INDIRECT TAXES / INDIRECT TAX LAWS

A. EXCISE

I. AMENDMENTS BY THE FINANCE ACT, 2007

Secondary and Higher Education Cess

A secondary and higher education cess @ 1% has been imposed on excisable goods manufactured in India. The proceeds from this cess will be utilized to finance secondary and higher education. It shall be chargeable on the aggregate duties of excise (including special duty of excise or any other duty of excise but excluding education cess) leviable on such goods.

The provisions of the Central Excise Act, 1944 and the rules including those relating to refunds and exemptions from duties and imposition of penalty shall apply in relation to the levy and collection of the secondary and higher education cess on excisable goods as they apply in relation to the levy and collection of the duties of excise on such goods.

(Effective from 01.03.2007)

Amendments in the Central Excise Act, 1944

1. Provisions relating to free trade zone omitted [Section 3(1)]

   Section 3 is the charging section which levies duties specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985. Following amendments have been made in section 3:

   (i) Clause (i) of the proviso to sub-section (1) and clause (i) of explanation 2 have been omitted with a view to omit the provisions relating to 'free trade zone' which have become redundant due to the enactment of the Special Economic Zones (SEZ) Act, 2005.

   (ii) Clause (iii) of explanation 2 has been substituted so as to define the meaning of 'Special Economic Zone' in the manner as is assigned to it in clause (za) of section 2 of the Special Economic Zones (SEZ) Act, 2005.

   (Effective from 11.05.2007)

2. CENVAT credit need not be reversed where the manufacturing process is held as not chargeable to excise duty by the Courts [New section 5B]

   Sometimes it happens that a process undertaken by a manufacturer is held as not chargeable to excise duty by the Courts, though the assessee has been availing credit of excise duty/service tax/cess paid on the inputs/capital goods/input services used in manufacturing the final product and paying excise duty on such final products.

   A new section 5B has been inserted after section 5A. The new section 5B provides that in such cases the Central Government may order for non-reversal of the credit allowed to the assessee by issuing a notification. The notification may specify the conditions subject to which such non-reversal of credit may be ordered. Further, the Central Government may also order for non-reversal of credit, if any, taken by the buyer of the said product in such notification.

It may be noted that such non-reversal of the credit shall not be ordered if the assessee has preferred a claim for refund of excise duty paid by him.

(Effective from 11.05.2007)

3. Relevant date for refund of duty in case of judgement, decree, order etc. defined [Section 11B]

Section 11B deals with the claim for refund of duty. It inter alia provides that claim for refund of duty should be filed before the expiry of 1 year from the relevant date. Clause (B) of the explanation to section 11B defines the relevant date for filing refund claim in case of different situations. A new sub-clause (ec) has been inserted in clause (B) of this explanation with a view to define the relevant date for filing a refund claim in consequences of judgement, decree, order or direction of appellate authority, Appellate Tribunal or any Court as the date of such judgement, decree, order or direction.

(Effective from 11.05.2007)

4. Meaning of 'joint venture in India' for the purpose of advance ruling clarified [Section 23A(c)]

Section 23A(c) defines the applicant who is eligible to seek advance ruling. A joint venture in India is an eligible applicant. An explanation has been inserted in clause (c) of section 23A which clarifies that "joint venture in India" means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a non-resident having substantial interest in such arrangement.

Thus, now in case of joint venture an application for advance ruling can be made only when one of the partners is non-resident.

(Effective from11.05.2007)

5. Amendments relating to Settlement Commission [Section 32L – 32PA]

The various amendments made in the provisions relating to Settlement Commission tend to curtail the scope of the Settlement Commission.

(i) Settlement Commission to entertain applications only in respect of cases pending before the adjudicating authority [Section 31(c)]

Prior to 01-06-07, an application for settlement could be filed with Settlement Commission even when original adjudicating authority had passed an order and the appeal was pending before a central excise officer or Central Government. However, section 31 has been amended by substituting clause (c) thereof so as to redefine 'case'. The new definition provides that:

"Case means any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of section 32E is made.

Provided that when any proceeding is referred back in any appeal or revision, as the case may be, by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a proceeding pending within the meaning of this clause".

Thus, with effect from 01.06.07, Settlement Commission cannot be approached when an appeal is pending before a central excise officer or Central Governemnt. It can also not be approached when the matter is remanded for further adjudication. It can only be approached when original adjudication is pending.

(Effective from 01.06.2007)

(ii) Chairman empowered to constitute Bench consisting of three members in appropriate cases [Section 32A]

Section 32A deals with the jurisdiction and powers of Settlement Commission. A proviso has been inserted after the proviso to sub-section (6) so as to empower the Chairman of the Settlement Commission to constitute, in appropriate cases, a Bench consisting of three Members and if Vice-Chairman is not one of the Members, the senior among the Members shall act as the presiding officer of such Bench.

(Effective from 11.05.2007)

(iii) Application for settlement cannot be made if proper records are not maintained in daily stock register or where there is clandestine removal of goods [Section 32E(1)]

Section 32E contains the provisions in respect of application for settlement of cases. Following amendments have been made in this section by substituting sub-sections (1) and (1A) for the existing sub-section (1):

(i) The assessee shall be eligible to file an application only in respect of the goods for which he admits short levy on account of misclassification, undervaluation, inapplicability of exemption notification or CENVAT credit but not in respect of the goods for which no proper record has been maintained by the assessee in his daily stock register.

(ii) While filing any application, the applicant shall deposit the additional amount of excise duty accepted by him along with interest due under section 11AB. So far the applicant was required to pay duty only after application was admitted by the Settlement Commission.

(iii) The minimum settlement amount has been enhanced from Rs.2,00,000 to Rs.3,00,000.

(iv) In respect of an application filed before 1st June, 2007, but pending issuance of an order by the Commission, the applicant shall pay the accepted duty by 30th June, 2007, failing which the application shall be rejected.

(Effective from 01.06.2007)

(iv) Substitution of new section for section 32F in respect of procedure on receipt of an application under section 32E [New section 32F]

Since as per the amended provisions, the assessee would be required to pay the additional amount of excise duty along with interest at the time of filling the application itself, procedure under section 32F has been completely changed. Thus, a new section has been substituted for section 32F. The provisions of new section 32F are as follows:

(1) The Settlement Commission shall issue a notice to the applicant within 7 days from the date of receipt of the application, to explain in writing as to why the application made by him should be allowed to be proceeded with. After taking into consideration the explanation provided by the applicant, the Settlement Commission shall, within a period of 14 days from the date of the notice, pass an order either allowing the application to be proceeded with, or rejecting the same. The proceedings before the Settlement Commission shall abate on the date of rejection.

    However, where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

(2) A copy of every order under sub-section (1), shall be sent to the applicant and to the Commissioner of Central Excise having jurisdiction.

(3) Where an application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within 7 days from the date of order under sub-section (1), call for a report along with the relevant records from the Commissioner of Central Excise having jurisdiction. The Commissioner shall furnish the report within a period of 30 days from the date of the receipt of communication from the Settlement Commission.

    However, where the Commissioner does not furnish the report within the aforesaid period of 30 days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(4) After examination of the report of the Commissioner submitted within time, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct, for reasons to be recorded in writing, the Commissioner (Investigation) within 15 days of the receipt of the report, to make such further enquiry or investigation on the matters covered by the application and any other matter relating to the case. The Commissioner (Investigation) should furnish the report of such enquiry within a period of 90 days from the date of the receipt of the communication from the Settlement Commission.

However, where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order under sub-section (5) without such report.

(5) The Settlement Commission may pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Central Excise and Commissioner (Investigation) after examination of the records, the report of the Commissioner of Central Excise and the report, if any, of the Commissioner (Investigation) of the Settlement Commission. An opportunity of being heard either in person or through a representative duly authorised in this behalf shall be given to the applicant and to the Commissioner of Central Excise having jurisdiction before passing of such order. The Commission shall also examine any further evidence as may be placed before it or obtained by it before passing the order.

(6) In respect of the applications filed on or before 31.05.2007, the order under sub-section (5) shall be passed by 29.02.2008 and in respect of the applications made on or after the 01.06.2007, the order shall be passed within 9 months from the last day of the month in which the application was made. However, if the order is not passed within the stipulated time, the settlement proceedings shall abate and the adjudicating authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 32E had been made.

(7) Subject to the provisions of section 32A, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-section (5). In relation to the passing of such order, the provisions of section 32D shall apply.

(8) The order passed under sub-section (5) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective. However, in case of rejection the order shall contain the reasons therefor. The order shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

The amount of settlement ordered by the Settlement Commission shall not be less than the duty liability admitted by the applicant under section 32E.

(9) The duty, interest, fine and penalty payable in pursuance of the order under sub-section (5) shall be paid by the assessee within 30 days of receipt of a copy of the order by him. If the assessee fails to do so the amount which remains unpaid shall be recovered along with interest due thereon as the sums due to the Central Government by the Central Excise Officer having jurisdiction over the assessee in accordance with the provisions of section 11.

(10) Where a settlement becomes void as provided under sub-section (8), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission. The Central Excise Officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of 2 years from the date of the receipt of communication that the settlement became void.

Consequential amendments have been made in section 32-I(2), 32K(2), 32M and 32N with respect to sub-sections of section 32F referred to in the said sections.

(Effective from 01.06.2007)

(v) Settlement Commission debarred from reopening completed proceedings in respect of applications received on or after 1.06.2007 [Section 32H]

Section 32H empowers the Settlement Commission to reopen completed proceedings. However, the Finance Act, 2007 has disempowered the Settlement Commission to reopen the proceedings in cases where applications under section 32E are made on or after the 1st day of June, 2007.

(Effective from 01.06.2007)

(vi) Settlement Commission debarred from granting immunity from prosecution for any offence under IPC or any Central Act other than Central Excise Act [Section 32K]

(i) Section 32K empowers Settlement Commission to grant immunity from prosecution and penalty. The Finance Act, 2007 has restricted the scope of such power of the Settlement Commission by withdrawing its power to grant immunity from prosecution for any offence under Indian Penal Code or any Central Act for the time being in force other than Central Excise Act.

(ii) Also, the Settlement Commission shall not have the power to grant immunity from payment of interest as provided under this Act. The amendments in (i) and (ii) have been effected by amending sub-section (1) of section 32K.

(iii) After the proviso in sub-section (1) an explanation has been inserted. The explanation provides that the applications pending before the Settlement Commission on or before 31st May, 2007 shall be decided in accordance with the existing provisions.

(iv) As per sub-section (2), the immunity granted under sub-section (1) is withdrawn if the applicant inter alia fails to pay the sum specified in the settlement order within the time specified in such order or within the extended time granted by the Settlement Commission. The power of Settlement Commission to grant extension of time to pay the final sum specified in the settlement order has been taken away by amending sub-section (2), consequent to the amendment of section 32F.

(Effective from 01.06.2007)

(vii) Application for settlement permissible only once during the lifetime of the assessee [Section 32O]

Section 32O specifies the grounds under which an assessee is barred from making any subsequent application for settlement under section 32E.

Following amendments have been made in this section:

(i) Section 32D has been renumbered as sub-section (1) and the provisions of this sub section (1) shall be applicable only in respect of applications made before 01.06.07.

(ii) A new sub-section (2) has been inserted in section 32O to govern the applications made on or after 01.06.07. The new sub section (2) lays down that where an assessee has made an application under sub-section (1) of section 32E, on or after 1.06.2007 and if such application has been allowed to be proceeded with under sub-section (1) of section 32F, such assessee shall not be entitled to apply for settlement under section 32E in relation to any other matter. Thus with effect from 01.06.07, an assessee can apply for settlement only once during his lifetime so that the scheme of settlement is not treated as a permanent amnesty scheme by the tax evaders.

(iii) However, in respect of cases involving identical recurring issue, but for the period of dispute and amount, the assessee can file application for settlement provided his earlier application is pending before the Settlement Commission.

(Effective from 01.06.2007)

(viii) Section 32PA omitted

Section 32PA entitles certain persons who have filed appeals to the Appellate Tribunal on or before 29.02.2000 to make application to the Settlement Commission. The Finance Act, 2007 has omitted this section as it has outlived its utility with the passage of time.

(Effective from 01.06.2007)

6. Committee of Chief Commissioners or Commissioner to pass orders within a period of 3 months [Section 35E]

Section 35E(3) grants a maximum period of 1 year to the Committee of Chief Commissioners or Commissioner to review the orders of the Commissioner or adjudicating authorities below the rank of Commissioner respectively and pass an order directing such Commissioner or such adjudicating authority respectively to file an appeal.

(i) The Finance Act, 2007 has amended sub-section (3) of section 35E so as to reduce the period of 1 year to 3 months. The time available to Committee of Chief Commissioners and Commissioner to pass an order has been reduced with a view to expedite filing of appeal by the Central Government.

(ii) The time period of 3 months shall be computed from the date of communication of the decision or order of the adjudicating authority. Earlier the time period of 1 year was computed from the date of the decision or order of the adjudicating authority.

(iii) The time period available to such Commissioner or such adjudicating authority to file appeal before the Appellate Tribunal or the Commissioner (Appeals) respectively has also been reduced from 3 months to 1 month. This has been done by amending sub-section (4).

(Effective from 11.05.2007)

7. The scope of the term "duty demanded" expanded [Section 35F]

Section 35F of the Central Excise Act, 1944, inter alia, provides that where in any appeal, the decision or order appealed against relates to any duty demanded, the person appealing against such decision or order shall first deposit the duty demanded or penalty levied. An explanation has been inserted in this section with a view to widen the scope of expression 'duty demanded'. The explanation clarifies that duty demanded shall include:

(i) amount determined under section 11D;

(ii) amount of erroneous CENVAT credit taken;

(iii) amount payable under rule 57CC of Central Excise Rules, 1944;

(iv) amount payable under rule 6 of Cenvat Credit Rules, 2001 or Cenvat Credit Rules, 2002 or Cenvat Credit Rules, 2004;

(v) interest payable under the provisions of this Act or the rules made thereunder.

Thus, all the above-mentioned items would also be included within the ambit of expression 'duty demanded' in addition to the duty specified under section 3 of the Central Excise Act, thereby making their pre-deposit necessary as a condition for hearing appeal.

(Effective from 11.05.2007)

8. Minimum penalty prescribed under sub-sections (4) and (5) of section 37 reduced to Rs.2,000 [Section 37]

Section 37(4) of the Central Excise Act, 1944 provides that if any manufacturer, producer or licensee of a warehouse contravenes any of the provisions stipulated therein, then such person, inter alia, will be liable to a penalty not exceeding duty leviable on such goods or Rs.10,000, whichever is higher.

(i) The Finance Act, 2007 has amended sub-section (4) of section 37 so as to reduce the minimum penalty from Rs.10000 to Rs.2000.

(ii) Sub-section (5) of section 37 has also been amended to reduce the minimum penalty from Rs.10000 to Rs.2000 for possessing, transporting, removing, depositing, keeping, concealing, selling or purchasing any excisable goods which are liable to confiscation.

The above amendments may not have any significant monetary impact as in both the cases the penalty is equal to Rs.2,000 or the amount of duty leviable on such goods, whichever is higher.

(Effective from 11.05.2007)

II. AMENDMENTS BY THE TAXATION LAWS (AMENDMENT) ACT, 2006

The Taxation Laws (Amendment) Bill was enacted on 13.07.2006, the date on which it received the assent of the President. It has made certain amendments in the Central Excise Act, 1944 with the object of rationalizing and simplifying procedures, widening of tax base and plugging loopholes leading to leakage of revenue.

All the amendments made by the Taxation Laws (Amendment) Act, 2006 have come into effect from 13.07.2006.

Amendments in the Central Excise Act, 1944

1. Adjudication proceedings to conclude in respect of a person who voluntarily deposits the full excise duty demanded along with interest and penalty equal to 25% of the excise duty [Section 11A(1A)]

   (i) Section 11A(1) provides that where excise duty is short/not levied or short/not paid or erroneously refunded, the Central Excise Officer can issue a show cause notice within 1 year from the relevant date. However, this period of 1 year is extended to 5 years when such short/non levy or short/non payment or erroneous refund of excise duty is by reason of fraud, collusion, or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Central Excise Act or the rules made thereunder with an intent to evade payment of excise duty.

   (ii) A new sub-section (1A) has been inserted after sub-section (1) in section 11A. The new sub-section provides an option to the person or his agent to whom a notice has been served by the Central Excise Officer for short/non levy or short/non payment or erroneous refund of excise duty by reason of fraud, collusion, or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Central Excise Act or the rules made thereunder with an intent to evade payment of excise duty.

   (iii) Such person or his agent may pay the excise duty in full or in part as may be accepted by him, including the interest payable thereon under section 11AB and penalty equal to 25% of the excise duty specified in the notice or the excise duty so accepted by such person within 30 days of the receipt of the notice.

   (iv) Further, a proviso has been inserted in sub-section (2) of section 11A. Sub-section (2) provides that the Central Excise Officer shall consider the representation, if any, made by the person on whom a notice under sub-section (1) is served. He shall determine the amount of excise duty due from such person and thereupon such person shall pay the amount so determined. However, such amount shall not exceed the amount specified in the notice.

   (v) The newly inserted proviso lays down that where such person has paid the excise duty in full together with interest and penalty, the proceedings in respect of such person and other persons to whom notices (referred to in point 1) have been served shall be deemed to have been concluded in respect of the matters stated therein.

