

Union Budget 2016-17: Indirect Tax Highlights

February 29, 2016

Key Takeaways-

Service Tax

Imposition of Krishi Kalyan Cess

- Imposes Krishi Kalyan Cess on all or any of the taxable services @ 0.5 per cent, with effect from June 1, 2016.
- Credit of Krishi Kalyan Cess paid on input services to be allowed for payment of the proposed cess on the service provided by a service provider.

Review of the Negative List in Section 66 D of the Finance Act, 1994

- Education services omitted from Negative list, service tax exemption continued by incorporating them in the general exemption notification.
- “service of transportation of passengers, with or without accompanied belongings, by a stage carriage” omitted from Negative List, service taxable with effect from June 01, 2016.
- Services by anon-air-conditioned contract carriage continues to be exempted by way of exemption notification.
- Service tax on services provided by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance. However, services by an aircraft continue to be exempted by way of exemption notification.
- Cenvat credit of eligible inputs, capital goods and input services now allowed for providing the service by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

Amendments in Chapter V of the Finance Act, 1994 (to be incorporated on enactment of the Finance Bill, 2016)

- Activity carried out by lottery distributor or selling agents of the State Government under the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998) leviable to service tax, Explanation 2 in section 65B(44) amended.
- Assignment by Government of right to use spectrum as well as subsequent transfers of assignment of such right to use now a deemed service, and leviable to service tax.
- Point of Taxation Rules, 2011 to be amended, and to come into force from date of enactment of the Finance Bill, 2016.
- For cases not involving fraud/collusion, limitation period for recovery of service tax now 30 months.
- Higher rate of interest to be applied to person who has collected, but not deposited the service tax.
- Penalty proceedings under section 78A deemed to be closed in cases where main demand and penalty proceedings closed under section 76 or section 78.
- Monetary limit for filing complaints for punishable offences enhanced to Rs. 2 crore.
- Power to arrest in service tax law restricted only to situations where the taxpayer has collected (threshold of Rs 2 crore) tax but not deposited it with exchequer.
- Retrospective allowance (from July 01, 2012) of refund of service tax on services used beyond factory or any other place or premises of production or manufacture of said goods, for export of the said goods.
- Service Tax exemption to canal, dam or other irrigation works with retrospective effect, refund of service tax for the period July 01, 2012 to January 29, 2014.
- Certain exemptions withdrawn last year for projects, contracts in respect of which were entered into before withdrawal of the exemption restored, with effect from March 01, 2016.
- Restoration of exemption from Service Tax on services by way of construction, erection, etc. of original works pertaining to an airport, port, with effect from March 01, 2016.

Information Technology Software (Effective March 01, 2016)

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- Transactions involving supply of media with recorded Information Technology Software bearing RSP, not amounting to sale/deemed sale, service tax is being exempted.

Review of Exemptions

- Services provided by a senior advocate to an advocate or partnership firm of advocates no longer exempt, service tax to be levied under forward charge, with effect from April 01, 2016.
- Person represented on arbitral tribunal to an arbitral tribunal no longer exempt, service tax to be levied under forward charge, with effect from April 01, 2016.
- Exemption of transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway withdrawn, with effect from April 01, 2016.
- Exemption to construction, erection, commissioning or installation of original works pertaining to monorail or metro withdrawn, in respect of contracts entered into on or after March 1, 2016, with effect from March 01, 2016.

New Exemptions

Effective April 01, 2016

- Services of life insurance business provided by way of annuity under National Pension System (NPS) exempted.
- Services provided by SEBI by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market exempted.
- Services provided by Employees' Provident Fund Organisation (EPFO) to employees exempted.
- Services provided by Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to the incubates exempted.
- Services provided by National Centre for Cold Chain Development under Department of Agriculture, Cooperation and Farmer's Welfare, Government of India, by way of knowledge dissemination exempted.
- Services provided by Insurance Regulatory and Development Authority (IRDA) of India.
- The threshold exemption limit of consideration charged for services provided by performing artist in folk or classical art

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forms of music, dance or theatre, increased from Rs 1 lakh to Rs 1.5 lakh per performance.

