GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
TAX RESEARCH UNIT
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D.O.F.No.B-1/3/2011-TRU
New Delhi, dated the 25th March, 2011.

Dear Chief Commissioner/Commissioner,

After the presentation of the Budget 2011-12 on the 28th February, 2011, the Ministry received several representations from industry/ trade associations and Chambers of Commerce either seeking changes in or clarifications about the scope of the tax proposals. Suggestions were also received from the field formations for modifying the content/wording of some of the proposals with a view to plug gaps or impart more clarity.

2. While responding to the discussions on the Finance Bill, 2011 in Lok Sabha on 22nd March, 2011, Finance Minister has announced certain further changes in Central Excise and Customs duty rates as also the provisions of some exemption notifications. Notification Nos. 20 to 31/2011-Central Excise and notification nos. 31 and 32/2011-Customs all dated 24th March, 2011 have been issued to give effect to these announcements. Notification Nos. 8 to 12/2011-Central Excise (NT) dated 24th March, 2011 have also been issued in this regard.

3. The changes introduced through these notifications are discussed in the following paragraphs. In addition, clarifications on some of the salient issues have also been provided.

I. CENTRAL EXCISE

3. Branded Ready Made Garments and Made-up Articles of Textiles:

3.1 The following changes have been made with regard to this levy:

(i) The tariff value notified under section 3 of the Central Excise Act for these items i.e. goods falling under Chapters 61, 62 and 63 (heading Nos. 63.01 to 63.08) has been reduced from 60% to 45% of the Retail Sale Price. Notification No. 12/2011-CE (NT) dated 24th March, 2011 refers.

(ii) It has been pointed out by industry associations that persons owning a brand often get goods bearing their brand from other manufacturers (normally small units) without providing the raw materials or inputs. Such manufacturers do not answer the description of "job-workers" and are necessarily required to register and pay duty on such goods. It has been pointed out that they may face some difficulty in discharging duty on tariff value since the Retail Sale

Price of the goods is not disclosed to them by the brand owner. It has been provided that if the RSP is not affixed or marked on goods when they are **cleared in the course of sale** from the factory of a manufacturer to the brand owner, **the wholesale price declared by the manufacturer would be deemed to be the tariff value for the payment of duty**. This has been provided through the insertion of a proviso in notification no.20/2001-CE (NT) dated 30th April, 2001 through amendment notification no.12/2011-CE (NT) dated 24th March, 2011. Since the process of labeling or re-labelling constitutes a process of "manufacture", duty on the tariff value (based on the actual RSP) would once again be payable as and when the brand owner labels the goods with the RSP and clears them for further sale. The garments purchased by the brand owner being duty-paid, he would also be entitled to claim credit and utilize that for the payment of duty when he clears the goods after affixing the RSP.

(iii) Concerned industry associations have represented that it is a common practice in this industry for goods to be cleared by the manufacturer to the wholesale dealer/ retailer on consignment basis. As a result, the duty-paid stock that remains unsold with the latter is returned to the manufacturer either at the end of the season or from time to time. Such returned goods are cleared either as such or after 're-finishing' operations to another wholesaler or retailer for sale (often at reduced prices). The re-finishing operations could involve cleaning, ironing, re-folding, repacking or relabeling -some of which constitute "manufacture" in terms of the relevant Chapter Notes. Normally, rule 16 of the Central Excise Rule, 2002 would cover such cases. However, it has been represented that often one -to - one correlation of such returned goods with the original invoice (against which they were cleared initially) is not possible. Accordingly, full exemption from Central Excise duty is being provided to duty-paid goods returned to the manufacturer during a financial year up to an aggregate ceiling not exceeding 10% of the value of clearances for home consumption made in the preceding financial year. The manufacturer would be required to observe the following procedure for this purpose:

a. To submit an intimation within 48 hours of the receipt of the returned goods about the value of returned goods received in his factory/ registered premises;
b. To maintain proper accounts/ record of the receipt, finishing operations, and dispatch of returned stock indicating the monthly and cumulative value of the returned stock received during the financial year and to produce the same as and when required;