The proceedings shall conclude notwithstanding anything contained in sections 9, 9A and 9AA.

(vi) Another proviso has been inserted in sub-section (2). This proviso lays down that in cases where such person has paid excise duty in part along with interest and penalty, the Central Excise Officer shall determine the amount of excise duty or interest which will not exceed the amount partly due from such person.

2. Commissioner to direct any Central Excise Officer subordinate to him to apply to the Commissioner (Appeals) [Section 35E(2)]

Section 35E(2) of the Central Excise Act gives powers to Commissioner of Central Excise to pass certain orders. The Commissioner of Central Excise may of its own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any order so as to satisfy itself upon the legality or propriety of the order. Thereafter, the Commissioner may direct such authority to apply to the Commissioner (Appeals) to determine such points as may be specified by it.

The Taxation Laws (Amendment) Act, 2006 has amended section 35E(2) to the effect that now the Commissioner may also direct any Central Excise Officer subordinate to him (apart from the adjudicating authority subordinate to him which has passed the order) to apply to the Commissioner (Appeals) to determine such points as may be specified by it.

3. Property may be attached provisionally to protect revenue in certain cases [New section 11DDA]

A new section 11DDA has been inserted by the Taxation Laws (Amendment) Act, 2006. The provisions of this section are:

(1) During the pendency of any proceeding under section 11A or section 11D, the Central Excise Officer may provisionally attach any property belonging to the person on whom notice is served under sub-section (1) of section 11A or sub-section (2) of section 11D, as the case may be, in accordance with the rules made in this behalf under section 142 of the Customs Act, 1962.

(2) Such an attachment shall be done only when the Central Excise Officer is of the opinion that the attachment is necessary for the purpose of protecting the interests of revenue. However, a previous approval of the Commissioner of Central Excise, by order in writing, is a prerequisite for such provisional attachment.

(3) Such an attachment can be done for a period of 6 months. This period will commence from the date of the order of the Commissioner of Central Excise permitting such provisional attachment.

(4) However, this period may be extended by the Chief Commissioner of Central Excise by such further period or periods as he thinks fit. The reasons for such an extension shall be recorded in writing. It is to be noted that the total period of extension in any case shall not exceed 2 years.

(5) If an application for settlement of a case under section 32E is made to the Settlement Commission, the period commencing from the date on which such an

application is made and ending with the date on which an order under section 32F(1) is made shall be excluded from the extended period mentioned in point (4).

4. Information in respect of persons in certain cases to be published [New section 37E]

This new section, added by the Taxation Laws (Amendment) Act, 2006 provides for publishing the name of any person and particulars of any proceedings in relation to such person, in public interest. The provisions are discussed below in detail:

(1) The Central Government may publish name of any person and any other particulars relating to any proceedings in respect of such person if it is of the opinion that it is necessary or expedient in the public interest to do so. The Government can do the publication in such manner as it thinks fit.

(2) The publication shall be made in relation to any penalty only after the time for presenting an appeal to the Commissioner (Appeals) or the Appellate Tribunal expires without an appeal being presented or the appeal, if presented, gets disposed of.

(3) In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, circumstances of the case justify it.

III. SIGNIFICANT AMENDMENTS MADE THROUGH NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2006 TO 30.04.2007

1. Following amendments have been made in the Central Excise Rules, 2002:

(i) With effect from 01.04.2007, e -payment has been made mandatory for payment of duty by all assessees who have paid excise duty of rupees 50 lakh or more in cash during the preceding financial year. This has been done by adding a third proviso in rule 8(1) [Notification No. 8/2007 CE (NT) dated 01.03.2007].

(ii) In rule 8, sub-rule (3A) has been substituted vide Notification No. 13/2006 CE (NT) dated 01.06.2006. The new sub-rule provides that if the assessee defaults in payment of duty beyond 30 days from the due date then he shall pay excise duty for each consignment at the time of removal, without utilizing the CENVAT credit. He shall continue to pay duty consignment-wise (from PLA) till the date he pays the outstanding amount including interest thereon. In the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow.

The old sub-rule provided that the assessee would lose the facility to pay the duty in monthly instalments if he made a default in payment of duty by due date and the same is discharged beyond a period of 30 days from the due date. This forfeiture would start from the date of communication of the order passed by the

Assistant/Deputy Commissioner of Central Excise in this regard. The forfeiture of the facility would continue for a period of two months or till such date on which all dues including interest thereof are paid, whichever is later. Further, during this period the assessee would not be able to utilize the CENVAT credit for the payment of duty on final products. He would compulsorily pay the excise duty for each consignment by debit to the account current and in the event of any failure, it would be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules would follow.

Thus, the requirement of the order passed by the Assistant/Deputy Commissioner and limitation of period of 2 months for paying consignment-wise duty has been done away with in the new sub-rule.

(iii) An explanation has been inserted after rule 8(4) to provide that for the purposes of payment of duty, the expressions 'duty' or 'duty of excise' shall also include the 'amount' payable in terms of the CENVAT Credit Rules, 2004. Therefore, all 'amounts' payable (like payment under rule 6(3) of the CENVAT Credit Rules, 2004 etc.) should be paid along with duty payable by 5th or 15th of the next month [Notification No. 8/2007 CE (NT) dated 01.03.2007].

(iv) With effect from 01.04.2007, an invoice, apart from containing other prescribed particulars, shall also contain address of the jurisdictional Central Excise Division. This has been done by amending sub-rule (2) of rule 11 [Notification No. 8/2007 CE (NT) dated 01.03.2007].

(v) Notification No. 03/2007-CE (NT) dated 08.02.2007 has inserted a proviso before the existing proviso in rule 12(1). The proviso lays down that an assessee, manufacturing pan masala falling under tariff item 2106 90 20 or pan masala containing tobacco falling under tariff item 2403 99 90, shall also file a statement along with the monthly return. The statement shall contain the monthly summary of-

(i) the purchase invoices for the month with the names and addresses of the suppliers of betel nut, tobacco and packing material along with the quantity of the said goods purchased; and

(ii) the sales invoices for the month with the names and addresses of the buyers, description, quantity and value of goods sold by the assessee.

In cases where the goods are not sold from the factory, the address of the premises to which the goods are dispatched from the factory shall also be provided.

(vi) Notification No. 30/2006-CE (NT) dated 30.12.2006 has inserted a new rule 12CC after rule 12C. The new rule provides for power to impose restrictions in certain types of cases.

Rule 12CC empowers the Central Government to provide for certain measures including restrictions on a manufacturer, first stage and second stage dealer or an exporter. The Central Government can exercise such powers where having regard to the extent of evasion of duty, nature and type of offences or any other relevant factors, it is of the opinion that in order to prevent evasion and default in payment of excise duty, it is necessary in the public interest to impose restrictions. The nature of restrictions, (e.g. suspension of registration in case of a dealer) types of facilities to be withdrawn and procedure for issue of such order by an officer authorized by the Board may be specified by a notification in the Official Gazette. The provisions of this rule shall not be subject to anything contained in Central Excise Rules, 2002.

(vii) Notification No. 26/2006-CE (NT) dated 28.12.2006 has substituted rule 16C which prescribes special procedure for removal of excisable goods for carrying out tests with a new rule. The new rule prescribes special procedure for removal of excisable goods for carrying out certain processes.

New rule 16C provides that the Commissioner may allow a manufacturer to remove excisable goods manufactured by him for carrying out test or any process not amounting to manufacture to any other premises without payment of duty. The said other premises may be registered or unregistered. After such tests or any such other process are carried out, the Commissioner may allow-

(a) bringing back of such goods to the said factory without payment of duty, for subsequent clearance for home consumption or export, as the case may be, or

(b) removal of such goods from the said other premises, for home consumption on payment of duty leviable thereon or without payment of duty for export, as the case may be:

However, this rule shall not apply to the goods known as “prototypes” which are sent out for trial or development test.

In order to ensure uniformity in the conditions to be imposed by the Commissioner, it has been clarified vide Circular No. 844/02/2007-CX dated 31.01.2007 that the procedure prescribed under sub-rules (2),(3),(4) & (9) of rule 12AA of the Central Excise Rules, 2002 should broadly be followed in such cases. However, proper records of receipt of goods, its use, nature of activities carried out, goods processed and cleared by the said other premises should be maintained. Further, any waste/scrap arising at such other premises while carrying out the test/other processes should either be cleared on payment of duties or it should be returned back.

(viii) Rule 21 has been amended to increase the power of remission given to various officers of central excise.

(a) The Superintendent is now empowered to remit the duty payable up to Rs.10,000. Earlier this limit was Rs.1,000.

(b) The Deputy/Assistant Commissioner is now empowered to remit the duty payable between Rs.10,000 to Rs.1,00,000. Earlier this range was Rs.1,000 to Rs.2,500.

(c) The Additional/Joint Commissioner is now empowered to remit the duty payable between Rs.1,00,000 to Rs.5,00,000. Earlier this range was Rs.2,500 to Rs.5,000 [Notification No. 8/2007 CE (NT) dated 01.03.2007].

(ix) Rule 25 inter alia provides for a penalty, on any producer, manufacturer, registered person of a warehouse or a registered dealer, of Rs.10,000 or the duty payable on the excisable goods in respect of which any of the specified contravention have been committed, whichever is greater.

Rule 26 inter alia provides that any person who acquires possession of, or is in any way concerned in transporting, removing, depositing etc. any excisable goods which he knows or has reason to believe are liable to confiscation shall be liable to a penalty not exceeding the duty on such goods or Rs.10,000 whichever is greater.

With effect from 11.05.2007, rule 25 and 26 have been amended to reduce the minimum penalty from the present level of Rs.10,000 to Rs.2,000 [Notification No. 8/2007 CE (NT) dated 01.03.2007].

(x) A new sub-rule (2) has been inserted in rule 26 to provide for penal action against the person who issues:

(i) excise duty invoice without delivery of goods mentioned therein or abets in making such invoice; or

(ii) any other document shipping bill, bill of lading, etc. or abets in making such document,

on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefits like CENVAT credit or refund.

Such person shall be liable to a penalty not exceeding the amount of such benefit or Rs.5,000 whichever is greater [Notification No. 8/2007 CE (NT) dated 01.03.2007].

2. Following amendments have been made in the CENVAT Credit Rules, 2004:

(i) The definition of capital goods provided in rule 2(a) has been amended to the effect that in place of goods falling under "heading No.68.02 and sub-heading No.6801.10", the goods falling under "heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804" would qualify to be the capital goods. Consequently, in rule 4(2)(b) also the goods falling under heading No. 68.02 and sub-heading No. 6801.10 have been substituted with the goods falling under heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 [Notification No. 07/2007 CE (NT) dated 21.02.2007].

(ii) Rule 3(7)(c) has been amended to provide that CENVAT credit of the additional duty of Customs to the extent of Rs.30 per square meter shall be allowed in case of marble slabs or tiles falling under tariff items 2515 12 20 and 2515 12 90 respectively. Earlier such credit was allowed in case of marble slabs or tiles falling under sub-heading No. 2504.21 or 2504.31 respectively [Notification No. 07/2007 CE (NT) dated 21.02.2007].

(iii) A new rule 5A has been inserted after rule 5 vide Notification No. 24/2007 CE (NT) 25.04.2000. New rule 5A is in relation to refund of CENVAT credit to units in specified areas. The new rule provides that the Central Government may allow refund of CENVAT credit of duty taken on inputs used in the manufacture of final products cleared in terms of Notification No.20/2007-CE dated 25.04.2007 if the manufacturer is unable to utilize such credit for paying duty on such final products.

However, the refund shall not be allowed if the final products are exempt or subject to nil rate of duty. The refund of credit shall be allowed subject to such procedure, conditions and limitations, as may be specified by notification.

For the purposes of this rule, "duty" means the duties specified in sub-rule (1) of rule 3 of these rules.

Notification No.20/2007 CE dated 25.04.2007 has granted exemption to certain specified goods cleared from a unit located in the States of Assam or Tripura or Meghalaya or Mizoram or Manipur or Nagaland or Arunachal Pradesh or Sikkim from so much of the duty of excise leviable thereon as is equivalent to the amount of duty paid by the manufacturer of goods other than the amount of duty paid by utilization of CENVAT credit under the CENVAT Credit Rules, 2004.

(iv) Rule 6(3)(a) enlists certain exempted goods in respect of which a manufacturer, who produces dutiable and exempted goods from common inputs or input services and does not maintain separate accounts for the same, has to pay an amount equivalent to the CENVAT credit attributable to the inputs and input services used in, or in relation to, the manufacture of such goods at the time of their clearance from the factory. The following amendments have been made in the exempted goods mentioned in that list:

(a) In place of goods falling within heading 22.04 of the First Schedule to the Central Excise Tariff Act, now such list shall cover goods falling within heading 2207 of the First Schedule to the Central Excise Tariff Act. Item (i) of such list has been amended to give effect to this amendment. Heading 2207 covers ethyl alcohol and other spirits, denatured of any strength.

(b) In place of newsprint, in rolls or sheets, falling within heading No. 48.01 of the First Schedule now such list shall cover newsprint, in rolls, sheets or reels, falling within Chapter 48. Item (v) of such list has been amended to give effect to this amendment. Chapter 48 covers paper and paperboards and articles thereof etc. [Notification No. 07/2007 CE (NT) dated 21.02.2007].

(v) Clause (d) has been inserted in rule 6(3) to provide an option to general insurance service providers providing taxable as well as exempted insurance schemes and not maintaining separate input/input services credit accounts to utilise CENVAT credit proportionate to the inputs and input services used in providing taxable services. Earlier such service provider could utilise the credit only to the extent of 20% of service tax payable on taxable output service.

The scheme is optional and is subject to fulfillment of certain conditions. The scheme has come into effect from 1st April, 2007. It may be noted that the scheme is applicable only to general insurance services referred to in section 65(105)(d). The conditions subject to which full credit, attributable to inputs/input services used in providing taxable services, can be utilised are:

(i) While exercising this option, the output service provider shall intimate his option in writing to the Superintendent of Central Excise giving the following particulars, namely:-

   (a) name and address of the provider of output service;

   (b) date from which this option is exercised or proposed to be exercised;

   (c) description of taxable services;

   (d) description of exempted services;

   (e) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition.

(ii) The option given under part (i) for a financial year shall not be withdrawn during the remaining part of the financial year.

(iii) The output service provider shall-

   (a) determine, provisionally, the amount equivalent to CENVAT credit attributable to exempted services, in the following manner, namely:-

   CENVAT credit attributable to exempted services (provisional) = (A/B) x C,

   where

   A = Total value of exempted services provided during the preceding financial year

   B = Total value of taxable and exempted services provided during the preceding financial year

   C = Total CENVAT credit of inputs and input services taken during the month

   (b) pay the amount attributable to exempted services determined as above for each month, on or before 5th day of the following month.

   (c) determine the CENVAT credit attributable to exempted services for the whole financial year in the following manner, namely:-

   CENVAT credit attributable to exempted services = (X/Y) x Z,

   where

   X = total value of exempted services provided during the financial year

Y = total value of taxable and exempted services provided during the financial year

Z = total CENVAT credit of inputs and input services taken during the financial year

(d) pay an amount equal to the difference between the amount determined as per item (c) and the amount determined as per item (a), on or before the 30th June of the succeeding financial year, where the amount determined as per item (c) is more than the amount paid.

(e) in addition to the amount short-paid, be liable to pay interest @ 24% from the due date i.e. 30th June till the date of payment, where the amount short-paid is not paid within the said due date.

(f) where the amount determined as per item (c) is less than the amount determined and paid as per item (a), adjust the excess amount on his own, by taking credit of such amount.

(iv) The output service provider shall intimate to the jurisdictional Superintendent of Central Excise, within a period of 15 days from the date of such payment or adjustment, the following particulars, namely:-

(a) month-wise details of CENVAT credit attributable to exempted services for the whole financial year, determined provisionally as per part (iii) item (a)

(b) the amount equivalent to CENVAT credit attributable to exempted services, determined provisionally for each month and paid month-wise as per part (iii) item(b)

(c) CENVAT credit attributable to exempted services for the whole financial year determined as per part (iii) item (c)

(d) amount short paid determined as per part (iii) item (d), alongwith the date of payment of the amount short paid

(e) interest payable and paid, if any, on the amount short paid, determined as per part (iii) item (e), and

(f) credit taken on account of excess payment, if any, determined as per part (iii) item (f)

(v) Where the amount equivalent to CENVAT credit attributable to exempted services cannot be determined provisionally since no taxable general insurance service has been provided, the output service provider is not required to provisionally determine and pay CENVAT credit attributable to exempted services for each month. In such a case he shall determine the CENVAT credit attributable to exempted services for the whole year as prescribed in part (iii) item (c) and pay the amount so calculated on or before 30th June of the succeeding financial year.

(vi) Where the amount determined under part (v) is not paid within the said due date i.e. the 30th June, the output service provider shall, in addition to the said amount, be liable to pay interest @ 24% per annum from the due date till the date of payment [Notification No. 10/2007 CE (NT) dated 01.03.2007].

(vi) Sub-rule (2) of rule 9 provides that CENVAT credit cannot be denied if basic prescribed details are available on the duty paying document even though all the particulars required under the rules are not mentioned therein.

Sub-rule (2) of rule 9 has been amended vide Notification No. 10/2007 CE (NT) dated 01.03.2007 to provide that the CENVAT credit can be taken only if all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994 are available on the invoice or other duty-paying document.