- Services provided by way of skill/vocational training by Deen Dayal Upadhyay Grameen Kaushalya Yojana training partners exempted.

Effective March 01, 2016

- Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship exempted.
- Construction/Erection services pertaining to "In-situ Rehabilitation of existing slum dwellers using land as a resource through private participation" exempted.
- Construction/Erection services pertaining to low cost houses up to a carpet area of 60 sq.m per house exempted.
- Services by IIM to Post Graduate Programme in Management exempted.

Abatements (Effective April 01, 2016)

- Abatement of 90 % on services by tour operator providing services solely of arranging or booking accommodation for any person in relation to tours; abatement on all other tour operator service rationalised from 75% and 60% to 70%.
- 30% abatement on services provided by foreman to a chit fund.
- Cost of fuel to be included in consideration charged for providing renting of motor-cab services for availing the abatement of 60%.
- Uniform abatement @ 70% on services of construction of complex, building, civil structure.
- Abatement rate of 60% with credit of input services for transport of goods in containers by rail by any person other than Indian Railway.
- Continue with abatement of 70% with cenvat credit of input services for service of transport of goods by vessel.
- Abatement on transport of used household goods by Goods Transport Agency (GTA) rationalised @60% without availment of cenvat credit on inputs, input services and capital goods.

Amendments made in Service Tax Rules (Effective April 01, 2016)

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- The benefit of quarterly payment of service tax being extended to OPC and HUF and payment on receipt basis extended to OPC.
- Rule 2(1) modified as an individual advocate other than senior advocate.
- The word “support” deleted from rule 2 making mutual fund agents/distributor as person liable for paying service tax will be deleted.
- The service tax composition scheme for single premium annuity policies.

Amendments made in Reverse charge mechanism (Effective April 01, 2016)

- Mutual fund agents/distributors to an asset management company under forward charge.
- Service provided by Government or local authorities to business entities shall be on the service recipient.

Amendments made in Cenvat Credit Rules, 2004

- Invoice issued by Service provider for removal of inputs and capital goods shall be a valid document.
- To give option to banking company, a financial institution including non-banking financial company for Cenvat Credit reversal under sub-rule (1), (2) and (3) of the Rule 6 along with rule 6(3B) of the Cenvat Credit Rules, 2004.
- Cenvat credit of service tax paid on upfront charges for assignment of spectrum/ mining rights etc.
- Reversal of Cenvat Credit of inputs/input services which have been commonly used in a taxable output service as well as an activity which is not a “service”.

Central Excise

Non Tariff:

Amendments in Central Excise Rules, 2002 & Central Excise Act, 1944

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- Section 11A is being amended so as to increase the Limitation period for show cause notice issuance from 1 year to 2 years in cases not involving fraud, suppression of facts, willful mis-statement, etc.

(The above change will be effective from date notified after Finance Bill enactment).

- The Central Excise Rules, 2002 are being amended so reduce number of returns to be filed by assessee above a certain threshold from 27 to 13, that is, one annual and 12 monthly returns. CBEC will provide for e-filing of annual return.
- Facility for revision of return, to be extended to manufacturers also.
- In case of finalization of provisional assessment, the interest will be chargeable from the original date of payment of duty.
- Instructions have been issued to Chief Commissioners of Central Excise to file application to Courts to withdraw prosecution in cases involving duty of less than Rs.5 lacs and pending for more than 15 years.

