# EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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## EPCES CIRCULAR NO. 291

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.

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### 27th GST Council Meeting held on 04th May, 2018

The salient features of the decisions taken in the meeting are as follows:

1. GST council has approved principles for filing of a new return design which would be implemented in 3 phases:

   - 1st phase – Present system of filing of return i.e. GSTR-3B and GSTR-1 shall continue for a period not exceeding 6 months till the new return software would be ready. GSTR-2 and GSTR-3 shall continue to remain suspended.
   - 2nd phase – The new return would be brought in the system which would facilitate invoice wise data upload and claiming ITC on self-declaration basis i.e. on provisional basis, as in case of GSTR-3B currently.
   - 3rd phase – After 6 months of phase 2, the facility of provisional credit will get withdrawn and input tax credit will only be limited to the invoices uploaded by the sellers from whom the dealer has purchased goods.

2. In order to incentivize digital payment, the Council has proposed to provide concession of 2% in GST rate (where the GST rate on supply is 3% or more) on B2C supplies, for which payment is made through cheque or digital mode, subject to a ceiling of Rs. 100 per transaction.

3. The Council has proposed to levy a new cess under GST viz. 'Sugar Cess' over and above 5% GST rate and further, council has recommended to reduce GST rate on ethanol;

With regard to recommendations mentioned at point no. 2 & 3, the Council has recommended for setting up of a Group of Ministers from State Governments to look into the proposals and make recommendations, keeping in mind the views expressed by GST Council.

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### Circular 209/1/2018-Service Tax F. No. 137/26/2016-Service Tax-Part-V Dated 4th May, 2018

This circular has been issued on the applicability of Place of Provision of Services Rules, 2012 (POPS) to development of software and services on software.

Software being intangible, does not have a unique existence and can exist on different servers. The exact location of the server is neither always known to the service provider nor is its knowledge essential for providing the service. Limited access to the software for a limited period through electronic protocols is given to the service provider by the recipient of service to enable the former to provide the service. Only the recipient of service has control over who accesses the software, when it can be accessed, for how long and for what purpose.

Applying the definition of "declared services" in section 66E(d) of the Finance Act, 1994, and the provisions of POPS, to the specific cases of services of development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software, the conclusions which can be drawn are as follows:

- where data, instructions etc. are provided so as to develop software, i.e. development, design and programming of information technology software, the place of provision of service is the location of the recipient of the service.

- in the case of services on software involving testing, debugging, modification etc. i.e. customization, adaptation, upgradation, enhancement, implementation of information technology software, the place of provision of service is the location of the recipient of the service.

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**Judicial Pronouncements**

- **MUMBAI CESTAT : SHAPOORJI PALLONJI & COMPANY LTD Vs COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, PUNE – III -** Whether the service provided for construction of hospital which is run by the trust is liable to service tax under ‘commercial or industrial construction’ - Whether the GTA service provided for construction of building located in SEZ is liable for service tax - Whether the GTA service availed in connection with the construction of hospital is liable to service tax; and – HELD - the building of civil construction which are fully used by charitable organization for the purpose of providing treatment not taxable being non-commercial ventures - the hospital is run by the charitable organization and such activities are clarified by the Board in the circular dated 17/09/2004 – construction of a building for use as hospital by a charitable organization does not fall under the category of ‘commercial or industrial construction’. Therefore, demand confirmed in this respect is set aside - the taxable service provided to the developer or unit to carry on the authorized operation under the SEZ is exempted. In the present case, the service of GTA is admittedly provided for construction of building in the SEZ. Therefore, the said service is exempted. Moreover, if at all the service tax is payable, the same is available as CENVAT credit to the appellant for the reason appellant is a service provider to SEZ and even though such service is not taxable the appellant is entitled to retain this input credit on the input service in terms of Rule 6A of the CCR, 2004. Therefore, it is a revenue neutral exercise. Hence, service tax is not chargeable on the GTA service used for construction of building in SEZ. Accordingly, the demand in this respect is set aside – however, the GTA service relating to construction of hospital is taxable in the hands of the appellant - The penalty commensurate to the demand of GTA relating to the hospital is maintained along with interest - The appeals are partly allowed.

