EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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EPCES CIRCULAR NO. 298

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.

Circular No. 15/2018-Customs dated 6th June 2018

- CBIC issued circular no.5/2018-customs dated 23/02/2018 and circular no.08/2018-customs dated 23/03/2018 providing alternate mechanism to resolve invoice mismatches for shipping bills filed till 28/02/2018. The facility of officer interface has now been extended for shipping bills filed upto 30/04/2018.
- IGST refunds are also stuck on account of SB003 errors which occurs when there is a mismatch between GSTIN entity mentioned in shipping bill and the one filing GSTR-1/3B. Correction facility has been provided where GSTIN of both entities are different but PAN is same which mostly happens mostly where an entity filing Shipping bill is a registered office and the entity which has paid the IGST is manufacturing unit/other office or vice versa. An undertaking must be signed by authorized person of both entities and submitted to customs officer at port. Utility has been developed to facilitate processing of IGST refund claims stuck due to SB003 error in the manner similar to SB005 error, as requested by CBIC.

Trade Notice No. 17/2018 dated 7th June 2018

Export Obligation Discharge Certificate (EODC) camp will be organized for disposal of EODC applications for Advance and EPCG authorizations from 11/06/2018 to 22/06/2018 by following RA's:
Mumbai, Chennai,CLA New Delhi, Bangalore, Hyderabad, Ahmedabad, Vadodara, Pune, Surat.

Following arrangements shall be made by RAs:

- Adequate number of staff and officers for disposal of cases.
- Presence of senior officers.
- Publicize the camp and intimation to exporters having pending applications to visit camp.
- Subsequentexamination of cases which cannot be decided on the spot.
- All relevant document prescribed in relevant ANF for discharge of export obligation are required.
- Processing and disposal to take place on same day.

Notification No. 10/2015-2020 dated 7th June 2018

Vide this notification, DGFT amends Para 6.08(b) of Foreign Trade Policy 2015-2020. The revised paragraph states:
"For services, including software units, sale in DTA in any mode, including on line data communication, shall also be permissible up to 50% of FOB value of exports and/or 50% of foreign exchange earned, where payment of such services is received in foreign exchange. However, sale in DTA in respect of services classified under Chapter Heading 9988 and 9989 under GST, but covered in LOP/para 9.31 of FTP as manufacturing of goods, will continue to be covered under para 6.08(a) above. At the time of DTA clearance, applicable GST and compensation cess as per GST classification would apply."

Thus, DGFT notifies that DTA supplies by EOU / EHTP / STP / BTP units of job-work and other manufacturing services classified under Chapter Heading 9988 and 9989 respectively and which are covered in LOP / Para 9.31 of FTP as manufacturing of goods, shall continue to be governed by Para 6.08(a) of FTP. Thus, such units can supply said services in DTA without restriction of 50% of FOB value of export and / or foreign exchange earned as per Para 6.08(b). At the time of DTA clearance, applicable GST and Compensation Cess as per GST classification would apply.

Circular No. 47/21/2018-GST dated 8th June 2018

Clarifications have been provided with respect to the following issues:

- Whether moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case.

  CLARIFICATION: Such a transaction between OEM and component manufacturer (not being related or distinct persons) does not constitute a supply as there is no consideration. Also there is no requirement for reversal of ITC availed on such moulds and dies by OEM, since these are provided on FOC basis in course of furtherance of business.

  Further, value of moulds and dies shall not be included while calculating value of supply made by component manufacturer since such cost was not to be incurred by the component manufacturer.

  However, if contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but same were supplied by OEM to component manufacturer on FOC basis, then the amortised cost of such moulds/dies shall be added to the value of the components. The OEM will also be required to reverse the ITC availed.

- Treatment under GST on servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately.

  CLARIFICATION: The goods and services would be liable to tax at the rates as applicable to such goods and services separately.

- In case of auction of tea, coffee, rubber etc., whether books of accounts are required to be maintained at every place of business by the principal and auctioneer, and whether they are eligible to avail input tax credit?

  CLARIFICATION: The principal and auctioneer may declare the warehouses, where such goods are stored, as their additional place of business. If the buyer wants to store goods purchased through auction in such warehouses, he is required to declare such additional place.

  Books of accounts relating to each and every place of business are required to be maintained by principal and auctioneer for supply of tea through private treaty. An intimation in this regard must be given to jurisdictional officer. The said parties are eligible to avail input tax credit in accordance with provisions of CGST act.

- In case of transportation of goods by railways, whether goods can be delivered even if the e-way bill is not produced at the time of delivery?

  CLARIFICATION: Railways shall not deliver the goods unless the e-way bill is produced at the time of delivery as per rule 138 (2A) of CGST Rules 2017.

