

PRE-BUDGET MEMORANDUM ON
INDIRECT TAXES
2007-2008

EXCISE DUTY ISSUES

1. Re: CBEC Circular No.643/34/2002-CX dated 1.7.2002:

(i) Section 4 of the Central Excise Act, 1944 – Rule 7 of the Central Excise (Valuation) Rules, 2000.

(ii) Section 4 of the Central Excise Act contains provisions relating to valuation of excisable goods for the purpose of charging duty of excise. Rule 7 of the Central Excise (Valuation) Rules, 2000 provides that where excisable goods are not sold at the time and place of removal but are transferred to a depot, etc. from where they are sold after their clearance from the place of removal and where the assessee and buyer are not related and the price is the sole consideration or sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods.

(iii) In this regard, a circular has been issued by CBEC bearing No.643/34/2002-CX dated 1.7.2002 wherein the period has been specified, for the aforesaid purpose, as daily. This is causing several problems to assesses who have countrywide network for sale and variety of products as it is difficult to determine maximum aggregate quantum on daily basis. Accordingly, the period specified as daily requires to be reconsidered.

2. Re: Amendment in Section 35:

(i) Section 35 of the Central Excise Act, 1944 contains provisions relating to filing of appeals before Commissioner of Central Excise (Appeals) such appeals are to be filed within 60 days from the date of communication of the decision or order under challenge. The Commissioner (Appeals) has been empowered to condone a delay of 30 days caused in filing such appeals.

(ii) Earlier, i.e. prior to amendment of the said section on 11.5.2001, the time limit stipulated for filing such appeals was three months from the date of communication of decision of order and the Collector (Appeals) (as he was then known) was empowered to condone delay of three months caused in filing such appeals.

(iii) This amended provision has now reduced the period during which the appeals are supposed to be filed and has also reduced the period for which Appellate Authority is empowered to condone the delay. This causes severe hardships to the appellants inasmuch as in a genuine case where an appellant has for justifiable reason not filed appeal within the stipulated time limit and in such a situation even if Appellate Authority is satisfied about the delay caused in filing the appeal, the delay cannot be condoned in view of there being no power conferred on the said authority in that regard.

(iv) It is also required to be noted that as against this as far as challenging an order by the department before Commissioner of Central Excise (Appeals) is concerned, under Section 35E (2) a Commissioner of Central Excise is supposed to pass an order directing lower authority to apply before Commissioner (Appeals) within a period of one year (outer limit) and such authority is supposed to file such proceeding within a period of 3 months from

the date of communication of order passed under Section 35E (2). Thus, the Central Excise Department in such a situation gets time of 15 months as against 2 months available to an assessee.

(v) The provisions of Section 35 of the Central Excise Act, 1944 are required to be suitably amended extending the period for filing the appeal as well as empowering Commissioner (Appeals) to condone delay of unlimited period as in the case of Customs, Excise and Service Tax Appellate Tribunal.

3. Re: Problems in view of introduction of eight digit code in Central Excise Tariff and those relating to Food Processing Industry:

(i) At the time when eight digit code came to be introduced in Central Excise Tariff and the Central Excise Tariff came to be restructured, the Government of India had issued a letter bearing F. No.334/1/2005-TRU dated 28.2.2005 wherein in para 28 it was stated that to ensure that the existing rates by the notification are continued and are not denied merely on the ground of change in chapter, heading, sub-heading, notifications No.5/2005/CE; No.6/2005/CE; and No.7/2005/CE all dated 24.2.2005 effective from 28.2.2005 have been issued. Other notification No.3/2005 was also issued effective from 28.2.2005 to continue the existing rates of specified goods for which the exemptions were built in the tariff and not in amended tariff schedule.

