

EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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EPCES CIRCULAR NO. 286

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.

Trade Notice No. 02/2018-2019 [File No. 01/02/70/AM-18/EDI] dated 11th April, 2018

- DGFT has noticed in some cases that even after issuance of IEC by DGFT, the IEC data transmitted by DGFT to ICEGATE (Customs) is not accepted by ICEGATE (Customs) due to some transmission errors thus IEC holder is unable to export/import using this IEC.
- Therefore, a facility has been created to check the current status of IEC application and status of IEC transmission to ICEGATE.
- The status query is based on PAN used in IEC Application made to DGFT.
- This facility can be accessed from DGFT website using Online Application -> IEC -> Know your IEC Status or directly from: <http://164.100.128.145:8100/lecStatusReport/link>.
- PAN Number and first three letters of Firm Name can be entered to check the status. Based on the status displayed, action to be taken as mentioned below:

S.No	Status	Action to be taken
1.	Application has been received in the DGFT	Wait for 4 days for processing by RA
2.	IEC application rejected	Re-submit the application after complying with the deficiencies raised by the Regional Authority.No need to pay the fees again.
3.	IEC transmitted to ICEGATE, yet to be accepted by ICEGATE	Wait for 3 days for IEC to be successfully accepted by ICEGATE.
4.	IEC successfully registered at DGFT and accepted by ICEGATE	IEC ready for use.

- Applicants can check the status of IEC at ICEGATE 3 days after the transmission to ICEGATE at the following link: <https://www.icegate.gov.in/EnqMod/> and report the problem to Contact@DGFT, if required.
- IEC is ready for Import/Export of goods only after IEC details get successfully registered at DGFT and accepted by ICEGATE (Customs).

Circular No. 42/16/2018-GST dated 13th April, 2018

CBIC has issued a clarification regarding procedure for recovery of central excise duty /service tax and CENVAT credit thereof, CENVAT credit carried forward erroneously and related interest, penalty or late fee payable arising as a result of the proceedings of assessment, adjudication, appeal etc.

The arrears of central excise duty /service tax and CENVAT credit thereof shall be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or

electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

The arrears of Interest, penalty and late fee shall be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).

In case where assessee are not registered under GST, such arrears shall be recovered in cash through payment on the ICEGATE portal.

Notification F. No. 10(6)/2016-DBA-II/NER dated: 12th April, 2018

The Government of India has announced **North East Industrial Development Scheme, NEIDS-2017** for industrial units in the North Eastern Region comprising States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura to boost industrialization. The Scheme will be **effective from 01.04.2017** and will remain in force **up to 31.03.2022**.

The following incentives will be provided to eligible industrial units on reimbursement basis:

1. Central Capital Investment Incentive for access to credit (CCIIAC)
2. Central Interest Incentive(CII)
3. Central Comprehensive Insurance Incentive (CCII)
4. Goods and Services Tax (GST) Reimbursement
5. Income Tax (IT) Reimbursement
6. Transport Incentive (TI); and
7. Employment Incentive (EI)

The Scheme requires that all eligible industrial units would have to register under the Scheme with Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Govt. of India, through the portal prior to being eligible for any benefit under this scheme. In this regard, an online application process shall be developed under which the applicants have to submit applications along with the DPR.

For detailed update on NEIDS, refer enclosed notification.

Press Release – Roll out Intra-state E-way bills from April 20

It is hereby informed that e-Way Bill system for intra-State movement of goods would be implemented from 20th April, 2018 in the following States:

- Bihar
- Jharkhand
- Haryana
- Himachal Pradesh
- Tripura
- Uttarakhand

Judicial Pronouncements

- **DELHI CESTAT : S N Modani Vs CC&ST**- Assessee engaged in manufacture of cotton as well as Polyester Viscose (PV) yarn, Cotton Yarn and Knitted Fabrics and for this purpose have seven mills in factory - The dispute is with reference to mill No. 1 which is used to manufacture the cotton yarn as well as knitted fabrics - The assessee claimed Cenvat credit on capital goods, and their spare parts used in this mill - By issue of impugned order, Revenue deny such Cenvat Credit by taking the view that goods manufactured using such capital goods enjoy exemption under Notification 30/04, since no credit on inputs/input services are being availed by assessee - Part of export has taken place

under bond (letter of undertaking) - Certain other consignments have been exported without executing LUT claiming the goods as exempted under Notification 30/2004 - In any case it is settled principle of law that only the goods are exported from the country and not the taxes - The Central Excise law provides for clearance of goods for export either under bond in which case the terminal excise duty is not paid at the time of clearance from the factory but in the terms of the bond the manufacturer is obligated to export the goods and get the bond closed - The other option available to manufacturer is to pay the said duty and export the goods and get the excise duty so paid rebated - In any case there is no doubt that goods manufactured have been partially exported and partially cleared to DTA - Benefit of Rule 6(6) (v) is required to be extended to assessee since the goods have in fact been exported - Consequently, assessee will be entitled to Cenvat Credit on capital goods used partially for export even though domestic clearances are exempted: Appeal allowed.