Notification No.31/2011-CE dated 24th March, 2011 has been issued in this behalf. The benefit of this exemption is available only if the manufacturer does not take Cenvat credit of the duty paid on the garments/ made-ups at the time they were initially cleared form the factory. The procedure prescribed for this purpose **does not envisage the physical verification of returned stock by Central Excise officers** on receipt of the intimation. **It may be ensured that visits by the staff are not made to the factory/ registered premises for such verification**. Normal checks could be conducted, if required, at the time

of audit of the unit on the basis of records/ accounts maintained for the purpose. Owing to the fact that most of the units manufacturing ready-made garments or made-ups had opted not to pay Central Excise duty until the presentation of the Budget 2011, it would not be possible to determine the entitlement of a unit for exemption (annual ceiling of 10% of the aggregate clearances for home consumption in the preceding year) on the basis of Central Excise records. A certificate from a Chartered Accountant indicating the aggregate value of clearances for home consumption made by the unit in the preceding financial year may be accepted for this purpose. At the time of scrutiny of the monthly return filed by the manufacturer, it may be verified that the cumulative value of the returned garments on which the unit has claimed exemption under this notification does not exceed the prescribed limit of 10% mentioned above. The facility of rule 16 would also continue to be available where a manufacturer is able to produce and correlate the relevant duty paying documents.

3.2 A clarification has been sought by trade whether the levy is applicable to blinds of all kinds or curtains falling under heading no.63.03 when these are made to order for a retail customer. It has been pointed out that blinds are normally made in the factory against order of a retail customer only and not kept in stock for sale over the counter. That being so, they do not also bear any RSP. Besides, they do not bear a brand name. Thus it is clarified that the levy would not be applicable to blinds of all kinds which are made to order for a retail customer. Consequently optional exemption benefit would continue to be applicable to such goods under Notification no.30/2004 –CE dated 9.7.2004. The same is not true of curtains that are available off the shelf in standard sizes and either bear a brand name or are sold under a brand name. These would be liable to duty even though the length or other dimensions are often adjusted according to the requirements of the customer after sale.

3.3 Clarifications have been sought by the industry on several general issues related to the levy on ready-made garments and made-ups. These are discussed point-wise below:

S. No	Issue/Query	Clarification
1.	Who needs to register for this levy? Is it the brand owner or the job-worker?	As stated in the D.O. letter of 28th March, 2011, the Central Excise Rules have been amended to prescribe that the person who gets the goods falling under Chapters 61, 62 or 63 (heading 63.01 to 63.08) manufactured on his own account on job work shall pay the duty leviable on such goods as if the goods were manufactured by him. It is evident, therefore, that the brand name owner (and not the job-worker) is required to register and comply with all the provisions of Central Excise law. It is relevant that the brand name owner has been given the option to authorise his job-worker to

		pay the duty leviable on the goods. If such an authorisation is given, it is the job-worker who would have to obtain registration.
2.	If a unit manufactures goods bearing the brand name of another person out of inputs or raw materials which have been purchased independently and not supplied by the brand owner, will the unit be eligible for treatment as a "job-worker"? If not, would it be required to register?	Such a unit does not satisfy the definition of "job-worker" contained in the Explanation to Rule 4(1A). It is not enough for a job-worker to manufacture goods or to undertake a process on behalf of and under instructions of the brand owner. The inputs or goods should also have been supplied by the brand owner or by a person authorised by him. Such units would, therefore, have to obtain registration and discharge the duty liability.
3.	The retail sale price is not disclosed to units mentioned at S.No (2) above by the brand owner. In such case what would be the tariff value for payment of duty?	Notification has been issued to provide that where goods are cleared from the manufacturer to the brand owner in the course of sale and they do not bear the RSP, the transaction value under section 4 would be deemed to be their tariff value.
4.	Many small units manufacture ready-made garments for brand owners and clear them without affixing any brand name. Will such units be required to register?	Where no brand name is affixed on such goods, when cleared by the manufacturer, he is not required to register as the levy is only on goods bearing a brand name or sold under a brand name. As and when the brand owner affixes the brand name on such goods, he would be required to pay excise duty.
5.	Many units manufacture branded ready-made garments exclusively for export or pre-dominantly for export. Would they be required to register?	Normally, units manufacturing exclusively for export would also clear some goods for home consumption either as rejects, seconds or waste. To the extent, the value of clearances for home consumption of the manufacturer/unit is within the eligibility limit (of Rs.4 crore in the previous financial year), benefit of SSI exemption would be available up to a value of clearances of Rs.1.5 crore in the current financial year. The condition that would have to be fulfilled is that the goods cleared for home consumption should either be unbranded or bear the brand name of the manufacturer himself. **If these conditions are fulfilled, the unit would not be required to register till the exemption threshold is crossed.** However, if the goods cleared for home consumption bear the brand name of another person, neither the benefit of SSI

