

## Removal of Excise Exemptions – Impact on Industry

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The FM in this budget 2016 re introduced Central Excise duty on branded readymade garments and jewelry (branded or not). In addition to this, there has been increase in rate of duty on mobile accessories, tobacco products with new levy of infrastructure cess on specified motor vehicles. In this article, we look at the implications of excise duty levy on branded garments and jewellery articles.

### ***Excise duty on jewellery***

In the year 2005, the Government had levied 2% excise duty on branded jewellery. The collections of excise duty from this sector were meager. The resistance from the parallel sector was quite which might have forced Government to withdraw the excise duty in 2009. Later in 2011, excise duty of 1% was levied on branded precious metal jewellery. From March 2012, the levy was extended to all jewellery whether branded or unbranded. Again the levy was removed subsequently probably for the same reason.

Now, in this budget 2016 the levy has been reintroduced on both branded as well as unbranded jewellery of gold / other precious metals, with an exception of silver jewellery. The levy would be applicable to the silver jewellery only when such jewellery is studded with diamonds, ruby, emerald or sapphire. Other important points in this regard are as follows:

- a) Excise duty of 1% [without Cenvat credit] or 12.5% with Cenvat credit is being levied on such articles of jewellery. Levy would be effective from 1<sup>st</sup> March 2016.
- b) The benefit of SSI exemption would be available to manufacturers of jewellery with a higher threshold of exemption upto Rs.6 Crore per annum and eligibility limit of Rs.12 Crore.
- c) Registration should be granted within 2 days without physical verification of premises.
- d) Option of centralized registration is available when the assessee is operating from multiple units but with centralized accounting / billing system

### ***Excise duty on readymade garments***

In the year 2001, the excise duty was first introduced on woven garments. Then in the year 2003, the levy was extended to entire textile industry for a short period of time. However to keep up his election promise Shri P Chidambaram exempted the sector. This was through Notification no.30/2004, the exemption was provided to entire textile industry with condition of non-

availment of Cenvat credit. The textile industry with exports opted for either duty drawback or DEPB benefit on textile exports. Vide notification no.29/2004, the textile industry had the option of paying excise duty at concessional rate with Cenvat credit benefit. Almost all opted out of dutiability.

In the year 2011, Shri Pranab Mukherjee reintroduced mandatory standard rate of duty on branded garments with Cenvat credit and abatement of 55% for payment of duty. In 2012, the abatement was increased to 70% as against 55% with increase in rate of duty from 10% to 12%. The succeeding FM Shri.Chidambaram removed the mandatory levy in 2013-14. Till this budget, the optional scheme was being continued.

In this budget 2016, the excise duty levy has also been introduced compulsorily for readymade garments and made up articles of textiles falling under Chapters 61, 62 and 63 (heading Nos. 6301 to 6308) of the Central Excise Tariff except those falling under 6309 and 6310. Other important points in this regard as follows:

- a) The levy is attracted only when Retail Sale Price (RSP) is Rs.1000/- and above when garments bear or sold with brand name.
- b) The excise duty of 2% (without Cenvat credit) or 12.5% (with Cenvat credit) is levied on. Levy would be effective from 1<sup>st</sup> March 2016.
- c) Goods other than above would continue with optional levy of “Nil (without Cenvat credit) or 6% (with Cenvat credit)” in case of garments / articles of cotton, not containing any other textile material and “Nil (without Cenvat credit) or 12.5% (with Cenvat credit)” in case of garments / articles of other composition.
- d) Abatement of 60% on MRP would be available for payment of excise duty.

As the levy would be new for most of the assessee under these segments, following aspects / implications may need to be understood/ considered to ensure compliance:

### **1. Duty payable on goods manufactured before levy but cleared later**

The Supreme Court in case of *Wallace Flour Mills Vs. CCE 1989 (44) ELT 598 (SC)* has held that the pre-budget stock of excisable goods which were exempted through notification would be liable for excise duty when they are cleared after the date of removal of exemption. Therefore, garment / jewelry manufacturers wherein levy has been introduced should pay duty and clear the goods from 1<sup>st</sup> March 2016 even though the goods were manufactured prior to this date.

Importantly, central excise duty is on removal. Therefore in case of goods which are already in transit or as stock at depots/ retail points as on 1<sup>st</sup> March 2016, the excise duty is not payable. It maybe a good practice that on invoice for goods manufactured and removed prior to 1<sup>st</sup> March 2016 there can be a declaration. The declaration – *“the goods under this invoice were removed from factory on... Jan/ Feb 2016”*. This could avoid seizure and litigation. This declaration would be useful for any subsequent movement of goods from the depots and warehouses in case of verification while it is moving.

## **2. SSI exemption eligible**

The jewellery manufacturer would be eligible for SSI exemption on first clearance of dutiable goods upto Rs.6 crore. However, this would be subject to condition that the clearance for the previous financial year does not exceed Rs.12 crore. Since, excise duty is levied from 1<sup>st</sup> March 2016, proportionate SSI exemption of Rs. 50 lakh has been fixed for March 2016. This exemption should be available only if value of clearances for home consumption from one or more manufacturer from one or more factory or premises of production or manufacture during the financial year 2014-15 did not exceed Rs. 12 crore.