(ii) In addition thereto, vide Circular No.808/2005-CX dated 25.2.2005, it came to be clarified in para 3 that Notification No.3/2005 C.E. 2005 dated 24.2.2005 was issued to preserve the existing duty rates on specified commodities where effective rates were built into the six digit tariff, but were

now subject to different tariff rates in eight digit code. This clearly shows the intention of the Government to continue with the rates as enforced prior to introduction of eight digit code in Central Excise Tariff which were built into six digit tariff.

(iii) However, this is not the situation in reality inasmuch as with regard to various products after introduction of eight digit code, the exemptions have not been continued.

(iv) In fact, before eight digit code was brought into force, number of goods not bearing brand name which were classifiable under sub-heading No.2108.91 were subjected to **NIL** rate of duty. After coming into force of eight digit code, the aforesaid notification No.3/2005 was issued for continuing effective rate of duty as **NIL**. However, while doing so, number of goods which were earlier classifiable under sub-heading No.2108.91 but due to the change became classifiable under tariff items No.2106 90 91 and 2106 90 50 have been left out and have thereby become chargeable to duty although as stated above were chargeable to **NIL** rate of duty earlier. This not being the intention of the Government at the time of introduction of eight digit code requires to be rectified by issuance of an exemption notification under Section 11C of the Central Excise Act, 1944 for the past period and Section 5A of the Central Excise Act, 1944 for the future.

4. Re: Food Processing Industry:

(i) In the Union Budget 2006-07, the Finance Minister proposed to give a thrust to the growth of food processing industry. Para 140 of the Budget Speech reads as under:

“140. Many food items, including packaged items, attract nil excise duty. With a view to give a fillip to the food processing industry, I propose to exempt from excise duty condensed milk, ice cream, preparations of meat, fish and poultry, pectins, pasta and yeast. Excise duty on ready-to-eat packaged food mixes like dosa and idli mixes, will be reduced from 16% to 8%.”

The sole intention on the part of the Government, therefore, appears to be boosting of food processing industry by granting exemption to edible preparations in ready for consumption form.

The Central Government, accordingly, vide Notification No.3/2006-C.E. dated 1.3.2006, granted exemption/partial exemption from payment of central excise duty to various products mentioned in the table to the said notification. Sr.No.29 of the table grants total exemption to sweet meats, Namkeens, Bhujia, Mixture, Chabena and similar edible preparations in ready for consumption form, Papad and Jaljira. The said entry reads as under:

“29. 2106 90 Sweetmeats (known as ‘msthans’ or ‘mithai’ or by any other name), namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form, papad and jaljeera”

In these days, it is required to be considered that various manufacturers of edible preparations manufacture the preparations such as Kheer, Basundi, Gulab Jamun, Samosa, Kachori, etc. which are in ready for consumption form requiring minor processes of heating, cooling, frying, etc. In fact, these edible preparations are essentially in ready to consumption form. However, in certain cases, the department refuses to grant benefit of the said exemption

notification to various manufacturers of such edible preparations. Appropriate explanation, clarifications or suitable amendment in the exemption notification is required to be issued in this regard.

(ii) In the Union Budget 2006-07, as aforesaid, the Finance Minister proposed to give a thrust to the growth of the Food Processing Industry.

Various Finance Ministers in the past have also recognized the importance of the need to give incentives to the Food Processing Industry and granted exemptions in excise duty to this sector. The above proposals are welcome but there are certain anomalies which are required to be rectified, some of which are demonstrated hereinafter:

(iii) Duty on "Ready-to-eat packaged foods" (Tariff Item 2106 90 99) has been reduced to 8% vide Entry No.30 of the table to Notification No.3/2006 dated 1.3.2006. However, 'Ready-to-eat packaged foods' have not been defined, hence it is unclear what products fall in this category. It is therefore necessary that a proper explanation of products covered under the said entry be added to clarify the ambiguity in this regard.

