

EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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EPCES CIRCULAR NO. 282

Greetings!!

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.

Public Notice F. No. NSEZ/Cus/Misc./P.N./2018/1903(S/L) dated 22nd February, 2018

Public notice issued by the Ministry of Commerce, Customs Wing, Noida SEZ, regarding the **procurement of goods and services from DTA for authorized operations in SEZ.**

It is emphasized that only goods/services related to authorized operations received by SEZ Unit/Developer under the cover of following documents are eligible for tax/duty benefits-

- a. GST Invoice with complete particulars, issued by a registered supplier, under a valid LUT/Bond. (Details of LUT/Bond to be specified on the invoice)
- b. GST Invoice for supply of goods & services with payment of IGST, endorsed/certified by Specified Officer of NSEZ.

In cases of supply to SEZ developer, which are not related to authorized operations, supplier has to charge IGST on such supplies of goods/services and will not be eligible for any tax/duty benefit.

The procedure for availing benefits on DTA procurement has been specified as follows:-

- i. File particulars of Invoice in '**DTA Procurement**' utility in the SEZ Online facility at the earliest. (SEZ online document prints the date of filing as the 'Date of Procurement')
- ii. Approval of documents on SEZ Online by the Authorized Officer
- iii. Present Invoice(s) along with details of Online filing
- iv. Invoice to be countersigned by the Authorised officer
- v. Present countersigned invoices before Specified Officer for endorsement

It is also clarified that Goods required for authorized operations may be procured on payment of IGST i.e. without availing any benefits.

Further, it is proposed that for endorsement/countersignature/verification, the invoices for procurement of goods/services can be submitted on monthly basis at the earliest after closing of the month in **Proforma A** for goods and **Proforma B** for Services. (formats enclosed)

Circular No. 37/11 /2018-GST dated 15 March 2018

Vide the captioned circular, CBEC has issued clarification on various refund related issues:

1. **Non-availment of duty drawback benefit**

- Refund of accumulated ITC in respect of zero rated supplies without payment of tax shall not be allowed if the supplier avails of drawback, however the said condition is not applicable for refund claim of accumulated ITC under inverted duty structure;
- No refund of central tax/ state tax/ integrated tax and compensation cess where the supplier avails drawback of such taxes;
- However, refund of central tax/ state tax/ integrated tax and compensation cess can be claimed where the supplier avails of drawback of BCD; and
- Refund of State tax can be claimed even if the supplier avails drawback of central tax only.

2. **Export without LUT**

In cases where zero rated supplies have been made before filing of LUT, the benefit pertaining to zero rated supplies may not be denied if it has been established that exports have been made under the provision of GST law and such cases may be condoned while processing refund claim in view of the facts and circumstances of each case.

3. **Export after specified period**

Under GST, it has been stated that where goods or services have been exported without payment of IGST under a LUT/ Bond, but such goods have not been actually exported within 3 months ('specified period') of issue of export invoice or where consideration in convertible foreign exchange for service exported is not received within one year ('specified period') from the date of export invoice, the assessee is liable to pay IGST along with interest within 15 days from the end of specified period. In this regard, it has been highlighted that as exports have been considered as zero rated, department shall not contend assessee to first pay IGST and later claim refund of the same. In order to avoid such scenario, the Jurisdictional Commissioner may consider granting extension of such time period basis keeping in view of the facts and circumstances of each case.

4. **Deficiency memo**

It would be served once only for one refund application and once served applicant has to file a fresh refund application manually in FORM GST RFD-01A. Officer will not serve another deficiency memo w.r.t same period application, unless after filing of afresh application, the said deficiencies pointed out in the original memo remain unrectified or any other substantive deficiency is noticed subsequently.

5. **Self-declaration for non-prosecution**

For every refund claim where the exports have been made under LUT is not warranted, as the same has already been filed at the time of obtaining of LUT.

6. **Refund of transitional credit**

The transitional credit pertains to duties/ taxes paid under erstwhile laws and the same cannot be said to have been availed during the relevant period (i.e. the period for which refund claim has been filed). Therefore, such credit cannot be treated as part of ITC eligible for refund claim.

