

Union Budget 2014- Indirect Taxation

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In recent times, the law abiding assesses have to contend with large number of target based queries/notices, audits and summons generally high amount of tax terrorism. Infructuous demands [90-95% bound to fail as per revenue officers themselves] in VAT & Service Tax have been observed. These lead to demands and disputes which go on for years leading to killing the golden goose. Most of the matters may not be resolved at departmental adjudication and appellate levels and some relief only at Tribunals, High Courts and many at the Supreme Court.

A majority of the demands in the last decade were raised due to the high revenue targets which are the base for promotions, almost 80% corruption in tax departments and added to that the tax laws being made extremely complicated year after year leading to different interpretations and consequent disputes.

All decisions in favour as a routine are appealed to higher forums. Officers give scant regard to decided case laws inspite of departmental instruction to do so. No pre deposit prior to hearing at stage of Commissioner Appeals is indeed a good move as 90% of the cases are confirmed routinely. Tax terrorism continues under this government in fine print which is written by the CBEC.

Retrospective amendment due to even Tribunal judgment were common and now we have a assure they would not be done unless absolutely necessary.

At this juncture, when there is a general slowdown in economy the paper writers would like to set out a list of the changes proposed by the new Government. The same are discussed under broad headings of Central excise, Service tax and Customs law, GST and CST.

It needs to be determined from which date changes are applicable. The amendments could be (i) changes come into effect immediately; and (ii) changes applicable based on periodicity of returns or from date when the Bill gets the presidential assent.

MAJOR CHANGES AND IMPACT UNDER CENTRAL EXCISE

Excise duty rate changes:

- **Changes in excise duty rates for some goods:** There has been reduction in rates on certain specified Capital Goods and non-consumer durables. All changes in rates of duty take effect from the midnight of 10th/11th July, 2014.

Increases in rates:

- An additional duty of excise is being levied at the rate of 5% on waters, including aerated waters, containing added sugar.
- Excise duty increase on cigarettes, pan masala, unmanufactured tobacco and gutkha and chewing tobacco.

Concession in rates:

- Concessional excise duty of 2% without CENVAT credit and 6% with CENVAT credit is being extended to gloves specially designed for use in sports

Withdrawn concession:

- Optional excise duty of 2% (without CENVAT) / 6% (with CENVAT) on writing and printing paper for printing of educational textbooks withdrawn and instead a uniform excise duty of 6% with CENVAT is being levied

Exemptions:

- Full exemption from excise duty is being provided to backsheet and EVA sheet used in the manufacture of solar photovoltaic cells or modules.
- Full exemption from excise duty to machinery, equipments, etc. required for initial setting up of solar energy production projects + compressed biogas plant (Bio-CNG).

Reduction in ED:

- Excise duty reduced from 12% to 6% on footwear of retail price exceeding Rs.500 per pair not more than Rs.1,000 per pair.
- Footwear of retail price upto Rs.500 per pair continues to be exempted.
- Excise duty on machinery for the preparation of meat, poultry, fruits, nuts or vegetables, and on presses, crushers and similar machinery used in the manufacture of beverages and on packaging machinery is being reduced from 10% to 6%.
- Fall in Excise duty on Branded Petrol from Rs.7.50 per litre to Rs. 2.35 per litre

Refer Notification nos 8-20/2014-CE for full details of changes in rates/extending of exemptions from excise duty.

Abatements

- **MRP abatement** rates promised that the Third Schedule and MRP schedule would be aligned though the time for this government was quite short.

Effect of changes in rates:

- a. **Consumer durables become cheaper.** This could lead to increase in demand. Similar thing had happen when automobile and machineries rates were reduced earlier in the year.
- b. **Increase in tax collections:** Due to new entrants coming into tax net due to lesser rates, could cause more duties being collected.
- c. **Growth of new industries:** As machineries are now more cheaper than ever what with even reduction in customs duties peak rates for same discussed later.

Substitution of Section 35F of the Central Excise Act

- To prescribe a mandatory fixed pre-deposit of 7.5% of the duty demanded or penalty imposed or both for filing of appeal before the Commissioner(Appeal) or the Tribunal at the first stage, and
- 10% of the duty demanded or penalty imposed or both for filing second stage appeal before the Tribunal.
- The amount of pre-deposit payable would be subject to a ceiling of Rs 10 Crore.
- All pending appeals/stay application would be governed by the statutory provisions prevailing at the time of filing such stay applications/appeals.
- This new provisions would apply to Service Tax.
- This unfair provision could be made applicable only when the demand is in excess of Rs 50 Lakhs to a Crore. A representation in this regards to be made. The Centre is following the state in making law draconiana!!!

