

## Customs & Excise Proposals in Union Budget 2015-16



*The Union Budget 2015-16 is the first full Budget of the present Union Government which comes at a time when the economy is turning around and the business environment is gearing up for the future challenges, opportunities and growth. At the same time, while optimism is ruling all around, there are a lot of expectations on reforms and performance from this Government by all the stakeholders of the economy. The Budget encompasses the objectives of achieving growth, enhancing investment and improving quality of life of citizens. While it offers direction and sets pace to country's economic policies, it needs to be seen as to how this is going to be implemented, monitored and achieved. It also aims at tax buoyancy, observance of fiscal discipline and double digit economic growth in mid-term. Jobs creation and nurturing young Indians with encouragement to entrepreneurs and start ups is also commendable. This article highlights the major changes in indirect taxes and customs & excise duties in particular.*

The tax proposals revolve around the broad objectives and themes, which include-

- (a) Measures to curb black money;
- (b) Job creation through revival of growth and investment and promotion of domestic manufacturing and 'Make in India';
- (c) Minimum government and maximum governance to improve the ease of doing business;
- (d) Benefits to middle class taxpayers;
- (e) Improving the quality of life and public health through Swachh Bharat initiative; and
- (f) Stand alone proposals to maximize benefits to the economy

### Goods & Services Tax (GST)

On a optimistic note, introduction of common Goods and Services Tax (GST) could be a game changer. GST will put in place a state of the art indirect tax system by 1<sup>st</sup> April 2016. The economic situation is therefore upbeat, on a rise and forward looking so far as growth and reforms are concerned.

The Government has already introduced the Bill to amend Constitution of India for Goods and Services Tax (GST) in last session of Parliament. GST is expected to play a transformative role in the way our economy functions GST will add buoyancy to economy by developing a common Indian market and reducing the cascading effect on the cost of goods and services. The Budget speech reaffirms the commitment to have GST in place from next year.

As a part of the movement towards GST, education cess and secondary & higher education



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cess have been subsumed in excise duty and Service Tax in the present Budget. Further, the general rate of excise duty will be rounded off from 12.36% (including cesses) to 12.5%. In case of Service Tax, it will go up from 12.36% (including cesses) to 14%. Thus, there will be no education cesses, once new rate is made applicable.

## Tax Revenue

Indirect tax revenue collected so far during 2004-15 has not been encouraging in view of economic and industrial slow down as the Revised Budget Estimates (RE) for the year are lower than the Budget Estimates (BE). Not only this, the Budget Estimates for financial year 2015-16 are also moderate. This is also evident from the following table—

### Revenue Receipts

(₹ in crore)

Taxes	2014-15 (BE)	2014-15 (RE)	2015-16 (BE)
Customs	2,01,819	1,88,713	2,08,336
Union Excise Duties	2,07,110	1,85,480	2,29,808
Service Tax	2,15,973	1,68,132	2,09,774

## CUSTOMS

The changes proposed in the Union Budget 2015 with reference to customs broadly cover the following areas—

- Reduction in duty on certain inputs to address the problem of duty inversion (22 items such as LEDs, LED TV panels *etc.*)
- Reduction in basic customs duty to reduce the cost of raw materials
- Reduction in SAD to address the problems of Cenvat accumulation
- Increase in basic customs duty of certain items such as metallurgical coke, commercial vehicles, iron & steel *etc.*

**The changes proposed in the Union Budget 2015 with reference to customs broadly cover 'Reduction in duty on certain inputs to address the problem of duty inversion (22 items such as LEDs, LED TV panels *etc.*,' 'Reduction in basic customs duty to reduce the cost of raw materials,' 'Reduction in SAD to address the problems of Cenvat accumulation,' and 'Increase in basic customs duty of certain items such as metallurgical coke, commercial vehicles, iron & steel *etc.*'**

The changes aim at job creation through revival of growth and investment and promotion of domestic manufacturing and promotion of 'make in India' concept.