Amendments in Cenvat Credit Rules, 2004

- Rule 6 of CCR, providing reversal of credit on inputs/input services used in manufacture of exempted goods/provision of exempted services, is redrafted with objective of simplifying and rationalizing same without altering established principles of such reversal credit.
- Banks and other financial institutions allowed to reverse credit in respect of exempted services on actual basis, in addition to option of 50% reversal.
- Capital goods with value upto Rs. 10 thousand per piece included in 'inputs' definition, allowing assessee to take credit in same year in which same received.
- No CENVAT credit shall be available on capital goods used/installed for manufacture of exempted goods or provision of exempted service for 2 years from date of commencement of commercial production or provision of service

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- Transportation of goods by vessel from customs station of clearance in India to place outside India excluded from 'exempted service' definition, thus, allowing shipping lines to take credit on inputs/input services used in providing said service, which may be used by them to pay service tax on said services of transportation which would become taxable w.e.f June 2016 (after enactment of Finance Bill 2016).
- Changes made in provisions relating to input service distributor, including extension of this facility to transfer input services credit to outsourced manufacturers, under certain circumstances.
- Relevant amendments made to enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to individual manufacturing units. Procedure applicable to a first stage dealer or a second stage dealer would apply, *mutatis mutandis*, to such a warehouse of the manufacturer.
- CENVAT credit of Service Tax paid on amount charged for assignment by Government/ any other person of a natural resource such as radio-frequency spectrum, mines etc. shall be spread over period for which rights have been assigned. Where manufacturer/ service provider further assigns such right to use against a consideration, balance CENVAT credit not exceeding service tax payable on consideration charged by him for such further assignment, shall be allowed in same financial year.
- CENVAT credit allowed on inputs/capital goods used for pumping water for captive use in factory, even where said goods installed outside factory

The above changes shall come into effect from April 1, 2016.

Tariff:

- Excise duty of 2% (without CENVAT credit) or 12.5% (with CENVAT credit) is being levied on branded readymade garments and made up articles of textiles of retail sale price of Rs.1000 or more. Further, tariff value of these is being revised from 30% of RSP to 60% of the RSP.
- Ready Mix Concrete manufactured at the site of construction for use in construction work at such site is being fully exempted from excise duty.

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- Exemption under Notification No.108/95-CE has been extended to sub-contractors for manufacture and supply of goods for or on behalf of main contractor, who has won the contract for supply of goods to projects financed by UN or an international organization, for execution of said project.
- Basic Excise Duty has been increased on pan masala, non-filter and filter cigarettes and tobacco and tobacco products.
- Excise duty on “waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured” has been increased from 18% to 21%.
- Basic Excise Duty rate on aviation turbine fuel [ATF] has been increased from 8% to 14%, except for supply to Scheduled Commuter Airlines [SCA] from Regional Connectivity Scheme [RCS] airports.
- Excise duty is being exempted on inputs and parts for use in manufacture of charger/adapter, battery and wired headsets/speakers of mobile handsets including cellular phone. Excise duty is also being exempted on inputs and sub-parts for use in manufacture of parts of charger/adapter, battery and wired headsets/speaker of mobile handsets including cellular phone. These exemptions are subject to actual user condition.
- Excise duty of 4% without CENVAT credit / 12.5% with CENVAT credit is being prescribed for Routers, broadband Modems, Set-top boxes for gaining access to internet, set top boxes for TV, digital video recorder (DVR) / network video recorder (NVR), CCTV camera / IP camera, lithium ion battery [other than those for mobile handsets].
- Excise duty on tools and tool kits for maintenance, repair, and overhauling of aircraft is being exempted subject to actual user condition
- Excise duty on Capital goods and spare thereof, raw materials, parts, material handling equipment and consumable for repairs of ocean-going vessels by a ship repair unit is being exempted subject to actual user condition.

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- Excise duty exemption on 5 specified items for manufacture of rotor blades and intermediates, parts and sub-parts of rotor blades for wind operated electricity generators is being withdrawn, hence, they will now attract a concessional excise duty of 6%, for manufacture of rotor blades and intermediates, parts and sub-parts of rotor blades for wind operated electricity generators, subject to actual user condition.
- Basic Excise Duty of 1% (without Cenvat Credit) and 12.5% (with Cenvat Credit) is being imposed on Articles of Jewellery [excluding articles of silver jewellery, other than those studded with diamonds, ruby, emerald or sapphire].
- The Schedule Rate of Clean Energy Cess, now renamed as "Clean Environment Cess" levied on coal, lignite and peat, is being increased from Rs.300 per tonne to Rs.400 per tonne and the effective rate of Clean Energy Cess has increased from Rs.200 per tonne to Rs.400 per tonne
- Infrastructure Cess is being levied on motor vehicles, (i) Petrol/LPG/CNG driven motor vehicles of length not exceeding 4m and engine capacity not exceeding 1200cc – 1%; (b) Diesel driven motor vehicles of length not exceeding 4m and engine capacity not exceeding 1500cc – 2.5%; (c) Other higher engine capacity motor vehicles and SUVs and bigger sedans – 4%.

