

Union Budget 2014-15

Budget 2014-Changes in the Excise and Customs Law



Looking at the concessions and tax cuts provided both under Customs and Central Excise, there is a push to increase the manufacturing facilities at home rather than importing the goods. This certainly would have long-term favourable implications not only for manufacturing but for services also. The important changes as proposed in the Finance Bill, 2014 as regards to excise and customs laws are discussed in this article.



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Introduction

Through the Union Budget, which is an annual exercise, the Government plans its revenue and expenditure and mops up its revenues through direct and indirect taxes. The Union Budget also gives an opportunity to amend the tax laws prospectively as well as retrospectively.

Being the first year of a new government, the expectations from the industry as well as the tax professionals was very high and several booklets of suggestions did reach the Finance Ministry. On the

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indirect tax front, there was an expectation that as a move towards GST, this budget would correct the errors of limiting Cenvat mechanism and would rationalise the tax credit system. However, none of these were seen in this budget but the statement of GST sounds conducive for its introduction in the next Budget. Keeping the rates largely stable gives a favourable impression to the investors.

That apart, looking at the concessions and tax cuts provided both under Customs and Central Excise, there is a push to increase the manufacturing facilities at home rather than importing the goods. This certainly would have long-term favourable implications not only for manufacturing but for services also.

With the above background, the important budget changes as regards excise and customs laws are discussed below.

Excise

Proposed Amendments to Central Excise Act, 1944

I. Information collection: (Clause 90)

With a view to broad-base the information collection to identify tax evaders or recover confirmed dues, a new section (Section 15A) is proposed wherein the Central Government would be empowered to collect information from various government and other agencies such as income tax authorities, banks, registration offices, state VAT authorities, Registrar of companies, stock exchanges, etc.

The time periods, format and manner of providing information return shall be prescribed. Further, the new section also proposes to impose penalty on the person who is required to furnish information (Section 15B) for failure to furnish information return or submission of wrong particulars. We are unsure how this would work, on the employee level or the departmental level.

II. Appeal provisions:(Clauses 95 to 100)

a) Non admission of appeals:

Presently, in terms of Section 35B the Customs Excise and Service Appellate Tribunal (CESTAT) been empowered with the discretion to refuse to admit the appeal where duty implications or the penalty amounts does not exceed ₹50,000/- It is proposed to increase the monetary limit to ₹2,00,000/-. It should be noted that matters relating to rate of duty or valuation would

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continue to be admitted irrespective of the duty amounts involved.

b) Procedure to constitute committee of commissioners:

For the purpose of filing appeal by the department, the committee of commissioners shall have to take a decision as to whether to file appeal or not. Presently, the above referred committee has to be constituted by way of issue of notification in official gazette. The amendment proposes that give power the CBEC to constitute committee by way of an **order** instead of notification in gazette.

c) Pre-deposit and stay proceedings before Commissioner (Appeals) and CESTAT:

Presently, Section 35F provides that where an appeal is to be preferred before Commissioner (Appeals) or before the Tribunal, duty, interest or penalty shall be deposited prior to filing appeal. However, the Commissioner (Appeals) or CESTAT may waive deposit of such adjudicated levies. Further, in terms of Section 35C(2A), the stay granted by the CESTAT stands vacated where the appeal is not disposed off within 365 days from the date of order of the stay.

In place of the above, it is proposed to bring new set of provisions which would provide that at each stage of the appeal proceedings appellant is required to deposit certain percentage of demands and the discretion to grant full waiver would be withdrawn. The proposed provisions are analysed below:

Orders other than passed Commissioner (Appeals) against which appeal to be preferred before CESTAT or Commissioner (Appeals) as the case may be.	7.5% of the duty demanded or penalty imposed or both in the order appealed against.
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Appeal before Tribunal against order of Commissioner(Appeals)	10% of the duty demanded or penalty imposed or both in the order appealed against.
Maximum pre-deposit amount	₹10 crore.
The above pre-deposit requirements would apply only to those appeals which are filed after these provisions are notified and not to the stay/appeals pending as on that date.	
Duty demand for this purpose has been defined to include (i) amount determined under Section 11D (ii) amount of erroneous Cenvat Credit taken; (iii) amount payable under Rule 6 of the Cenvat Credit Rules, 2001 or the Cenvat Credit Rules, 2002 or the Cenvat Credit Rules, 2004. Consequently, the provisions relating to lapse of stay is proposed to be omitted.	

