

EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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EPCES CIRCULAR NO. 306

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.

Office Memorandum No.Pr.CCA/CBEC/GST-IT/E-PAORefund/33/2017-18/263 dated 19th July 2018

- The said Office Memorandum covers CBIC's GST Refund: Advisory No.2. The said advisory is issued to all concerned officers, authorities and organizations to ensure smooth and timely processing of GST refund during the refund fortnight from 16/07/2018 to 31/07/2018.
- It has been decided that refund sanctions issued by state authorities shall be communicated through the nodal officer to the sanctioned authorities of the concerned Division, who will sign on it with remarks "RFD-05 dated – issued against this sanction". The RFD-05 (payment advice) along with duly signed and remark sanction will be sent in original to the concerned Pay & Accounts office through DDO.
- In regard to Review of refund sanctioned above Rs. 50 lakhs, it is advised that that the process of review of sanction should be completed on the same day or the next day.

Policy Circular No. 11/2015-20 dated 23rd July, 2018

The captioned circular relates to grant of Deemed Export Benefits for supplies to the projects funded by organization such as JICA etc under para 8.2(d) of the Foreign Trade Policy, 2009-14.

- Such supplies notified vide DGFT'S public Notice No.67 dated 25th May 2010 were made against ICB and were eligible for ab initio exemption from payment of terminal excise duty under para 8.3(c) of FTP, 2009-14.
- Representations were received stating that the supplies to projects funded by JICA etc other than IBRD, IDA, and ADB were not getting exemption from Terminal Excise Duty (TED) from Jurisdictional excise authorities even though supplies were under ICB.

The said issue is considered and to honour the commitments made in erstwhile FTP 2009-14, it is decided to allow refund of TED, where exemption from payment of TED under relevant excise notifications was not available in respect of supplies made to the projects funded by JICA etc for supplies made upto 31/03/2015 under para 8.2(d) of FTP 2009-14 provided those supplies are otherwise eligible under FTP, 2009-14. Thus Regional Authorities are advised to dispose the claims of applicants in this regard.

Press Release – 28th GST Council Meeting dated 21st July 2018

The GST Council in its 28th meeting has made the following key recommendations:

Simplified GST Return:

- All taxpayers excluding small taxpayers and a few exceptions like ISD etc. shall be required to file monthly return.
- Small taxpayers having turnover below Rs. 5 Cr to be offered an optional facility to file return on quarterly basis.
- Quarterly return shall be similar to main return with monthly payment facility but for two kinds of registered persons – small traders making only B2C (Sahaj) supply or making B2B + B2C (Sugam) supply.
- Opening of migration window for tax payers till 31 August 2018.

Legislative amendments:

- Upper limit of turnover for opting composition scheme raised from Rs. 1 crore to Rs. 1.5 crore
 - Composition dealers to be allowed to supply services other than restaurant services, for upto a value not exceeding 10% of turnover in the preceding financial year, or Rs. 5 lakhs, whichever is higher
 - GST on reverse charge mechanism on receipt of supplies from unregistered suppliers shall be applicable to only specified goods by notified classes of registered persons
 - Registration threshold limit for the States of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand to be increased to Rs. 20 Lakhs from existing Rs. 10 Lakhs
 - Multiple registrations within a State/Union territory in respect of multiple places of business located within the same State/Union territory allowed
 - Mandatory registration for only those e-commerce operators who are required to collect tax at source
 - During the pendency of application for cancellation of registration, the registration to remain temporarily suspended to relieve taxpayers from compliance burden
 - The following transactions to be inserted under Schedule III i.e. no supply transactions:
 - Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India
 - Supply of warehoused goods to any person before clearance for home consumption
 - Supply of goods in case of high sea sales
 - Input tax credit allowed for the following:
 - Most of the activities or transactions specified in Schedule III
 - Motor vehicles for transportation of persons having seating capacity of more than thirteen (including driver), vessels and aircraft
 - Motor vehicles for transportation of money for or by a banking company or financial institution
 - Services of general insurance, repair and maintenance in respect of motor vehicles, vessels and aircraft on which credit is available
 - Goods or services which are obligatory for an employer to provide to its employees, under any law
 - No interest implication for recipient's failure to pay the due amount to the supplier within 180 days resulting in reversal of credit availed
 - Consolidated credit/debit notes allowed in respect of multiple invoices issued in a FY
 - Capping of pre-deposit for filing of appeal before the Appellate Authority and the Appellate Tribunal at Rs. 25 Crores and Rs. 50 Crores resp.
 - Commissioner empowered to extend the time limit for return of inputs and capital sent on job work upto a period of one year and two years resp.
 - In case of exports, condition for receipt of payment in foreign convertible relaxed and payment received in Indian Rupees (where permitted by the RBI) allowed
 - Place of supply in case of job work of any treatment or process done on goods temporarily imported into India and then exported without putting them to any other use in India to be outside India.
 - Recovery can be made from distinct persons, even if present in different State/Union territories
 - The order of cross-utilisation of input tax credit is being rationalized
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Notification 14/2018 –Central Tax (Rate) dated 26th July, 2018

