

Summary of Notifications, Circulars from 16th March, 2017 to 15th April, 2017

SERVICE TAX

1. **Issues related to levy of service tax on the services provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India to the customs station in India**

Central Government vide *Notification No. 1/2017-ST dated 12th January 2017* had withdrawn exemption for services provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

Now Central Government vide *Notification No. 13/2017 -Service Tax, Dated: April 13, 2017* has amended the Service Tax Rules, 1994 to provide that, w.e.f 23rd April 2017, in case of services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of such goods by a vessel from a place outside India up to the customs station of clearance in India, the importer (as defined under section 2(26) of the Customs Act, 1962) of goods would be the person liable for paying service tax. Section 2(26) of the Customs Act 1962 defines Importer as “*in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer;*”.

Further, a new sub-rule has been inserted in Rule 6 of Service Tax Rules, 1994, w.e.f 22nd January 2017, to provide that a person liable for paying service tax aforesaid specified services shall have the option to pay an amount calculated at the rate of 1.4% of the sum of cost, insurance and freight (CIF) value of such imported goods. SBC & KKC accordingly would be calculated at 0.05% each of Customs value of goods.

The Point of Taxation Rules, 2011 have also been amended vide *Notification No. 14/2017-Service Tax, dated: April 13, 2017* to provide that, w.e.f 22nd January 2017, the point of taxation in respect of services provided by a person located in non-taxable territory to a person in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, shall be the *date of bill of lading* of such goods in the vessel at the port of export. No service tax will be levied if the bill of lading is of date prior to 22nd January 2017.

Further, Central Government vide *Circular No. 206/4/2017-Service Tax, dated: April 13, 2017* has provided that, w.e.f 22nd January 2017, in case of services of transportation of goods by sea provided by a foreign shipping line to a foreign charterer w.r.t. goods destined for India, an option has been provided in the Service Tax Rules to pay service tax @ 1.4% of value of imported goods as determined under Section 14 of the Customs Act, 1962 and the rules made thereunder. Swachh Bharat Cess and Krishi Kalyan Cess will be paid accordingly.

It is important to note that the Abatement *Notification No. 26/2012- ST dated 20.06.2012* provides an exemption on 70% of value of services of transportation of goods in a vessel subject to the fulfilment of the condition that Cenvat credit on inputs and capital goods used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. However, in case of foreign shipping lines, services being exported from their home country, which are zero-rated in their home country have suffered no taxes. Further, the foreign shipping lines do not get registered in India and do not follow the provisions of CENVAT Credit Rules. Hence, benefit of conditional exemption will not be available to them and service tax will have to be paid on full value of services.

Corresponding amendments have been brought in CENVAT Credit Rules, 2004 vide *Notification No. 10/2017-Central Excise (N.T.), Dated: April 13, 2017* to allow CENVAT Credit on the basis of

the challan of payment of service tax by the said importer on the services provided by a foreign shipping line to a foreign charterer with respect to goods destined for India. The changes are as follows:

- a) Definition of Input Service to include aforesaid specified services
- b) Amendment in Rule 4(7) – New Proviso inserted to provide that w.r.t to aforesaid specified services credit of service tax paid by the person liable for paying service tax shall be allowed after such service tax is paid.
- c) Amendment in Rule 9(1) – new clause “ea” inserted: a challan evidencing payment of service tax by the manufacturer or the provider of output service is a valid document for availing CENVAT Credit.

[Notification No. 13/2017 -Service Tax, Notification No. 14/2017 -Service Tax, Circular No. 206/4/2017-Service Tax, all dated: April 13, 2017 and Notification No. 10/2017-Central Excise (N.T.), Dated: April 13, 2017]

2. Amendment in Reverse Charge Notification w.r.t Ocean Freight

Central Government vide *Notification No. 15/2017-Service Tax, dated: April 13, 2017* has amended Reverse Charge *Notification No. 30/2012- ST dated 20.06.2012* and inserted new explanations to the notification in place of existing ones which are as follows:

- a) The business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification. (Explanation III)
- b) "Non-assessee online recipient" has the same meaning as assigned to it in rule 2(1)(ccba) of Service Tax Rules, 1994 i.e. "non-assessee online recipient" means Government, a local authority, a governmental authority or an individual receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory. (Explanation IV)
- c) the importer as defined under clause (26) of section 2 of the Customs Act, 1962 of goods is the person liable for paying service tax in case of services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of such goods by a vessel from a place outside India up to the customs station of clearance in India. (Explanation V)

[Notification No. 15/2017-Service Tax, dated: April 13, 2017]

