



INDIRECT TAXES – NON TARIFF

1) CENTRAL EXCISE

Sec./ Rule	Change
3	Cenvat Credit Rules, 2004: It is provided that If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), and (5B) of Rule 3 (payment on removal of inputs/capital goods as such or after use and write off of inputs/capital goods), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.
7	Central Excise Rules, 2002: Rule 7(5) is amended to provide that where the assessee is entitled to a refund consequent to an order of final assessment under sub-rule (3), then, subject to sub-rule (6), there shall be paid an interest on such refund as provided under section 11BB of the Act. The period for which interest shall be paid has been removed from Rule 7(5) and the period for payment of interest will be same as per section 11BB [Presently the rule states that the interest shall be payable from first day of the month succeeding the month in which the refund is determined. Now, department will get three months to pay refund amount.].
23A	Advance rulings – Expansion: "Activity" now includes any new business of production or manufacture by the existing producers or manufacturers. This will enable such producers or manufacturers to seek advance ruling when starting a new line of business. [W.e.f. Date of enactment of finance bill]
23(C) (e)	Advance rulings – Input service credit : Presently, advance ruling can be sought, inter-alia, on the issue of admissibility of credit of excise duty paid or deemed to have been paid on the goods used in/ in relation to the manufacturer of excisable goods. This section is being amended so as to extend the advance ruling provisions also to the admissibility of the credit of service tax paid on or deemed to have been paid on input services used in the manufacture of excisable goods. [W.e.f. Date of enactment of finance bill]
23A	"Resident public limited companies" will be eligible for seeking advance ruling on central excise, in view of Notification No. 4/2013-CE(NT)[W.e.f. 1-3-2013]
9	Prosecution for 7 years and fine will be applicable only to offences involving duty of Rs. 50 lakhs or more. The present limit is Rs. 30 lakhs.[W.e.f. Date of enactment of finance bill]
9A	The offences relating to excisable goods where the duty leviable thereon exceeds Rs. 50 lakh and relating to – <ul style="list-style-type: none"> • evading the payment of any duty payable under this Act; or • contravention of any of the provisions of this Act or the rules made thereunder in relation to credit of any duty allowed to be utilised towards payment of excise duty on final products, shall be cognizable and non-bailable. Offence non-bailable does not mean that bail cannot be granted. It only means that bail is at the discretion of magistrate. Bail is not automatic. [W.e.f. Date of enactment of finance bill]
11	The following modes of recovery of duty will be available — <ul style="list-style-type: none"> • deducting or requiring any other Central Excise Officer or a proper officer referred to in section 142 of the Customs Act, 1962 to deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control or may be in the hands or under disposal or control of such other officer ;



	<ul style="list-style-type: none"> <i>garnishee proceedings i.e. recovering from assessee's debtor/bank, etc. :</i> requiring any other person from whom money is due to such person, or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held, or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount. (e.g. from debtor of the defaulter or from insurance company, bank etc. who hold money of defaulter) – proposed insertion of section 11(2) of CEA
	<i>[W.e.f. Date of enactment of finance bill]</i>
11A	This section is being amended to insert sub-section (7A) providing that service of a statement containing details of duty not paid, short levied or erroneously refunded shall be deemed to be a service of notice under sub-section (1) or (3) or (4) or (5) of this section for a period subsequent to period involved in original notice. Once show cause notice has been served on show cause notice for a particular period, for subsequent period on same issue and same grounds, it is not necessary to issue detailed show cause notice. A statement giving details of duty not levied or short paid shall be served on assessee.
	<i>[W.e.f. Date of enactment of finance bill]</i>
11DDA	Notice served under any sub-section of section 11A will attract this section.
	<i>[W.e.f. Date of enactment of finance bill]</i>
20	Section 20 will apply only to non-cognizable offences.
	<i>[W.e.f. Date of enactment of finance bill]</i>
21	It is being amended so as to make the provisions regarding release of arrested person on bail or personal bond applicable only to offence which is non-cognizable.
	<i>[W.e.f. Date of enactment of finance bill]</i>
37C	It is being amended to specify additional modes of delivery of specified documents i.e. by speed post with proof of delivery or through courier approved by the Central Board of Excise & Customs. Show cause notice can be served by speed post or through approved courier approved by CBE&C.
	<i>[W.e.f. Date of enactment of finance bill]</i>
35C	It is being amended to provide for a maximum ceiling of 365 days up to which the Tribunal can grant stay of recoveries. By inserting a proviso in the above-mentioned sections, it is being stipulated that after 365 days from the stay order, this stay shall stand vacated even if the disposal of the case is pending for no fault of the assessee. By virtue of stipulation under section 86(7) of the Finance Act, 1994, the provisions of the Central Excise Act would be applicable for dispute in Service Tax matters.
	<i>Circular No. 967/1/2013-CX., dated 1-1-2013 and judgment of Bombay High Court in Larsen and Tourbro Ltd. v. Union of India [2013] 30 taxmann.com 363 (Bom.) remain unaffected, because this amendment applies only after stay has been granted and 1 year has elapsed thereafter. There is no change in position where stay application is pending!</i>
	<i>[W.e.f. Date of enactment of finance bill]</i>
35D	It is being amended to enhance the monetary limit of the Single Bench of the Tribunal to hear and dispose of appeals from Rs. 10 lakh to Rs. 50 lakh.
	<i>[W.e.f. Date of enactment of finance bill]</i>



