

Important Changes
Of Indirect Taxes
in
Budget 2011

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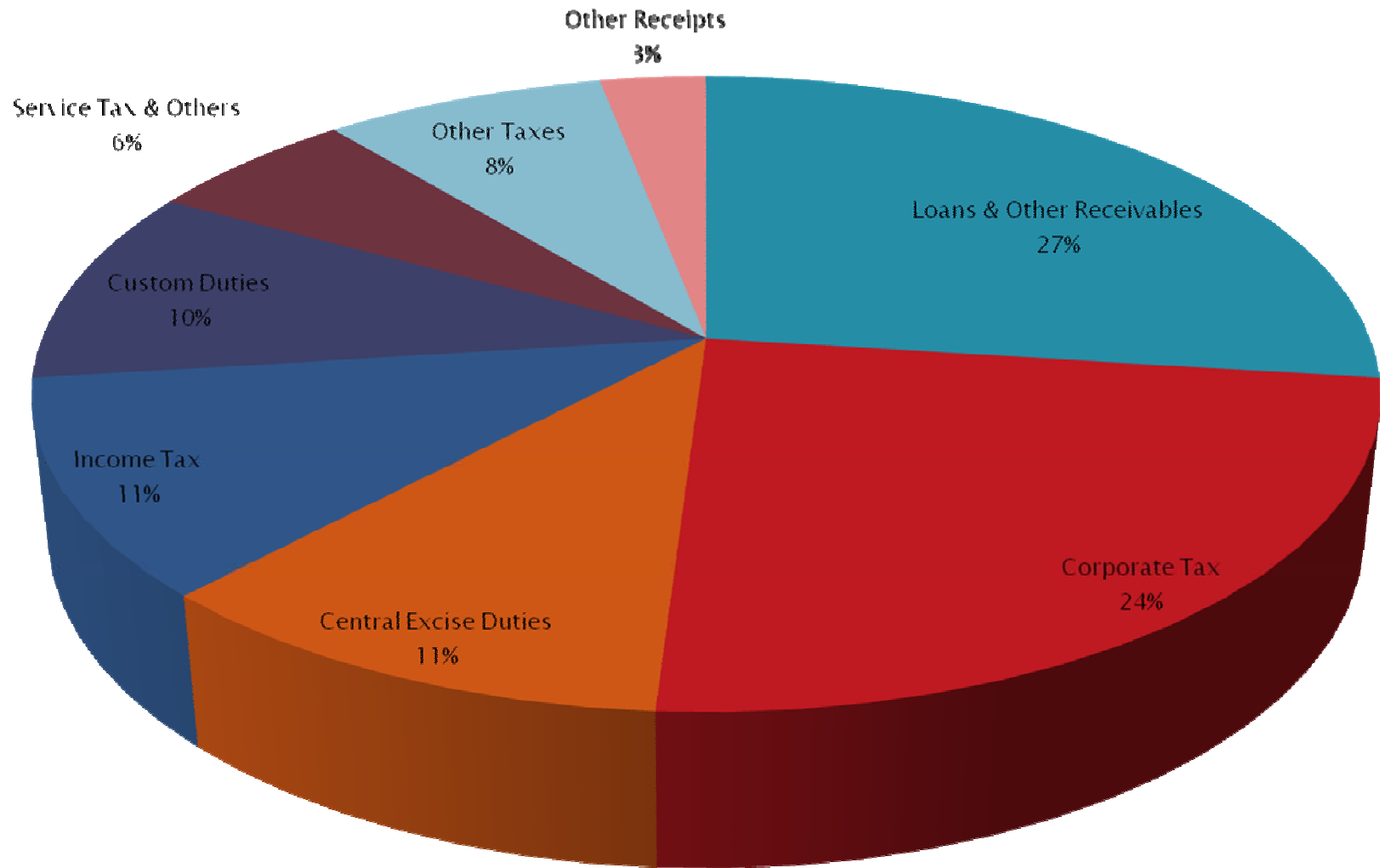
- Member of Indirect Tax Committee of PHD Chamber of Commerce FICCI & ASSOCHAM
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Fiscal Consolidation Vs. Economic Growth

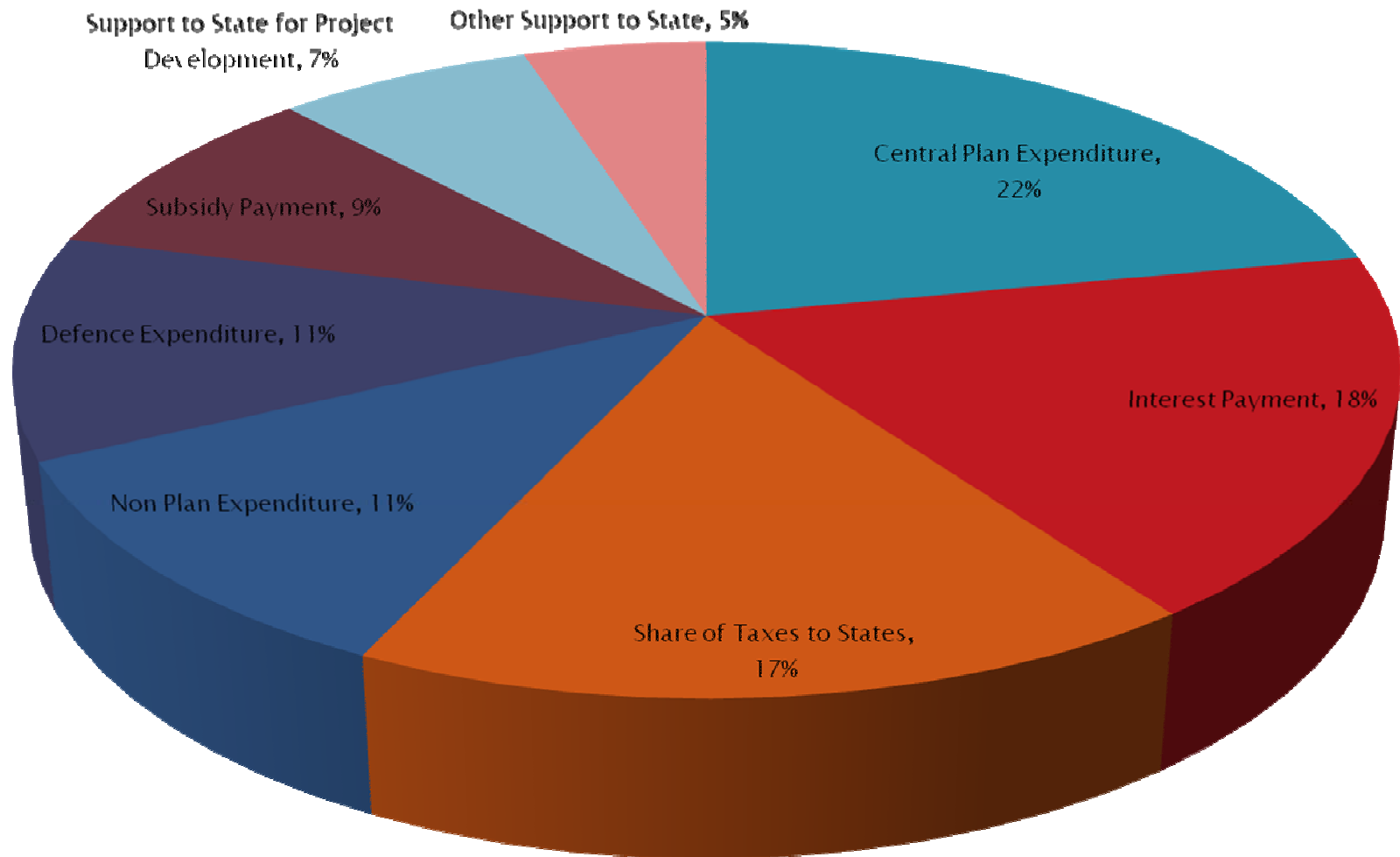
*“We are reaching the end of remarkable fiscal year. In a globalised world with its share of **uncertainties and rapid changes**, this year brought us some more **opportunities and many challenges** as we moved ahead with steady steps on the **chosen path of fiscal consolidation and high economic growth.**”*