(The above changes shall come into effect from March 1, 2016).

Exemptions

- Engineering goods exempted from excise duty, along with scientific equipments for research purposes in Government Laboratories other than hospitals. .
- Clarifies that the area based excise duty exemption presently available to the North Eastern States including Sikkim, will be available to an existing unit on second substantial expansion as well, provided that the concerned unit commences commercial production from such expanded capacity not later than March 31, 2017.
- Excise duty exemption is also available to sub-contractors for manufacture and supply of goods for or on behalf of the main contractor (who has won the contract for the supply of goods to the projects financed by the UN or an

international organization and approved by the Government of India) for execution of the project.

Other Amendments

- Section 3 of Central Sales Tax Act, 1956 is being amended so as to insert an explanation providing that, where the gas sold or purchased and transported through a common carrier pipeline or any other common transport distribution systems becomes co-mingled and fungible with other gas in the pipeline or system and such gas is introduced into the pipeline or system in one State and is taken out from the pipeline in another State, such sale or purchase of gas shall be deemed to be a movement of goods from one state to another.
- Indirect tax Dispute Resolution Scheme, 2016 have been introduced. The said Scheme provides for settlement of disputes pending before Commissioner (Appeal) as March 1, 2016, on payment of tax dues along with interest and 25% of penalty imposed and is applicable to declarations made upto December 31st, 2016.

(The above changes will be effective from date notified after Finance Bill enactment).

- The interest rates for non-payment have also been made uniform across indirect taxes and brought down to 15% (except in cases where Service tax has been collected but not deposited).

(The above change is effective from April 1, 2016)

- The Oil Industry (Development) Act, 1974 is being amended so as to reduce the rate of Oil Industries Development Cess, on domestically produced crude oil, from Rs. 4500 PMT to 20% ad valorem. The amendment in the Act will be effective from the date of assent to the Finance Bill, 2016. Till the enactment of the Finance Bill, 2016, Notification prescribing 20% effective rate of OID Cess will be issued by Ministry of Petroleum & Natural Gas.
- 11 new benches of CESTAT have been proposed.

Customs

Non-Tariff:

Warehousing Provisions

- New class of warehouses has been added in Sec 2(43) of Customs Act for enabling storage of specific goods under physical control of the department, as control over the other types of warehouses would be only record based. Collaterally, omits 'warehousing station' definition u/s 2(45) and CBEC power to declare warehousing stations u/s 9 of Customs Act.
- Inserts new Sec 58A in Customs Act to provide for a new class of warehouses which require continued physical control and will be licensed for storing goods, as may be specified
- Inserts new sec 58B in Customs Act to regulate process of cancellation of licenses, which is a necessary concomitant of licensing.
- Warehousing bond amount to be at thrice the duty involved in terms of Sec 59 of Customs Act.
- Defines date of removal of goods from customs station and deposit in a warehouse.
- Empowers Principal Commissioners / Commissioners to extend warehousing period to all goods used by Export Oriented Undertakings / Units under Electronic Hardware Technology Parks / Software Technology Parks / Ship Building Yards and other units manufacturing under bond upto 1 year at a time.
- Owner of Warehouse is not required to pay any rent or warehouse charges in respect of Sec 63 of Customs Act.
- No payment of fees to be paid by warehousing owners for supervision of manufacturing facilities under Bond in respect of Sec 65 of Customs Act.