Author is of the view that the above amendments are welcome as it would speed up the disposal of pending matters before CESTAT and Commissioner (Appeals). However, pre-deposit percentages could have been restricted to duty amount or penalty where only penalties are imposed, in light of the fact that the lower authorities impose penalties without even ascertaining whether conditions under concerned penal provisions would get fulfilled or not. The author is quite sure that the constitutionality of the above provisions would be challenged.

However, where the lower authorities [including Commissioner (Appeals)] confirm the demands without even looking at the favourable decisions of the higher forums (which the authorities normally do), the assesses would certainly be put to hardship.

Further, the interpretation of this provision as per the TRU circular would land into further litigation as the TRU circular envisages 17.5% as per deposit, where the

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appeal is carried thorough Commissioner (Appeals). The proposed provision only requires 10% of the amount confirmed to be paid as pre-deposit and such amount is not over and above the amount already deposited. Further, the theory of doctrine of merger has not been considered by the TRU circular.

Another fear is that the pre-deposit figures are kept low but may be made higher in the later years. The new section should also have a specific clause that on payment of the said amounts, waiver of pre deposit is automatic.

d) *Appeal to Supreme Court:*

This Clause is proposed to clarify that clarify that determination of disputes relating to taxability or excisability of goods is covered under the term "determination of any question having a relation to rate of duty" and hence, appeal against the Tribunal orders in such matters shall be preferred before the Supreme Court. This proposal is necessitated in the background of the fact that many High Courts have taken a view that taxability or excisability relates to determination of rate of duty and hence appeal shall be preferred to the Supreme Court and not the High Courts.

e) *Revision of order by Committee of Chief Commissioners:*

Presently, in terms of Section 35E, revision shall be made by the committee within three months from the date of the order and there was no power to CBEC to extend the time limit. Proposed amendment provides power to CBEC to grant extension by one month.

f) *Amendment to Section 35R dealing non filing of appeal by the Department in certain cases:*

Section 35R provides that based on the monetary limits, the board shall decide not to file appeals before appellate authorities or tribunal or courts. Reference under Section 35(4) did not include Commissioner (Appeals). Proposal is to include Commissioner (Appeals) under the said sub-Section and therefore departmental appeals below specified limits would not be admitted.

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III. Settlement Commission [Clauses 91 to 94]

Summary of amendments proposed to settlement provisions are as below:

- a) Commission has been renamed as "Customs, Central Excise and Service Tax Settlement Commission."
- b) Reference to Section 11AB with a reference to Section 11AA to align the same with the existing central excise provisions relating to recovery of interest on delayed payment.
- c) Allow filing of applications of settlement before the Settlement Commission in cases where the applicant has not filed the excise returns.
- d) To allow filing of settlement applications before 180 days from the date of seizure of books or records.
- e) No subsequent applications would be allowed where there is a concealment of duty before the central excise authority.

