BUDGET REFORMS

2015 - 16

KEVIN SHAH & CO
[CHARTERED ACCOUNTANTS]

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ABOUT THE COMPANY& AUTHOR:

Kevin Shah & Co is a boutique indirect tax firm which specializes in the field of indirect taxes. It is being headed by CA. Kevin Shah who has a wide variety of experience in the field of Service Tax, Cenvat Credit, Central Excise and Customs. The firm caters to leading players of the industries like Pharma, Infrastructure, Hospitality, Power, Educational etc.

Further, currently associated with many reputed CA firms wherein they jointly carry out assignments in relation to indirect taxes.

Further, the proprietor is a regular speaker at various forums like WIRC, NACEN, CA study circles, corporates etc. He provides regular training courses to departmental officers and helps them in understanding the complicacies of law. He regularly writes editorials for forums like MCTC, Service Tax Review etc.

He holds the position as an independent director in a listed company.

I. SERVICE TAX

1. TAX RATES:

1.1. Basic rate:

The basic rate[1] of service tax has been increased from 12% to 14%. Further, education cess and secondary higher education Cess is being subsumed and no such cess are payable from a date to be notified by the Central Government. The said rate would be effective from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015. Till the time the revised rate comes into effect the current effective levy of 12.36% would continue[2].

1.2. Prudence during transition:

1.2.1. As per the provisions of Point of Taxation[3], which is been crafted to cater such kind of a situation one has to resort to such rules. Generically any of the two events which occurs either before the rate change or after the rate change is considered to be as the point of taxation. The same is explained as an example in detail

Illustration:

Assumption that rate of Service tax has been changed w.e.f 01.07.2015

Prov. of serv	Date of Invoice	Date of payment	POT / Effective tax rate
Before rate change 31.03.2015	After rate change 02.07.2015	After rate change 30.08.2015	Invoice date or payment date, whichever is earlier 02.07.2012 / [new rate]

[1] Section 66B of the Finance Act, 1994
[2] Clause 106 of Chapter V of the Finance Act, 1994
[3] Rule 4 of the Point of Taxation Rules, 2011

Before rate change 30.06.2015	Before rate change 20.06.2015	After rate change 30.07.2013	Date of invoice 20.06.2015[old rate]
Before rate change 30.06.2015	After rate change 30.07.2013	Before rate change 20.06.2015	Date of payment 20.06.2015 [old rate]
After rate change 31.07.2015	After rate change 02.07.2015	After rate change 30.08.2015	Invoice date or payment date, whichever is earlier 02.07.2012 / [new rate]
After rate change 31.07.2015	Before rate change 20.06.2015	After rate change 30.07.2013	Date of payment 20.06.2015 [new rate]
After rate change 31.07.2015	After rate change 30.07.2013	Before rate change 20.06.2015	Date of invoice 30.07.2015 [new rate]

1.2.2. Since there is a change in the basic rate of service tax therefore it will have impact on other rates which are depended on the basic rate. Accordingly, their current rates will also change. For example: rates under abatement, special schemes etc will change. Detailed change in the impact is summarized under Exhibit A

1.3. **Swachh Bharat Cess:**

Swachh bharat cess is being imposed by the central government[4] on all or any of the taxable services at a rate of 2% on the value of taxable services. This cess shall be levied from such date as may be notified by the Central Government after the enactment of the Finance Bill, 2015.

2. Negative List[5]:

The concept of negative list based taxation was introduced from 01.07.2012. Accordingly, the items listed under the said list were excluded[6] from the levy of service tax.

2.1. **Government related services:**

2.1.1. Presently, services provided by Government or a local authority, excluding certain specified services[7] are covered by the Negative List. On perusal of the same it can be summarized that service tax is being made applicable on provision of support services[8]. Further, the same was liable for payment under reverse charge mechanism[9].

2.1.2. Further, it is amended to enlarge the scope and state that any service provided by Government or a local authority to any business entity is excluded from negative list and is taxable. To that effect it is proposed to even delete the term “support service” and accordingly the concept of “support service” would no longer be valid.

2.1.3. **Comments**: The said amendment has narrowed the scope of litigation in lieu of the term “support services” which is a positive sign. Further, on perusal of the definition provided for the

[4] Clause 117 of Chapter VI of the Finance Act, 2015
[5] To be effective from a date to be notified later, after the enactment of the Finance Bill, 2015
[6] As per Section 66B of the Finance Act, 1994
[7] clause (a) of Section 66D
[8] Section 65B(49) of the Finance Act, 1994
[9] Sr. 6 of Notification 30/2012 dated 20.06.2012

said term it can be stated that there is little room for any service provided by government or local authority to the business to get away from the said definition. If one takes a view that the said service is excluded from the instant definition then the same would not have been an easy affair to prove because of the wide structuring of the definition.

2.2. **Manufacturing related services:**

2.2.1. Presently, any process amounting to manufacture or production of any goods[10] was excluded from the levy of service tax. The intention behind excluding the same was not to tax such transaction which ultimately suffers tax by way of central or state taxes/duties. Accordingly, a distinction was being carved out under the erstwhile regime to exclude transactions of loan licensee/ job workor any process for the manufacture or production of alcoholic liquor for human consumption.

2.2.2. However, under the current budget it is being proposed to tax such transaction. Accordingly, service tax would be applicable on amount paid to loan licensee/ job worker for the manufacture or production of alcoholic liquor. Further, the exemption granted to the same is also been suitably amended so as to tax amount paid to loan licensee/ job worker for the manufacture or production of alcoholic liquor.

2.2.3. **Comments**: The said amendment will have huge impact from the point of view of cenvat credit and if there is no taxable output available with the company then the same would be a cost to the company.

2.3. **Betting, Gambling, Chit Fund or Lottery related services:**

[10] Section 65B(40) of the Finance Act, 1994

2.3.1. During the introduction of taxation in the said space, the intention of the legislature was to tax services provided by foremen of chit fund[11] and services provided by lottery distributors and selling agents[12]. However, invariably the courts have given divergent views[13] with respect to taxability on the same.

2.3.2. Inorder to bring the above mentioned transaction under the service tax gamut relevant amendments were made in the legislature and accordingly service tax is applicable on the same from the date when the same gets notified. Further, the exemption granted to them is also been appropriately withdrawn and thus the entire leg is now a taxable transaction.

2.4. **Entertainment related services:**

2.4.1. Presently, service tax on admission to entertainment events or access to amusement facilities was excluded from the levy of service tax. The intention behind excluding the said activities was that the same is subject to the jurisdiction of state and therefore considering the golden principle that a transaction should not suffer dual tax the said activities were excluded from the taxable bracket by way of negative list.

2.4.2. In this budget, the said entry is proposed for deletion from the negative list; accordingly, service tax is proposed to be made applicable on the same. Therefore, going forward it is propose to tax transaction by way of admission to entertainment events or access to amusement facilities.

