

## Amendments Relating to Central Excise

**Although the Union Budget 2007-08 has attempted to rationalise the Central Excise Law and Rules, the changes effected in the taxation rates are not significant. This article examines the proposed changes in the Act, the various Rules, and Tariff Act.**

The Finance Minister Mr. P. Chidambaram has made an attempt at rationalisation of the Central Excise Law and Rules in this budget. The changes in the rates of taxation, though quite a few, are not significant. Mainly the measures to provide a disincentive to the tax evaders, which were taken last year through Taxation Law Amendment Act 2006 w.e.f. 13.7.2006 wherein Section 11DD relating to interest on amounts collected in excess of the duty and Section 11DDA relating to provisional attachment to protect revenue, have been continued in this budget. This would, it is hoped in the era of reasonable tax rates, push the non compliant to join the mainstream and pay his just dues.

### I. Proposed Changes in Central Excise Act 1944.

1. Proviso to Section 3 dealing with levy of central excise duty on SEZ and EOU, is proposed to change so as to omit the provisions relating to 'Free Trade Zone' and substitute the meaning of 'Special Economic Zone' so as to harmonize the said provisions with the Special Economic Zone Act, 2005 also in view of the fact that now there is separate legislation covering Special Economic Zones.
2. Section 11B dealing with refund is sought to be amended so as to provide that the relevant date for the purpose of refund of duty in consequence of judgment, decree, order or direction of Appellate authority, Appellate Tribunal or any Court, shall be the date of such judgment, decree, order or direction. In other words, the said refund would no more be consequential but an application for refund would have to be preferred within the said period of 1 year of the date of the judgment. However, the proviso to section 11B, which governs the exception to limitation of 1 year, would be available when duty is paid under protest even to refund arising out of order, judgment, decree as mentioned above.
3. Section 23A which relates to advance ruling is proposed to be amended, so as to clarify that 'joint venture in India' would mean a venture in which at least one of the participants, partners or equity holders shall be a non-resident having substantial interest in the joint venture and exercising joint control over it. This should encourage the investments from outside India.
4. Sections 31, 32A, 32E, 32F, 32H, 32I, 32K, 32M, 32N, 32O, 32PA, is sought to be amended to make certain changes pertaining to settlement commission. The amendments are as under:
  - The proceedings pending before adjudicating authority as an original proceeding alone can be taken to settlement commission, barring the matters, which are already decided by the adjudicating authority,
  - the additional duty accepted is not less than Rs. 3 lakh (increased from Rs. 2 lakh),
  - time limit for response by the settlement commission and commissioner fixed,
  - if the final order is not passed in the



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time prescribed then the proceeding shall abate and revert to the earlier position,

- when proceedings abate the materials and evidences provided to the settlement commission would be available for the normal proceedings,
- the commission shall only pass orders with regard to penalty and fine and not on interest or for preventing any action under the Indian Penal Code.

These amendments would result in the settlement commission becoming toothless and would not provide any relief. The focus appears to be to avoid shelter for the tax evaders but may also result in unnecessary hardships for genuine taxpayers who have not paid due to bona fide reasons.

5. Section 35E is proposed to be amended which provide that the Committee of Chief Commissioners or the Commissioners shall review the orders of the Commissioner or adjudicating authorities below the rank of Commissioner within a period of three months as against the present period of one year from the date of communication of the decision or order of the Adjudicating Authority. It is also proposed to reduce the time available for authorised officer to file appeal before the Appellate Tribunal or the Commissioner (Appeals), as the case may be, from three months at present to one month from the date of communication of the order from the committee.
6. Section 35F dealing with pre-deposit of duty demanded before filing appeal is proposed to be amended to include the following:
  - (i) amount determined under section 11D (amounts collected from customer which were not liable to be collected);
  - (ii) amount of erroneous CENVAT credit taken;
  - (iii) amount payable under rule 57CC of Central Excise Rules, 1944;

(iv) amount payable under rule 6 of Cenvat Credit Rules, 2001 or Cenvat Credit Rules, 2002 or Cenvat Credit Rules, 2004;

(v) interest payable under the provisions of this Act or the rules made thereunder.

This measure may have been prompted as these amounts could also be substantial at times and to discourage assesseees from taking a plea that the pre-deposit is not applicable for all these type of amounts payable though there is orders confirming the liability for payment

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of the same. This would also help the revenue to initiate recovery proceedings against such demands unless the assesseees obtain stay order for recovery proceedings.

7. Section 37(4) and 37(5) is proposed to be amended to reduce the minimum penalty from Rs. 10000 to Rs. 2000. The penalty for technical errors or minor errors and irregularities has rightly been trimmed.

## **II. Changes in Central Excise Rules, 2002 effective from 1st April 2007**

- A. Rule 8 is amended to make e-payment mandatory for payment of duty by all assesseees who have paid excise duty of Rs. 50 lakh or more in cash during the preceding financial year. This indeed heralds a move towards more use of information technology and would also avoid paperwork and save the transaction cost. The increased adoption of information technology is essential where most taxpayers have already been using the same for many years. The experience of e-filing in the past has not been very encouraging but it is the initial period and over a period of time it is expected to become user

friendly.

