

Customs

Clause 63 seeks to amend section 28B of the Customs Act so as to insert a new sub-section therein to enable the Central Government to recover any amount collected by any person representing as duty of customs in excess of the duty assessed or determined or paid on any goods, and also to recover any amount collected by any person as representing duty of customs on any goods, which are wholly exempt or are chargeable to *nil* rate of duty. Accordingly, certain consequential amendments have been made in sub-sections (2) and (4) of the said section.

Clause 64 seeks to amend section 108 of the Customs Act so as to omit the words “duly empowered by the Central Government in this behalf” from sub-section (1) of the said section with a view to give powers to all Customs Officers to issue summons.

Clause 65 seeks to amend section 117 of the Customs Act so as to increase the maximum amount of penalty for contravention of any provision of the Act from existing ten thousand rupees to one lakh rupees, where no express penalty is provided elsewhere.

Clause 66 seeks to amend sub-section (2) of section 129A of the Customs Act by inserting a proviso so as to provide that in case the Committee of Commissioners of Customs differs in its opinion on the order passed in an appeal by the Commissioner (Appeals), it shall refer the matter to the jurisdictional Chief Commissioner who shall consider the facts of the case and the points of difference and if he is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct the proper officer to appeal to the Appellate Tribunal against the order of the Commissioner (Appeals). The jurisdictional Chief Commissioner shall be the Chief Commissioner having jurisdiction over the adjudicating authority who has decided the case.

Clause 67 seeks to amend section 129D of the Customs Act with a view to,—

(i) insert a proviso to sub-section (1) so as to provide that in case of the Committee of Chief Commissioners of Customs differs in its opinion about the legality or propriety of the order passed by the Commissioner of Customs as an adjudicating authority, it shall refer the matter to the Board which shall consider the facts of the case and the difference between them and if it is of the opinion that the order passed by the Commissioner is not legal or proper, direct the Commissioner or any other Commissioner to appeal to the Appellate Tribunal against the order.

(ii) substitute sub-section (3) to provide that every order under sub-section (1) or sub-section (2) of section 129D of the Act shall be made within a period of three months from the date of communication of the decision or the order of the adjudicating authority. The proposed amendment is of consequential nature in view of amendment of sub-section (1) of section 129D of the said Act.

Clause 68 seeks to insert a new section 129EE in the Customs Act to provide for payment of interest in case of delayed refund of amount deposited by the appellant in pursuance of the order of the Commissioner (Appeals) or the Appellate Tribunal, when the decision is in favour of the appellant. It provides that in case the amount is not refunded within three months from the communication of the order of the appellate authority, unless the order of the appellate authority is stayed by a superior court or tribunal, interest at the rate specified in section 27A shall be paid after the expiry of three months from the communication of the order of the appellate authority till the date of refund of the amount.

Clause 69 seeks to amend section 141 of the Customs Act so as to regulate the manner in which the imported or export goods may be received, stored, delivered, dispatched or otherwise handled in a customs area by any person and to specify by regulations the responsibilities of persons engaged in the aforesaid activities.

Clause 70 seeks to amend section 158 of the Customs Act so as to increase the maximum amount of penalty for contravention of any of the rules from five hundred rupees to fifty thousand rupees, and also to increase the maximum amount of penalty from two hundred rupees to fifty thousand rupees, for contravention of regulations.

Clause 71 seeks to give retrospective effect to condition No.7 of Notification number G.S.R. 277(E), dated 1st April, 2003 (53/2003 – Customs), as amended *vide* number G.S.R. 673 (E), dated 17th November, 2005 (97/2005-Customs), so as to allow the importer to avail of the drawback or CENVAT credit of additional duty against the amount debited in the Duty Free Credit Entitlement (DFCE) certificate.

Customs tariff

Clause 72 seeks to amend,—

(i) the First Schedule to the Customs Tariff Act in the manner specified in the Second Schedule with a view to enhance the rate of duty on certain items;

(ii) the Second Schedule to the Customs Tariff Act in the manner specified in the Third Schedule with a view to increase export duty on chromium ores and concentrates.