Similarly, in case of readymade garments, exemption would be eligible on first dutiable clearance of dutiable goods upto Rs.1.5 crore. However, this would be subject to condition that the clearance for the previous financial year does not exceed Rs.4 crore. For, March 2016, SSI exemption of Rs. 12.50 lakh has been fixed. This exemption should be available only if value of clearances for home consumption from one or more manufacturer from one or more factory or premises of production or manufacture during the financial year 2014-15 did not exceed Rs.4 crore.

### **Branded Goods:**

It is important to note that the SSI exemption of Rs.150 lakh for garments is eligible only on goods manufactured using own brand name. If the goods are manufactured using other's brand name, the SSI exemption is not eligible as per notification no.8/2003-CE. Even for jewellery, the exemption would not be eligible if goods manufactured under other's brand name. For this purpose, brand name means a name / mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating. Brand name maybe registered or unregistered.

## **3. Registration under Central Excise**

Manufacturers of jewellery articles have the option of the Centralized registration in case of multiple units. For ease of registration, it has been provided that registration should be without physical verification of premises. The garment manufacturers would also have the option of centralized registration after the amendment in the registration no.35/2001-CE NT in this budget. However, the same should be subject to condition that the premises of the same factory are located within a close area in the jurisdiction of a Range Superintendent and the manufacturing processes undertaken are interlinked. The benefit of Centralized registration would not be eligible if such additional units are operating under any of the area based exemption notifications.

An appropriate decision should be made by the manufacturers considering the availability of centralized registration as it could reduce substantial compliance at each unit. Brand owners may also consider the option of asking the job workers to register and discharge the excise duty to reduce the compliance burden.

#### ***4. Job Worker Registration***

Rule 4(1A) of Central Excise Rules 2002 provides that person who gets the goods falling under Chapter 61 or 62 or 63 produced or manufactured on his account on job work, should pay the duty leviable on such goods as if such goods have been manufactured by such person. However, the burden can be transferred to job worker as well wherein job worker would be liable to obtain registration and discharge the duties.

The choice whether the job worker is to pay the duty also needs to be made as at times brand name owner may not be in a position to register.

#### ***5. Cenvat credit on input and input services***

Where excise duty is discharged at concessional rate of 1% or 2% as applicable, manufacturers would not be eligible for Cenvat credit in respect of the inputs, input services as well as capital goods.

Where the option of full duty payment is taken, the credit on closing of stock of inputs and inputs used in finished goods including WIP would be eligible for Cenvat credit. For the purpose, a certificate from the Chartered Accountant is required.

The manufacturers/ brand name owner can make cost benefit analysis between payment of concessional duty without Cenvat and payment of full duty with Cenvat. It is likely that 99% of those liable would go for 2% option.

#### **6. Other procedural Compliance**

The manufacturers/ job workers need to obtain registration which could be done after choosing the better option of concessional duty and full rate of duty and also as they reach the exemption limit.

The registered manufacturers should file an initial declaration letter under Rule 22 (2) of Central Excise Rules 2002 with the department with brief details of activity undertaken as well as the method adopted for payment of duty and Cenvat credit as a good practice. The compliance under service tax reverse charge mechanism would also be very important for any assessee today. Subsequent actions like maintenance of proper records, providing appropriate declaration, ensuring capital goods credits, making payments in time and filing accurate returns would be the basic compliance. The large tax payers may institute a regular internal check in house or external to ensure compliances at higher levels and optimization of tax by availing capital goods credits, planning for reverse charge and avoiding interest and penalties.

The registered assessee to make the payments within the due date. The due date would be 6<sup>th</sup> of every month. In case of assessees who are eligible for SSI exemption, the payment would be on quarterly basis i.e by 6<sup>th</sup> end of each quarter.

Similarly, the assessee is required to file monthly return in Form ER-1 by 10<sup>th</sup> of subsequent month. In case of assessee who is eligible for SSI exemption, filing of Form ER-3 by 10<sup>th</sup> after end of quarter is mandatory. If assessee opts for 1% / 2% duty payment, a quarterly return in form ER-8 within 10 days after quarter should be filed instead of ER-1 or ER-3.

#### **Professional Opportunities for Chartered Accountants**

There is some increased opportunity for chartered accountant in indirect tax practice. Introduction of jewellery and garment sectors into excise levy has added to it. Following could be few important areas wherein the professional could be of great value to new assessees now:

- a) **Registration assistance** – Assistance in initial registration which could take about 2 to 5 days. Professional can guide the assessee properly with respect to documentation.

- b) **Initial handholding** – New assessee may not be aware of all compliance requirements at the initial stages. Professional could help assessee in compliance requirements like maintaining books, registers, issue of invoices, filing initial disclosure letters etc.
- c) **Regular payment assistance** - Computation of taxes, credits, interest, liability under reverse charge mechanism are some of the areas where assessee could require assistance.
- d) **Filing of return** – Assistance could be provided in review of collated information with respect to credits, liability etc. Assessee, generally ignore the importance of this.
- e) **Regular review of compliance** – Periodic review of compliance which could be quarterly / half yearly could add great value to assessee in respect of credits, payment compliance, export benefits etc.

**Conclusion:** It is highly unlikely that the Government would roll back levy of excise duty on garments and jewelry as the objective is to broad basing taxation to tax all products and services. In the next budget we may see an increase in coverage to all garments and the rate being hiked marginally.

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