- B. The term 'duty' or duty of excise is explained to include the 'amount' payable in terms of the CENVAT Credit Rules, 2004. Therefore, all amount payable like payment on removal of input as such under Rule 3(5), payment under rule 6 (3) of the CENVAT Credit Rules, 2004 etc., can be paid along with duty payable by 5<sup>th</sup> or 15<sup>th</sup> of the next month. This measure puts to rest the demands mainly by the audit party that such amounts were payable on the dates of removal rather than after the end of the month. Further also it would put to rest the contentions that the duty payable would not include the amounts payable in terms of CENVAT Credit Rules, 2004.
- C. Rule 11(2) dealing with the contents of invoice is amended to provide for inclusion of address of the jurisdictional Central Excise Division in the Central Excise Invoice. The rationalisation measures from 2000 onwards was to accept assessee's own records. The need to have the Division's address for cross verification is imperative and necessary.
- D. Rule 21 has been amended to increase the power of remission given to various officers of central excise as follows:

- F. A new sub-rule (2) has been inserted in rule 26 to provide for penal action against the person who issues CENVAT invoices without delivery of goods mentioned therein and also against the person who is involved in fabricating Central Excise documents or any other document like shipping bill, bill of lading, etc., based on which the user of said document is likely to take or has taken any ineligible benefits like CENVAT credit, refund, etc.; The penalty would be Rs.5000/- or the amount of benefit involved, whichever is greater. The practice by some nefarious elements which is prevalent even today of issuing bogus invoices without materials or excess invoices with less materials is a serious malady and deterrents in the law toward this were required.

### Changes in Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 effective from 1<sup>st</sup> April 2007

- A. The industry (especially the pharmaceutical, chemical and engineering and plastic products industries) has for more than a decade been outsourcing their manufacture to independent job workers following the valuation of goods as per the decision of

Sl. No.	Competent Central Excise Officer	Existing Amount of duty empowered to remit	Revised Amount of duty empowered to remit
1	Commissioner	Without limit, but normally any amount exceeding Rs. 5,000	Without limit, but normally any amount exceeding Rs. 5,00,000
2	Additional/Joint Commissioner	Rs. 2,500 to Rs. 5,000	Rs. 1,00,000 to Rs. 5,00,000
3	Deputy/Assistant Commissioner	Rs. 1,000 to Rs. 2,500	Rs. 10,000 to Rs. 1,00,000
4	Superintendent	Below Rs. 1,000	Below Rs. 10,000
5	Inspector	None	None

- E. Rules 25 & 26 are being amended to reduce the minimum penalty from the present level of Rs.10,000/- to Rs. 2,000/-. This change would be effective on enactment of Finance Act, 2007.

Supreme Court (Ujagar Prints 1988 (38) ELT 535). The valuation was the cost of materials supplied along with the job work charges. This was used as a tax-planning device, which would result in the saving of excise duty on the manufacturer's profits and

overheads specially marketing overheads.

- B. New rule 10A has been inserted in the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 to provide that where goods are manufactured by a job-worker on behalf of a person (commonly known as principal manufacturer), the value for payment of excise duty would be based on the transaction (sale) value at which the principal manufacturer sells the goods.
- C. This would apply to all sales from the job workers factory or from the depot or any other point of sale of the principal manufacturer.
- D. Cost of transportation from the place of sale to the place of delivery would be excluded. Where the goods are returned to the principal manufacturer, then the usual valuation methodology would have to be followed.
- E. With this change, it is also expected that such independent job workers may now be asked by their customers or traders to convert into manufacturer supplier.

### **Changes in CENVAT Credit Rules, 2004 effective from 1<sup>st</sup> March 2007**

- (a) Rule 3 is amended to allow credit of Secondary and Higher Education Cess, which can be utilised for payment of either Education Cess or SHE Cess.
- (b) Rule 6 is amended to provide for an option to the provider of output services relating to General Insurance business to take proportionate credit based on the methodology set out, for which they would have to exercise option.
- (c) Rule 9(2) is amended to provide that the Cenvat credit can be availed if all the particulars as prescribed under Central Excise Rules, and Cenvat Credit Rules are mentioned on the invoice or other duty-paying document.
- (d) In case, any of the required particulars (other

than specified particulars as to duty payment etc.) are not available on the document, the Assistant/Deputy Commissioner may allow the credit subject to his satisfaction that:

- i. goods/services covered by said document has been received by the assessor, and
  - ii. the receipt of said goods/services has been accounted for in the books of accounts of the receiver.
- (e) Rule 9(3) which contained the obligation on the person availing credit to ensure the genuineness of supplier and the payment made is omitted as new responsibilities are imposed. Consequential amendments are also made in rule 15(1) and 15(3), which provides for penal action for not complying with these aspects.

The provision in c), d) and e) above are to tighten the procedures to prevent and discourage the sale of bogus duty paying documents.