Excise

Clause 73 seeks to amend section 2 of the Central Excise Act with a view to insert an *Explanation* in clause (d) which defines "excisable goods". The proposed *Explanation* provides that for the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for consideration and such goods shall be deemed to be marketable. It will remove the ambiguity occurred due to the judgments in certain cases regarding the marketability of goods and it will be applicable prospectively.

Clause 74 seeks to insert a new section 3A in the Central Excise Act. The proposed section empowers the Central Government to charge excise duty on the basis of capacity of production in respect of notified goods. The proposed section provides that the Central Government shall notify the goods on which the duty of excise shall be levied and collected and it shall also make rules in respect of the manner for determination of the annual capacity of production of the factory, in which the notified goods are produced, the factor relevant to the production of notified goods and quantity thereof and the determination of the annual capacity of production of the factory in which such goods are produced and rate of duty of excise on the goods to be levied subject to the condition that where the factory producing notified goods is in operation only for a part of the year, or if it remains closed for a certain period, such determination shall be made on proportionate basis. Further, the proposed amendment provides that the provisions of this section shall not be applicable to goods produced or manufactured by a hundred per cent. export-oriented undertaking and brought to any other place in India.

Clause 75 seeks to amend section 11B of the Central Excise Act to provide for the refund of interest paid on any duty of excise.

Clause 76 seeks to amend section 11D of the Central Excise Act so as to insert a new sub-section therein to enable the Central Government to collect any amount collected by any person representing as duty of excise in excess of the duty assessed or determined and paid on any excisable goods, and also to collect any amount collected by any person as representing duty of excise on any excisable goods, which are wholly exempt or are chargeable to *nil* rate of duty. Accordingly, certain consequential amendments have been made in sub-sections (2) and (4) of the said section.

Clause 77 seeks to amend section 11DD of the Central Excise Act so as to provide for recovery of interest on amount collected in excess of the duty assessed or determined and paid from the person who collected such amount, and also provide for recovery of interest on the amount collected by any person as representing duty of excise on any excisable goods, which are wholly exempt or are chargeable to *nil* rate of duty.

Clause 78 seeks to amend sub-section (2) of section 35B of the Central Excise Act by inserting a proviso so as to provide that in case the Committee of Commissioners of Central Excise differs in its opinion on the order passed in an appeal by the Commissioner (Appeals), it shall refer the matter to the jurisdictional Chief Commissioner who shall consider the facts of the case and the points of difference and if he is of the opinion that the order passed by the Commissioner of Central Excise is not legal or proper, direct the Central Excise Officer to appeal to the Appellate Tribunal against the order of the Commissioner (Appeals). The jurisdictional Chief Commissioner shall be the Chief Commissioner having jurisdiction over the adjudicating authority who has decided the case.

Clause 79 seeks to amend section 35E of the Central Excise Act with a view to,—

(i) insert a proviso to sub-section (1) so as to provide that in case the Committee of Chief Commissioners of Central Excise differs in its opinion about the legality or propriety of the order passed by the Commissioner of Central Excise as an adjudicating authority, it shall refer the matter to the Board

which shall consider the facts of the case and the difference between them and if it is of the opinion that the order passed by the Commissioner is not legal or proper, direct the Commissioner or any other Commissioner to appeal to the Appellate Tribunal against the order.

(ii) substitute sub-section (3) to provide that every order under sub-section (1) or sub-section (2) of section 35E of the Act shall be made within a period of three months from the date of communication of the decision or the order of the adjudicating authority. The proposed amendment is of consequential nature in view of amendment in sub-section (1) of section 35E of the said Act.

Clause 80 seeks to insert a new section 35FF in the Central Excise Act to provide for payment of interest in case of delayed refund of amount deposited by the appellant in pursuance of the order of the Commissioner (Appeals) or the Appellate Tribunal, when the decision is in favour of the appellant. It provides that in case the amount is not refunded within three months from the communication of the order of the appellate authority, unless the order of the appellate authority is stayed by a superior court or tribunal, interest at the rate specified in section 11BB shall be paid after the expiry of three months from the communication of the order of the appellate authority till the date of refund of the amount.

