EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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No.EPC/SEZ/AM-18
October 4, 2018

EPCES CIRCULAR NO. 316

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. 65/2018 – Customs dated 24th September, 2018

Vide the captioned notification, the Government of India has further extended the exemption from Integrated Tax and Compensation Cess for Import of goods by EOU/STPI/EHTP till 1st April 2019.

SEZ (Amendment) Rules, 2018

The Central government has notified SEZ (Amendment) Rules, 2018on 19th September, 2018 in order to amend Special Economic Zones, Rules 2006. Copy of the said rules are enclosed for your reference.

Notification No. 35/2015-20 dated 26th September, 2018

As per the captioned notification, the Central Government has amended the Foreign Trade Policy 2015-20 to extend the exemption from applicability of Integrated Goods and Services Tax (IGST) and compensation cess upto 31st March 2019 under the following schemes:

- Advance Authorization Scheme (AA)
- Export Promotion Capital Goods Scheme (EPCG)
- Export Oriented Units Scheme (EOU)

Judicial Pronouncements

- **MUMBAICESTAT - MOHIT ISPAT LTD Vs COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, GOA**– The Appellant is seeking complete waiver of penalty, imposed for availing ineligible credit against payment of Education Cess and Secondary & Higher Education Cess on counter veiling duty (CVD). It was held that the availing of Education Cess and Secondary Cess and Higher Education Cess and viz-a-viz Cenvat credit can only be considered as bonafide mistake in not knowing the change of rule and the same cannot be treated as suppression of fact or mis-statement etc. as appellant have paid the entire duty demand amount by way of Cess which were no more leviable. As such the conduct of appellant can never be treated as suppression of fact, wilful misstatement of fraud or violation of statutory provision to invoke extended period and impose fiscal penalty on the appellant. Hence the appeal is allowed.

- **DELHI CESTAT** - **CGST & CE Vs Continental Engines Ltd -** The assessee is a 100% EoU engaged in manufacture & export of Automotive components - It procured 'Casting Articles' from a sister concern which is a DTA unit - It paid Excise duty on such articles & availed credit of such duty paid - It later claimed refund of Cenvat credit u/r 5 of CCR 2004 in respect of goods exported - Such claim was rejected on grounds that the assessee was not obliged to pay Excise duty on goods procured from DTA unit - Hence no credit could be availed of Excise duty paid on inputs or capital goods on which exemption is available under Notification No 22/2003 - It was also held by the Department that the provisions of Section 51(1A) of the CEA 1944 were applicable to the case & that they prevailed over the provisions of Circular No 799/32/2004-CX dated 23.09.2004 - The Comm.(A)

reversed such findings.Held -The issue stands settled in the assessee's favour in the assessee's own case, wherein the High Court held that the 100% EoU is entitled to take cenvat credit on goods/inputs procured in the industry - Also when they were not in a position to utilise the same, they are entitled for benefit of refund u/r 5 of CCR 2004 - Hence the O-I-A in question warrants no interference. Appeal dismissed

- **GUJARAT HIGH COURT - WILLOWOOD CHEMICALS PVT LTD Vs UNION OF INDIA -** Petition challenging constitutional validity of Section 140(1) CGST Act, 2017 and vires of Rule 117 of the CGST Rules, 2017.Petitioner sought to declare Section 140(1) of the CGST Act as unconstitutional as this proviso limits the right of a dealer to claim carry forward the input tax credit. Petitioner submits Rules 117(which prescribes the time limit for making a declaration of available CENVAT / ITC as on 30th June 2017)as ultra vires the Act and such time limit should be read as directory and not mandatory.