[11] Newly inserted vide Section 65B(23A)

[12] Newly inserted vide Section 65B(31A)

[13] For Lottery Distribution : Upheld the levy by Supreme Court : Union of India vs. Martin Lottery Agencies Ltd 2009 (14) S.T.R. 593 (S.C.)
For Chit Fund foremen : Delhi HC struck stating the same as transaction in money : Delhi chit Fund Ass vs. UOI 2013 (30) S.T.R 347 (Del)

2.4.3. However, there are certain relaxations are provided under the statue inorder to provide relief to the common man and the same is appropriately dealth in para 3.3

2.4.4. **Comments**: The said amendment in broader sense would lead to lot of litigation with respect to constitutional validity of taxing such transactions leading to confusion. On a positive note it would act as a good catalyst for the industry. The analogy behind it is that since there is now an output available for such companies, the taxes so paid to various vendors would be available in the form of CENVAT (subject to availment conditions) to such companies and accordingly will not form cost to such companies.

3. Exemption Structure

3.1. Healthcare related exemption:

3.1.1. Presently, services provided by a clinical establishment, an authorized medical practitioner or para-medics by way of healthcare services[14] is being exempted from the levy of service tax. The said scope has been further expanded to state that services provided by way of transportation of a patient in an ambulance is exempted[15] from the levy of service tax.

3.1.2. **Comments**: An important point to note in the above mentioned exemption scheme is that the said exemption is applicable for services provided by way of transportation of patient in an ambulance. There is no specification as to who should provide these services unlike health care services where exemption is available only if the service provider is a clinical establishment or authorized medical practitioner or paramedic.

[14] Defined under Rule 2(t) of Notification 25/2012 dated 20.06.2012
[15] Effective from 01.04.2015

3.2. **<u>Construction related exemption:</u>**

3.2.1. Post 01.07.2012,mega exemption scheme was introduced wherein certain services relating to construction were being exempted from the levy of service tax. Out of the said exemption scheme certain exemption are being withdrawn and from 01.04.2015 have become taxable. The same is as under:

<u>Government related constructions and other allied activities</u>:

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession.

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment.

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation* 1 to clause 44 of section 65B of the said Act.

Thus, w.e.f 01.04.2015, any construction related services provided by any person to government with respect to above mentioned activities are being liable for payment of service tax.

3.2.2. **<u>Comments</u>**: The same is a positive move as it will end a lot of litigation in the space where the main contractor and to some extent sub-contractors were able to claim exemption by virtue of the said notification[16]. However, if the said contract is further sub-contracted by the sub-contractors and the said sub sub-contractors are providing standalone services which is not amounting to works contract[17] then service tax is applicable on the said transaction and ultimately since there is no output so it becomes a cost. Accordingly, there were lot of interpretational issues with respect to such types of contracts which will now put to an end and tax would be happily disbursed as there is a corresponding output available.

[16]Notification 25/2012 : Entry 12 for main contractors ; Entry 29 (h) for sub-contractors
[17]Section 65B(54) of the Finance Act, 1994

3.3. **Entertainment related exemptions:**

3.3.1. Presently, services provided by way of admission to any cinematographic films, circus, dance, or theatrical performance including drama or ballet etc is being covered under the negative list and accordingly excluded from the taxable bracket of service tax. However, as per the proposed amendment as explained supra the said entry has become taxable. For a level playing field certain exemptions are being granted which is summarized as under:

(i) Services provided by way of right to admission to exhibition of cinematographic film, circus, and dance, theatrical performance including drama or ballet and recognised sporting event[18].

(ii) Services provided by way of admission to award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than Rs 500 per person.

(iii) Services by way of admission to a museum, national park[19], wildlife sanctuary[20], tiger reserve[21] or zoo[22].

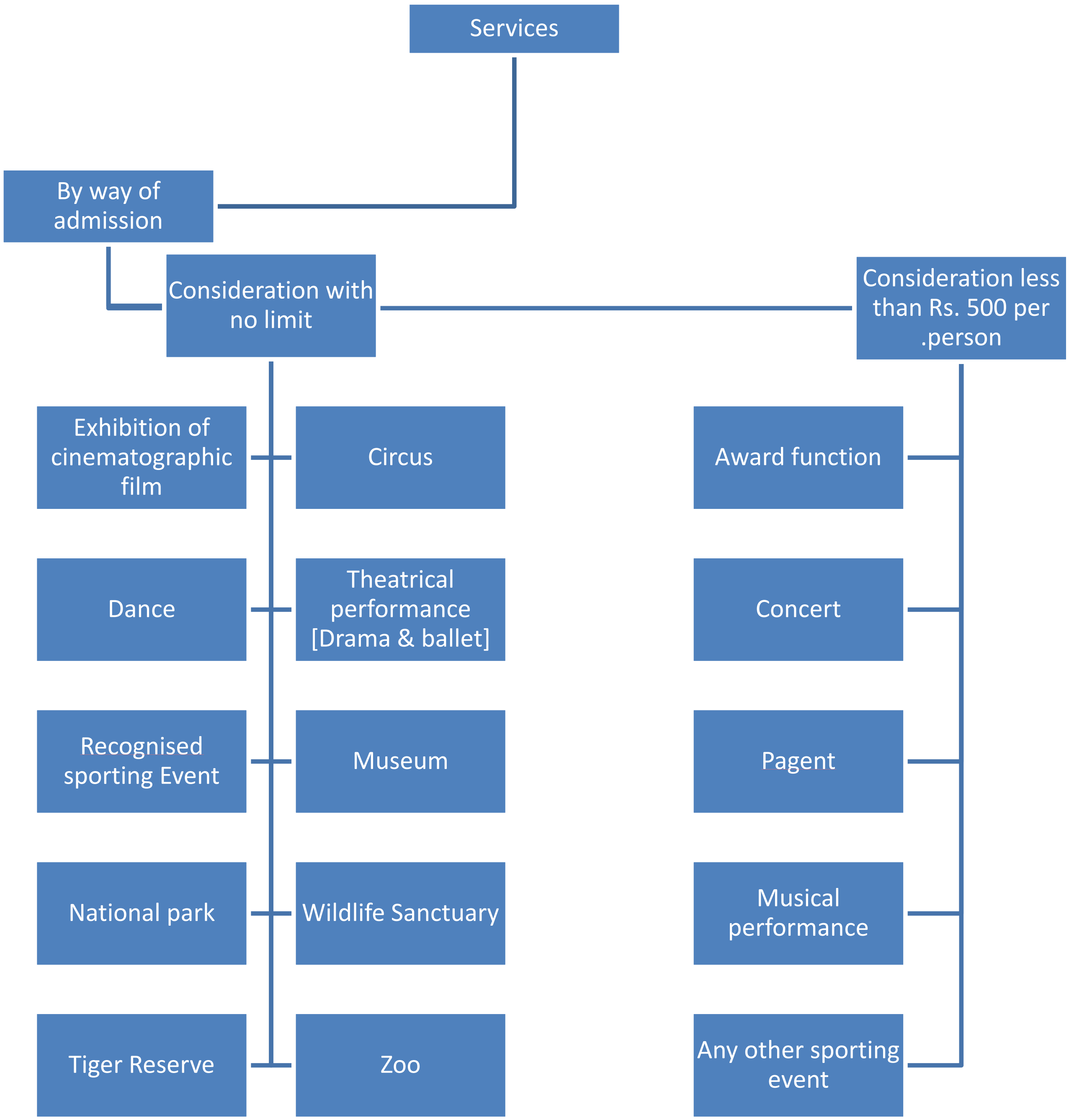
(iv) Service provided by way of exhibition of movie by an exhibitor to the distributor or an association of persons consisting of the exhibitor as one of its members.