Amendment in CE Rules:

As per section 8(3A), If the assessee does not pay excise duty payable as per excise return within 1 month from the due date, then the assessee is liable to pay the penalty at the rate of

1% on such amount of the duty not paid, for each month or part thereof from the due date, for the period during which such failure continues. Effective 30% as compared to 6% for delayed refund.

Earlier the credit facility was being denied till such ED payment not made.

Refer notification no.19/2014-CE(NT).

Amendments in the Central Excise Valuation Rules, 2004:

The Valuation Rules, 2000 amended to provide that in cases where excisable goods are sold at a price below the manufacturing cost and profit and there is no additional consideration flowing from the buyer to the assessee directly or from a third person on behalf of the buyer, value for the assessment of duty shall be deemed to be the transaction value.

This is heartening and could reduce the harassment caused to auto sector in line with decision held by Apex Court in Guru Nanak case.

Please refer notification No.20/2014- CE(NT).

To come into effect immediately. Effectively dealt with the FIAT case to encourage investments and assure FDI.

Other:

The assessee eligible for SSI exemption to pay ED on periodicity of monthly basis.

Changes in Service Tax:

Negative List:

- a. **Sale of space or time for advertisements extended to cover all sale of space or time for advertising other than broadcasting or print media:**
 - Earlier covered in negative list.
 - Impacts on internet websites, on film screen in theatres, bill boards, buildings, etc. Recognizing the freedom of press which was upheld in landmark Indian Express case, the sale of space for advertisements in print media is excluded from service tax.
 - Print media is being defined in service tax law for the purpose.

- b. **Service tax on services by radio taxis or radio cabs:**

Direct impact on cabs whether AC or non-AC.

Note: The above changes are effective from date when Finance bill receives presidential assent.

Changes in mega exemption:

- a. Air-conditioned contract carriages taxed:** The inter-city AC bus services could be taxed.
- Impact is any service provided for transport of passenger by air-conditioned contract carriage including point to point travel, leviable to service tax, with immediate effect. Service tax on abated value of 40% effectively tax rate of 4.944%.
 - Services by non-air conditioned contract carriages for purposes other than tourism, conducted tour, charter or hire is still exempted.
- b. Removal of Exemption to services by way of technical testing or analysis of new developed drugs, on human participants:** There was an exemption to testing on human subjects in clinical trials by a clinical research organization(CRO) approved to conduct clinical trials by the Drug Controller General of India. Now made taxable.
- c. Changes in exemption to Education:** All services provided by educational institutions providing education specified in the negative list remains.
- The exemption which was earlier given to auxiliary education services as defined is omitted.
 - In future, the following services received by education institutions are exempted from service tax:
 - (i) transportation of students, faculty and staff of the eligible educational institution;
 - (ii) catering service including any mid-day meals scheme sponsored by the Government;
 - (iii) security or cleaning or house-keeping services in such educational institution;
 - (iv) services relating to admission to such institution or conduct of examination.
 - The exemption extended to cover services to students/staff by education institution providing education covered in negative list.
 - The exemption hitherto available to services provided by way of renting of immovable property to educational institutions removed.
- d. Services ordinarily provided by a Municipality:**

- The exemption in respect of services provided to Government or local authority or governmental authority which earlier covered services in relation to water supply etc has been made more limited in scope.
- This exemption would be available only to Services of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation will continue to remain exempted.
- Example when consultancy, designing, of water supply done to local municipality liable to service tax as it used to be.

e. Services by a Hotel, Inn or Guest House:

- According to the present entry at Sl. No. 18, “service by way of renting done by commercial places meant for residential or lodging purposes, having a declared tariff of a unit of accommodation below Rs 1000 per day or equivalent” was exempted from service tax.
- To remove any ambiguity, the word commercial is being omitted.
- Now due to this omission, the exemption could be available upto specified limits is available to any entity providing service by way of accommodation, including dharmashalas or ashram or such other entities.

Other changes in mega exemption notification:

- **Transport of organic manure** by vessel, rail or road (by GTA) similar to fertilizer which is already exempted. This exemption is not just for GTA but all categories.
- **Services by way of loading, unloading, packing, storage or warehousing, transport** by vessel, rail or road (GTA), **of cotton**, ginned or baled, is exempted. Extending benefit which was available to other agri produce.
- **Services by Common Bio-medical Waste Treatment Facility operators** by way of treatment, disposal of bio medical waste or processes incidental to such treatment or disposal are being exempted. This has recognized the representation made by this segment.
- **Service provided by Employees State Insurance Corporation (ESIC)** prior to 1.7.2012 is exempted from service tax.

This exemption effective from the date the Finance (No.2) Bill, receives the assent of the President.

