EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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EPCES CIRCULAR NO. 288

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.

Press Release dated 23red April, 2018 – Clarification regarding "Bill-to-ship-to" for E-Way Bill

In a "Bill To Ship To" model of supply, there are three persons involved in a transaction, namely:

- 'A' is the person who has ordered 'B' to send goods directly to 'C'.
- 'B' is the person who is sending goods directly to 'C' on behalf of 'A'.
- 'C' is the recipient of goods.

In this scenario,as two supplies are involved, hence two tax invoices are required to beissued:

- Invoice -1, which would be issued by 'B' to 'A'.
- Invoice -2 which would be issued by 'A' to 'C'.

It is clarified that as per the CGST Rules, 2017 either 'A' or'B' can generate the e-Way Bill but it may be noted that only one e-Way Bill is required to be generatedas per the following procedure:

Case -1: Where e-Way Bill is generated by 'B', the following fields shall be filled in Part Aof GST FORMEWB-01:

1. Bill From: Details of 'B'
2. Dispatch From: Place from where goods are actually dispatched (Principal/Additional place of business of 'B').
3. Bill To: Details of 'A'.
4. Ship To: Address of 'C'.
5. Invoice Details: Details of Invoice-1.

Case -2: Where e-Way Bill is generated by 'A', the following fields shall be filled in Part A ofGST FORM EWB-01:

1. Bill From:Details of 'A'.
2. Dispatch From: Place from where goods are actually dispatched (Principal/Additional place of business of 'B').
3. Bill To:Details of 'C.
4. Ship to: Address of 'C'.
5. Invoice Details: Details of Invoice-2.

Press Release – Roll out Intra-state E-way bills from April 25

It is hereby informed that e-Way Bill system for intra-State movement of goods would be implemented from 25th April, 2018 in the following States:

- Arunachal Pradesh
- Madhya Pradesh
- Meghalaya
- Sikkim
- Puducherry

Circular No. 10/2018 – Customs dated 24th April,2018

Vide the captioned circular, CBIC has issued clarification regarding Imports by EOUs/EHTP/STP/BTP without payment of duty w.r.t. Rule 5 of Customs (import of goods at concessional rate of duty) Rules, 2017. It is clarified that an importer EOU need not get prior approval of the information submitted under Rule 5(1)(a) viz. estimated quantity and value of goods to be imported, from jurisdictional DC / AC for duty-free import at Customs Station of importation. Information submitted to the DC / AC at the Customs Station of importation is sufficient to avail exemption under Notification No. 52/2003-Customs dated 31.03.2003. Accordingly, clears the misconception arising out of wrong interpretation of Rule 5(3) by stating that said provision nowhere makes the forwarded copy by jurisdictional DC / AC a prerequisite for allowing duty-free import by DC / AC at Customs Station of importation.

CBIC further prescribes that jurisdictional DC / AC shall ensure that intimation received under Rule 5(1)(a) is properly scrutinized so that only eligible goods as prescribed under said Notification and Letter of Permission are imported duty-free. One copy of such information is to be forwarded to DC/AC at Customs Station of importation who shall reconcile the Bill of entry of imported goods with the information received and inform any discrepancies to the jurisdictional DC/AC for necessary steps.

Judicial Pronouncements

- **DELHI AAR - M/s ROD RETAIL PRIVATE LIMITED – GST** - Export of goods u/s 2(5) of the IGST Act 2017 - Customs Frontiers of India - whether the supply of goods made to international outbound passengers, holding international boarding pass, from the retail outlet located in the Security Hold Area of the IGI International Airport and which is claimed to be beyond Customs Frontiers of India, can be considered as zero rated supply, being export of goods or the same should be subjected to GST.

  HELD - goods can be said to be exported only when they cross the territorial waters of India; goods cannot be called to be exported merely on crossing the Customs Frontiers of India - when goods are exported by Air, the export will be completed only when goods crosses airspace limits of its territory or territorial water of India - supply of goods to the International passengers going abroad by the applicant from the retail outlet situated in the Security Hold Area may be taking place beyond Customs Frontiers of India as defined under Section 2(4) of the IGST Act, 2017. However, the said outlet is not outside India but the same is within the territory of India as defined under Section 2(56) of the CGST Act, 2017 and Section 2(27) of the Customs Act, 1962 and hence the applicant is not taking goods out of India and hence the supply cannot be called “export” under Section 2(5) of the IGST Act, 2017 or “zero rated supply” under Section 2(23) and Section 16(1) of the IGST Act, 2017. Accordingly, the applicant is required to pay GST at the applicable rates.