(iv) Duty on "Instant food mixes, like dosa and idli mixes" (Tariff Item 2106) has been reduced to 8% vide entry at Sr.No.28 of the table to Notification No.3/2006 dated 1.3.2006 which examples are illustrative. It is required to be clarified whether all instant food mixes are covered within the scope of the exemption notification. There are various instant mixes apart from the aforesaid e.g. instant pre-mix used in tea, mixes of fruit juice concentrate, etc. which are classifiable under Tariff Item 2106. In such cases, the Central Excise Department does not accept that such instant food mixes are exempt

vide the aforesaid exemption notification. Hence, a suitable clarification in this regard is required to be issued.

(v) Duty on products falling under residuary entry viz. Tariff Item 2106 90 99 deserves specific exemption or reduction to 8% to promote innovations.

5. Re: Problems relating to Pharmaceutical Industry:

(i) The Central Government, vide notification No.49/2003 dated 10.6.2003 as amended, has granted exemption from liability of central excise duty and additional duty of central excise duty to pharmaceutical products falling under Tariff Item Nos.3003 to 3006. This, therefore, covers medicaments and other products stated in the said tariff items. However, Bulk Drugs / Active Pharmaceutical Ingredients (API) have not been covered under the exemption. This is causing great hardship to Pharmaceutical Industries located in these areas.

(ii) As per the provisions of Central Excise Rules read with CENVAT Credit Rules, credit of duty paid on inputs used in the manufacturer of exempted finished goods is not available. (Including finished goods manufactured in the States of Himachal Pradesh and Uttaranchal).

(iii) Since Bulk Drugs / API form a considerable part in the value of the formulation, non-availability of CENVAT credit in respect of duty paid on Bulk Drugs / API substantially adds to the costs of formulations manufactured in the excise free zones. This, to a great extent, defeats the purpose of granting excise duty exemption to formulations manufactured in such excise free zones.

In view of this, it would be appropriate if Bulk Drugs / API are covered in schedule to the said notification, by way of amendment so as to see to it that the benefit flowing therefrom is available to Bulk Drugs / API also or a similar exemption may be granted to Bulk Drug / API.

(iv) Physician's samples are distributed to doctors for their evaluation and feedback free of cost. These samples constitute a significant cost in any pharmaceutical company without any commercial returns. Such samples are usually of a distinct pack with a prominent indication that the same are not meant for sale. Accordingly, these samples do not deserve to be treated equally with the products meant for sale, for the purpose of determination of assessable value and levy of excise duty.

(v) Accordingly, physician's samples deserve to be exempted from Central Excise duty or suitable amendment is required to be made in Central Excise Valuation Rules for not charging or charging duty on manufacturing cost.

(vi) All pharmaceutical manufacturers in terms of provisions of Drugs and Cosmetics Act and Rules framed thereunder are supposed to keep a side a few boxes of each batch of medicines manufactured by it till the date of expiry. These samples are known as 'control samples' which are required to test the same during their shelf life if any complaint is received relating to their quality. These samples can thereafter not be sold and are required to be destroyed.

(vii) Accordingly, control samples deserve to be exempted from Central Excise duty or suitable amendment is required to be made in Central Excise Valuation Rules for not charging or charging duty on manufacturing cost.

6. Re: Problem relating to small-scale industry:

(i) The small-scale industrial units are run usually with inadequate infrastructure, shortage of manpower and are mostly on self-employment basis. The persons running these units usually find it difficult to follow the cumbersome central excise procedure.

(ii) Due to the inflatory trend of prices, the SSI sector has been badly affected inasmuch as the prices of raw materials, electricity charges, labour charges, etc. have escalated to a large extent. In view of this, there has been an increase in the turnover of individual units which is illusionary inasmuch as there is no change in the quantum of manufacture and clearance of the final products. In fact, in view of this, a manufacturer reaches the limit of exemption granted under exemption notification No.8/2003, being Rs.1 crore, without there being any increase in the quantum of production covered therein. In reality, if one sees, the quantum of production covered under the said limit decreases.

(iii) The aforesaid fact, therefore, requires to be taken into consideration and the central excise exemption limit deserves to be enhanced from Rs.1 crore to Rs.3 crores.