		exemption nor exemption from registration would be available.
6.	Would units referred to at S.No.5 be eligible for the simplified export procedure?	Yes. Since they would avail of the benefit of the SSI exemption i.e. an exemption based on the value of clearances, they would be eligible for the simplified export procedure.
7.	What is the value for computing the turnover for the purposes of SSI exemption? Would it be the Retail Sale Price, wholesale price or the tariff value?	Value for computing the eligibility as well as the exemption limit for purposes of SSI exemption is defined in Explanation (C) to Notification No.8/2003-CE dated 1st March, 2003. Accordingly, it would be the tariff value of the goods.
8.	Would SSI exemption be available to a manufacturer/ unit for goods falling under Chapters 61, 62 or 63 for the full exemption limit of Rs.1.5 crore for the month of March, 2011? Or, would this limit be applied on a pro-rata basis for one month i.e. Rs.12.50 lakh?	In the absence of a provision in the SSI notification to curtail the exemption to Rs.12.5 lakh for March, 2011 benefit upto the full exemption threshold of Rs.1.50 crore would be available for clearances for home consumption made in March, 2011. Of course, the conditions of the notification would have to be fulfilled.
9.	How would the eligibility for SSI exemption be computed for the financial year 2011-12?	As stated above, the eligibility for availing of the SSI exemption in 2011-12 is that the value of clearances for home consumption from one or more manufacturer from one or more unit should not have exceeded Rs.4 crore in the financial year 2010-11. The computation for this purpose should be done in accordance with the provisions of para 3A of notification no.8/2003-CE. For this purpose, a certificate from a Chartered Accountant based on the books of accounts for 2010-11 may be accepted.
10.	What is the status of Finished Goods in the factory/warehouse as on 28.2.2011? Will goods produced before 28.2.2011 but lying in the warehouse attract duty? Are the manufacturers required to submit stock Declaration?	Excisable goods which were produced on or before 28.2.2011 but lying in stock as on 28.2.2011 would attract excise duty upon clearance. However, such goods as had already been cleared from the factory of the manufacturer at Nil rate of duty on or before 28.2.2011 but are lying in the warehouse/ private store room for further sale would not be chargeable to the duty of 10% once again. Manufacturers would be required to submit a stock declaration of finished goods, goods- in-process and inputs as on 28.2.2011. Submission of such stock declaration would not only be for

		the purposes of payment of the excise duty but also for enabling the manufacturers to claim Cenvat credit on inputs or inputs contained in goods lying in stock as already provided for in rule 3(2) of the Cenvat Credit, Rules, 2004.
11.	Can manufacturers claim Cenvat credit of excise duty paid on inputs	Manufacturers can claim Cenvat credit on inputs as per the provisions of the Cenvat Credit Rules,2004

4. **Levy of 1% Excise Duty without Cenvat Credit on 130 items:**

4.1 The following changes have been made with respect to levy of 1% excise duty on 130 items which were fully exempt till 1st March 2011:

(i) Out of the 130 items covered under Notification 1/2011-CE dated 01.03.2011, 35 items have been notified under section 4A of the Central Excise Act, 1944 with an abatement of 35%. Notification No. 11/2011-CE (NT) dated 24th March, 2011 refers. The excise duty (and CVD) on these goods will thus be charged on the assessable value determined under section 4A.

(ii) Since units that exclusively manufacture items attracting the duty of 1% are neither allowed to take Cenvat credit nor to pass it on to their buyers, a simplified procedure is being prescribed for them so that physical interface with them is minimized and the levy does not pose a compliance burden on them. The salient features of this are as under:

a. Waste, scrap and parings arising in the course of manufacture of items subject to the 1% levy have been fully exempted. The benefit of this exemption is available only to units that exclusively manufacture these items. Notification No. 27/2011-CE dated 24th March, 2011 refers. The benefit of this exemption is also available to units exclusively manufacturing mobile handsets including cellular phones.

b. Post- registration verification of the factory premises shall not be required for such units.

c. Visits to such units should not be required in the normal course. If at all the need arises, the officer visiting them should do so only with the prior authorization of the Assistant Commissioner or the Deputy Commissioner Central Excise of the jurisdictional division. The authorisation should be shown to the assessee and his signatures obtained on it at the time of the visit. These instructions may be disseminated to the field formations for strict compliance.

d. Facility of quarterly returns is being prescribed for these units. Notification No. 8/2011-CE (NT) dated 24th March, 2011 refers.

e. A simple format for this quarterly return will be notified in due course as the first return from such units will become due only in July 2011.