(v) Services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, if the consideration charged for such performance is more than Rs. 1,00,000/-.

3.3.2. Exemption limit of Rs. 1,00,000/- is not applicable to performing artist who provides service as a brand ambassador.

[18]Rule 2(zab) of Notification 25/2012 dated 20.06.2012 amended vide Notification 6/2015 dated 01.03.2015
[19]Rule 2(xxa) of Notification 25/2012 dated 20.06.2012 amended vide Notification 6/2015 dated 01.03.2015
[20]Rule 2(zk) of Notification 25/2012 dated 20.06.2012 amended vide Notification 6/2015 dated 01.03.2015
[21]Rule 2(zi) of Notification 25/2012 dated 20.06.2012 amended vide Notification 6/2015 dated 01.03.2015
[22]Rule 2(zl) of Notification 25/2012 dated 20.06.2012 amended vide Notification 6/2015 dated 01.03.2015

3.3.3. **<u>Comments</u>**: Thus, going forward except for such services which are listed supra transactions of such mature would fall under the taxable purview and thereafter would be liable for payment of service tax. From above it can be stated that there are various exemptions granted in the said space. Accordingly, the above mentioned exemptions are summarized as under:


Services
By way of admission
Consideration with no limit
Consideration less than Rs. 500 per .person
Exhibition of cinematographic film
Circus
Dance
Theatrical performance [Drama & ballet]
Recognised sporting Event
Museum
National park
Wildlife Sanctuary
Tiger Reserve
Zoo
Award function
Concert
Pagent
Musical performance
Any other sporting event

3.4. **Logistics and transport related exemptions:**

3.4.1. Post 01.07.2012, services relating to transportation by way of road, rail or vessels of certain commodities such as foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, exclude alcoholic beverages were being exempted from payment of service tax.

3.4.2. In this budget, certain exemptions are withdrawn and accordingly transportation of foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, alcoholic beverages by way of road, rail or vessel would be taxable. Thus, the entry is amended to exempt only transportation of milk, salt and food grain including flours, pulses and rice.

3.4.3. Further, a comparative analysis of the exemption granted by way of road, rail or vessel is analyzed as under:

S.N	Transportation by rail or vessel	Transportation by GTA (Road)
1	relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap	relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap
2	defence or military equipments	defence or military equipments
3	newspaper or magazines registered with the Registrar of Newspapers	newspaper or magazines registered with the Registrar of Newspapers
4	railway equipments or materials	<<no such exemption>>
5	agricultural produce	agricultural produce
6	milk, salt and food grain including flours, pulses and rice	milk, salt and food grain including flours, pulses and rice
7	chemical fertilizer and oilcakes	chemical fertilizer and oilcakes
8		goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees

		goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty

3.5. **Telephone related exemptions:**

3.5.1. Post 01.07.2012, services provided by way of making telephone calls from departmentally run public telephone, guaranteed public telephone operating only for local calls or free telephone at airport and hospital where no bills are being issued were exempted from payment of service tax. In this budget, it is proposed to withdraw the exemption so granted thereby taxing the same.

3.6. **Other Exemptions**

3.6.1. **Insurance:**

Services in respect of life insurance business for selected schemes were exempted from payment of service tax w.e.f. 24.12.2012[23]. Further, Varishtha Pension BimaYojana is exempted from payment of service tax.

Others:

3.6.2. Servicesof pre-conditioning, pre-cooling, ripening, waxing, retail packing labelling of fruits and vegetables which do not change or alter essential characteristics of the said fruits and vegetables is being exempted from payment of service tax[24].

3.6.3. Services by operator of Common Effluent Treatment Plant by way of treatment of effluent.

[23] Notification 49/2012 dated 24.12.2012
[24] w.e.f. 01.04.2015

4. **Abatement mechanism:**

4.1. In this budget there are certain changes which are being proposed w.r.t the current abatement structure. Further, even there are some substantial changes in the conditions under which the abatement scheme can be granted. All such change and the exact current scenario w.r.t availment of the abatement scheme and related conditions is explained in Exhibit B.

5. **Reverse charge mechanism:**

5.1. Reverse charge mechanism scheme was introduced[25] on 01.07.2012. Post which suitable amendments took place and more and more services were brought under the said gamut. Under the current budget few new services are brought under the said gamut and accordingly are liable for payment of service tax under reverse charge mechanism. The same is listed as under:

S.N	Description of a service	% of ST payable by the person providing service	% of ST payable by any person liable for paying service tax other than the S.P
	in respect of services provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company	NIL	100%
	in respect of service provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery	NIL	100%

[25]Notification 30/2012 dated 20.06.2012

	distributor or selling agent		
	in respect of any service provided or agreed to be provided by a person involving an aggregator in any manner	NIL	100%
8	Supply of Manpower & Security Services (amended from partial reverse charge to full reverse charge)	NIL	100%

5.2. For the first time under the service tax regime the concept of "Aggregator Service" was introduced. The same has a wider implication. The term "aggregator" is explained in great detail as under –

5.3. **Who is an aggregator?**

An aggregator means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator.

Requisite for the term "aggregator":

a) Should own and manage a web based software application –

Web based software application means an application in which all or some parts of the software are downloaded from the Web each time it is run.

b) A potential customers are able to connect with persons providing particular kind of services through that web based software application and a communication devices.-

With the help of web based software and communication device like internet, mobile phones etc potential customer are able to avail the services provided in any manner.

c) <u>Service provided to potential customers must be of a particular kind and under the brand name or trade name of the aggregator-</u>

Particular kind means specific kind of services which is under the brand name / trade name of an aggregator. For better understanding brand name / trade name is explained as under:-

"**Brand name or trade name"** means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some person using the name or mark with or without any indication of the identity of that person".

