

EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

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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.

Press Release dated 18th October, 2018

Last date for availing Input Tax Credit

Vide press release issued on 18th October 2018, the government has clarified on the issue “Last date to avail input tax credit(ITC) in respect of invoices or debit notes relating to such invoices pertaining to period from July’17 to March’18”.

The key points are as follows:

- I. ITC could be availed on self-assessment basis even if such ITC is not appearing in FORM GSTR-2A and the last date to avail such ITC in respect of invoices issued within the period July’17 to March’18 shall be the due date of filing the return for the month of September i.e. 20th October 2018. Also, ITC is to be availed on debit notes up to the said date even when such debit note pertains to an invoice which was issued during the said period.
 - II. Facility to view the invoices uploaded by the corresponding supplier is just a facilitation measure and does not impact the ability to avail ITC on self-assessment basis subject to other conditions prescribed.
 - III. There is no such apprehension that ITC can be availed only on the basis of reconciliation between FORM GSTR-2A and FORM GSTR-3B conducted before the due date for filing of return in FORM GSTR-3B for the month of September, 2018 as the same can be done after filing of return also.
 - IV. For taxpayers notified under N.No. 47/2018 – Central Tax, the extended date i.e. 31st December, 2018 or the date of filing of annual return whichever is earlier will be the last date for availing ITC in relation to the said invoices issued by the corresponding suppliers during the period from July’17 to March’18
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Press Release – Ministry of Finance dated 21st October, 2018

In addition to the above mentioned press release, the Central Government has, vide the captioned press release, extended the last date for furnishing return in the Form GSTR-3B for the month of September, 2018 upto 25th October, 2018. The extension of the said due date also implies that the last date for availment of ITC for the period July, 2017 to March, 2018 also gets extended upto 25th October, 2018.

It may also be noted that the Government has extended the last date for furnishing of return in FORM GSTR-3B for the month of September, 2018 for certain taxpayers who have been recently migrated from erstwhile tax regime to GST regime vide notification No. 47/2018- Central Tax dated 10th September, 2018. For such taxpayers, the extended date i.e. 31st December, 2018 or the date of filing of annual return

whichever is earlier will be the last date for availing ITC in relation to the said invoices issued by the corresponding suppliers during the period from July, 2017 to March, 2018.

Notification No. 55/2018 – Central Tax dated 21st October, 2018

Vide the captioned notification, the Central Government has extended the last date for furnishing the return in FORM GSTR-3B for the month of September, 2018 upto 25th October, 2018.

GST Portal Update

Advisory for Taxpayers to file Refund for Multiple Tax period

- Refund application filing for multiple tax period is available for below grounds of refund:
 - a. Export of Goods & Services-Without payment of Tax
 - b. Export of services with payment of tax
 - c. Supplies made to SEZ Unit/SEZ Developer-Without payment of Tax
 - d. Supplies made to SEZ Unit/SEZ Developer-With payment of Tax
 - e. ITC accumulated due to inverted tax structure
 - f. Claim by recipient /supplier of deemed exports
 - Refund application can be filed using refund application Form GST-RFD-01A & selecting the tax period range.
 - The multiple tax period application has following restrictions:
 - a. Multiple tax period selection should be within a single financial year
 - b. Application has to be filed chronologically for tax periods and in case refund application is not to be filed for any tax period, a declaration of “No Refund Application” is to be provided.
 - For claiming refund, taxpayer would have to upload invoice details mandatorily in the statement template available in the refund application itself which further will be validated by system from the invoice data declared by the taxpayer at the time of filing return for that period for which refund is claimed.
 - All the invoice details are to be provided in a single statement.
 - After filing refund application, taxpayer would not be able to claim refund for that invoice again in some other refund application. Also, taxpayer would not be able to amend invoice details after claiming refund.
 - Taxpayer can also attach any other supporting document.
 - After filing of refund application by taxpayer, refund application Form GST-RFD-01A along with the statement and documents uploaded shall be available to jurisdictional tax officer for review and processing of refund.
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Judicial Pronouncements

- **BANGALORE CESTAT–Mast Global Services India Pvt Ltd Vs CCT-** The assessee have filed two refund claims for refund of service tax amount paid on the specified services said to have been used for authorized operations in SEZ under Notification No. 12/2013-ST. Thereafter, two SCNs were issued to assessee on two grounds viz. certain input services are not covered in the definition of input service under Rule 2(I) of CENVAT Credit Rules and hence not eligible and secondly non-submission of documents required to process the claims. O-I-O as well as impugned order, both have rejected the refund claims on other grounds which are not taken in SCNs and therefore they have travelled beyond the SCNs which is not legally permissible. Impugned order also violates the principles of natural justice because the assessee has not been given the reasonable opportunity to defend himself on the ground on which the refund claims have been rejected. The other grounds on which the refund claims have been rejected by the impugned order is that assessee has not produced the approved list of specified

input services from the UAC of SEZ which is a mandatory condition as per the Commissioner (A). Keeping in view the intention of Govt. in enacting the SEZ Act and giving special fiscal concessions to SEZs, this is only a procedural and is not a mandatory condition as held by Commissioner (A). Therefore, the ground on the basis of which refund claims have been rejected is not tenable in law. As regards to the second ground on which refund claims have been rejected is that the assessee has availed cenvat credit and hence he is not entitled to file the refund claim. Assessee has already reversed the CENVAT credit without any utilization and it has been shown in ST-3 return filed for the period April 2015 to September 2015 and once he has reversed the CENVAT credit without utilization, it tantamount to not taking credit in view of various decisions relied upon by assessee and the benefit of exemption would be admissible on reversal of CENVAT credit. The impugned order rejecting the refund claims is not sustainable in law and therefore same is set aside.

- **BANGALORE CESTAT– Aricent Technologies Holdings Ltd Vs CC-** Assessee is a 100% EOU working under STP Scheme. They have imported the goods considering the same as modular furniture and have availed the benefit of Notification No. 52/2003. In the performa invoice and sale invoice and Bill of Entry, they have described the goods as parts of modular furniture. STPI authorities have also permitted the import of goods under said notification after satisfying themselves that the goods were eligible for duty free import and necessary certificate was also issued. For availing exemption under said Notification, two conditions need to be satisfied (a) STPI unit is set up as per the authorization granted by Development Commissioner / STPI authorities and a certificate is issued by STPI stating that the goods are required to be installed or used in the unit and (b) the import is authorized by the Standing Committee. In the present case, both the conditions have been fulfilled by assessee and once the Committee has authorized the import, then, the Customs Department later on cannot question the benefit under the Notification. In case of Cognizant Techno Solutions India Pvt. Ltd., the Kolkata Tribunal held that mineral fibre sound absorbing sheet, cut to sizes and used as false ceiling, is a modular furniture and is entitled to the benefit under Notification 52/2003 and in the present case, the goods procured are in the nature of connecting parts between the two workstations, therefore it can be considered as parts of modular furniture only and the benefit of notification can be extended to assessee. The Department has invoked the extended period of limitation and has not brought any evidence on record to show that there was an element of fraud, collusion or any wilful mis-statement or suppression of facts on the part of assessee justifying the invocation of extended period of limitation. Consequently, entire demand is barred by limitation. The impugned order is not sustainable in law on merits as well as on limitation.
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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.