EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

Ministry of Commerce & Industry, Government of India
8G, Hansalaya Building, 15, Barakhamba Road, New Delhi-110001
Tel: 23329766-69 Fax No.011-23329770
E-mail : epces@epces.in Web: www.epces.in

AnandGiri
Dy. Director General

No.EPC/SEZ/AM-18
May 17, 2018

EPCES CIRCULAR NO. 292

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 – Roll out Intra-State E-way bills

It is hereby informed that e-Way Bill system for intra-State movement of goods would be implemented in Assam from 16th May, 2018 and Rajasthan from 20th May, 2018.

Notification No. 22 /2018 – Central Tax dated 14th May, 2018

The Central Governmenthas waived the late fee payable on failure tofurnish the return in FORM GSTR-3B by the due date for the months October,2017 to April, 2018, for the registered persons whose declaration in FORM GSTTRAN-1 was submitted but not filed on the portal on or before 27th December, 2017. Such registered persons must have filed FORM GSTTRAN-1 on or before10th May, 2018 and FORM GSTR-3B for eachof such months, on or before 31st May, 2018.

Public Notice No. 09/2015-2020 dated 14th May, 2018

Vide the captioned notice, DGFT has amended Para 4.07(i), Para 4.27 and Para 4.45(a)(iv)of Handbook of Procedures.

The amended Paragraphs state as follows:

Para 4.07(i)*"Regional Authority may also issue Advance Authorization where there is no SION/valid Adhoc Norms for an export product or where SION / Ad hoc norms have been notified /published but exporter intends to use additional inputs in the manufacturing process, based onself-declaration by applicant. Wastage so claimed shall be subject to wastage norms asdecided by Norms Committee. The applicant shall submit an undertaking to abide by decisionof Norms Committee. The provisions in this regard are given in paragraph 4.03 and 4.11 ofFTP."*

Para 4.27- Exports/Deemed Export supplies in anticipation or subsequent to issue of anAuthorisation.

"(a) Exports / Deemed Export supplies made from the date of EDI generated file number for anAdvance Authorization, may be accepted towards discharge of EO. Shipping Bills / TaxInvoices should be endorsed with File Number or Authorization Number to establish co-relationof exports

/ Deemed Export supplies with Authorization issued. Export/Deemed Export supplydocument(s) should also contain details of exempted materials/inputs consumed and technicalcharacteristics of export and import items, as the case may be.

(b) If application is approved, authorization shall be issued based on input / output norms inforce on the date of receipt of application by Regional Authority. If in the intervening period(i.e. from date of filing of application and date of issue of authorization) the norms getchanged, the authorization will be issued in proportion to provisional exports / Deemed Exportsupplies already made till any amendment in norms is notified. For remaining exports, Policy /Procedures in force on date of issue of authorization shall be applicable.
c) The export of SCOMET items shall not be permitted against an Authorization until and unless the requisite SCOMET Authorization is obtained by the applicant.

(d) Inputs with pre-import condition shall not be considered for replenishment againstExports/Deemed Export supplies made before import of such inputs."

Para 4.45(a)(iv)*"Authorization for Annual Requirement shall be issued only where SIONs or valid Ad hoc*
norms exist on the date of issue of Authorization. However, no Authorization for Annual Requirement shall be issued where input is listed in Appendix-4J."

Effect of this Public Notice:
(i) Now Advance Authorization for Annual Requirement can also can be issued where Ad hoc norms exist for the resultant product. (ii) Enabling provision is made to submit manual BRCs and self-attested copy of Exporter Copy of shipping bill. (iii) Other amendments made to bring clarity and harmonize documentation requirements for EODC.

Judicial Pronouncements

- **BOMBAY HIGH COURT: SARLA PERFORMANCE FIBERS LIMITED Vs THE UNION OF INDIA-** refund of duty drawback (para 8.5 of Foreign Trade Policy 2009-14) for custom duty paid on inputs/components – dispute regarding the route through which assessees are entitled to claim the refund - The applicants claim that they are entitled to claim the duty drawback as per column 'B' of AIR schedule whereas the department's view is that the applicants can get the refund only after submission of documentary evidence in respect of custom duty paid and getting the same fixed through route of brand rate fixation – appellant contends that the provisions of FTP 2009-2014 do not visualize the application of Column 'B' of the AIR Schedule where the CENVAT Credit has already been availed.

  HELD – the petitioner rightly claimed that they are entitled to claim this drawback. That is not disputed either - the issue was unnecessarily confused and compounded further by the respondents. Once there was no dispute about the entitlement of the petitioner, then, we do not see why the petitioners were denied the benefit. The petitioner has also rightly pointed out that they are otherwise entitled to drawback at the rate mentioned in Column 'B'. That could not have been denied by relying upon the policy circular dated 30th October, 2013 and relying upon Para 8.5 of FTP 2009-2014 read with Para 8.3.3 of HBP makes it clear that while claiming deemed export drawback in terms of 8.3, there is an option to claim drawback at the rate specified in the Schedule of All Industry Rate of Duty Drawback or the fixation of brand rate. Once the respondent has published revised Schedule of All Industry Rates of Duty Drawback for 2011-2012 and that Schedule of All Industry Rates published by respondent has two columns, namely, Column 'A' and Column 'B', then, this conscious