4.2 The entry relating to mobile handsets (S.No. 100 of Notification No. 1/2011-CE dated 01.03.2011) has been modified. 1% conditional excise duty will now apply only to

Radio Trunking Terminals while separate Notification No.20/2011-CE dated 24.03.2011 has been issued prescribing unconditional excise duty rate of 1% on mobile handsets including cellular phones. The imports of these goods as well as their clearances from SEZ into DTA also will attract additional duty of customs of 1% over and above the NCCD of 1%. This duty rate will also be available to clearances from EOUs into the DTA.

4.3 The excise duty exemption on silicon wafers has also been restored. Other forms of silicon would continue to attract excise duty of 1% ad val.

4.4 As you are aware, the levy of 1% excise duty covers all kind of carpets (S. No. 57 of the Notification 1/2011-CE refers). The trade has represented that most of the carpets are woven by individual weavers and exported. It has been informed that in most of the cases, the domestic sales of the carpets are well within the exempted threshold of Rs.1.5 Crore. It is to clarify that in such cases the units need not register and can continue to export following the simplified export procedure for exempted units as prescribed under part III of Chapter 7 of CBEC's Excise Manual of Supplementary Instructions 2005.

4.5 Some difficulty has been expressed on behalf of producers of coal with regard to the registration of each mine. Centralised registration facility on the lines of that available for the purpose of the Clean Energy Cess imposed on this item last year has been permitted to coal producers in terms of notification no.10/2011-CE (NT) dated 24th March, 2011.

5. **Jewellery and other articles of precious metals bearing or sold under a brand name :**

A. Liability to pay excise duty

5.1. In respect of levy of excise duty @ 1% on jewellery and other articles of precious metals which bear or are sold under a brand name, the provisions of Rule 12AA of the Central Excise Rules and Rules 2 & 4 of the Cenvat Credit Rules as amended by notification nos. 8/2011-Central Excise (N.T.) and 9/2011-Central Excise (N.T.) both dated 24th March 2011 may kindly be referred to. As in the case of branded garments, in case of goods falling under chapter heading 7113 and 7114 also, where a brand owner gets jewellery or articles other than jewellery made from any other person, and supplies the raw materials such as gold/ silver/ gemstones etc. (of chapter 71) to the job-worker for such manufacture, the duty liability would be on such person who gets jewellery or articles made from the job worker, unless the job worker opts to discharge the duty liability. However, a person manufacturing jewellery of heading 7113 or articles of heading 7114 bearing a brand name or sold under a brand name on his own account will be liable to pay excise duty unless he claims benefit of the SSI exemption.

B. What constitutes a Brand name for the purposes of this exemption

5.2.1 It has been prescribed in respect of jewellery and other articles, "brand name" means a brand name or trade name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person. Only such jewellery or other articles of precious metals which either bear or are marketed and sold under a brand name attract this levy. Whether a particular name or mark or symbol etc. is a brand name or not is a matter of fact, and can be ascertained from the manner in which it is understood in commercial or trade parlance. The test of goods being branded would be if the buyer seeks to buy the goods because they bear or are sold under a particular brand. As such, a mere mark of identity put by a jeweller or the job worker, commonly known as a 'house-mark' shall not be considered a brand name. Some illustrations are given below to explain the scope of the term "brand name":

(i) A manufacturer, say "ABC Jewellers", getting jewellery or other articles manufactured on his behalf from gold smiths/ job-workers who put a mark/sign/initials, etc. on the jewellery/ article. This is only to identify that the article or jewellery was received from a particular goldsmith, etc. This is not branded jewellery and will not attract duty.

(ii) "ABC jewellers", when it sells articles of jewellery to customers, puts a distinctive sign/ mark/ initials etc. on the jewellery- very often a simple acronym of his name e.g. ABC. It may be noted that mere alphabets or numerals (unless stylized) cannot be registered as a brand name or trademark. This is again for the purpose of identification when the customer re-sells or returns the jewellery or article and goods bearing it would not attract the levy.

(iii) "ABC jewellers" advertises and sells its products under the brand "Star" or puts a logo like $^{A}B_{C}$ or $\mathscr{ABC}$ i.e. in a stylized manner. It also puts the same brand name or an abbreviation thereof or a mark which has a connection with such brand name either on the jewellery or article itself or on the packing such as the jewellery box or pouch or even on the warranty card or certificate of quality. Such goods will clearly be treated as branded and will be liable to duty.