<u>Illustration:</u>

Meru/TAB Cabs – Such ecommerce player owns and has web based software applications wherein potential customer through their communication device like internet, mobile phones etc can provide services of providing cab service to the end consumer who is desires to avails the service such as. In this case Meru/TAB is considered as aggregator and is a person liable for payment of Service Tax.

6. <u>Valuation mechanism:</u>

6.1. The Delhi High Court in the case of M/s. Intercontinental Consultants & Technocrats Pvt. Ltd v. Union of India 2013 (29) S.T.R. 9 (Del.) held that Rule 5 is unconstitutional and accordingly service tax demanded on reimbursement of expenses is ultravirus. The reason being that a rule cannot create a charge on any income; it is only the charging section which can appropriately levy tax which levies tax on gross amount charged. Post which the said view was being accepted by various courts.

6.2. Inorder to nullify the said position, the definition of “consideration” is being amended to include reimbursement under the gamut of charging section. Accordingly, the term consideration means –

- any amount that is payable for the taxable services provided or to be provided.
- all reimbursable expenditure or cost incurred and charged by the service provider.
- amount retained by the distributor or selling agent of lottery from gross sale amount of lottery ticket, or, as the case may be, the discount received, that is the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such tickets.

6.3. **Comments:** In order to negate the decision mentioned above, the definition of the term “consideration” is amended by the Finance Bill, 2015. However there is no amendment in the definition of “gross amount charged”. Thus, it appears that the said decision would still hold good and the impact of the said amendment would once again raise bar for litigation in the said front.

7. Other Changes:

7.1. **Registration:**

7.1.1. Rule 4 is being amended to provide that CBEC, by way of an order, specify the conditions, safeguards and procedure for registration in service tax.To that extent, general procedure has been prescribed under ORDER No. 1/2015-SERVICE TAX dated 28.02.2015.

7.2. **Maintenance of Documents:**

7.2.1. Provision for issuing digitally signed invoices is being added along with the option of presentation of records in electronic form. The conditions and procedure in this regard shall be specified by the CBEC.

7.2.2. Further, document can be maintained in electronic form and there is no need of preservation and presentation of the said documents. Such documents can be preserved in electronic form and would be considered valid provided all the pages which are being stored in electronic form is being digitally signed.

7.3. **<u>Recovery of Service tax</u>**

7.3.1. It is being proposed that, in cases where the return is being self-assessed and filed by the assessee, disclosing that certain tax is unpaid then the recovery of the said unpaid tax can be made in terms of Section 87 of the Finance Act, 1994 i.e. recovery from third party, deduction from refund etc.

7.3.2. Currently, if true and complete details of transaction were available on specified records then the option of reduced penalty up to a maximum of 25% of the tax amount was available to the assessee. In this budget it is proposed to delete such provision and hence no such benefit is available.

7.4. Penalties

7.4.1. Section 76& Section 78

The provision for penalties has been amended and the same has been strengthen. The said provisions can be summarized as under:

Circumstances	Penalty under Section 76 (involving NO FRAUD)	Penalty under Section 78 (involving FRAUD)
Tax and Interest Paid before SCN	NIL	
Tax and Interest Paid within 30 days of the SCN	NIL	15%
Adjudication Order	Not exceeding 10%	100%
Paid within 30 days of the Order	25% of the penalty imposed – Proviso (ii) to S. 76(1)	25% of service tax demanded

7.4.2. There are well crafted transition rules to cater situations w.r.t to change in the penalty provisions and its impact on current orders/notices.

7.5. Reasonable cause

The provision of reasonable cause has been omitted and accordingly the benefit which provides for waiver for penalty in case certain circumstances is no longer available.

7.6. Appellate changes

Sections 86 is being amended to prescribe that remedy against the order passed by Commissioner (Appeal), in a matter involving rebate of Service Tax, shall lie in terms of section 35EE of the Central Excise Act. It is also being provided that all appeals filed in Tribunal after the date the Finance Act, 2012 came into effect and pending on the date when the Finance Bill, 2015 receives assent of the President shall be transferred and dealt in accordance with section 35 EE of the Central Excise Act.

II. CENVAT CREDIT:

1. Clarity w.r.t cenvat availment in case of Job work:

a. It is a very settled law[26] that cenvat credit can be availed at the time of receipt of goods in the factory. However, if the goods are being directly sent to the premises of job worker then the condition of receipt of goods in the factory does not satisfies and thus there was an issue w.r.t. to such situation and accordingly a light for litigation. Inorder to curb the litigation and to provide a fair chance the rules have been amended to state that cenvat credit of inputs and capital goods will be allowed at the time when the said goods are directly received in the premises of the jobworker.

b. Further, if the said inputs or capital goods are not received within 180 days or 2 years respectively then equivalent cenvat credit attributable to it shall be reversed and can be re-credited at the time when it is received within the premises of the manufacturer or the provider of output service. Time limit for availment of cenvat credit is not applicable[27] in case of re-credit.

2. Time Limit for availment of Cenvat Credit:

a. From 01.09.2014, time limit of 6 months was imposed on availment of cenvat credit and accordinglycredit should be availed within 6 months from the date of issue of the invoice. The said time limit of 6 month from the date of invoice has been extended to 1 year from the date of invoice.

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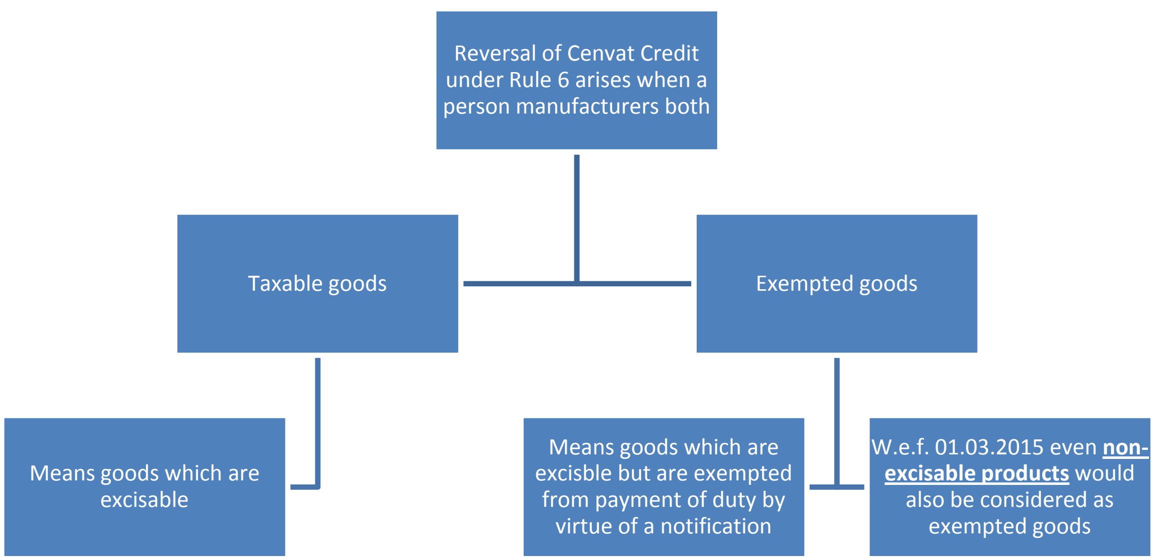
[26] 1. *Binani Cement Ltd.* v. *CCE, Jaipur-II*2002 (143) E.L.T. 577
2. *HEG Ltd.* v. *CCE*1998 (100) E.L.T. 133 (NRB - New Delhi)