The captioned notification amends notification 12/2017 – Central Tax (Rate) so as to exempt the following supplies:

- Services by an old age home run by Central/State Government or by an entity registered under section 12AA of Income-tax Act, 1961 to its residents (aged 60 years or more) against consideration upto INR 25,000 per month per member, provided the consideration charged is inclusive of charges for boarding, lodging and maintenance;
 - Services supplied by electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for electricity distribution network upto the tube well of farmer or agriculturalist for agricultural purposes;
 - Services by National Pension System (NPS) Trust to its members against consideration paid in form of administrative fee;
 - Services supplied by Central/State Government or Union Territory to their undertakings or PSUs by way of guaranteeing the loans taken by such undertakings or PSUs from financial institutions;
 - Services supplied by State Government to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf of the State Government on minerals dispatched by mining lease holders, subject to specified conditions; and
 - Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in:
 - (i) activities relating to the welfare of industry, agricultural labour or farmers; and
 - (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee upto INR 1000/- per member per year.
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Notification 17/2018 –Central Tax (Rate) dated 26th July, 2018

The captioned notification amends notification 11/2017 – Central Tax (Rate). Explanation inserted to Serial No. 3(vi) of Notification no. 11/2017 – Central tax (Rate) stating ‘business’ shall not include any activity or transaction undertaken by the Central or State Government or any local authority in which they are engaged as public authorities.

The said entry provided that works contract services provided to Central or State Government or Union Territory or local authority/ Government authority or Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession shall be subject to CGST at the rate of 9%.

Judicial Pronouncements

- **BANGALORE CESTAT: NXP Semiconductors India Pvt Ltd Vs Commissioner of Central Tax-** The assessee is engaged in the export of "Information Technology Software Services, Business Auxiliary Services, Consulting Engineering Services" - It filed refund claim of unutilised Cenvat credit on various input services used for services exported by them during the period in dispute under Rule 5 of CCR 2004 read with Notification No.27/2012-CE - However, the lower authorities allowed few of the claims and denied the rest - Hence, the present appeal by assessee.
Held - As per Rule 6A of Service Tax Rules, 1994 three conditions are prescribed on fulfilment of which a service provider is eligible to export without payment of service tax when the service recipient is located outside India, place of provision of service is outside India and finally, consideration for the

services rendered must be received in convertible foreign exchange - In the present case all three conditions are fulfilled - The services rendered by the assessee under the category of BAS is Export of Service and therefore, the assessee are entitled to refund of Cenvat credit - The original authority has not applied the formula in a correct manner on account of which the refund amount has been substantially reduced - Further, for the subsequent period, the original authority has correctly applied the formula to determine the eligibility of refund and those orders are on record produced by the assessee - In addition, the assessee have annexed detailed chart for computation of eligible refund for different quarters along with the appeal - The original authority will reconsider and apply the correct formula for the purpose of determining the refund claim of the assessee - Hence, the order challenged is set aside - Matter remanded.

