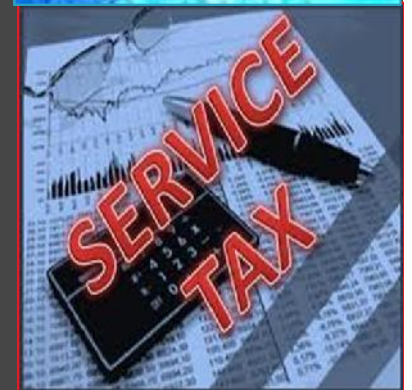
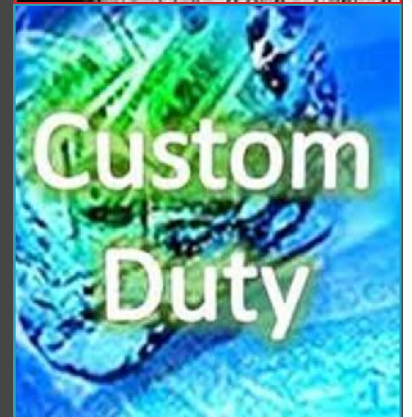
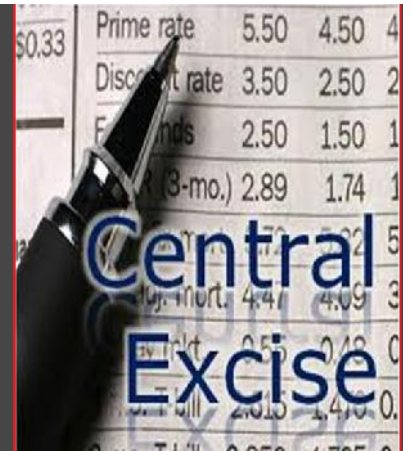


INDIRECT TAX PROVISIONS - FINANCE BILL, 2015

By
Vishal Agrawal
Senior Partner,
TLC Legal, Advocates.



14th March, 2015

Finance Bill, 2015

The Broad Picture

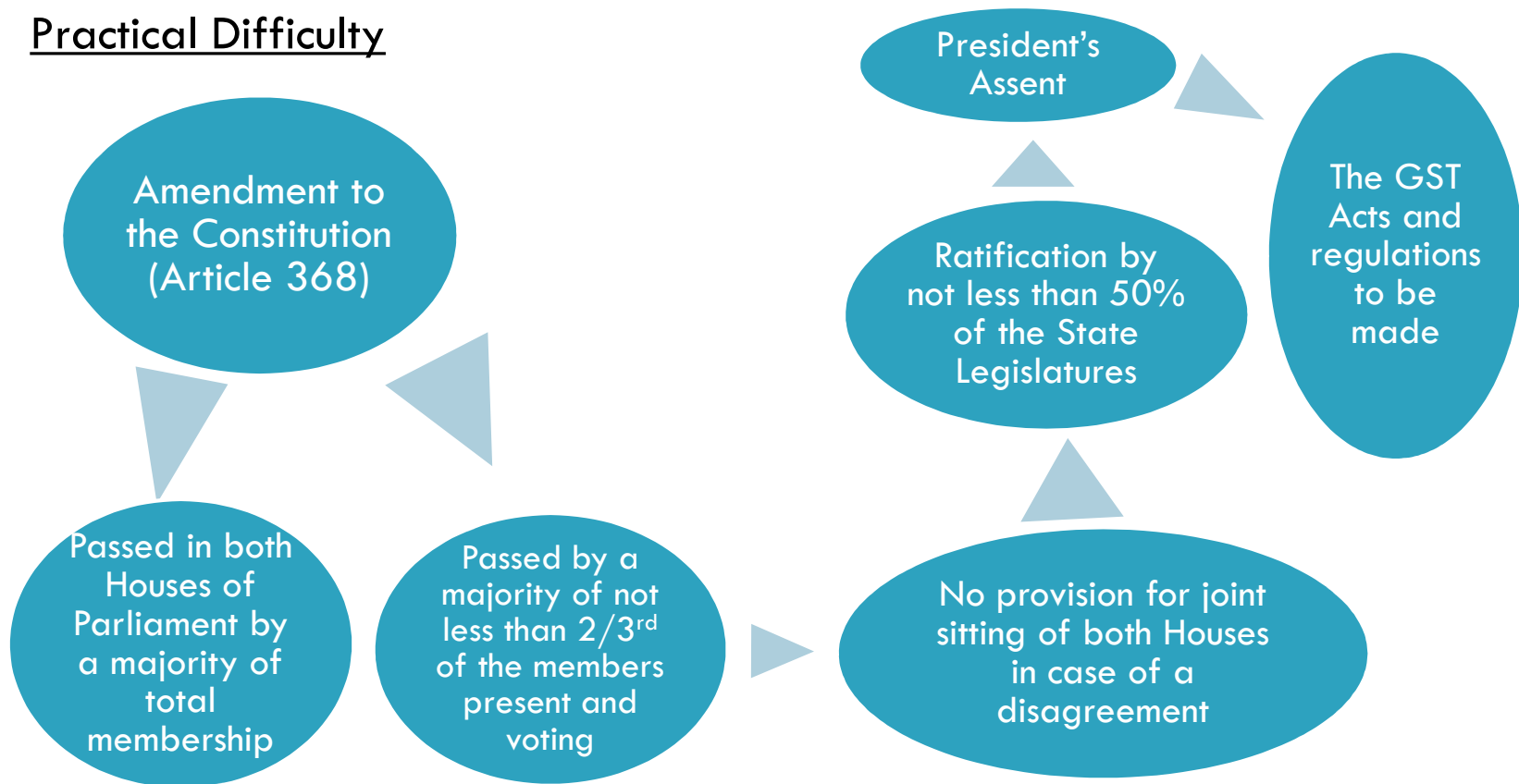
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Indirect Taxes			
	Revised 2014-15 (in crores)	Budgeted 2015 -16 (in crores)	Additional Collection (in crores)
Customs	188,713	208,336	19,623
Excise	185,480	229,808	44,328
Service Tax	168,132	209,774	41,642
Total	542,325	647,918	
Total			105,593
Direct Taxes			
	705,628	797,995	92,367
Percentage increase in Tax Collection			
Increase in Indirect Taxes			19.47%
Increase in Direct Taxes			13.09%