Clause 81 seeks to amend rule 12 of the Central Excise Rules, 1944 with retrospective effect so as to allow rebate of duty paid on excisable goods cleared from factory for export for which refund has been granted under certain notifications issued under section 5A of the Central Excise Act, 1944, for the period commencing on and from 8th July, 1999 and ending with the 30th June, 2001.

Clause 82 seeks to amend rule 18 of the Central Excise (No. 2) Rules, 2001 with retrospective effect so as to allow rebate of duty paid on excisable goods cleared from factory for export for which refund has been granted under certain notifications issued under section 5A of the Central Excise Act, 1944, for the period commencing on and from 1st July, 2001 and ending with the 28th February, 2002.

Clause 83 seeks to amend rule 18 of the Central Excise Rules, 2002 with retrospective effect so as to allow rebate of duty paid on excisable goods cleared from factory for export for which refund has been granted under certain notifications issued under section 5A of the Central Excise Act, 1944, for the period starting with 1st March, 2002 and ending with 7th December, 2006.

Excise tariff

Clause 84 seeks to amend the First Schedule to the Central Excise Tariff Act with a view to,—

(i) enhance the rate of duty on certain items in Chapter 24 and Chapter 25;

(ii) amend NOTE 16 of Chapter 39 with a view to insert two more processes therein;

(iii) enhance the rate of duty on an item in Chapter 85.

Service tax

Clause 85 seeks to amend Chapter V of the Finance Act, 1994 relating to service tax in the following manner, namely:—

(i) sub-clause (A) seeks to amend section 65 of the said Act, so as to,—

(a) define the terms – associated enterprise, information technology software, internet telecommunication service, processing and clearing-house;

(b) specify the scope of the following taxable services - banking and other financial service, business auxiliary service, cargo handling service, internet telecommunication service, management, maintenance or repair service, renting of immovable property service, consulting engineer service, information technology software service, management of investment under Unit

Linked Insurance Plan (ULIP) service, stock exchange service, recognised association or registered association commonly known as commodity exchange service, processing and clearinghouse service, supply of tangible goods for use service, technical testing and analysis service, technical inspection and certification service, tour operator service;

(c) omit the taxable service "internet telephony";

(d) substitute the word "client" with the words "any person" in the specified taxable services;

(e) substitute the word "customer" with the words "any person" in the specified taxable services;

(II) sub-clause (B) seeks to amend section 66 of the said Act, so as to specify the following services as taxable services, namely:-

(a) information technology software service,

(b) management of investment under Unit Linked Insurance Plan (ULIP) service,

(c) stock exchange service,

(d) recognised association or registered association commonly known as commodity exchange service,

(e) processing and clearinghouse service,

(f) supply of tangible goods for use service,

(g) internet telecommunication service;

(III) sub-clause (C) seeks to amend section 67 of the said Act, so as to include any amount credited or debited in the books of account within the scope of the term "gross amount charged" where the transaction of taxable service is with any associated enterprise;

(IV) sub-clause (D) seeks to insert new sections 71 and 72 respectively in the said Act so as to -

(i) empower the Board to frame a Scheme by notification in the Official Gazette for filing service tax returns by any person or class of persons in preparing and furnishing return required to be filed under section 71 through a Service Tax Return Preparer authorised to act under the Scheme. It seeks to provide that a Service Tax Return Preparer shall assist the person or class of persons furnishing the return in such manner as may be specified in the Scheme and seeks to define "Service Tax Return Preparer" and "Specified person or class of persons". It seeks to provide the manner in which and the period for which the Service Tax Return Preparer shall be authorised, the educational and other qualifications, the training and other conditions required to be fulfilled, the code of conduct, the duties and obligations, the circumstances under which the authorisation may be withdrawn and any other matter which is required to be, or may be specified by the Scheme;

(ii) authorise the Central Excise Officer for assessment on the basis of his best judgment after allowing assessee to represent his case where assessee fails to make service tax returns as required under section 70 or if return have been made out fails to assess the tax in accordance with the provisions of the Act or rules made thereunder.

(V) sub-clause (E) seeks to substitute section 77 of the said Act so as to provide for specific penalty for specific contraventions which are as follows:-

In case of violation of the provisions of section 69, failure to furnish certain information, and failure to appear before the Central Excise Officer a penalty up to five thousand rupees or rupees two hundred every day till such contravention continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance.

