

BUDGET 2011 – An Analysis

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CENTRAL EXCISE

Rate of duty

- The peak Excise duty rate continues to be 10% and there is no change.
- The goods hitherto attracting 4% rate of duty, except petroleum products, will attract 5% duty with effect from 1/3/2011.

1% duty Scheme

- About 130 items hitherto enjoying full exemption or attracting Nil rate of duty will hereafter (wef 1/3/2011) attract 1% duty without Cenvat credit benefit. Medicines (including anesthetics, Vaccines other those covered under National immunization program, Intravenous Fluids), Bicycles, Mobile phones, data cards, Fruit pulp and fruit juice base drinks, Flavoured Milk and Soya Milk, Sauces and ketchup, Soups and Broths, Ice Creams, Supari, etc which were attracting Nil rate of duty would attract 1% duty.
- SSI exemption will be available for all the said products, except for pan masala and adhesive tapes.
- The manufacturers of the said 130 items can opt to avail Cenvat credit and pay 5% duty instead of 1% duty.
- 1% duty have to be paid only in cash and cannot be debited out of Cenvat credit.
- The buyers of such 1% duty products is not entitled to take credit of such 1% duty.
- For the purpose of Cenvat Credit Rules, such 1% duty products are included in the exempted products and accordingly, Rule 6 obligation have to be discharged for such goods.

Readymade garments/Made-ups

- Ready Made Garments and Made Up Articles falling under Chap 61, 62 and 63 when sold with Brand Name are brought under compulsory levy of 10%

duty regardless of the composition and the optional scheme is not available to them.

- SSI exemption has been extended for the above chapters
- The levy does not apply to retail tailoring establishment who stitch garment in customized manner.
- Deemed manufacture has been made applicable to Chap 63 Vide introduction of Note 5. It is already there for Chap 61 and 62.
- Many Brand Owners get their garments manufactured on job work basis and accordingly, rule 4(1A) has been introduced to make the Brand Owners liable to pay duty on such Brand Owners on whose behalf the job workers manufacture. The Brand Owner have to get their warehouse/store room registered with the dept for this purpose and they are permitted to take Cenvat credits. Alternately, they can authorise the job workers to comply with the levy.

Mega Power Project

- Hitherto S.No.91A, 91B & 91C of Notification 6/2006 CE provided for supply of all goods to Mega Power Project and Ultra Mega Power Project subject to a condition that the goods are also entitled for exemption under Customs. Now the said condition has been removed and instead 'All goods' have been substituted with the Tariff description contained in heading 9801 of the Customs Tariff.

Withdrawal of Exemptions

- The full exemption hitherto available for paper and paper board upto first clearance of 3500 Mt per annum stands withdrawn and the said goods will attract 5% duty.
- Full exemption provided for parts of computer such as micro processor, floppy disc drive; hard disc drive; CD-ROM drive; DVD drives/ writers; flash memory and combo drives meant for fitment inside a laptop/CPU is also withdrawn and such goods along with parts of such goods will attract 5% duty wef 1/3/2011.

Legislative Amendments

1. Section 4A amended – Instead of Standards of Weights and Measures Act, now the requirement of affixing MRP is based on Legal Metrology Act, 2009. (w.e.f 1/3/2011)
2. Section 11A substituted -
 - in terms of sub section (5), if the details relating to the offending transaction, warranting invocation of extended period, are available in the specified records (any document including computerized document maintainable in terms of any law – refer explanation (c) to Section 11A), the penalty would be 50% of the duty involved.
 - in terms of sub section (6) if the duty and interest in respect of a case covered under sub section (5) is paid before issue of show cause notice, then penalty equivalent to 1% of such duty per month to be calculated from the date of liability but not exceeding a maximum of 25% of such duty.
 - in terms of sub section (8) period of stay if any granted by court or tribunal will stand excluded for the purpose of calculation of limitation.
 - in terms of sub section (11) cases involving normal period is required to be decided within 6 months and cases involving extended period is required to be decided within a period of 6 months.
3. Section 11AA and 11AB substituted with a new section 11AA – interest rates have been proposed to be increased to 18% which is subject the enactment of the Finance Bill.
4. Section 11AC substituted – Clause(b) provides for 50% in terms of Section 11A(5). Reduced penalty of 25% when the duty, interest and reduced penalty paid within 30 days from the date of order continues.
5. New Section 11E introduced to create first charge on the property of the assessee for the dues under this Act.
6. New Section 12F introduced to empower the JC/ADC to authorise search operations and the provisions of Code of Criminal procedure has been made applicable.
7. New Section 35R introduced to protect the revenue from non filing of appeal in certain cases and the tribunal or the court to consider the reason for such non filing instead of dismissing the appeals on the ground that the dept has not filed appeals against the earlier orders against the revenue.
8. Section 38 amended to include