ROLLOUT OF GST – TENTATIVE DATE 1.4.2016

3

Practical Difficulty



Certain amendments indicating a step closer to GST

4

- Increase in the base rate for Excise (from 12.36% to 12.5%) and Service Tax(from 12.36% to 14%);
- Subsuming of Ed. Cess and SHEd. Cess under Central Excise and Service Tax;
- Procedural amendments – ‘Ease of business’.

**LEGISLATIVE
AMENDMENTS**

common to

CUSTOMS & EXCISE

COMMON AMENDMENTS

6

- Advance Ruling facility extended to Resident Firms.
- Settlement Commission cannot entertain cases where notices have been challenged in a Writ.
- Overhaul of the penal provisions.

AMENDTMENTS IN PENAL PROVISIONS

7

[Sec 11 AC of CEA and Sec 112(b)(ii) & 114 of CA]

Situation 'A' - No fraud, suppression, etc. and if goods are not prohibited

Maximum penalty is now **10% of the duty or Rs.5000/-** whichever is higher.

If duty and interest have been paid before issue of SCN or within 30 days of issue of SCN then no penalty is imposable.

If the above does not happen, within 30 days of the adjudication order, pay duty + interest+25% of [Upto 10% penalty].

AMENDTMENTS IN PENAL PROVISIONS

8

[Sec 11 AC of CEA and Sec 112(b)(ii) & 114 of CA]

Situation 'B' - If fraud, suppression, etc. exists

Option-1

Penalty remains 100% of the duty.
Pay 15% penalty if duty, interest + 15% penalty is deposited within 30 days of the issue of SCN.

Option-2

Pay 25% of penalty after adjudication within 30 days

Notes:

1. Earlier option in excise law of avoiding issuance of notice by paying before the notice was issued has been deleted.
No such option existed under Customs law.
2. Right to contest the matter remains and refund can be claimed of duty, interest and proportionate penalty on success.
3. Proceedings against co-noticees get over if case is not adjudicated, whereas it does not get over if payment is made after adjudication.

Proposed Section 11AC

*“(d) where any duty demanded in a show cause notice and the interest payable thereon under section 11AA, issued in respect of transactions referred to in clause (c), is paid within thirty days of the communication of show cause notice, the amount of penalty liable to be paid by such person shall be fifteen per cent. of the duty demanded, subject to the condition that such reduced penalty is also paid within the period so specified and **all proceedings** in respect of the said duty, interest and penalty shall be **deemed to be concluded**;*

(e) where any duty as determined under sub-section (10) of section 11A and the interest payable thereon under section 11AA in respect of transactions referred to in clause (c) is paid within thirty days of the date of communication of the order of the Central Excise Officer who has determined such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent. of the duty so determined,”

Proposed Section 112 (b)(ii)

“(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher: Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;”.

EXCISE AMENDMENTS

11

- Self assessed liability can be straight away recovered without proceedings under Section 11A.
- Where suppression is involved, distinction in penal consequences between recorded and unrecorded transactions has been deleted – Section 11A amended.

