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Dy. Director General

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EPCES CIRCULAR NO.300

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 18/2018 dated 20th June, 2018

- The said notice highlights the resolution taken that w.e.f 21st June 2018, importer/exporter are required to send their applications via email to import-dgft@nic.in (for import licenses) or export-dgft@nic.in (for export licenses) along with proof of application fee paid, where online application for import/export of restricted items have been submitted.
- Applications are required to be submitted in prescribed pro-forma ANF-2M (for import license) and ANF - 2N (for export license) along with ANF-1 (Applicant's Importer Exporter Profile), copy of IEC and other applicable documents.
- AayatNiryat forms are available on the DGFT's website www.dgft.gov.in.
- On receiving the NOC from the concerned administrative ministry, the same should be attached with the application.
- Applicants are requested to send their attachments only in PDF format.

Public Notice No.14/2015-2020 dated 20th June, 2018

The Director General of Foreign Trade hereby amends the office address of DGFT and its Regional Authorities and their Jurisdiction and Private SEZs of Appendix 1A of Foreign Trade Policy, 2015-20.
Acopy of the said public notice has been enclosed for reference.

Notification No.13/2015-2020 dated 20th June, 2018

Amends Paragraph 4.29 (VI) and (vii) of Foreign Trade Policy 2015-20.
Effect of this Notification is that Paragraph 4.29 (VI) and Para 4.29(vii) of Foreign Trade Policy 2015-20 are replaced enabling exporters to file single DFIA application for exports made from any EDI port and separate applications for export to be made from each non-EDI port.

Notification No. 12/2018 – Central Tax(Rate) and Notification No. 13/2018 – Integrated Tax(Rate)dated 29th June 2018

Government of India vide the captioned notifications has decided to extend the exemption on intrastate and interstate supplies of goods and services or both received by a registered person from an unregistered supplier, from whole of the central tax leviable under section 9(4) of the CGST Act, 2017 or Integrated tax leviable under section 5(4) of IGST Act,2017 till 30th September 2018. Through this, the Reverse Charge on the said transactions has been deferred till 30th September, 2018.

Judicial Pronouncements

- **CHANDIGARH CESTAT: CCE Vs Vertex Customer Services India Pvt Ltd** - The assessee is a 100% EOU registered under the Software Technology Park Scheme - They provided services to non-resident recipient without payment of service tax as they were not in a position to utilize the Cenvat Credit - They filed refund claim which was rejected by the revenue on grounds that the period of refund under the scheme was prior to amendment in Rule 5 of CCR, 2004 vide Notification No.04/2006-CE (NT) issued in March, 2006 - The Commissioner. (A) Allowed the refund.

  Held - The assessee who has exported the services and providing taxable service for the period prior to March, 2006 is entitled to claim refund of Cenvat credit remains unutilized in their Cenvat Credit Account - Following the ratio laid down by the Tribunal in WNS Global Services Pvt. Ltd case, affirmed by the HC of Bombay in WNS Global Service Pvt. Ltd- Appeal Dismissed.

- **CHENNAI CESTAT:CGST & CE Vs J Ray Mcdermott Engineering Pvt Ltd**–Assessee, a 100% EOU under STPI, engaged in provision of Engineering Design Services to its group entities and is - They provide BPO services to customers outside India and are also registered with Service Tax Department w.e.f. 30.1.2008 - They filed refund claim for period April 2007 to March 2008 for refund of unutilized credit under Rule 5 of CCR, 2004 - Commissioner (A) has allowed the issue with regard to availment of credit before registration observing that it is merely a technical lapse - The issue whether assessee is eligible to avail credit before registration has been settled by decision in case of mPortal India wireless Solutions P. Ltd. Following the said decision, there is no merit in appeal filed by department, same is dismissed.

