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The "PC" Budget !!!

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Electoral beatings in Gujarat and other States! The pouring accolades for his cabinet colleague for his fantastic Railway Budget!! Most of all, the last budget for the UPA in this term!!! The tremendous pressure was very evident in his face and his body language in the House when our beloved PC presented his seventh budget in the parliament which is definitely a signature PC budget! But the PC we refer here is not the acronym of Mr. Palaniappan Chidambaram but a "**Poll Conscious**" Budget!!!

Apart from giving huge waiver for the kissans and income tax relief to the middle income group, this Budget also has shown some benevolence to the manufacturing sector. Reduction of Excise duty from 16% to 14%, across the board, particularly reducing the duty to 8% for the bleeding pharma sector, has been the crowning glory of this Budget! While reducing the duty across the board, there is an increase in the duty for the clearances by the 100% EOUs in the Domestic tariff area, which once again manifests the step motherly treatment of the Revenue towards the Commerce baby. Though the reduction of duty for small cars and motorcycles is a welcome I am really worried about the pathetic future of the already overcrowded traffic in most of the urban cities. Another welcome proposal is the restoration of the exemption to the paper industry for the first 3500M.T in a financial year, if manufactured from non-wood resources. Earlier, after this exemption was withdrawn, many of the units converted their facility into kalyana mandapam and the present restoration would give the industry a fresh lease of life. The National calamity Contingency Duty has been abolished for the polyester yarn and a 1% NCCD has been levied on the mobile phones.

In a significant amendment to Section 2 of the Central Excise Act (CEA), the definition of the term "goods" has been deemed to be "marketable" if they are capable of being bought and sold. The Notes on Clauses says that this amendment is to overcome certain judicial interpretations about the marketability. But, to me, this would only open another era of litigations, and this time, the nucleus of the litigation is going to be the interpretation of the term "capability of being bought and sold in the market". Further there is an amendment to the "deemed manufacture" definitions appearing in the Chapter / Section notes of the CEA. All through the deemed fiction in the various Chapter / Section Notes of the Central Excise Tariff read as,

> *"…labelling or relabelling of containers **and** repacking……"*, which has now been proposed to be amended as *"…labelling or relabelling of containers **or** repacking……"*.

This amendment has been explained in the TRU letter as an editorial change to align with the definition contained under Section 2(f)(iii) of CEA. But it is not so. Reference is drawn to **2007-TIOL-1331-CESTAT-MAD,** wherein, the Hon'ble Tribunal has interpreted the crucial **"and"** *supra*, and has held that, to attract the "deemed manufacture" fiction there shall be **both repacking as well as labeling /relabelling.** In other words, if there is only labeling/relabelling or only repacking then the same

would not amount to "manufacture" as per the deemed fiction. To overcome this, now the department has come with this amendment and tries to camouflage it as an " editorial change".

Another significant amendment to the CEA is the re-introduction of Section 3A of the CEA. All of us, mainly the Steel industry, is yet to forget the ghosts of the erstwhile Section 3A and the corresponding Rules made thereunder. From 1997 to 2001, till it was abolished, the Courts and the Tribunals were flooded with bounty of disputes from the determination of capacity to the default in payments. Now, like a phoenix bird, it has resurrected once again, only to feed many but not the industry.

Though Section 4A(4) of CEA (introduced w.e.f 14/5/2003) has envisaged certain circumstances wherein the manufacturer of goods falling under the valuation purview of Section 4A (RSP based assessment) removes the goods without affixing the RSP or tampers with the RSP, and has made a provision to prescribe the manner to ascertain the RSP in such circumstances, the manner was never prescribed. Now, after getting "really hit" by the tile manufactures of Gujarat, the Revenue has woken up from its slumber and has issued Notification No 13/2008, whereby, it has notified the Rules for the determination of Retail Sale price (RSP) under Section 4A(4) of CEA. To me, even these Rules are not fool proof and a good amount of mischief is still in store.

In an amendment to Section 11B, interest has been included into the ambit of refunds under the said Section. By this, all aspirants of refund of interest shall, henceforth, be well aware of the deadly principle of "unjust enrichment" in their claims. In another crucial amendment to Section 11D of CEA, the Revenue has played it very wisely. All along, as per Section 11D of CEA, any amount collected by a person, **who is liable to pay duty**, alone was liable deposit the amount collected representing duty. In other words, if a person, who is not a manufacturer, collects any duty from his buyer as duty, would not be covered under Sectuin 11D of CEA. But, by this proposed amendment to Section 11D, by way of inserting a new sub-section 1(A), the Revenue has overcome this and has made **any person** who has collected any amount representing duty to be covered under this Section11D, thus making Section 11D(1) as non-existent.

