UNION BUDGET 2011- 2012

INDIRECT TAXES

GLANCE:

- Central Excise Duty to be maintained at standard rate of 10 per cent.
- Reduction in number of exemptions in Central Excise rate structure
- Nominal Central Excise Duty of 1 per cent imposed on 130 items entering in the tax net.
- Lower rate of Central Excise Duty enhanced from 4 per cent to 5 per cent.
- Optional levy on branded garments or made up proposed to be converted into a mandatory levy at unified rate of 10 per cent.
- Peak rate of Custom Duty held at its current level.

SECTOR SPECIFIC PROPOSALS:

1. *Agriculture and Related Sectors*

- ✓ Scope of exemptions from Excise Duty enlarged to include equipments needed for storage and warehouse facilities on agricultural produce.
- ✓ Basic Customs Duty reduced for specified agricultural machinery from 5 per cent to 2.5 per cent.

- ✓ Basic Custom Duty reduced on micro-irrigation equipment from 7.5 per cent to 5 per cent.
- ✓ De – oiled rice bran cake to be fully exempted from Basic Customs Duty. Export Duty of 10 per cent to be levied on its export.

2. *Manufacturing Sector*

- ✓ Basic Custom Duty reduced for various items to encourage domestic value addition vis-à-vis imports, to remove duty inversion and anomalies and to provide a level playing field to the domestic industry.
- ✓ Rate of Export Duty for all types of iron ore enhanced and unified at 20 per cent ad valorem. Full exemption from Export Duty to iron ore pellets.
- ✓ Basic Customs Duty on two critical raw materials of cement industry *viz*. pet coke and gypsum is proposed to be reduced to 2.5 per cent.
- ✓ Cash dispensers fully exempt from Basic Customs Duty

3. *Environment*

  - ✓ Full exemption from Basic Customs Duty and a concessional rate of Central Excise Duty extended to batteries imported by manufacturers of electrical vehicles.
  - ✓ Concessional Excise Duty of 10 per cent to vehicles based on Fuel Cell Technology.

- ✓ Exemption granted from Basic Customs Duty and Special CVD to critical parts/assemblies needed for Hybrid vehicles.
- ✓ Reduction in Excise Duty on kits used for conversion of fossil fuel vehicles into Hybrid vehicles.
- ✓ Excise Duty on LEDs reduced to 5 per cent and special CVD being fully exempted.
- ✓ Basic Customs Duty on solar lantern reduced from 10 to 5 per cent
- ✓ Full exemption from Basic Customs Duty to Crude Palm Stearin used in manufacture of laundry soap.
- ✓ Full exemption from basic Excise Duty granted to enzyme based preparation for pre-tanning.

4. *Infrastructure*

- ✓ Parallel Excise Duty exemption for domestic suppliers producing capital goods needed for expansion of existing mega or ultra mega power projects.
- ✓ Full exemption from Basic Customs Duty to bio-asphalt and specified machinery for application in the construction of national highways.
- ✓ Scope of exemptions from Basic Customs Duty for work of art and antiquities extended to apply for exhibition or display in private art galleries open to the general public.
- ✓ Exemption from Import Duty for spares and capital goods required for ship repair units extended to import by ship owners.

- ✓ Concessional Basic Customs Duty of 5 per cent and Countervailing Duty (CVD) of 5 per cent available to newspaper establishments for high speed printing presses extended to mailroom equipment.
- ✓ Jumbo rolls of cinematographic film fully exempted from CVD by providing full exemption from Excise Duty.
- ✓ Out right concession to factory-built ambulances from Excise Duty.

IMPORTANT LEGISLATIVE AMENDMENTS:

CENTRAL EXCISE

- ✓ Under Section 11 A of the Central Excise Act, a separate category has been carved out from cases involving extended period oflimitation (fraud, collusion, willful mis-statement etc.) wherein a lower mandatory penalty of 50% of the duty (rather than 100% of the duty) would apply. These would cover cases where it is noticed during an audit, investigation or verification that duty has not been levied, short levied, not paid or short paid or erroneously refunded but the transactions to which such duty relates are entered in the specified records.
- ✓ The provisions of the existing sub-section (1A) of section 11 have been omitted. The facility of compounding the penalty amount has been confined only to the new category and if the person chargeable with duty (for an extended period) pays the duty in full or part along with interest before the issuance of a show cause notice, the penalty shall stand reduced to 1 % per month but not exceeding 25% of the duty. However if the duty

alongwith interest is paid within thirty days of the issuance of adjudication order, the penalty would be 25% of the duty.