In case of failure to pay service tax electronically, issuance of incorrect or incomplete invoices and general contravention, a penalty of up to five thousand rupees.

(VI) sub-clause (F) seeks to amend section 78 of the said Act so as to provide that where penalty for suppressing value of taxable service under section 78 is imposed, the penalty for failure to pay service tax under section 76 shall not be applicable;

(VII) sub-clause (G) seeks to insert the word, figures and letters "section 35FF" in section 83 of the said Act which deals with the application of certain provisions of the Central Excise Act, 1944.

(VIII) sub-clause (H) seeks to amend section 86 of the said Act with a view to insert a proviso,-

(i) to sub-section (2) so as to provide that in case the Committee of Chief Commissioners of Central Excise differs in its opinion regarding the appeal against the order of the Commissioner of Central Excise, it shall refer the matter to the Board which shall, after considering the facts of the order and the points of difference between them and if it is of the opinion that the order passed by the Commissioner is not legal or proper, direct the Commissioner to appeal to the Appellate Tribunal against the order.

(ii) to sub-section (2A) so as to provide that in case the Committee of Commissioners differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall record the point or points of difference between them and refer the matter to the jurisdictional Chief Commissioner who shall, after considering the facts of the order and if he is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct the Central Excise Officer to appeal to the Appellate Tribunal against the order of the Commissioner (Appeals). The jurisdictional Chief Commissioner shall be the Chief Commissioner having jurisdiction over the adjudicating authority who has decided the case.

(IX) sub-clause (I) seeks to amend section 94 of the said Act to provide that the Scheme framed by the Board under section 71 shall be laid before each House of Parliament.

(X) sub-clause (J) seeks to amend section 95 of the said Act so as to empower the Central Government to issue orders for removal of difficulty in case of implementing, classifying or assessing the value of any taxable service incorporated by the proposed legislation in this Chapter, up to one year from the date of enactment of the Finance Bill, 2008.

Clause 86 relates to short title and commencement of a Scheme for resolution of disputes in service tax to be called the Service Tax Disputes Resolution Scheme, 2008.

Clause 87 contains definition of certain terms and expressions used in the Scheme.

Clause 88 seeks to provide that Scheme would not be applicable in cases where tax arrears includes service tax amount of more than twenty-five thousand rupees and where notice or order has been issued under section 73A of the Finance Act, 1994.

Clause 89 seeks to specify the time frame for making the declaration by a person against whom tax arrear is pending, to the designated authority and rate of amount payable under the Scheme by the declarant.

Clause 90 provides that a declaration under the Scheme will be made before the designated authority and further provides that the declaration will be in such form or manner as may be prescribed.

Clause 91 provides that designated authority shall determine the amount payable on the basis of declaration, within fifteen days

of the receipt of the declaration and will pass order on the declaration received by him. The declarant shall pay the sum determined by the designated authority and furnish proof of such payment before him. The designated authority will also issue certificate to the person making the declaration stating therein the particulars of the sum payable by the declarant. The clause further provides that the matter once determined will not be opened for such dispute in the court of law or before any other forum. In case the declarant has filed a writ petition for appeal or reference before any High Court or Supreme Court against any order in respect of tax arrear, the declarant shall file application before the High Court or Supreme Court for withdrawing such writ petition or reference and shall provide proof of such withdrawal.

Clause 92 provides that appellate authority shall not proceed to decide any issue relating to tax arrear specified in the declaration and in respect of which an order had been made by the designated authority.

Clause 93 seeks to provide that amount paid in pursuance of the declaration shall not be refundable under any circumstances.

Clause 94 clarifies that, except as expressly provided therein the Scheme should not be construed as conferring any benefit, concessions or immunity on the declarant in any assessment or proceeding other than in respect of which the declaration pertains to.

Clause 95 seeks to empower the Central Government to pass any order not inconsistent with the provisions of the Scheme for removing any difficulty which may arise in giving effect to its provisions. All such orders made by the Central Government shall be required to be laid before each House of Parliament.