- **AHMEDABAD CESTAT: Essar Project India Ltd Vs CC**- Issue arises for consideration is; whether the assessee is required to discharge interest for period from 13.02.2007 to 23.10.2007 on the duty free imported goods to SEZ on its clearance to DTA on payment of duty as assessed under section 30 of SEZ Act, 2005 - Analysing the provisions, it is clear that on clearance/removal of goods from SEZ to DTA, applicable duties of Customs as levied under CTA, 1975 are required to be paid and the rate of duty and tariff valuation, if any applicable would be the rate as in force on the date of its removal or payment of duty as the case may be - Nowhere under the said provision, there is any mention of payment of interest on clearance of goods from SEZ to DTA - The Supreme Court in Indian Carbon Ltd.'s case relying the ratio laid down by Constitution Bench in case of J.K.Synthetics Ltd. - Thus, under SEZ Act and Rules made thereunder, there is no substantive provision for charging interest - Interest on customs duty determined and paid in accordance with Section 30 of SEZ Act, 2005 has been demanded and confirmed under Section 47 of Customs Act, 1962 - It is clear that in the event, bill of entry is returned to importer after assessment by proper officer, duty shall be required to be paid and in the event he fails to pay the duty within the specified period, then interest would be leviable on amount of duty for delayed period - It is not in dispute that bill of entry was filed on 23.10.2007 and after assessment, within five days, i.e. on 24.10.2007, the duty was paid - Thus, there was no delay in discharging the duty after assessment under Section 47 of Customs Act, 1962 - The Revenue's attempt to levy interest from the date of initial import by SEZ developer i.e. as on 13.02.2007 is not supported by Provisions contained either under SEZ Act or Rules made thereunder nor under the Customs Act, 1962 - Therefore, interest cannot be levied for period 13.02.2007 to 23.10.2007 - Consequently, impugned order is set aside- Appeal allowed.

- **AHMEDABAD CESTAT: Diamond and Gem Development Corporation Vs CCE & ST**- Assessee had provided Repair & Maintenance Service and Renting of Immovable Property Service to the units located in SEZ - They have filed refund claim of service tax paid on such services in Form A-2 under Notification 9/2009-ST - Same was rejected by lower authorities - It is not in dispute that assessee had provided these services to units in SEZ and claimed the refund under Notification 9/2009-ST - The

department rejected the refund claim on the ground that the exemption from payment of service tax of services used in SEZ is allowed by way of refund to the service receiver situated in SEZ - There is no room for any intendment in interpretation of said exemption Notification which has to be strictly interpreted - The only exception carried out in said notification is that in the event the service provider and service receiver are one and the same person, service provider could claim the refund of service tax paid on specified services used in SEZ - Claimant of refund is not the service receiver, but, the service provider, accordingly, Commissioner (A) has rightly upheld the rejection of refund claim and no reason found to interfere with said order - Impugned order upheld. Appeal rejected.

- **BENGALURU HIGH COURT :M/s Abb India LtdVs Union Of India** - The petitioner imported various inputs under the advanced authorizations for manufacture of the products to be supplied to SEZ – petitioner applications seeking condonation of the procedural lapse of non-submission of Bills of export for supply to SEZ and for redemption of advance authorization by considering the ARE-1s and the 'Certificate of Receipt of Supply' endorsed by the authorized officer – rejection of application on the ground that the bill of export is mandatory document for supply of goods to SEZ – HELD - the Consumption Certificate placed on record by the petitioner before the Registered Authority as well as the Policy Relaxation Committee has not been properly appreciated – The 'Certificate of Receipt of Supply' duly certified and endorsed by the Statutory Authorities would have been appreciated by the Policy Relaxation Committee to grant the necessary relaxation - On examining these consumption certificates, the Authorities could have condoned requirements of generating the bill of export and raising an objection that ARE-1 forms submitted without the number and date, would be hyper-technical – the impugned order is arbitrary, unreasonable and discriminatory when such relaxation is extended to similarly situated units in condoning the procedural of non-filing of the bills of export – the impugned orders of the Policy Relaxation Committee is unsustainable and set aside - the writ petitions are allowed by remand.

