

EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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EPCES CIRCULAR NO. 314

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. 43/2018 – Central Tax dated 10thSeptember, 2018

As per the captioned notification, due dates for filing quarterly GSTR-1 returns for the period from July 2018 to March 2019 by a registered person having aggregate turnover below INR 1.5 crore in FY 2017-18 or 2018-19 has been notified as below:

Sl. No.	Tax Period	Due date
1	Jul 2017 - Sep 2018	31-Oct-2018
2	Oct - Dec 2018	31-Jan-2019
3	Jan - Mar 2019	30-Apr-2019

- However, taxpayers registered in the State of Kerala or having principal place of business in Kodagu district of Karnataka or Mahe in Puducherry, the due date for the period July 2017 to September 2018 shall be 15 November 2018; and
 - Further, for taxpayers who have obtained GSTIN under special scheme for migration as per Notification No. 31/2018 – Central Tax dated 6 August 2018, the due date for period from July 2017 to September 2018 shall be 31 December 2018.
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Notification No. 44/2018 – Central Tax dated 10thSeptember, 2018

As per the captioned notification, the government has notified the following:

- Due date for filing of monthly GSTR-1 returns for the period from July 2017 to September 2018 by a registered person having aggregate turnover above INR 1.5 crore in FY 2017-18 or 2018-19 shall be 31st October 2018;
 - For subsequent period, from October 2018 to March 2019 due date shall be 11th of the succeeding month; and
 - Taxpayers who have obtained GSTIN under special scheme for migration as per Notification No. 31/2018 – Central Tax dated 6 August 2018, the due date for the period from July 2017 to September 2018 shall be 31 December 2018
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Notification No. 45, 46 and 47/2018 – Central Tax dated 10thSeptember, 2018

Videthe captioned notification, the government has extended the due date of filing Form GSTR-3B for taxpayers who have obtained GSTIN under special scheme for migration as per Notification No. 31/2018 – Central Tax dated 6 August 2018 shall be 31st December 2018.

Notification No. 48/2018 – Central Tax dated 10th August, 2018

Vide the captioned notification, the government has amended the Rule 117 of the CGST Rules, 2017 which deals with transition of credit in Form GST Tran-1, by inserting a sub-rule (1A) which empowers the Commissioner to extend due date of submitting Form GST Tran-1 to 31st March 2019 in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal;

Further, due date for filing of Form GST Tran-2 has been extended to 30th April 2019 in respect of taxpayers who opts to file GST Tran-1 as per newly inserted sub-rule (1A) as mentioned above.

Notification No. 49/2018 – Central Tax dated 13th September, 2018

As per the captioned notification, the Government has notified GST audit report in Form GSTR-9C. Important details to be furnished in the said form are summarised herein below:

- Reconciliation of turnover declared in audited Financial Statement vis-à-vis Annual Return;
- Reconciliation of tax paid;
- Reconciliation of Input Tax Credit (ITC);
- Reconciliation of ITC declared in Annual Return (GSTR-9) with ITC availed as per audited Financial Statements; and
- Auditor's recommendation on additional liability in cases involving discrepancies being reported.

Copy of the said notification has been enclosed for reference.

Notification No. 50/2018 – Central Tax dated 13th September, 2018

Vide the captioned notification, the provisions of Tax Deducted at Source (TDS) have been made effective from 1st October 2018. Further, following class of persons have also been notified to deduct TDS in addition to the one's already specified:

- Authority/board/any other body, set up by an Act of Parliament/ State Legislature or Government establishment with fifty-one per cent or more participation by way of equity or control, to carry out any function;
 - Society established by the Central Government/State Government/Local Authority under the Societies Registration Act, 1860 (21 of 1860); and
 - Public sector undertakings.
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Notification No. 51/2018 – Central Tax dated 13th September, 2018

Vide the captioned notification, the Central Government notifies for the date i.e. 1st October 2018 when the provisions of Collection of Tax at Source (TCS) shall come in force.

Trade Notice No. 30/2018-19 – Directorate General of Foreign Trade dated 13th September, 2018

Guidelines to apply for MEIS under the System Driven approval mechanism for MEIS applications for shipping bills from EDI ports.

The directorate would start the process of system driven approval of the MEIS claim applications in respect of exports made through EDI shipping bills. The procedure for MEIS applicants/exporters are being outlined below:

- The process of logging into the E com module would be the same as before. However, after entering the application, the applicants are prompted to select whether their MEIS claim is for

Project Exports or not. They can tick the relevant box in case of Project Exports. These applications would be submitted, but would be processed at DGFT HQs.

