Customs and Central Excise Proposals in the Union Budget 2016-17



Third Budget of the present Government that entered Parliament without any coalition pressures is fast exhausting the freedom that absolute majority brings to make policy decisions of far-reaching and even irreversible effects on the economy. Increase in share of service tax revenues in the total indirect tax collections does not dismantle the role and contribution of customs and central excise duties. These twin levies have a stellar role in the success of 'Make in India' by regulating cross-border trade and supporting manufacture of products that we want to be identified with. This article discusses the announcements made in the Union Budget 2016-17 in the areas of customs and central excise.



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Proposals of the Union Government came in the face of expectations that were sky high because we are poised for a 'hockey stick' growth curve in our economy. And the uproar from opposition benches was quelled by the never-seen-before performance and growth indicators that received repeated mention in the Hon'ble Finance Minister's Budget speech. Though political stresses from JNU and Haryana incidents were remarkably ill-timed, it was truly a Budget for the people who brought about

the change at the Centre. Ensuing paragraphs list out the changes brought by the Union Budget 2016-17 in the customs and central excise legislations in brief.

(I) Customs

Rate of Duty (1st March, 2016)1

- Peak rate of customs duty remains unchanged at 10 per cent.
- Infrastructure cess imposed under central excise applies as additional duty of customs.

Legislative Changes (Presidential assent)¹

- Publications in official gazette no longer require sale of these publications.
- Importers of repute to be allowed deferred payment of customs duties.
- Licensing on bonded warehouse by Principal Commissioner or Commissioner against security of triple-duty bond.
- Extension of 'warehousing period' of bonded goods to be dispensed with along with rent and MOT charges and:
 - EOUs and approved warehouses to retain capital goods until validity of license and other goods until consumption or clearance; and
 - b) Others to retain duty free goods for 1 year with interest accruing from 90 days.
- New class of 'warehouses' to be licensed for storage of specified goods under physical control. Others are relaxed from physical control system and monitored through records.
- Regulations to be framed for transit of goods without payment of duty.
- Time prescribed for issuing notice for demand of tax to be increased from 1 year to 2 years.
- Interest on delay in payment of duty to be reduced to 15 per cent from 1st April 2016.
- Amendments proposed to the Tariff Act not affecting rate of duty or to update for changes in HSN (1st January, 2017).

Tariff Changes (from 1st March, 2016)²

- Amendments to the rate of duty listed, some interesting ones are:
 - a) Refurbished aircraft parts to be liable to duties on their present value.
 - b) Plans, drawings, design for engineering,

Duty free allowance for import of gift articles is increased from $\stackrel{<}{_{\sim}}$ 10,000 to $\stackrel{<}{_{\sim}}$ 20,000 with immediate effect.

- industrial, commercial purposes to be subjected to customs duty at 10 per cent.
- c) Basic customs duty on Golf cars increased from 10 per cent to 60 per cent.
- Imports against advance license or authorisation to be exempt from safeguard duty also.
- Duty free allowance for import of gift articles is increased from ₹10,000 to ₹20,000 with immediate effect.

Baggage Rules (from 1st April, 2016)

- Baggage Rules, 2016 notified to simplify and rationalise multiple slabs of duty free allowance for various categories of passengers.
- Duty free baggage allowance increased from ₹45,000 to ₹50,000 combining dutiable articles with used personal effects.
- Import of foreign exchange linked to FEMA provisions.
- Transfer of Residence Rule continued.
- Quantity and value based limit prescribed for jewellery.
- No provision for import of professional equipment as baggage.
- Laptop computer accompanied by a passenger continues to be exempt from customs duty.
- Customs Baggage Declaration Regulations, 2013 amended to provide declaration by the passenger carrying dutiable or prohibited goods.

Changes in Delegated Legislations (As notified)

- Importer of IT-software to be exempt from duty if declaration of RSP is not required as per the Legal Metrology Act, 2009 and on execution of an undertaking that applicable service tax would be paid.
- Concessional Procurement Rules substituted and allow for self-declaration and records-based administration of imports. Manufacturers to file quarterly returns giving details of such imports and corresponding manufacture of final

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- products (1st April, 2016).
- Specific provision for imposing Safeguard Duty on imports from China to be omitted in view of provisions in Section 8B.

(II) Central Excise

Rate of Duty (1st March, 2016)3

- Basic rate of central excise duty remains unchanged.
- Infrastructure cess of 4 per cent to be imposed 'as' central excise duty on motor cars.