However, the Deputy/Assistant Commissioner may allow the CENVAT credit even if the said document does not contain all the particulars but the following two conditions are satisfied:

(a) The document contains the following information:

- details of duty or service tax payable,
- description of the goods or taxable service,
- assessable value,
- central excise/service tax registration number of the person issuing the invoice (inserted vide Notification No. 19/2007 CE (NT) dated 09.03.2007)
- name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service, and

(b) The Deputy/Assistant Commissioner is satisfied that the:

(i) goods or services covered by the said document have been received and

(ii) accounted for in the books of the account of the receiver.

(vii) Sub-rule (3) of rule 9 provides that the manufacturer or provider of output service or the input service distributor should take all reasonable steps to ensure that the input or capital goods or input service in respect of which he has taken the CENVAT credit are goods or services on which the appropriate duty of excise or service tax as indicated in the accompanying documents has been paid by the manufacturer of such input or capital goods or the provider of input service as the case may be.

Sub-rule (3) of rule 9 has been omitted vide Notification No. 10/2007 CE (NT) dated 01.03.2007. With the deletion of the above said rule, it implies that, now, the person availing CENVAT credit is not responsible to ensure that duty or service tax paid to manufacturer of inputs or capital goods or provider of input service respectively has been deposited by such person. However, such person is required to fulfill other obligations specified under CENVAT Credit Rules, 2004 like maintenance of records etc.

(viii) Consequent amendments have been made in sub-rules (1) and (3) of rule 15 which prescribe a penalty inter alia where CENVAT credit in respect of input or capital goods or input service has been taken without taking reasonable steps to ensure that appropriate excise duty or service tax as indicated in the duty paying document has been deposited with the department.

Now, after the deletion of sub-rule (3) of rule 9 no penalty shall be imposed if credit is taken without taking reasonable steps to ensure that appropriate excise duty or service tax has been deposited with the department [Notification No. 10/2007 CE (NT) dated 01.03.2007].

(ix) Sub-rule (11) has been inserted after sub-rule (10) in rule 9 so as to allow the output service provider or the input service distributor to rectify mistakes or omission and file revised return within 60 days from the date of filing of original return [Notification No. 10/2007 CE (NT) dated 01.03.2007].

(x) New sub-rule (3) has been inserted in rule 11 to provide that a manufacturer shall be required to pay an amount equivalent to the CENVAT credit in respect of inputs received for use in the manufacture of the final product which is lying in stock or in process or is contained in the final product lying in stock, if,-

(i) he opts for exemption from the whole of the excise duty leviable on the said final product under a notification issued under section 5A of the Central Excise Act; or

(ii) the said final product has been exempted absolutely under section 5A of the Act.

If after deducting the said amount from the balance of CENVAT credit (if any lying in his credit) there still remains a balance, it shall lapse. Such balance shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported [Notification No. 10/2007 CE (NT) dated 01.03.2007].

(xi) Similar amendment has been made in respect of cases wherein taxable services become exempted. New sub-rule (4) has been inserted in rule 11 to provide that a output service provider shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for providing the said service and is lying in stock or is contained in the taxable service pending to be provided, when he opts for exemption from payment of whole of the service tax leviable on such taxable service.

After deducting the said amount from the balance of CENVAT credit (if any lying in his credit) if there still remains a balance, it shall lapse. Such balance shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export or for payment of service tax on any other output service, whether provided in India or exported.

It should be noted that in this case reversal of credit of input services is not required [Notification No. 10/2007 CE (NT) dated 01.03.2007].

(xii) Notification No. 31/2006 CE (NT) dated 30.12.2006 has inserted a new rule 12AA after rule 12A which provides for the power to impose restrictions in certain types of cases.

Rule 12AA empowers the Central Government to provide for certain measures including restrictions on a manufacturer, first stage and second stage dealer or an exporter if there is a misuse of CENVAT credit. The Central Government can exercise such powers where having regard to the extent of misuse of CENVAT credit, nature and type of such misuse and any other relevant factors, it is of the opinion that in order to prevent the misuse of the provisions of CENVAT credit, it is necessary in the public interest to impose restrictions. The nature of restrictions, (e.g. restrictions on utilization of CENVAT credit and suspension of registration in case of a dealer) types of facilities to be withdrawn and procedure for issue of such order by an officer authorized by the Board may be specified by a notification in the Official Gazette. The provisions of this rule shall not be subject to anything contained in CENVAT Credit Rules, 2004.

(xiii) The minimum penalty prescribed in rule 15 for wrongly taking CENVAT credit on inputs/capital goods/input services or for contravening any of the provisions of the rules has been reduced from Rs.10,000 to Rs.2,000. Sub-rule (1) and sub-rule (3) have been amended to give effect to this change. This amendment has come into effect from 11.05.2007 [Notification No. 10/2007 CE (NT) dated 01.03.2007].

(xiv) Rule 3(1) and 3(7)(b) have been amended to allow credit of secondary and higher education cess for payment of education cesses [Notification No. 10/2007 CE (NT) dated 01.03.2007].

3. Notification No. 25/2007 CE (NT) dated 25.04.2007 has prescribed the following procedure for claiming refund of unutilised CENVAT credit under rule 5A:

(a) The manufacturer shall file a declaration with the jurisdictional Assistant/Deputy Commissioner describing the finished goods proposed to be manufactured, rate of duty thereof, manufacturing or processing formula and quantity and quality of the materials actually used. The declaration shall also contain the tariff classification, rate of duty paid or payable on the materials so used in relation to the finished goods to be manufactured and cleared. However, if any particulars given in the declaration have undergone any changes, the revised declaration shall be filed by the manufacturer;

(b) The manufacturer shall submit a statement containing details namely quantity of opening balance of inputs, quantity of inputs received during the month, value thereof, duty paid or payable thereon, amount of CENVAT credit taken, quantity of inputs used during the month, quantity of final products manufactured, quantity of inputs lying in stock at the end of the month, amount of CENVAT credit utilised for payment of duty on the final product and amount of CENVAT credit lying in balance to the Assistant/Deputy Commissioner by the 7th day of the next month for claiming refund;

(c) The Assistant/Deputy Commissioner after appropriate verification may refund the balance amount of unutilised credit, if any, at the end of the month under consideration to the manufacturer within a period of 3 months from the date of receipt of the statement; and

(d) If there is likely to be any delay in the verification, the Assistant/Deputy Commissioner shall refund 80% of the amount on provisional basis by the 30th day of the month following the month under consideration.

The above-mentioned conditions shall be subject to the conditions prescribed in Notification No. 20/2007 CE dated 25.04.2007.

4. In pursuance of rule 12CC of the Central Excise Rules, 2002, and rule 12AA of the CENVAT Credit Rules, 2004, the Central Government vide Notification No. 32/2006 CE (NT) dated 30.12.2006 has declared that an officer authorised by the Board may order for withdrawal of facilities or impose restrictions where a manufacturer, first stage or second stage dealer, or an exporter including a merchant exporter is prima facie found to be knowingly involved in any of the following,-

(a) removal of goods without the cover of an invoice and without payment of duty;

(b) removal of goods without declaring the correct value for payment of duty, where a portion of sale price, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account;

(c) taking of CENVAT credit without the receipt of goods specified in the document based on which the said credit has been taken;

(d) taking of CENVAT credit on invoices or other documents which a person has reasons to believe as not genuine;

(e) issue of excise duty invoice without delivery of goods specified in the said invoice;

(f) claiming of refund or rebate based on the excise duty paid invoice or other documents which a person has reason to believe as not genuine.

Facilities to be withdrawn and imposition of restrictions:

The officer authorized by the Board may impose following restrictions in case of a manufacturer involved in committing any of the above-mentioned offences:

(i) the facility of monthly payment of duties may be withdrawn and the assessee shall be required to pay excise duty for each consignment at the time of removal of goods;

(ii) payment of duty by utilisation of CENVAT credit may be restricted and the assessee shall be required to pay excise duty without utilising the CENVAT credit.

It may be noted that the person against whom the order for withdrawal of facilities or imposition of restrictions has been passed may continue to take CENVAT credit but he would not be able to utilize the credit for payment of duty during the period specified in the said order.

Further, where a person is found to be knowingly involved in committing any one or more type of the above-mentioned offences for the second time or subsequently, every removal of goods from his factory may be ordered to be under an invoice which shall be countersigned by the Inspector of Central Excise or the Superintendent of Central Excise before the said goods are removed from the factory or warehouse. For second time or subsequent offence, the restriction specified in clauses (i) and (ii) may also be imposed.

Where a first stage or second stage dealer is found to be knowingly involved in committing the type of offence specified at clauses (d) or (e), the registration granted under rule 9 of the Central Excise Rules 2002 may be suspended for a specified period. During the period of suspension, the said dealer shall not issue any Central Excise Invoice. However, he may continue his business and issue sales invoices without showing excise duty in the invoice and no CENVAT credit shall be admissible to the recipient of goods under such invoice.

Where a merchant exporter is found to be knowingly involved in committing the type of offence specified at clause (f), the self sealing facility for export consignment may be withdrawn whereby each export consignment shall be examined and sealed by the jurisdictional Central Excise Officer.

Further, any other facility available to a manufacturer, first stage or second stage dealer or an exporter provided by a circular or an order issued by the Board may also be ordered to be withdrawn for a specified period.

Monetary limit:

The provisions of this notification shall be applicable only in a case where the duty or CENVAT credit alleged to be involved in the above-mentioned offences is more than Rs.10 lakhs.

Procedure:

The Commissioner of Central Excise or Additional Director General of Central Excise Intelligence, as the case may be, after examination of records and other evidence, and after satisfying himself that the person has knowingly committed the above-mentioned offence, may forward a proposal to the Chief Commissioner or Director General of Central Excise Intelligence, as the case may be, specifying the facilities to be withdrawn and restriction to be imposed and the period of such withdrawal or restrictions, within 30 days of the detection of the case, as far as possible.

The Chief Commissioner of Central Excise or Director General of Central Excise Intelligence, as the case may be, shall examine the said proposal and after satisfying himself that the records and evidence relied upon in the said proposal are sufficient to form a reasonable belief that a person has knowingly committed the said offences, may forward the proposal along with his recommendations to the Board. However, the Chief Commissioner of Central Excise or Director General of Central Excise Intelligence, before forwarding his recommendations, shall give an opportunity of being heard to the person against whom the proceedings have been initiated and shall take into account any representation made by such person before he forwards his recommendations to the Board.

An officer authorized by the Board shall examine the recommendations received from the Chief Commissioner of Central Excise or Director General of Central Excise Intelligence and issue an order specifying the type of facilities to be withdrawn or type of restrictions imposed, along with the period for which said facilities will not be available or the period for which the restrictions shall be operative.

The Board has authorized Member (Central Excise), Central Board of Excise and Customs to issue such orders.

5. With effect from 01.04.2007, a new rule 10A has been inserted in the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 vide Notification No. 9/2007 CE (NT) dated 01.03.2007 to provide for valuation in case of job-work. The rule provides that where goods are manufactured by a job-worker on behalf of a person (commonly known as principal manufacturer), the value for payment of excise duty would be based on the sale value at which the principal manufacturer sells the goods, as against the present provision where the value is taken as cost of raw material plus the job charges.

   The rule lays down that where the excisable goods are produced or manufactured by a job-worker, on behalf of a person (hereinafter referred to as principal manufacturer), then,-

   (i) in a case where the goods are sold by the principal manufacturer for delivery at the time of removal of goods from the factory of job-worker, where the principal manufacturer and the buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the transaction value of the said goods sold by the principal manufacturer.

   (ii) in a case where the goods are not sold by the principal manufacturer at the time of removal of goods from the factory of the job-worker, but are transferred to some other place from where the said goods are to be sold after their clearance from the factory of job-worker and where the principal manufacturer and buyer of the goods are not related and the price is the sole consideration for the sale, the value of the excisable goods shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of said goods from the factory of job-worker.

   (iii) in a case not covered under clause (i) or (ii), the provisions of foregoing rules, wherever applicable, shall mutatis mutandis apply for determination of the value of the excisable goods.

The cost of transportation, if any, from the premises, wherefrom the goods are sold, to the place of delivery shall not be included in the value of excisable goods.

Here, job-worker means a person engaged in the manufacture or production of goods on behalf of a principal manufacturer, from any inputs or goods supplied by the said principal manufacturer or by any other person authorised by him.

6. The assessees who pay less than Rs.100 lakh as excise duty from account current during the financial year to which the Annual Financial Information Statement relates were exempted from filing of such annual information return vide Notification No. 35/2004-CE (N.T.) dated 01.11.2004. Notification No.17/2006 CE (NT) dated 01.08.2006 has rescinded the above-mentioned notification and has extended the benefit of exemption of not filing Annual Information Return to Indian Ordnance Factories, Department of Defence Production and Ministry of Defence while keeping intact the exemption in case of assessees who pay excise duty of less than 100 lakh rupees from account current during the financial year to which Annual Financial Information Statement relates.
7. Notification No. 8/2003 CE dated 01.03.2003 has been amended vide Notification No.45/2006 CE dated 20.11.2006 to provide that account books, registers, writing pads and file folders falling under heading 4820 or 4821 of the First Schedule of the Central Excise Tariff shall be entitled to small scale exemption even if they bear a brand name or trade name whether registered or not, of another person. Prior to this amendment, such goods were not entitled to small scale exemption if they bore a brand name of another person.
8. Notification No.5/2006 CE (NT) dated 14.03.2006 which lays down conditions to be fulfilled in order to obtain refund under rule 5 of the CENVAT Credit Rules, 2004 has been amended vide Notification No. 13/2007 CE(NT) dated 01.03.2007. In order to claim refund the manufacturer inter alia has to submit an application to the jurisdictional Deputy/Assistant Commissioner along with the original shipping bill or bill of export duly certified by the officer of customs. Now after the amendment the manufacturer can also submit a photocopy of the shipping bill/bill of export attested by the customs officer along with the application.
9. With effect from 01.04.2007, Notification No. 8/2007 CE dated 01.03.2007 has increased the exemption limit under the SSI scheme from Rs.1 crore to Rs.1.5 crore.
10. Circular No. 843/1/2007-CX dated 17.01.2007 has clarified that the provisions of Standards of Weight & Measures (Packaged Commodities) Rules, 1977 shall apply in case of bulk sale of ice cream in packages to hotel/catering industry etc. and accordingly, the assesee is required to declare the retail sale price on such packages.

LARGE TAX PAYER UNITS

The Finance Minister in his Budget Speech 2005-06 announced the proposal to set up Large Taxpayer Units (hereinafter referred to as LTUs) in the country in line with the international practice, which would service large taxpayers paying excise duty, corporate tax/income-tax and service tax under a single window. LTU is a trade facilitative measure seeking to address and deliver appropriate solutions to the unique compliance issues that may arise. The establishment of LTU is a step to achieve excellence in the formulation and implementation of Service Tax and Excise initiatives by creating a climate for voluntary compliance by providing guidance and building of mutual trust. It is envisaged that this approach will improve India's business climate, and will reassure the trade that their taxation related concerns would be dealt with in a fair and transparent manner.

The Government has decided to implement the LTU scheme in a phased manner.The first Large Taxpayer Unit has been set up at Bangalore. LTUs will also be established in a phased manner in Chennai, Delhi, Kolkata, and Mumbai. The Chief Commissioner, Central Excise and Service Tax will head the LTU in Bangalore.

Conceptually, LTU is a self-contained tax office that provides single point interface with the tax administration to the large taxpayers who pay direct and indirect taxes above the threshold limit as specified in the Notification No. 20/2006 C.E (NT) dated 30.09.2006 (discussed in point 3 later). It is a single office that would deal with central excise/service tax/ income tax/ corporate tax issues of all units holding a single PAN. Once a taxpayer acquires the status of LTU, the entire jurisdiction of central excise, service tax and income tax matters shall stand transferred to the said LTU in respect of all his manufacturing units, service providing premises, and other registered premises located throughout the country. Some of such activities are as given below: -

(a) Filing of returns

(b) Filing of refund/rebate claims

(c) Audit, Adjudication and Appeals

(d) Filing of intimation, permissions

(e) Visit to units

(f) Acceptance of proof of export

A LTU will be headed by a Chief Commissioner (either from CBDT or from CBEC). The Chief Commissioner, LTU is expected to undertake following functions-

(a) overall administration of LTU;

(b) co-ordination between the direct tax and the indirect tax wings of LTU;

(c) distribution of work amongst the LTU officers;

(d) monitoring of revenue collection;

(e) quality Assurance Checks/ taxpayer feedback system;

(f) devising effective taxpayer assistance system;

(g) review of the orders passed by the Commissioners as adjudicating authority (as a member of Review Committee);

(h) issuance of trade notices/ circulars to bring about uniformity in tax administration as well as determination of amount of tax payable;

(i) coordination with the Boards (CBEC and CBDT), Directorates and with other field formations in the matters such as audit verification, revenue recoveries, etc.