3. Settlement of Cases by a co-noticee under Service Tax, Central Excise & Customs

Central Government vide *Notification No. 13/2017-Service Tax, (Dated: April 12, 2017), Notification No. 9/2017-Central Excise (N.T.); Dated: April 12, 2017 & Notification No. 37/2017-Customs (N.T.), Dated: April 12, 2017* has amended Service Tax (Settlement of Cases) Rules, 2012, Central Excise (Settlement of Cases) Rules, 2007 & Customs (Settlement of Cases) Rules, 2007 respectively to prescribe application form SC(ST)-2/ Form SC (E)-2/ Form SC (C)-2 for settlement by co-noticee when main noticee against whom tax is demanded has opted for settlement.

Accordingly, rule 4 of the said Service Tax rules, has been amended as follows:-

"4. Disclosure of information in the application for settlement of cases.-- The Settlement Commission shall, while calling for a report from the Commissioner of Central Excise having

jurisdiction or Commissioner of Service Tax having jurisdiction, under sub-section (3) of section 32F of Excise Act, made applicable to Service Tax vide section 83 of the Act, forward a copy of the application referred to in sub-rule (1) or subrule (1A) of rule 3, as the case may be, to the Commissioner of Central Excise having jurisdiction or Commissioner of Service Tax along with the annexure and the statements and other documents accompanying such annexure to the application.".

Similar amendments have been brought in Central Excise Rules& Customs Rules.

[Notification No. 13/2017-Service Tax, (Dated: April 12, 2017), Notification No. 9/2017-Central Excise (N.T.); Dated: April 12, 2017& Notification No. 37/2017-Customs (N.T.), Dated: April 12, 2017]

CENTRAL EXCISE

4. Amendment in Central Excise (Advance Rulings) Amendment Rules& Service Tax (Advance Rulings) Amendment Rules

The Central Government vide *Notification No. 8/2017-Central Excise (NT), Dated: March 31, 2017 & Notification No. 12/2017-Service Tax, dated: March 31, 2017* amended the Central Excise (Advance Rulings) Amendment Rules,2002& Service Tax (Advance Rulings) Rules, 2003 respectively to provide that the "Authority" means the Authority for Advance Rulings as defined in clause (e) of section 28E of the Customs Act, 1962.

Similarly, Central Government vide *Notification No. 29/2017-Customs (NT), Dated: March 31, 2017* has amended the Customs (Advance Rulings) Rules, 2002 to provide that "Authority" means the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961.

As per Section 28E(e) of the Customs Act, 1962, Authority means the Authority for Advance Rulings (Central Excise, Customs and Service Tax) constituted under section 28F. Accordingly, aforesaid definition of Authority would be applicable for Excise & Service Tax as well.

[Notification No. 8/2017-Central Excise (NT), Dated: March 31, 2017, Notification No. 12/2017-Service Tax, dated: March 31, 2017&Notification No. 29/2017-Customs (NT), Dated: March 31, 2017]

CUSTOMS

5. Levy of Fees (Customs Documents) Amendment Regulations, 1970 amended

CBEC vide *Notification No. 36/2017-Customs (NT), Dated: April 11, 2017* has amended the Levy of Fees (Customs Documents) Regulations, 1970 to provide for revised fees for amendment of various customs documents. The revised chart is as follows:

S. No.	Purpose	Revised Rates	Old Rates
i.	Amendment of		
	a) import manifest or export manifest including supplementation thereof		
	b) vessel's name in a Shipping Bill		
	c) particulars (other than vessel's name) in a Shipping Bill	Rs. 1000.00	Rs. 10.00
	d) particulars in a port clearance application		
	e) port on Outward Entry application		
	f) Supplementation of a Short-shipment notice		

	g) cancellation of any document		
ii.	supply of certified copies of- (a) a bill of entry, if the request is made prior to the passing of an order under section 46 or section 60 (b) a customs document relating to imports other than referred to an item (a) (c) a shipping bill, if the request is made prior to the passing of an order under section 51 (d) a customs document relating to exports other than that referred to in item (c)	Rs. 100.00	Rs. 50
iii.	(a) amendment of prior Bill of Entry filed under the proviso to subsection (3) of section 46 of the Customs Act, 1962 (52 of 1962) (b) amendment of Bill of Entry other than those at (a) above.	Nil; Rs. 1000.00	No Rate Provided

[Notification No. 36//2017-Customs (NT), Dated: April 11, 2017]

6. **Delayed, incomplete or incorrect filing of Import Manifest or Import Report**

The Central Government vide *Circular No. 14/2017-Customs, Dated: April 11, 2017* has taken upon tedious process of IGM amendment leading to reluctance in availing the facility of advance/ Prior Bill of Entry and prescribed the procedure for the same.

