

New Products under Central Excise Levy – 1.3.2011

The Finance Minister as a move towards GST to be implemented by 2012 took a step in removing the exemption regime by levying duty on 130 items out of 370 where VAT is charged by the States. The items covered are mainly consumer goods. The balance 240 items would be roped in along with the implementation of GST in 2012.

The manufacturers of such excisable goods, which were enjoying exemptions from the levy, are required to comply with the provisions of the Central Excise law as the government has withdrawn exemptions. The products introduced into the levy include those where the rate of duty is 'Nil' by tariff.

The withdrawal of the exemption leads to a situation wherein the manufacturers may not be in position to further dispatch the good without violating the law in many cases (unless exemption under the SSI Exemption is available) as the levy is applicable from 1st March 2011 itself.

Duty Rates:

The standard rate of central excise is maintained at 10% however the rate of Central Excise was increased from 4% to 5% across all goods which were chargeable to 4%. The changes would be effective from 1st March 2011. In this budget vide notification, as many as 130 entries of goods have been brought under the excise net and chargeable to duty at the rate of 1% duty without the benefit of Cenvat credit on inputs and input services vide notification no.1/2011 i.e. w.e.f. 01.03.2011 as a part of budget changes the following are the options available:

- a. A nominal duty of 1% ad valorem is being imposed on all 130 items with a condition that the benefit of cenvat credit paid on inputs and input services is not availed. (refer notification 01/2011 – CE dated 01st March 2011) List of Products in Annexure -1
- b. A rate of 5% ad valorem is being imposed on most of the products covered under notification 01/2011 – CE dated 01st March 2011 without any condition i.e. the benefit of credit of duty paid on inputs and service tax paid on input services would be available. (Refer notification 02/2011 – CE dated 01st March 2011). The products covered under notification 02/2011 – CE are those products where the tariff rate is not nil. List of Products in Annexure-1

The implications of the above amendment are discussed below:

1. Which are the goods covered under tax net?

The goods with the tariff number is provided in notification 01/2011 – CE dated 01.03.2011, where the duty rate is 1% provided the benefit of cenvat credit of excise duty paid on inputs and service tax paid on services is not availed. Further the option is also available for payment of duty at 5%, when the manufacturer wishes to avail the benefit of excise duty paid on inputs and service tax paid on services. The latter option is available only for those goods on which the manufacturer can avail cenvat benefit

2. From which date the duty is liable to be paid?

For all the clearances, the effective date as discussed above is 1st day of March 2011. In addition to this nominal rate, a cess of 2% as education cess and 1% of secondary & higher education cess is also to be paid. Thus effectively, the rate of duty would be 1.03% or 5.15% as the case may be.

3. Whether duty is payable even on Exports?

No, the goods exported will be free from duty in terms of Central Excise Rules, 2002. However the procedures that are set out in the rules may have to be followed.

4. Will the goods manufactured and lying there as a stock is also liable?

Yes. As the duty liability is fastened by amending the exemption notification even those goods which were manufactured before 1st of March but cleared after the date is also liable to the duty.

5. What would be status of the goods, when duty rate followed is 1%?

The definition of 'exempted goods' has been amended to include goods in respect of which the benefit of 01/2011 – CE is availed. This would imply that the credit attributable to such goods would have to be reversed when common inputs and input services are used for both these goods and dutiable goods.

6. Whether the benefit of duty paid at 1% is available as cenvat credit?

Credit of duty paid on input or input services would not be available to a manufacturer, when opted to pay the duty at 1%. Credit of the duty paid on items that are being subjected to the levy of 1% would not be available to a manufacturer or service provider who buys them.

7. What would be the implications for non-compliance of the any of the provisions of CE act?

As the goods after a long time are being subjected to the levy of excise, fresh registration are required to be obtained and in this regard, the board vide DOF no 334/3/2011 – TRU has clarified that that necessary facilitation and guidance in securing registration and complying with central excise formalities. Further coercive measures are not to be used in the immediate aftermath of the budget for the implementation of the levy.

