

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 24, 2018

EPCES CIRCULAR NO. 293

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.11/2018-19 dated 18th May, 2018

Exporters are required to have DSC (IEC embedded) to access facility for digital payment for miscellaneous applications (e-MPS). However, there are users who don't possess DSC, thus unable to make payments. Thus changes have been made to delink it from DSC for login purpose and convenience. Also the date for mandatory digital payment through e-MPS is extended to 01.06.2018.

Notification No.23/2018 – Central Tax dated 18th May, 2018

This is to inform that Government of India vide NN 23/2018 – Central Tax dated 18th May 2018 has decided to extend due date for filing of GSTR-3B for the month of April,2018 to May 22, 2018.

Judicial Pronouncements

- **HYDERABAD CESTAT: CcVs Idea Cellular Ltd-** the Assessee company is a leading provider of telecom services - During the period of dispute, it equipment certain equipment, including software CD roms - It filed bills of entry for these goods and claimed benefit under Notification No.21/2002 - The Assessee classified software as filling under Chapter 85.24 & exempted from payment of duty - The Department sought to know the nature and usage of software imported along with equipment - The Department also recorded statements of various employees of the Assessee & later issued SCN on grounds that the value of software not included in the value of the goods imported was incorrect, and that the same had to be included - It further stated that upon filing separate invoices the Assessee was ineligible for exemption on software - The Department alleged mis-declaration of goods by the Assessee - Later the adjudicating authority raised duty demand with interest & imposition of penalty & also appropriated duty already paid by the Assessee - The Department claimed that the adjudicating authority should also have imposed penalty equivalent to duty amount with interest.
Held - It is undisputed that the imported software is in relation to the software embedded in the hardware & equipment imported - Hence separate sale of hardware & software is not the criteria for determining whether the price of software is to be included in the price of hardware or otherwise - This was held by the Apex Court in Hewlett Packard (India) Sales Pvt Ltd - Thus, the demands confirmed are unsustainable, as are the interest & penalty- Appeal Dismissed.
- **CESTAT VISAKHAPATNAM-I: M/s Mmtc LimitedVs Commissioner Of Central Excise, Customs & Service Tax** - Export of goods – refund claim – period of limitation - whether the limitation of time imposed by the N/No. 41/2012-ST for claiming the refund of Service Tax on inputs which went into

export of goods can be altered by reckoning the date on which the appellant received the invoices instead of the date of Let Export Order as laid down in the notification.

HELD – the Notification is a subordinate legislation made by the Government in exercise of the powers delegated by the Parliament. This power is given to the Government and not to the officers or to this Tribunal. Hence, the provisions of this notification including the time limit and the date of reckoning the time limit cannot be modified by the officers or by this Tribunal - in the case of Sony India Pvt. Ltd. the Hon'ble High Court of Delhi modified the date of reckoning to calculate the time limit for claiming SAD refund under the relevant notification. This judgment does not empower the officers or the Tribunal to make such modification to other notifications - no force in the arguments of the appellant that they should be granted refund of Service Tax paid on services used in the goods exported by them beyond one year from the date of LEO as specified in the Notification No. 41/2012-ST - The appeal is dismissed.