7. Re: Problems relating to various notifications:

(i) The Central Government, vide Notification No.39/2001 dated 31.7.2001, granted exemption from payment of central excise duty to excisable goods except those specified in the annexure to the notification cleared from units in Kutch (Gujarat). The cut-off date mentioned in the said notification is 31.12.2005 which has thereafter not been extended.

(ii) It requires to be taken into consideration that the said notification was issued for boosting up the setting up of industry in Kutch (Gujarat) which was severely affected due to the earthquake in 2001. It is obvious as on date also the said region is not completely rehabilitated and has still not come out of the aftermath of the earthquake. Under such circumstances, the date of setting up requires to be suitably extended inasmuch as the said notification was issued with a solemn intention rehabilitating the area of Kutch which was badly affected during the earthquake and providing employment to the people of Kutch.

(iii) The notifications for the areas of the State of Himachal Pradesh, etc. have been issued only for the purpose of development of the said areas. However, it is required to be taken into consideration that as far as notification No.39/2001 is concerned, the same has been issued with a solemn purpose of rehabilitating the Kutch area in the State of Gujarat which has not returned to normalcy after the earthquake of 2001 till date. Under these circumstances, when the cut-off date mentioned in the notifications relating to the State of Himachal Pradesh, etc. has been extended, the same deserves to be done in the case of notification No.39/2001 relating to Kutch area. Not doing so amounts to discriminatory treatment to Kutch area.

(iv) At present, the Central Excise exemption for captive consumption under Notification No.67/95 is available only when the goods are captively consumed within the registered factory of the manufacturer. However, often there are inter unit transfers for further processing etc. in the same company and such units are separately located and registered with respective Central Excise authorities. It will be beneficial for the trade if the concept of captive consumption of inputs/semi-finished goods/capital goods is extended beyond a single factory and applied to various units of the same factory.

(v) E.g. Unit-I at Ahmedabad of Company “X” transfers moulds (Capital goods) manufactured by them to Unit-II of the same Company at Vadodara for use in or in relation to manufacture of machines. At present, Central Excise duty has to be paid @ 110% of the cost of production as per the valuation rates on such clearances. However, if the exemption of captive consumption is extended to all units of the same Company, no duty will have to be paid on such clearances. In today’s scenario, the concept of traditional manufacture has grown beyond a single premises and extends to multi-location facilities.

8. Re: Cenvat Credit Rules:

(i) Rule 6 of the Cenvat Credit Rules provides that cenvat credit shall not be allowed on such quantity of input or input service used in manufacture of exempted goods or exempted services except where the manufacturer or provider of output service maintains separate accounts of receipts, consumption and inventory of input and input service meant for use in manufacture of dutiable final products or in providing output service and the quantity of input service for use in manufacture of exempted goods or services and take credit only on that quantity of input or input service which is intended for use in manufacture of dutiable goods or in providing output service on which service tax is payable.

(ii) Such provisions increase avoidable administrative and logistical work. Further, there is a series of decisions/judgments pronouncing that if cenvat credit wrongly availed of is reversed then there is no requirement of payment of 10% of the value of goods at the time of clearance of exempted products.

(iii) In this regard, it would be desirable that Rule 6 of Cenvat Credit Rules be deleted qua restrictions imposed by it or atleast the reversal be restricted to

the amount of credit wrongly availed of instead of 10% of the value of goods cleared.

9. Re: GENERAL

(i) With effect from 11.5.2002, the provisions of Section 35C (2A) of the Central Excise Act, 1944 came to be amended to provide that if an appeal is not disposed of in 180 days by the Tribunal from the date of stay order, the same shall automatically stand vacated.

(ii) This amendment which has also been made under Customs Act, 1962, is causing hardship to the assesses as application for extension of stay has to be filed every six months inasmuch as it is a hard reality that appeals are not disposed of within a period of 180 days. Thus, the period of 180 days deserves to be suitably increased or removed resulting in continuation of stay once granted till the disposal of appeal, avoiding multiplicity of proceedings.

