

# EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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No.EPC/SEZ/AM-18  
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## **EPCES CIRCULAR NO.303**

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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### **Press Release-Third Refund Fortnight dated 16th July 2018**

Press Release D.O.F. No.450/119/2017-CUS-IV has been issued by CBIC on 16th July 2018.

In order to overcome issues related to sanction of refund under GST, Ministry of Finance has issued a Press Release starting "Refund Disposal Fortnight" from 16th July, 2018 to 30th July 2018, after observing two special drives cum refund fortnights i.e. from 15th to 31st March 2018 and 31st May to 16th June 2018. Dedicated cells and helpdesks would be provided for exporters to get refund claims processed.

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### **Circular No. 21/2018-Customs dated 18<sup>th</sup> July 2018**

- Vide the captioned circular, it has been decided to set up help desks at the offices of FIEO and AEPC for expeditious resolutions of IGST refund related issues since exporters are unable to approach customs port of exports due to factors like distance, lack of information etc.
  - The helpdesks would be located at FIEO offices at (i) Ahmedabad (ii) Bangalore (iii) Chennai (iv) Cochin (v) Coimbatore (vi) Delhi (vii) Hyderabad (viii) Kolkata (ix) Ludhiana (x) Mumbai and AEPC office at Tirupur and will function for a period of 2 weeks till 1st August, 2018. Officers deputed at help desk would inform exporters about the documents needed and guide them to resolve the errors.
  - Status of pending refund claims along with reasons and errors of delay will be available on ANTARANG. The icagate email ID of the officer(s) deputed at the Help Desk may immediately be informed to Team.ICES@icagate.gov.in to enable access to the data.
  - The details provided by the exporters to the Help Desk shall be transmitted by ICEGATE e-mail to the nodal officers at the port of export.
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### **Order No. F. No. 96/ACTT/GST/2018/391-93 dated 18<sup>th</sup> July 2018**

- It has been noted that Registration number is shown as inactive on GSTN Common Portal, thus making tax payers unable to log in and file their dues. The reason for this has been found to be that during verification of application for enrolment of existing tax payers, online SCNs were issued, being overlooked by taxpayers, due to which Provisional Registrations got cancelled from back end by system.
  - Thus authorities have been directed to restore all such cases of migration after due verification of GST REG-21 submitted by tax payers.
  - Officers can upload requisite documents provided by the tax payers in response to their SCN using ARN of GST-REG-26, in their log-in.
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## Circular No. 22/2018-Customs dated 18<sup>th</sup> July 2018

- Earlier CBIC has provided resolution of SB003 error in certain cases via the utility developed by the Directorate of System in a similar manner as in SB005 error provided in circular 15/2018-Customs dated 06.6.2018. In several cases, the exporters have mentioned PAN instead of GSTIN in the Shipping Bills, even though GSTIN has been correctly mentioned while filing the GST returns resulting in IGST refund claims not getting processed.
  - Circulars have been issued offering alternate mechanism to resolve invoice mismatches (SB005 error) for shipping bills filed till 30th April 2018.
  - It has been decided by the Board to extend the rectification facility to Shipping Bills filed up to 30.06.2018 in light of ongoing refund fortnight.
  - The facility of rectification through Officer Interface is also extended in case of other errors mentioned in circulars 8/2018-Customs and 15/2018-Customs for shipping bills filed up to 30.06.2018.
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## Judicial Pronouncements

