# EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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## EPCES CIRCULAR NO. 315

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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### Order No. 4/2018 – GST dated 17th September, 2018

As per the captioned order, the government hereby extends the period for submitting the declaration in FORM GST TRAN-1 till 31st January 2019, for the class of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal.

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### Circular No. 33/2018 – Customs dated 19th September, 2018

As per the captioned circular, the government has also authorized the Cost Accountants to provide the requisite certificates as envisaged under Circular no. 12/2018-Customs dated 29th May 2018. It may be recalled that vide circular 12/2018-Customs, board has provided interim solution to the problem faced by the exporters whose records were not transmitted from GSTN to Customs due to mismatch in GSTR 1 and GSTR 3B. The interim solution was subject to submission of CA certificates by the exporters as given in Circular 12/2018-Customs and post refund audit scrutiny. So now the government has also authorized Cost Accountants along with the CAs to provide requisite certificate.

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### Notification No. 52/2018 – Central Tax dated 20th September, 2018

As per the captioned notification, all E-commerce operators excluding agents are required to collect half percent Tax at Source on net value of intra-state supplies made through other suppliers with respect to which consideration is received by the operator.

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### Notification No. 02/2018 – Integrated Tax dated 20th September, 2018

As per the captioned notification,all E-commerce operators excluding agents are required to collect one percent Tax at Source on net value of inter-state supplies made through other suppliers with respect to which consideration is received by the operator.

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### Judicial Pronouncements

- **AHMEDABAD CESTAT –Radha Trading Vs CC**–The appellants herein are importers who purchased goods from an SEZ unit. Such goods were seized by the DRI on allegation of under-valuation. Demand for differential duty was raised. The appellants sought provisional release of the goods. However, a condition was imposed, directing furnishing of bond of re-determined assessable value as well as bank guarantee covering the entire differential amount. The appellants were also directed to pay 25% of the re-determined assessable value. It was held that the appellants seek that a lenient view be taken in light of the Board Circular No. 35/2017-Customs. However, the Circular differentiates between cases involving mis-declaration and those which do not. The modus operandi of the appellants here shows that they routed their import through the SEZ unit with intent of under-valuing the goods. The import negotiations were carried out between the appellants & the exporter but the import was routed through an intermediary in the SEZ unit. Hence in view of such attempt to defraud, no lenient view can be taken for

provisional release. Although the conditions imposed on the appellants do not prima facie appear to be harsh, considering the decision of the Delhi High Court in Mala Petrochemicals & Polymers the quantum of bank guarantee is revised to cover 100% of the differential duty. Other conditions will continue.

- **West Bengal AAR – Indian Oil Corporation Ltd**-The Applicant exports HSD, ATF and other refined petroleum products to Nepal. Whether GST paid on the railway freight for transportation of the above goods from its Haldia Refinery to its export warehouse at Raxaul can be availed as Input Tax Credit under the GST Act. Whether the products transported and supplied by the Applicant are "non- GST products", "non-taxable supplies" "exempt supplies" or "zero rated supply of goods". It was held thatthe transfer of ATF and other non-taxable supplies from Haldia Refinery to Raxaul Depot are not export of goods in terms of section 2(5) of the IGST Act, but exempted supplies from the West Bengal Unit to the Bihar Unit of the Applicant, who are distinct persons in terms of section 25(4) of the Act. Sections 16(1)(a) and 16(2) of the IGST Act are, therefore, not applicable. The Applicant cannot claim credit of the GST paid on the input services like railway freight on ATF and other non-taxable supplies from West Bengal to his Bihar Unit.

- **Rajasthan AAR - CHAMBAL FERTILISERS & CHEMICALS LIMITED**- Whether in the case of import of goods on CIF basis, the applicant-importer is liable to pay GST on the component of Ocean freight paid by the foreign supplier to the shipping company. Whether in the case of import of goods on FOB basis the applicant-importer, for the purpose of determination of value of goods for the payment of IGST on import of goods is required to exclude the value of the component of Ocean freight paid by the applicant to the foreign shipping entity. It was held that the services supplied by the foreign shipping entity of transportation of goods in a vessel to a port in India is an 'interstate supply' in terms of section 7 of the IGST Act, 2017, hence, IGST is leviable on the same under Section 5 of the Act – as per the Notification No. 10/2017-Integrated Tax (Rate), in the case of import of goods on CIF basis, the Applicant is liable to pay GST on the component of Ocean freight paid by the foreign supplier to the shipping company. Regarding exclusion of any component of expenditure upon imported goods (Ocean freight) while determining their value at the time of import, the same falls beyond the purview of Section 97 of CGST Act, 2017 as valuation of imported goods is to be done by the Customs Authority under the Customs Act, 1962 and this authority is not empowered to decide on the issue of valuation of imported goods.

- **CHENNAI CESTAT - Vijay Television Private Ltd Vs CST** - Assessee is engaged in number of services, inter alia broadcasting service and video tape production service. As per the agreement STAR L appointed and engaged the assessee as their exclusive sales agent for solicitation of advertising, related air time and programme sponsorship on the television channel from advertisers, collection and remittance of advertisement fees. For these activities, assessee was paid commission by STAR L. Department took the view that assessee is required to discharge service tax liability on these commission amounts under category of BAS. The services in question are nothing but solicitation of advertising, related air time for which assessee receive a commission, hence the activity would fall within the fold of BAS. However, notwithstanding the contentions put forth by revenue that the conditions of Rule 3 of Export of Services Rules, 2005 are not fully satisfied since services are provided only within India, this controversy has now been fully settled by the case laws of higher appellate forums which have consistently held that if other requirements of Rule 3 are satisfied and the only niggle is that the services have been provided in India, this should be considered as 'Export of Service', notwithstanding the Board's circulars. Impugned services provided by assessee to STAR L will have to be treated as 'Export of Service' and hence there would be no tax liability on the same. This being so, demand with interest thereon cannot sustain and is set aside. In respect of remaining demand alleged to be ineligible credit taken, these relate to Mediclaim and Accident Insurance Policy taken for the employees. The issue is amply covered by Tribunal decision in *Stanzen Toyotetsu India (P) Ltd.* where the Karnataka High Court held that credit on Group Insurance Policy taken by assessee has to be construed as activities relating to business and hence credit is to that extent is permissible This being so, the demand with interest and also penalty of equal amount imposed will also not sustain and are set aside.

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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 Chairman EPCES.