EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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EPCES CIRCULAR NO. 294

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.

Public Notice No.10/2015-2020 dated 22nd May, 2018

Director General of Foreign Trade amends Hand Book of Procedures 2015-2020 and states that the excess exports done towards the average export obligation fulfillment of an EPCG authorization during a year can be used to offset any shortfall in the Average Export Obligation done in other year(s) of the Export Obligation period or the block period,provided Average Export Obligation is maintained on an overall basis.

Circular No. 3/1/2018-IGST dated 25th May, 2018

CBIC has issued clarification regarding applicability of IGST on goods supplied while being deposited in a customs bonded warehouse:

- Integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the IGST would be payable at the time of clearance.
- For levy of IGST on warehoused imported goods at the time of clearance for home consumption, valuation would be at higher of the transaction value or valuation done at the time of filing the into-bond bill of entry.
- Supply of goods before their clearance from the warehouse would not be subject to levy of IGST.

This circular would be applicable for supply of warehoused goods, while being deposited in a customs bonded warehouse, on or after the 1st of April, 2018.

Notification No.11/2018- Central Tax (Rate) dated 28th May, 2018

Central government vide the captioned notification has inserted the following entry in Notification No.4/2017-Central Tax (Rate) dated 28th June, 2017related to Reverse charge on certain specified supplies of goods under section 9 (3) of CGST act 2017:

S.No.	Tariff item, sub-heading, heading or Chapter	Description of Goods	Supplier of goods	Recipient of supply
7	Any chapter	Priority sector lending certificate	Any registered person	Any registered person

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Circular No. 12/2018- Customs dated 29th May, 2018

With respect to sanction of refund of IGST paid on exports, it has been observed that exporters have committed mistakes while filing GSTR-1 and GSTR-3B, mis-declared IGST paid on export supplies as IGST paid on domestic outward supplies, short payment of IGST vis-a-vis liability declared in GSTR-1. These mismatches have led to non-transmission of records from GSTN to Customs EDI system.

Procedure has been prescribed to overcome the problem of refund blockage:

1. **Cases where there is no short payment** –
   - List of exporters whose cumulative IGST paid against exports and interstate domestic outwards supplies for the period July 2017 to March 2018 is greater than/equal to cumulative IGST in GSTR-1, to be sent by Customs Policy Wing to GSTN.
   - Confirmatory email to be sent to such exporters
   - CA Certificate required to be submitted before 31st October, 2018 to Customs Office at port of export that no discrepancy exists in IGST refunded and paid.
   - Copy of certificate to be submitted to jurisdictional GST office.
   - List of non-submission to be submitted by Customs Zone to Board by 15th November, 2018 and non-submission would affect future IGST refunds.
   - List of exporters whose refund sanctioned to be sent to DG (Audit)/DG (GST).

2. **Cases of short payment-**
   - List of exporters who have shortly paid IGST to be sent to GSTN and chief commissioners of customs.
   - Email for informing such exporters needs to be circulated.
   - Payment of shortfall in IGST in GSTR 3B of subsequent months ensuring that total IGST refund being claimed in GSTR-1 is paid along with submission of payment proof.
   - If IGST refund is upto 10 lakhs, proof of payment to be submitted to concerned customs office and where IGST refund is more than 10 lakhs, CA Certificate that shortfall is liquidated, is also required to be submitted.
   - Undertaking to return the refund amount in case it is found not due to them is required by exporter.
   - List of exporters claiming refund after payment for shortfall amount to be made by Customs Zone.
   - Such list is forwarded to customs policy wing, DG (audit), DG (GST), following which GSTN transmits records of such exporters to customs EDI system.
   - CA Certificate required to be submitted before 31st October, 2018 to Customs Office at port of export that no discrepancy exists in IGST refunded and paid.
   - Copy of certificate to be submitted to jurisdictional GST office.
   - List of non-submission to be submitted by Customs Zone to Board by 15th November, 2018 and non-submission would affect future IGST refunds.

3. The exporters would be subjected to a post refund audit under the GST law.

Press release dated 30th May, 2018 - Special Refund Fortnight

- Government is starting a “Special Drive Refund Fortnight” from 31st may 2018 to 14th June 2018. It would facilitate all types of refund claims like IGST paid on export, refunds of unutilized credits and other refunds in FORM GST RFD-01A, where applications received on or before 30.04.2018.
- All claimants may note the refund application in FORM GST RFD-01A will not be processed unless a copy of application, along with all supporting documents, is submitted to the jurisdictional tax office. Mere online submission is not sufficient.
- All IGST refund claimants may register on ICEGATE website, if not already done, to check their refund status.

Circular No. 45/19/2018-GST dated 30th May, 2018

The said circular provides clarification on certain refund related issues:

- **Application for refund of IGST paid on export of services and suppliesmade to a SEZ developer/unit**
  While filing GSTR-3B, errors have been made in declaring the export of services or Zero-rated supplies made to SEZ on payment of IGST, thus unable to file refund of tax paid in FORM GST RFD-01A on portal due to an in-built validation check feature in system.

It is clarified that for the tax periods from 01.07.2017 to 31.03.2018, the refund application in FORM GST RFD-01A shall be allowed subject to the condition that the amount of refund of IGST/cess claimed shall not be more than the aggregate amount of IGST/cessmentioned in Table under Columns 3.1(a), 3.1(b) and 3.1(c) in FORM GSTR-3B.

- **Zero-rated supply or exports of exempted or non-GST goods**
  It is clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of IGST; LUT/bond is not required.
  Such registered persons exporting non-GST goods shall comply with the requirements prescribed under the existing law (i.e. CentralExcise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, ifany.
  Exporter would be eligible for refund of unutilized input tax credit of central tax, state tax, union territory tax, integrated tax and compensation cess in such cases.