- **BANGALORE CESTAT: Infinite Resources Vs CCE:** Assessee in terms of provisions of Rule 5 of CCR, 2004 r/w Notification 27/2012-CE(NT) , filed the refund claims for various period on the ground that inputs used in manufacture of agricultural machinery parts have been entirely exported and assessee is unable to utilize the accumulated Cenvat credit - Issue is squarely covered in favor of assessee by decision of High Court of Karnataka in case of ANZ International Ltd. wherein the High Court has held that an EOU manufacturing exempted goods is entitled to take CENVAT Credit of duty paid on inputs and can claim refund when such credit is unusable - This decision of Karnataka High Court was challenged by Revenue before the Supreme Court and Supreme Court dismissed the SLP - Further, it was observed by Tribunal that Government's policy is not to export duties and therefore export of exempted goods under bond is proper and there is no illegality in it - Therefore by following the ratios of said decisions, impugned order is not sustainable in law and same is set aside - Appeals allowed.

- **MUMBAI CESTAT: CST Vs DFS India Pvt Ltd** - Respondent are operating duty free shops in the departure and arrival terminals in the International Airport - Appellant had filed four refund claims in terms of Notification No. 41/2012-ST dt. 29.06.2012 for refund of service tax paid on specified services which have been used in export of goods - claims were rejected by original authority but in

appeal, the Commissioner(A) set aside the said orders, therefore, Revenue in appeal - stand taken by Revenue is refund is available only in respect of departure longue whereas it has been claimed on arrival portion in case of services such as rent where the services are to be apportioned on proportionate basis of revenue.

Held: There is no dispute that the goods were not cleared for home consumption, warehouse transfer or any other purpose but to International passenger for taking the goods outside India at departure terminal, hence it is clear that the clearance was made for export of goods only - it has to be accepted that the sale of goods at Duty free Shop at the departure terminal is exports - this bench of the Tribunal in the Respondent's own case on the same issue has passed Final order -MUM holding that refund has been correctly granted - Since the issue involved is same and of same assessee, in such circumstances, no reason to deviate from the same - as for the objection by Revenue that the certificate issued by the Chartered accountant towards verification of claim does not serve any purpose as the auditors do not commit to any accuracy or correctness of the data submitted by the Respondent and has put back the entire responsibility / onus on the management, held that the certification has been done based on their professional guidelines and further, the auditors are not required to check the compliance with the customs, excise or service tax nor are they expected to carry out a statutory audit, therefore, objection is not sustainable - no reason to interfere with the order of the Commissioner (Appeals) - Revenue appeal dismissed.

- **ALLAHABAD TRIBUNAL - M/s JUBILANT CHEMSYS LTD Vs COMMISSIONER OF CENTRAL EXCISE& SERVICE TAX, NOIDA -**Export of Service - Appellant are engaged in the research and development of drug chemicals and export thereof under the 100% EOU scheme - whether the appellant have exported their service and received convertible foreign exchange as required under the Export of Service Rules - demanding service tax and penalty for the reason that the supply of small quantities of organic compounds manufactured at laboratory scale and supplied to drug manufacturing companies outside India, in collaboration with their Associate Company - As per the Revenue, the appellant have not actually exported their services or products, but have given services and or sold their products to their Associate Company as a sub-contractor or agent of theirs.

  HELD – The appellant is not a sub-contractor, but a co-venture along with in their Associate Company in executing the research and development assignments for clients situated outside India - the appellant have exported their services under the agreements, and also received payments in convertible foreign exchange through the EEFC account of the lead venture under the Research Agreement - The said agreement also provides that the foreign client shall give all notices, correspondence etc. to the lead venture acting for all the three co-ventures - the appellant have satisfied both the conditions for export of service, namely, rending of service from India and receipt of the service by the client outside India and receipt of consideration in convertible foreign currency in India. Accordingly, appeals by assessee is allowed and set aside the impugned order.

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

This issues with the approval of the Officiating Chairman EPCES.