Amendments to Rules

Rule	Nature of amendment				
Central Excise Rules, 2002 [Notification No. 19/2014-Central Excise (N.T.) dt. 11-07-2014]	<p>i. Manner of payment: W.e.f. 01-10-2014, all assesses are required to pay duty only through internet banking mode and the Assistant Commissioner may allow payment in other mode, after recording the reasons for allowing the same.</p> <p>ii. Consequences of default in payment of duty: In case of default in payment of duty beyond one month, then the assessee is liable to pay the penalty at the rate of 1% of such amount of the duty not paid, for each month or part thereof calculated from the due date, for the period during which such failure continues. Earlier provisions of withdrawal of Cenvat facility or payment of duty on each clearance would not be applicable henceforth. Replacement of existing Rule 8(3A) of the Central Excise Rules, 2002 with the new one is a much needed relaxation for the industry.</p>				
Rule 6 of Central Excise Valuation (Determination Of Price Of Excisable Goods) Rules, 2000 [Notification No. 20/2014-Central Excise (N.T.) dt. 11-07-2014]	<p>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.</p> <p>This is also a welcome amendment that overcomes the decision of the Supreme Court in Fiat's case, 2012 (283) E.L.T. 161 (S.C.)</p> <p>i. Definition of place of removal: Place of removal has been specifically defined for the purpose of the Cenvat Credit Rules, 2004. This may make it difficult to take credit on transportation of goods beyond such places.</p> <p>ii. Restriction on availment of credit (Rule 4): Restriction of six months from date of the invoice/bill to avail credit has been re-introduced for inputs and input services effective from 01-09-2014. The author is of the view that this is a retrograde step which re-introduces the restrictive provisions which were existing and withdrawn many years back.</p> <p>iii. When to avail credit on service tax paid under reverse charge [Rule 4(7)]:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Where whole of service tax is paid by recipient</td><td>To avail credit after payment of service tax</td></tr> <tr> <td>Service tax is partly paid by recipient and partly by the provider</td><td>To avail credit on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill</td></tr> </table>	Where whole of service tax is paid by recipient	To avail credit after payment of service tax	Service tax is partly paid by recipient and partly by the provider	To avail credit on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill
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- iv. **Reversal of credit if value of service is not paid [Rule 4(7)]:** Where the value of service and service tax is not paid to the service provider(other than those services covered under reverse charge or joint charge), within 3 months from the date of invoice or bill, then amount equal to the credit availed shall be reversed. Whether the recredit has to be taken within 6 months of date of original invoice is going to be litigated.
- v. **Delay in realisation of proceeds [Rule 6(8)]:** The purpose of this amendment is to allow credit to be re availed when reversed on account of non receipt within the time limit fixed by RBI. This proviso allows a further period of one year from the time limits fixed by RBI.
- vi. **Transfer of credit between two units of an assessee under LTU scheme [Rule 12AA]:** Rule provided for transfer of credit available with one unit of an assessee registered as LTU to another unit of assessee under LTU. This transfer would not be allowed henceforth and there seems no logic to this.
- vii. **Clarification on distribution of Credit by input service distributor [Rule 7]:** It is clarified that the credit of service tax on common input services by ISD could be distributed between units based on their turnover irrespective of the fact that a particular unit is exempted from duty / tax. [Circular No. 178/4/2014-ST dt.11.07.2014]

Customs

Amendments to Customs Act, 1962

Similar to amendments proposed under the Central Excise Act, 1944, amendments are proposed in Customs Act, 1962 relating to appeal provisions (**Clauses 80-84**) and settlement commission provisions (**Clauses 77-79**). Therefore, the

amendments discussed in paragraphs BII and BII relating to appeals and settlement commission would equally be applicable to customs also. Apart from the above, following are the proposed changes in Customs Act.

I. Amendment to Section 15 & Section 46: Date of determination of rate of duty and valuation and filing of bill of entry (Clause 74 & 76)

It is proposed to amend Section 15(1) which provides for determination of rate of duty and tariff valuation for imports. Presently, this section does not cover import through vehicles by land.¹ Amendment proposes to cover imports by vehicles through land routes and allows presentation of bill of entry for imported goods before arrival of vehicle carrying the goods.

II. Retrospective exemption to mineral oils extracted in the continental shelf of India or the exclusive economic zone of India for the period prior to 7th February, 2002 (Clause 75)

It is proposed to grant exemption to mineral oils including petroleum and natural gas extracted or produced in the continental shelf of India or the exclusive economic zone of India for the period prior to 7th February, 2002 from whole of customs duties. This would settle the disputes in this regard.

III. Settlement Commission (Clauses 77-79)

This amendment proposes to expand the scope of Settlement Commission by providing that an application for settlement of cases can also be filed in cases where a Bill of Export, Baggage Declaration, Label or Declaration accompanying the goods effected through Post or Courier have been filed.