Legislative Changes (Presidential assent)

- Publications in official gazette no longer require sale of these publications.
- Centralised registration to be allowed for manufacture of select articles of jewellery. SSI exemption allowed for jewellery manufacturer and outstanding value of exemption limit for current year to be based on prorated value certified by an accountant.
- Revision of returns to be permitted within the month of filing original return and within one month from filing annual return.
- Rationalisation of filing of various returns. Annual installed capacity statement no longer required.
- Scope of 37B orders to be extended to implementation of any provision of the Act.
- Time prescribed for issuing notice for demand of tax to be increased from 1 year to 2 years.
- Interest on delay in payment of duty to be reduced to 15 per cent from 1st April 2016.
- Third Schedule of the Act to cover soaps, aluminium foils, smart watches and accessories to motor vehicles.
- Alignment of Tariff with correlative amendments in HSN and changes not affecting the rate of duty effected (1st January, 2017).

Tariff Changes (from 1st March, 2016)³

- Amendments to the rate of duty listed, some interesting ones are:
 - Articles of jewellery subject to duty at 1 per cent without CENVAT benefit of inputs and capital goods or 12.5 per cent with CENVAT benefit:
 - b) Branded readymade garments and madeup textile articles with RSP more than ₹1,000 now subject to duty at 2 per cent

- without any CENVAT benefit. Tariff value increased from 30 per cent to 60 per cent;
- Unbranded readymade garments and made-up textile articles with RSP more that than ₹1,000 now subject to duty at 0 per cent without CENVAT or 6 per cent (cotton)/12.5 per cent (other) with CENVAT benefit and at a tariff value of 60 per cent:
- Exemption to site-mix concrete extended d) to ready-mix concrete manufactured at any premises made available for construction as per the contract with customer; and
- Significant increase in duty on cigarettes, cigar, etc.; beedis excluded.

Indirect Tax Dispute Resolution Scheme, 2016 (1st June, 2016)

- Scheme allows appeals pending before Commissioner (Appeals) involving tax, interest and penalty permitted to be settled on payment of dues with 75 per cent concession on penalty only.
- Steps involved:
 - a) Option to be exercised before 31st December, 2016 in writing;
 - Pay tax, interest and 25 per cent penalty within 15 days;
 - Inform within 7 days of deposit; and
 - d) Order-of-discharge to be passed within 15
- This scheme is not available for cases involving serious offences.
- Appeal stands disposed without precedent value on merits of issue involved.

Changes in Delegated Legislations (As notified)

- Rules amended to reduce number of returns to be filed from 27 to 12 monthly returns and one annual return. And to enable e-filing of these
- Revision of monthly returns to be permitted within the month of its filing and annual returns within 1 month after its filing.
- Area-based exemption for production of gold and silver discontinued (1st March, 2016).
- SSI exemption notification not to apply to exports to Nepal in view of discontinuation of extant refund procedure.
- Manufacturer of IT software to be exempt from

Declared provision under the Provisional Collection of Taxes Act, 1931

If there is no incidence on the date of occurrence of 'taxable event', then introduction of a rate of tax on any subsequent date does not restore the levy that failed. This is the admitted position from decision of the Hon'ble Supreme Court in the case of Wallace Flour Mills vs. CCE (1989) 44 ELT 598 (SC). Explanations inserted to the Point of Taxation Rules recognise this principle for newly taxed services also.

duty if declaration of RSP is not required as per the Legal Metrology Act, 2009 and on execution of an undertaking that applicable service tax would be paid.

- SSI exemption on:
 - a) Articles of jewellery exempt upto ₹6 crore (₹50 lakh in March) based on previous years' clearances of 12 crore; and
 - b) Readymade garments exempt upto ₹1.5 crore (₹12.5 lakh in March) based on previous years' clearances of ₹4 crore.
- Simplified procedure provided for removal of goods at concessional rate of duty for manufacture of excisable goods. The applicant manufacturer can procure goods upon intimation as against approval under earlier rules.
- Engineering goods included in concessional supply for educational research projects.

Clean Energy Cess (1st March, 2016)

- Clean Energy Cess renamed as Clean Environment Cess.
- Effective rate increased to ₹400 per ton of coal, lignite and peat.