  Note: Rule 138(2A) - Where the goods are transported by railways/air/vessel, the e-way bill shall be generated by the registered person, being the supplier/recipient, who shall, either before/after the commencement of movement, furnish, on the common portal, the information in Part B of FORM GST EWB-01. Provided that where the goods are transported by railways, the railways shall not deliver the goods unless the e-way bill required under these rules is produced at the time of delivery.

- Whether e-way bill is required for goods in transit through another State while moving from one area in a State to another area in the same State?

CLARIFICATION: Generation of e-way bill is not dependent on whether a supply is inter-state or not, but on whether the movement of goods is inter-State or not. Therefore, e-way bill will be required in this case.

- Whether e-way bill is required when goods move from a DTA unit to a SEZ unit or vice versa located in the same State?
  CLARIFICATION: No e-way bill is needed where goods move from a DTA to SEZ unit or vice-versa in same state, only if movement of goods is within the areas specified/notified under CGST rule 138(14)(d).

Circular No. 48/22/2018-GST dated 14th June, 2018

Clarifications have been provided with respect to the following issues:

- Whether services of short term conferencing, accommodation, banqueting etc. provided to a SEZ developer/unit should be treated as an inter or intra state supply?
  CLARIFICATION: According to section 7(5)(b) of IGST Act 2017, supply of goods or services or both to SEZ unit shall be treated as interstate supply whereas according to section 12(3) (c) of IGST Act, the place of supply of services by way of accommodation in any immovable property for organizing any function shall be the location at which the immovable property is located i.e. if the location of supplier and place of supply are same, it amounts to intra state supply. In case of such conflict between two provisions, the specific provision shall prevail and therefore the said service shall be treated as an inter-state supply as per IGST Act.

- Whether benefit of zero rated supply be allowed to all procurements by a SEZ unit such as event management service, hotel and accommodation service, consumables etc.?
  CLARIFICATION: Provisions related to Zero-rated supplies and conditions, procedures and safeguards for refund to person making zero rated supplies are provided under section 16(1) and 16(3) of IGST Act, and second proviso to rule 89(1) of CGST rules. A conjoint reading reveals that supplier shall be eligible for refund of unutilized ITC only if such supplies have been received by SEZ for authorized operations, as endorsed by the specified officer. Therefore, if event management service, hotel and accommodation service, consumables etc are received by SEZ unit for authorized operations as endorsed by the specified officer of zone, the benefit of zero rated supply shall be available to the supplier, subject to section 17(5) of CGST Act, 2017

- Whether independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of CGST Act, 2017, even if the goods (fabrics) supplied are covered under NN. 5/2017-Central Tax (Rate)?
  CLARIFICATION:NN. 5/2017-ccentral tax (Rate) dated 28th June 2017 specifies goods for which refund of unutilized ITC on account of inverted duty structure under section 54(3) of CGST act shall not be allowed.However,in case of fabric processors, the output supply is supply of job work services and not of goods (fabrics). Therefore, it is clarified that fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure.

Judicial Pronouncements

- **BANGALORE CESTAT: Bilz Tool Pvt Ltd Vs CCE, ST & CC**- The assessee is a 100% EOU which manufactures and exports tool holders - It availed credit on inputs and input services - The Department opined that during the disputed period, the assessee availed ineligible credit on flooring chemicals & on medical insurance for employees & these input services lacked nexus with the final products manufactured and exported - SCN was issued alleging that the assessee suppressed material facts with intention to evade duty & avail inadmissible credit.
  Held - The credit on floor paints is allowed as the same fall in the definition of input services viz., maintenance or repair of the photocopier; rent-a-cab service, information technology software service

and insurance of the assets of the company - By amendment in the definition of input service w.e.f 1.4.2011, medical insurance has been specifically excluded - In the present case the credit is availed after 2011 and so must be disallowed-Appeal Partly Allowed.

- **PUNJAB AND HARYANA HIGH COURT : Pr.CCE & ST Vs Neelam Steels-** the assessee manufactured ready-made garments & exported the same to Nepal upon filing shipping bills - It was alleged that the assessee showed fraudulent export of goods under free shipping bills & without export invoices - It was further alleged that the assessee availed inadmissible benefits under DEPB scheme - Duty demands were raised with interest & penalties - Later, the Tribunal noted the issue to be regarding non-fulfilment of condition 2(IV) of NotificationNo. 45/2001-CE(NT) , wherein the goods were to be presented before Nepalese custom office, which would endorse the certificate of goods received - The same would be sent to the relevant officer in the Indian Customs department - The Tribunal found it to be such officer's duty to send duplicate copy of invoice to CE officer to comply with said condition - Noting the same to be internal correspondence of the Department, the Tribunal held that the assessee could not be made liable to Departmental lapses - Hence the demands were set aside. Held - Revenue's appeal is withdrawn - Permission granted to approach Tribunal for rectification of mistake, where order passed without considering certain issues raised- Appeal Dismissed.