PROCEDURAL AMENDMENTS CENTRAL EXCISE RULES

12

EASE OF BUSINESS

- As a step towards technological advancement -
 - Issuance of digitally signed invoices*
 - Preservation of records in electronic form.
- *However, a transporter of goods needs to carry a self-attested hard copy of the invoice during transportation.
- Registration process under Central Excise and Service Tax simplified; enabling online registration within 2 working days.
- Direct dispatch of inputs and capital goods to the job-worker's premises permitted.

PROCEDURAL AMENDMENTS CENTRAL EXCISE RULES

13

EASE OF BUSINESS

- Direct dispatch of goods without transiting through registered dealer/importer's premises permitted.
- Time limit for return of capital goods from job-worker increased to 2 years (from 6 months).
- Late filing of any return – penalty at Rs. 100/- per day subject to maximum of Rs. 20,000/-.

SERVICE TAX

DELETION OF PROVISIONS

- Sub section (4A) to section 73 is proposed to be deleted. As a result of this amendment, in cases of suppression, the procedure of issuing a show cause notice cannot be circumvented.
- Section 80 of the Act which provided for waiver of penalty, at the discretion of the Commissioner is proposed to be deleted.

ADDITION OF NEW PROVISIONS

16

- Section 76
- Section 78
- Section 78B – Transitory Provision

NEW SECTION 76

17

➤ WHEN DOES IT APPLY?

*When service tax has **not been** levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason in cases **other than** fraud, suppression, etc.*

➤ What is the QUANTUM?

10% of the tax demanded.

NEW SECTION 76

18

MITIGATION PROVISIONS - In cases where, extended period not invocable

	Extended period not invocable
Maximum penalty leviable	10% of Service Tax
Tax and Interest paid within 30 days of issue of SCN.	No Penalty.
Tax, Interest and reduced penalty paid within 30 days of Order.	25% of maximum penalty. [10% of Service Tax]
Tax Demand modified in Appeal – Tax, Interest and reduced penalty paid within 30 days of order.	Benefit of reduced penalty to be extended.

COMPARISON

19

Existing Penalty	<p>Not less than Rs. 100/- per day¹ during which default continues or 1% of the service tax per month, whichever is higher but restricted to 50% of the amount of service tax.</p> <p>¹The intention appears to be “Rs. 100/- per day” and not “not less than Rs. 100/- per day” - see Explanatory Notes on Service Tax dated 28.02.06 issued by Ministry of Finance.</p>
Proposed Penalty	<p>(i) Maximum - upto 10% of tax.</p> <p>(ii) Penalty – Nil, if tax and interest paid within 30 days of service of SCN.</p> <p>(iii) Penalty – 25% of penalty imposed under an order u/s. 73(2), if the service tax, interest and such reduced penalty is paid within 30 days of receipt of the order².</p> <p>² The maximum penalty imposable u/s. 76 is upto 10% of the tax. Hence the maximum penalty payable in such cases would be 2.5% of service tax i.e. [25% of 10%]</p>

NEW SECTION 78

20

➤ WHEN DOES IT APPLY?

*When service tax has **not been** levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason in cases of fraud, suppression, etc.*

➤ What is the QUANTUM?

100% of the tax demanded.

NEW SECTION 78

21

MITIGATION PROVISIONS - in cases where extended period is invocable.

	Extended period invocable
Maximum penalty leviable	100% of Service Tax
Tax and Interest paid within 30 days of issue of SCN.	Reduced penalty of 15% of Service Tax also to be if paid within 30 days.
Tax, Interest and reduced penalty paid within 30 days of Order.	25% of maximum penalty. [100% of Service Tax]
Tax Demand modified in Appeal – Tax, Interest and reduced penalty paid within 30 days of order.	Benefit of reduced penalty to be extended.

COMPARISON

22

Existing Penalty	<ul style="list-style-type: none">(i) Penalty – 100% of the service tax.(ii) Penalty – where true and complete details of transactions are available in the “specified records”:<ul style="list-style-type: none">(a) 25% of tax, where the tax, interest and penalty of 25% of the tax is paid within 30 days (90 days in case of assesses having value of taxable services less than 60 lakhs) from the date of receipt of order.(b) 50% of tax in all other cases.
Proposed Penalty	<ul style="list-style-type: none">(i) Penalty – 100% of service tax.(ii) Penalty - 15% of the service tax amount if tax, interest and such reduced penalty is paid within 30 days of service of SCN.(iii) Penalty - 25% of the service tax amount determined if the service tax, interest and such reduced penalty is paid within 30 days of receipt of order.

