

EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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No.EPC/SEZ/AM-18
July 16, 2018

EPCES CIRCULAR NO.302

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.

Policy Circular No.9/2015-20 dated 9th July 2018

- The said circular is regarding acceptance of any copy of Shipping Bill in lieu of EP copy of Shipping Bill for grant of EODC of Advance Authorization.
- Self-certified exporter copy of shipping bill in lieu of EP copy of shipping bills for exports made after 23rd November were allowed until facility of online verification is made available.
- Representations have been received to allow acceptance of Exchange Control Copy of Shipping Bill in lieu of EP copy of Shipping Bill.
- A viewing facility has been made available and is being improved for RAs to view shipping bill details available in DGFT servers.
- Exporter are given option to furnish self-certified copy of any copy of shipping bill i.e. Exporter copy/EP Copy/CHA copy/ Exchange Control Copy of shipping bill along with application for EODC in ANF-4F where exports were made on or after 23.11.2016 thus reducing transaction cost.

Judicial Pronouncements

- **CHENNAI CESTAT: BhartiAirtel Ltd Vs CGST & CE- ST** - Assessee engaged in providing mobile phone services - During audit, it was noticed that they had wrongly availed exemption under Notification 4/2004-ST on Telecom Services provided to SEZ units; alleging that the telecom services are not consumed wholly within the SEZ Unit, it is found that the mobile services are provided by assessee to SEZ units - Merely because the facility of mobile phone is used outside the SEZ unit also, the exemption in terms of Notification 4/2004 cannot be denied - Further, the period involved is after 10.2.2006 when the SEZ Act 2005 came into existence - Denial of exemption is unjustified. Appeals partly allowed.
- **MADRAS HIGH COURT : Dy.CCEVs Madura Coats Ltd** - Assessee, a 100% EOU is manufacturing and clearing various types of fabrics and yarn in DTA subject to conditions including payment of applicable Customs and other duties - The assessee executed a Bond undertaking to abide by conditions stipulated for Rs.30 crores - On verification of invoices, two types of DTA clearances i.e. direct sales to textile dealers and clearance to their own unit viz., Madura Textiles, Vikramasingapuram for further processing and sale were found - But the invoices for 2nd type of clearances were made in the name of dealers so as to escape the scrutiny by Department and to escape assessment under Section 14 of Customs Act, 1962 - The case of assessee is that the SCNs were issued beyond the period of five years

from the relevant date and therefore, the Notices issued are liable to be set aside under Section 11-A of the Central Excise Act - The SCNs issued on 01.11.2001 and 07.11.2001 clearly shows that based on specific intelligence report, Preventive Unit searched the factory premises of assessee on 10.11.2000 and 11.11.2000 and certain incriminating documents were seized under Mahazar - The SCNs cannot be termed as time barred - The question of limitation is a mixed question of fact and law - It is not purely a question of law - The said question cannot be decided summarily without considering the materials available on record - The Single Judge accepted the case of assessee without even giving an opportunity to the adjudicating authority to consider the legality and correctness of the contentions taken by assessee - The order passed by single Judge quashing the SCNs therefore set aside: HC - Appeals allowed.

- **BANGALORE CESTAT: Commissioner of Central Tax Vs Aurigo Software Technologies Pvt Ltd**- The assessee is engaged in providing Management Consultancy Service to their foreign client - It paid tax on certain services and filed for claim of refund in respect of input service tax credit taken during the period in dispute - - However, the Revenue rejected refund application on grounds that the export turnover during the claim period was nil - The Commissioner. (A) allowed the refund, hence, the present appeal by Revenue.

Held - The finding in order-in-original that the assessee has complied with all the conditions stipulated under Rule 6A of Service Tax Rules, 1994 for considering the services provided as export of service is correct - The refund has been rejected, merely, on grounds that the export turnover has not been shown in the ST-3 return and that there was clubbing of quarters for claiming the refund - The Commissioner. (A) has not validated this ground - Following the decision of CC vs. M/s. U.P. Police, the order challenged is Upheld-Revenue's appeal dismissed.

- **MUMBAI CESTAT: CCE & ST Vs Supreme Industries Ltd** - CENVAT - Goods cleared to Special Economic Zone (SEZ) under exemption - applicability of rule 6 of CCR, 2004 - Revenue in appeal.

Held: By no stretch can supply to SEZ be deemed to be exempted - Notification 50/2008-CE (NT) dated 31.12.2008 incorporating supplies to developers of Special Economic Zone in rule 6(6) of CCR, 2004 is retrospective - no cause for reversal of credit/payment under rule 6(3) (i) of CCR, 2004 - Revenue appeal lacks merit, hence dismissed- Appeal dismissed.

- **BANGALORE CESTAT : CC & ST Vs Perot Systems Tsi India Pvt Ltd**- The assessee company is an STPI unit under 100% EOU scheme, engaged in operating private bonded warehouses - It was observed by the Revenue that assessee transferred the goods imported or procured duty-free without complying with the conditions under Notification No. 15/2003-Cus and CE Notification No.22/2003 - Duty demand was raised for recovery of duty and interest - However, when pointed out the assessee paid duty, the Commissioner(Cus) did not confiscate the goods - Hence, the present appeal by Revenue.

Held - As a show-cause notice proposing confiscation is absent, the recovery of duty in itself is contentious - Therefore penalty imposed & confiscation of goods are unsustainable- Revenue's appeal 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.