  It was held that the combined effect of provisos to Section 140(1) of the CGST Act is that a dealer who fails to issue necessary prescribed forms in support of inter-State sales, branch transfers or export sales would not be able to claim credit of the taxes. However, as and when such forms are furnished, the amount would be refunded to the dealer. As per the main provision, credit would be available on the amount of VAT and Entry Tax carried forward in the return. As per the further proviso, such credit to that extent would not be transferred when necessary declarations are not furnished by the dealer. The proviso thereafter however ensures that as and when declarations are filed, the amount equivalent to credit specified in the second schedule would be refunded to the dealer. We do not find any major change in the effect of late production of the forms by a dealer in the present statutory provisions; as compared to the earlier position nor the statutory provisions deny the benefit of such credit, even where necessary declarations are furnished. Thus, no existing or vested right can be said to have been taken away.

  The sub-rule (1) of Rule 117 has prescribed, besides other things, the time limit for making declaration in the prescribed form for every dealer entitled to take credit of input tax under Section 140. Sub-rule [1] of Rule 117 thus applies to all cases of credits which may be claimed by a registered person under section 140 of the Act and is not confined to sub-section [3]. This plenary prescription of time limit within which necessary declarations must be made is neither without authority nor unreasonable. Combined effect of the powers conferred to subordinate legislature under sub-sections [1] and [2] of Section 164 of the CGST Act would convince us that the prescription of time limit under sub-rule [1] of Rule 117 of the CGST Rules is not ultra vires the Act. When the entire tax structure of the country is being shifted from earlier framework to a new one, there has to be a degree of finality on claims, credits, transfers of such credits and all issues related thereto. The petitioners cannot argue that without any reference to the time limit, such credits should be allowed to be transferred during the process of migration. Any such view would hamper the effective implementation of the new tax structure and would also lead to endless disputes and litigations - merely because the Rule 117 prescribes a time frame for making a declaration, such provision cannot necessarily be held to be directory in nature and must depend on the context of the statutory scheme – the assessee petitions are dismissed.

- **MADRAS HIGH COURT - TARA EXPORTS Vs THE UNION OF INDIA -** GST is a new progressive levy. One of the progressive ideal of GST is to avoid cascading taxes. GST Laws contemplate seamless flow of tax credits on all eligible inputs. The input tax credits in TRAN 1 are the credits legitimately accrued in the GST transition. The due date contemplated under the laws to claim the transitional credit is procedural in nature. In view of the GST regime and the IT platform being new, it may not be justifiable to expect the users to back up digital evidences. Even under the old taxation laws, it is a settled legal position that substantive input credits cannot be denied or altered on account of procedural grounds. The writ petition is disposed of, with a direction to the respondents either to open the portal, so as to enable the petitioner to file the TRAN 1 electronically for claiming the transitional credit or accept the manually filed TRAN 1 and allow the input credits, after processing the same, if it is otherwise eligible in law. Considering the facts and circumstances of this case, the Court has passed the above order and therefore, it shall not be a precedent.

- **KARNATAKA HIGH COURT - M/s RADIALL INDIA PVT LTD Vs UNION OF INDIA** - Denial of rebate of duty paid through cenvat account on export of goods which were cleared for the units located in SEZ. When the fact of export by way of supplying to 'SEZ' unit is not in dispute and the fact of payment of duty by debiting the CENVAT account is also not in dispute, there is no question of denying one of the reliefs viz. the Rebate of duty u/R.18 or Export without payment of duty u/R.19, which ought to have been allowed or the rebate of cash refund when once the duty has been paid by debit to CENVAT account u/R.18 ought to have been given. Both the reliefs could not have been simultaneously denied to the assessee. The tax gatherers though expected to protect the interest of Revenue are at the same time bound in law to act fairly and in accordance with law. They are not allowed to take a distorted and skewed view of the law by interpreting one Rule or the other while forgetting the effect of applicability of the relevant Rules to the facts and circumstances of the case. The present case is a glaring example of such misuse of power by the authorities below. The writ petition is allowed with exemplary costs quantified at Rs.50,000/- to be paid by each of the three authorities below, which will be remitted to 'Prime Minister's Relief Fund' for meeting the costs of relief to sufferers of natural disasters.The writ petition is allowed in favour of assessee.

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.