- The rest of the procedure is same for EDI shipping bills. However, there are certain cases where Online Module would not accept the submission in case of some discrepancies.
 - The applicant would also select the mode of dispatch of the duty credit scrip whether they want to collect it from counter or to be sent to them by post at the address specified.
 - After submission, the online module segregate the applications into Manual and Automated applications. The applications in which all shipping bills meet the prescribed requirements would be approved by the system automatically at the end of the submission process.
 - The system approved MEIS applications would be available at the DGFT regional office duly attested and dispatch to the applicant as per the option selected.
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Judicial Pronouncements

- **MUMBAI CESTAT - Accutech Engineering Pvt Ltd Vs CCE**– Inputs cleared as such without reversing CENVAT credit to 100% EOU. Demand was confirmed and equivalent penalty imposed by the department. The appellant contending that entire exercise is revenue neutral as consignee was entitled to exemption under notification 22/2003-CE in respect of procurement of inputs. There is no doubt that consignee of goods being a 100% EOU is entitled to exemption from all duties on procurement of inputs, however, such exemption can be availed of by the manufacturer of inputs. A third party, appellant in the present case, cannot take it upon himself to accord that exemption through availment of CENVAT credit. Revenue neutrality may apply to goods manufactured by appellant but it would tantamount to exemption from duty if allowed on inputs procured by them. Reversal of credit u/r 3(5) of CCR is inescapable. So appeal is dismissed.
- **Customs – Amarnath Overseas Ltd Vs Commissioner of Customs**-The assessee, a 100% EOU was converted into SEZ unit after following appropriate procedure and obtaining permission of the competent authority. The question to be deliberated before the Tribunal was whether the export obligation period has been extended and whether the assessee's have fulfilled the export obligation within such extended period and have also achieved positive NFE for the relevant period. The Tribunal in its earlier order remanded the matter to the original authority. Subsequently, the Adjudicating Authority confirmed the demand after taking into consideration of letter by the Development Commissioner, wherein it was stated that the Development Commissioner has extended the LOA period. It was held that before expiry of the extended period of LOP it is neither open to the Development Commissioner nor to the customs authorities to treat that the assessee had ceased to be a 100% EOU after the expiry of the first block of five years and consequently the question of enforcing the penal liability before the expiry of the extended period does not arise at all. Likewise, this issue was deliberated & ratio was laid down in the case of Mavi Industrial Ltd. vs. Commissioner of Customs passed by the Bombay HC. Hence, the order challenged is set aside
- **ALLAHABAD CESTAT -NCS Pearson India Pvt Ltd Vs CC&CE**- The assessee is engaged in providing electronic tests delivery services to certain organizations. On audit, it was observed that services were actually delivered to and consumed by various "Test Centres" located in India on behalf of a US entity. The Revenue opined that the services rendered by the party on behalf of US entity cannot be considered as export and are chargeable to service tax under section 66 of the FA, 1944. Duty demand was raised by the department. The Adjudicating Authority confirmed the demand along with interest It was held that the issue is no longer res integra in view of Microsoft corporation (India) & Paul Merchants Ltd. v. CCE, Chandigarh. It is concluded that the services are delivered or used outside India and thus are export of services. In these cases, although, there was

a company registered in India and rendered services in India in terms of an agreement with the service recipient which was outside India, the services has to be held as export of services, having been delivered outside India. Hence, the order under challenge is set aside.

- **FILCO TRADE CENTRE PVT LTD Vs UNION OF INDIA-** CGST Act, 2017 - Constitutional validity of clause (iv) of sub-section (3) of section 140 of the CGST Act which limits the eligibility of a first stage dealer to claim credit of the eligible duties in respect of goods which were purchased from the manufacturers prior to twelve months of the appointed day. Transitional arrangements for input tax credit. It was held that the benefit of credit of eligible duties on the purchases made by the first stage dealer as per the then existing CENVAT credit rules was a vested right. By virtue of clause (iv) of sub-section (3) of section 140A, such right has been taken away with retrospective effect in relation to goods which were purchased prior to one year from the appointed day. This retrospectivity given to the provision has no rational or reasonable basis for imposition of the condition. The reasons cited in limiting the exercise of rights have no co-relation with the advent of GST regime. Same factors, parameters and considerations of “in order to co-relate the goods or administrative convenience” prevailed even under the Central Excise Act and the CENVAT Credit Rules when no such restriction was imposed on enjoyment of CENVAT credit in relation to goods purchased prior to one year - though the impugned provision does not make hostile discrimination between similarly situated persons, the same does impose a burden with retrospective effect without any justification. Hence the assessee petitions are allowed.
- **DELHI CESTAT - DELHI-I Vs TECHNIP INDIA LTD-** Calculation of refund of the Cenvat Credit on the basis of the formula prescribed under Rule 5 of the CCR, 2004. Revenue aggrieved by grant of excess refund. It was held that the refund has been sanctioned by determining the same in terms of the given formula, for the quarter for which such refund claim have been filed - the condition which is sought to be imposed by the Revenue for restricting such refund claim to an amount which is equal to be duty payable on export goods, is without justification, in the absence of any such restricting clause in Rule 5 of the CCR, 2004 - the order passed by the Commissioner (Appeals) is sustained and the appeal filed by Revenue is rejected.

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 Chairman EPCES.