(a) Rule 3 amended to provide for credit of service tax paid under Section 66A with retrospective effect from 18.4.2006.

Deemed Manufacture

- Activities such as packing, repacking, labeling, re-labelling, etc has been declared as manufacturing activity in respect of Chap 15 and Chap 22
- Process of conversion of ore into concentrates has been deemed to be manufacture under Chap 26
- Refining of Gold Dore Bars has been deemed to be manufacture under Chap 71
- Process of Galvanisation has been deemed to be manufacture under Chap 72.

CUSTOMS

- The peak Customs duty rate continues to be 7.5% and there is no change.
- Basic customs duty rates of 2%, 2.5% and 3% unified at median rate of 2.5%
- Full exemption in respect of BCD for import of aircraft by non scheduled operators has been withdrawn and a duty of 2.5% introduced. Exemption in respect of education cesses also withdrawn.
- Full exemption for payment of CVD granted on portion of value representing consideration paid or payable for transfer of right to use such goods to those packaged or canned software which does not required affixation of RSP under the Legal Metrology Act, 2009 subject to importer being registered under service tax.
- Export duty on Iron ores lumps and fines has been increased to 20%.
- Full exemption from Export duty has been given to Iron ore pellets.
- Fresh Export duty on de-oiled rice bran cake has been introduced which will attract 10% duty.
- Water pumping station and water reservoir included in scope of projects eligible for water supply projects.
- **All clearances from SEZ to DTA exempted from SAD if they are not exempt from VAT/Sales tax.**
- Full exemption from SAD on parts, components, accessories for manufacture of mobile handsets including cellular phones.

- **It is clarified that Cement and Steel which goes into the construction of Power Projects are not entitled for the benefit of exemption.**
- Security amount to tendered at the time of registering of contracts under project imports has been reduced to 2% of the Contract Value with a ceiling of Rs.1 Crore which shall be provided in the form of Bank Guarantee and the same need not be renewed if the finalisation of assessment does not take place within 6 months from the date of submission all relevant documents by the importer.

Legislative Changes

- Self assessment provisions introduced for import and export of goods by importer or exporter. Customs officer may verify the assessment made by the importer/exporter and call for any documents for verification and if the assessment is found to be incorrect, then he may re assess the duty liability. If such re-assessed duty liability is not accepted by the importer/exporter then the officer is required to pass speaking orders. In all other cases, other than those warranting issue of speaking order, the customs is empower to conduct audit either at the custom house or by visiting the importer's premises. Provisional assessment provisions made applicable for importer/exporter unable to do self assessment.
- Time limit for claiming refund of duty and interest enhanced from six months to one year. Section 28 amended accordingly.
- Rate of Interest fixed at 18%.
- Section 110A is amended to provide for release of seized goods by the adjudicating authority instead of Commissioner
- Section 124 is amended to provide issuance of show cause notice with the approval of Asst Commissioner instead of Deputy Commissioner
- Section 131D is inserted to empower Board to issue instructions regarding non filing of appeal in line with the National Litigation Policy
- Section 142A is inserted to create first charge on the property of the defaulter for recovery of Customs dues
- Section 150 is amended to provide for retention of balance of sales proceeds of unclaimed cargo sold in auction if they cannot be paid to the owner within 6 months.