- **Services by the Indian tour operators to foreign tourists** in relation to tours wholly conducted outside India are being exempted. Anyway this would have been not liable as services provided to recipient located outside India.
- **Special financial services received by RBI** from outside India, in the course of management of foreign exchange reserves, e.g. external asset management, custodial services, securities lending services, are being exempted.

The exemptions other than for which presidential assent required above to be implemented immediately.

Service tax valuation:

Service tax on service portion in Works Contracts:

- In Rule 2A of the Service Tax (Determination of Value) Rules, 2006, service tax payable on works contracts for finishing services of immovable property and repairs/maintenance of goods on 70% of total amount charged.
- It has not addressed whether service providers executing works contract for the finishing such as flooring, painting of newly constructed buildings can pay service tax on 40% or on 70% of total amounts charged
- Please refer Notification No.11/2014-ST.
- This is wef 1.10.2014.

Changes in Service Tax Rules: [with immediate effect]:

Reverse charge:

a. Service provided by a Director to a body corporate: Earlier restricted to services provided to company alone. This could cover services to LLP or body corporate as defined in Companies Act 2013.

b. Services provided by Recovery Agents to Banks, Financial Institutions and NBFC is being brought under the reverse charge mechanism; Banks would now need to pay and avail credit of tax and tax cannot be recovered from agent.

Refer Notifications 9 and 10/2014-ST.

Changes in Place of Provision of Services Rules: [applicable wef from 1st October, 2014].

Amend place of provision of repair service carried out on temporarily imported goods.

- The second proviso to rule 4(a) is being amended to prescribe that it would suffice for the purpose of exclusion of repair service from applicability of rule 4(a) that the goods imported for repair are exported after repair without being put to any use other than that which is required for such repair.

Intermediary services definition amended:

- The definition of intermediary is being amended to include the intermediary of goods in its scope.
- This could impact the services by Commission agents for goods of foreign principals.
- We may need to examine whether there is any impact on pending litigations of past.

Refer Notification 14/2014-ST for full details.

Point of Taxation Rules:

The point of taxation for reverse charge will be:

- the payment date or
- the first day that occurs immediately after a period of 3 months from the date of invoice
- whichever is earlier.
- There are transitional provisions made in Rule 10 of these rules.
- Refer Notification No.13/2014-ST

This amendment only applies to invoices issued after 1st October, 2014.

Changes in abatement notification 26/2012-ST [Notification No. 8/2014- ST]

- **Abatement benefit to service receiver even if credits are availed by GTA:** Service recipient will not be required to establish satisfaction of this condition by the service provider
- This is a major relief effective immediately. Therefore now the GTA can avail credits and pay ST on the gross amount for the services he provides to individuals and other ineligible persons, which could be lead to non payment in cash?
- Service of transportation of passenger by air-conditioned contract carriages is taxable with immediate effect. An entry has been inserted by which ST to be paid on 40%.
- The condition is that CENVAT credit of inputs or capital goods or input services has not been availed.

- **The credit of input service of renting of a motor cab** would be allowed to be availed if such services are received from a person engaged in the similar line of business i.e. a sub-contractor providing services of renting of motor cab to the main contractor.
- The whole of the CENVAT credit has been allowed with respect to input service of renting of any motor cab, received from a person who is paying service tax on 40% of the value of services.
- The CENVAT credit eligibility will be restricted to 40% of the credit of the input service of renting of any motor cab even if no abatement is availed. This is wef 1.10.2014.
- **Tour operator service:** Service providers are also being allowed to avail CENVAT credit on the input service of another tour operator, used for providing the taxable service. Change to be effective from 1st October, 2014.
- **Taxable portion in respect of transport of goods by vessel reduced:** This is from 50% to 40%.
- Effective service tax will decrease from the present 6.18% to 4.944%, with effect from 1st October, 2014.

Joint Charge mechanism:

- In renting of motor vehicle, where the service provider does not take abatement service tax payable by the service provider and service receiver will be modified as 50% each.
- This change wef 1st of October 2014.

Refer Notification No.10/2014- ST.

Major changes in CENVAT Credit Rules:

Time limit for availing credits

- A manufacturer or a service provider shall take credit on inputs and input services within a period of six months from the date of issue of invoice, bill or challan w.e.f. 1st September, 2014 [Borrowed from the State VAT laws which are at best one of the worst administered laws in the world]

Comment:

- We can advise our clients to avail credits wherever not done for past as later it could cause litigation or consequent denial of credits.
- **All tax payers to complete an exercise of Cenvat verification, to avoid losses due to this restriction.**

Credits availment of ST paid under reverse charge:

- In case of service tax paid under full reverse charge, the condition of payment of invoice value to the service provider for availing credit of input services would not be there.
- For partial reverse charge, both invoice value+ ST would need to be paid to avail credits. [Refer amended proviso to rule 4(7)].