The Chief Commissioner, LTU will intimate the jurisdictional Central Excise, Service Tax and Income Tax Commissioners regarding the transfer of the specified units from their jurisdiction to the LTU. There will be Commissioners posted in LTU, who would be holding executive and appellate charges. The powers and duties would be similar to that of other field commissioners. However, they are required to play a pro-active role in ensuring the fulfilment of objectives of a LTU. The Commissioners of Direct and Indirect Taxes are expected to work in a coordinated manner. Other Group 'A', 'B', 'C' officers along with supporting staff will be posted by CBDT and CBEC. The Chief Commissioner, LTU will assign a Client Executive for each taxpayer from among the Additional/Joint/Deputy/Asstt. Commissioner posted in LTU, and the said Client Executive will be the single point interface with the large taxpayer for all purposes.

The officers posted in LTU will have all India jurisdiction in respect of all registered premises of a large taxpayer registered in that particular LTU. The erstwhile Central Excise or Service Tax Commissionerate Officers will have concurrent jurisdiction. However, the interaction with these units will be limited to specific functions requiring physical presence of the officers for purposes as warehousing, sealing or any other work as assigned by the LTU.

1. Following amendments have been made in the Central Excise Rules, 2002 vide Notification No. 18/2006 CE (NT), dated 30.09.2006 so as to incorporate the concept of large tax payer.

    (i) In rule 2, after sub-rule (e), another sub-rule has been inserted to define "large taxpayer" as a person who-

        (i) has one or more registered premises under the Central Excise Act, 1944; or

        (ii) has one or more registered premises under Chapter V of the Finance Act, 1994;

    and is an assessee under the Income Tax Act, 1961, who holds a Permanent Account Number issued under section 139A of the said Act, and satisfies the conditions and observes the procedures as notified by the Central Government in this regard.

    (ii) Rule 12BB has been inserted after Rule 12AA which lays down the procedure and facilities for the large taxpayer. The provisions of this rule are:

        (1) A large taxpayer may remove excisable goods (intermediate goods), except motor spirit, commonly known as petrol, high speed diesel and light diesel oil without payment of duties of excise under the cover of a transfer challan or invoice from any of his registered premises (sender premises) where such goods are produced, manufactured or warehoused to his other registered premises (recipient premises) for further use in the manufacture or production of such other excisable goods (subject goods). However, the large taxpayer cannot remove the intermediate goods without payment of duty to the premises

of a first or second stage dealer. The removal of intermediate goods without payment of duty from the sender premises to recipient premises shall be subject to the conditions that-

(a) the subject goods are manufactured using the said intermediate goods and cleared on payment of appropriate duties of excise leviable thereon within a period of 6 months, from the date of receipt of the intermediate goods in the recipient premises; or

(b) the subject goods are manufactured using the said intermediate goods and exported out of India, under bond or letter of undertaking within a period of 6 months, from the date of receipt of the intermediate goods in the recipient premises,

and that any other conditions prescribed by the Commissioner of Central Excise, Large Taxpayer Unit in this regard are satisfied.

The transfer challan or invoice shall be serially numbered and shall contain the registration number, name, address of the large taxpayer, description, classification, time and date of removal, mode of transport and vehicle registration number, quantity of the goods and registration number and name of the consignee.

However, if the subject goods manufactured or produced using the said intermediate goods are not cleared on payment of appropriate duties of excise leviable thereon or are not exported out of India within the said period of 6 months, duties of excise payable on such intermediate goods shall be paid by the recipient premises with interest in the manner and rate specified under section 11AB. The duty payable shall be the duty payable on the date and time of removal of the intermediate goods from the sender's premises. If the large taxpayer fails to pay such amount, it shall be recovered along with interest in the same manner as provided under section 11A and section 11AB.

Illustration 1

Excise duty is payable on intermediate goods, namely, electronics goods, manufactured by factory A which are removed without payment of duties of excise for use in the manufacture of subject goods, namely, machines, in factory B of the large taxpayer. In case such machines are not exported or are removed without payment of duties of excise, then factory B shall pay duties of excise payable on the electronic goods so cleared along with interest.

Further, if any duty of excise is payable on such intermediate goods and if the said duty is not payable on such subject goods, the said duty of excise as equivalent to the total amount payable on such intermediate goods along with interest under section 11AB of the Act shall be paid by the recipient premises. The duty payable shall be the duty payable on the date and time of removal of the intermediate goods from the sender's premises. If the large taxpayer fails to pay such amount, it shall be recovered along with interest in the same manner as provided under section 11A and section 11AB respectively of the Act.

Illustration 2

National Calamity Contingent duty is payable on intermediate goods namely, polyester yarn manufactured by factory A. Such yarn is removed without payment of duty of excise for use in the manufacture of subject goods, namely, grey fabrics in factory B of a large taxpayer, (on which such National Calamity Contingent duty is not payable), then factory B shall pay an amount equivalent to the National Calamity Contingent duty that would have been payable on the polyester yarn along with interest under section 11AB of the Act.

It may be noted that the provisions of this sub-rule shall not be applicable if the recipient premises is availing following notifications:

(i) No. 32/99-CE, dated 08.07.1999;

(ii) No. 33/99-CE, dated 08.07.1999;

(iii) No. 39/2001-CE, dated 31.07.2001;

(iv) No. 56/2002-CE, dated 14.11.2002;

(v) No. 57/2002-CE, dated 14.11.2002;

(vi) No. 56/2003-CE, dated 25.06.2003; and

(vii) No. 71/2003-CE, dated 09.09.2003

Also, the provisions of this sub-rule shall not apply in respect of a EOU or a unit located in a EHTP or STP.

(2) Where a registered premises of a large taxpayer manufacturing excisable goods has paid to the credit of Central Government any duty of excise in excess of duty of excise payable on account of arithmetical error, the said large taxpayer may adjust the excess duty so paid by him, against his duty liability for the subsequent period subject to the limitations prescribed under rule 3(7)(b) of the CENVAT Credit Rules, 2004.

However, such adjustment shall be admissible only if the said registered premises has not passed on the incidence of such excess duty so paid to any other person, and the consignee does not avail credit of such duty under the CENVAT Credit Rules, 2004.

(3) Any notice issued but not adjudged by any of the Central Excise Officer immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise officers of the said Unit.

(4) A large taxpayer shall submit the monthly returns, as prescribed under these rules, for each of the registered premises.

(5) A large taxpayer, on demand, may be required to make available the financial, production, stores and CENVAT credit records in electronic media, such as, compact disc or for the purposes of carrying out any scrutiny and verification as may be necessary.

(6) A large taxpayer may, with intimation of at least 30 days in advance, opt out to be a large taxpayer from the first day of the following financial year.

(7) The provisions of other rules of Central Excise Rules, 2002 in so far as they are not inconsistent with the provisions of this rule shall mutatis mutandis apply in case of a large taxpayer.

2. Following amendments have been made in CENVAT Credit Rules, 2004 vide Notification No. 19/2006 CE (NT), dated 30.09.2006 so as to incorporate the concepts of large tax payer.

(i) In rule 2, sub-rule (na) has been renamed as sub-rule (naa) so that sub-rule (na) can define "large taxpayer" to have the meaning assigned to it in the Central Excise Rules, 2002.

(ii) Rule 12A has been inserted after Rule 12 in the CENVAT Credit Rules, 2004 which lays down the procedure and facilities for the large taxpayer. The provisions of rule 12A are as under:

(1) A large taxpayer may remove inputs (except motor spirit, commonly known as petrol, high speed diesel and light diesel oil) or capital goods, as such, on which CENVAT credit has been taken without payment of an amount specified in rule 3(5) of the CENVAT Credit Rules, 2004 under the cover of a transfer challan or invoice from any of his registered premises (sender premises) to his other registered premises (recipient premises) other than a premises of a first or second stage dealer for further use in the manufacture or production of final products in the recipient premises. Such removal shall be subject to the conditions that-

(a) the final products are manufactured or produced using the said inputs and cleared on payment of appropriate duties of excise leviable thereon within a period of 6 months, from the date of receipt of the inputs in the recipient premises; or

(b) the final products are manufactured or produced using the said inputs and exported out of India, under bond or letter of undertaking within a period of 6 months, from the date of receipt of the inputs in the recipient premises,

and that any other conditions prescribed by the Commissioner of Central Excise, Large Taxpayer Unit in this regard are satisfied.

The transfer challan or invoice shall be serially numbered and shall contain the registration number, name, address of the large taxpayer, description, classification, time and date of removal, mode of transport and vehicle registration number, quantity of the goods and registration number and name of the consignee.

However, if the final products manufactured or produced using the said inputs are not cleared on payment of appropriate duties of excise leviable thereon or are not exported out of India within the said period of 6 months from the date of receipt of the input goods in the recipient premises, or such inputs are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such inputs by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules. The first recipient premises may take CENVAT credit of such amount paid by it as if it was a duty paid by the sender premises who removed such goods on the basis of a document showing payment of such duties.

Also, if such capital goods are used exclusively in the manufacture of exempted goods, or such capital goods are cleared as such from the recipient premises, an amount equal to the credit taken in respect of such capital goods by the sender premises shall be paid by the recipient premises with interest in the manner and rate specified under rule 14 of these rules.

If a large taxpayer fails to pay any of such amount, it shall be recovered along with interest in the manner as provided under rule 14 of these rules.

It may be noted that the provisions of this sub-rule shall not be applicable if the recipient premises is availing following notifications:

(i) No. 32/99-CE, dated 08.07.1999;

(ii) No. 33/99-CE, dated 08.07.1999;

(iii) No. 39/2001-CE, dated 31.07.2001;

(iv) No. 56/2002-CE, dated 14.11.2002;

(v) No. 57/2002-CE, dated 14.11.2002;

(vi) No. 56/2003-CE, dated 25.06.2003; and

(vii) No. 71/2003-CE, dated 09.09.2003

Also, the provisions of this sub-rule shall not apply in respect of an EOU or a unit located in a EHTP or STP.

(2) CENVAT credit of the specified duties taken by a sender premises shall not be denied or varied in respect of any inputs or capital goods, removed as such under sub-rule (1) on the ground that the said inputs or the capital goods have been

(i) removed without payment of an amount specified in rule 3(5) of these rules; or

(ii) used in the manufacture of any intermediate goods removed without payment of duty under sub-rule (1) of rule 12BB of Central Excise Rules, 2002.

For the purpose of this sub-rule intermediate goods shall have the same meaning assigned to it in sub-rule (1) of rule 12BB of the Central Excise Rules, 2002.

(3) A large taxpayer may transfer CENVAT credit available with one of its registered manufacturing premises or premises providing taxable service to its other registered premises by,-

(i) making an entry for such transfer in the records maintained under rule 9;

(ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit as well as receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i),

and such recipient premises can take CENVAT credit on the basis of such transfer challan as mentioned in clause (ii):

It may be noted that such transfer or utilisation of CENVAT credit shall be subject to the limitations prescribed under rule 3(7)(b).

It may be noted that the provisions of this sub-rule shall not be applicable if the registered manufacturing premises is availing following notifications:

(i) No. 32/99-CE, dated 08.07.1999;

(ii) No. 33/99-CE, dated 08.07.1999;

(iii) No. 39/2001-CE, dated 31.07.2001;

(iv) No. 56/2002-CE, dated 14.11.2002;

(v) No. 57/2002-CE, dated 14.11.2002;

(vi) No. 56/2003-CE, dated 25.06.2003; and

(vii) No. 71/2003-CE, dated 09.09.2003

(4) A large taxpayer shall submit a monthly return, as prescribed under these rules, for each of the registered premises.

(5) Any notice issued but not adjudged by any of the Central Excise Officer immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise Officers of the said Unit.

(6) Provisions of these rules, in so far as they are not inconsistent with the provisions of this rule shall mutatis mutandis apply in case of a large taxpayer.

3. Notification No. 20/2006 CE (NT) dated 30.09.2006 has notified the following persons to be eligible to opt as large taxpayer:

(i) Any person engaged in the manufacture or production of goods, except the goods falling under chapter 24 or Pan Masala falling under chapter 21 of the First schedule of the Central Excise Tariff Act, 1985, or

(ii) a provider of taxable service,

who has paid during the financial year 2004-05 or during the financial year preceding the year of filing of application for large tax payer-

(a) duties of excise of more than Rs.500 lakhs in cash or through account current; or

(b) service tax of more than Rs.500 lakhs in cash or through account current; or

(c) advance tax of more than Rs.1000 lakhs, under the Income Tax Act, 1961,

and is presently assessed to income tax or corporate tax under the Income Tax Act, 1961, under the jurisdiction of Chief Commissioner of Income Tax – I, Bangalore (other than revenue district of Tumkur) and Chief Commissioner of Income Tax – II, Bangalore (other than district of Kolar).

Further, following procedures have also been notified which are to be followed to be eligible to opt as large tax payer:

A large taxpayer who satisfies the conditions mentioned above may file an application in the prescribed form duly completed in all respects to the Chief Commissioner of Central Excise, Large Taxpayer Unit for the city where the large taxpayer is presently assessed to income tax or corporate tax indicating his willingness to be a large taxpayer.

A person willing to operate as large taxpayer shall furnish details of each of the premises already registered under the Central Excise Act, 1944 including the premises of first and second stage dealers and each of the premises registered under Chapter V of the Finance Act, 1994 including the premises of input service distributor.

The Chief Commissioner of Central Excise, Large Taxpayer Unit may after due verification of the application form, grant the acceptance in writing. The process of acceptance would not normally take more than 7 days.

Existing registrations under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 shall continue. However, in case a new factory or service provider, input service distributor or first or second stage dealer which becomes liable to be registered, after opting as large taxpayer, the application for such new registration shall be made before the Chief Commissioner of Central Excise, Large Taxpayer Unit.

4. Notification No.23/2006 CE (N.T.) dated 12.10.2006 has notified revised formats of ER-1 and ER-3 returns under rule 12 of the Central Excise Rules, 2002 and rule 9(7) of CENVAT Credit Rules, 2004. The notification has come into force from 01.11.2006. The revision of the formats of ER-1 and ER-3 has been necessitated following the setting up of the first Large Taxpayer Unit (LTU) in Bangalore. However, the revised ER 1 return form is applicable for all assessees (large taxpayers and others), although the additional details to be provided by a large taxpayer, have been separately indicated.

B. CUSTOMS

I. AMENDMENTS BY THE FINANCE ACT, 2007

Secondary and Higher Education Cess

A seconday and higher education cess @ 1% has been imposed on imported goods. The proceeds from this cess will be utilized to finance secondary and higher education. It shall be chargeable on the aggregate duties of customs. However, following duties shall be excluded for computing this cess:–

(a) the additional duty leviable under section 3(5) of the Customs Tariff Act, 1975;

(b) the safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act, 1975;

(c) the countervailing duty leviable under section 9 of the Customs Tariff Act, 1975;

(d) the anti-dumping duty leviable under section 9A of the Customs Tariff Act, 1975; and

(e) the education cess and

(f) secondary and higher education cess on imported goods.

The provisions of the Customs Act, 1962 and the rules and the regulations including those relating to refunds and exemptions from duties and imposition of penalty shall apply in relation to the levy and collection of the secondary and higher education cess on imported goods as they apply in relation to the levy and collection of the duties of customs on such goods.

(Effective from 01.03.2007)

Amendments in the Customs Act, 1962

1. Concept of transaction value introduced in section 14 to align it with valuation rules [New section 14]

   The sub-section (1) of section 14 of the Customs Act, 1962 provides that valuation of goods shall be based on the concept of 'deemed value'. However, the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 provide that the value of the imported goods shall be based on the concept of transaction value.

   The Supreme Court in the case of Ispat Industries Ltd. v. CCus. 2006 (202) ELT 561 had held that since section 14 created a legal fiction, the ordinary value of the imported goods in the course of international trade at the place and time of import should be considered. Therefore, specific cases for determining value of imported goods should be ignored. The Supreme Court further held that Valuation Rules should be read in consonance with section 14 and if the Valuation Rules read independently lead to inclusion of a particular expense, which would otherwise not be included as per section 14, the said expense could not be included in the assessable value.

   The Finance Act, 2007 has substituted a new section 14 for existing section 14 with an aim to rectify this anomaly.

   The provisions of the new section are:

(i) Sub-section (1) lays down that for the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods.

(ii) In case of export goods, the transaction value shall be

- the price actually paid or payable for the goods
- when sold for export from India
- for delivery at the time and place of exportation
- where the buyer and seller of the goods are not related and
- price is the sole consideration for the sale.

However further conditions may be specified in the rules made in this behalf.

(iii) In case of imported goods, the transaction value shall be

- the price actually paid or payable for the goods when sold for export to India
- for delivery at the time and place of importation
- where the buyer and seller of the goods are not related and
- price is the sole consideration for the sale.

However, further conditions may be specified in the rules made in this behalf.

Such transaction value shall also include in addition to the price as aforesaid, any amount paid or payable for costs and services, including:

- commissions and brokerage,
- engineering,
- design work,
- royalties and licence fees,
- costs of transportation to the place of importation,
- insurance
- loading,
- unloading and
- handling charges

to the extent and in manner specified in the rules made in this behalf.

(iv) Such rules may provide for:

(a) the circumstances in which the buyer and the seller shall be deemed to be related;

(b) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(c) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.

(v) For imported goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing bill of entry under section 46.

(vi) For export goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing shipping bill (vessel or aircraft) or bill of export (vehicle) under section 50.

(vii) Sub-section (2) provides that the Board may fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods by notification in the Official Gazette if it is satisfied that it is necessary to do so.

(viii) Where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value. Provisions of sub-section (2) have an overriding effect on the provisions of sub-section (1).

