

# 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](mailto:epces@epces.in) Web: [www.epces.in](http://www.epces.in)

**AnandGiri**  
**Dy. Director General**

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## **EPCES CIRCULAR NO.301**

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.

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### **Circular No.49/23/2018-GST dated 21<sup>st</sup> June 2018**

The said circular covers the modifications to Circular No.41/15/2018-GST in relation to clarification on the procedure for interception of conveyances for inspection of goods in movement, and detention, release and confiscation of such goods and conveyances. Modifications are as follows:

- In para 2 (e) of the said Circular, the expression "three working days" may be replaced by the expression "three days".
- The statement after paragraph 3 in **FORM GST MOV-05** should read as: "In view of the above, the goods and conveyance(s) are hereby released on (DD/MM/YYYY) at \_\_\_\_ AM/PM."
- Hard copies of the notices/orders issued in the specified form by a tax authority may be shown as proof of initiation of action by a tax authority by the transporter/registered person to another tax authority as and when required.
- Further, it is clarified that only such goods and/or conveyances should be detained/confiscated in respect of which there is a violation of the provisions of the GST Act or the rules made thereunder.

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### **Press Release 29<sup>th</sup> June, 2018**

The said release extends the suspension of provisions relating to Tax deduction at source (TDS) and Tax collection at source (TCS) till 30th September 2018.

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### **Public Notice No.17/2015-2020 dated 03<sup>rd</sup> July 2018**

DGFT via the said notice adds Para 3.24 in the Hand Book of Procedures which states as follows:

#### **3.24 No Incentive Certificate under MEIS**

- a) Wherever an exporter requires a certificate to the effect that No incentive under MEIS has been taken for shipment(s) which is being re-imported, the exporter will submit a request in the specified format, ANF 3E- "Application for No Incentive Certificate" to the concerned Regional Authority (RA) as per para 3.06(a) of the HBP 2015-20.*
- b) The following procedure will be followed at the concerned Regional Authority while issuing the No Incentive Certificate, in the specified format Appendix 3F.*
  - i. Wherever, MEIS has been utilized by the applicant for the relevant shipping bill(s), the applicant is required to refund the proportionate amount along with interest at the rate prescribed under the section 28AA of the Customs Act, in the relevant Head of Account of Customs. On receipt of proof of payment, the RA would issue the certificate.*

- ii. *Wherever, MEIS has been issued to the applicant for the relevant shipping bill (s) but the MEIS scrip has not been utilised, the applicant should surrender the MEIS scrip to the RA. The RA would then issue the certificate and simultaneously inform the NIC to block the relevant shipping bill(s).*
  - iii. *Wherever, MEIS has not been applied for or MEIS has been applied for but no scrip has been issued, the RA would issue the certificate in the specified format, on the basis of the undertaking submitted in the application and simultaneously inform the NIC to block the relevant shipping bill(s).*
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## Judicial Pronouncements

- **BANGALORE CESTAT: CCE, C & ST Vs Stumpp Schedule and Somappa Pvt Ltd**- Assessee, a 100% EOU have been paying commission on export orders procured by agents situated outside the country - They were also incurring sales promotional expenses on export sales - Issue in both the appeals is that of levability of service tax under Rule 2(l)(d)(iv) on reverse charge mechanism for import of services rendered abroad by outside agents - Law on this issue is settled in favour of assessee in case of Bombay High Court's judgment in Indian National Ship owners Association, which has been affirmed by Supreme Court - By following the judgment of Bombay High Court, demand of service tax, interest and penalties for the period prior to 18.4.2006 are set aside - For the period after 18.4.2006, there is no dispute as assessee have paid appropriate service tax along with interest before the issuance of SCN - By following the judgment in case of C Ahead Info Technologies India Pvt Ltd, the penalty under Section 78 imposed on assessee is set aside - Assessee's appeal allowed.
  - **AHMEDABAD CESTAT: Sopariwala Exports Pvt Ltd Vs CCE & ST**- The assessee exported some goods & such exports were made by utilizing the services on which service tax was payable for the exported goods - It filed refund of service tax paid on various services used in export of goods for the quarter - A SCN was issued rejecting the claim for refund - The Commissioner (A) rejected the appeal as well. Held: The Department did not reject the refund claim and returned the same to the assessee for deficit of document, namely, proof of payment of service tax - Therefore, the refund claim cannot be rejected on the ground of time bar - In addition, the assessee complied with the condition of filing the refund claim within 6 months from the date of export of goods for the relevant quarter - Hence, the order challenged is set aside- Appeal Allowed.
  - **MAHARSHTRA AAR: BASF INDIA LTD**-Applicant will be purchasing the goods from its overseas related party situated abroad based on purchase order received from its customers. While the goods are in transit, the goods will be sold by the Applicant to its customers before the goods are entered for customs clearance in India. Whether IGST will be leviable on such sale effected by the Applicant to customers who are known to them at the time of placing order on the overseas party - Whether input tax credit will have to be reversed, to the extent of inputs, input services and common input services used by the Applicant, in case the above transaction is not subjected to the levy of IGST by treating the same as an exempt supply for the purpose of Section 17 of the CGST Act – HELD - the goods which are sold on high seas sale basis are non-taxable supply as no tax is leviable on them till the time of customs clearance in accordance with and compliance of Section 12 of the Customs Act, 1962 and Section 3 of the Customs Tariff Act, 1975 - the goods sold on High Seas sale basis being non-taxable supply as per Section 2(78) of the CGST Act and being exempt supply as per Section 2(47) of the CGST Act, the input tax credit to the extent of inputs, input services and common input services would be required to be reversed by the applicant as per Section 17 of the CGST Act.
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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 OfftgChairman EPCES.