- **CHENNAI CESTAT:Home Fashions International Vs CCE & ST-** Assessee engaged in export of textile made-ups under claim of drawback and filed a refund claim of service tax paid on various input services in terms of Notification No. 41/2007-ST which Suppresses of the Notification No.40/2007-Service Tax, dated the 17th September, 2007 i.e. related to Exemption of certain taxable services specified in the Schedule received by an exporter and used for export of goods. Assessee further claimed that subsequent Notification No.33/2008-ST which allowed such refund of service tax even where exports were under duty drawback claim, should be considered as retrospective in nature and their claims should be sanctioned - An identical issue was considered by Tribunal in case of Art & Craft Inc. & others, wherein it was held that Notification No.33/2008-ST cannot be held to be of retrospective nature and the refund claims filed prior to the introduction of said Notification would be hit by Notification No. 41/2007-ST, if exports have been made under duty drawback - The said decision of Tribunal was followed in case of Judhana Art and Crafts as also in case of Shriram Rayon - In as much as exports were made prior to the introduction of Notification No.33/2008-ST and were admittedly under the claim of drawback, the refunds are not admissible to Assessee in terms of said orders of the Tribunal - Appeals rejected .
- **CHANDIGARH CESTAT:Suntec Enterprises Vs CCE-** the Assessee company manufacture cut wire shot & exported such goods - During the period of dispute, it issued ARE-1 for exporting goods - However, the buyer cancelled the order & the export could not be made - The goods were then received back in the Assessee's factory - The Department issued an SCN on grounds that the Assessee had not entered such goods in its daily stock account register & that it failed to prove re-entry of the goods meant for export - Duty demand was raised with interest & imposition of equivalent penalty - A further penalty was imposed under Rule 27 of the CER, 2002 - Later, the Commissioner(A) upheld the duty demand with interest & reduced the penalty imposed under Rule 25 of CER - The penalty imposed under Rule 27 was set aside.
Held - That the export had been cancelled due to cancellation of order by the buyer, is not disputed - The Assessee got the consignment cancelled by the Customs and paid demurrage charges - When returning goods to its factory, the Assessee produced evidence of filing Sales Tax challan& evidence of transportation - D-3 intimation was submitted after receiving the goods in the factory - The Department did not verify the goods within 24 hours of receiving of intimation as required - Hence the Department's claim that delay in D-3 intimation due to which verification of return goods was not possible within 48 hours of intimation, is untenable and arbitrary - Hence the bona fide of the Assessee cannot be doubted & demands cannot be raised merely based upon presumptions - Hence the O-i-A is set aside - Appeal Allowed .
- **CHENNAI CESTAT: Electrosteel Castings Ltd Vs CC** - The Assessee exported cast iron pipes - Revenue was of the view that such iron pipes were liable to export duty - Iron pipes is to be classified under Sl. No. 15 of the Table in Notification No. 66/2008-Cus dated 10.05.2008 - Assessee appealed on the ground that the description in the notification for export duty will more appropriately be covered under Import Tariff Heading 7304 and since their product is covered

under 7303 as cast iron pipes, they are not liable to export duty - Heading 7304 talks about tubes, pipes and hollow profiles, seamless of iron (other than cast iron) or steel. Held - The Tribunal held that when the export duty notification mentions tubes and pipes of iron or steel, all tubes and pipes which are made up of iron or steel are to be included in the heading- Inference can be drawn from the clarification issued on 03.06.2008 by the Board - Assessee is liable to export duty - Appeal dismissed.

- **DELHI CESTAT : TevaApi India Pvt Ltd Vs CCG, ST & CE-** the Assessee, a 100% EOU engaged in manufacturing bulk drugs, received various inputs, capital goods and input services from various manufacturers - The Assessee availed Cenvat credit on the same - The Revenue opined that the Assessee being an EOU was eligible to obtain goods & services without payment of duty, and so it sought to deny such credit - It also denied refund under Rule 5 of CCR, 2004 - Held - Regarding Assessee's entitlement to avail credit, neither the SCN nor the orders state any provision under which the Assessee cannot avail credit - The only basis for denial of credit is that the duty itself should not have been paid by the supplier of inputs & capital goods - The order relying on the decision of Bombay High Court in Sandoz Pvt. Ltd. vs. Union of India is not sustainable - This decision is w.r.t. refund to be granted by DGFT on terminal excise duty in terms of relevant EXIM Policy - Such procedure was withdrawn by the DGFT it has no application to decide the eligibility or otherwise of the appellant to Cenvat credit in terms of CCR, 2004 - proceedings for demand or for rejection of refunds arising on such credit shall also held in Assessee's favour in line with the above findings - Hence the orders denying credit be set aside - Appeal Allowed.
- **ALLAHABAD CESTAT: Samtel Electron Devices Vs CCE-** The first Assessee company is engaged in manufacture of Thermionic Valves (Electron Guns) and Heater & Cathodes for Electron Gun - The second Assessee is a 100% EOU engaged in manufacture of picture tubes for Color Televisions - The second Assessee holds a certificate issued under the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 - This certificate permits it to obtain excisable goods at nil rate of duty from the first Assessee - This permit was for one year and was later extended by another year - However, the Department refused to extend such certificate - Hence it held that some quantity of 14" size Electron guns cleared by the first Assessee to the second Assessee was not permissible & was in contravention of the certificate - Hence duty demand was raised against the second Assessee and penalties were imposed on both Assessees - Such findings were upheld by the Commissioner.(A).
Held - It is admitted that the permission granted 2004-05 for duty-free procurement had been extended for 2005-06 - The SCN does not record any such permission being granted for the following year - The only allegation is that the second Assessee procured duty-free goods during June 2005 to August 2005 - Since the permission is granted till July 2005 for procurement of duty-free goods, there is apparently no violation of any provisions of the certificate - Hence the SCN and the resultant demands are set aside - 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.