Judicial Pronouncements

- **MUMBAI CESTAT : Commissioner of GST VsEverstone Capital Advisors Pvt Ltd** - In case of export of service, the same qualifies as export only when convertible foreign exchange is received - In the present case, appellant has admittedly filed the refund claim within one year from the receipt of convertible foreign exchange, therefore, relevant date is the date of FIRC and not the date of service - As regards the receipt of remittance in Indian rupees, the issue is no longer res integra as it has been considered in the case of Sun Area Real Estate Pvt. Ltd wherein in identical facts, it was held that the Indian rupees received through foreign bank is considered as payment in convertible foreign exchange - impugned order is upheld and Revenue's appeal is dismissed.

- **DELHI CESTAT: Cummins Technologies India LtdVs CCE & ST, MEERUT-II -**SEZ Unit – Refund of service tax paid on the input services – denial of refund by placing reliance on N/No. 9/2009-ST dated 3.3.2009 – HELD - Since the SEZ Act and the rules have not provided any conditions for granting exemption from payment of service tax, the Central Government cannot issue the notification under a different statute i.e. Finance Act, 1994 in providing the conditions for grant of refund of service tax paid on the taxable services used for the authorized operations in the SEZ - by virtue of Section 51 of the SEZ Act, the provisions of the said Act and the Rules made there under are mandated to have overriding effect over the provisions contained in any other statute. Therefore, all the activities relating to SEZ shall be guided and governed by the provisions contained in SEZ Act and the SEZ Rules. Since, such statutory provisions governing the SEZ are silent about any condition or restriction for claiming the refund of service tax, the notification issued by the Central Govt. in terms of Finance Act, 1994 cannot prescribe any conditions, which are contrary to the SEZ provisions. Therefore, rejection of refund application by the authorities by placing reliance on the N/No. 9/2009-ST cannot be sustained - the impugned order, so far as it rejected the refund application filed by the appellant, is set aside and the assessee appeal is allowed.

- **MUMBAI CESTAT:Flamingo Pharmaceuticals Ltd Vs CCE**- Rule 2(l) of CCR, 2004 - Appellant is an exporter of pharmaceutical products and is entitled to export incentives mandated in the FTP - they had availed the services of M/s JAK Traders Pvt. Ltd. for compliance with the necessary formalities necessary to obtain the sanctions of their incentives - Contention of the department is that the professional fees on which service tax liability has been discharged pertains to activities beyond the place of removal and hence ineligible to be availed as CENVAT credit - appeal to CESTAT.Held - Input service in relation to manufacture and input service in relation to a specific activity enumerated in the exclusive portion or both are eligible for availment as CENVAT credit - In the context of certain services such as outward transportation, judicial interpretation shifted the 'place of removal' from factory to the port of export - Export incentives are an entitlement of the appellant upon grant of 'Let Export Order' - Also the lapse of time between exports per se and the release of incentives is attributable to procedural formalities which does not deprive the export goods of the eligibility for incentives upon export - eligibility for incentives on completion of export formalities is consisted with the place of removal being the port of export - Exports are the

culmination of production activity and the motive force for production, therefore, denial of CENVAT credit on the ground that there is no nexus with the manufacturing activity will not sustain - impugned order set aside and appeal allowed.

- **DELHI CESTAT: Avanti Overseas Pvt Ltd Vs CCE & C**- the assessee company, a DTA unit, is engaged in manufacture & export of steel pet bowls - It availed duty drawback on such exports - When the assessee set up a separate EOU unit in the same premises & obtained LOP, it was unable to get the premises customs-bonded within the valid period of LOP - Later the Customs department enquired from the Excise department as to whether or not the assessee was a functional EOU - The latter clarified in the negative since the assessee failed to get its premises customs-bonded within the validity of LOP - Thereupon, the assessee's pending drawback claims were released - After some years, the DRI conducted investigations & surmised that the assessee was an EOU since it claimed benefits u/s 10B of the Income Tax Act & such benefits were only available to 100% EOU - SCN was issued proposing recovery of drawback sanctioned to the assessee - The same culminated into an O-i-O raising duty demand with interest & penalty and which was later upheld by the Commissioner.(A) - The assessee does not contest the issue of drawback & instead seeks to determine whether or not it classifies as a 100% EOU - Since the Commissioner.(A) dismissed the assessee's appeal after examining the issue as to whether or not it is 100% EOU, the appeal against such findings is maintainable before the Tribunal, u/s 129A of the Act.

  Held - There was a difference of opinion during an earlier hearing on the matter - The Member (J) held the assessee to be a DTA unit, on grounds that Department failed to effectively prove that the assessee was a 100% EOU - That its status under the Income Tax Act was inconsequential for purposes of the Customs Act - Meanwhile, the Member (T) relied on some precedent cases to hold that any proceedings to recover drawback cannot be appealed before the Tribunal when the order is passed by Commissioner.(A) - Hence the appeal was dismissed for lack of jurisdiction - Considering the decision of the three-member Bench in Commissioner vs. Jindal Stainless Steel Limited, it is to be considered at par with a Larger bench decision & so is a binding precedent - Presently, to determine assessee'seligibility for drawback, it must first be determined whether or not it is a 100% EOU - The two issues are not independent of each other - The pith & substance of the matter pertains to payment of drawback - Hence the present case is one in which the appellate jurisdiction of the Tribunal is barred - The O-I-A can only be challenged before the Revisionary authority - Thus the present appeal is not maintainable - Appeals Dismissed.

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.