[27] Circular 990/14/2014-CX-8 dated 19th November, 2014

b. Credit of service tax paid under full or partial reverse charge is available on payment basis. Thus, cenvat credit of service tax paid on partial reverse charge is being allowed without linking payment to the service provider.

c. The rules have been amended to state that reversal of cenvat credit arising due to above mentioned rules should be done on or before the 5th day of the following month in which it becomes due except for reversals in the month of March, when such payment shall be made on or before the 31st day of the month of March. On failure of its payment duty shall be recovered along with interest.

3. <u>Reversal of Cenvat Credit</u>:



a. From the above, it can be summarized that w.e.f 01.03.2015, for the purpose of this rule, even non-excisable products would be considered as exempted products and accordingly the provisions of reversal of cenvat credit would be made applicable. The same will have far reaching impact and practically the same would be mean that if the company is not paying excise duty on its output then accordingly the company has to reverse the cenvat credit.

4. **Recovery of Cenvat Credit wrongly taken or erroneously refunded:**

a. The Supreme court in the case of Ind Swift Laboratories stated that interest is payable on wrong availment or utilization of cenvat credit. This position was further amended vide Finance Act, 2012 wherein it was clarified that interest is payable on wrongful availment and utilization. The instant rule was further amended to clarify that duty is payable with interest on wrongful availment and utilization and also the manner of utilization for the said section is also clarified. The same will have a far reaching impact and also now the companies will have to be very cautious with respect to availment of cenvat credit as considering the manner of utilization specified in the said rule the argument that there is a sufficient balance of cenvat credit will not survive and litigations would prove costly

5. **Miscellaneous changes:**

a. The term “export goods” has been defined to provide clarity in terms of availment of benefit under Rule 5 of the Cenvat Credit Rules, 2004.

b. The provisions with respect to documentation required for availment of cenvat credit is being made applicable to an importer who issues an invoice on which cenvatable invoice.

c. The term “place of removal” in case of export of goods by Manufacturers exporter as well as Merchant exports has been clarified[28].

[28]Circular No.999/6/2015 - Central Excise dated 28.02.2015

III **<u>CENTRAL EXCISE:</u>**

1. Boost to the manufacturing sector with little room for litigation and smooth transition towards GST is what is reflected in this very budget. Amendments in Central Excise are quite significant and necessary loopholes are filled. Further, one can notice from the said budget is that the intentions of this government is very clear "NO ROOM FOR TAX AVOIDANCE". With this short introduction, let us sail over through the amendments affected this year.

2. **Rate Change**:

a. The basic rate of excise duty has been increased from 12% to 12.5%. Further, education cess and secondary higher education Cess is being subsumed and no such cess are payable hereafter.

3. **Legislative Amendments:**

a. In respect of notified goods, excise duty is chargeable on the basis of the capacity of production. Further, an explanation has been inserted to provide that factor relevant to production includes factors relevant to production, so as to enable the Central Government to specify more than one factor relevant to the production of such goods

b. Section 11A is being amended so as to:

   (i) Remove from the statute provisions relating to the category of cases where fraud, collusion, willfulmis- statement, etc. is involved but the transaction is recorded in the specified record so as to bring uniformity in treatment of all such cases irrespective of whether the transaction is so recorded or not ;

(ii) Amend the provision relating to relevant date to provide definition of relevant date in respect of cases where a return is not filed on the due date and cases where only interest is required to be recovered.

(iii) Provide that the provisions of section 11A shall not apply to cases where the Non-payment or short payment of duty is reflected in the periodic returns filed and that in such cases recovery of duty shall be made in such manner as may be prescribed in the rules.

4. **SETTLEMENT COMMISSION:**

a. Any proceeding referred back to the adjudicating authority by any appellate authority or any court for a fresh adjudication or decision then such cases shall not be admitted under settlement commission.

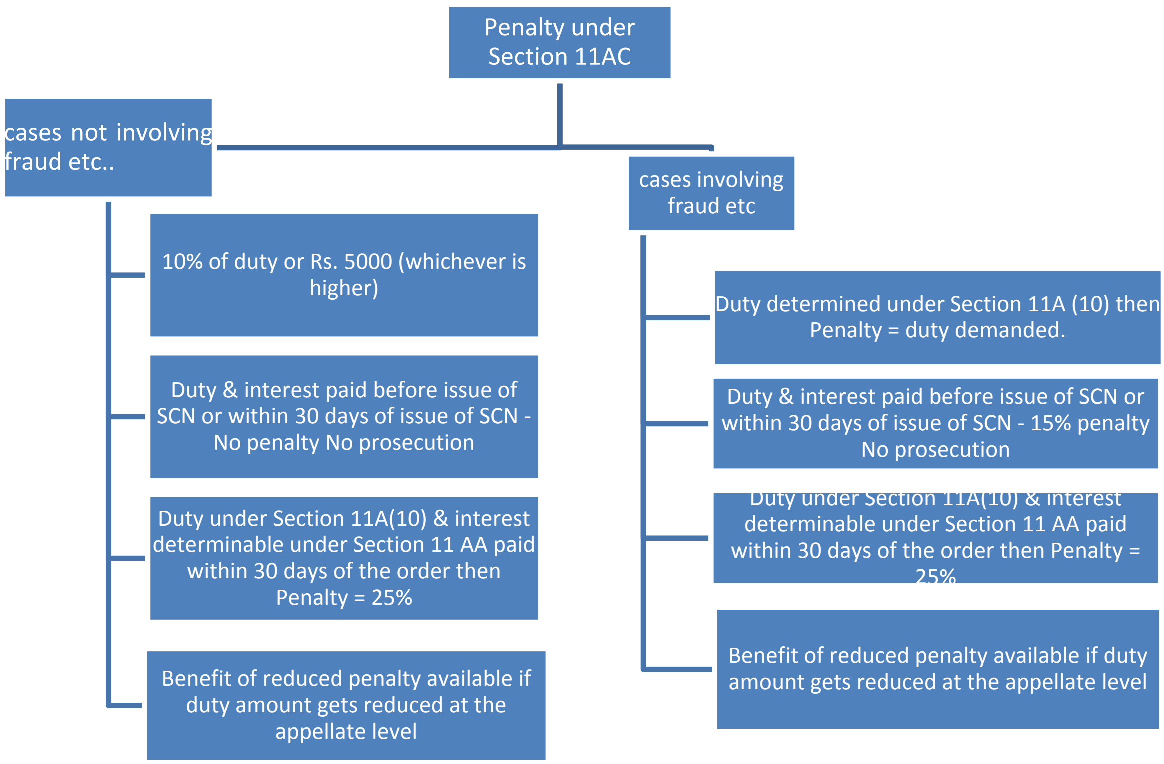
b. Many clauses were deleted under the provisions of the settlement commission which as on date are redundant or irrelevant.