(Extracts from Speech of Mr. Pranab Mukherjee)

Fiscal Consolidation Vs. Economic Growth



Fiscal Consolidation Vs. Economic Growth



Fiscal Consolidation of the Economy

➤ **Fiscal Consolidation and Growth**

- Fiscal deficit for FY 2010-11 – 5.1% (5.5% budgeted) - For FY 2011-12 Projected at 4.6% of GDP and placed at 4.1% for 2012-13 and 3.5% for 2013-14
- Revenue Deficit estimated at 2.3% of GDP (RE) for FY 2010-11 and 1.8 per cent for FY 2011-12
- Inflation - Primary articles being reported at 18% during the period April to December 2010 as compared to 10%
- All subsidy related liabilities brought into fiscal accounting
- Increase of 18.3 per cent in total Plan allocation
- Increase of 10.9 per cent in the Non-plan expenditure
- Implementation gaps, leakages from public programs
- Drift in governance and gap in public accountability -
Corruption

Growth of the Economy

- GDP growth for FY 2010-11 - estimated at 8.6% (from 8% in 2009-10)
- The GDP growth - fairly broad-based, with Agriculture, Industry and Services growing at 5.4%, 8.1% and 9.6%, respectively

Components of India's GDP	Share in GDP*	FY08	FY09	FY10	Q1 FY11	Q2 FY11	Q3 FY11	FY11 (AE)
Agriculture, forestry & fishing	18.0	4.7	1.6	0.2	2.5	4.4	8.9	5.4
Industry (IIP)	19.0	9.5	2.6	10.2	11.6	9.0	5.6	8.0
Of which:								
Mining & quarrying	2.0	3.9	3.6	10.6	8.4	7.9	6.0	6.2
Manufacturing	15.0	10.3	2.4	10.8	13.0	9.8	5.6	8.8
Electricity, gas & water supply	2.0	8.5	3.4	6.5	6.2	3.4	6.4	5.1
Construction	7.0	10.0	7.2	6.5	10.3	8.7	8.0	8.0
Services	56.0	10.5	9.6	8.5	9.4	9.9		
of which:								
Trade, hotel, transport & comm.	28.0	10.7	9.0	9.3	11.0	12.1	9.4	11.0
Financing, insurance, real estate & business services	14.0	13.2	7.8	9.7	7.9	8.2	11.2	10.6
Community, social & personal services	14.0	6.7	13.1	5.6	7.8	7.4	4.8	5.7
Overall real GDP	100.0	9.2	6.7	7.4	8.9	8.9	8.2	8.6

Growth of the Economy

- Exports have grown at 29.4% to reach USD 184.6 billion while the imports bill at USD 273.6 billion grew at 17.6%
- Disinvestment – INR 40,000 Cr (AE 22,000 Cr FY 2010-11)
- Forex reserves increased from USD 279.6 billion at the end of April 2010 to USD 297.3 billion at the end of December 2010
- Tax to GDP ratio -10.9% (Direct Tax – 6.3% & Indirect Tax – 4.6%)

- Big Ticket Reform: Budget 2011
 - DTC by April, 2012
 - Convergence to IFRS by April, 2011
 - Companies Bill
 - **Goods & Service Tax (GST) – Indirect Taxes**

Tax Reforms – GST

Particulars		2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Custom	Custome duty	35.0%	25.0%	15.0%	12.5%	12.5%	10.0%	10.0%	10.0%
	CVD	16%	16%	16%	16%	16%	14%	10%	10%
	Edu. Cess-1				2%	3%	3%	3%	3%
	Edu. Cess-II				2%	3%	3%	3%	3%
	SAD				4%	4%	4%	4%	4%
FG Tax	Excise Duty	16%	16%	16%	16%	16%	14%	10%	10.0%
	Edu. Cess	2%	2%	2%	2%	2%	3%	3%	3.0%
	LST/VAT	15.5%	15.5%	13.5%	13.0%	12.5%	12.5%	12.5%	13.5%
	Entry Tax /Octroi	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	NA
	CST	4%	4%	4%	3%	2%	2%	2%	2.0%
Locatio nal	EFZ -UA, HP & Guj	Excise, Sales tax, Income Tax Exemption							GST
	STF - State	Sales Tax Exemption, Investment Subsidy							
	SEZ/EOU	Exemption to promote Exports							
	Service tax	5%	8%	10%	12%	12%	12%	10%	10.0%

Tax Reforms – VAT → GST

VAT			
STATE	12.5%	4.0%	Effective date
ASSAM	13.50%	5.00%	
BIHAR	12.50%	4.00%	
Jharkhand	12.50%	4.00%	
ORISSA	12.50%	4.00%	
WEST BENGAL	12.50%	4.00%	1-Apr-10
DELHI	12.50%	5.00%	1-Apr-10
HARYANA	13.13%	5.25%	1-Apr-10
CHANDIGARH	12.50%	4.00%	
HP	13.75%	5.00%	29-Mar-10
J & K	13.50%	5.00%	1-Apr-10
PUNJAB	13.75%	5.50%	
RAJASTHAN	14.00%	5.00%	
UTTRANCHAL	13.50%	4.50%	1-Apr-10
UP	13.50%	5.00%	
AP	14.50%	4.00%	
KARNATAKA	13.50%	5.00%	1-Apr-10
KERALA	12.63%	4.04%	
TAMIL NADU	12.50%	4.00%	
PONDECHERY	8.00%	4.00%	
MAHARSHTRA	12.50%	5.00%	1-Apr-10
GOA	5.00%	5.00%	4/ 5/ 2010
GUJARAT	15.00%	5.00%	
Chatisgarh	14.00%	5.00%	1-Jan-10
MP-	13.00%	5.00%	1-Apr-10

Justification of GST

- Lack of uniformity in tax rates
- Lack of uniformity in classifications
- Different threshold exemption limits
- Different taxable events for different taxes
 - Excise – Manufacture
 - VAT/CST – Sale
 - Service tax – Rendering of services
- Lack of Uniformity in Forms & Procedure, Appeals, Tax payments, etc.
- Different base for levy of taxes

Cascading effects on costs – Cenvat, CST, etc. -??