SERVICE TAX

HIGHLIGHTS

- Service tax to be paid on accrual basis from 01-04-2011.
- Interest on delayed payments increased to 18% other than for individuals;
- No audit for individuals with turnover up to 60 lakhs. Applicable rate of interest for such tax payers would be 15%.
- Airconditioned restaurants having license to serve alcoholic beverages to pay service tax on services provided while serving food and beverages.
- Hotels, inns, guest houses charging more than Rs.1000/- per day brought under service tax net.

Amendments in Existing Services:

- Scope of life insurance service expanded to cover services relating to managing investment for policy holders ;
- Scope of club or association service expanded to cover service provided to non members;
- Scope of authorised service station expanded to include service provided by any person, further includes decoration services and servicing to all motor vehicles except three wheeler rickshaws and goods carriages .
- Business support service expanded to include operational or administrative assistance in any manner;
- Scope of legal consultancy service to include representational service provided to business entities and services of arbitration provided by arbitration tribunal to business entity;
- Commercial training or coaching service amended to include all unrecognised courses;
- Health services to include service provided by clinical establishments with central airconditioning and more than 25 beds for inpatient treatment, in relation to diagnostic test, doctors from premises of such clinical establishment.

Exemption Notifications:

- Exemption to services provided by organisers of business exhibitions in relation to business exhibitions organised outside India
- Abatement of 25% provided to services rendered in relation to 'transport of coastal goods' and goods transported through 'national waterways or inland water'

- Exemption to works contract services when rendered for construction of residential complex or completion and finishing services under Jawarhal Nehru Urban Renewable Mission
- Exemption to general insurance provided under Rashtriya Swasthya Bima Yojna
- Exemption to works contract service rendered within port or other port in specified areas
- Exemption to transport of goods when provided to a person in India from a destination outside India to a destination outside India
- Exemption to works contract service when provide inside airport and classified under airport service
- Exemption with retrospective effect to association or chamber representing commerce or industry in respect of membership fee under 'Club or association service' for the period 16-06-05 to 31-03-08.
- Exemption with retrospective effect to interstate or intra state transport of passengers in a vehicle baring contract carriage and tourist vehicle permit for period 01-04-2000 to 06-07-2009.

Amendment to Existing Notifications:

- Service tax applicable to transport of passengers by air service is revised
- Amendment in SEZ notification widening scope of services 'wholly consumed ' with in SEZ.
- Works contract composition Rules amended restricting credit on input services as erection commissioning, commercial or industrial construction and construction of residential complex services to 40% when tax has been paid on such services after availing credit on input.

Miscellanea:

- No audit for individuals and sole proprietor assesseees with turnover up to 60 lakhs
- Interest for assesseees up to turnover of Rs.60 lakhs less than 3% of prescribed rate.
- Delay in filing returns to attract penalty from Rs. 2,000 to 20,000/-

- Benefit of reduced penalty not available in cases of fraud, collusion etc unless details are available in records,
- Interest for delayed payment of service tax enhanced to 18% with effect from 01-04-2011. Concessional rate of 3% for individual tax payers with taxable turnover less than 15%.
- Provisions relating to prosecution to be reintroduced;
- Applicable rate for service tax to be the rate prevailing at the time of rendering service;
- Monetary limit of adjustment under service tax enhanced to Rs. 2,00,000/-
- Payment of service tax to be altered from receipt to accrual basis;
- Re-categorisation of certain services under Export of Service Rules, 2005 and Import of Service Rules, 2005.

CENVAT CREDIT

1. Definition of '*Capital goods*' expanded to include specified goods used outside the factory for generation of electricity for captive use within the factory (w.e.f 01-04-2011).