(ix) The rate of exchange is notified by three agencies- the Central Board of Excise and Customs (Baord), the Reserve Bank of India and the Foreign Exchange Dealers' Association of India. For the purpose of customs valuation, "rate of exchange" means the rate of exchange-

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct,

for the conversion of Indian currency into foreign currency or foreign currency into Indian currency.

The CBEC notifies the rates on a monthly basis applicable from the first day of the month. There are separate rates for imported goods (selling rate) and export goods (buying rate).

(x) "Foreign currency" and ''Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999.

(xi) Consequential amendment has been made in clause (41) of section 2 defining value. As per the amended definition, the "value" in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14.

(xii) Consequential amendment has also been made in section 156 which empowers Central Government to make rules. In sub-section (2) clause (a) has been substituted by a new clause. The new clause (a) empowers the Central Government to make rules for the manner of determining the transaction value of the imported goods and export goods under sub-section (1) of section 14.

(Effective from a date to be notified by the Central Government)

2. Relevant date for refund of duty in case of judgement, decree, order etc. defined [Section 27(1)(b)]

Section 27 deals with the claim for refund of duty. It inter alia provides that claim for refund of duty should be filed within 6 months from the date of payment of duty. However, in case of imports made by any individual for his personal use or Government or by any educational research or Charitable Institution or hospital, the refund claim can be filed within 1 year from the date of payment of duty.

A new proviso has been inserted in sub-section (1) in clause (b) after the third proviso. This proviso lays down that the relevant date for the purpose of reckoning the limitation of 1 year or 6 months for filing the claim for refund of duty in consequences of judgement, decree, order or direction of appellate authority, Appellate Tribunal or any Court shall be the date of such judgement, decree, order or direction.

(Effective from 11.05.2007)

3. Meaning of 'joint venture in India' for the purpose of advance ruling clarified [Section 28E(c)]

Section 28E(c) defines the applicant who is eligible to seek advance ruling. A joint venture in India is an eligible applicant. An explanation has been inserted in clause (c) of section 28E which clarifies that "joint venture in India" means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a non-resident having substantial interest in such arrangement.

Thus, now in case of joint venture an application for advance ruling can be made only when one of the partners is non-resident.

(Effective from 11.05.2007)

4. Interest on drawback payable at the rate fixed under section 28AB [Section 75A(2)]

Section 75A(2) of the Customs Act, 1962 deals with payment of interest on drawback paid to a claimant erroneously. It inter alia provides that interest on erroneously paid drawback shall be chargeable at the rate fixed under section 28AA from the date after the expiry of 2 months from the date of demand till the date of recovery.

Following amendments have been made in sub-section (2) of section 75A by the Finance Act, 2007:

(i) The interest shall not only be payable in case of erroneous refund of drawback but also where the same becomes otherwise recoverable under the Customs Act or the rules made thereunder

(ii) The interest shall be charged at the rate fixed under section 28AB, and not under section 28AA. Currently the rate notified under section 28AB is 13%.

(iii) The amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

(Effective from 11.05.2007)

5. Provisions relating to Special Economic Zones omitted [Chapter XA]

Prior to operationalisation of Special Economic Zone (SEZ) Act, 2005, the scheme of SEZs was implemented through Chapter XA of the Customs Act, 1962, and the rules notified under the said Act. In view of the specific legislation covering SEZs, Chapter XA of the Customs Act, 1962 has become redundant.

The Finance Act, 2007 has accordingly omitted Chapter XA from the Customs Act, 1962.

(Effective from 11.05.2007)

6. Amendments relating to Settlement Commission

The amendments made in provisions relating to the Settlement Commission in the Customs Act are similar to the ones made in the Central Excise Act. Here also, the amendments tend to curtail the scope of Settlement Commission.

(i) Settlement Commission to entertain applications only in respect of cases pending before the adjudicating authority [Section 127A(b)]

Prior to 01.06.07, an application for settlement could be filed with the Settlement Commission even when original adjudicating authority had passed an order and the appeal was pending before a proper officer or the Central Government. However, section 127A has been amended by substituting clause (b) thereof so as to redefine 'case'. The new definition provides that:

"Case means any proceeding under this Act or any other Act for the levy, assessment and collection of customs duty, pending before an adjudicating authority on the date on which an application under sub-section (1) of section 127B is made.

Provided that when any proceeding is referred back in any appeal or revision, as the case may be, by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a proceeding pending within the meaning of this clause".

Thus, with effect from 01.06.07, Settlement Commission cannot be approached when an appeal is pending before a proper officer or the Central Governemnt. It can also not be approached when the matter is remanded for further adjudication. It can only be approached when original adjudication is pending.

(Effective from 01.06.2007)

(ii) Application for settlement cannot be made if goods are not included in the bill of entry or shipping bill [Section 127B(1)]

Section 127B contains the provisions in respect of application for settlement of cases. Following amendments have been made in this section by substituting sub-sections (1) and (1A) for the existing sub-section (1):

(i) The importer, exporter or any other person (applicant) shall be eligible to file an application only in respect of the goods for which he admits short levy on account of misclassification, undervaluation or inapplicability of exemption notification but not in respect of the goods which are not included in the bill of entry or shipping bill, as the case may be.

(ii) While filing any application, the applicant shall deposit the additional amount of customs duty accepted by him along with interest due under section 28AB. So far the applicant was required to pay duty only after application was admitted by the Settlement Commission.

(iii) The minimum settlement amount has been enhanced from Rs.2,00,000 to Rs.3,00,000.

(iv) In respect of an application filed before 1st June, 2007, but pending issuance of an order by the Commission, the applicant shall pay the accepted duty liability by 30th June, 2007, failing which the application shall be rejected.

(Effective from 01.06.2007)

(iii) Substitution of new section for section 127C in respect of procedure on receipt of an application under section 127B [New section 127C]

Since as per the amended provisions, the applicant would be required to pay the additional amount of customs duty along with interest at the time of filing the application itself, procedure under section 127C has been completely changed. Thus, a new section has been substituted for section 127C. The provisions of new section 127C are as follows:

(1) The Settlement Commission shall issue a notice to the applicant within 7 days from the date of receipt of the application to explain in writing as to why the application made by him should be allowed to be proceeded with. After taking into consideration the explanation provided by the applicant, the Settlement Commission shall, within a period of 14 days from the date of the notice, pass an order either allowing the application to be proceeded with, or rejecting the same. The proceedings before the Settlement Commission shall abate on the date of rejection.

However, where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

(2) A copy of every order under sub-section (1), shall be sent to the applicant and to the Commissioner of Customs having jurisdiction.

(3) Where an application is allowed or deemed to have been allowed to be proceeded with under sub-section (1), the Settlement Commission shall, within 7 days from the date of order under sub-section (1), call for a report along with the relevant records from the Commissioner of Customs having jurisdiction. The Commissioner shall furnish the report within a period of 30 days from the date of the receipt of communication from the Settlement Commission.

However, where the Commissioner does not furnish the report within the aforesaid period of 30 days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(4) After examination of the report of the Commissioner submitted within time, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct, for reasons to be recorded in writing, the Commissioner (Investigation) within 15 days of the receipt of the report, to make such further enquiry or investigation on the matters covered by the application and any other matter relating to the case. The Commissioner (Investigation) should furnish the report of such enquiry within a period of 90 days from the date of the receipt of the communication from the Settlement Commission.

However, where the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order under sub-section (5) without such report.

(5) The Settlement Commission may pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Customs and Commissioner (Investigation) after examination of the records, the report of the Commissioner of Customs and the report, if any, of the Commissioner (Investigation) of the Settlement Commission. An opportunity of being heard either in person or through a representative duly authorised in this behalf shall be given to the applicant and to the Commissioner of Customs having jurisdiction before passing of such order. The Commission shall also examine any further evidence as may be placed before it or obtained by it before passing the order.

(6) In respect of the applications filed on or before 31.05.2007, the order under sub-section (5) shall be passed by 29.02.2008 and in respect of the applications made on or after the 01.06.2007, the order shall be passed within 9 months from the last day of the month in which the application was made. However, if the order is not passed within the stipulated time, the settlement proceedings shall abate and the adjudicating authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 127B had been made.

(7) Subject to the provisions of section 32A of the Central Excise Act, 1944 the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under sub-

section (5). The provisions of section 32D of the Central Excise Act, 1944 shall apply in relation to the passing of such order.

(8) The order passed under sub-section (5) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective. However, in case of rejection the order shall contain the reasons therefor. The order shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

The amount of settlement ordered by the Settlement Commission shall not be less than the duty liability admitted by the applicant under section 127B.

(9) The duty, interest, fine and penalty payable in pursuance of the order under sub-section (5) shall be paid by the applicant within 30 days of receipt of a copy of the order by him. If the applicant fails to do so, the amount which remains unpaid shall be recovered along with interest due thereon as the sums due to the Central Government by the proper Officer having jurisdiction over the applicant in accordance with the provisions of section 142.

(10) Where a settlement becomes void as provided under sub-section (8), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission. The proper officer having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of 2 years from the date of the receipt of communication that the settlement became void.

Consequential amendments have been made in section 127F(2), 127H(2), 127J and 127K with respect to sub-sections of section 127C referred to in the said sections.

(Effective from 01.06.2007)

(iv) Settlement Commission debarred from reopening completed proceedings in respect of applications received on or after 1.06.2007 [Section 127E]

Section 127E empowers the Settlement Commission to reopen completed proceedings. However, the Finance Act, 2007 has disempowered the Settlement Commission to reopen the proceedings in cases where applications under section 127B are made on or after the 1st day of June, 2007.

(Effective from 01.06.2007)

(v) Settlement Commission debarred from granting immunity from prosecution for any offence under IPC or any Central Act other than Customs Act [Section 127H]

(i) Section 127H empowers Settlement Commission to grant immunity from prosecution and penalty. The Finance Act, 2007 has restricted the scope of such power of the Settlement Commission by withdrawing its power to grant immunity from prosecution for any offence under Indian Penal Code or any Central Act for the time being in force other than Customs Act.

(ii) Also, the Settlement Commission shall not have the power to grant immunity from payment of interest as provided under the Customs Act. The amendments in (i) and (ii) have been effected by amending sub-section (1) of section 127H.

(iii) After the proviso in sub-section (1) an explanation has been inserted. The explanation provides that the applications pending before the Settlement Commission on or before 31st May, 2007 shall be decided in accordance with the existing provisions.

(iv) As per sub-section (2), the immunity granted under sub-section (1) is withdrawn if the applicant inter alia fails to pay the sum specified in the settlement order within the time specified in such order or within the extended time granted by the Settlement Commission. The power of Settlement Commission to grant extension of time to pay the final sum specified in the settlement order has been taken away by amending sub-section (2), consequent to the amendment of section 127C.

(Effective from 01.06.2007)

(vi) Application for settlement permissible only once during the lifetime of the applicant [Section 127L]

Section 127L specifies the grounds under which an applicant is barred from making any subsequent application for settlement under section 127B.

Following amendments have been made in this section:

(i) Section 127L has been renumbered as sub-section (1) and the provisions of sub-section (1) shall be applicable only in respect of applications made before 01.06.07.

(ii) A new sub-section (2) has been inserted in section 127L to govern the applications made on or after 01.06.07. The new sub-section (2) lays down that where an applicant has made an application under sub-section (1) of section 127B, on or after the 1.06.2007 and if such application has been allowed to be proceeded with under sub-section (1) of section 127C, such applicant shall not be entitled to apply for settlement under section 127B in relation to any other matter. Thus, with effect from 01.06.07, an applicant can apply for settlement only once during his lifetime so that the scheme of settlement is not treated as a permanent amnesty scheme by the tax evaders.

(iii) However, in respect of cases involving identical recurring issue, but for the period of dispute and amount, the assessee can file application for settlement provided his earlier application is pending before the Settlement Commission.

(Effective from 01.06.2007)

(vii) Section 127MA omitted

Section 127MA entitles certain persons who have filed appeals to the Appellate Tribunal on or before 29.02.2000 to make application to the Settlement Commission. The Finance Act, 2007 has omitted this section as it has outlived its utility with the passage of time.

(Effective from 01.06.2007)

7. President, Vice-President and members of CESTAT prohibited from appearing/acting/pleading before the CESTAT when no longer in office [Section 129]

Section 129 contains the provisions in respect of constitution of the Appellate Tribunal. Sub-section (6) has been inserted after sub-section (5) with a view to debar the President, Vice-President or other Member of the Customs, Excise and Service Tax Appellate Tribunal from appearing, acting or pleading before the said Tribunal on ceasing to hold office.

(Effective from 11.05.2007)

8. Committee of Chief Commissioners or Commissioner to pass orders within a period of 3 months [Section 129D]

Section 129D(3) grants a maximum period of 1 year to the Committee of Chief Commissioners or Commissioner to review the orders of the Commissioner or adjudicating authorities below the rank of Commissioner respectively and pass an order directing such Commissioner or such adjudicating authority respectively to file an appeal.

(i) The Finance Act, 2007 has amended sub-section (3) of section 129D so as to reduce the period of 1 year to 3 months. The time available to Committee of Chief Commissioners and Commissioner to pass an order has been reduced with a view to expedite filing of appeal by the Central Government.

(ii) The time period of 3 months shall be computed from the date of communication of the decision or order of the adjudicating authority. Earlier the time period of 1 year was computed from the date of the decision or order of the adjudicating authority.

(iii) The time period available to such Commissioner or such adjudicating authority to file appeal before the Appellate Tribunal or the Commissioner (Appeals) respectively has also been reduced from 3 months to 1 month. This has been done by amending sub-section (4).

(Effective from 11.05.2007)

9. Fraudulent availment of drawback/exemption in connection with export of goods liable to imprisonment/fine and the categories of offences punishable with imprisonment upto 7 years and fine enlarged [Section 135(1)]

Section 135(1) of the Customs Act, 1962 prescribes the extent of penalty in terms of imprisonment and fine in respect of offences relating to evasion of any duty and violation of prohibitions imposed under the Customs Act or any other law for the time being in force.

The Finance Act, 2007 has made the following amendments in sub-section (1) of this section:

(i) Fraudulent availment of or attempt to avail of drawback or any exemption from duty provided under the Customs Act in connection with export of goods has also been made liable to imprisonment and fine.

(ii) The categories of offences punishable with imprisonment for a term which may extend to seven years and fine have been enlarged. Now, a person shall be punishable with imprisonment for a term which may extend to seven years and fine when the offence is relating to:

  (A) any goods the market price of which exceeds 1 crore of rupees; or

  (B) the evasion or attempted evasion of duty exceeding 30 lakh of rupees; or

  (C) such categories of prohibited goods as the Central Government may, by notification in the Official Gazette, specify; or

  (D) fraudulently availing of or attempting to avail of drawback or any exemption from duty if the amount of drawback or exemption from duty exceeds 30 lakh rupees.

(iii) The minimum punishment in respect of abovementioned offences has been reduced from 3 years to 1 year which could be relaxed by the court for reasons to be recorded in writing.

(Effective from 11.05.2007)

II. AMENDMENTS BY THE TAXATION LAWS (AMENDMENT) ACT, 2006

The Taxation Laws (Amendment) Bill, 2006 was enacted on 13.07.2006, the date on which it received the assent of the President. It has made certain amendments in the Customs Tariff Act, 1975 and the Customs Act, 1962 with the object of rationalizing and simplifying procedures, widening of tax base and plugging loopholes leading to leakage of revenue.

All the amendments made by the Taxation Laws (Amendment) Act, 2006 have come into effect from 13.07.2006.

Amendments in the Customs Act, 1962

1. Speaking order to be issued within 15 days of assessment in case of contrary claims by the assessee [Section 17]

   Section 17 of the Customs Act, 1962 governs the provisions in respect of assessment. A new sub-section (5) has been inserted after sub-section (4) in section 17. The new sub-section (5) lays down that where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification and in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within 15 days from the date of assessment of the bill of entry or the shipping bill, as the case may be.

2. Interest to be paid on the duty difference between the provisional and final assessment [Section 18]

Section 18 of the Customs Act lays down the provisions in respect of provisional assessment. Duty is paid in two stages in case of provisional assessment; firstly, at the time of provisional assessment and another at the stage of finalization of assessment. A new sub-section (3) has been inserted in section 18 to levy interest on the duty difference in the provisional and final assessment of duty. This may expedite the recovery of duty short-levied under provisional assessment of duty. Provisions of sub-section (3) are detailed under:

(1) Sub-section (3) provides that the importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order.

(2) The interest shall be payable at the rate fixed by the Central Government under section 28AB.

(3) This interest shall be payable from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) If the refund arising out of the final assessment of goods cleared for home consumption or exportation (in case the amount paid at the time of provisional assessment exceeds the amount determined to be payable at the final assessment) is not refunded within 3 months from the date of final assessment of duty, interest shall be paid to the assessee on such unrefunded amount till the date of refund of such amount.

(5) This interest shall be payable at the rate fixed by the Central Government under section 27A. The refund of duty and interest thereon shall be subject to the conditions mentioned in point no.6 below.

(6) The amount of such refundable duty and such interest, if any shall be paid to the importer or the exporter, as the case may be, only if such amount is relatable to:

   (a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

   (b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

   (c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

   (d) the export duty as specified in section 26;

   (e) drawback of duty payable under sections 74 and 75.

In all other cases the amount of such refund and interest shall be credited to the Consumer Welfare Fund.