## Legislative Changes

### Penalty for non/sort payment of duty (Section 28)

The Finance Bill 2015 proposes to rationalise the penal previous and the amount of penalty gets reduced significantly. It is proposed to—

- Insert a *proviso* in sub-Section (2) thereof to provide that in cases not involving fraud or collusion or willful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of duty, no penalty shall be imposed if the amount of duty along with interest leviable under Section 28AA or the amount of interest, as the case may be, as specified in the notice, is paid in full within 30 days from the date of receipt of the notice and the proceedings in respect of such person or other persons to whom the notice is served shall be deemed to be concluded;
- Provide that in cases involving fraud or collusion or willful mis-statement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of duty, the amount of penalty payable shall be 15% instead of the present 25%;
- Insert Explanation 3 to provide that where a notice under clause (a) of sub-Section (1) or sub-Section (4) of Section 28, as the case may be, has been served but an order determining duty under sub-Section (8) has not been passed before the date on which the Finance Bill, 2015 receives the assent of the President, then, without prejudice to the provisions of Sections 135, 135A and 140, as may be applicable, the proceedings in respect of such person or other persons to whom the notice is served shall be deemed to be concluded if the payment of duty, interest and penalty under the *proviso* to sub-Section (2) or under sub-Section (5), as the case may be, is made in full within 30 days from the date on which such assent is received.

In summary, the proposed changes will result in the following—

- For show cause notices issued after enactment of the Finance Bill, 2015-
  - No penalty shall be payable if the duty

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**Section 112 provides for penalty for improper importation of goods, etc. Section 112 is being amended so as to substitute sub-clause (ii) of clause (b) to provide that any person who acquires possession of or is in any way concerned with or in any other manner deals with any dutiable goods, other than prohibited goods, which he knows or has reasons to believe are liable to confiscation under section 111, shall, subject to the provisions of Section 114A, be liable to a penalty not exceeding 10% of the duty sought to be evaded of ₹ 5,000, whichever is greater.**

alongwith interest is paid within 30 days from the date of receipt of SCN in the cases not involving fraud, collusion, willful-misstatement etc with the intention to evade duty.

- (ii) Penalty payable shall be 15% (presently 25%) of the duty if the duty, interest and reduced penalty is paid within 30 days from the date of receipt of SCN in the cases involving fraud, collusion, willful-misstatement etc with the intention to evade duty.
- (b) For show cause notices issued and pending for adjudication on the date of enactment of the Finance Bill (where the assessee does not wish to wait for adjudication)
  - (i) No penalty shall be payable if the duty alongwith interest is paid within 30 days from the date of enactment of the Finance Bill, in the cases not involving fraud, collusion, willful-misstatement etc. with the intention to evade duty.
  - (ii) Penalty payable shall be 15% (presently 25%) of the duty if the duty, interest and reduced penalty is paid within 30 days from the date of enactment of the Finance Bill, in cases involving fraud, collusion, willful-misstatement etc. with the intention to evade duty.

### **Penalty for improper importation of goods**

Section 112 provides for penalty for improper importation of goods, etc. Section 112 is being amended so as to substitute sub-clause (ii) of clause (b) to provide that any person who acquires possession of or is in any way concerned with or in any other manner deals with any dutiable goods, other than prohibited goods, which he knows or has reasons to believe are liable to confiscation under Section

111, shall, subject to the provisions of section 114A, be liable to a penalty not exceeding 10% of the duty sought to be evaded of ₹ 5,000, whichever is greater. It has also been provided that in cases of short levy or non-levy or short payment or non-payment and erroneous refund of duty for reasons of collusion or any willful mis-statement or suppression of facts, if the duty as determined under sub-Section (8) of Section 28 and the interest payable thereon under Section 28AA is paid within 30 days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to paid by such person under this Section shall be 25% of the penalty so determined.