(iii) Similar is the position as regards the provisions of Customs Act, 1962 and the period therein also deserves to be suitably increased or removed resulting in continuation of stay once granted till the disposal of appeal, avoiding multiplicity of proceedings.

CUSTOM DUTY ISSUES

1. Re: Section 18 of Customs Act, 1962:

(i) At present, no time period is prescribed for finalisation of the Provisional Assessment of duties. The process of final assessment of Bills of Entry takes a long time and the assessments, thus, remain provisional for many years.

(ii) A time frame of 6 months may be prescribed for the finalisation of the Bills of Entry. This time period should be reckoned from the date of passing of the order detailing the basis for finalisation. The finalisation of the assessments within defined time frames would benefit both the Department and the assessee by crystallizing the duty liabilities. This change would bring the customs provisions at par with the Central Excise provisions in relation to finalisation of the provisional assessments (Ref Rule 7(3) of Central Excise Rules, 2002).

2. Re: Section 128 of the Customs Act, 1962:

(i) Section 128 of the Customs Act, 1962 contains provisions relating to filing of appeals before Commissioner of Central Excise (Appeals) such appeals are to be filed within 60 days from the date of communication of the decision or order under challenge. The Commissioner (Appeals) has been empowered to condone a delay of 30 days caused in filing such appeals.

(ii) Earlier, i.e. prior to amendment of the said section on 11.5.2001, the time limit stipulated for filing such appeals was three months from the date of communication of decision of order and the Collector (Appeals) (as he was

then known) was empowered to condone delay of three months caused in filing such appeals.

(iii) This amended provision has now reduced the period during which the appeals are supposed to be filed and has also reduced the period for which Appellate Authority is empowered to condone the delay. This causes severe hardships to the appellants inasmuch as in a genuine case where an appellant has for justifiable reason not filed appeal within the stipulated time limit and in such a situation even if Appellate Authority is satisfied about the delay caused in filing the appeal, the delay cannot be condoned in view of there being no power conferred on the said authority in that regard.

(iv) It is also required to be noted that as against this as far as challenging an order by the department before Commissioner of Central Excise (Appeals) is concerned, under Section 129D (2) a Commissioner of Central Excise is supposed to pass an order directing lower authority to apply before Commissioner (Appeals) within a period of one year (outer limit) and such authority is supposed to file such proceeding within a period of 3 months from the date of communication of order passed under Section 129D (2). Thus, the Central Excise Department in such a situation, gets time of 15 months as against 2 months available to an assessee.

(v) The provisions of Section 128 of the Customs Act, 1962 are required to be suitably amended extending the period for filing the appeal as well as empowering Commissioner (Appeals) to condone delay of unlimited period as in the case of Customs, Excise and Service Tax Appellate Tribunal.

3. Re: Food processing industry:

(i) In the Union Budget 2006-07, the Finance Minister proposed to give a thrust to the growth of the Food Processing Industry. Various Finance Ministers earlier have also recognized the importance of the need to incentives the Processing Industry and granted exemptions in excise duty to this sector. These steps are commendable.

(ii) However, the following anomaly needs to be rectified:

(iii) In the speech regarding Finance Bill, it was proposed in para 133 that countervailing (CVD) of 4% on all imports would be made applicable, with few exceptions. This has been made applicable to all inputs/raw materials. In cases where finished products are exempt, no CENVAT credit can be taken by the manufacturers. It is therefore necessary that imported inputs used in food processing industry are exempted from liability of countervailing duty.

(iv) In view of this, an exemption notification exempting inputs/raw materials imported for using food processing industry deserved to be exempted from liability of countervailing duty.

(v) In consonance with the policy of the Central Government regarding boosting up of food processing industry, an exemption notification providing for exemption from customs duty and countervailing duty for import of food processing machinery by mega food processing plants is required to be issued. This would help in reduction of selling price of final product which would ultimately benefit the consumers. This would be on lines of the tax benefits provided by Government in case of Mega power projects.

