

EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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EPCES CIRCULAR NO. 317

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. 53/2018 – Central Tax dated 9thOctober, 2018

As per the captioned notification, the Central Government amended Rule 96(10) of CGST Rules, 2017 w.e.f. 23rd October 2017, which is as follows:

“ The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of Notification No. 48/2017-Central Tax, dated 18th October, 2017, or Notification No. 40/2017-Central Tax (Rate) dated 23rd October, 2017, or Notification No. 41/2017-Integrated Tax (Rate), dated 23rd October, 2017, or Notification No. 78/2017-Customs, dated 13th October, 2017, or Notification No. 79/2017-Customs, dated 13th October, 2017.”

Notification No. 54/2018 –Central Tax dated 9thOctober, 2018

As per the captioned notification, the Central Government amended Rule 89(4B) and Rule 96(10) of CGST Rules, 2017, which is as follows:

Rule 89(4B):“Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has –

(a) received supplies on which the supplier has availed the benefit of Notification No. 40/2017-Central Tax (Rate), dated 23rd October, 2017, or Notification No. 41/2017-Integrated Tax (Rate), dated 23rd October, 2017,

(b) availed the benefit of Notification No. 78/2017-Customs, dated 13th October, 2017, or Notification No. 79/2017-Customs, dated 13th October, 2017,

the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.”.

Rule 96 (10):“The persons claiming refund of integrated tax paid on exports of goods or services should not have -

(a) received supplies on which the benefit of Notification No. 48/2017-Central Tax, dated 18th October, 2017, except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or Notification No. 40/2017-Central Tax (Rate), dated 23rd October, 2017, or Notification No. 41/2017-Integrated Tax (Rate), dated 23rd October, 2017, has been availed; or

(b) availed the benefit under Notification No. 78/2017-Customs, dated 13th October, 2017, or Notification No. 79/2017-Customs, dated 13th October, 2017, except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.”.

Circular No. 37/2018-Customs dated 09th October, 2018

Cases where IGST refunds have not been granted due to claiming higher rate of drawback or where higher rate and lower rate were identical

Vide the captioned circular, CBIC has replied to numerous representations received from exporters regarding cases where IGST refunds have not been granted because higher rate of drawback has been claimed or where higher rate and lower rate were identical.

The ministry has re-iterated the legal provisions related to Drawback claims and has clarified that exporters had availed option to take drawback at higher rate in place of IGST refund out of their own volition. Considering the fact that exporters have made requisite declarations as per Drawback Rules while claiming higher rate of drawback, they have consciously relinquished their IGST/ITC Claims. It would not be justified to allow exporters to avail IGST Refund after initially claiming benefit of higher drawback.

Judicial Pronouncements

- **DELHICESTAT -HI LEX INDIA PVT LTD Vs COMMISSIONER OF CUSTOMS-NEW DELHI-** Import of goods from principle for manufacture of goods and sale thereof. It was held that this import had been affected since 2009 and 1998 when first such import was made in year and the transaction value was examined by the Special Value Branch wherein it was categorically concluded that imported price is not influenced by the relationship as per Rule 2(2) of the Customs Valuation Rules, 2007. In the impugned order, the Commissioner (Appeal) has not given any categorical finding as to how the relationship had influenced the transaction value especially when it is on record by way of affidavit that the LTA agreement of 2005 and 2013 have not changed. The pattern of sale transaction the terms and conditions in the two LTAs are same - the NIDB data will not be relevant in this case when it is apparent from the facts on records that there is no import / sale of the products in India. When the Revenue has accepted the previous orders of 2006, 2009 and 2012 and has not challenged the same before any higher forum the valuation adopted by the Appellant, the same attended finality as there was no challenge in to those orders. It is trite that the assessable value can't be rejected merely on the grounds of NIDB data, the impugned order is set aside by restoring the order passed by the primary Adjudicating Authority. Hence the appeal is allowed.
- **GUJARAT ADVANCE RULING - M/s SAPTHAGIRI HOSPITALITY PRIVATE LIMITED** - Classification of service provided by Co-Developer in non-processing zone of SEZ. It was held that rendering of services from SEZ to DTA does not qualify as Zero rated supply in terms of Section 16 of IGST Act, 2017. Therefore, SEZ Unit / developer making inter-state supply to DTA would be liable to pay IGST under IGST Act. Therefore, supply of services by the SEZ unit or Developer from SEZ to DTA would be covered under the normal course of supply. Accordingly the applicant will be liable to pay GST at the prescribed rates for supplies made to the clients located outside the territory of SEZ. The supplies made by applicant, a SEZ Co-developer, from their hotel located in non-processing zone of SEZ to the clients located in SEZ for authorized operations will be treated as zero rated supplies under the provisions of Section 16(1) of Integrated Goods and Service Tax Act, 2017 r/w Section 2(m) of SEZ Act, 2005.
- **DELHI CESTAT - CCE & ST Vs Pinnacle Infotech Solutions** - Dispute is regarding the grant of refund in terms of Notification 12/2013. Said notification provides for exemption in form of refund, of any service tax paid by SEZ unit in respect of service used by them for their authorized operations. The service tax has been paid for lease of the land on which assessee unit is situated within SEZ. Since, the operation is approved by LOA, the main condition of notification stands satisfies. The lower authority has allowed refund by holding that long term lease for more than 90 years would also fall within the scope of Renting of Immovable Property Services. It is further noted that the bond also

has been executed and accepted by competent authority. Even though the lease agreement has been entered prior to such date, it is seen that the refund claim for same in terms of Notification 12/2013 has been preferred only after the execution of Bond. Hence, there is no infirmity in order passed by lower authority.

- **GUJARAT HIGH COURT – RELIANCE INDUSTRIES LIMITED Vs UNION OF INDIA** - Notice for recovery of Central Sales Tax on the ground that the petitioner was not entitled to reimbursement of CST on goods purchased from DTA which were used in manufacture of final products and cleared in DTA. It was held that the Foreign Trade Policy entitled an EOU to reimbursement of CST on its purchases made from DTA units. This provision did not make any distinction between the consumption of the goods purchased from DTA for production of goods meant for export or for domestic clearances. The procedure laid down by the Government of India for granting reimbursement of central sales tax, cannot contain a condition which will curtail the right granted in the substantive provision contained in the Foreign Trade Policy. The handbook of procedure cannot override the substantive provisions made in the foreign trade policy. The order in original would not survive and set aside. Hence the assessee's petition is allowed.
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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.