2) SERVICE TAX

A. Amendments in Finance Act, 1994. (on enactment of Finance Bill, 2013)

Section 66BA

To give legislative effect to the explanation contained in Removal of Difficulty Order 2012, new section has been introduced to provide that any reference to Section 66 (Charging Section in positive List) in this Act or any other act will be construed as reference to Section 66B (charging section in negative list). It has also been provided that negative list based taxation has deemed to have come into effect w.e.f. 01.07.2012.

Section 73(2A)-Issue of SCN

A new Sub-section (as existing in Central Excise law) has been introduced to provide that if any Show Cause Notice which seeks invocation of extended period (more than 18 months) is not found sustainable by Appellate Authority, Tribunal or Court on charges of *fraud, collusion.....etc.* the same shall be deemed to be a SCN issued for normal period of 18 months. In case the allegation of tax evasion, recognizable up to a period of five years, is not established under any Appellate authority, the proceedings would not be dropped completely but the same would be limited to eighteen months period.

Penalty under Section 77-Failure to take registration

At present penalty under Section 77(a) for failure in taking registration is levied at higher of (i) upto Rs. 10000/- OR (ii) Rs. 200/- for every day of default
An amendment is proposed to restrict the maximum penalty upto to Rs. 10000/- only.

Penalty on Directors, officers etc. (Section 78A)

For the first time in Service tax law, provision for penalty on directors, manager, secretary or officer upto a maximum of Rs. 1 Lac, has been introduced under new Section 78A for any of the following contraventions:

- Evasion of service tax,
- issuance of invoice without provision of service,
- availment of Cenvat credit without receipt of services or goods, or
- service tax collected remaining overdue for more than 6 months

Comments: *It appears that the Government is determined increase the compliance of timely and correct payment service tax.*

Filing of Appeal or Cross Objections after expiry period

A suitable amendment is being made under Section 86(5) to provide that appeal or Cross objections filed by Assessee beyond expiry period may be admitted by CESTAT. At present this facility is available only in case of Department Appeals.

Offences & Penalties-Section 89, 90 & 91

- (i) New provisions are being introduced to prescribe revised punishments for offences in section 89.
(ii) Section 90 is being introduced to make certain offences cognizable and others non-cognizable and bailable.
(iii) Section 91 is being introduced to empower Commissioner of Central Excise to authorize Central Excise officer (not below Superintendent) to arrest a person for specified offences.

Comments: *As per TRU letter of CBEC dated 28.02.2013, the Policy wing of the Board will be issuing detailed instructions in due course.*



SERVICE TAX (Continued))

B. Amnesty Scheme for Service Tax Payers. (On enactment of Finance Bill, 2013)

Service tax Amnesty Scheme (known as 'Service Tax Voluntary Compliance Encouragement Scheme, 2013') has been introduced in Finance Bill, 2013. The scheme will be effective from date on which President assents Finance Bill, 2013 (expected to be in second week of May, 2013) upto 31-12-2013.

The scheme is open only to those to whom any show cause notice or notice of audit or summons have not been issued prior to 1-3-2013. If they make declaration and pay at least 50% of service tax before 31-12-2013 and balance before 30-6-2014, they will get immunity from interest and penalty.

They have to pay service tax for last five years i.e. from 1-10-2007 to 31-12-2012.

Who can make declaration of service tax dues – Any person may declare his 'tax dues' in respect of which no notice or an order of determination under section 72 or section 73 or section 73A of Finance Act, 1994 has been issued or made before March, 1-3-2013 – proposed section 96(1) of Finance Act, 1994.