7. **Discrepancy between value of GST invoice and shipping bill/ bill of export**

While processing of refund claim of unutilized input tax credit on account of exports of goods, the value of goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export would be examined if there is a discrepancy lower of the two values would be sanctioned as refund.

8. **Refund claims pertaining to pre-GST regime**

- Refund claims for CENVAT credit to be filed and disposed off in accordance with the provisions of erstwhile laws and taxpayers may not apply for such refund claims under GST law;
- Amount of refund arising out of such claims would be refunded in cash .
- Amount rejected, whether partially or fully, would not be transmitted into GST.

9. Frequency of refund claims

Exporter, at his option, may file refund claim for one calendar month/ quarter or by clubbing successive calendar months/ quarters. The calendar month(s)/quarter(s) for which refund claim has been filed cannot spread across different financial years.

10. BRC/ FIRC against export of goods (not for services)

Proof of realization of export proceeds is not required for processing of refund claims in case of export of goods where as in case of export of services realization of convertible foreign exchange is required.

11. Supply to Merchant Exporter

- Exporter would be eligible to avail ITC of the tax @ 0.05%/ 0.1% paid to supplier;
- Supplier is also eligible to refund accumulated ITC on account of inverted duty structure; and
- Exporter can export the goods only under LUT/ bond and cannot export on payment of IGST.

12. List of documents required for processing of refund claims

For processing of refund claims, officer may call up from taxpayer certain documents only unless the same are not available electronically. A comprehensive list of such documents is mentioned below:

Type of refund	Documents
Export of services with payment of IGST (refund of IGST paid)	<ul style="list-style-type: none">- Copy of RFD-01A filed on common portal- Copy of Statement-2 of RFD-01A- Invoices i.e. input, input services and capital goods- BRC/ FIRC- Undertaking/ declaration in RFD-01A
Export of goods or services without payment of IGST (refund of accumulated ITC)	<ul style="list-style-type: none">- Copy of RFD-01A filed on common portal- Copy of Statement-3A of RFD-01A generated on GST portal.- Copy of Statement-3 of RFD-01A- Invoices i.e. input and input services- BRC/ FIRC- Undertaking/ declaration in RFD-01A

13. Refund may not be withheld due to minor procedural lapses or errors or omissions.

D.O.F No. 267/8/2018-CX.8 dated 14th March, 2018

CBEC has issued a guidance note to its officers w.r.t. verification of correctness of transitional credit in a more focused and concerted manner. The verification has to be conducted in respect of list of top 50,000 GSTINs in the order of transitional credit availed. Preliminary verification process is already over in most zones and now a more detailed exercise may be needed in some cases.

Two fundamental principles should be kept in sight while the transition credit is verified. Firstly, only such CENVAT credit can be taken as credit of CGST by filing TRAN1 for which explicit legal authority exists in section 140 of CGST Act. Secondly, same CENVAT credit cannot be availed as transitional credit twice.

Another factor which needs to be verified is the growth of CENVAT credit in the period September, 2016 to June, 2017. Accordingly, it has been decided to verify the correctness of credit availed by them by checking the tax payment by their suppliers.

Advisory for change in taxpayer type for SEZs dated 19th March 2018

- Migrated taxpayers who have inadvertently selected themselves as SEZ can send their requests for change in taxpayer type i.e. from SEZ to Regular on the email: reset.sezflag@gst.gov.in
- Taxpayers who have not migrated as SEZ can send their request to become SEZ on the email: reset.sezflag@gst.gov.in

Please attach scanned copy of LOA for obtaining registration as SEZ/SEZ developer units.