- **DELHI CESTAT :MMTC LTD Vs CC** - Assessee engaged in among other things, as one of nominated agencies for import of duty free gold for supply to be used to make jewellery for export - They have been regularly importing gold availing such provisions and were discharging their obligation in terms of notification 57/2000-Cus, Policy and bond executed by them - In certain cases, deficiency was found against assessee for violation of provisions of policy and accordingly, proceedings were initiated against assessee to enforce the bonds executed by them and to impose penalty - Except in one case, the bond relates to the period prior to pre-amended notification - Nowhere in pre-amended EXIM Policy or circular the condition of production of BRC by importing /nominated agencies has been stipulated - Such stipulation apparently was brought in w.e.f. 1.4.2008 in amended EXIM Policy which was later followed by Circular dated 24.7.2008 of the Board - On such plain reading of provisions, impugned order cannot ask for compliance of condition which was later on introduced in Policy for the import / bond executed which was made earlier - As per the submissions made by assessee, the bond condition was never changed even after the amendment of Policy / circular - In such a situation, Tribunal found under no basis for enforcement of condition of bond to collect duty from assessee - Accordingly, no legal justification found in impugned order enforcing the bond and also imposing penalty on assessee - Appeals allowed.
- **KARNATAKA HIGH COURT : Acer India Pvt Ltd Vs Uoi-** Terminal Excise Duty [TED] - Petitioner has challenged the communication dated 31.3.2016 issued by the Deputy Director General of Foreign Trade, New Delhi inter alia seeking for declaration that petitioner is eligible for refund of the TED paid in respect of goods supplied to Export Oriented Units [EOU] during the period from June 2009 to October 2009 in terms of para 8.3 of the Foreign Trade Policy 2009-14 [FTP] : **HELD** - the petitioner supplied goods to the EOU at the relevant time, its entitlement would be as defined in terms of the then existing Policy i.e. refund in terms of para 8.2 to 8.5 of the Policy - any subsequent amendment made to the existing policy liberalizing the Scheme and exempting payment of TED cannot be a reason to deny the refund of payment already made by the petitioner - this reason is fortified by the Division Bench Judgment of the Calcutta High Court in the case of *IFGL Refractors Ltd. [2001 (132) ELT 545 (Cal)]* and Division Bench Judgment of Delhi High Court in *Kandoi Metal Powders Mfg. Co. Pvt. Ltd.*, wherein it is held that once the supply of goods fall within the category of deemed export, the unit would be entitled to refund of TED. High Court of Madras [*Lenovo India Pvt. Ltd.*] has also taken a similar view whereby the Authorities are directed to process the refund claim in accordance with the 2009 Policy - this Court finds it difficult to concur with the view of the Bombay High Court [*Sandoz Private Limited*] that the policy circular dated 15.3.2013 is merely clarificatory and the DGFT had the power to interpret and implement the Policy, in view of the amendment to the FTP - amendment to the FTP indicates liberalization of Policy and the same shall be prospective in nature - petition is allowed - communication dated 31.03.2016 issued by the Deputy Director of Foreign Trade, New Delhi is quashed - the respondent no.3 shall consider the refund claim of the petitioner in accordance with 2009 Policy and pass appropriate orders in accordance with the law in an expedite manner.
- **WEST BENGAL AAR - GLOBAL REACH EDUCATION SERVICES PVT LTD – GST** -The Applicant provides Overseas Education Advisory whereby it promotes the courses of foreign universities among prospective students - Whether the service provided to the Universities abroad is to be considered “export” within the meaning of Section 2(6) of the IGST Act, 2017, hence, a zero-rated supply under

the GST – HELD – in the case of Export of Services all the conditions as laid down under Section 2(6) of IGST Act is to be followed in totality without any violation, and that there is no scope of partial compliance of the conditions laid down therein - the Applicant is facilitating recruitment / enrolment of students to foreign Universities - If promotion of university courses were the principal supply, the applicant should have been remunerated for its promotional activity no matter whether it facilitates recruitment or not. If the Applicant receives 'commission' based on recruitment / enrolment through it, the principal supply is clearly facilitating the foreign university in recruitment/enrolment with promotional services ancillary to the principal supply - Being an intermediary service provider, the place of the Applicant's supply shall be determined under section 13(8)(b) of the IGST Act and not under section 13(2) of the IGST Act. The place of supply under the above legal framework is the territory of India. As the condition under section 2(6)(iii) of the IGST Act is not satisfied, the Applicant's service to the foreign universities does not qualify as Export of Services, and is, therefore, taxable under the GST Act.

- **WEST BENGAL AAR - SWITCHING AVO ELECTRO POWER LTD - GST** - Applicant, stated to be a supplier of power solutions, including UPS, servo stabiliser, batteries etc. wants a ruling on the classification of the supply when it supplies UPS along with the battery - More specifically, they want a ruling on whether such supplies can be treated as Composite Supply within the meaning of Section 2(30) of the CGST Act, 2017. Held: A standalone UPS and a battery can be separately supplied in retail set up - A person can purchase a standalone UPS and a battery from different vendors - applicant himself admits that he supplies the battery and UPS as separate machines as well as UPS with battery - It is obvious that the UPS and the battery have separate commercial values as goods and should be taxed under the respective tariff heads when supplied separately - If a combination of goods that does not amount to a composite supply is being offered at a single price, such supplies are to be treated as mixed supplies - Supply of UPS and Battery is to be considered as Mixed Supply within the meaning of Section 2(74) of the GST Act, as they are supplied under a single contract at a combined single price.

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 Offtg. Chairman EPCES.