Proposed GST Rates - India

➤ For Goods & Services:

GST	13th FC	Deptt of Revenue	Budget 2011
CGST	5%	8%	10%
SGST	7%	8%	10%
TTL	12%	16%	20%

Year	Categories	CGST	SGST	Total Tax Liability
2011 April	Goods at lower rate	6	6	12
	Goods at standard rate	10	10	20
	Services	8	8	16
2012 April	Goods at lower rate	6	6	12
	Goods at standard rate	9	9	18
	Services	8	8	16
2013 April	Goods at standard rate	8	8	16
	Services	8	8	16

Budget 2011 - GST

➤ Roadmap to GST:

- First Discussions Paper – 10 Nov 2009; 13th FC Report – 15 Dec, 2009; Comments of Dept of Revenue – 25 Jan, 2010
- Dual GST
 - Intra-State Sale/Service -CGST & SGST
 - Inter-State Sale/IGST
- Constitutional Amendment Bill – Empowers State to levy Service tax on Services and Central to levy VAT on intra-State Sale of Goods – to be passed by 2/3rd Majority in Parliament & Rajya Sabha & approved by minimum 15 States
- NSDL – Mr. Nandan Nilkani - IT Infrastructure – 11 States – June, 2011
- April 2012 – Expected GST Rate

Changes in Service Tax

- The rate of Service tax remains unchanged at 10% ad valorem (plus EC & SHE @ 2% & 1% respectively on Service Tax)
- **Introduction of New Taxable Services: Date to be notified**
 - **Services by air-conditioned restaurants** having license to serve liquor – Abatement of 70%/ No Cenvat Credit
 - K. Damodaraswamy Naidu 117 STC 1 (SC) – Article 366(29A)(f) – Supply of foods, liquor or other articles for human consumption as part of or incidental to any service, as Sale
 - **Short-term accommodation** in hotels / inns/ clubs / guest houses etc. Short term accommodation for a continuous period of less than 3 months & Tariff > Rs. 1000/ day – Abatement of 50%/ No Cenvat Credit
 - Excluded from Renting Services – Chargeable to

Changes in Service Tax

- **Introductions of Point of Taxation Rules, 2011: 1/4/2011**
 - These rules provides for, *inter alia*, determination of the point of taxation - Earliest of the following dates shall be the relevant date for levy of service tax:
 - date on which service is provided or to be provided;
 - date of invoice; or
 - date of payment
 - Hybrid system – Cash/ Accrual
 - Billing done prior to 1/4/2011 not covered by these Rules
 - Consequential changes to be made in Service Tax Rules, 2011 – for payment of service tax from receipt of payment to provision of services
 - Associated Enterprises – Point of Taxation - Earliest of date of receipt/ issue of invoice/ Cr or Dr entry in books

Changes in Service Tax

➤ Derogatory Changes:

- Power to issue search warrant U/S 82 - Jt. Commissioner and the execution of search warrant at the level of Superintendent
- 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
- No power of arrest and the prosecution can be launched only with the approval of Chief Commissioner

Changes in Service Tax

➤ **Expansion of scope of Existing Services:**

- Club or association service S.65(105)(zzze) - Widened to include services provided to non-members
 - Fateh Maidan Club Vs. CTO (2008) 12 VST 598 (SC - 3 Member bench) – *“Club is agent of member”*
- Business Support Service S. 65(105)(zzzq) – Widen to cover any kind of operational or administrative assistance
- Services by legal professionals have been widened to include: (Except Individual to Individual)
 - advice, consultancy or assistance provided by a business entity to any person;
 - representational services before any court, tribunal or authority provided by any person to a business entity; and
 - services provided by arbitrators to business entities

Changes in Service Tax

➤ Expansion of scope of Existing Services:

- Life insurance business S.65(105)(zx) – ULIP - Risk Cover & Services in relation to Management of Investments provided by an insurer or re-insurer – No Break-up: 1.545% of gross amount (1.03%)
- Commercial training or coaching service S.65(105)(zzc)
 - Recognized by the Law
 - Unrecognized coaching/ training provided by any institute or establishment in any subject or field other than sports

Changes in Service Tax

- **Expansion of scope of Existing Services:**
 - Air travel services increased w.e.f 1/4/2011
 - Domestic (Economy) - From Rs.100 to Rs.150
 - International (Economy) - From Rs.500 to Rs.750
 - Domestic (Other than Economy) – 10.3%
 - Money Changing Services – Rule 2B of Valuation Rules – Value shall be
 - Buy/Sell Rate and reference rate declared by RBI
 - If reference rate not available then – Pay 1% on Rupee value of the Transactions
 - Rate of composition under Rule 6(7B) lowered from 0.25% to 0.1%

Changes in Service Tax

- **Substitution of Existing Services:**
 - **Authorized Service Stations S.65(105)(zo)** - Widened to include i) all persons and service stations, whether authorised or not, ii) engaged in services of repair, reconditioning, restoration or decoration of any motor vehicles except for goods carriage or 3 wheeler auto rickshaw
 - **Health Services S.65(105)(zzzzz)** – Widen to cover:
 - Any service provided by a centrally air-conditioned clinical establishment having more than 25 beds for in-patient
Clinical establishment includes hospital, maternity home, nursing home, dispensary, clinic, sanatorium or any institution providing services for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine.