8. Whether the benefit of exemption notification popularly called as SSI exemption is available to the manufacturer?

The manufacturers who are eligible for the exemption under Notification 8/ 2003 as amended popularly called the SSI exemption would have a little breathing time. However, the following aspects are to be considered to confirm that the exemption is available :

- a. The goods must be specified in the annexure to the notification.
- b. The products should not be a branded product bearing the brand name of another. [Own branded goods are eligible] This rule is not applicable for supplies to Original Equipment manufacturing Units who clear the goods to manufacturers who discharge the duty of excise. Further if the manufacturer is located in a rural area then also the brand name restriction does not apply.
- c. The value of clearances as distinguished from turnover in the previous year of manufactured products (whether exempted or not) should not have exceeded Rs. 400 lakhs.*1
- d. The value of clearances of dutiable goods from 1st April 2010 (other than those effected by Budget 2011) and new ones from 1st March 2011 onwards should not exceed Rs. 150 lakhs.*2

Note: It maybe noted that where goods are received for job work and t he job worker engages in manufacture the levy would be on him [as a manufacturer} and the value of goods would be reckoned based on the selling price of the buyer if sold or if

captively consumed then on Cost of Production + 10%. The job worker would not be liable where the buyer works under Notification 214/86 or 83/84/ 94.

***1 Following clearances shall not be taken into account for 400 lakhs:**

- a) Clearances of excisable goods without payment of duty –
 - (i) To a unit in a free trade zone; or
 - (ii) To a unit in a special economic zone; or
 - (iii) To a hundred percent export-oriented undertaking; or
 - (iv) To a unit in an Electronic Hardware Technology Park or Software Technology Park; or
 - (v) Supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under Notification No. 108/95-Central Excise, dt. 28th August, 1995.
- b) Clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption ,
- c) Clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods;
- d) Clearances of strips of plastics used within the factory of production for weaving of fabrics or for manufacture of sacks or bags made of polymers of ethylene or propylene.
- e) Clearances, which are exempt from the whole of the excise duty leviable thereon under notifications No. 214/86-Central Excise, dated the 25th March, 1986 or No. 83/94-Central Excise, dated the 11th April, 1994 or No. 84/94-Central Excise, dated the 11th April, 1994."
- f) Clearances meant for exports

***2 Following clearances shall not be taken into account for 150 lakhs:**

- a) Clearances, which are exempt from the whole of the Excise duty leviable thereon (other than an exemption based on quantity or value of clearances) under any other notification or on which no Excise duty is payable for any other reason;

- b) Clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption;
- c) Clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods. Here, specified goods are those goods, which are eligible for SSI exemption;
- d) Clearances of strips of plastics used within the factory of production for weaving of fabrics or for manufacture of sacks or bags made of polymers of ethylene or propylene.
- e) Clearances meant for exports

9. What are the compliance required under Central Excise law?

The manufacturer has to comply with the following:

- a. Registration under Central Excise as manufacturer;
- b. Preparation of invoice containing all requirements under rule 11 of Central Excise Rules;
- c. Maintenance of records for recording production of goods, movement of goods from stores to production area, movement of goods for job work
- d. Monthly submission of returns in form ER 1
- e. Submission of returns in form ER 4, ER 5, ER 6.

10. What would be the implications on the manufactured goods in the following scenarios?

- a. Factory: Manufacturer has to pay duty of 1% / 5% as applicable to him for removals on or after 01st March 2011. Duty is charged at the rates prevailing on the date of removal from manufacturer's premises.
- b. Goods sent on approval basis / testing basis: In such case for removals on or after 01st March 2011, the new rate of 01%/05% is applicable.
- c. Goods transported to Depot & lying in stock: There is no need for the manufacturer to pay the duty as goods already removed.
- d. Goods sold prior to 01st March 2011 but invoice raised on or after 01st March 2011 inadvertently: There is no requirement to pay the duty.

- e. Dealer having stock of goods (charged @ nil): There is no need for the manufacturer to pay the duty.
- f. Invoice is raised on 28th February 2011 & goods are cleared on 01st March 2011: New invoices are to be raised, charging duty .

This note is prepared to provide some basic information immediately on changes brought in Budget 2011. It does not propose to deal with all possible issues. For detailed understanding and other procedural aspects, the relevant notifications , tariff entries and rules have to be studied and examined. Please feel free to give your feedback and comments on the above to [tdtc@\[icai.org\]\(http://icai.org\)](mailto:tdtc@icai.org) or pdicai.org.