**Consequential amendments have also been made in rule 15(1) and 15(3), which provide for penal action for not complying with these aspects.**

- (f) New sub-rule (11) is inserted in rule 9 so as to allow service provider to rectify mistakes and file revised return within 60 days from the date of filing of original return, subject to specified conditions. It is to be noted that this facility is not pertaining to manufacturer but is only a consequential change to support the changes made in the Service Tax Rules 1994, to file revised returns for service provider. This could have also been made available to manufacturers.
- (g) New sub-rules (3) & (4) have been inserted in rule 11 to provide that when a person opts for exemption from whole of duty (in

case of conditional notification) or where a product becomes exempted absolutely, in such cases, the CENVAT credit taken on inputs lying in stock, or in process or contained in the final product lying in stock should be reversed. Similar provision has been made in respect of cases wherein taxable service becomes exempted. However, no reversal of credit of input services is required to be made in such cases. These changes were made to nullify

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the decisions of court where it was held that there was no requirement of reversal of duty on inputs, which were already used and is in other forms like work in progress or finished goods.

- (h) Rule 15 is amended to reduce the minimum penalty from the present level of Rs. 10,000/- to Rs. 2,000/-. This would be effective on enactment of Finance Act, 2007. A more reasonable amount for technical breaches.

### Proposed Tariff Changes

The important general tariff changes are discussed as under:

- A. Secondary and Higher Education Cess (SHE Cess) @ 1% has been imposed. This is in addition to already existing education cess. This is calculated in the same manner as that of education cess. However, this has to be shown separately. Cenvat Credit facility is also extended for this cess and credit can be taken in a manner similar to that of education cess. This can be used only for paying education cess or SHE Cess. It is important to note that this is effective from 01.03.2007 for all the goods manufactured and cleared after 01.03.2007. This additional

levy effectively increases the taxes and also adds to the complication of accounting, calculation and finally the transaction cost.

- B. Exemption limit for SSI scheme has been increased from Rs. 1 crore to Rs. 1.5 crore. This would be effective from 1.4.2007 under Notification 8/2007. However, the upper limit for eligibility has been kept intact at Rs. 400 lakhs. Also the declaration limit has been kept intact at Rs. 40 lakhs, which could also have been consequently amended upwards.
- C. The measure to tax the value addition in certain products where the retail sales price and the value at which duty is being paid is unduly large has been proposed to be advanced in this budget. The items has been added to the Third Schedule of the Central Excise Act to provide that in relation to such goods, packing or repacking in unit container, labelling or relabelling of packages, including the declaration or alteration of retail sale price on it or adoption of any other treatment to render the product marketable to the consumer, shall amount to 'manufacture'. These items are:
- a. Cement falling under heading 252329
  - b. Plant growth regulators
  - c. Toothbrush
  - d. Personal computers (including laptops and other portable computers)
  - e. Printers, whether or not combined with the functions of copying or facsimile transmission.
  - f. Monitors of a kind used solely or principally in an automatic data processing machine.
  - g. Computer keyboards
  - h. Scanners
  - i. Computer mouse
  - j. Computer plotter
  - k. Facsimile machines

- l. Modems (modulator-demodulators)
- m. Set top boxes for gaining access to internet
- n. Set top boxes for television sets.

This amendment would be effective from the date to be notified except cements, plant growth regulators, and toothbrush

D. Consequential to the above the MRP based assessment under Section 4A is being extended from a date to be notified to the following goods:

- a. Personal computers (including laptops and other portable computers)
- b. Printers, whether or not combined with the functions of copying or facsimile transmission.
- c. Monitors of a kind used solely or principally in an automatic data processing machine.
- d. Computer keyboards
- e. Scanners
- f. Computer mouse
- g. Computer plotter
- h. Facsimile machines
- i. Modems (modulator-demodulators)
- j. Set top boxes for gaining access to internet
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E. The budget provides that full exemption is to be given to the following goods w.e.f. 01.03.2007

- a. Packed biscuits of maximum retail sale price (MRP) not exceeding Rs. 50 per kilogram;
- b. Food mixes (including instant food mixes);
- c. Specified water purification devices based on membrane technology;
- d. Household water filters not using elec-

tricity and pressured tap water;

- e. Bio diesels.
- f. Flash memory in general.
- g. DVD drive including DVD writer'.

F. The exemption to specified items when domestically procured by all research institutions registered with Department of Scientific & Industrial Research, for the purpose of research, is extended, subject to certain conditions.

G. There were exemptions in regard to pipes carrying water from water treatment plant, including its reservoir, to the first storage point. Further exemption is now given to all pipes of outer diameter exceeding 20 centimetre, when such pipes are integral part of the water supply project. Such pipes would be eligible for the exemption

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irrespective of whether they are used for taking water from treatment plant to the first storage point or from one storage point to another storage point.

H. There were other amendments to rates of certain products upwards and downwards by way of rate changes, exemptions provided and exemptions withdrawn which being of specific nature have not been discussed in this article.

The amendments in the past year and the thrust to discourage the tax evaders while being welcome also requires that the check and balances on the actions of lower level tax administrators be put in place to avoid tax compliant assessee from facing any difficulty and not lead to increase in the transaction costs. □