- ✓ The provisions of sections 11 AA and 11 A B have been merged into a revised section 11 AA. Under the proposed provision, interest would be payable on any duty not levied, short- levied, not paid, short paid or erroneously refunded from the first date of the month succeeding the month in which the duty ought to have been paid under the Act or from the date of erroneous refund. The provisions of the existing section 11 AA are proposed to be omitted.
- ✓ Section 11 E is being inserted in the Central Excise Act to create a first charge on the property of a defaulter for recovery of Central Excise dues
- ✓ Monetary limits will be prescribed below which appeals, revision application or references need not be filed.
- ✓ The Standards of Weights and Measures Act, 1976 is being repealed

CENVAT CREDIT RULES, 2004

- ✓ The definition of "input" contained in rule 2(k) has been revised. The requirement that goods should be used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not has been removed. Henceforth, all goods used in the factory by the manufacturer of the final product, except those specified in the negative list and goods having no relationship whatsoever with the manufacture of final product, would qualify for treatment as inputs.
- ✓ In addition, any goods including accessories cleared alongwith the final product

and goods used for providing free warranty have also been included in the definition of inputs. Similarly, goods used for generation of electricity or steam for captive use also constitute inputs.

- ✓ Any goods used for the construction of a building or a civil structure or laying of foundation or making of structure for support of capital goods have been excluded.

CUSTOMS

- ✓ One of the highlights of the provisions of the Finance Bill, 2011 is the introduction of self-assessment in the Customs Act, 1962 both for imported goods and export goods. This would replace the existing legal requirement of assessment of every bill of entry or shipping bill by the Customs Officer.
- ✓ Consequential amendments are being proposed in section 18 relating to provisional assessment. It is being provided that the importer may make a request for assessment of goods by the officer when he is not in a position to self-assess.
- ✓ Sub-section (1) of section 27 of the Customs Act, 1962 is being substituted so as to enhance the time limit for claiming refund of duty and interest from six months to one year for all categories of importers
- ✓ Section 110A of the Customs Act, 1962 is being amended to empower the adjudicating authority to allow release of seized goods instead of Commissioner of Customs.

- ✓ Section 131D of the Customs Act, 1962 is being inserted to empower the Board to issue instructions relating to non-filing of appeal in certain cases in line with National Litigation Policy retrospectively with effect from 20.10.2010.
- ✓ Section 3 of Customs Tariff Act, 1975 is being amended to substitute the reference to Standards of Weight & Measures Act, 1976 with Legal Metrology Act, 2009 with effect from 1.3.2011.

SERVICE TAX

- ✓ Standard rate of Service Tax retained at 10 per cent, while seeking a closer fit between present regime and its GST successor.
- ✓ Hotel accommodation in excess of Rs. 1,000 per day and service provided by air conditioned restaurants that have license to serve liquor added as new services for levying Service Tax.
- ✓ Tax on all services provided by hospitals with 25 or more beds with facility of central air conditioning.
- ✓ Service Tax on air travel, both domestic and international raised.
- ✓ Scope of authorized service station extended to cover repair, re-conditioning, restoration, or decoration or any other similar services of any motor vehicle.
- ✓ Services provided by life insurance companies to cover all services including in relation to management of investments.

- Scope of legal services expanded to include advice, consultancy or assistance provided by a business entity to individuals as well; representational services provided by any person to a business entity; and services provided by arbitrators to business entities. Services provided by individuals to other individual will remain outside the levy.

- Business Support Service expanded to include operational or administrative assistance of any kind.

- Health-related services provided by doctors, not being employees, providing health-related services from the premises of a clinical establishment.

- Scope of service proposed to be expanded to include all coaching and training not recognized by law irrespective of whether the institute is providing any other course(s) recognized by law.

- Exemption provided to services provided by an organizer of business exhibitions in relation to business exhibitions held outside India.

- An abatement of 25% from the taxable value has been provided for the purpose of levy of service tax under 'Transport of goods through coastal and inland shipping'.

- Exemption provided to 'works contract' service provided for construction or finishing of new residential complex under 'Jawahar Lal Nehru National Urban Renewal Mission' and Rajiv Awaas Yojna'.

- Exemption provided to services provided within a port or other port or an airport under the 'Works contract' service for specified purposes.