### **Penalty for improper exports**

Section 114 provides for penalty for attempt to export goods improperly, etc. Section 114 is being amended so as to substitute clause (ii) to provide that any person who, in relation to any dutiable goods, other than prohibited goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 113, or abets the doing or omission of such an act, shall, subject to the provisions of Section 114A, be liable to a penalty not exceeding 10% of the duty sought to be evaded of ₹ 5,000, whichever is greater. It has also been provided that in cases of short levy or non-levy or short payment or non-payment and erroneous refund of duty for reasons of collusion or any willful mis-statement or suppression of facts, if the duty as determined under sub-Section (8) of Section 28 and the interest payable thereon under Section 28AA is paid within 30 days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to paid by such person under this Section shall be 25% of the penalty so determined.

Thus, penalty of 10% of the duty sought to be evaded or ₹ 5,000, whichever is higher, shall be imposed for improper importation or exportation u/s 112 and 114 respectively. However, such penalty could be reduced up to 25% of the penalty determined if the duty, interest and reduced penalty is paid within a period of 30 days from the communication of order.

### **Advance Ruling**

The facility of advance ruling under excise and customs has been extended to resident firms also. 'Resident firm' shall include limited liability

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partnership (LLP), sole proprietorship firm and one person company under Companies Act, 2013.

## Settlement Commission

The *proviso* to clause (b) of Section 127A relating to the provisions of Settlement Commission is being amended to delete the reference to “in appeal or revision, as the case may be” so as to provide that when any proceeding is referred back, whether in appeal or revision or otherwise, by any court, Appellate Tribunal Authority or any other authority to the adjudicating authority for a fresh adjudication or decision, then such case shall not be entitled for settlement.

With this change, whenever any proceeding is referred back, whether in an appeal or revision or otherwise, by any court, appellate tribunal/authority to the adjudicating authority for fresh adjudication or order, then such case(s) shall not be eligible for settlement before the Commission.

Further, certain redundant provisions, *i.e.* Section 127B(IA), 127C(6), 127E, 127H, 127L[1(i) & (ii)], being redundant are proposed to be omitted.

## Other Changes

- Simplified full exemption to basic customs duty and CVD leviable on life saving drugs and medicines imported by an individual's for personal use (Notification No. 10/2015-Customs dated 1.3.2015).
- Withdrawal of exemption of CVD and SAD on specified goods imported for use by Security Printing and Minting Corporation of India Ltd. (Notification No. 11/2015-Customs dated 1.3.2015).

## CENTRAL EXCISE

The Finance Bill, 2015 proposals and budget announcements revolve around the following broad objectives-

- Restructuring and rationalisation of excise duty structure on certain specified goods
- Reduction in number of levies
- Ensuring certainty and uniformity in valuation of goods for levy of excise duty
- Broadening of tax base.
- Excise duty on mobile handsets with Cenvat option doubled from 6% 12.5%
- Excise duty on select goods restructured (on wafers used in integrates circuits; increased on

mobile handsets, tablet computes; solar water heaters) *etc.*

- Time limit for taking Cenvat credit increased from 6 months to one year from invoice date
- Excise duty on rails for track exempted from 17.3.2012 if no Cenvat credit availed
- Reduction in number of excise levies
- Compliance facilitation measures put in place.

## Penalties for short/non-payment of duty

Penal provisions have been rationalised and the amount of penalties is sought to be reduced significantly. The amended penalties under Section 11AC under different situations will be as under:

- (a) For show cause notices issued after enactment of the Finance Bill, 2015-
1. For cases not involving fraud, collusion, willful-misstatement *etc.* with the intent to evade duty
    - (i) Amount of maximum penalty shall be limited to the extent of 10% of the duty demanded or ₹5,000/-, whichever is higher.
    - (ii) No penalty to be levied if duty and interest is paid within 30 days from the service of show cause notice
    - (iii) Penalty shall be reduced to 25% of the penalty demanded if duty, interest and reduced penalty is paid within 30 days from the communication of the adjudication order or the appellate order, as the case may be.
  2. For cases involving fraud, collusion, willful-misstatement *etc.* with the intent to evade duty-
    - (i) Penalty shall be leviable equivalent to 100% of the duty amount.
    - (ii) Penalty shall be reduced to 15 % if the duty and interest is paid within 30 days from the service of show cause notice.
    - (iii) Penalty shall be reduced to 25% of the penalty demanded, if duty, interest and