Changes in Service Tax

➤ **Substitution of Existing Services:**

- All diagnostic centers services carrying out diagnosis of diseases through pathological, bacteriological, genetic, radiological, chemical, bio-logical investigation or other diagnostic or investigative services with the aid of laboratory or medical equipment
- Services provided by doctors, not being employees, providing health-related services from the premises of a clinical establishment – **Employment Vs. Service**
- **Exemption** - Medical care provided by an establishment owned or controlled by the Government or local authority has been excluded from the ambit of service tax
- 50% Abatement

Changes in Service Tax

➤ Amendments in Export of Services Rules, 2005: 1/4/2011

Certain Services re-arranged:

Name of Services	Old Category	New Category
Preferential location and similar services	iii	i
Rail Travel Agent	iii	ii
Health service	iii	ii
Credit rating agency	ii	iii
Market research agency	ii	iii
Technical testing and analysis	ii	iii
Goods transport agency	ii	iii
Transport of goods by air	ii	iii
Opinion poll	ii	iii
Transport of goods by rail	ii	iii

- Corresponding changes made in Rule 3 of the Taxation of Services (Provided from outside India and Received in India) Rules, 2006
- Because of changes made, certain services taxable if recipient located in India even when Service is performed outside India – Hence, necessary exemption granted to these services

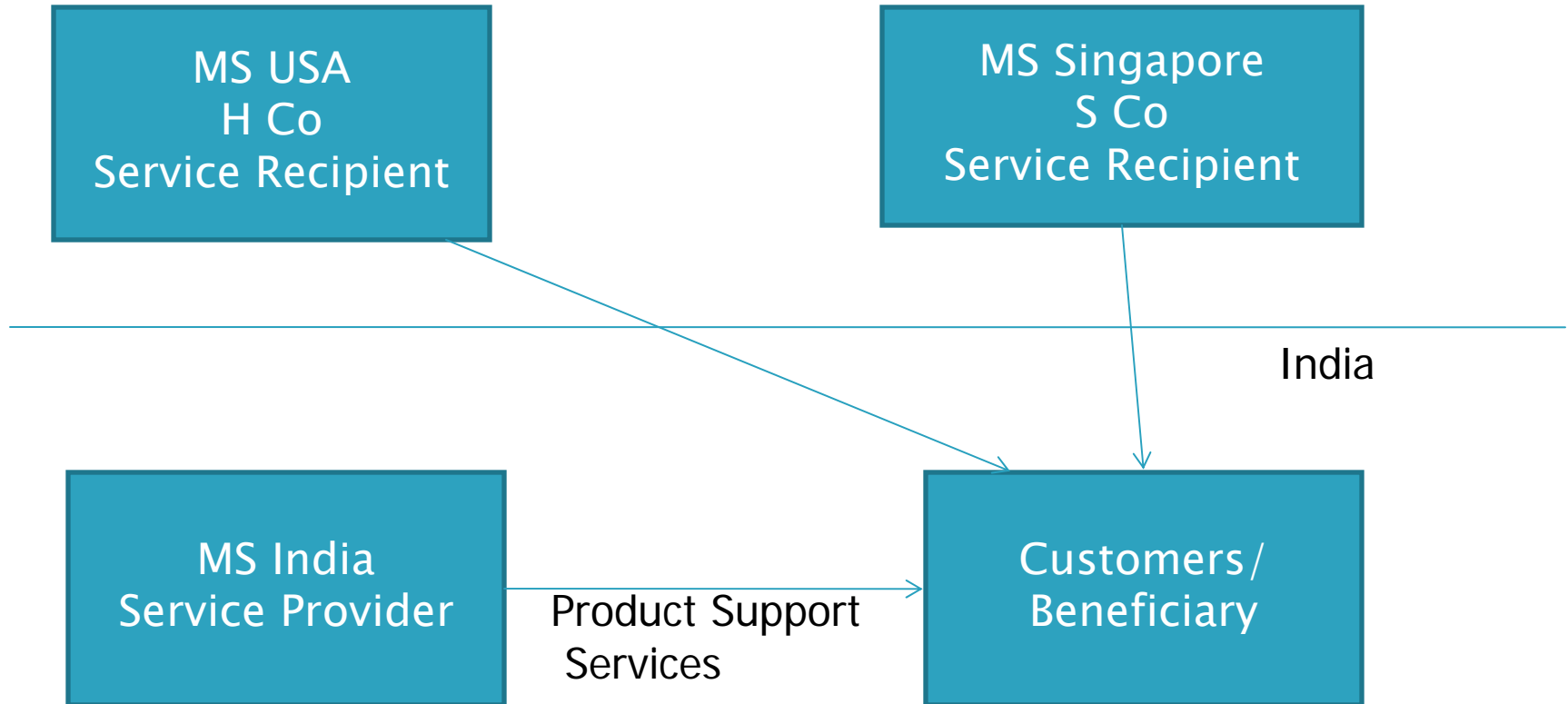
Export of Service

- No Service Tax on Export of Service as per Export of Service Rules, 2005 w.e.f 15-3-2005
- If paid then refundable -Rebate/ Refund of Service tax paid on input Services used for export of taxable Services
- **Meet to satisfy specific & common conditions**
 - Rule 3(i) Services related to Immovable Property outside India
 - Rule 3(ii) Performance: Services partly performed outside India
 - Rule 3(iii) Location: Recipient is located outside India & for business & Commerce
- Common Condition for all 3 categories -Payment received in convertible FE

Export of Service

- Export rules simplified by deleting condition of provided from India and used outside India w.e.f 27 February 2010
 - Question – Why not retrospective ? Litigation to continue
- Used outside India - ABB India Ltd. Vs. CST (2008) 17 STT 233 (CESTAT) – question of delivery is decided leniently and treated as export of service for booking sales orders in India for company situated in Singapore
- Blue Star Vs. CCE (2009) 18 STT 34 (CESTAT SMB)
- Lenovo (India) Pvt. Ltd. v. CCE (Appeals-II) & Ors. 2009 – TIOL – 911 –CESTAT – DEL
- Microsoft Corporation (India) Private Ltd. Vs. Commissioner of Service Tax & Anr. (AIT -2009- 418 Delhi HC) – Against Assessee – Marketing Support Services to H Co (USA)/ S Co (Singapore)

Export of Service



Service Tax → 125 Cr + Penalty → 125 Cr; Pre deposit ordered – 70 Cr

Import of Service

- Service tax is payable by Service recipient of Services under Reverse Charge mechanism in cash/PLA –GAR 7 then Cenvat credit of the same is availed of the Service tax so paid as it is Input Services
- Service tax is payable only when Service is received in India w.e.f 18-4-2006 *“Indian National Ship owners Association (2009) 18 STT 212” BOM HC DB*
- Treat the Services as Import – 3 categories
 - Immovable Property situated in India
 - Services partly performed in India
 - Service recipient is located in India for business & Commerce

Changes in Service Tax

➤ Exemption from Service Tax – w.e.f 1/3/2011

- Services tax has been exempted on business exhibitions held outside India
- Following works contract services have been exempted:
 - Construction of residential complexes or completion and finishing of a new complex under ‘Jawaharlal Nehru Urban Renewable Mission’ (JNURM) and ‘Rajiv Awaas Yojana’; and
 - Services rendered within a port, other port and airport for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways.
- General insurance services provided for ‘Rashtriya Swasthya Bima Yojna’ have been exempted
- Transport of goods by air, road or rail from a place outside India to another destination outside India has been exempted. Import Rules