- **ALLAHABAD CESTAT: CCE Vs C L Gupta Exports Ltd** - Whether assessee, a 100% EOU engaged in manufacture and export of Handicrafts are entitled to refund of service tax paid on Port Services under provisions of Notification 41/2007-ST - The ground of appeal taken by Revenue is that the invoices issued by shipping lines cannot be considered as invoice issued by port or its authorised agent - Assessee points out that CBEC vide its Circular No.112/06/2009-ST have considered the issue- the service provider providing services to the exporter, provides various services but he has registration of only one service - The refund is being denied on the ground that taxable services that are not covered under registration certificate of provider, are not eligible for such refund - Clarifying the issue, Board observed that Notification 41/2007-ST provides exemption by way of refund from specified taxable services used for export of goods - Granting refund to exporters on taxable services, that he receives and uses for export, do not require verification of registration certificate of supplier of service - Further, reliance on ruling of Tribunal in case of Western Agencies Pvt. Ltd. wherein it was held that all services otherwise taxable, covers also port services, when rendered within territorial limits of a port or other port - 'Cargo Handling Service' provided within limit of port, being more specific in relation to port, is covered under 'port service' - Issue is wholly covered by clarification by CBEC and ruling of Tribunal in said case - Accordingly, appeal filed by Revenue is dismissed.

- **MADRAS HIGH COURT: Industrial Mineral Company (IMC) vs CC**- Assessee, a 100% EOU is manufacturer and exporter of processed and upgraded ilmenite falling under CTH 26140020 and paid duty under protest @ 10% - But the appropriate duty would be 5% from 01.03.2013 vide Notification 15/2013-Cus. and 2.5% from 01.03.2015 vide Notification 08/2015-Cus. - When a decision was taken by Higher Judicial Forum, it is binding on subordinate authorities - The Tribunal, admittedly, held that duty is not leviable @ 10% as claimed by assessee, but, it is only leviable under CH26140020, as per the Notification issued by Department then and there - It is well settled that duty paid by assessee under protest, if ultimately found, was not leviable, it would automatically entitle him for refund - The payment under protest by itself would tantamount to claiming refund, but, it cannot be turned down merely because he has not filed any appeal or appeal was filed by the Department before a

higher forum - Petitioner is entitled to get refund - Since a binding decision has not been followed by Adjudicating Authority in this case, Court can interfere straight away without relegating the assessee to file an appeal - The second respondent is directed to refund the amount in question to petitioner within a period of four weeks after taking immovable property security from the petitioner - Writ Petition allowed.

- **MUMBAI CESTAT: Barclays Global Service Centre Pvt Ltd Vs CCE** - Refund - Notification 12/2013-ST - Out of the refund claim of Rs.1,14,79,918/- filed by the appellant, a SEZ unit, the adjudicating authority observed that the appellant was not eligible for the refund of Rs.23,05,740/- as the CENVAT credit availed against general insurance services provided by M/s United India Insurance Company Ltd. was involving group mediclaim tailor-made policy and the said mediclaim was not covered by the approved list of services.
  Held: Mediclaim insurance is one of the insurance policy under general insurance - insurance was done by M/s United India Insurance Company Ltd, which is undisputedly involved in the business of general insurance and not any life insurance, therefore, the 'general insurance' term clearly covers mediclaim - appellant being a SEZ unit, their input services, otherwise also is not taxable and the output service being 100% exported, no service tax is payable - further, if at all the appellant does not claim the refund under Notification No. 12/2013-ST the appellant will be entitled for the refund under Rule 5 of the CENVAT Credit Rules, 2004 - even if there is some discrepancy in declaring the input service in the letters of approval, so long as tax paid input services were received and used in the SEZ unit, the refund should be allowed and only because of procedural lapse refund cannot be rejected - 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.