As discussed in the preceding paragraphs, amendments relating settlement commission as discussed under central excise section would equally be applicable to customs also.

IV. Levy of safeguard duty on inputs/raw materials imported by an EOU (Clause 86)

Amendment proposed to the Customs Tariff Act, 1975 to provide for levy of safeguard duty on inputs/raw materials imported by an EOU and cleared into DTA as such or are used in the manufacture of final products and cleared into DTA. This amendment would have immediate implication as the said amendment is covered under declaration made under Provisional Collection of Taxes Act, 1931.

Baggage Allowance [Notification Nos. 50/2014-Cus (N.T.) Dated 11-07-2014]

For passenger facilitation, free baggage allowance

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increased from ₹35,000 to ₹45,000. However, duty free allowance of cigarettes has been reduced from 200 to 100, of cigars from 50 to 25 and of tobacco from 250 gms to 125 gms.

A. Duty Structures and Important Exemptions Under Excise and Customs

Excise

- The peak rate of duty of excise remained unchanged at 10%. However, incentives in the form of reduced rates have been extended to goods manufactured for use in renewable energy, wind, solar and Bio-CNG. Further, duty has been reduced for branded petrol. Further, rate of duty on food processing and packaging machines, foot ware having MRP between ₹500 and ₹1,000, has been reduced.
- On the other hand, duty on cigarettes, tobacco products and aerated waters containing added sugars, has been increased. Further, concessional rate of duty on smart cards and paper and educational text book has been withdrawn and would be liable to duty at 6%.
- Rule 8 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 is being amended with retrospective effect from 13-04-2010 to provide that where a manufacturer manufactures pouches of different RSPs on a single machine in a month, the duty liability for that month would be the duty applicable to the highest of the RSP so manufactured. Earlier, such manufacture of pouches having different RSPs was treated to be a different machines for the purpose of imposing capacity based duty. This amendment would result in reduction of duty liability and assesses could prefer refund within six months from date of presidential ascent subject to provisions of Section 11B. (**Clause 101**)
- Retrospective exemption effective from 08-02-2013 to 10-07-2014 (both days inclusive) to liquefied propane and butane mixture, liquefied propane, liquefied butane and Liquefied Petroleum Gases (LPG) supplied to Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited or Bharat Petroleum Corporation Limited for supply to household domestic consumers or to nondomestic exempted category (NDEC) customers. Prospective from 11-07-2014, exemption has been

granted and similar prospective and retrospective exemptions are also brought in central excise also. This is to ensure that the exemption is available to both domestic as well as non-domestic users. (**Clause 85**)

- Education cess and secondary and higher education cess (customs component) is being exempted on goods cleared by an EOU into the DTA. (**Notification No. 18/2014-Central Excise dt. 11-07-2014**)

Customs

The peak rate of duty of customs remained unchanged at 10%. However, it appears that, in order to give a boost to the local industry to manufacture, duty concessions have been extended on many goods. Important goods which attract duty concession include parts and components of PCs and Laptops, goods used for manufacture of solar panels or cells, plant and machinery for setting up Bio-CNG plant, etc.

B. Tax Administration

New post as Principal Chief Commissioner/ Principal Commissioner (Clauses 72-73 and 88-89)

There is a proposal to create new posts as principal chief commissioner or principal commissioners. Similar provisions have been brought under Customs Act, 1962. The author is of the view that this amendment does not gel with the theory of maximum governance minimum government.

Advance Rulings [Notification Nos. 51/2014-Cus (N.T.) Dated 11.07.2014 and 18/2014-CE (NT) dated 11-07-2014]

Apart from public sector and resident public limited companies, resident private limited companies could also prefer advance ruling under Central Excise and Customs provisions.

C. Conclusion

As mentioned in the earlier paragraphs, the Budget tries to give push to self reliance in manufacture of certain goods, especially in power sector. Concrete steps have been made to reduce litigation but the provisions itself may be challenged. The imminent introduction of GST in the coming year would be a major boost to the industry, if things are kept simple. However, some of the steps in relation to Cenvat Credit would require a re-look by the Government. ■