5.2.2. Hallmarking of the jewellery, which is an accurate determination and official recording of the proportionate content of precious metal in gold and is thus only official marks used as a guarantee of purity or fineness of gold jewellery, cannot be treated as 'branding' for the purposes of the excise levy.

II. CUSTOMS:

6. Full exemption from levy of Special Additional Duty of Customs has been provided to Ships; Aircrafts imported by non scheduled operators and specified parts of

personal computers viz. Microprocessor for computer, other than motherboards, Floppy disc drive, Hard disc drive, CD-ROM drive, DVD Drive/DVD Writers, Flash memory and Combo drive. The exemption on parts of personal computers is subject to actual user condition.

7. It may be recalled that excise duty of 1% was imposed on ships and other goods falling under heading 89.01 on the condition that no Cenvat credit is taken. Doubts have been raised about the applicability this levy as CVD to foreign-going vessels. It is clarified that the levy would not apply to such imports which are temporary in nature.

8. In the Budget 2011-12, concessional rate of 5% excise duty/CVD and NIL SAD had been provided for parts of inkjet printers and laser jet printers. The concessional rate is being extended to parts of all printers capable of being attached with computers, subject to actual user condition.

9. As you are aware, a definition of Completely Knocked down Unit had been prescribed in the Budget. However, considering the representations by the industry, the custom duty rate on vehicles imported in the form of completely knocked down kits having all the necessary components, parts and sub-assembly including the pre-assembled engine, gearbox and transmission mechanism of Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 87.02) including motor cycles is being reduced from 60% to 30%. Such imports of vehicles in completely built form or in any other form including in a form where any of the three viz. engine, gear box or transmission assembly are imported fixed to a chassis will attract 60% BCD. The imports in form of CKD kits where all the parts and components including engine, gearbox and transmission assembly are present in completely knocked down condition will attract 10% BCD.

10. Doubts have been raised about the applicable CVD rate on the 130 items, on which Excise Duty @ 1% has been levied vide Notification 1/2011-CE dated 01.03.2011, when imported. It is further learnt that manual bills of entry have been permitted at certain customs locations as 1% CVD rate was not available in the system. This concessional rate of 1%, however, is available only if the Cenvat credit on inputs and input services is not availed of; otherwise all these items attract 5% Excise duty as prescribed vide notification 2/2011-CE dated 01.03.2011 and Tenth Schedule to the Finance Bill. At the time of updating of ICES, the Directorate of Systems had been advised not to feed Notification 1/2011-CE dated 01.03.2011 in the system as 1% rate will not be applicable for CVD purposes. There should have been no confusion on the subject. Since the CVD is levied to provide a level playing field for the domestic manufacturers, CVD is charged at a rate equal to excise duty rate. However, in respect of these 130 items, there are two excise duty rates. It needs to be appreciated that if CVD is levied @ 1%, the protection for the domestic manufacturer would be lost since in the country of origin, the overseas supplier enjoys input tax neutralization on goods exported to India (akin to availment of input tax credit), whereas on the other hand the domestic manufacturer suffers all the input taxes and 1% excise duty over and above that. Since 5% excise duty rate is payable when the cenvat credit of duties and taxes paid on inputs and input services is availed of, the tax treatment becomes equitable with the goods being

imported into India, the input taxes having been neutralized in the country of export. As such, the CVD of 5% will be applicable in respect of all the goods covered under Notification 1/2011-CE dated 01.03.2011 and 1% rate will not apply.

11. Some amendments have been proposed in the provisions of the Finance bill, 2011 too. These would be communicated as and when the Bill is enacted. The changes discussed above may kindly be communicated to the field formations under your charge as well as trade. In conclusion, I would take the opportunity to once again emphasize that in the case of new levies all possible help, guidance and facilitation should be provided to the trade. Difficulties, if any, may kindly be brought to my notice immediately.

With regards and best wishes,

Yours sincerely,

Sd/-
(Vivek Johri)

To

All Chief Commissioners/ Directors General
All Commissioners of Customs
All Commissioners of Central Excise
All Commissioners of Customs and Central Excise
All Commissioners of Service Tax
Director DPPR/ Logistics/Legal Affairs/ Data Management
All Joint Secretaries/ Commissioners (CBEC)