PENALTIES:

Penalty for acquisition of confiscated goods

a. Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing,or in any manner deals with, any excisable goods which he knows or has reason to believe are liable for confiscation then penalty not exceeding duty leviable on suchgoods or Rs. 5000/- (earlier Rs. 2000/-), whichever is greater

Penalty for duty unpaid for whatsoever reason:


Penalty under Section 11AC
cases not involving fraud etc..
10% of duty or Rs. 5000 (whichever is higher)
Duty & interest paid before issue of SCN or within 30 days of issue of SCN - No penalty No prosecution
Duty under Section 11A(10) & interest determinable under Section 11 AA paid within 30 days of the order then Penalty = 25%
Benefit of reduced penalty available if duty amount gets reduced at the appellate level
cases involving fraud etc
Duty determined under Section 11A (10) then Penalty = duty demanded.
Duty & interest paid before issue of SCN or within 30 days of issue of SCN - 15% penalty No prosecution
Duty under Section 11A(10) & interest determinable under Section 11 AA paid within 30 days of the order then Penalty = 25%
Benefit of reduced penalty available if duty amount gets reduced at the appellate level

CHANGE IN RATE OF DUTIES AND EXEMPTION:

5. Basic excise duty on cigarettes and other products of tariff heading 2402 is being increased. The changes in total excise duty rates are summarized below.

TARIFF ITEM	**DESCRIPTION (length in mm)**	**Rs. per 1000 sticks (Existing Rate)**	**Rs. per 1000 sticks (New Rate)**
24022010	Non filter not exceeding 65	1150	1438
24022020	Non-filter exceeding 65 but not exceeding 70	2250	2588
24022030	Filter not exceeding 65	1150	1323
24022040	Filter exceeding 65 but not exceeding 70	1650	1898
24022050	Filter exceeding 70 but not exceeding 75	2250	2588
24022090	Other	3290	3784

6. Tariff rate of excise duty on high speed diesel (HSD) falling under tariff item 2710 19 30 is being increased from 14% + ‘5 per litre to 14% + ‘15 per litre. However, there is no change in the aggregate of various duties of excise on high speed diesel(HSD)

7. Concessional excise duty of 6% on specified goods for use in the manufacture of electrically operated vehicles and hybrid vehicles, presently available upto 31.03.2015, is being extended upto 31.03.2016

8. Excise duty on specified raw materials [battery, titanium, palladium wire, eutectic wire, silicone resins and rubbers, solder paste, reed switch, diodes, transistors, capacitors, controllers, coils

(steel), tubing (silicone)] for use in manufacture of pacemakers is being fully exempted, subject to actual user condition.

9. Excise duty on round copper wire and tin alloys for manufacture of Solar PV ribbon for manufacture of solar PV cells is being fully exempted subject to certification by Department of Electronics and Information Technology (DeitY)

10. The entry “waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured” in the Seventh Schedule to the Finance Act, 2005 related to levy of additional duty of excise @ 5% is being omitted. Till the enactment of the Finance Bill, 2015, the said additional duty of excise of 5% leviable on such goods is being exempted Simultaneously, the Basic Excise Duty rate on these goods is being increased from 12% to 18%

11. Excise duty on sacks and bags of polymers of ethylene, other than for industrial use, is being increased to 15%

12. Full exemption from excise duty is being extended to captively consumed intermediate compound coming into existence during the manufacture of Agarbattis. Agarbattis attract NIL excise duty

13. The Seventh Schedule to the Finance Act, 2005 is being amended so as to omit the entry relating to levy of Additional Duty of Excise of 5% ad valorem on waters, including mineral waters and aerated waters containing added sugar.

14. Other important changes with respect to change in rates for certain products are attached as Exhibit C for ready reference.

MISCELLANEOUS CHANGES

15. S. No. 337 of Notification No. 12/2012-CE dated 17-3-2012 provided Nil excise duty on goods for setting up Ultra Mega Power Project specified in List No. 10 of the said Notification. In case of goods for a Project for which certificate regarding Ultra Mega Power Project status is provisional, the exemption is subject interalia to condition that the Chief Executive Officer of the Project furnishes a bank guarantee or fixed deposit receipt for a term of 36 months or more. This condition is being amended to prescribe furnishing of bank guarantee or fixed deposit receipts for a period of 42 months.

16. Goods manufactured domestically and supplied against International Competitive Bidding are eligible for full excise duty exemption provided that such goods when imported attract Nil Basic Customs Duty and Nil CVD [S.No.336 of notification No.12/2012-CE dated 17.03.2012 read with Condition No.41]. The condition is being amended so as to provide that if imported goods are eligible for Nil Basic Customs Duty and Nil CVD subject to certain conditions, then the said conditions shall also apply mutatis mutandis to such goods when manufactured domestically and supplied against International Competitive Bidding for the purposes of availing of the said excise duty exemption

IV. **CUSTOMS:**

1. **RATE CHANGE**:

a. There is no change in the rate of basic customs duty. However, for some products the rate has been changed and the same is enumerated in subsequent paras. Further, education cess and secondary higher education Cess levied on imported goods as a duty of customs will continue.

2. **LEGISLATIVE AMENDMENTS:**

a. The term “firm” has been defined clearly inorder to bring LLP, sole proprietorship, one person company to be classified as firm. Further, the term sole proprietorship and one person company has also been defined.

3. **SETTLEMENT COMMISSION:**

a. Any proceeding referred back to the adjudicating authority by any appellate authority or any court for a fresh adjudication or decision then such cases shall not be admitted under settlement commission.Many clauses were deleted under the provisions of the settlement commission which as on date are redundant or irrelevant.

PENALTIES:

Penalty for improper importation:

b. The said clause has been amended to include any person who acquires possession of or is in any way concerned with or in any other manner deals with any dutiable goods, other than prohibited goods, which he knows or has reasons to are liable for confiscation then a penalty not exceeding 10% of the duty sought to be evaded of Rs.5000, whichever is greater. Further, in cases involving suppression, if duty along with interest is paid within 30 days of the communication of order then the penalty shall be reduced to 25%.