Other changes in CCR:

- Rule 12A is being amended so as to disallow transfer of credit by a large taxpayer from one unit to another.
- As per Rule 2(qa) 'place of removal' defined. This is borrowed as earlier defined and referred as per the CE Act.

Refer Notification No.21/2014-CE (N.T.) for full text of changes in cenvat credits provisions

Input Service Distributor:

- Rule 7 of the CENVAT Credit Rules, 2004, provides for the manner of distribution of common input service credit by the Input Service Distributor. Rule 7(d) was amended to provide for distribution of common input service credit among all units in their turnover ratio of the relevant period.
- It clarifies that it allows distribution of input service credit to all units (which are operational in the current year) in the ratio of their turnover of the previous year/previous quarter as the case may be. No need to prove that the services are used for respective unit.

Other Major changes

Interest rate changes:

Interest rates per annum payable on delayed payments under section 75, are prescribed as follows:

Extent of delay

- Up to six months 18%
- More than six months & upto one year 18% for first six months, and 24% for the period of delay beyond six months
- More than one year 18% for first six months, 24% for second six months, and 30% for the period of delay beyond one year
- This is applicable from 1st October 2014.

- Compare with 6% for refund.
- 3% concession on the applicable rate of interest will continue to be available to the small service providers with turnover upto Rs 60 Lakhs pa.

Comments: This is a gargantuan measure which could kill business. The representation could be made by trade /industry at earliest to drop it.

Refer notification 12/2014-ST.

E-payment:

- E-payment of service tax mandatory from the 1st Oct 2014.
- Relaxation permitted with discretion by the Deputy Commissioner/Asst. Commissioner on case to case basis.
- Refer Notification 09/2014-ST.
- Same in excise as well.

Advance Ruling: The resident private limited company is being included as a class of persons eligible to make an application for Advance Ruling in service tax [Notification No.15/2014-ST]. This change will come into effect immediately. Good measure to avoid litigation.

Other Amendments:

Section 80 is being amended to exclude the reference of first proviso to section 78. This amendment, in effect, removes the power to waive the 50% penalty imposable in cases where service tax has not been levied, not paid or short levied or short paid on account of suppression of facts or willful misstatement but details of transactions are available in the specified record.

Section 87 is being amended to incorporate power to recover dues of a predecessor from the assets of a successor purchased from the predecessor as it is presently provided for in section 11 of the Central Excise Act, 1944.

SEZ – procedural simplification: [changes to have immediate effect]

Changes in GST:

Given a time line for GST: legislative changes in December 2014 and expected in 2015-16. Remains to be seen whether kept up. Very challenging. FM did not appear very confident.

Changes in Customs:

Rates changes:

- Imposition of basic customs duty on certain items falling outside the purview of IT Agreement

Increase in rates:

- Increase in BCD on imported flat-rolled products of stainless steel from 5% to 7.5%.
- BCD on metallurgical coke increased from Nil to 2.5% in line with the duty on coking coal.

Exemptions:

- Colour picture tubes exempted from basic customs duty(BCD) to make cathode ray TVs Cheaper and more affordable to weaker sections.
- Specified inputs for use in the manufacture of EVA sheets and back sheets and flat copper wire for the manufacture of PV ribbons exempted from basic customs duty.
- To encourage exports, pre-forms of precious and semi-precious stones exempted from BCD.

Reduction in rates:

- BCD on LCD and LED TV panels of below 19 inches reduced from 10% to Nil.
- Reduction in BCD from 10 to 5% on forged steel rings used in the manufacture of bearings of wind operated electricity generators.
- Duty on ship breaking scrap and melting scrap of iron or steel rationalized by reducing the basic customs duty on ships imported for breaking up from 5 to 2.5%.

Concessional rates:

- Concessional BCD of 5% extended to machinery and equipment required for setting up of a project for solar energy production.
- Concessional BCD of 5% on machinery and equipment required for setting up of compressed biogas plants (Bio-CNG).
- **Other changes:** Anthracite coal, bituminous coal, coking coal, steam coal and other coal to attract 2.5% BCD and 2% CVD.
- To prevent mis-use and avoid assessment disputes, basic customs duty on semi-processed, half cut or broken diamonds, cut and polished diamonds and coloured gemstones rationalized at 2.5%.
- Duty free entitlement for import of trimmings, embellishments and other specified items increased from 3 to 5% of the value of their export, for readymade garments.

We have covered major items here. Please read notifications from 11 to 25 of 2014-Cus for full text of the changes in rates and exemptions given under customs.

Other changes:

Export duty on bauxite increased from 10 to 20%.

For passengers, free baggage allowance increased from Rs.35,000 to Rs.45,000.

Changes in CST:

No change.

In this article the paper writer has sought to cover the changes and impacts in the Budget 2014.