The Cenvat credit available on the service tax paid on the Goods Transport Agency on outward transportation of the goods manufactured and cleared by the manufacturer has been the recent box office hit issue in the taxation world. The contradiction between the main definition of "input service" under Rule 2(l) of the Cenvat Credit Rules, 2004 (CCR) and its inclusive definition has been the bone of contention for this battle. We all witnessed conflicting decisions and the issue has now been even referred to the larger bench of the Hon'ble Tribunal. Now there has been an amendment to the main definition of Rule 2 (l) *ibid*, whereby, we believe, the issue would be put to rest in future. But, by this amendment, the contention that the Cenvat credit would be available for the past period is more or less justified, as this amendment can only be prospective.

Another very significant amendment is to Rule 6 of the CCR, wherein, a Eucledian formula has been prescribed for quantification of the reversal of Cenvat Credit, if common inputs are used in the manufacture of dutiable/exempted goods and provision of taxable/exempted services. A detailed analysis with illustrations can be read from our another article on budget titled as **"Rule 6 Calculus"**.

This budget has not brought many changes in the Customs except for reduction of duty for certain Project Imports from 7.5% Basic Customs duty to 5%. In a major boost to the Steel and Aluminium Industry, the BCD for the melting scrap of Iron & Steel and Aluminium had been wholly exempted from the existing 5%. In a major amendment to Section 74 of the Customs Act, the time limit to re export the goods under claim of drawback has been reduced to 18 months from the existing 36 months.

On Service Tax, another populist bonanza in this "PC" budget is the increase in the threshold limit from 8 lakhs to 10 lakhs per annnum. Though against the speculations, there were not much new levies, this Budget has not been soft on the "software" sector, either under Central Excise or under the Service tax. While increasing the Excise duty from 8% to 12% for the packaged/canned software, a comprehensive service tax levy has been levied to almost the entire operations of the IT sector. Though this new levy brings almost all the IT services under the carpet whilst there is a definite ammunition in store as there could be a classification challenge between the IT levy and the IPR levy, where the copyrights are specifically exempted. Anyways, dear Murthyji and Premji, welcome aboard!!! Another very important levy is the introduction of service tax on supply of tangible goods. After the introduction of levy on services like site formation, the ingenuous service providers split their contracts like supply of earth movers etc and avoided the levy to that extent. By this present levy, the department has come out with an effective counter, whereby, such supply would also be under the net.

Apart from the above, there has been significant amendments to certain existing levies also. By some crucial amendments to the existing definitions of services like cargo handling service, tour operator service, renting of immovable property service and business auxiliary service, whereby, the activities of packing and moving, inclusion of all permits (including contract carriage permits) except stage carriage permit, renting of space for vending machines and cinema halls and services relating to games of chance (lottery/lotto/bingo) are included respectively. Months back, TIOL reported a huge case being booked by the department on a major lottery service provider. By amending the definition, though by way of an explanation to clarify doubts, the department has given a very big scope for an argument that the present insertion is only prospective. We all know the fate of one such explanation insertion under section 65 (105), which was stayed by the hon'ble High Court of Madras in the case of Export of Services. By this explanation, I am really afraid that, this time the department has played a "game of chance" staking the mulit- crore demand!!!

While many are smiling, there is one sector who are really very upset about this Budget and it is the "Works Contract" service providers. When the levy was introduced last year, there was a huge

welcome to the levy as it was the BEST option available to the Construction / Erection, Commissioning, Installation sector. It came as a boon to that industry as it was only 2% which was less than half of the other existing schemes. That too, it came with a bonanza of Cenvat credit on input services and capital goods. But the joy has been short lived. Now, by Notification 7/2008 – ST, the rate of tax has been enhanced from 2% to 4%. But still this would be a better option vis-à-vis the 33% scheme because of the Cenvat credit facility. But who knows? Like Notification 1/2006-ST for that 33% scheme, soon there shall be a Notification to this levy too, prohibiting Cenvat credits!!!

Lastly to the Samadhan scheme for service tax. While appreciating the initiative to shake hands for dispute redressal, the 25,000/- limit to the scheme needs reprimand. Today, any service tax case would be more than a Crore and they are mostly because of varied interpretations. This is a time where the department has to come out stretching their arms to settle such disputes in a big way and reassure faith to the tax payers. Instead, coming with a "peanut" limit and calling it as an amnesty scheme is nothing but a shame and a testimony of the meanness of the North Block. I am sure, the expenditure incurred would be much more than the revenue realized by this scheme.

Before parting…

Right through his present innings as the Union Finance Minister, he had never been this considerate to this country, be it in Direct Taxes or in the Indirect Taxes, as he had been this time. If the ensuing General Elections is the reason behind his generosity, we feel, it is worth a Constitutional Amendment to have polls EVERY YEAR!!!