Judicial Pronouncements

- **CHENNAI CESTAT : CCE & ST Vs Eid Parry India Ltd** - Assessee, 100% EOU engaged in manufacture of ABDA, Plant Vitalizer, Avana and Neemazal and Pesticides - During course of audit, it was noticed that assessee have been clearing products to DTA viz., Neem Oil and Neem Cake which arose in course of manufacture of pesticides under non-excise challans/invoices thereby not paying duty - Department views that assessee cannot sell said products into DTA without payment of full duties as applicable, as if product has been imported into India and that assessee is not entitled for exemption or concession under any of Sl. Nos. of Notification 23/2003-CE as amended - The adjudicating authority has held that once education cess is added to customs duties to arrive the aggregate of customs duties, question of charging education cess again does not arise - This position is settled in favour of assessee - Further in assessee's own case, in recent decision, Tribunal has held the issue in favour of assessee.
- **Madras High Court - M/s POOJA MARBLES Vs THE ASSISTANT COMMISSIONER** - Petitioner undertook works contract for contractee located in Special Economic Zone – zero rated sales - the contractee deducted tax at source on the premise that the works contract are taxable – levy of penalty under Section 40(2) on the petitioner – adjustment of TDS towards penalty – HELD – at no point of time the petitioner deducted the tax at source but it is the contractee for whom the petitioner executed the works contract had deducted tax at source and remitted it to the respondent. Therefore, the petitioner cannot be blamed for such deduction - Admittedly, the petitioner not deducted tax at source and therefore, the petitioner cannot be brought within the ambit of sub-section (1) of Section 40 of the TNVAT Act - the respondent could not have levied penalty at the first instance and could not have adjusted the tax which was deducted at source by the contractee and remitted to the respondent towards the petitioner's account. In fact, the respondent should have refunded the amount to the petitioner as a consequence of holding that the petitioner is eligible for exemption of the contract receipt. Thus, the impugned order is wholly unsustainable in law and the levy of penalty and the adjustment of TDS towards the said penalty is illegal - the impugned order is set aside and the respondent is directed to refund the sum to the petitioner - the writ petition is allowed.
- **CESTAT Chennai: M/s BHARTI AIRTEL LTD Vs COMMISSIONER OF GST, CENTRAL EXCISE** - SEZ Unit - Eligibility to exemption under N/No. 4/2004 dated 31.3.2004 to mobile subscriptions availed within SEZ unit – denial of exemption alleging that the telecom services are not consumed wholly within the SEZ Unit - Demand invoking extended period for credit availed on inputs/capital goods as well as towers and shelters – HELD – the mobile services are provided by the appellant to SEZ units. The department does not have a case that the subscribers are outside SEZ units. Merely because the facility of the mobile phone is used outside the SEZ unit also, the exemption in terms of Notification No. 4/2004 cannot be denied. Further, the period involved is

after 10.2.2006 when the SEZ Act 2005 came into existence. Section 26 of the Act grants various exemptions from taxes and duties to SEZ. Section 51 of the Act provides that the Act shall have overriding effect. Taking into consideration all these aspects, the denial of exemption is unjustified. The demand raised on this count therefore cannot sustain and set aside - the denial of credit on inputs / capital goods and towers/shelters used for setting up of telecommunication towers is upheld only to the normal period with no penalties - In respect of denial of exemption under Notification No.4/2004, the demand on this count is set aside - The appeals are partly allowed.

- **CHENNAI CESTAT:CCE VsTracFujico Air Systems Ltd- CX** - As per Revenue's allegations, assessee availed the benefit of Cenvat credit of duty paid on inputs and subsequently cleared the said inputs "as such" , without reversal of Cenvat credit to other 100% EOUs, on the basis of CT-3 certificates - Though, there is a doubt as to whether the inputs were cleared "as such" or after being processed partially, benefit stand extended to assessee by Commissioner (A) on the primarily basis of limitation - Though, he has also observed that the inputs supplied to 100% EOUs were partially processed, in which case, assessee is entitled to avail and retain Cenvat credit - Revenue in their memo of appeal have not produced any evidence or have not raised any plea to rebut the factual aspects adopted by Commissioner (A) for holding the limitation plea in favour of assessee - That being so, no infirmity found in order of Commissioner (A) on the issue of limitation - Accordingly, without going into the merits of the case, Revenue's appeals rejected.

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 of Officiating Chairman EPCES.