3. Adjudication proceedings to conclude in respect of a person who voluntarily deposits the full duty demanded along with interest and penalty equal to 25% of the duty [Section 28(1A)]

   (i) Section 28(1) provides that where any duty is not/short levied or erroneously refunded or where any interest payable is not/part paid or erroneously refunded, the proper officer may serve notice on the person chargeable with such duty or interest in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year from the relevant date. In any other case the notice can be issued within 6 months from the relevant date. However, this period of 1 year and 6 months is extended to 5 years when such short/non levy or non charging or short payment of interest or erroneous refund of duty and interest is by reason of fraud, collusion, or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter.

   (ii) A new sub-section (1A) has been inserted after sub-section (1) in section 28. The new sub-section provides an option to the importer or the exporter or the agent or employee of the importer or exporter to whom a notice has been served by the proper officer for short/non levy or non charging or short payment of interest or erroneous refund of duty and interest by reason of fraud, collusion, or any wilful mis-statement or suppression of facts.

   (iii) Such a person may pay the duty in full or in part as may be accepted by him including the interest payable thereon under section 28AB and penalty equal to 25% of the duty specified in the notice or the duty so accepted by such person within 30 days of the receipt of the notice.

   (iv) Further, a proviso has been inserted in sub-section (2) of section 28. Sub-section (2) provides that the proper officer shall consider the representation, if any, made by the person on whom a notice under sub-section (1) is served. He shall determine the amount of duty or interest due from such person and thereupon such person shall pay the amount so determined. However, such amount shall not exceed the amount specified in the notice.

   (v) The newly inserted proviso lays down that where such a person has paid the duty in full together with interest and penalty, the proceedings in respect of such person and other persons to whom notices (referred to in point 1) have been served shall be deemed to have been concluded in respect of the matters stated therein. The proceedings shall conclude notwithstanding anything contained in sections 135, 135A and 140.

   (vi) Another proviso has been inserted in sub-section (2). This proviso lays down that in cases where such person has paid duty in part along with interest and penalty, the proper officer shall determine the amount of duty or interest which will not exceed the amount partly due from such person.

4. Persons furnishing false declaration/documents under section 132, obstructing customs officers under section 133, making preparatory actions for illegal export under section 135A and customs officers guilty of offence under section 136 may also be arrested [Section 104]

   Section 104 of the Customs Act grants the power of arrest to officer of customs. Sub-section (1) of section 104 has been substituted by a new sub-section. The new sub-section lays down that if an officer of customs empowered in this behalf by general or special order of the Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest. Thus, arrest can also be made in the cases of furnishing false declaration/documents, obstructing customs officers in exercising their powers and making preparation to export any goods in contravention of the provisions of the Customs Act. Further, any officer of customs permitting or doing or abstaining from doing or concealing or conniving at any act or thing whereby any fraudulent export is effected or any duty of customs leviable on any goods is or may be evaded can also be arrested.

5. Summons to be issued in case of any inquiry [Section 108]

   Section 108 of the Customs Act empowers any gazetted officer to summon any person to give evidence and to produce documents in any inquiry which such officer is making in connection with the smuggling of any goods. Sub-section (1) of section 108 has been substituted by a new sub-section. The new sub-section lays down that any gazetted officer of customs duly empowered by the Central Government in this behalf, shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act. Thus, with this amendment, summons cannot only be issued in connection with smuggling, but for any inquiry under the Customs Act. Further, the gazetted officer issuing the summons should be duly empowered to do so by the Central Government.

6. Use of false and incorrect material to be penalized [New section 114AA]

   After section 114A of the Customs Act, section 114AA has been inserted. The new section lays down that if a person knowingly or intentionally

   - makes,
   - signs or uses, or
   - causes to be made,
   - signed or used,

   any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Customs Act, shall be liable to a penalty. The penalty shall not exceed 5 times the value of goods.

7. Show cause notice before confiscation of goods to be issued only with the prior approval of the officer of customs not below the rank of a Deputy Commissioner of Customs [Section 124]

   As per section 124 a written notice is to be issued to the owner of the goods before confiscating any goods or imposing any penalty on such person. Section 124 has been amended to the effect that now such a notice can be issued only with the prior approval of the officer of customs not below the rank of a Deputy Commissioner of Customs.

8. Commissioner to direct any officer of customs subordinate to him to apply to the Commissioner (Appeals) [Section 129D(2)]

   Section 129D(2) of the Customs Act gives powers to Commissioner of Customs to pass certain orders. The Commissioner of Customs may of its own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any order so as to satisfy itself upon the legality or propriety of the order. Thereafter, the Commissioner may direct such authority to apply to the Commissioner (Appeals) to determine such points as may be specified by it.

   The Taxation Laws (Amendment) Act, 2006 has amended section 129D(2) to the effect that now the Commissioner may also direct any officer of customs subordinate to him (apart from the adjudicating authority subordinate to him which has passed the order) to apply to the Commissioner (Appeals) to determine such points as may be specified by it.

9. Term of imprisonment increased from 6 months to 2 years in case of furnishing of false declarations/documents etc. [Section 132]

   Section 132 of the Customs Act provides for an imprisonment of 6 months or fine, or both, in case of furnishing of false declaration or documents. This term of imprisonment has been increased from 6 months to 2 years.

10. Term of imprisonment increased from 6 months to 2 years in case of obstruction of officers of customs [Section 133]

    Section 133 of the Customs Act provides for an imprisonment of 6 months or fine, or both, in case of obstructing officers of customs in exercising their powers. This term of imprisonment has been increased from 6 months to 2 years.

11. Prior sanction of Commissioner of Customs necessary to take cognizance in case of offence under section 135A also [Section 137]

    Section 137 lays down that previous sanction of the Commissioner of Customs is necessary for any Court to take cognizance in case of offences under section 132, section 133, section 134 or section 135. Section 137 has been amended to include offences under section 135A i.e., making preparatory actions for illegal export etc. amongst the list of offences for which the cognizance can be taken by the Courts only with the prior sanction of the Commissioner of Customs.

12. Property may be attached provisionally to protect revenue in certain cases [New section 28BA]

A new section 28BA has been inserted by the Taxation Laws (Amendment) Act, 2006. The provisions of this section are:

(1) During the pendency of any proceeding under section 28 or section 28B, the proper officer may provisionally attach any property belonging to the person on whom notice is served under sub-section (1) of section 28 or sub-section (2) of section 28B, as the case may be, in accordance with the rules made in this behalf under section 142 of the Customs Act, 1962.

(2) Such an attachment shall be done only when the proper officer is of the opinion that the attachment is necessary for the purpose of protecting the interests of revenue. However, a previous approval of the Commissioner of Customs, by order in writing, is a prerequisite for such provisional attachment.

(3) Such an attachment can be done for a period of 6 months. This period will commence from the date of the order of the Commissioner of Customs permitting such provisional attachment.

(4) However, this period may be extended by the Chief Commissioner of Customs by such further period or periods as he thinks fit. The reasons for such an extension shall be recorded in writing. It is to be noted that the total period of extension in any case shall not exceed 2 years.

(5) If an application for settlement of a case under section 127B is made to the Settlement Commission, the period commencing from the date on which such an application is made and ending with the date on which an order under section 127C(1) is made shall be excluded from the extended period mentioned in point (4).

13. Seized goods, documents and things pending adjudication to be released provisionally [New section 110A]

A new section 110A has been inserted after section 110 of the Customs Act. The new section lays down that any goods, documents or things seized under section 110, may, pending the order of the adjudicating officer, be released to the owner. Such release shall be made when the owner executes a bond in the proper form with such security and conditions as the Commissioner of Customs may require.

14. Information in respect of persons in certain cases to be published [New section 154B]

This new section, added by the Taxation Laws (Amendment) Act, 2006 provides for publishing the name of any person and particulars of any proceedings in relation to such person, in public interest. The provisions are discussed below in detail:

(1) The Central Government may publish name of any person and any other particulars relating to any proceedings in respect of such person if it is of the opinion that it is necessary or expedient in the public interest to do so. The Government can do the publication in such manner as it thinks fit.

(2) The publication shall be made in relation to any penalty only after the time for presenting an appeal to the Commissioner (Appeals) or the Appellate Tribunal expires without an appeal being presented or the appeal, if presented, gets disposed of.

(3) In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, circumstances of the case justify it.

Amendment in the Customs Tariff Act, 1975

1. The words "all such countries" clarified to mean "developing countries each with less than 3% import share" in proviso to section 8B(1)

   As per the proviso to section 8B(1) of the Customs Tariff Act, 1975 articles originating from developing country are exempt from safeguard duty so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India. In case of articles originating from more than one developing country, the exemption will be available if the aggregate of imports from all such countries taken together does not exceed 9% of the total imports of that article into India.

   In the said proviso the words "all such countries" have been substituted with the words "developing countries each with less than 3% import share". Thus, it has been clarified that in case of articles originating from more than one developing country the exemption from safeguard duty shall be available only if the aggregate of import from all developing countries each with less then 3% import share does not exceed 9% of the total imports of that article into India.

III. SIGNIFICANT AMENDMENTS MADE THROUGH NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2006 AND 30.04.2007

1. Notification No.80/2006-Cus (N.T.) dated 13.07.2006 has amended the Customs and Central Excise Duties Drawback Rules, 1995. These rules have been rechristened as Customs, Central Excise Duties and Service Tax Drawback Rules, 2006 and have been accordingly amended to provide for the drawback of service tax paid on taxable services used as input services in the manufacture or processing of export goods.

   The new drawback rates shall now also take into account the incidence of service tax paid on taxable services which are used as input services in the manufacturing or processing of export goods. The exporters should not avail of the refund of this tax through any other mechanism while claiming the all industry rate of drawback.

C. SERVICE TAX

I. AMENDMENTS BY THE FINANCE ACT, 2007

Secondary and Higher Education Cess

A secondary and higher education cess @ 1% is being imposed on services liable to service tax. It shall be levied on the service tax payable on such services. The provisions of the Chapter V of the Finance Act, 1994 and the rules including those relating to refunds and exemptions from tax and imposition of penalty shall apply in relation to the levy and collection of the secondary and higher education cess on taxable services as they apply in relation to the levy and collection of tax on such taxable services.

(Effective from 11.05.2007)

Amendments in Chapter V and VA of the Finance Act, 1994

1. 7 new services brought under the service tax net [section 65]

   This year seven services have been brought under the tax net. However, all these services are not new, some of the old services have been merged together under one separate category. The seven services are:

   (i) Telecommunication service (includes individual services in respect of telephone, pager, leased circuit, telegraph, telex and facsimile communication)

   (ii) Mining services

   (iii) Services provided in relation to renting of immovable property, other than residential properties and vacant land, for use in the course or furtherance of business or commerce

   (iv) Services provided in relation to the execution of a works contract

   (v) Development and supply of content for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services

   (vi) Asset management services including portfolio management and all forms of fund management service provided by any person, except a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern

   (vii) Design services

   (Effective from 01.06.2007)

   Each of the abovementioned 7 services have been discussed below:

   (i) Telecommunication service

   Individual services in respect of telephone, pager, leased circuit, telegraph, telex and facsimile communication have been merged under this service. Consequently, sub-clauses (b), (c), (zd), (ze), (zf) and (zg) of section 65(105) and clause (60) and clause

(104) of section 65 covering the provisions relating to these individual services have been omitted.

"Telecommunication service" means service of any description provided by means of any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence or information of any nature, by wire, radio, optical, visual or other electro-magnetic means or systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception by a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1885 and includes-

(i) voice mail, data services, audio tex services, video tex services, radio paging;

(ii) fixed telephone services including provision of access to and use of the public switched telephone network for the transmission and switching of voice, data and video, inbound and outbound telephone service to and from national and international destinations;

(iii) cellular mobile telephone services including provision of access to and use of switched or non-switched networks for the transmission of voice, data and video, inbound and outbound roaming service to and from national and international destinations;

(iv) carrier services including provision of wired or wireless facilities to originate, terminate or transit calls, charging for interconnection, settlement or termination of domestic or international calls, charging for jointly used facilities including pole attachments, charging for the exclusive use of circuits, a leased circuit or a dedicated link including a speech circuit, data circuit or a telegraph circuit;

(v) provision of call management services for a fee including call waiting, call forwarding, caller identification, three-way calling, call display, call return, call screen, call blocking, automatic call-back, call answer, voice mail, voice menus and video conferencing;

(vi) private network services including provision of wired or wireless telecommunication link between points for the exclusive use of the client;

(vii) data transmission services including provision of access to wired or wireless facilities and services specifically designed for efficient transmission of data; and

(viii) communication through facsimile, pager, telegraph and telex,

but does not include service provided by-

(a) any person in relation to on-line information and database access or retrieval or both referred to in sub-clause (zh) of clause (105);

(b) a broadcasting agency or organisation in relation to broadcasting referred to in sub-clause (zk) of clause (105); and

(c) any person in relation to internet telephony referred to in sub-clause (zzzu) of clause (105) [Section 65(109a)].

Scope of taxable service shall include service provided or to be provided to any person by the telegraph authority in relation to telecommunication service [Section 65(105)(zzzx)].

It is important to note that the existing condition of the recipient of service being a subscriber in telecommunication related services has been changed to any person in the new service.

(ii) Mining service

Geological, geophysical or other prospecting, surface or sub-surface surveying or map-making services relating to location or exploration of deposits of mineral, oil or gas are leviable to service tax under survey and exploration of mineral service under section 65(105)(zzv). Other services in relation to mining such as site formation and clearance, and excavation and earth moving, drilling wells for production/exploitation of hydrocarbons (development drilling), well testing and analysis services etc. are also individually classified under the appropriate taxable services. The Finance Act, 2007 has introduced a separate mining service in order to cover services provided in relation to mining of mineral, oil and gas.

Scope of the taxable service shall include service provided or to be provided to any person, by any other person in relation to mining of mineral, oil or gas [Section 65(105)(zzzy)].

Thus, now services provided in relation to both exploration and exploitation of mineral, oil or gas would be covered under the service tax net.

(iii) Renting of immovable property service

"Renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include —

(i) renting of immovable property by a religious body or to a religious body; or

(ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

Explanation.—For the purposes of this clause, "for use in the course or furtherance of business or commerce" includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings [Section 65(90a)].

Scope of taxable service shall include service provided or to be provided by to any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce.

Explanation 1.—For the purposes of this sub-clause, "immovable property" includes—

(i) building and part of a building, and the land appurtenant thereto;

(ii) land incidental to the use of such building or part of a building;

(iii) the common or shared areas and facilities relating thereto; and

(iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,

but does not include-

(a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;

(b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;

(c) land used for educational, sports, circus, entertainment and parking purposes; and

(d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

Explanation 2.—For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce [Section 65(105)(zzzz)].

Therefore, in case of a single composite contract of renting of immovable property involving part of property for use in commerce or business and part of it for residential/accommodation purposes, the total value of the contract shall be the taxable value.

(iv) Service involved in the execution of a works contract

In a works contract, sales tax /VAT is levied on the transfer of property in goods involved in the execution of such works contract. Now the Finance Act, 2007 has levied service tax on the service element involved in the execution of a works contract.

Scope of taxable service shall include service provided or to be provided to to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation.—For the purposes of this sub-clause, "works contract" means a contract wherein,—

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out,—

    (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects [Section 65(105)(zzzza)].

Thus, the definition of works contract is an exhaustive one.

The Finance Minister P. Chidambaram in his budget speech has announced a composition scheme for the service providers involved in the execution of a works contract. The scheme would give an option to the assessee to pay 2% of the total value of the works contract as service tax. Assessees opting for the composition scheme would not be entitled to avail CENVAT credit of capital goods, inputs and input services required for use in the works contract. The assesses who do not opt for this scheme would pay service tax on the taxable value of the works contract which is relatable to services provided in the execution of a works contract. Such value would be determined on actual basis based on the records maintained by the assessee. Valuation of works contract and details of the composition scheme will be notified separately.

(v) Development and supply of content service

"Development and supply of content" includes development and supply of mobile value added services, music, movie clips, ring tones, wall paper, mobile games, data, whether or not aggregated, information, news and animation films [Section65(36c)].

Scope of taxable service shall include service provided or to be provided to any person, by any other person in relation to development and supply of content for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services [Section 65(105)(zzzzb)].

(vi) Asset management including portfolio management and all forms of fund management service

Asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or any other person is leviable to service tax under banking and other financial service.

The Finance Act, 2007 has substituted the words "any other person" with "commercial concern" in the definition of banking and other financial service (discussed in pt. 3(v) later). Therefore, in order to cover asset management and similar services provided by persons, other than the ones covered under banking and other financial services, a separate category of service has been introduced by the Finance Act, 2007.

Scope of taxable service shall include service provided or to be provided to any person, by any other person, except a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern referred to in sub-clause (zm), in relation to asset management including portfolio management and all forms of fund management [Section 65(105)(zzzzc)].

(vii) Design services

Services in relation to conceptualizing, outlining, creating the designs and preparing patterns for costumes, apparels, garments, clothing accessories, jewellery or any other articles intended to be worn by human beings are leviable to service tax under the fashion designing service. Services in relation to planning, design or beautification of spaces is leviable to service tax under the interior decorator's service. The Finance Act, 2007 has included design services provided to any person by any person other than an interior decorator and a fashion designer under this new category of service. The definition of this service reads as under:

"Design services" includes services provided in relation to designing of furniture, consumer products, industrial products, packages, logos, graphics, websites and corporate identity designing and production of three dimensional models [Section 65(36b)].