Clause 96 seeks to empower the Central Government to make rules for carrying out the provisions of the Scheme. All rules made under the Scheme shall be laid before each House of Parliament.

Clauses 97 to 116 provide for levy of tax on taxable commodities transactions entered in a recognised association.

Clause 97 deals with the extent, commencement and application of Chapter VII.

Clause 98 of the Bill is the definition provision. Sub-clause (5) of this clause defines taxable commodities transaction to mean a transaction of purchase or sale of option in goods, or option in commodity derivative, or any other commodity derivative, traded on recognised associations.

Clauses 99 and 100 seek to make a provision for the charging of a tax called "commodities transaction tax" at the rate of- (i) 0.017 per cent. of the option premium, payable by the seller, in the case of sale of an option in goods or an option in commodity derivative; (ii) 0.125 per cent of the settlement price of the option in goods or an option in commodity derivative, as the case may be, payable by the purchaser, in the case of a sale of an option in goods or an option in commodity derivative, where option is exercised; (iii) 0.017 per cent. of the price at which the commodity derivative is sold, payable by the seller of any other commodity derivative, in the case of a sale of such commodity derivative.

Clauses 101 to 114 provide for collection and recovery of commodities transaction tax, furnishing of returns, assessment procedure, power of Assessing Officer, rectification of mistake, chargeability of interest, levy of penalty, institution of prosecution and filing of appeals. Further, it also provides that various procedural provisions in the Income-tax Act will, so far as may be, apply in relation to commodities transaction tax.

Clause 115 confers powers on the Central Government to make rules for the purposes of carrying out the provisions of this Chapter. This clause also provides that every rule made under this clause shall be laid before each House of Parliament.

Clause 116 of the Bill confers power on the Central Government to issue orders for removal of any difficulty arising in giving effect to the provisions of this Chapter. This power is available to the Central Government for a period of two years from the date on which the provisions of this Chapter come into force. Every order made under this clause shall be laid before each House of Parliament.

Clauses 97 to 116 will take effect from the date to be notified by the Central Government.

Clause 117 seeks to amend the Seventh Schedule to the Finance Act, 2001 so as to omit certain existing tariff items and include certain new tariff items in the said Schedule. It also proposes to substitute certain entries with a view to enhance the rate of duty.

Clause 118 seeks to amend section 13 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002.

Sub-section (1) of section 13 provides that notwithstanding anything contained in the Income-tax Act, 1961 or any other enactment for the time being in force relating to tax or income, profits and gains, no income tax or any other tax shall be payable by the Administrator in relation to the specified undertaking for a period of five years computed from 1st February, 2003 in respect of any income, profits or gains derived, or any amount received in relation to the specified undertaking.

It is proposed to amend sub-section (1) to allow the exemption for the period beginning on 1st February, 2003 and ending on 31st March, 2009.

This amendment will take effect retrospectively from 1st February, 2008.

Clause 119 seeks to amend the provisions of Chapter VII of the Finance (No. 2) Act, 2004, relating to the securities transaction tax.

Section 98 of the said Act provides for charge of securities transaction tax. It is provided that in the case of sale of a derivative, where the transaction of such sale is entered into in a recognised stock exchange, the securities transaction tax will be at the rate of 0.017 per cent. and will be payable by the seller.

It is proposed to substitute said serial No. 4 of the Table in section 98 and also amend section 99 of the said Act so as to provide that the securities transactions tax shall be levied at the rate of 0.017 per cent. on sale of a futures in securities and shall be payable by the seller; 0.017 per cent. of the option premium on the sale of a derivative, being option in securities and shall be payable by the seller; and 0.125 per cent. of the settlement price on the sale of an option in securities, where option is exercised, and shall be payable by the purchaser.

This amendment will take effect from 1st June, 2008.

Clause 120 seeks to amend section 95 of the Finance Act, 2005, relating to charge of banking cash transaction tax.

It is proposed to insert a new sub-section (3) in section 95 so as to provide that no banking cash transaction tax shall be charged in respect of any taxable banking transaction after 31st March, 2009.

This amendment will take effect from 1st April, 2009.

This clause also seeks to amend the Seventh Schedule of the said Act, so as to substitute certain entries with a view to enhance the rate of duty.