Penalty for attempt to export goods improperly etc:

c. The said clause has been amended to include any person who, in relation to any dutiable goods, other than prohibited goods, does or omits to do any act which act or omission would render such goods liable to confiscation or abets the doing or omission of such an act then a a penalty not exceeding 10% of the duty sought to be evaded of Rs.5000, whichever is greater. Further, in cases involving suppression, if duty along with interest is paid within 30 days of the communication of order then the penalty shall be reduced to 25%

CHANGE IN RATE OF DUTIES AND EXEMPTION:

a. There are plethora of changes in the rates of basic customs duty and the same is neatly summarized under Exhibit D

CHANGES UNDER SAD AND CVD:

a. SAD on naphtha, ethylene dichloride (EDC), vinyl chloride monomer (VCM) and styrene monomer (SM) for manufacture of excisable goods is being reduced from 4% to 2%

b. SAD on melting scrap of iron & steel including stainless steel scrap for melting, copper scrap, brass scrap and aluminium scrap is being reduced from 4% to 2%

c. SAD on inputs for use in the manufacture of LED drivers and MCPCB for LED lights, fixtures and lamps are being fully exempted, subject to actual user condition.

d. CVD and SAD are being fully exempted on specified raw materials [battery, titanium, palladium wire, eutectic wire, silicone resins and rubbers, solder paste, reed switch, diodes, transistors, capacitors, controllers, coils (steel), tubing (silicone)] for use in the manufacture of pacemakers, subject to actual user condition

e. CVD and SAD exemption on specified goods imported for use by Security Printing and Minting Corporation of India Limited (SPMCIL) are being withdrawn.

OTHER CHANGES

a. Export duty on upgraded ilmenite is being reduced from 5% to 2.5%.

b. Concessional customs duties of Nil Basic Customs Duty, 6% excise/CVD and Nil SAD on specified goods for use in the manufacture of Electrically operated vehicles and Hybrid motor vehicles, presently available upto 31.03.2015, are being extended upto 31.03.2016

Hopefully we are moving forward to GST. But still there are more bottlenecks which require immediate redresser. Thank you for patient reading.

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Disclaimer: Prepared by Kevin Shah & Co for clients and internal use only. This document summarizes the indirect tax proposals of the Union Budget 2014 as also certain other amendments. The information provided in this document is intended for informational purposes only and does not constitute legal opinion or advice. Readers are requested to seek formal legal advice prior to acting upon any of the information provided herein.

Exhibit A:<u>**Changes in the Basic rate:**</u>

Description	Old Rate	New Rate
<u>Air Travel Agents</u> - Domestic Bookings - International Bookings	0.60% 1.20%	0.70% 1.40%
<u>Life Insurance</u> -First Year Premiums -Subsequent Premiums	3% 1.5%	3.5% 1.75%
<u>Money Changing</u>		
– Upto Rs. 100000	0.12% (Min of Rs. 30)	0.14% (Min of Rs. 35)
– Between Rs. 100000 and Rs.1000000	Rs. 120 + 0.06% of excess over 100000	Rs. 140 + 0.07% of excess over 100000
– Above Rs. 1000000	Rs 660 + 0.012%of excess over 1000000 (Max of Rs. 6000)	Rs 770 + 0.014%of excess over 1000000 (Max of Rs. 7000)
<u>Distribution of Lottery Tickets</u>		
– Guaranteed Prize Payout more than 80%	Rs. 7000 for every Rs. 10 lakhs	Rs. 8200 for every Rs. 10 lakhs
– Guaranteed Prize Payout more than 80%	Rs. 11000 for every Rs. 10 lakhs	Rs. 12800 for every Rs. 10 lakhs

Exhibit B:CHANGES IN THE ABATEMENT STRUCTURE:

Sl. No.	Description of taxable service	Old Rate	Old Conditions	New Rate	New Conditions
1	Services in relation to financial leasing including hire purchase	10	Nil.	10	Nil.
2	Transport of goods by rail	30	Nil.	30	1
3	Transport of passengers, with or without accompanied belongings by rail	30	Nil.	30	1
4	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	70	(i) CENVAT credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.	70	(i) CENVAT credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
5	Transport of passengers by air, with or without accompanied belongings (i) Economy class (ii) Other than economy class	40	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.	40 60	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	60	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules,	60	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

			2004.		
7	Services of goods transport agency in relation to transportation of goods.	25	1	30	1
9	Renting of motor cab	40	“(i) CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004;	40	“(i) CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004;
			(ii) CENVAT credit on input service of renting of motorcab has been taken under the provisions of the CENVAT Credit Rules, 2004, in the following manner :		(ii) CENVAT credit on input service of renting of motorcab has been taken under the provisions of the CENVAT Credit Rules, 2004, in the following manner :
			(a) Full CENVAT credit of such input service received from a person who is paying service tax on forty percent of the value; or		(a) Full CENVAT credit of such input service received from a person who is paying service tax on forty percent of the value; or
			(b) Up to forty percent CENVAT credit of such input service received from a person who is paying service tax on full value;		(b) Up to forty percent CENVAT credit of such input service received from a person who is paying service tax on full value;
			(iii) CENVAT credit on input services other than those specified in (ii) above, has not been taken under the		(iii) CENVAT credit on input services other than those specified in (ii) above, has not been taken under the

			provisions of the CENVAT Credit Rules, 2004.”;		provisions of the CENVAT Credit Rules, 2004.”;
9A	Transport of passengers, with or without accompanied belongings by -a contract carriage other than motorcab -Radio taxi	40	1	40	1
10	Transport of goods in a vessel	40	1	30	1
11	Services by a tour operator in relation to,-	25	No credit	25	No Credit
	(i) a package tour				(ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour.
11	(ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour	10	(i) No credit (ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation (iii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.	10	(i) No credit (ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation (iii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.