It has further been clarified that since responsibility of amendment in the IGM rests solely with the Shipping Line/Agent the fine/penalty imposed upon adjudication in such cases, shall be payable by the Shipping Line only or such other person as specified. No fine/penalty is required to be imposed on the consignee or others. No request for any amendment in the IGM from Custom Broker/Importer will be entertained.

[Circular No. 14/2017-Customs, Dated: April 11, 2017]

7. **DTA clearance of goods procured by EOUs/EHTP/STP units from indigenous sources – charging of Duty**

The Central Government vide *Circular No.74/2001-Cus dated 04.12.2001* clarified that in case raw materials/ capital goods etc., procured from indigenous sources by EOUs/EPZ/SEZ/EHTP/STP units are transferred/ sold back to DTA except for the purpose of replacement, the deemed export benefits already availed of against such goods shall be required to be refunded back and that the export benefits shall be deposited through TR in the designated bank. It was further clarified that the goods will be allowed to be cleared to DTA only on production of a certificate from the jurisdictional Development Commissioner to the effect that such deemed export benefits are paid back.

However, field formations are insisting on production of a certificate from the Development Commissionereven after payment of applicable Customs Duties on clearance of capital goods procured from DTA by EOU/STP/EHTP units where deemed export benefits have been availed as per *Notification No. 29/2007-CE dated 06.07.2007*.

In this regard, Central Government vide *Circular No. 13/2017-Cus, Dated: April 10, 2017* has clarified that the indigenous goods supplied to the EOUs/EPZ/SEZ/EHTP/STP units after availing the deemed export benefits are to be treated as ‘imported goods’ and accordingly, duty as applicable to the imported goods is liable to be paid. Once the goods are treated as imported goods and applicable Customs Duty is paid at the time of their transfer/sale back into DTA or exit, there is no requirement of refund of the deemed export benefits availed on such goods or for the production of a

certificate from the Development Commissioner regarding refund or non-availment of deemed export benefits at the time of clearance of such goods or exit.

Alternatively, the EOU/STP/EHTP units would also be allowed to clear the domestically procured goods or on exit, on payment of Excise Duty as per *Notification No. 22/2003-CE dated 31.03.2003* only on production of certificate from Development Commissioner to the effect that deemed export benefits have been paid back or not availed, as the case may be, as envisaged in *Circular No.74/2001-Cus dated 04.12.2001*.

[Circular No. 13/2017-Cus, Dated: April 10, 2017]

8. **Deferred Payment of Import Duty Rules, 2016 amended**

The Central Government vide *Notification No. 28/2017-Customs (NT), Dated: March 31, 2017* has amended Rule 5 of the Deferred Payment of Import Duty Rules, 2016 which provides for the due dates for deferred payment of import duty by eligible importers. The Revised dates are as under:

S. No.	Particulars	Revised Date for payment of Duty	Old Date prescribed for payment of duty
a)	for goods corresponding to Bill of Entry returned for payment from 1st day to 15th day of any month	16th day of that month	17th day of that month
b)	for goods corresponding to Bill of Entry returned for payment from 16th day till the last day of any month other than March	1st day of the following month	2nd day of the following month
c)	for goods corresponding to Bill of Entry returned for payment from 16th day till the 31st day of March	31st March	31st March

[Notification No. 28/2017-Customs (NT), Dated: March 31, 2017]

9. **Amendment in the Bill of Entry (Forms) Regulations, 1976**

The Central Government vide *Notification No. 27/2017-Customs (NT), Dated: March 31, 2017* has amended Bill of Entry (Forms) Regulations, 1976 by inserting a new Regulation No. 4 which entails the provisions with regards to period upto which bill of entry may be presented by an importer or a person authorised by him having a valid licence under the Customs Broker Licensing Regulations, 2013 without late presentation charges. The new Regulation Reads as follows:

"Regulation 4. (1) The importer or a person authorised by him who has a valid licence under the Customs Broker Licensing Regulations, 2013, shall present the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

(2) Where the bill of entry is not presented within the time specified in sub-regulation (1) and the proper officer of Customs is satisfied that there was no sufficient cause for such delay, the importer shall be liable to pay charges for late presentation of the bill of entry at the rate of rupees five thousand per day for the initial three days of default and at the rate of rupees ten thousand per day for each day of default thereafter:

Provided that where the proper officer is satisfied with the reasons of delay, he may waive off the charges referred to in the second proviso to sub-section (3) of the section 46 of the Customs Act, 1962 (52 of 1962).