Scope of taxable service shall include service provided or to be provided to any person, by any other person in relation to design services, but does not include service provided by-

(i) an interior decorator referred to in sub-clause (q); and

(ii) a fashion designer in relation to fashion designing referred to in sub-clause (zv) [Section 65(105)(zzzzd)].

3. Scope of certain existing services expanded [Section 65]

All the changes in respective services specified below have come into effect from 01.06.2007

(i) Sale of space or time for advertisement, other than in print media

Sale of space or time for advertisement, other than in print media is chargeable to service tax under sub-clause (zzzm) of clause (105) of section 65. The scope of this service has been expanded by substituting the explanation 2 to the clause (zzzm) which defines print media. The new explanation states that print media does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes. Consequently, sale of space for advertisement in such publications will also be leviable to service tax under this service.

(ii) Rent-a-cab service

Under this category, services provided by a rent-a-cab scheme operator in relation to the renting of cabs carrying up to 12 passengers, excluding the driver, for hire or reward are chargeable to service tax.

However, the Finance Act, 2007 has included services provided in relation to renting of motor vehicles capable of carrying more than 12 passengers (e.g. bus) within the scope of this service. This has been done by amending the definition of the "cab" provided under clause (20) of section 65. The new definition reads as under:

"Cab" means-

(i) a motorcab, or

(ii) maxicab, or

(iii) any motor vehicle constructed or adapted to carry more than 12 passengers excluding the driver, for hire or reward.

However, the maxicab referred to in sub-clause (ii) or motor vehicle referred to in sub-clause (iii) which is rented for use by an educational body imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre, shall not be included within the meaning of cab.

Thus, renting of motorcab to an educational body would be leviable to service tax.

(iii) Mandap keeper service, pandal or shamiana service and event management service

Mandap keeping services and pandal or shamiana services provided in organizing a social function are chargeable to service tax. The Finance Act, 2007 has clarified that social functions include marriage functions. This has been done by inserting explanations in the definitions of mandap [section 65(66)], mandap keeper [section 65(67)] and pandal or shamiana [section 65(77a)].

Further, definition of event management provided under section 65(40) has also been amended so as to specifically include event of marriage within the scope of this service. Thus, now mandap keeping service, pandal or shmiana service and event management service provided in organizing a marriage shall be chargeable to service tax.

(iv) Consulting engineer's service

Consultancy in the filed of computer hardware engineering has been included within the scope of taxable services provided by a consulting engineer by amending the definition of taxable consulting service provided under sub-clause (g) of clause (105) of section 65.

Prior to this amendment, consultancy services in relation to computer hardware and software were specifically excluded from the scope of the consulting engineer's services. However, the amended definition of taxable service provided by a consulting engineer still excludes consultancy provided in the filed of computer software engineering.

(v) Banking and financial service

(i) The Finance Act, 2007 has substituted the words "or any other person" with "or commercial concern" in the definition of banking and other financial services provided under clause (12) of section 65 and the meaning of taxable service provided under sub-clause (zm) of clause (105) of section 65.

(ii) Section 65(12)(v) provides that banking and other financial services means asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services, but does not include cash management. However, the Finance Act, 2007 has omitted the specific exclusion of cash management. Consequently, cash management shall be liable to service tax under this service.

(iii) Item (i) of clause (12) of section 65 provides that banking and other financial services means financial leasing services including equipment leasing and hire purchase. An explanation has been inserted at the end of item (i) to clarify the meaning of financial lease. The new explanation reads as under:

"Explanation.—For the purposes of this item, "financial leasing" means a lease transaction where—

(i) contract for lease is entered into between two parties for leasing of a specific asset;

(ii) such contract is for use and occupation of the asset by the lessee;

(iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and

(iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment."

(vi) Management consultancy service

Section 65(105)(r) defines taxable management consultancy service. The Finance Act, 2007 has amended the said sub-clause to rename the management consultancy as management or business consultancy. The amended sub-clause provides that the "taxable service means any service provided or to be provided to a client, by a management or business consultant in connection with the management of any organisation or business, in any manner."

Consequently, clause (65) of section 65 defining management consultant has also been amended so as to explicitly include business consultancy within the scope of management consultancy service.

(vii) Manpower recruitment or supply agency's services

The Finance Act, 2007 has inserted an explanation at the end of sub-clause (k) of clause (105) of section 65 which defines taxable manpower or recruitment supply service. The explanation clarifies that recruitment or supply of manpower service includes the following services:

(a) pre-recruitment screening,

(b) verification of the credentials and antecedents of the candidate, and

(c) authenticity of documents submitted by the candidate.

(viii) Management, maintenance or repair service

The Finance Act, 2007 has inserted an explanation at the end of clause (64) of section 65 which defines management, maintenance or repair.

The explanation clarifies that for the purpose of management, maintenance or repair service "goods" includes computer software.

Therefore, with effect from 01.06.2007, maintenance, repair or management of computer software would attract service tax. It may be noted that development of computer software, being information technology service, is distinct from maintenance or repair of computer software and does not attract service tax.

4. Delayed return may be filed with late fee [Section 70(1)]

(i) Section 70(1) provides that every person liable to pay service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed. The Finance Act, 2007 has amended section 70(1) to provide filing of periodical return after the due date with the prescribed late fee of not more than Rs.2,000.

So far, filing of a return after the due date has been treated as a violation and was liable for penal action under 77.

(ii) A consequential amendment has been made in section 94 by substituting clause (c). Section 94 contains the matters on which the Central Government may, by notification in the Official Gazette, make rules. New clause (c) empowers Central Government to make rules regarding the form, manner and frequency of the returns to be furnished under sub-sections (1) and (2) and the late fee for delayed furnishing of return under sub-section (1) of section 70.

(Effective from 11.05.2007)

5. Special audit introduced for CENVAT credit of service tax [Section 83]

Section 83 enlists the sections of the Central Excise Act, 1944 that are applicable to service tax. The Finance Act, 2007 has added two more sections of the Central Excise Act, 1944 in the said list thereby making them applicable to the service tax matters.

(i) The provisions of section 14AA of the Central Excise Act, 1944 have been made applicable to service tax matters so as to order special audit in cases where credit availed or utilised is not within the normal limits.

(ii) The provisions of section 38A of the Central Excise Act, 1944 have been made applicable in respect of service tax matters so as to protect actions under rules and notifications that existed prior to changes in the rules and notifications.

(Effective from 11.05.2007)

6. Powers of review to be exercised by Committee of Chief Commissioners/Commissioners [Section 86]

   (i) The Finance Act 2007 has inserted a new sub-section (1A) in section 86 to empower the Board to constitute Committees by notification in the Official Gazette. The Committee shall consists of two Chief Commissioners or two Commissioners of Central Excise.

   (ii) Thus, now the Committee of Chief Commissioners of Central Excise shall review the orders of the Commissioner of Central Excise and not the Board. This has been done by amending sub-section (2).

   (iii) Further, the orders of the Commissioner of Central Excise (Appeals) shall be reviewed by the Committee of Commissioners of Central Excise and not by the Commissioner of Central Excise. This has been done by amending sub-section (2A).

   (iv) Consequential amendment has been made in sub-section (3) by substituting the words "Board or by the Commissioner of Central Excise" with the words "Committee of Chief Commissioners or the Committee of Commissioners".

   (Effective from 11.05.2007)

7. Central Government empowered to remove difficulties arising in implementing, classifying or assessing the value of any taxable service introduced by the Finance Act, 2007 [Section 95]

   Section 95 inter alia empowers Central Government to issue orders for removing difficulties, which may arise in respect of implementing or assessing the value of any taxable service introduced by any of the Finance Acts.

   Section 95 has been amended to provide that if any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated by the Finance Act, 2007, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of Chapter V of the Finance Act, 1994, remove the difficulty.

   However, no such order shall be made after the expiry of a period of 1 year from 11.05.2007.

   (Effective from 11.05.2007)

8. Meaning of 'joint venture in India' for the purpose of advance ruling clarified [Section 96A(b)]

   Section 96A(b) defines the applicant who is eligible to seek advance ruling. A joint venture in India is an eligible applicant. An explanation has been inserted in clause (b) of section 96A which clarifies that "joint venture in India" means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a non-resident having substantial interest in such arrangement.

Thus, in case of a joint venture an applicant for advance ruling can be made only when one of the partners is non-resident.

(Effective from 11.05.2007)

II. SIGNIFICANT AMENDMENTS MADE THROUGH NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2006 AND 30.04.2007

Exemptions

1. Notification No. 7/2006 ST dated 01.03.2006 exempting taxable services, provided or to be provided to any person, by Reserve Bank of India, from the whole of service tax leviable thereon has been superseded by Notification No. 22/2006 ST dated 31.05.2006. This notification exempts the following taxable services from the whole of the service tax leviable thereon:

   (i) taxable services provided or to be provided to any person, by the Reserve Bank of India;

   (ii) taxable services provided or to be provided by any person, to the Reserve Bank of India when the service tax for such services is liable to be paid by the Reserve Bank of India under sub-section (2) of section 68 of the said Finance Act read with rule 2 of the Service Tax Rules, 1994;

   (iii) taxable services received in India from outside India by the Reserve Bank of India under section 66A of the Finance Act, 1994.

2. Following amendments have been made in Notification No. 1/2006 ST dated 01.03.2006 which grants partial exemptions from service tax to certain specified services:

   (i) Abatement granted to erection, commissioning or installation service under a contract for supplying a plant, machinery or equipment and erection, commissioning or installation thereof has been extended to structures as well. This amendment is in view of the modification made in the definition of erection, commissioning or installation service by the Finance Act, 2006 [Notification No. 21/2006 ST dated 23.05.2006].

   (ii) Business auxiliary service, in relation to production or processing of parts and accessories used in the manufacture of cycles, cycle rickshaws and hand-operated sewing machines, for, or on behalf of, the client has been granted an abatement of 30% from the gross amount charged for such service. This abatement is available when the gross amount charged from the client is inclusive of the cost of inputs and input services, whether or not supplied by the client.

   However, the exemption is not available in cases where –

   (i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service has been taken under the provisions of the CENVAT Credit Rules, 2004; or

(ii) the service provider has availed the benefit under Notification No. 12/2003-ST, dated 20.06.2003 [Notification No. 23/2006 ST dated 02.06.2006].

3. Notification No. 25/2006 ST dated 13.07.2006 has exempted the taxable services provided or to be provided by a practising chartered accountant, a practising cost accountant and a practising company secretary, in their professional capacity, to a client, relating to representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force, by way of issue of notice, from the whole of service tax leviable thereon.

4. Notification No. 31/2006 ST dated 11.12.2006 has exempted the taxable service provided by an insurer, carrying on general insurance business, to a policy holder for the insurance of sheep, from the whole of service tax leviable thereon. However, the exemption contained in this notification shall be valid only upto 31.12.2009.

5. Notification No. 4/2007 ST dated 01.03.2007 has amended Notification No.6/2005 ST dated 01.03.2005 in order to raise the exemption limit in case of small service providers from the current Rs.4,00,000 to Rs.8,00,000 with effect from 01.04.2007. Thus, taxable services of aggregate value not exceeding Rs.8,00,000 in any financial year would be exempt from service tax if the aggregate value of taxable services rendered by a provider of taxable service from one or more premises does not exceed Rs.8,00,000 in the preceding financial year.

6. Consequent upon the increase in the threshold exemption limit from Rs.4 lakh to Rs.8 lakh, the limit for obtaining service tax registration has also been increased from Rs.3 lakh to Rs.7 lakh by amending Notification Nos. 26/2005-ST and No.27/2005-ST, both dated 07.06.05 vide Notification Nos. 5, 6 & 7/2007 ST dated 01.03.07. This amendment is effective from 01.04.2007.

7. Notification No. 8/2007 ST dated 01.03.2007 has exempted the taxable services provided or to be provided by a resident welfare association under section 65(105)(zzze) to its members from whole of the service tax leviable thereon. However, the exemption is subject to the condition that the total consideration received from an individual member by the said association for providing the said services does not exceed Rs.3,000 per month. This service would otherwise be taxable under the category of membership of clubs or association.

   It has been clarified vide F.No.137/68/2007-CX.4 dated 08.05.2007 that a resident welfare association registered as a co-operative society with Registrar of Co-operative Societies is eligible to avail exemption from levy of service tax vide Notification No.8/2007 ST dated 01.03.2007 provided the following conditions are satisfied, namely:-

   (i) The exemption is available for the services specified under section 65(105)(zzze) of the Finance Act, 1994 and provided or to be provided by the association to its members.

   (ii) The sole criterion for membership of the resident welfare association is the residential status of a person in a residential complex or locality i.e., membership of the association is restricted only to the residents of the complex or locality.

(iii) The value of total consideration received from an individual member by the association for providing the services should not exceed Rs.3,000/- per month.

8. With effect from 01.04.2007, Notification No. 9/2007 ST dated 01.03.2007 exempts all taxable services provided or to be provided by Technology Business Incubators (TBI)/Science and Technology Entrepreneurship Parks (STEP) recognized by National Science and Technology Entrepreneurship Board (NSTEBD) of the Department of Science & Technology from the whole of service tax leviable thereon. The exemption contained in this notification shall be subject to the following conditions:

   (i) the STEP or the TBI, who intends to avail the exemption, shall furnish the requisite information containing the details of the incubator along with the information received from each incubatee to the concerned Assistant/Deputy Commissioner of Central Excise before availing the exemption; and

   (ii) the STEP or the TBI shall thereafter furnish the information in the formats mentioned above in the same manner before the 30th day of June of each financial year.

9. With effect from 01.04.2007, Notification No. 10/2007 ST dated 01.03.2007 has exempted taxable services provided or to be provided by an (incubatee) entrepreneur located within the premises of a TBI/STEP recognized by the NSTEDB of the Department of Science and Technology Government of India from the whole of the service tax leviable thereon subject to the following conditions:-

   (i) the entrepreneur enters into an agreement with the TBI or the STEP as an incubatee, to enable himself to develop and produce hi-tech and innovative products; and

   (ii) the total business turnover of such entrepreneur does not exceed Rs.50 lakh during the previous financial year.

   Further, the exemption contained in this notification shall apply for a period of 3 years from the date on which such entrepreneur enters into an agreement with the TBI or the STEP.

   The exemption for taxable services under this notification shall not be available for any taxable services provided or to be provided immediately after the total business turnover of the entrepreneur exceeds Rs.50 lakh during a given financial year.

10. Notification No. 11/2007 ST dated 01.03.2007 has exempted the technical testing and analysis services of new drugs, including vaccines and herbal remedies, on human participants so as to ascertain the safety and efficacy of such drugs by a Clinical Research Organization (CRO) (approved to conduct clinical trials by the Drugs Controller General of India) from the whole of service tax leviable thereon.

11. Notification No. 12/2007 ST dated 01.03.2007 has exempted the taxable services, provided or to be provided, under an agreement, by any person to other person who has the right to authorise any person to exhibit cinematograph film, from the whole of the service tax leviable thereon subject to the following conditions:

(i) that the service provided or to be provided is in relation to the delivery of the content of the cinematograph film; and

(ii) that the content of such film, being in digitized form, after its encryption, is transmitted directly to a cinema theatre for exhibition through the use of satellite, microwave or terrestrial communication line and not by any physical means including CD and DVD.

Explanation. – For the purposes of this notification,-

(a) "cinematograph film" means a film certified under section 5A of the Cinematograph Act, 1952;

(b) "cinema theatre" means a place which is licenced under Part III of the Cinematograph Act, 1952, or under any other law for the time being in force in a state for the exhibition of a cinematograph film.

12. During the period between 01.04.2000 and 04.02.2004 there was a practice of not levying service tax on services provided by a tour operator providing services in relation to transport of passengers (other than services provided in relation to package tour) operating under a contract carriage permit issued by the appropriate transport authority. However, such services were liable to service tax under section 65(105)(n) of the Finance Act.

Therefore, in exercise of the powers conferred by section 11C of the Central Excise Act 1944 read with section 83 of the Finance Act, the Central Government has directed vide Notification No.15/2007 ST dated 04.04.2007 that service tax on 60% of the gross amount charged by such tour operators shall not be required to be paid in respect of such taxable service on which the service tax was not being levied during the aforesaid period in accordance with the said practice.

Other Amendments

13. When Service Tax (Determination of Value) Rules, 2006 were notified on 19.04.2006, Rule 6(2)(iii) inter alia provided that the rail fare collected by "air travel agent" in respect of service provided by him does not form part of the taxable service. This error has now been rectified vide Notification No. 24/2006 ST dated 27.06.2006 which has substituted the words "air travel agent" with the words "rail travel agent".

14. Following amendments have been made in the Service Tax Rules, 1994:

(i) In rule 2, after sub-rule (ccc), sub-rule (cccc) has been inserted which defines "large taxpayer" to have the meaning assigned to it in the Central Excise Rules, 2002. This has been done to incorporate the concept of large taxpayer in the service tax provisions [Notification No. 28/2006 ST dated 30.09.2006]

(ii) With effect from 01.04.2004, rule 2(1)(d)(vii) has been amended to the effect that service tax is required to be paid under reverse charge method, i.e., where service tax is to be paid by service receiver, in relation to sponsorship service only if the recipient of service is located in India. Therefore, if the recipient of sponsorship service is located outside India, service tax would be required to be paid by the service provider and not by the recipient [Notification No. 1/2007 ST dated 01.03.2007]

Accordingly, similar amendment has also been made in Notification No. 36/2004 ST dated 31.12.2004 vide Notification No. 3/2007 ST dated 01.03.2007.