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- Inserts new Sec 73A is being inserted so as to provide for custody of warehoused goods and responsibilities including the liabilities of warehouse keepers.

Others Amendments

- Principal Commissioner / Commissioner to appoint / license warehouses instead of Deputy / Assistant Commissioner u/s 57 & 58 of Customs Act.
- Removes requirement of publishing / offering for sale of notification by Directorate of Publicity and Public Relations in terms of exemption notification issued u/s 25 of Customs Act.
- Increases limitation period from 1 year to 2 years where no fraud / suppression of facts / willful mis-statement is involved
- Prescribes deferred payment of customs duties for importers and exporters to certain class of importers and exporters.
- Allows CBEC to frame regulations for allowing transit of certain goods and conveyance without payment of duty.
- Indian Customs Single Window Project to be implemented at major ports / airports w.e.f. next financial year.
- Simplifies Customs Baggage Rules for international passengers to increase free baggage allowance. Filing of baggage declaration will be required only for those passengers who carry dutiable goods.

Miscellaneous:

- Exempts disposable sterilized dialyzer and micro barrier [Chapter 84 or 90] of artificial kidney from BCD / Excise / CVD, and SAD. CVD exemption will flow from excise exemption.
- BCD / CVD exemption extended on imports of goods required for exploration & production of hydrocarbon activities undertaken under Petroleum Exploration Licenses (PEL) or Mining Leases (ML) issued or renewed before 1st April 1999 also.

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- In case of power generation project based on municipal and urban waste, valid agreement between producer of power with urban local body for processing of municipal solid waste for not less than 10 years from project commissioning date is being prescribed for availing customs / excise duty concessions as an alternative to the existing condition of “production of valid power purchase agreement between the importer/producer of power and the purchaser, for the sale and purchase of electricity generated using non-conventional materials.

Tariff:

Amendments not affecting rates of duty

- Editorial changes in the Harmonized System of Nomenclature (HSN) in certain chapters are being incorporated in the First Schedules, to be effective from 01.01.2017
- Prescribes separate tariff lines for laboratory created / laboratory grown or manmade or cultured or synthetic diamonds
- Substitutes Tariff line 5801 39 10 with description “Warp pile fabrics, uncut” in place of tariff line 5801 37 11
- Removes Tariff Line relating to Wireless Microphone.

Amendments affecting rates of duty

Amendments involving increase in duty rates coming into force immediately owing to a declaration under the Provisional Collection of Taxes Act, 1931:

- Duty on Natural latex rubber made balloons increased from 10% to 20%
- Duty on Primary aluminium and Zinc alloys increased from 5% to 7.5%.
- Duty on Imitation jewellery increased from 10% to 15%.
- Duty on Industrial solar water heater increased from 7.5% to 10%.

Other proposals involving changes in BCD / CVD / SAD & Export Duty Rates:

- Imposes Basic Customs Duty on E-Readers @ 7.5%.
- Withdraws Basic Customs Duty and CVD exemptions on charger/Adapter, Battery and Wired Headsets/Speakers for use in manufacture of mobile handsets including cellular phone.
- Withdraws SAD exemption on charger/Adapter, Battery and Wired Headsets/Speakers for use in manufacture of mobile handsets including cellular phone.
- Withdraws CVD exemption on specified machinery required for construction of roads. CVD to be imposed @ 12.5%.
- Basic Customs duty on refrigerated containers reduced from 10% to 5%.
- Basic Customs duty on specified fibres and yarns reduced from 5% to 2.5%.
- Basic Customs duty on Golf Cars increased from 10% to 60%.
- Basic customs duty exemption provided on specified raw materials for use in manufacture of Micro fuses, Sub-miniature fuses, Resettable fuses, and Thermal fuses.
- CVD increased on Gold dore bars from 8% to 8.75% and of silver dore bars from 7% to 7.75%.
- SAD imposed @ 4% on Populated PCBs for manufacture of personal computers (laptop or desktop).
- SAD imposed @ 2% on Populated PCBs for manufacture of mobile phone/tablet computer