(3) No charges for late presentation of Bill of Entry shall be liable to be paid where the entry inwards or arrival of cargo, as the case may be, has taken place before the date on which the Finance Bill, 2017 receives the assent of the President."

[Notification No. 27/2017-Customs (NT), Dated: March 31, 2017]

10. Amendment in the Bill of Entry (Electronic Integrated Declaration) Regulations, 2011

The Central Government vide *Notification No. 26/2017-Customs (NT), Dated: March 31, 2017* has amended Regulation 4 of the Bill of Entry (Electronic Integrated Declaration) Regulations, 2011 dealing with the time when bill of entry shall be deemed to be filed as follows:

Regulation 4. (1) The authorised person shall file the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

(2) The bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration.

(3) Where the bill of entry is not filed within the time specified in sub-regulation (1) and the proper officer of Customs is satisfied that there was no sufficient cause for such delay, the importer shall be liable to pay charges for late presentation of the bill of entry at the rate of rupees five thousand per day for the initial three days of default and at the rate of rupees ten thousand per day for each day of default thereafter:

Provided that where the proper officer is satisfied with the reasons of delay, he may waive off the charges referred to in the second proviso to sub-section (3) of section 46 of the Customs Act, 1962.

(4) No charges for late presentation of Bill of Entry shall be liable to be paid where the entry inwards or arrival of cargo, as the case may be, has taken place before 31st March 2017 (date on which Finance Bill, 2017 received Presidential assent)."

[Notification No. 26/2017-Customs (NT), Dated: March 31, 2017]

11. Handling of Cargo in Customs Areas (Amendment) Regulations, 2017

The Central Government vide *Notification No. 24/2017-Customs (NT), Dated: March 31, 2017* amended the Handling of Cargo in Customs Areas Regulations, 2009 so as to make it mandatory for the Customs Cargo Service providers to provide the information regarding arrival of cargo to the Deputy Commissioner or Assistant Commissioner of Customs immediately on arrival of said goods in the customs area and also information about their departure after the clearance thereof.

[Notification No. 24/2017-Customs (NT), Dated: March 31, 2017]

12. Issues regarding amendment in Special Economic Zone Rules, 2006 clarified

The Special Economic Zone Rules, 2006 have been amended by way of inserting a new Rule 47 (5) vide *Department of Commerce (DoC) Notification No. GSR 772(E) dated 05.08.2016* wherein functional operations like Refund, Demand, Adjudication, Review and Appeal are to be made by jurisdictional Customs and Central Excise authorities in accordance with the relevant provisions contained in the Customs Act, 1962 & Central Excise Act, 1994 and the Finance Act, 1994. This amendment has issues regarding operationalisation of refund claims filed prior to 05.08.2016 and as to who would be the appropriate authority, the Development Commissioner or the jurisdictional Customs Authority to raise demand of duty, if need arises, in respect of un-utilized capital goods/raw materials by a unit in case it exits/ opts out of the SEZ.

In this regard, Central Government vide *Circular No. 11/2017-Cus, Dated: March 31, 2017* has clarified that unless, otherwise expressed specifically for retrospective application in the notification itself, all notifications are applicable prospectively only. Therefore, all new cases of refund, demand, adjudication, review and appeal are to be made by the concerned jurisdictional authorities of Customs, Central Excise and Service Tax under the provisions of the respective Acts. The standard operating procedures in respect of Refund, Demand, Adjudication and Review & Appeal have also been provided.

For the old cases of refund pending as on 05.08.2016 which are otherwise in order, both on account of limitation and merit (even though filed in the office of the Development Commissioner) should be issued by Customs officers. For interest on delayed payment of refunds the date on which such refund claims are received by jurisdictional Customs, Central Excise or Service Tax or Central GST field formations would be relevant for the purpose of interest rather than the period for which it was lying with SEZ authorities.

With respect to the issue of appropriate authority to demand duty in case a unit opts out of the SEZ scheme, it has been clarified that if the unit has not achieved positive net foreign exchange, the exit shall be subjected to penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992. However, in respect of duty benefits already taken on the unutilized capital goods/ raw materials for carrying out authorized operations, demand, adjudication and appeal thereof shall be made by the jurisdictional Customs, Central Excise & Service Tax authority under Rule 47(5) of the SEZ Rules, 2006.

[Circular No. 11/2017-Cus, Dated: March 31, 2017]