specification of two separate rates would enable the recipient EOU to claim drawback under Column 'B' on production of suitable disclaimer. That condition has been prescribed. It is in these circumstances the petitioner's claim could not have been rejected. In any event, the rejection is not in tune with the policy and the HBP. An unnecessary and uncalled for controversy was generated only because of the route chosen by the petitioner. We do not see how merely for this alleged fault or deficiency could the whole claim have been denied. It is in these circumstances that the conclusion of the respondents that the refund of duty drawback for customs duty on inputs can be made only by way of brand rate of fixation and hence, the claim for refund as per Column 'B' of the All Industry Rates of Duty Drawback Schedule is rejected cannot be sustained - the impugned order is set aside and writ petition is allowed.

- **DELHI CESTAT: Autolite India Ltd Vs CCE -** Assessee has two units in Jaipur - Unit-I is a 100% EOU engaged in manufacture of Halogen Bulbs as well as Halogen Capsules - In addition to export, a part of Halogen Capsules manufactured by Unit-I were cleared to Unit-II for further manufacture of Halogen Lamps, for domestic market - Investigations were undertaken against Unit-I as well as Unit-II - two allegations were raised namely; goods cleared by Unit-I (100% EOU) to Unit-II (DTA) were undervalued and that some goods were cleared clandestinely without payment of duty from Unit-I to Unit-II.

  As regards to charge of undervaluation, the entire basis for rejecting transaction value is the relationship between them - Merely because the two units are related persons, same would not ipso facto be the ground for rejecting transaction value - It is settled position of law that unless the transaction value is rejected for valid and cogent reasons, the value of imported goods cannot be re-determined - It has been held by Supreme Court in case of South India Television (P) Ltd. that before rejecting the transaction value as incorrect or inacceptable, Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time - Unless the evidence is gathered in that regard, question of rejecting the transaction value and determination of value as per Valuation Rules does not arise - In such circumstance the invoice price has to be accepted as transaction value - Consequently, demand for differential duty on charge of undervaluation set aside.

  With regard to charge of clandestine clearance, a note book "MONARK' was recovered from Unit-II which indicated receipt of Halogen Bulbs and Halogen Capsules from Unit-I - The author of private note book was the Store Keeper - No statement found recorded from him on record but departmental officers has recorded the statement of employee of Unit-II in which he admitted that said diary contained the receipt of Halogen Capsules and Halogen Bulbs received from Unit-I - Some of entries found in note book did not have corresponding invoices and evidence of payment of duty - On basis of these statements, Department has alleged that quantity of goods mentioned in private records, which were not co-related with duty paying invoices, were transferred clandestinely without payment of duty - Other than submissions of person, there is no corroborative evidence on record to substantiate the stand of Department that goods reflected in diary titled as "MONARK" were clandestinely cleared - No discrepancies have been noticed in respect of quantity of raw material or finished goods vis-a-vis statutory documents - Consequently, charge of clandestine clearance cannot be upheld only on basis of seized private record especially in view of fact that statements admitting clandestine clearance of such goods stand reflected - Appeals allowed

- **KARNATAKA AAR: M/s GOGTE INFRASTRUCTURE DEVELOPMENT CORPORATION LTD:**whether Hotel Accommodation & Restaurant services provided within the premises of the Hotel to the employees & guests of SEZ units, be treated as supply of goods & services to SEZ units.

Supply of goods or services or both to a SEZ developer/unit are treated as 'Zero Rated Supply' in terms of Section 16(1)(b) of IGST Act 2017. Further Rule 46 of CGST Rules 2017 stipulates that the invoice shall carry an endorsement "Supply meant for export / Supply to SEZ unit or Developer for authorized operations on payment of Integrated Tax" or "Supply meant for Export / Supply to SEZ unit or Developer for authorised operations under Bond or Letter of Undertaking without payment of Integrated Tax" as the case may be.

Therefore, on reading Section 16(1)(b) of IGST Act 2017 & Rule 46 of CGST Rules 2017 together, it is clearly evident that the supplies of goods or services or both towards the authorised operations only shall be treated as Supplies to SEZ Developer / SEZ Unit.

Further, the place of supply in case of services of lodging accommodation by a hotel, shall be the location of immovable property (hotel) as per Section 12 (3)(b) of the IGST Act, 2017. Also the place of supply of restaurant and catering services shall be the location where the services are actually performed, as per Section 12 (4) of the IGST Act, 2017. In the instant case, the applicant is located outside the SEZ. Therefore, the services rendered by the applicant are neither the part of authorised operations nor consumed inside the SEZ. Since services involved here, based on the provisions of place of supply under GST, cannot be said to have been 'imported or procured' into SEZ Unit / Developer. Hence, in the instant case, the supply is intra state supply.

It has been therefore held by the authority that the Hotel Accommodation & Restaurant services being provided by the Applicant, within the premises of the Hotel, to the employees & guests of SEZ units, cannot be treated as supply of goods & services to SEZ units and hence, the intra state supply and are taxable accordingly.

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 Oftg. Chairman EPCES.