	`(iii) any services other than specified at (i) and (ii) above.	40	(i) 1 (ii) The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.	40	(i) 1 (ii) The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.
12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly, except where entire consideration is received after issuance of completion certificate by the competent authority,-		(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004 (ii) The value of land is included in the amount charged from the service receiver		(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004 (ii) The value of land is included in the amount charged from the service receiver
	(a) for a residential unit satisfying both the following conditions, namely :-	25		25	
	(i) the carpet area of the unit is less than 2000 square feet; and				
	(ii) the amount charged for the unit is less than rupees one crore;				
	(b) for other than the (a) above.	30		30	

CONDITIONS:

1 CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

Exhibit C:<u>**Changes under Excise Tariff**</u>

Sr.No	**Chapter or heading No or Sub-heading no**	**Description of Goods**	**Old Rate**	**New Rate**
1	20081100	Peanut butter	Nil	2%/6%
2	252329	Portland cement not availing benefit under 12/2012	900 per tonne	1000 per tonne
3	24021010	Hand-rolled cheeroots with per cheroot retail sale price equivalent not exceeding 3 Rs	12%	12.5%
4	24031110	Tobacco, used for smoking through hookah or chilam, commonly known as 'hookah'tabacoo or gudaku	12%	12.5%
5	24031190 or24031990	Other smoking tobacco, not bearing a brand name	12%	12.5%
6	24039990	Other manufactured Tobacco& Manufactured Tobacco substitutes not bearing brand name	12%	12.5%
7	252329	All goods, manufactured and cleared in packaged form, i) from a mini cement plant ii) other than from mini cement plant	i)6%+Rs 120 PMT ii)12%+Rs 120PMT	i)6%+Rs 125 PMT ii)12.5%+Rs 125PMT
8	252329	All goods , whether or not manufactured in a mini cement plant other than those cleared in packaged form	12%	12.5%
9	252310000	All goods	12%	12.5%
10	2710	Motor spirit commonly known as petrol (i) intended for sale without a brand name (ii) other than those intended for sale without a brand name.	(i)Rs 1.20 per liter (ii) Rs2.35 per liter	(i) 5.46 per liter (ii) Rs 6.64 per liter
11	27101930	High Speed diesel(HSD) (i) intended for sale without a brand name (ii) other than those specified in (i)	(i) RS1.46 per liter (ii) 3.75 per liter	(i) RS 4.26 per liter (ii) 6.62 per liter

12	28	Gold potassium cyanide manufactured from gold and used in the electronics industry	12% of the value of such gold potassium cyanide excluding the value og gold used in manufacture of such goods	12.5% of the value of such gold potassium cyanide excluding the value go gold used in manufacture of such goods
13	3818	Wafers for use in the manufacture of Integrated Circuit (IC) modules for Smart card	12%	6%
14		Inputs used for manufacture of LED drivers and MCPCB for LED lights, fixtures,lamps	12%	6%
15	39232100	Sacks and bags , other than for industrial use	12%	15%
16	6403or 6405	Leather footwear falling under heading 4107 or 4112 to 4114 of RSP more than Rs 1000 pp	12%	6%
17	7201000	Pig iron SG grade for manufacture of cast components of wing operated electricity generators	12%	Nil
18	72022900	Ferro-silicon -magnesium for manufacture of cast components of wind operated electricity generators	12%	Nil
19		Solar water heater and system	12%	Nil
20	847130	Tablet Computer	10%	2%/12.5%
21	84 or any other Chapters	(i)Parts, components or accessories for use in the manufacture of tablet Computer (ii) Sub-parts for use in the manufacture of items mentioned at (i) above	10%	Nil
22	8517	Mobile handsets including cellular phones	6%/1%	12.5%/1%

23	87	Ambulances and Taxis	(i)12% (ii) 12% (iii)80% of the excise paid at the time of clearance	(i)12.5% (ii) 12.5% (iii)80% of the excise paid at the time of clearance
24	87060021 or87060039	chassis of ambulances	24%	12.5%
25	33074100	Other odoriferous preparations which operate by burning	Nil	12%
26	5208 to 5212	All goods , not subjected to any process other than the goods specified against S No 5 (S No 5- All goods, of cotton not containing any other textile material and not subjected to any process	In excess of amount equal to 12 % of duty of excise specified in the First Schedule to the Central Excise Tariff Act,1985	In excess of amount equal to 12.5 % of duty of excise specified in the First Schedule to the Central Excise Tariff Act,1985
27	5407,5408,5512,5513, 5514,5515,5516	All goods not subjected to any process	In excess of amount equal to 12 % of duty of excise specified in the First Schedule to the Central Excise Tariff Act,1985	In excess of amount equal to 12.5 % of duty of excise specified in the First Schedule to the Central Excise Tariff Act,1985

28	300610 or 60`	All goods of man madefiber not subjected to any process	In excess of amount equal to 12 % of duty of excise specified in the First Schedule to the Central Excise Tariff Act,1985	In excess of amount equal to 12.5 % of duty of excise specified in the First Schedule to the Central Excise Tariff Act,1985

Exhibit D: Changes under Customs Tariff

Sr.No	Description of Goods	Old Rate	New Rate
1	Ulexite ore	2.5%	Nil
2	Isoprene and liquefied butane	5%	2%
3	Ethylene dichloride(EDC) , vinyl chloride monomer(VCM) and styrene monomer(SM)	2.5%	2%
4	Butly acrylate	7.5%	5%
5	Anthraquinone	7.5%	2.5%
6	Antimony metal and antimony waste and scarp	5%	2.5%
7	Surphuric acid for the manufacture of fertilizers	7.5%	5%
8	Metallurgical coke	2.5%	5%
9	Metal Parts for use in the manufacture of electrical insulators	10%	7.5%
10	Ethylene-propylene-non-conjucated-Diene rubber, Water blocking tape and Mica glass tape, for use in the manufacture of insulated wires and cables	10%	7.5%
11	Magnetron of upto 1Kv for use in the manufacture of domestic microwave oven	5%	Nil
12	Zeolite, ceria Zirconia compounds and cerium compounds for use of the manufacture of wash coats which are used in manufacture of catalytic converters	7.5%	5%
13	Specified components for use in the manufacture of specified CNC lathe machines and machines centres	7.5%	2.5%
14	C -Block for Compressor , Over load Protector (OLP) and positive thermal Co-efficient and crank Shaft for compressor for use in the manufacture of Refrigerator compressors	7.5%	2.5%
15	Specified inputs for use in the manufacture of flexible medical video endoscope	5%	2.5%
16	HDPE for use in the manufacture of the communication grade optical fibre cables	7.5%	Nil
17	Black Light Unit Module for use in the manufacture of LCD/LED TV panels	10%	Nil
18	Organic LED(OLED) TV panels	10%	Nil

19	Digital Still image Video Camera capable of recording video with minimum resolution of 800*600 pixels, at minimum 23 frames per second, for at least 30 minutes in a single Sequence, using the maximum storage (including the expanded capacity and parts and components for use in the manufacture of such camera	10%	Nil
20	Evacuated Tubes with three layers of solar selective coatings for use in the manufacture of solar , water, heater and system	7.5%	Nil
21	Active Energy Controller(AEC)for use in the manufacture of renewable Power System (RPS) inverters	7.5%	5%
22	Commercial Vehicles	10%	20%
23	Artificial Heart	7.5%	Nil
24	Parts and Components of cash dispenser and automatic bank note dispensers	7.5%	Nil
25	Life Saving drug and medicines imported by an individual for personal use	7.5%	Nil