Changes in Service Tax

- **Exemption from Service Tax – w.e.f 1/3/2011**
 - Air freight which is included in the value of goods for levy of customs duty has been exempted from service tax – Import Rules
 - An **exemption of 25%** has been allowed on the taxable value provided in respect of services rendered in relation to transport of coastal goods and goods transported through national waterways or inland water
- **Amendment in Works Contract** (Composition Scheme for Payment of Service Tax) Rules, 2007:
 - Where CENVAT credit on inputs has been availed on works contract, availment of CENVAT credit on input services is restricted to 40% of tax paid on erection, commissioning and installation, commercial or industrial construction and construction of residential complex w.e.f

1/3/2011

Changes in Service Tax

➤ **SEZ Refund/ Exemption: – W.e.f 1/3/2011**

- All services received by an entity in a SEZ, which does not have any other DTA operations shall be considered as 'wholly consumed' services in SEZ
- Wholly consumed services within SEZ shall be fully exempted including exemption from payment of tax on reverse charge basis under Section 66A of the Finance Act
- Refund of the remaining services i.e., which are not wholly consumed shall be available on pro rata basis i.e. ratio of SEZ turnover to total turnover; and
- Rule 6(6A) of CCR – Non applicability of Sub Rule (1), (2), (3) & (4) for Service provided without charging Service tax to Developers/ Units of SEZ for their authorised operations

Changes in Service Tax

➤ Compliance related Changes:

- Maximum **Penalty for delay in filing of return** under Section 70 of the Finance Act is proposed to be increased from INR 2,000 to INR 20,000
- S. 73(1A) & (2) proposed to be deleted – benefit of reduced Penalty not available in case of fraud, suppression, collusion, etc.
- S. 73(4A) –Non Fraud Case - Where true and complete records are available and service tax has not been levied, short levied, short paid or erroneously refunded – Pay Service tax and interest voluntarily + **Penalty** equal to 1% PM of such tax up to a maximum of 25%
- S.73B & 75 - **Interest** rate for delayed payment of Service tax increased from 13% to 18% PA except for Tax payer having turnover < Rs. 60 Lakhs during any year(s) covered in the Notice -15% PA. – 1/4/2011

Changes in Service Tax

- S. 76 → is proposed to reduce **Penalty for failure to pay service** tax from INR 200 per day to INR 100 per day or from 2% of tax per month to 1% of tax per month
- S.77 → Maximum penalty for contravention of various provisions to be increased from INR 5,000 to INR 10,000
- S.78 → Changes in Penalty
 - Fraud, Suppression, collusion – **Up to tax amount**
 - True & Complete information – 50% of tax amount but may be reduced to 25% if tax dues paid with in 1 month together with interest & reduced penalty – 90 days for Tax payer ≤ Rs. 60 Lakhs
- S. 80 amended - the power to waive penalty - information is captured properly in the specified records
 - Individual & Sole Proprietorship - turnover ≤ Rs. 60 Lakhs
 - Not subject to audit – Whether this Tax audit or Service tax audit

Changes in Service Tax

➤ **Amendments in Service Tax Rules, 1994: 1/4/2011**

- New Rule 5B introduced to provide that prevailing rate at the time when services are deemed to have been provided under the Point of Taxation Rules, 2011 shall be the applicable rate of tax
- New Rule 6A introduced to provide for recovery of tax and interest which are self-assessed but not paid by the assessee
- Relevant date for payment of service tax shall be the date on which service is deemed to be provided instead of the date of receipt of payment
- Rules to allow for credit of the service tax paid on services not provided
- Limit for self adjustment of excess amount has been increased from INR 100,000 to INR 200,000

Changes in Cenvat Credit Rules

- Definition of **Inputs/ Input Services** – Amended
- CENVAT credit allowed on **CG** used outside the factory of the manufacturer for generation of electricity used captively within the factory
- The definition of **Inputs** - Substituted to include:
 - All goods used in the factory of the manufacturer;
 - Accessories and goods cleared along with the final product, provided value of such goods / accessories is included in the value of the final product;
 - **Goods used for providing free warranty for final products**, where value of such warranty is included in the price of the final product and is not charged separately from the customer;
 - All goods used for generation of electricity or steam for captive use

Changes in Cenvat Credit Rules

- All goods used for providing any output service; and
- Certain goods specifically **excluded from Inputs**:
 - Light diesel oil, high speed diesel oil and motor spirit (petrol);
 - Goods used for **civil construction of a civil structure** by a manufacturer or service provider, except for situations where such goods are used in provision of specified construction services;
 - Motor vehicles;
 - Capital goods except when used as parts or components in the manufacture of final product;
 - Food items, goods used in guest houses, residential colonies, clubs and clinical establishment, used primarily **for personal use or consumption by employees**

Changes in Cenvat Credit Rules

- Goods which do not have any relationship with the manufacture of final products
- The definition of **Input services** - Amended to exclude services such as architect's, **commercial construction**, etc., which pertain to construction of building, structure or support structure for capital goods, unless the same are used in provision of specified services
- Further, expression '**activities relating to business**' - deleted from the inclusive part of the definition and 'business exhibition' and 'legal services' added in the list of services provided in the inclusive list
- Services relating to motor vehicles, such as rent-a-cab, supply of tangible goods for use, insurance or repair of vehicle would not qualify as an input service, except in respect of output services where credit of motor vehicle is permitted as '**capital goods**'

Changes in Cenvat Credit Rules

- Services used primarily for **personal use or consumption of employees** not qualify as an input service - Services such as outdoor catering, beauty treatment, health services, membership of clubs etc., not constitute an input service
- Exempted goods provided under the Credit Rules has been amended to include goods on which a concessional rate of Central Excise duty of 1% has been levied under Notification No 1/2011–CE dated 1 March 2011
- Manufacturer engaged in the manufacture of such exempted goods would not be able to discharge its obligation through utilization of CENVAT credit
- **Exempted services** has been amended to include services which are partially exempted (on which abatements are prescribed) and on which CENVAT credit is not permitted to be availed or utilized - **Trading has**

Changes in Cenvat Credit Rules

- Rule 6 of the Credit Rules – Takes Cenvat Credit on Inputs/ Input Services used for dutiable goods & taxable services but in case of both Dutiable/ Exempted goods or taxable or exempted Services - **Manufacturer / Service provider** can avail credit and follow any of the 3 options for reversal of inadmissible credits

- Maintain separate accounts for receipt, consumption and inventory of inputs and would be eligible to claim the CENVAT credit only of inputs used in relation to manufacture of dutiable goods / taxable service

