has already received the amount twice - Assessee is eligible to avail Cenvat credit and could have claimed the refund of such credit, it is fair and just and assessee be allowed to take credit which was debited, first towards duty and subsequently paid in cash as per the direction of lower authorities - As regards the penalties imposed on assessee for this infraction, penalties so imposed under section 112 of Customs Act, 1962 for violation of conditions of notfn, needs to be modified and it is held that a penalty of Rs. 15,000/- is just in interest of justice as a deterrent - As regards the penalty imposed under rule 25 of CER, 2002 and penalty imposed under rule 15(1) of CCR, 2004, both these penalties are unwarranted on the fact of records that assessee had not cleared the goods without payment of duties and has not availed any improper cenvat credit - Penalties imposed under these two heads are also set aside - As regards penalty imposed under rule 27 of CER, 2002, said penalty has been correctly imposed and no interference is called for - Assessee could have misunderstood the provision of Section 76 of Finance Act inasmuch, he had availed the credit of the service tax paid under reverse charge mechanism and utilized the same for making the payment - It is also undisputed that assessee had mentioned in returns filed before the authorities regarding availment of such credit and utilization thereof - There could be a bonafide error in understanding the law, hence this is a fit case wherein provisions of Section 80 of Finance Act, 1994 are invokable - By invoking the provisions of Section 80 of FA, 1994, penalty imposed by adjudicating authority under section 76 and upheld by first appellate authority is set aside.

- **DELHI CESTAT: Continental Engines Ltd Vs CCE:**Assessee have two divisions i.e. Machining division which is a 100% EOU and Foundry Division which is a DTA unit - The Machining Division had imported raw materials i.e. aluminium ingots without payment of duty under Notfn 52/2003-Cus. - Machining Division has wrongly paid CVD as well as SAD by making use of cenvat credit - In terms of Rule 3(4) of CCR, 2004, Cenvat Credit cannot be utilised for payment of such customs duties - Consequently, no infirmity found in the view taken by adjudicating authority that such duty payment is required to be made only through cash and not allowed to be done by making use of cenvat credit - Cenvat credit was taken wrongly by Foundry Division since such duty was paid using the cenvat credit account by the machining division and cannot be considered to be payment of duty - The cenvat credit also has been

taken on the basis of non-prescribed duty paying documents - Consequently, reversal of such cenvat credit taken alongwith interest and levy of penalties upheld.

- **BANGALORE CESTAT : Milestone Aluminium Company Pvt Ltd Vs CCE , ST & C CX** - The assessee-company manufactured structural glazings& availed Cenvat credit - The Revenue opined that the assessee had manufactured and cleared structural glazings from their factory to their own selves without payment of duty, by wrongly availing the exemption from excise duty meant for clearances made to a unit or developer in SEZ - The Revenue further claimed that clearances made to the developer in the SEZ were not notified in Rule 6(6) of CCR, 2004 - Thereby, an SCN was issued and duty demand was raised - The same was upheld by the Commr.(A) - Held - The issue is no more res integra and stands settled in judgment of Sujana Metal Products vs. CCE wherein it was held that supplies made to SEZ from DTA were deemed exports - Thus an assessee was entitled to the benefit of Cenvat credit and was not required to maintain separate account for dutiable and non-dutiable goods - Therefore, duty demands set aside: Appeal allowed.

- **M/s MSD PHARMACEUTICALS PVT LTD Vs CST, DELHI** - The appellant entered into an agreement with their foreign based parent company for clinical trials for newly developed drugs – Demand under business support service – appellant plea for exemption in terms of Notification 11/2007-ST dated 01/03/2007 as well as these services qualifying the export of service criteria – HELD – The appellants activities are initiation of trial sites, monitoring, trial monitoring, site management, query response and coordinate with M/s Merck, USA etc. Perusal of these detail clearly reveal that the appellant are directly engaged in the activities of conducting clinical trial studies. They did obtain no objection approval from the concerned drug authorities in India - the findings recorded in the impugned order is neither factually nor legally tenable. The appellants activities are clearly covered by the exemption under Notification 11/2007-ST dated 01/03/2007 – further, these services are for delivery and consumption of an entity located outside India. On this ground also, the appellant is having a case on merit - the impugned orders are set aside and the appeals are allowed.

- **THE COMMISSIONER OF GST & CENTRAL EXCISE, CHENNAI Vs BNP PARIBAS SUNDARAM GLOBAL SECURITIES OPERATIONS PVT LTD** - 100% EOU – rejection of refund claim on the ground of non-registration of the premises – HELD - credit availed on the inputs received in the premises which was not registered prior to export but subsequently obtained Registration is legally correct - A perusal of the sub Rules(2) and (3) of Rule 4 of the 1994 Rules, on which, reliance is placed by the Revenue, does not bring to fore any limitation, with regard to grant of refund, for unutilized cenvat credit, qua, export services, merely on the ground that the premises are not registered – revenue appeal is dismissed .

Hope the newsletter was useful for you all.

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

This issues with the approval ofOfftg. Chairman EPCES.