(III) Special Notes

Budget proposals have been expounded previously in various judicial pronouncements. Understanding those legal authorities brings some perspective to this discussion. Please read on and know about some aspects:

Date for Rate of Duty

- Enactment of the Finance Bill is only on securing Presidential assent or date 'stated'.
- If provision of the Bill is declared under the Provisional Collection of Taxes Act, 1931, then imposing or increasing customs and excise duty will have an immediate effect (1st March 2016).
- Delegated legislations like Rules, Regulations

and Notifications will take effect from date 'stated' or publishing (1st April, 2016 or 1st January 2017, *etc.*)

Date of 'Coming into Force'

Central Act or Regulation shall be construed as coming into operation immediately on the 'expiration of the day preceding' its commencement unless contrary is expressed (s. 5 of the General Clauses Act, 1897)

Legal effectiveness of Repeal

A vested right does not get altered by the repeal of a provision. The Hon'ble Supreme Court held in *Garikapatti Veeraya vs. N. Subbiah Choudhry AIR* 1957 SC 540, that, in a legal pursuit of a remedy, an appeal is but a step in a series of proceedings connected by an intrinsic unity. The right of appeal is a vested right. A right vested on the date of commencement of the *lis* (i.e. a lawsuit or an action) and the lis commenced when the show cause notice was first issued to the appellant.

'Lis' Commencement

Right-of-appeal accrues on date of initiation of original proceedings and not on the date of order (taken in appeal) – Hon'ble Supreme Court in Hossein Kasam Dada (India) Ltd. vs. State of MP AIR 1953 SC 221.

Omission-Repeal

Omission of a provision in a statute has the effect 'as if' that provision was never contained in the statute. And upon such omission, proceedings initiated previously come to a halt, if no 'saving' clause is attached during its omission. But, if a provision were to be 'repealed' then such repeal will not affect any previous operation of the provision or any right, privilege, obligation or liability acquired under the (now) repealed provision (s. 6 and 24 General Clauses Act, 1897).

'New' Tax – Infrastructure Cess

If there is no incidence on the date of occurrence of 'taxable event', then introduction of a rate of tax on any subsequent date does not restore the levy that failed. This is the admitted position from decision of the Hon'ble Supreme Court in the case of *Wallace Flour Mills vs. CCE (1989) 44 ELT 598 (SC)*. Explanations inserted to the Point of Taxation Rules recognise this principle for newly taxed services also.

With the introduction of infrastructure cess, these settled principles of law would be recognised and such new levies will not apply to goods already manufactured before the date of levy.

11 New Benches of CESTAT

Union Budget 2016-17 has proposed to constitute 11 new benches of CESTAT at various places. This is to remove the current backlog of cases that the present benches are burdened with. It is pertinent to note that the existing benches are not operating fully due to shortage of members at various locations. That being the case, it would be a challenging task for the Finance Ministry to appoint members to occupy these 11 new benches.

Silence on GST

Considering the anxiety over the past few months, lack of any mention about GST implementation has surprised one and all. GST being a landmark reform, it is surely round the corner and given the efforts its implementation entails, care must be taken not to ignore ongoing preparatory efforts.

CBEC has decided to create a GST Directorate in Delhi by shifting the headquarters of DGST from Mumbai to Delhi. Consequently, the Directorate General of Service Tax has been renamed as Directorate General of Goods and Service Tax (DGGST) with effect from 1st August, 2015.

Time to initiate Tax Demand

Expiry of limitation period puts an end to disputes for the period that lies outside of it. Deliberate steps to mislead, if proved, grant additional time for making the demand. But, now the proposal to extend time to demand unpaid taxes comes as a relief to the tax administrators but a threat to industry because delays do not need any explaining. Transaction growth may be the justification but e-governance ought to be the remedy and not extension of limitation time.

Incorporation By Reference Must Be Express And Exhaustive, Else Lacks Authority

Constitutional mandate requires a clear authority

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of law for imposition of any kind of tax or any levy such as penalty for that matter. If any additional obligations are imposed by a referential legislation, then the reference must be very explicit and clear. The Hon'ble High Court in the case of Pioneer Silk Mills P Ltd. & Anr. vs. UoI & Ors. 1995 (80) ELT 507 (Del.) has held that the provision relating to levy of penalty must be implicit and in its absence, no penalty can be imposed on the assessee. And that penal liability cannot be created by implication or intendment unless it was so specifically and expressly mentioned by the referential legislation. Clause 159 levying infrastructure cess appears to carry this exact deficiency.

Duty Structure

Giving fillip to the 'Make in India' initiative of the Government, duty structure has been thoughtfully maintained where the incidence is lower on inputs. This adds significant percentage points to the cash needs and resource compulsions of industry. Impressive alignment is visible in the arrangement of the duty structure to keep up the intention of the Government to bring the world to India with policy and law harmoniously creating an ecosystem for sustained development.

(IV) Conclusion

Expectations are inevitable in every Budget and from every stakeholder. Appeasement may not necessarily be from heeding demands but upholding the faith that is reposed in the Government of the day. Whether those expectations were met will be known when the 'elected' meet the 'electorate'. But, the nation will have moved ahead and realised the outcome of the Budget proposals.