- **CHENNAI CESTAT: Madras Cements Ltd Vs CCE-** Assessee is engaged in manufacture of cement and clinker - On verification of ER-1 returns as well as details of cement dispatched by them to SEZ furnished along with their returns, it was noticed that assessee had cleared cement without payment of duty claiming exemption under Notification 3/2004-CE but had shown in ER-1 returns as clearances made to SEZ - The department views that assessee is not eligible for benefit of Notification and have mis-declared the clearances in their ER-1 returns - The goods which are exempted as per the notification does not include cement - Therefore, contention of assessee that cement is impliedly exempted as per notification does not hold water - The contractor M/s. Driplex Water Engg. Ltd. has obtained a certificate from District Collector wherein it is shown that cement is to be supplied and is included in the list of goods exempted vide Notification 3/2004 - When the notification per se does not grant any exemption to cement, the certificate issued by District Collector cannot exempt the goods from payment of duty - No ground found to interfere with confirmation of demand or interest - As regards to penalty, assessee submitted that there was no intention to evade payment of duty and the exemption was availed only because the contractor produced the certificate issued by Collector - Penalty imposed under section 11AC is unwarranted and same is set aside: CESTAT - Appeal partly allowed.
- **CHENNAI CESTAT: CCE Vs Mercury Manufacturing Company Ltd** - The assessee, a SEZ/MEPZ filed refund claim towards duty paid on procurement of High Speed Diesel (HSD) oil from DTA namely M/s. Indian Oil Corporation Ltd. - It appeared to department that assessee had not followed the procedure laid down under Rule 30 of SEZ Rules, 2006 r/w Notification 19/2004-CE and also that they had not submitted the required documents prescribed under law - SCNs were issued proposing to deny the refund claim - Refund claim for period 8/2008 to 9/2008 was sanctioned and for the period 9/2004 to 5/2006 and 6/2006 to 12.4.2007 was rejected by lower authorities - The main contention for rejection of refund for the period upto 2007 is that the assessee had not furnished necessary documents to which the assessee has submitted that if given a chance the assessee would be able to furnish necessary documents - Both the appeals remanded to adjudicating authority for fresh decision - The adjudicating authority is directed to consider the issue of refund afresh - Matter remanded.
- **CHENNAI CESTAT: MAERSK INDIA PVT LTD Vs CST** - Assessee is registered with the department to provide services under category of clearing and forwarding agency service and BAS - During audit, it was noticed that assessee was availing exemption from service tax under Notification 4/2004-ST - Department was of the view that such exemption is restricted to those services which are consumed within the SEZ - Services provided by assessee ranges from logistics services, operating as steamer agents, equipment repair services and operating container freight station - International transportation of goods by sea requires that the goods should be stuffed into the seaworthy containers - The stuffing of cargo into container for international transportation can be undertaken either at the factory premises of exporter or at the Container Freight Station (CFS) nominated by Customs Department - In case cargo is to be stuffed into the container at the exporter's factory premises, exporter takes the delivery of empty container from assessee and stuffs the cargo into the container in presence of Central Excise officer at the factory and seals the container - The sealed container moves to the port and loaded on the vessel - In case of CFS stuffing option, the cargo is

transported from exporter's factory to CFS by the exporter and at the CFS in the presence of Customs officer, the cargo is stuffed into the container by assessee and then the containers are moved to the port for onward journey - These import/export cargo services provided by assessee to the SEZ units are definitely consumed by SEZ Unit - The denial of exemption alleging that these are not consumed entirely within the SEZ unit does not find favour - Taking note of Section 26 as well as Section 51 of SEZ Act, denial of exemption is unjustified - Further, Tribunal in case of Norasia Container Lines analyzed a similar issue and held that exemption is eligible - Accordingly, impugned order set aside.

- **BANGALORE CESTAT: Such Silk International Ltd Vs CCE, C & ST** - The assessee established a factory being a 100% EOU to manufacture and export of Silk Ties and Silk Fabric - In terms of the LOP granted on 06.10.1997, the assessee were permitted to set up the EOU for manufacture and export of the items produced by assessee - During the period in dispute the assessee imported capital goods which were duty free - Simultaneously, it imported duty free raw-material but it could not fulfill the complete obligations - Duty demand was raised on the capital goods & raw material - Hence, the present appeal.

Held - It is important to note that the Notification No. 52/2003 came into existence on 31.03.2003 where the condition for exemption from the duty of the capital goods was removed and after the date, the capital goods are also subjected to Customs duty - In the instant case, the capital goods were installed in the factory and were used primarily for the export of the goods - Therefore, the claim of the assessee pertaining to the capital goods where duty is not leviable is allowed - With respect to duty on raw materials, the assessee is liable to duly make payment - Hence, the order challenged is modified- Appeal partly allowed.

- **MAHARASHTRA ADVANCE RULING - MERIT HOSPITALITY SERVICES PRIVATE LIMITED** – The issue raised in this advance ruling relates to Canteen service to SEZ Unit - Applicant entered into a contract with a company (say, “B Ltd”) having its unit in SEZ area. The supply of food is done by applicant to the employees of SEZ unit – whether the applicant is eligible for benefit of zero rated supply – whether the applicant can claim that it is running a canteen/ restaurant in SEZ area hence no GST is applicable. The benefit of zero rated supply would be allowed to a domestic unit only if supply of goods or services to a SEZ unit or developer is only in respect of authorized operations as mentioned in the Letter of Approval of the Development Commissioner as per Section 15(9) of the SEZ Act - However in the case details provided by the applicant, it is not forthcoming whether ‘B Ltd’ is an authorized unit in SEZ as per Section 15 (9) of the SEZ Act and as to what are the authorized operations of 'B Ltd' in SEZ and whether supply of food to ‘B Ltd’ or its employees is covered under authorized operations as allowed/approved by the Development Commissioner. If it is not covered under authorized operations, then this supply of food by the applicant to SEZ employees would not be eligible for the benefit of zero rated supply - the applicant cannot claim that they are running a canteen/ restaurant in SEZ. Rather their service would be in the nature of outdoor catering service.

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.