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 Web: www.epces.in

AnandGiri
Dy. Director General

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EPCES CIRCULAR NO. 309

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.

Notification No. 22/2018- Central Tax (Rate) dated 6th August 2018

In this regard, please note that the Government of India vide Notification No. 22/2018- Central Tax (Rate) dated 6 August 2018, has further extended the exemption on intra-State supplies of goods and services or both received by a registered person from any unregistered supplier from whole of the central tax leviable under Section 9(4) of the Central Goods and Services Tax Act, 2017 till 30th September 2019.

Notification No. 23/2018 – Integrated Tax (Rate) 6th August, 2018

In this regard, please note that a notification has also been issued under the Integrated Goods and Services Tax Act, 2017 (IGST) wherein the exemption on inter-State supplies of goods and services or both received by a registered person from any unregistered supplier from whole of the integrated tax leviable under Section 5(4) of the IGST has been extended till 30th September 2019.

Notification No. 24/2015-2020 dated 08th August, 2018

Vide this notification, the central government amends Para 2.05 of Foreign Trade Policy 2015-2020 on Importer-Exporter Code. This notification leads to revision of Para 2.05 and details on the procedure have been shifted to para 2.08 of Handbook of Procedures. Copy of the said notification is attached for your reference.

Public Notice No. 27/2015-2020 dated 08th August, 2018

Vide this notice, DGFT has amended Para 2.08 and 2.14 of Handbook of Procedures on Importer-Exporter Code. Through this, the procedure for filing online application for IEC/Modification in IEC/e-IEC is laid down. IEC will henceforth be system generated and applicant will have the facility to take print out of IEC. Further, requirement of Digital Signature for submitting IEC applications is done away. Copy of the said notice is attached for your reference.

Judicial Pronouncements

- **HYDERABAD CESTAT:CCE & C Vs Dr Reddy Laboratories Ltd** - The assessee is a 100% EOU engaged in manufacture of bulk drugs and drug intermediates - It availed exemption under Notification No. 23/2003-CE as they were of the view that they had fulfilled the condition that the goods were manufactured wholly from the raw materials produced or manufactured in India - The assessee procured material like Methyl Iso Butyl Ketone, Hexane, Methanol, IsoproplAlchocol IP from dealers

- Thereafter, they imported the goods and sold to the assessee - The Revenue took a view that as the materials were imported they were not entitled to benefit of the notification - Duty demand was raised - However, the Comm. (A) set aside the order-in-original on grounds that goods bought from dealers were consumables & not raw materials - It relied on the Board's circular No. 614/5/2002-CX which clarified that the benefit of notification No. 8/97 should not be allowed if imported consumables are used - Hence, the present appeal by the Revenue.

Held - The issue at hand was whether the goods cleared to DTA which are manufactured using imported consumables, falls within benefit of notification 8/97 - The answer to this question is in affirmative - The circular No. 85/2001-CUS reversed the earlier Board circular which disallowed usage of imported consumables in manufacture - Moreover, the issue has been settled by SC in the case of Vanasthali Textiles Industries Ltd vs. CCE Jaipur & Premium Tools Pvt. Ltd wherein the exemption notification 8/97-CE was allowed in respect of the goods sold in DTA, even when the consumable was used which is not domestically manufactured - Therefore, there is no restriction that the consumables which are used in the manufacture also have to be domestically manufactured - Hence, the benefit of notification No. 8/97 is available - Furthermore, whether consumables would be covered within the definition of raw materials - In the present case, this question is answered against the assesse - The products in question are not consumables - It is well established principle that any exemption notification should be strictly construed against the person who is claiming it - Here, it is for the assessee to prove that the goods in question are consumables and not raw material in the process of manufacturing of final products which burden they failed to discharge - Hence, the benefit of the notification no. 23/2003-CE is not available to the assessee - The order challenged is set aside - Revenue's appeal allowed.

- **DELHI CESTAT: Parasrampuria International Vs CCE** - Assessee, a 100% EOU engaged in manufacture of Polyester Cotton yarn and Polyester blended yarn - The assessee, in addition to clearing finished products, 'spun yarn' for export, were also making DTA clearances of cotton waste - It is alleged that value and quantity of DTA clearances had been under-declared and on this basis, a SCN was issued to assessee - After issue of SCN dated 04.09.2006, assessee approached the Settlement Commission which settled the dispute - Accordingly, assessee paid differential duty along with simple interest @ 10% - After order of Settlement Commission, Revenue proceeded to re-determine the eligibility of assessee for the concession rate of duty in respect of DTA clearances - The Revenue added the quantum of under-valuation of cotton yarn, as settled by Settlement Commission, to the value of clearances already made during disputed period and noticed that over the ceiling of 50% of FOB value was already breached - For the value of clearances in excess of ceiling, Revenue demanded the differential duty without the benefit of concession under Notification 23/2003 - Towards this, SCN dated 01.12.2006 was issued which covered the same period of dispute settled by Settlement Commission.