- **CHENNAI CESTAT: M/s Kellogg and Andelson Management Service Pvt Ltd Vs CST, Chennai-II-**refund of un-utilized Cenvat credit in terms of Rule 5 of CCR, 2004 and Notification No. 27/2012-CE (NT) – Export turnover of services - HELD - Rule 5 of CCR, 2004 makes it clear that when it defines export turnover of services, the assessee needs to consider only the payments received during the relevant period and certainly not the payments which are to be received for which invoices are raised during that period. The Ld. Commissioner (Appeals) has rejected the claim of the appellant since according to him, a perusal of Rule 5 of CCR, 2004 and Notification No. 27/2012-CE (NT) revealed the quantum of refund that would be determined based on the exports effected during the relevant quarter for which proceeds were received in foreign currency in the same quarter. This is not practical and perhaps also not the intention of the legislation. More so because nowhere in Rule 5 or in Notification it is stated that the payments received should relate to the exports effected - the order of the ld. Commissioner (Appeals) in denying the refund granted by the original authority is set aside and the order of the adjudicating authority is restored – assessee appeal is allowed.

- **CHENNAI CESTAT : Sun Pharmaceuticals Industries Ltd Vs CCE & ST**- Assessee, a 100% EOU engaged in manufacture of bulk drugs - They had imported raw materials (inputs) packed in MS drums and HDPE drums availing concessional duty benefit of Notification No.52/2003-Cus. as amended - Empty drums after use of inputs were sold by assessee in DTA - Department took the view that such clearances will attract customs duty in view of condition No.4(b) of the notification- From the facts on record and assertions of assessee made before the lower authorities, it clearly emerges that the empty drums have been sold only as scrap to merchants and to their employees - True, these drums may well be used for some purpose or the other by the persons who purchase them like storing water which is apparently the purpose for which the employees buy these drums - However, for the purpose of notification the test of being "suitable for repeated use", is whether the drums are being reused for containing and transporting the very same goods in which they had initially arrived - There is no such allegation or evidence brought forth - In the circumstances, impugned goods are only in the nature of used packing material of a kind of unsuitable for repeated use which then should be allowed to be cleared without payment of any duty, as per provisions of 4(c) of same notification-Appeal allowed.

- **Delhi CESTAT : M/s SRF LTD Vs C.C.E INDORE–** SEZ Unit - GTA Service - appellant recovered certain amount from their customers on account of transportation of finished goods in DTA from factory to their final destination but did not discharge any Service Tax liability on the said recovered amount - Whether the appellant can be called as the goods transport agency as defined under Section 50 (b) of Section 65 of the Finance Act, 1994 – HELD - to be called “Goods Transport Agency” a person should fulfil two conditions, namely, (i) provide service in relation to transport of goods by road and (ii) issue consignment note, by whatever name called. In this present case, no consignment note was issued by the goods transporter. The slip issued by the appellant as recipient of service is taken by the adjudicating authority with such activity of transport to bring in tax liability - such attempt is beyond the scope of law - the appellant do not fall under the definition of Goods Transport Agency, whose

services are taxable in view of Section 65 (zzb) of the Finance Act - consumption of services within Special Economic Zone is intended to bear the utilization by the entities within the special economic zone. By no stretch it can be stated that it intends to restrict such exemption only to the extent that its consumption to be within the geographical boundaries of Special Economic Zone - Commissioner (Appeals) has wrongly fastened the liability of Service Tax upon the appellant - the appeals stands allowed. The Department to comply, as far as, the refund is concerned.

- **AHMEDABAD CESTAT : SANMAR SPECIALITY CHEMICALS LIMITED Vs C.C.E. & S.T.-VAPI-**100% EOU - goods manufactured out of the imported as well as indigenous raw material and cleared in DTA on payment of duty - whether the valuation shall be governed by Section 4 of CEA, 1944 or Section 14 of Customs Act, 1962 - the department case that applying Section 14 the value of the identical goods sold by the appellant to the independent buyers shall be taken as assessable value for the purpose of charging duty by the 100% EOU – HELD - From Clause (ii) of proviso to Section 3 it is clear that the value for the purpose of DTA sale shall be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1974. Therefore, as per the above express provision there is no doubt that the valuation in respect of goods manufactured by EOU shall be adopted in accordance with the Customs Act, 1962 - the overall scheme for 100% EOU, the object is that goods manufactured by 100% EOU should be exported and if it is permitted to be cleared in DTA, duty equal to the Customs duty should be charged - In the case of goods manufactured even by 100% EOU out of the total indigenous raw-material there is no situation that the customs duty on the raw-material stand forgone. Therefore, the situation is like goods are manufactured by the non-EOU within the country and the duty should be charged equal to excise duty. In such case, the valuation can be done as per the Central Excise Act, 1944 - the valuation principle adopted by the Revenue by invoking the valuation provision of Customs Act, 1962 is correct and legal. Therefore, the impugned orders are sustained and the appeals are 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.