- & With respect to input services, a manufacturer / output service provider - required to follow the formula prescribed for proportionate reversal under Rule 6(3A) of the Credit Rules

Changes in Cenvat Credit Rules

- Not able to maintain separate accounts – then pay 5% of exempted goods or exempted service (earlier 6%)
- Follow excel formula as determined under rule 6 (3A)
- Rule 6(3A) – Value of Trading Services = SP less PP of Goods & Value of services covered under composition scheme defined
- Banking or financial Institutions – Common Services used for investment/ interest income – Pay 50% of credit availed on Inputs/ Input Services & ULIP or Insurance Company - Pay 20% of credit availed on Inputs/ Input Services

➤ Rule 6(5) – allowing credit of 16 services – deleted

Changes in Cenvat Credit Rules

- A service provider providing services to a unit located in a SEZ or a developer of a SEZ would not be treated as an exempt service For SEZ – Rule 6(6A) inserted
- Rule 3 (5B) - Manufacturer / Output service provider who either **partially or completely writes-off** or makes a provision of the value of any input or capital good (after claiming CENVAT credit on the same) to pay an amount equivalent to the entire CENVAT credit availed. Earlier, on such good, a manufacturer / output service provider was required to pay an amount in proportion to the value written off

Changes in Cenvat Credit Rules

- Manufacturer / Service provider who has returned any payment towards an input service would be required to pay an amount equivalent to the CENVAT credit on the amount returned
- **Quarterly return** being filed by a Manufacturer availing exemption under a notification would require to be submitted within 10 days as opposed to the earlier period of 20 days
- **Following Activities / processes amounting to 'Manufacture':**
 - Labelling / re-labelling or packing / re-packing from bulk packages into retail packs - **Chapter 22** (Beverages, Spirits and Vinegar) and activities such as affixing of brand names, in case of goods specified in **Chapter 63** (Branded Textile articles; Conversion of ores to concentrates in case of items specified in Chapter 26 (Metal ores etc) & Process of

Changes in Customs

- **Basic Customs Duty (BCD) and Additional duty of Customs (CVD) – w.e.f 1/3/2011**
 - Peak rate of BCD remains unchanged at 10% *ad valorem*
 - Various existing rates of 2%, 2.5% and 3% - Proposed a single rate of 2.5%
 - Median rate of CVD - retained at 10% *ad valorem*
- BCD has been reduced on the following goods:

Item	Old Rate	New Rate
Live SPFL Vannamei broodstock	30%	10%
Pistachios	30%	10%
Sun dried dark seedless raisin	105%	30%
Bamboo for use in the manufacture of agarbatti	30%	10%
Lactose for use in the manufacture of homeopathic medicine	30%	10%
Cranberry products	30%	10%

Changes in Customs

- BCD has been reduced on the following goods:

Item	Old Rate	New Rate
De-oiled rice bran oil cake	30%	NIL
Fin fish feed	30%	NIL
Waste paper and paperboard for use in or supply to a unit for manufacture of paper, p	5%	2.50%
Pamphlets, booklets, brochures, leaflets and similar printed matter in single sheets	NIL	10%
Raw Silk (not thrown)	30%	5%
Ferro-nickel	5%	2.50%
Stainless steel scrap for melting	5%	NIL
Acrylonitrile	5%	2.50%
Crude Palm Stearin for use in the manufacture of laundry soap	20%	NIL
Nylon goods falling under CTH 5402, 5403, 5404, 5405 and 5406	10%	7.50%
Nylon goods falling under CTH 5501 to 5510	10%	7.50%
Carbon black feed stock	5%	2.50%
Endovascular stents	5%	NIL
Vanadium pentaoxide or vanadium sludge	10%	2.50%
Diphenylmethane 4,4-diisocyanate (MDI) for use in the manufacture of spandex yarn	10%	5%
Caprolactam	10%	7.50%
Sodium Polyacrylate	10%	5%
Polytetramethylene ether glycol, (PT MEG) for use in the manufacture of spandex yarn	10%	5%
Nylon chips	10%	7.50%
Gypsum	10%	2.50%
Cotton waste	10%	Nil
Petroleum coke	5%	2.50%
Specified agriculture machine	5%	2.50%
Parts for manufacture of specified agriculture machine	10%	2.50%
Rubber pneumatic tyres for aircraft	10%	2.50%
Rayon grade wood pulp	5%	2.50%
Micro irrigation equipment	8%	5.00%
Cash dispenser or automatic bank note dispenser and parts	8%	NIL
Specified jewellery making machine	8%	5.00%
Parts of aircraft	3%	2.50%
Solar lanterns or solar lamps	10%	5.00%

Changes in Customs

- **Exemption / Concessions:** Industry specific exemptions are as follows:
 - **Electronics industry:** Import of the following goods for use in manufacture of specified goods are **exempted from BCD:**

Description of import goods	Description of Manufactured Goods
Toughened glass and silver paste	Solar cells/ modules
Glass tubes of sizes between 2 mm to 4 mm outside diameter and blade fuse body	Glass cartridges fuses/ ceramic tube fuses/ PPTC resettable fuses
Para nitro benzyl alcohol	Aluminium electrolytic capacitors
Polyster insulation tapes	Degaussing coil and other wound components
Aluminium wire of purity 99.9% or more of dia up to 3 mm; copper clad aluminium wire of purity 99.9% or more of dia up to 3 mm	Deflection yokes for colour picture tubes

Changes in Customs

- **Exemptions from BCD** 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 BCD of 5% and CVD of 5%** 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
- **Outright concession** to factory-built ambulances from Excise Duty

Changes in Customs

- **Relief** measures proposed for raw pistachio, bamboo for agarbatti, lactose for the manufacture of homoeopathic medicines, sanitary napkins, baby and adult diapers
- **Transmission project:** Parts and components of the specified goods listed in List 44 (for use in high voltage power transmission project) allowed at **concessional duty of 5% BCD, 5% CVD and nil SAD**
- **Road Construction:** Import of bio-based asphalt sealer and preservation, agent, millings remover and crack filler, asphalt remover and corrosion protectant and sprayer system for bio-based asphalt for construction of roads based on the bio based asphalt **exempted from BCD**

Changes in Customs

- **Exemption / Concessions:** Industry specific exemptions are as follows:
 - **Textile and leather garments:** List of embellishment / accessories expanded to include anti theft devices like labels, tags and sensors
 - **Leather footwear / products:** List of embellishment / accessories expanded to include buckles, inlay cards, synthetic leather, reflective leather etc.
 - **Handicraft:** List of equipments expanded to include glue applicator, tool bits etc
 - **Electrically operated vehicles:** Import of battery for electrically operated vehicles **exempted from BCD** and concessional duty of 5% CVD