[Note - The relevant sections are as follows - section 72 - Best Judgment assessment by Central Excise Officer. Section 73 - Demand for service tax short paid or not paid. Section 73A - Amount collected from customer representing the amount as 'service tax']

Who cannot make declaration – Following cannot make such declaration -

(a) Any person who has furnished return under section 70 of Finance Act, 1994 and disclosed his true liability, but has not paid the disclosed amount of service tax or any part thereof [i.e. amount disclosed as payable in service tax return but still not paid. Note that no assessee has filed any return for the period after 1-7-2012 since the form has been notified but not available on ACES upto 1-3-2013]. – proposed first *proviso* to section 96(1) of Finance Act, 1994.

(b) If notice or order was received for earlier period, then no declaration can be made of tax dues on the same issue for any subsequent period – second *proviso* to proposed section 96(1) of Finance Act, 1994.

(c) If an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by way of – (i) search of premises under section 82 of Finance Act, 1994; or (ii) Summons has been issued under section 14 of the Central Excise Act, 1944 as made applicable to service tax (iii) Notice asking assessee to produce accounts, documents or other evidence under Finance Act, 1994 or rules has been issued; *if the investigation or inquiry is pending on 1-3-2013*. – proposed section 96(2)(a) of Finance Act, 1994.

(d) Notice for audit has been initiated and *the audit is pending on 1-3-2013* - proposed section 96(2)(b) of Finance Act, 1994.

What if only notice to file return was issued - If notice was issued for not filing of return, it cannot be said that there was any inquiry or investigation in respect of service tax. Hence, in my view, declaration can be filed. In such cases, penalty for non-filing of returns cannot be imposed.

If no returns were filed - In my view, declaration can be filed and then penalty for late filing of return cannot be imposed.

Declaration of Nil liability – In my view those who had not paid any service tax as there was no liability, can also file the declaration and seek immunity from penalty.



SERVICE TAX (Continued)

Tax dues – “Tax dues” means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from 1-10-2007 to 31-12-2012 including a cess leviable thereon under any other Act, but not paid as on the 1-3-2013 – proposed section 95(1)(e) of Finance Act, 1994.

Thus, ‘tax dues’ does not include interest or penalty or late fee.

Declaration by assessee to designated authority – A person can make declaration to designated authority (AC/DC as specified by Commissioner) in prescribed form, before 31-12-2013. The designated authority will issue acknowledgment – proposed sections 97(1) and 97(2) of Finance Act, 1994. – - Note that declaration has to be submitted to designated AC/DC only. Declaration submitted to Range Superintendent or Inspector is not valid.

Payment if admitted tax dues – At least 50% of admitted tax dues should be paid before 31-12-2013 and balance before 30-6-2014. On such payment, the proof of payment by way of challan should be submitted to AC/DC to whom declaration was submitted. If he cannot make payment before due dates he can even pay before 31-12-2014, but interest will be payable in addition to tax dues – Interest rate is 18%. However, if value of taxable services were less than Rs 60 lakhs, interest will be 15%- proposed sections 97(3) and 97(4) of Finance Act, 1994.

No amnesty for period after 1-1-2013 – Any service tax which becomes due or payable for the month of January, 2013 and subsequent months shall be paid by assessee with interest. – proposed section 97(5) of Finance Act, 1994.

Acknowledgment of discharge of dues – The declarant shall furnish to the designated authority details of payment made from time to time under this Scheme with a copy of acknowledgement issued to him under section 97(2). On furnishing the details of full payment of declared tax dues and the interest, if any, the designated authority (AC/DC as applicable) shall issue an acknowledgement of discharge of such dues in prescribed form – proposed section 97(7) of Finance Act, 1994.

Immunity from penalty, interest and other proceeding – On payment of tax dues and interest (if paid after 1-7-2014) and after submitting necessary declarations, the declarant shall get immunity from penalty, interest or any other proceeding under Finance Act, 1994 – proposed section 98(1) of Finance Act, 1994.

Thus, any penalty or late fee for non-filing or late filing of return will also not be payable.

However, there would be no other benefit, concession or immunity – proposed section 102 of Finance Act, 1994.

Matter cannot be reopened except by Commissioner – The declaration shall become conclusive upon issuance of acknowledgement of discharge by AC/DC under section 97(7). No matter shall be reopened thereafter in any proceedings under Finance Act, 1994 before any authority or court relating to the period covered by such declaration – proposed section 98(2) of Finance Act, 1994. However, Commissioner can reopen it under section 101(1).