- **DELHI AAR - Deepak & Co -** Supply of food at railway platform stalls, in mail/express trains does not have an element of service - to be considered as supply of goods**.**

  i. Supply of food on board Rajdhani/Duronto trains - not covered under S. No. 7 (i) of Notfn. 11/2017-CT(R), 8/2017-IT(R) since a train is a mode of transport and hence cannot be called as a restaurant, eating joint, mess or canteen etc. - The supply of goods i.e. food, bottled water etc. shall be charged to GST on value of goods (excluding the service charges) at applicable rates as pure supply of goods, as the same have no element of service.
  ii. Supply of newspaper at platforms/in mail/express/Rajdhani/Duronto trains - Tax at 'Nil" GST under S.No. 120 of Notification No. 2/2017-CT(R) and parallel Notifications of IGST and Delhi GST.
  iii. For the supply of food (Cooked/ MRP/ Packed) in food plaza at railway platform, the relevant document pertaining to details of items supplied, pricing detains, extent of services provided are not submitted. Hence, no ruling can be given in respect of supply from Food Plaza on the Railway Platform**.**

iv. The supply of food and beverages (cooked/ MRP/ packed) by the applicant to the passengers/ general public at the rates fixed by the Indian Railways/ IRCTC at food stalls at Railway platforms does not have any element of service and hence the same shall be considered as pure supply of goods and GST shall be charged on individual items at their respective applicable rates. The mere heating/ cooling of beverages or similar other services are incidental and minimal required to supply of goods and such supply cannot be called composite supply**.**

- **MAHARASHTRA AAR - Kansai Nerolac Paints Ltd -** Carried forward KKC in Electronic Credit Ledger cannot be considered as admissible Input credit - Applicant seeks advance ruling on the question - 'Whether accumulated credit by way of Krishi Kalyan Cess (KKC) as appearing in the Service Tax return of Input Service Distributor (ISD) on 30.06.2017 which is carried forward in the Electronic Credit ledger maintained by the company under the CGST Act, 2017, will be considered as admissible Input Tax credit?' Under CCR, 2004, it was made clear that KKC would be utilized towards payment of KKC only and that the list of items in respect of which CENVAT credit is available would not be utilized for payment of KKC. Under GST law, there is no levy of KKC.

  In Cellular Operators Association of India, Delhi High Court, while dismissing the petition held that it would be improper to treat the two Cesses viz. Education Cess and Secondary and Higher Education Cess as duty of excise or service tax and, therefore, could not be allowed to be cross-utilised against the excise duty or service tax; that what the petitioner seeks is an amendment of the Scheme to allow them to take cross utilization of unutilized EC and SHE (upon the two cesses being withdrawn) towards excise duty and service tax, though this was not the position even earlier.

  In view of the above, KKC cannot be treated as excise duty or service tax inasmuch as the CENVAT Credit referred to in section 140(1) of the CGST Act, 2017 would not include the credit in respect of KKC. FAQ brought out by the Board explaining SBC (Swachh Bharat Cess) apply with equal force to KKC and in fact, under the GST Act too, the FAQ issued by CBEC clarifies at point 112 that ITC of Swachh Bharat Cess or KrishiKalyanCess cannot be carried forward under GST.

- **MUMBAI CESTAT - Shree Precoated Steel Vs CCE -** Goods cleared for export from the place of removal - since in case of export, ownership of the goods remains with the exporter and, therefore, all the expenditure for the clearances of the goods up to the port is borne by the exporters, export price is CIF, therefore, place of removal stands extended up to port - transportation incurred for clearances of the goods from factory to port is within the ambit of the term ‘clearances of goods up to the place of removal' - GTA service is covered under the definition of Input service and credit is admissible thereon - so also, in case of supply of goods to depot, the place of removal is depot from where the goods are sold, so credit is available in such case also - Tribunal orders in Rathi Dye Chem and Welspun Corporation Ltd. followed - impugned order set aside and appeal allowed.

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.

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