Changes in Customs

- **Exemption / Concessions:** Industry specific exemptions are as follows:
 - **Aircraft:** Full exemption from import duty (BCD, CVD and SAD) has been **withdrawn** on the import of aircraft by non-scheduled operators for passenger services or chartered services. Now such import will attract 2.5% BCD, nil CVD, nil SAD, 2% Education Cess and 1% Secondary & Higher Education Cess
 - **Mobile handset:** Import of parts or components for the manufacture of PC connectivity cables for mobile handsets and sub-parts for the manufacture of battery chargers, PC connectivity cables and hands-free headphones for mobile handsets exempted from BCD and CVD

Changes in Customs

- **Other Relevant Sector-wise changes:**
 - **Packaged software:** in some cases the importer of packaged software may not be required to affix Retail Sales Prices (RSP) under the Standards of Weights and Measures Act, 1976
 - Portion of the value representing the consideration paid or payable for transfer of the **right of its use** has been exempted from the CVD Such software would attract CVD only on the **value of the medium** on which it is recorded Service tax would be attracted on the exempted value representing right to use

Software – Issues

➤ Issues:

- Double Taxation under Central Laws – Excise duty/ Service Tax
- Packaged software Vs. Customized software
- Physical Delivery Vs. Electronic download
- Service Vs. Goods - Service Tax/ VAT or CST - Mutually exclusive of VAT- “*Imagic Creative Pvt. Ltd. CCT (2008) 2 SCC 614*”

Software – Excise duty/ Service tax

- Notification no. 53/2010-ST dated 21-12-2010: the Service tax exemption granted in relation to providing right to use packaged or canned software upon following conditions:
 - ‘Packaged or canned software’ as specified goods subject to MRP based levy with abatement of 15 percent vide Notification No. 30/ 2010-Central Excise (N.T.) dated 21 December 2010
 - appropriate duties of excise or customs (including CVD) on such value have been paid; and
 - service provider declares on the invoice that no amount in excess of the retail sale price has been recovered from the customer

Software – Service tax/ VAT or CST

- Payments of service tax and VAT are mutually exclusive
“Imagic Creative Pvt. Ltd”
- Software –Goods & Supplied under EULA is Sale/Service and Constitutional Validity of levy of Service tax on IT Software- ***“Infotech Software Dealers Association Vs. UOI”***
 - Upheld the validity of levy under Entry 97 (Residue)
 - *EULA – Right to use of software –Source code with Owner*
 - Software – Packaged/ Customized – ‘Goods’ - tangible property or an intangible property provided it has (a) utility (b) capable of being bought and sold (c) capable of transmitted, transferred, delivered, stored and possessed
 - Software – Right to use of Copyright Goods but Sale/ Service depends upon individual contract

Software – Service tax/ VAT or CST

- Software is goods when recorded on a media
 - *Tata Consultancy Services Vs. State of Andhra Pradesh [2004 (178) E.L.T. 22 (S.C.)]*
 - *Bharat Sanchar Nigam Limited Vs. UOI [2006 (2) S.T.R. 161 (S.C.)]*
- Sale or Right to use –Deemed Sale U/A 366(29A)(d) - full possession and effective control is given to the transferee both covers for chargeability of VAT/CST
- *State of Madras v. Gannon Dunkerley & Co. Ltd.* 2002-TIOL-493-SC-CT-LB – Sale Vs. Service: Agreement to transfer title/ Supported by consideration, and Actual transfer of title in the goods.

Changes in Customs

➤ Other Relevant Sector-wise changes:

- **Motor Vehicles:** Import of motor vehicles and motor cycles in Completely Built Units (CBU), Semi Knocked Down (SKD) condition and Completely Knocked Down (CKD) condition attract **different rates of customs duty**
 - Present Budget defines the term CKD as follows:
 - **CKD motor car/ motor cycles** and motor vehicle unit shall mean a unit having all the necessary components, parts or sub-assemblies for assembling a complete vehicle but does not include –
 - i) kit containing a pre-assembled engine or gearbox or transmission mechanism; or
 - ii) a chassis or body assembly of a vehicle on which any of the component or sub-assembly *viz.* engine or gearbox or transmission mechanism is installed

Changes in Customs

- **Special Additional duty of customs (SAD):**
 - **SEZ:** All clearances (mfg or traded) from SEZ to DTA - **Exempted from SAD** provided that such goods not exempt from VAT/CST

 - Copper dross, copper residues, copper oxide mill scale, brass dross and zinc ash, parts of inkjet and laser-jet printers, light emitting diodes (electroluminescent) imported for manufacture of LED lights or fixtures and parts of DVD Drive or DVD Writer, Combo Drives, CD-ROM Drives have been **exempted from SAD**

 - **Drugs:** Patent and proprietary medicines have been **exempted from SAD**

Changes in Customs

- **Export Duty:** Export tariff is aligned with the Harmonized System of Nomenclature (HSN) - Export duty on the following items *inter alia* has been revised:

CTH	Item	Old Rate	New Rate
2306	De-oiled Rice bran oil cake	Nil	10%
260111	Iron ore and concentrates (Non -Agglomerated)	15%	20%
260112	Iron ore and concentrates, (Agglomerated) other than iron ore pellets	5%	20%

Changes in Customs

- **Legislative change:**
 - **Provide for self assessment of import and export goods** -Self-assessed as per existing risk assessment module
 - **Time limit for filing refund** - Extended to 1 year in all cases - Presently, 6 months with the exception of import of goods for personal use or by Government or other specified importer
 - **Time limit for demand notice of duty U/S 28** - raised to 1 year in all cases except cases involving collusion, willful misstatement or suppression of facts – 5 Yrs
 - The proper office is required to determine the amount of duty or interest within 6 months in case involving collusion, willful mis-statement or suppression of facts and within 1 year in all other cases

MRP based levy covered under SWMA, 1976

Changes in Excise

➤ Basic Excise Duty (BED)

- BED retained at 10% *ad valorem*
- BED increased on all non petroleum products from 4% to 5% *ad valorem*
- Consumer products falling under **130** Central Excise Tariff entries, exempted hitherto - brought within the excise net – Nominal duty of 1% *ad valorem* has been imposed on these items without availment of CENVAT credit on input and input services

➤ Changes in Excise duty rates:

Item	Old Rate	New Rate
Cement dinker 10% ad valorem + INR200 per	INR375 per tonne	10% ad valorem + INR200 per MT
Package cement manufactured in a mini- cement plant - Of retail sale price not exceeding INR190 per 50 kg bag or of per tonne equivalent RSP not exceeding INR3800	INR185 per tonne	10% ad valorem
Of retail sale price exceeding INR190 per 50 kg bag or of per tonne equivalent RSP exceeding INR3,800	INR185 per tonne	10% ad valorem + INR30 per tonne