**The Finance Bill, 2015 proposals and budget announcements revolve around the objectives of 'restructuring and rationalisation of excise duty structure on certain specified goods,' 'reduction in number of levies,' 'ensuring certainty and uniformity in valuation of goods for levy of excise duty,' 'broadening of tax base,' 'reduction in number of excise levies,' and 'compliance facilitation measures put in place' among others.**

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reduced penalty paid within 30 days from the communication of the adjudication order or the appellate order, as the case may be.

(b) For the pending SCN's before adjudication at the time of enactment of the Finance Bill, 2015 (where the assessee does not wish to wait for adjudication)-

(i) Cases can be closed upon the payment of duty, interest and penalty @ 15% of the duty in the matters involving fraud, collusion, willful-misstatement *etc.* within 30 days from the enactment of the Finance Bill, 2015.

(ii) Cases can be closed upon the payment of duty and interest in the matters not involving fraud, collusion, willful-misstatement *etc.* within 30 days from the enactment of the Finance Bill, 2015.

(c) For show cause notices issued before and adjudicated after the enactment of the Finance Bill, 2015-

(i) Reduced penalty of 25% of duty payable shall be applicable in the matters involving fraud, collusion, willful-misstatement *etc.* if the duty, penalty and interest is paid within 30 days from the communication of the order.

(ii) Reduced penalty shall be payable @ 25% of the penalty imposed in the order for cases not involving fraud, collusion, willful-misstatement *etc.* if the duty, penalty and interest is paid within 30 days from the communication of the order.

Further, for penalty under Section 11A, availability of specified records shall no more be a criterion for issuing show cause notice to demand reduced penalty.

Where only interest is to be demanded and a show cause notice is to be issued for recovery of interest, relevant date shall be the date of payment of duty to which such interest relates.

## Simplified registration

The registration process for Central Excise has been simplified as per Notification No. 07/2015-CE(N.T.) dated 01.03.2015, effective from 01.3.2015. It prescribes documentation, time limits and procedure for registration which includes the following-

- Requirement of PAN No. is mandatory for registration;

- Registration application shall be verified within two days of filing the application.
- Applicant shall quote the email address and mobile number.
- Existing registrants who have not submitted this information are required to file an amendment application within 3 months.
- Documentation will be required to be submitted along with registration certificate has also been specified

## Retrospective exemption for railways

Excise duty levied on the value of duty paid on rails for manufacture of railway or tramway track construction material has been exempted retrospectively for the period from 17.03.2012 to 02.02.2014, if no Cenvat credit of duty paid on such rails is availed.

## Compliance/relief measures

Various compliance facilities and relief measures provided include the following-

- Online Central Excise/Service Tax Registration within two working days.
- Time limit for taking Cenvat Credit on inputs and input services is being increased from six months to one year.
- Facility of direct dispatch of goods by registered, dealer from seller to customer's premises is being provided. Similar facility is also being allowed in respect of job-workers. Registered importer can also send goods directly to customer from the port of importation.
- Penalty provisions in Customs, Central Excise & Service Tax are being rationalised to encourage compliance and early dispute resolution.
- Central Excise/Service Tax assesseees are being allowed to issue digitally signed invoices and maintain other records electronically.

To sum up, it can be said that the first full budget of the new Government seems to be influenced by long term socio-economic reforms keeping in mind the structural changes that were presently thought fit. It is a process and we cannot have a please all document in one go. However, more clarity and navigatory road map on GST was much expected. The changes proposed in indirect taxes shall certainly help growth of industrial sector and the economy. ■