(iii) Sub-rule (2) of rule 4 has been substituted by a new sub-rule vide Notification No.29/2006 ST dated 02.11.2006. The new sub-rule (2) provides that where a person, liable for paying service tax on a taxable service:

(i) provides such service from more than one premises or offices; or

(ii) receives such service in more than one premises or offices; or

(iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax,

and has centralised billing system or centralised accounting system in respect of such service, and such centralised billing or centralised accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralised billing or centralised accounting systems are located.

Prior to this amendment, only the person providing taxable service from more than one premises and having centralized billing or accounting in respect of such service could take centralized registration of premises from which such centralized billing was done or where such centralized accounting system was maintained. However, with this amendment the service receiver or any other person made liable to pay service tax, having centralized accounting/billing for such service will be eligible to take centralized registration.

(iv) Sub-rule (3) of rule 4 has been substituted by a new sub-rule vide Notification No.29/2006 ST dated 02.11.2006. The new sub-rule (3) provides that in all cases where tax payer opts for centralised registration, including those who have applied for such registration but have not been granted such centralised registration, the registration shall be granted by the Commissioner of Central Excise having jurisdiction over the premises for which centralized registration is sought (i.e., the premises from where centralized billing or accounting is done).

However, such provisions shall not be applicable to the registration granted to the premises or offices having such centralised billing or centralised accounting systems, prior to the 2nd day of November, 2006.

Prior to this amendment, centralized registrations were granted by the Commissioner or the Chief Commissioner of Central Excise or DGST, as the case may be, depending on the location of premises where centralized billing or accounting system was maintained as well as from where the taxable service was provided.

(v) Following amendments have been made by amending sub-rule (5) of rule 4 and Form ST-1 and ST-2:

(i) While intimating any change in the information furnished at the time of obtaining registration certificate, the assessee would be required to submit only a self-certified copy of the registration certificate instead of original registration certificate.

(ii) Department shall issue the amended registration certificate after cancelling the original registration certificate issued earlier [Notification No. 1/2007 ST dated 01.03.2007].

(vi) Sub-rule (4) of rule 5 lays down that every assessee shall make available the prescribed records at the registered premises for inspection and examination by the Central Excise Officer. This sub-rule has been amended vide Notification No.29/2006 ST dated 02.11.2006 to the effect that now the audit party deputed by the Comptroller and Auditor General of India can also inspect and examine the records and the assessee shall make available such records to them.

(vii) With effect from 01.10.2006, Notification No. 27/2006-ST dated 21.09.2006 has made it compulsory for the assessee, who has paid service tax of Rs.50,00,000 or above in the preceding financial year or has already paid service tax of Rs.50,00,000 in the current financial year, to deposit the service tax liable to be paid by him electronically, through internet banking. This has been done by amending sub-rule (2) of rule 6.

Circular No. 88/06/2006 ST dated 06.11.2006 has clarified the following regarding the interpretation of qualifying amount of service tax of such Rs.50 lakh paid by the assessee:

(i) For a person providing taxable service from more than one premises, where each such premises is separately registered with the department for payment of service tax, the criterion of Rs.50 lakh would apply to each registered premises individually, as each registered premises is separately an assessee in terms of law. Similar is the situation in the case of a person paying service tax on taxable service received by him.

However, in case of a Large Taxpayer (LTU), the cumulative service tax paid by all registered premises of such Large Taxpayer will be taken into account for satisfaction of criterion of payment of service tax amount of Rs 50 lakh.

(ii) If a person pays service tax from a registered premises for both the taxable services provided by him and the taxable service received by him on which he is liable to pay service tax, the cumulative service tax paid, i.e., service tax paid on taxable service provided from and service tax paid on taxable service received in such registered premises would be taken into account for the purposes of satisfaction of criterion of payment of service tax amount of Rs.50 lakh.

(iii) Further, for the purposes of calculation of this amount of Rs.50 lakh the total service tax paid by cash plus CENVAT credit would be taken into account as service tax paid amount. Therefore, if an assessee has paid service tax of Rs.50 lakh (in preceding financial year or the current year) in cash plus CENVAT credit, such assessee, if he pays any further service tax in cash, would be required to make mandatory e-payment.

(viii) Sub-rule (4A) of rule 6 has been substituted and sub-rule 4B inserted to provide for self-adjustment of excess service tax paid, subject to specified conditions. So far, self-adjustment of excess service tax paid was available only to the assessees who opted for centralised registration. Further, the adjustment was allowed only on account of delayed receipt of details of payment from the branch offices.

With effect from 01.03.2007, self-adjustment of excess service tax paid has been extended to all the assessees. However, such an adjustment would be subject to the following conditions:

(i) Self-adjustment of excess credit would not be allowed in case of reasons involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.

(ii) Excess amount paid and proposed to be adjusted should not exceed Rs.50,000 for the relevant month or quarter. However, in case of assessees opting for centralized registration excess amount can be adjusted without any monetary limit provided the excess amount paid is on account of delayed receipt of details of payments from branch offices.

(iii) Adjustment can be made only in the succeeding month or quarter.

(iv) The details of self-adjustment should be intimated to the Superintendent of Central Excise within a period of 15 days from the date of such adjustment [Notification No. 1/2007 ST dated 01.03.2007].

(ix) Rule 7B has been inserted vide Notification No. 1/2007 ST dated 01.03.2007 to allow an assessee to submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of 60 days from the date of submission of the return under rule 7. It has been clarified that where an assessee submits a revised return, the 'relevant date' for the purpose of recovery of service tax, if any, under section 73 of the Act shall be the date of submission of such revised return.

(x) Rule 10 has been inserted after Rule 9 which lays down the procedure and facilities for the large taxpayer. This has been done to incorporate the concept of large taxpayer in the service tax provisions.

The provisions of this rule are discussed below:

Notwithstanding anything contained in these rules, the following shall apply to a large taxpayer,-

(1) A large taxpayer shall submit the returns, as prescribed under these rules, for each of the registered premises. A large taxpayer who has obtained a centralized registration under rule 4(2) shall submit a consolidated return for all such premises.

(2) A large taxpayer, on demand, may be required to make available the financial, stores and CENVAT credit records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification, as may be necessary.

(3) A large taxpayer may, with intimation of at least 30 days in advance, opt out to be a large taxpayer from the first day of the following financial year.

(4) Any notice issued but not adjudged by any of the Central Excise Officer administering the Act or rules made thereunder immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise Officers of the said unit.

(5) Provisions of these rules, in so far as they are not inconsistent with the provisions of this rule shall mutatis mutandis apply in case of a large taxpayer [Notification No. 28/2006 ST dated 30.09.2006].

15. As per sub-rule (2) of rule 3 of Export of Services Rules, 2005 any taxable service shall be treated as exported only when the following conditions are satisfied:–

(a) such service is delivered outside India and used outside India; and

(b) payment for such service provided outside India is received by the service provider in convertible foreign exchange.

This sub-rule has been substituted by the following sub-rule vide Notification No. 2/2007 ST dated 01.03.2007:

The provision of any taxable service specified in sub-rule (1) shall be treated as export of service when the following conditions are satisfied:–

(a) such service is provided from India and used outside India; and

(b) payment for such service provided outside India is received by the service provider in convertible foreign exchange.

Thus, following amendments have been made in rule 3(2):

(i) The words 'delivered outside India and used outside India' have been substituted with the words 'provided from India and used outside India'.

(ii) It has been clarified that both rule 3(1) and rule 3(2) have to be satisfied for provision of service to be treated as export of service.

The explanation remains unchanged.

16. Circular No. 83/1/2006 ST dated 04.07.2006 has clarified that services such as transfer of money through money orders, operation of savings accounts, issue of postal orders provided by the Department of Posts are not liable to service tax under banking and other financial services. Banking and other financial services are defined under section 65(12). Such services provided to a customer by a banking company or a financial institution including a non-banking financial company or any other body corporate or any other

person to a customer are liable to service tax under section 65(105)(zm). The expression ‘any other person’ appearing in section 65(105)(zm) is to be read ejusdem generis with the preceding words. The expression ‘other financial services’ appearing under section 65(12)(a)(ix) is a residuary entry and includes those services which are normally rendered by banks or financial institutions.

Hence, banking and other financial services provided by a banking company or a financial institution or a non-banking financial company or any other service provider similar to a bank or a financial institution are liable to service tax under section 65(105)(zm) of the Finance Act, 1994. Department of Posts is not similar to a bank or a financial institution and hence does not fall within the category of any other similar service provider.

Note: The Finance Act, 2007 has substituted the words “or any other person” in the definition of banking and other financial services provided under section 65(12) with the words “or commercial concern”. This amendment has come into effect from 11.05.2007.

17. Circular No. 84/2/2006 ST dated 19.09.2006 has clarified that any club or association that enjoys exemption under the provisions of Income Tax Act on the ground of being a public charitable institution does not automatically get excluded from levy of service tax under section 65(105)(zzze) read with section 65(25a) of the Finance Act, 1994 as exemption under the Income Tax Act on the ground of being a public charitable institution is of no consequence to levy of service tax. Levy of service tax is entirely governed by the provisions contained in the Finance Act, 1994 and the rules made thereunder.

18. Circular No. 85/3/2006 ST dated 17.10.2006 has clarified following issues in respect of levy of service tax on international journey by aircraft:

Sl.No	Issue	Clarification
1	In the case of international journey commencing from an Indian airport involving stopover/transfer at intermediate airports outside India before reaching the destination (say Mumbai-Dubai-London-New York), whether service tax would be leviable on the value indicated in the ticket or on the value attributable to the first sector (Mumbai-Dubai)?	International journey is from Mumbai to New York. Stopover/transfer at intermediate airports is incidental or part of the main journey. Stop over/transfer at intermediate airports outside India is of no relevance or consequence for levy of service tax under section 65(105)(zzzo) read with section 66 of the Finance Act,1994. Service tax is leviable on the total value of the ticket representing the consideration of a single composite service.
2.	In case the international journey also includes travel in a domestic sector as part of the international journey (say Delhi-Mumbai-	Service tax is leviable on the total value of the ticket.

	London), whether service tax is leviable excluding the value attributable to the domestic sector or on the total value of the ticket treating the domestic sector as integral part of international journey?	
3.	In the case of round trip/return ticket, whether service tax is leviable on the total value of the ticket or only on half the value of the ticket?	Service tax is leviable on the total value of the ticket.
4.	In the case of journey commencing from an airport outside India and completed at an airport outside India but including a sector wherein the passenger disembarks and subsequently embarks at an Indian airport as part of international journey (say Sydney-Mumbai-Dubai-Singapore-Sydney), whether service tax is leviable for Mumbai-Dubai sector only or on the total value of the ticket?	Service tax is not leviable in such cases.
5.	Whether ticket issued outside India for an international journey commencing from India (say Delhi–London) is leviable to service tax?	Service tax is payable by the service provider for the taxable service provided. Place of purchase/issue of ticket is of no relevance or consequence to determine the levy of service tax under section 65(105)(zzzo) read with section 66 of the Finance Act, 1994.

19. Circular No. 86/4/2006 ST dated 01.11.2006 has clarified that institutes like IITs or IIMs are not liable to pay service tax prior to 1.5.2006 under the category of “manpower recruitment or supply service”. As regards the period after 1.5.2006, decision should be taken after taking into account all material facts on case to case basis.

20. Circular No. 87/05/2006 ST dated 06.11.2006 has clarified following issues relating to authorized motor vehicle dealers and service stations:

Sl.No.	Issue	Clarification
1.(a)	Whether the mark-up (profit) on the spare parts sold by a service station during the servicing of vehicles is liable to payment of service tax?	As regards, the issue relating to sale of spare parts and consumables, Notification No. 12/2003 ST dated 20.06.2003, exempts service tax to the extent of value of the goods and materials sold by the service provider to the service recipient, if documentary proof of such sale exists and no credit of excise duty paid on such spares or consumables have been taken.
1.(b)	Whether exemption can be claimed on the cost of consumables that get consumed during the course of providing service?	It may, however be pertinent to note that for availing such exemption, the goods must be sold and consequently, they must be available (whether independently or as a part used for repair of a vehicle) for sale. In other words, the exemption would not be available to such consumables which have been consumed during the process of providing service and are not available for sale.
2.	Whether 'free services' given by the authorized dealers (for which they are reimbursed by the vehicle manufacturers) are subjected to service tax?	As regards 'free servicing' (where the customer does not pay any charges) of the motor vehicles, normally the service charges are reimbursed by the vehicle manufacturers, who promises such a facility to attract customer. As the law does not in any way restricts the levy of service tax only on the service charges received from the recipient of the service, therefore, such reimbursements are subject to service tax.
3.	Whether the commission received by the automobile dealers from Banks/Non Banking Financial Companies (NBFC), for introducing the customers seeking finances/loans to such banks/NBFCs is subjected to service tax?	In some cases, the automobile dealers help the buyers of the vehicles for arranging the finances. For this, they have a tie-up with Banks/Non-banking Finance Companies. The customers are advised by the dealers to approach such financial companies for taking loans. The automobile dealers get commission from such financial companies for directing the customers to the latter. By this activity, the automobile dealers 'promote or market the services provided by their customer (i.e., the financial institution) and are therefore covered

	Further, in case part of these incentives are passed on by the dealers to the customers, whether tax would be leviable only on that part of incentive, which is retained by the dealers or whether it would be on full amount?	under "taxable business auxiliary service". The tax is payable on the gross commission received by the automobile dealer. In some cases, the dealers share part of their commission with their customers to attract them. However, this is an independent transaction between the automobile dealer and the purchaser of the vehicle and does not involve the service rendered by the automobile dealer to the finance company. Therefore, the tax payable by the dealer would be on the gross amount received from the financial company and not on the balance amount, i.e., after excluding the amount that he passes on to the customer.
4.	Whether service tax is chargeable on the amounts received for servicing/repair of the commercial vehicles?	As regards 'authorized service stations', the taxable service means any service provided or to be provided to a customer by an authorized service station in relation to any service, repair, reconditioning or restoration of motor cars, light motor vehicles or two wheeled motor vehicles, in any manner. Further, a 'light motor vehicle' means any motor vehicle constructed or adapted to carry more than 6 messengers, but not more than 12 passengers, excluding driver. Similarly, as per the 'Motor Vehicle Act', a 'motor car means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage'. In other words, servicing, repair, reconditioning or restoration of specified types of vehicles (whether they are used for commercial purposes or not) fall under the category of taxable services. However, servicing of vehicles like trucks is not within the ambit of service tax.

21. Circular No. 89/7/2006 ST dated 18.12.2006 has clarified that service tax shall not be leviable on fee collected by Public Authorities while performing statutory functions/duties under the provisions of a law. However, if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for a consideration not in

the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service.

A number of sovereign/public authorities (i.e. an agency constituted/set up by government) perform certain functions/duties, which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. For example, the Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; the Regional Transport Officer (RTO) issues fitness certificate to the vehicles; the Directorate of Boilers inspects and issues certificate for boilers; or Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws. Fee as prescribed is charged and the same is ultimately deposited into the Government Treasury.

The Circular explains that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.

22. Circular No. 91/2/2007 ST dated 12.03.2007 has been issued regarding levy of service tax on interconnect usage charges (IUC) on interconnection service provided by one telecom operator to another. The interconnection service is provided by one telegraph authority to another to enable the telephone subscribers of these telegraph authorities to connect with each other. Interconnection in technical terms means the commercial and technical arrangements under which service providers connect their equipment, networks, and services to enable their customers to have access to the customers, services, and networks of other service providers. For providing interconnection, the telegraph authority collects interconnect usage charges (IUC).

The Finance Act, 2007 has incorporated a new definition of 'telecommunication service' vide clause (104) of section 65 of the Finance Act, 1994 and IUC has been specifically incorporated in the definition of 'telecommunication service' to make it a taxable service. Further, any service provided or to be provided, to any person, by a telegraph authority in relation to 'telecommunication service' has been made taxable. This amendment has come into effect from 01.06.2007. Therefore, after this amendment comes into effect, service tax would be applicable to IUC charges. It has therefore been clarified that for the period prior to the date when the amended definition of "telecommunication service" comes into effect, service tax is not applicable to IUC.

23. Service tax is leviable on foreign exchange (forex) broking service under the category of 'banking and other financial service'. In terms of the provisions of the Finance Act, 1994, foreign exchange broker includes a money changer (authorized dealer of foreign

exchange). Circular No. 92/3/2007 ST dated 12.03.2007 has been issued to answer the question as to whether the service provided by a money changer in relation to exchange of foreign currency is a forex broking service for applicability of service tax levy under 'banking and other financial services'.

It has been noted that 'money changing' and 'foreign exchange broking' are two distinct activities. Money changing is an activity of sale and purchase of foreign exchange at the prevalent market rates. On the other hand, foreign exchange broking is the activity performed as an intermediary, on a commission/brokerage basis, for facilitating the clients who wish to buy or sell foreign exchange. The foreign exchange broker providing foreign exchange broking service does not hold title to the foreign exchange. Accordingly, Board is of the view that service tax is not leviable on money changing per se, as such activity does not fall under the category of foreign exchange broking.