Changes in Excise

➤ Changes in Excise duty rates:

Item	Old Rate	New Rate
Package cement whether or not manufactured in a mini- cement plant - of retail sale price not exceeding INR 190 per 50 kg bag or of per tonne equivalent RSP not exceeding INR 3,800	INR 290 per metric tonne	10% ad valorem + INR 80 per tonne
of retail sale price exceeding INR 190 per 50 kg bag or of per tonne equivalent RSP exceeding INR 3,800	10% of retail sale price	10% ad valorem + INR 160 per tonne
Cement, whether or not manufactured in a mini cement plant, other than those cleared in packaged form	INR 290 per tonne, whichever is	10% ad valorem
Branded ready made garments and made-up articles of textiles falling under chapters 61 (apparel and clothing accessories, knitted or crocheted), 62 (apparel and clothing accessories, not knitted or crocheted) and 63 (other made up textile articles, sets, worn clothing and worn textile articles, rags) except goods falling under chapter heading nos 63.09 and 63.10 (worn clothing and other worn articles)	Exempt if CENVAT credit not availed on inputs -4% for goods of only cotton and 10% for others if CENVAT credit availed on inputs)	10%*
Serially numbered gold bars, other than tola bars when manufactured from the stage of the ore / concentrate or gold dore bar	INR 280 per 10 grams	INR 200 per 10 grams
Kits for the conversion of fossil fuel vehicles into hybrid vehicles and parts of such kits	10%	5%
Grease proof paper and glassine paper	10%	5%
hydrogen vehicles based on fuel cell technology	20%	10%

Changes in Excise

➤ Changes in Excise duty rates:

- Branded Readymade garments - Subject to levy of duty on the basis of RSP printed on the retail package - abatement of 40% is allowed

➤ Withdrawal of Exemptions / Concessions:

- **Full BED exemption** to paper manufactured from non-conventional raw materials for the first clearances not exceeding 3,500 per metric tonne per annum made from a unit has been withdrawn
- **Full BED exemption** available to automatic looms and projectile looms has been withdrawn
- Full exemption on micro-processors, other than motherboards; floppy disc drive; hard disc drive; CD-ROM drive; DVD drives / writers; flash memory and combo drives meant for fitment inside a laptop / CPU has been **withdrawn**. All these goods would be chargeable to a

50% BED

Changes in Excise

- **Exemptions / Concessions:** BED has been exempted on the following goods:
 - Air-conditioning equipment, panels and refrigeration panels for installation of cold-chain infrastructure for preservation, storage or transport of agricultural produce and apiary, horticultural, dairy, poultry, aquatic and marine produce and meat as well as processing thereof;
 - Conveyor belt systems for use in cold storages and in mandis and warehouses for the storage of food grains and sugar;
 - Specified parts of sewing machines (other than those with inbuilt motors);
 - Parts of power tillers when cleared to another factory of the same manufacturer for manufacture of power tillers;
 - Cotton stalk particle board;

Changes in Excise

- **Exemptions / Concessions:** BED has been exempted on the following goods:
 - Enzymatic preparations for pre-tanning of leather;
 - Colour, unexposed cinematographic film in jumbo rolls of 400 feet and 1000 feet; and
 - Pipe fittings required for a water supply project

- **Concessional duty of 1% BED has been provided for the following:**
 - Sanitary napkins, baby and clinical diapers and adult diapers; and
 - Water filters using pressurized tap water but no electricity and their replaceable kits.

Changes in Excise

- **Concessional duty of 1% BED has been provided for the following:**
 - Packing or labeling of perfumes -deemed as manufacture and liable to BED - Retail packing of traditional perfumes commonly known as 'Attar' at retail shops - **Exempted from BED** provided duty has been paid on RSP by the manufacturer
 - **Concessional 5% BED** - extended to the specified parts of hybrid vehicles and plug-in kits (and their parts) for conversion of normal fuel vehicles into hybrid vehicles
 - Motor vehicles with a capacity of 13 person including the driver (as against the earlier capacity of 7 persons) has been allowed refund – based concessional BED rate equivalent to 80% of the BED when registered for use solely as taxi

Changes in Excise

- Factory-built ambulances shall be exempted on refund based concession
- Specified goods supplied to expansion projects of existing mega power projects has been exempted from BED- Goods supplied to ultra-mega power projects has been exempted from BED irrespective of the exemption from Customs duties
- **Package software** or canned software, not required to declare the RSP, has been exempted BED equivalent to the BED payable on the portion of the value of such goods which represents the consideration paid or payable for transfer of **right to use** such goods. Such exempted value shall be liable to service tax

Changes in Excise

- **Amendments in the Central Excise Act, 1944 (Excise Act)**
 - **Penalty for Non- Fraud case – Period of Limitation - 1 Yr**
 - No Penalty if Excise duty along with the interest is paid before the issuance of SCN
 - **Penalty for Fraud Case** - fraud, collusion, Suppression, etc. - Excise duty discovered during audit or investigation/ occurred due to / the records pertaining to the transaction are available– 5Yr
 - **Not Contested** - Penalty @1% of such duty PM subject to a maximum of 25% of such duty If the Excise duty along with interest is paid before the issuance of SCN
 - **Contested** - but paid with in 30 days of Adjudication Order – Penalty shall be 25% of ED
 - **Contested** - but not paid with in 30 days of Adjudication Order – Penalty shall be 50% of ED

Changes in Excise

- A new Section 11AA of the Excise Act is proposed to be introduced under which notwithstanding any judgment, decree, order, etc., a person liable for payment of duty shall also be liable to pay interest on such duty
- However, no interest would require to be paid if the duty becomes payable consequent to the order or direction of the Central Board of Customs & Excise (CBEC) and the duty is voluntarily deposited within 45 days from the date of issue of such order without reserving the right to appeal
- **Power of Search & Seizure – JC/Addl Comm – S. 12F**
- MRP based levy U/S 4A – from SWMA, 1976 to Legal Metrology Act, 2009 – 1/3/2011

Changes in Excise

- The **rate of interest** on delayed payment of duty under Section 11AA and Section 11AB of the Excise Act has been increased to 18% per annum from 15% and 13% respectively
- Any amount due under the Excise Act would be recoverable as the first charge over the property of the defaulting person except as restricted under Companies Act, 1956 the Recovery of Debt due to Bank and the Financial Institution Act, 1993 and the Securitisation and Financial Reconstruction of Assets and Enforcement of Security Interest Act, 2002.
- **CENTRAL SALES TAX (CST)** - The rate of CST for sale or purchase of declared goods within the State has been increased from 4% to 5%.

THANK YOU.....

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