  Assessee argued that the second SCN dated 01.12.2006 covering the same period of dispute as the initial SCN dated 04.09.2006 cannot be held valid for the extended period of limitation since the allegation of under-valuation was already known to Revenue - Revenue was already in a position to re-compute the overall ceiling of DTA clearances by adding the quantum of under-valuation detected, but Revenue failed to do so - For such re-computing and raising the revised demand, a further SCN dated 01.12.2006 has been issued in which the allegation of suppression has been made once again - Decision of Supreme Court in M/s Nizam Sugar Factory 2006-TIOL-56-SC-CX will be applicable and Revenue will be precluded from raising the allegation of suppression in the SCN dated 01.12.2006 - Consequently, the demand of duty raised in SCN dated 01.12.2006 is required to be restricted to that falling within the normal period of limitation - The mandatory penalty equal to the duty demanded also will not be liable to paid - However, demand for interest on the re-computed demand as well as penalties imposed on Director as well as Assistant. General Manager are upheld - Assessee's appeal partly allowed.

- **MAHARASHTRA AAAR: Kansai Nerolac Paints Ltd -** KrishiKalyan Cess (KKC) accumulated credit appearing in the service tax return of Input Service Distributor (ISD) as on 30 June 2017, and carried forward in the electronic credit ledger maintained under CGST Act, 2017 cannot be allowed as admissible Input Tax credit - FAQ issued by CBIC has clarified against Sl. No. 112 that ITC of KKC cannot be carried forward under GST - Order of Advance Ruling Authority maintained and appeal dismissed.

- **CHENNAI CESTAT - Vision Pro Event Management Vs CCE & ST -** Assessee is engaged in rendering "Event Management Service" - During audit, it was noticed that the assessee had rendered service to some SEZ Unit and claimed exemption under Notification 4/2004-ST and had not discharged service tax on the value of services realized by them - It appeared that the assessee is not eligible to avail the exemption under the said Notification - The intention of Notification as well as Section 26 of SEZ Act, is to exempt the taxes/duties payable on goods and services provided to SEZ unit/developer, the supply of goods and services to SEZ being deemed exports - The assessee provided event management services to SEZ unit - The SEZ unit was a co-sponsor for event which helped advertising of product of SEZ - The event was held outside the SEZ unit - Even if the event is held outside, since the services were for advertisement of product of SEZ, the services provided is to be considered as consumed within SEZ - It also needs to be mentioned that for availing the services, SEZ has to get these services approved by Development Commissioner - The department then cannot contend that these services are not eligible for refund since these are not consumed within SEZ - Denial of benefit is unjustified: Appeal Allowed

- **MUMBAI CESTAT - Shriram Grape Growers Co-Operative Society Ltd Vs CC**- Appellant had admittedly not fulfilled its export obligation mandated under the '100%EOU scheme' and was proceeded against for recoveries of duties foregone at the time of import and on procurement from domestic market - appeal to CESTAT.
  Held: Duty liability on imported or indigenously procured capital goods is erased by sheer efflux of time - appellant has been functioning as an export-oriented unit since 1992 and capital goods procured in that year should be eligible for depreciation over the period that the unit has been in existence - as on the date of the impugned order, the unit has been in existence for over a decade and by application of the straight-line depreciation approved by CBEC, the value of capital goods would be 'NIL' and consequently no duty liability would arise - letter of permission (LOP) had been issued for a period of 10 years and appellant has not sought any renewal thereafter -unit should have been appropriately de-bonded under the relevant rules and such de-bonding would have set in motion the process of duty recovery in accordance with the exemption notification - impugned order has no observations or findings on this score - on the date of initiating proceedings against the appellant, a different regime was in place and that regime relied upon the touchstone of net foreign exchange positive - considering the value of imports effected by the appellant, the obligation stands fulfilled - impugned order had failed to take notice of this - confirmation of duty and imposition of penalties do not appear to have emanated from the intent as well as the wording of law - impugned order set aside and appeal allowed.

- **WEST BENGAL AAAR -Global Reach Education Services Pvt Ltd -** The appellant company is engaged in promoting courses offered by foreign universities in India - It approached the AAR to know the GST applicable on such services - The AAR held such service to not be Export of Service & that they would be taxable under GST - It also held the appellant to be an intermediary for foreign universities - While the appellant does not contest the first ruling, the present appeal is filed against the second one.
  Held - The appellant promotes the courses of the university, finds suitable prospective students and in accordance with university procedures & requirements, recruits & helps recruit suitable students - Such activities squarely make it an intermediary as per Section 2(13) of the IGST Act - Hence the findings of the AAR are upheld: Appeal dismissed

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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.