No refund of amount paid under the Scheme – Any amount paid in pursuance of a declaration made shall not be refundable under any circumstances – proposed section 99 of Finance Act, 1994.

Recovery of tax dues declared but not paid – If he declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues alongwith interest thereon shall be recovered under the provisions of section 87 of Finance Act, 1994.



SERVICE TAX (Continued)

Commissioner can initiate action for failure to make true declaration – Where the Commissioner of Service Tax has reasons to believe that the declaration made by a declarant under this Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause why he should not pay the tax dues not paid or short-paid – proposed section 101(1) of Finance Act, 1994. No action shall be taken under section 101(1) after the expiry of one year *from the date of declaration* – proposed section 101(2) of Finance Act, 1994.

The one year periods is from date of declaration and not date when the discharge letter has been issued by AC/DC (very good provision indeed)

If such show cause notice is issued, then normal provisions of personal hearing, demand, appeal etc. will apply – proposed section 101(3) of Finance Act, 1994.

Comments on the scheme – The scheme will be useful to those who want to pay service tax and have peace of mind. Those who had not registered and those who had registered but did not pay service tax or file returns can take benefit of the scheme.

It would be better if the benefit of the scheme is also extended to those to whom notices or summons have been issued. Many assesses would prefer to pay service tax in such cases.

C. Benefit of Advance Ruling extended to specified residents (on Enactment of Finance Bill, 2013)

The benefit of Advance Ruling Authority is being extended to resident public limited companies.



CUSTOMS

- Duty free allowance in respect of jewellery for an Indian passenger returning to India after one year or on transfer of resident will be Rs 50,000 for gentleman and Rs 1,00,000 for lady passengers [The limit was Rs 10,000 and 20,000 respectively upto 1-3-2013] Duty free allowance for crew member increased from Rs. 600 to Rs. 1,500 w.e.f. 1-3-2013.
- If customs duty is not paid within two days of return of Bill of Entry to importer, interest is payable – proposed amendment to section 47(2) of Customs Act [Really, interest is compensation. Here, importer is not using Government money. Rather he is incurring heavy demurrage by not paying in time. Thus, though termed as ‘interest’, it is actually ‘penalty’]
- Goods can be kept in customs bonded warehouse for 30 days only. The period can be extended by Commissioner for further period upto 30 days at a time – - proposed amendment to section 49 of Customs Act.
- Authority of Advance Ruling (AAR) can entertain application from existing producer or manufacturer if he proposes to undertake new business of manufacture or production or from existing importer or exporter if he proposes to undertake new business of import or export – proposed amendment to definition of ‘activity’ in section 23A(a) of CEA and section 28E(a) of Customs Act.
- Offence punishable with imprisonment extending to seven years with fine, if the duty evaded or drawback fraudulently availed exceeds Rs 50 lakhs (present limit is Rs 30 lakhs) – proposed amendment to section 9(1) clause (i) of CEA and section 135(1)(i) of Customs Act.
- Offences relating to Central Excise, Service Tax and Customs will be cognizable and non bailable if the amount of duty/tax exceeds Rs 50 lakhs and offence is relating to evasion of duty/tax or availment of Cenvat credit – proposed amendment to section 9A(1) and insertion of section 9A(1A) of CEA, and section 104(6) of Customs Act. Corresponding changes are also made in sections 20 and 21 of CEA in respect of bail. Offence non-bailable does not mean that bail cannot be granted. It only means that bail is at the discretion of magistrate. Bail is not automatic.
- If the recovery of dues cannot be made from the defaulter, the amount can be recovered from other person, after giving notice, if that other person holds money for or on account of the defaulter (e.g. from debtor of the defaulter or from post, insurance company, bank etc. who hold money of defaulter) – proposed insertion of section 11(2) of CEA and section 142(1)(d) of Customs Act]
- If CESTAT grants a stay, it is expected to decide the issue in 180 days. If the appeal cannot be disposed of within 180 days, for no fault of the party, CESTAT can grant further stay for 185 days. If the appeal is not disposed of within 365 days from date of stay order, the stay order shall stand vacated – proposed second proviso to section 35C(2A) of CEA and third proviso to section 129B(2A) of Customs Act.
- Single member bench of CESTAT can decide matter if fine or penalty involved is less than Rs 50 lakhs, if issue does not relate to classification or valuation [present limit is Rs 10 lakhs] – proposed amendment to section 35D(3) of CEA and section 129C(4) of Customs Act.

For Federation of Corrugated Box Manufacturers of India

Bharath Kedia

Chairman – Taxation Committee