2. Definition of '*inputs*' amended (w.e.f 01-04-2011)

➤ As per the new definition of "*inputs*", Credit can be taken on:

- all goods used in the factory by manufacturer of the final product,
- Any goods including accessories , cleared along with final products, the value of which is included in value of final product ,
- Goods used for providing free warranty for final products,
- All goods used for generation of electricity or steam for captive use;
- All goods used for providing any output service

➤ No Credit shall be taken on:

- Light diesel oil, high speed diesel oil, motor spirit commonly known as petrol
- Any goods used for Construction of a building, civil structure or part thereof;

- Laying of foundation or making of structures for support of capital goods;
(credit of goods used for construction and laying foundation or making of structure can be taken when such construction, foundation, structural are used for provision of port service, airport service, construction of commercial and residential complex and works contract service)
- Capital goods (Credit can be taken when such capital goods are used as parts or components in manufacture of final products);
- Motor vehicles,
- Any goods which are used primarily for personal use or consumption of employees Such as food items, goods used in guest house, residential colony, club or a recreation facility, and clinical establishment,
- Any goods which does not have any relationship with manufacture of final product.

3. Definition of "input services" amended (w.e.f 01-04-2011)

➤ As per the new definition of 'input service', Credit can be taken on:

- Any service used by provider of taxable service for providing output service
- Any service used by manufacturer, whether directly or indirectly in or in relation to manufacture of final products and clearance of final products up to place of removal
- Services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relation to such factory or premises,
- Advertisement or sales promotion,
- Market research
- Storage up to the place of removal,
- Procurement of inputs,
- Accounting , auditing, financing, recruitment and quality control
- Coaching and training
- Computer networking
- Credit rating, share registry, security,
- Business exhibition,
- Legal services
- Inward transportation of inputs
- Inward transportation of capital goods

- Outward transportation up to place of removal

No Credit shall be taken on:

- Architect service, port service, airport service, construction of residential and commercial complex service, works contract service used for construction of building or civil structure or part thereof, used for laying of foundation or making of structures for support of capital goods (Credit can be taken when such services are input service for services as airport service, construction of residential or commercial complex service, works contract service etc.)
 - General Insurance service, rent a cab service, authorised service station service, supply of tangible goods service in relation to motor vehicle (credit can be taken when such services are used for provision of a taxable service for which credit on motor vehicle is available as capital goods)
 - Services as outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation as leave or home travel concession when such services are used primarily for personal use or consumption of employee.
- "Exempted goods" to include goods subject to 1% excise duty as per Notification 1/2011-CE dated 01-03-2011 (w.e.f 01-03-2011). No Cenvat credit can be used for payment of duty of such goods. No Cenvat credit would be available on such 1% duty to the buyers of such goods.
- "Exempted services" to include trading and taxable services whose part of value is exempted on condition that no credit on inputs and input services shall be taken (w.e.f 01-04-2011). With this amendment trading and services with benefit of abatement would be treated as exempted services.
- No need to reverse credit on inputs taken outside factory for providing free warranty services.
- Credit of Cenvat to be reversed on inputs and capital goods which are written off partially or where provision to write off partially is made (w.e.f

01-03-2011). Hitherto, reversal was contemplated only if written off/provision to write off fully was made!

- Cenvat credit taken on input services to be reversed when any amount is returned back to the service recipient by the service provider, on or before 5th of the succeeding month (w.e.f 01-04-2011).
- In a major relief, Service tax paid under Rule 66A has been added in list of eligible credit with effect from 18-04-2006.

Amendments in Rule 6 of Cenvat Credit Rules, 2004:

- Rule 6 of Cenvat Credit Rules amended making manufacturer of dutiable and exempted goods or taxable and exempted service to pay amount equal to 5% of value of exempted goods or exempted service. In respect of services exempted on basis of value, 5% is to be computed on value exempted as per notification on condition of non-availment of credit on inputs and input services.
- Option under Rule 6 also given to maintain separate accounts only in respect of inputs and offer only input services for formula under Rule 6 (3A).
- For applying formula under Rule 6 (3A), value of trading service shall be difference between sale price and purchase price of goods.
- For applying formula under Rule 6 (3A), value of services under composition scheme shall be tax amount/rate of tax under Section 66 read with exemption.
- Banking and financial institutions and life insurance companies to reverse
- 50% of credit availed and options under rule 6 will not be available for them.
- Rule 6 (5) permitting full credit on 16 services used for provision of exempted as well as taxable service and manufacture of exempted as well as dutiable goods is deleted.
- No credit to be reversed on provision of tax free services to SEZ.