- ✓ Exemption provided to 'Rashtriya Swasthya Bima Yojna' under the General Insurance' service.

- ✓ Value of air freight included in the assessable value of goods for charging customs duties has been excluded from taxable value for the purpose of levy of service tax under the 'Transport of goods by air' service.

- ✓ Services related to transportation of goods by road, rail or air when both the origin and the destination are located outside India has been exempted from service tax.

- ✓ New notification has been issued for the purposes of granting exemption/ refund to services provided to a SEZ. Notification has been issued superceding notification 9/2009-ST dated 03.03.2009.

- ✓ The maximum penalty for delay in filing of return under section 70 has been proposed to be increased from Rs.2, 000/- to Rs.20, 000/-.

- ✓ The provisions of section 73 (1A) and both the Provisos of section 73 (2) are proposed for deletion.

- ✓ A concession of 3% in interest has been proposed in the Bill for tax-payers whose turnover during any of the years covered in the notice or the preceding financial year is below Rs 60 lakh.

- ✓ Penalty for failure to pay tax under section 76 is being halved.

- ✓ The maximum penalty under section 77 for contravention of various provisions is proposed to be increased from Rs.5000/- to Rs.10000/-. However, the daily rate of penalty, wherever applicable, is being retained.

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- ✓ Penalty under Section 78 is proposed to be altered from upto twice the amount of tax to an amount equal to the tax.
- ✓ Section 80 is being amended by substituting section 78 with the words “proviso to section 78”.
- ✓ Provisions relating to prosecution are proposed to be re-introduced and shall apply in the following situations:
  - ➢ Provision of service without issue of invoice;
  - ➢ Availment and utilization of Cenvat credit without actual receipt of inputs or input services;
  - ➢ Maintaining false books of accounts or failure to supply any information or submitting false information;
  - ➢ Non-payment of amount collected as service tax for a period of more than six months.
- ✓ There shall be no power of arrest and the prosecution can be launched only with the approval of Chief Commissioner.
- ✓ Notification 26/2010-ST dated 22-6-2010 is being amended by Notification 4/2011-ST and the service tax applicable in respect of ‘Transport of passengers by air service’ is being revised as follows:
  - ➢ Domestic (economy) : From Rs.100 to Rs.150
  - ➢ International (economy) : From Rs.500 to Rs.750
  - ➢ Domestic (other than economy) : Standard rate of 10%

- ✓ Exemption from service tax on the membership fees under 'Club or association service' is being given to the associations or chambers representing industry or commerce for the period from 16.06.2005 to 31.03.2008.
- ✓ Retrospective effect is being given to Notification No. 20/2009-ST dated 7.07.2009 exempting service tax on inter-State or intra-State transportation of passengers in a vehicle bearing Contract carriage permit or a tourist vehicle permit for the period from 1.04.2000 to 6.07.2009 2008.
- ✓ Interest rate for delayed payment of service tax is being increased to 18% per annum, effective 01.04.2011.
- ✓ Point of Taxation Rules, 2011 have been framed vide notification 18/2011-ST and made effective from 01.04.2011.
- ✓ Consequential changes have also been made in the Service Tax Rules, 1994 to alter the payment of service tax from receipt of payment to provision of service and also to permit adjustment of tax when service is not finally provided.
- ✓ Service provided by builders is being included to sub-rule 1 and will thus be considered as exported, subject to compliance with other conditions, if the immovable property is situated outside India.
- ✓ A new rule (2B) has been inserted vide Notification 2/2011-ST to prescribe the value of service rendered in relation to money changing.
- ✓ An explanation has been added after rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 clarifying that for the purpose of

telecommunication service the value shall be the gross amount paid by the person to whom the service is provided by the telegraph authority.

- ✓ A new sub-rule (2A) is being added in rule 3 in the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 vide Notification 1/2011-ST so as to restrict the Cenvat credit to 40% of the tax paid on services relating to erection, commissioning & installation; commercial or industrial construction and construction of residential complex, in case tax has been paid on full value of the service after availing Cenvat credit on inputs i.e. without availing exemption notification 1/2006-ST dated 01.03.2006.

- ✓ All individual and sole proprietor tax payers with a turn over upto 60 lakh freed from the formalities of audit.

- ✓ To encourage voluntary compliance the penal provision for Service Tax are being rationalized. Similar changes being carried out in Central Excise and Custom laws.