- **AHMEDABAD CESTAT: Equinox Semiconduction Ltd vs. CC & ST** - The assessee is a 100% EOU engaged in import of capital goods for installation in factory premises - The capital goods could not be put to use for commercial production and the warehouse license got expired - Duty demand was raised for the amount of duty not paid on the imported goods which was not put to use as per the condition of import - An SCN was issued by Assistant Commissioner and adjudicated by Comm. (CUS) - In the de novo proceedings the Commissioner. (A) Confirmed the duty demand along with interest - In addition, the goods were confiscated u/s 111(o) of the Customs Act with an option to redeem the same on payment of fine - Hence, the present appeal.  
Held: Section 28 provides for one year limitation period for collection of unpaid duty - Even so the action of recovery of duty has to be initiated within a reasonable time - The issue related to no period of limitation applicable to warehoused goods has been deliberated in the case of Raj Exports vs. Central Warehousing Corporation - In the present case, the warehouse license expired in 1991 whereas the SCN was issued in 1995 - The initial action was taken after four years which is an unreasonable delay on part of the Department - The demand is barred by limitation - Hence, the order challenged is set aside- Appeal Allowed.
- **MUMBAI CESTAT : Indoworth India Ltd Vs CCE**- Assessee, a 100% EOU removed the certain quantity of Poly Wool waste and All Wool waste to DTA in terms of para 9.9(a) of EXIM Policy 1997-2002 and paid 50% of BCD leviable under similar goods imported into India in terms of Notification 2/95-CE - Lower authorities have sought to apply provisions of paragraph 9.9(b) of the Policy to the clearance of polywool waste and all wool waste - The assessee has claimed that prior to 1.4.2001, the provisions of para 9.9(b) of the Policy were not applicable to the clearance made in para 9.20 of the EXIP Policy 1997-2002 - In this regard, Tribunal in case of Nahar Industrial Enterprises Ltd. has observed that the sale of waste is not to be included in the DTA sales permission - Impugned order relies on the amendment made in Policy on 1.4.2001 to confirm the demand and penalty - In these circumstances, no merit found in said order - Appeal allowed.
- **DELHI HIGH COURT: M/s MOTHERSON SUMI ELECTRIC WIRES Vs UNION OF INDIA**- Admissibility to refund of TED against supply of goods made to 100% EOUs - Whether the petitioner who manufactured and supplied goods, after payment of excise duty via the CENVAT credit route, to 100% EOU unit is entitled to claim refund of Terminal Excise Duty - HELD - the Policy Relaxation Committee (PRC) and the respondent should have acceded to the petitioner's request for grant of TED for the quarter October, 2011 to December, 2011 as it was a period which fell prior to the issuance of the amendment notification No.4 dated 18.04.2013. Circular No.16, dated 15.03.2013, which is portrayed as clarificatory in nature, cannot impact the application for refund pertaining to the period prior to 18.04.2013 - Importantly, the petitioner's entitlement to refund of TED will be

governed by the relevant provisions of the Foreign Trade Policy in the relevant period for which the claim was made. The fact that the petitioner could or could not get refund under the CENVAT Credit Rules or under the provisions of the Central Excise Act is not relevant - at the relevant point in time the worst that could be said against the petitioner is that it had available to it two options, first, to claim exemption and second, to pay duty and claim refund - The pivotal point is that the Foreign Trade Policy 2009-2014 conferred a right on the petitioner to seek refund of TED, as the supplies had been made to 100% EOUs, albeit, under a non-ICB route - the Revenue argument that since excise duty was not paid via cash but was paid by utilizing the CENVAT credit route and hence, the petitioner would not be entitled to claim refund is unsustainable as there is no bar in law in paying duty by utilizing CENVAT credit - The object of the FTP is to provide impetus to export either by direct physical export or via the deemed export route. In case refund of TED is not given qua deemed export, it would result in export of duties, which, in the long run would be detrimental to the cause of the exporters and the Indian economy – the impugned communication whereby the petitioner’s claim for refund was declined is set aside. The respondents are directed to refund TED to the petitioner for the period spanning between October, 2011 and December, 2011 after due verification – writ petition is allowed.

- **CHENNAI CESTAT: Ultratech Cement Ltd Vs CCE** - Assessee is manufacturer of cement and clinker and cleared them to domestic customers on payment of excise duty - They availed CENVAT credit on inputs and input services in terms of provisions of CCR, 2004 - During impugned period, assessee cleared cement to SEZ developers also in addition to the domestic customers - Such clearances were made without payment of excise duty treating them as exports - Department views that the cement cleared to SEZ developers without payment of duty are to be treated as exempted goods under Rule 2(d) of CCR, 2004 - Goods cleared to SEZ developers without payment of duty does not amount to clearance of exempted goods and Rule 6(3) is therefore not applicable - After enactment of Special Economic Zones Act, 2005 w.e.f. 10-2-2006, supplies to SEZ from DTA are treated as export of dutiable goods and entitled to benefits as such, including that of exception in Rule 6(6) of CCR, 2004, of not requiring separate accounts of dutiable and non-dutiable inputs/services to be maintained - Impugned order is not sustainable in law- Appeal allowed
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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 Offtg. Chairman EPCES.