4. Re: Petrochemical Industry:

(i) Propane is a vital feedstock for the Gas based Petrochemical Industry in India and elsewhere in the ASEAN region. In the Indian context, the usage of propane has gained importance in the gas crackers due to continuous decline in the production of Natural Gas. Propane as a petrochemical feedstock is used for the production of building blocks namely Ethylene and Propylene, which are subsequently, converted to plastic raw material such as polyethylene and Polypropylene of national importance.

(ii) In the Union Budget for the year 2006-07, Customs Duty on Naphtha (Important Feedstock for specified Polymers) has been logically reduced to Zero (previously at 5%) as a sequel to the lowering of basic Customs Duty on the specified Polymers to 5% (Previously at 10%). The duty has also been reduced on other building blocks namely EDC, VCN and styrene from 5% to 2%. However, the basic Customs Duty on Feedstock (propane) Building Blocks (Ethylene, Propylene) and end products (Plastic raw Material) are all kept at 5%.

(iii) It is important to note that duty on polymer raw material in India is one of the lowest in the region and at par with those prevailing with most of the ASEAN Countries for Intra ASEAN Trade. Within the ASEAN region, inputs and building blocks such as Naphtha, Propane, Ethylene, Propylene etc. attract zero percent customs duty thereby allows producers a modest 5% tariff protection.

(iv) In view of this, appropriate exemption notification to rationalize the rates of basic customs duty on propane, ethylene and propylene and products viz. plastic raw materials are required to be issued.

5. Re: Development of infrastructure:

For the purpose of development of infrastructure, the customs duty payable on import of any inputs and/or capital goods used at pre-construction or post-construction stage in respect of roads, airport, power transmission project, etc. should be exempted which exemption should be given without any conditions.

SERVICE TAX

1. Re: Abatement:

(i) Under Finance Act, 1994, abatement has been provided to 11 taxable services where the provider has an option either to charge service tax at full rate or after taking abatement. With effect from 1.3.2006 service provider who avails of the abatement is not allowed to take cenvat credit of service tax whereby the service provider charges service tax at full rate. This ultimately has led to the customers paying more service tax since it is an indirect tax charged from them, without giving the benefit of abatement.

(ii) Accordingly, appropriate notifications are required to be issued, thus, ultimately benefiting the service availer/consumer.

2. Re: Cenvat credit of services of goods transport operator:

(i) A clarity is required on availing of cenvat credit of service tax paid on transportation of goods beyond the factory gate inasmuch as the officers of the department refuse to give the benefit of cenvat credit of such service tax paid on the services.

(ii) It is desirable that an appropriate explanation/amendment is issued/ made in the definition of the term "input service" contained in Cenvat Credit Rules, 2004. In fact, the said definition provides for considering the services of accounting, auditing, recruitment and quality control, etc. as input service. Thus, as aforesaid, appropriate amendment/explanation is required in the definition as regards transportation of goods.

3. Re: Exemption to services rendered by small service providers:

With the passage of time, various services have been covered under the net of service tax whereby even small persons who do not have a voluminous turnover are required to make payment of service tax. In this regard, the Central Government has issued a notification granting exemption from payment of service tax upto the value of Rs.4 lakhs which deserves to be increased to Rs.10 lakhs in terms of recommendation of the Kelkar Committee.

4. Re: General recommendations:

(i) The credit of service tax should be allowed without any limit to the manufacturer coupled with the fact that the rate of service tax deserves reduction as the same is on a higher side.

(ii) There should be a provision for issuing supplementary invoices for service providers as in the case of central excise duty which will facilitate the availment of cenvat credit of service tax paid on input service.

(iii) Manufacturing units having home consumption turn over upto Rs.100 lakhs are exempt from payment of central excise duty. These units should also be given exemption from payment of service tax for job work activities under the category of business auxiliary services.