Section 78B - Transitory Provision

“78B. (1) Where, in any case,— (a) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and no notice has been served under sub-section (1) of section 73 or under the proviso thereto, before the date on which the Finance Bill, 2015 receives the assent of the President; or (b) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and a notice has been served under sub-section (1) of section 73 or under the proviso thereto, but no order has been passed under sub-section (2) of section 73, before the date on which the Finance Bill, 2015 receives the assent of the President, then, in respect of such cases, the provisions of section 76 or section 78, as the case may be, as amended by the Finance Act, 2015 shall be applicable. (2) Notwithstanding anything contained in sub-section (1), in respect of cases falling under the provisions of sub-section (4A) of section 73 as was in force prior to the date of coming into force of the Finance Act, 2015, where no notice under the proviso to sub-section (1) of section 73 has been served on any person or, where so served, no order has been passed under sub-section (2) of section 73, before such date, the penalty leviable shall not exceed fifty per cent. of the service tax.”.

OTHER PROVISIONS

24

- Recovery of tax without issue of notice -

New sub section (1B) to section 73 is proposed to be added whereby service tax amount self-assessed and declared in the return but not paid can be recovered without any notice.

- Purpose of introduction of the section

Earlier this provision existed by way of Rule 6(6) of the Service Tax Rules, however there was no such provision in the statute. Now this has been introduced as a statutory amendment to remove the legal lacuna.

CASES INVOLVING EXPORT REBATE

25

Section 35EE of the Central Excise Act read with amended Section 86 of the Finance Act -

An order passed by the CCE(A) with respect to cases involving rebate of inputs and/or input services used in the provision of export services, has been made appealable by way of Revision by the Central Government.

Purpose:

This amendment overcomes the Delhi High Court judgment of Glyph International Ltd. wherein it was held that Section 86 does not exclude the Tribunal's jurisdiction in cases of export rebate.

CENVAT CREDIT RULES

CHANGES IN THE CCR, 2004

27

- Time limit for availing CENVAT credit on inputs and input services extended from 6 months to **one year** from the date of issue of invoice/challan/any other specified document. (effective from 1.3.2015)
- An explanation has been added to Rule 6(1) to provide that 'exempted goods' would also include 'non excisable goods' sold for a consideration.
- Rule 4(7) of CCR, 2004 has been amended to provide that Cenvat credit in respect of services falling under partial reverse charge mechanism can be availed immediately on payment of service tax.

CHANGES IN THE CCR, 2004

28

- Rule 4(1) and (2) of CCR is being amended to provide that where inputs and capital goods are directly sent to the job-worker, Cenvat credit of inputs and capital goods can be availed by the manufacturer or service provider at the time of receipt of such inputs at the job-worker's premises.
- Inputs can travel from one job-worker to another, provided they come back within 180 days.
- Rule 9(4) of CCR has been amended to provide that the invoice issued by the importer indicating payment of duty on inputs or capital goods shall be an eligible document for availing Cenvat credit.

Manner to determine utilization of credit (to enable calculation of interest liability)

29

- Rule 14 has been amended to provide for recovery of Cenvat credit wrongly availed or erroneously refunded but not utilized.
- All credits taken during a month shall be deemed to have been taken on the last day of the month and the utilization thereof shall be deemed to have occurred in the following manner -
 - The opening balance of the month has been utilized first;
 - Credit admissible in terms of CCR taken during the month has been utilized next;
 - Credit inadmissible in terms of CCR taken during the month has been utilized thereafter.

Rule 14 substituted

“14. Recovery of CENVAT credit wrongly taken or erroneously refunded. –

(1) (i) Where the CENVAT credit has been taken wrongly but not utilised, the same shall be recovered from the manufacturer or the provider of output service, as the case may be, and the provisions of section 11A of the Excise Act or section 73 of the Finance Act, 1994 (32 of 1994), as the case may be, shall apply mutatis mutandis for effecting such recoveries; (ii) Where the CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same shall be recovered along with interest from the manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply mutatis mutandis for effecting such recoveries.

(2) For the purposes of sub-rule (1), all credits taken during a month shall be deemed to have been taken on the last day of the month and the utilisation thereof shall be deemed to have occurred in the following manner, namely: - (i) the opening balance of the month has been utilised first; (ii) credit admissible in terms of these rules taken during the month has been utilised next; (iii) credit inadmissible in terms of these rules taken during the month has been utilised thereafter.”

ISSUES

31

What happens to the Ed.Cess and SEd. Cess balance in the CENVAT credit account?

Whether order of Commissioner (Appeals)/Tribunal modifying the tax liability will give a fresh chance to mitigate penalties, if the option was not exercised earlier?

Is CENVAT credit wrongly taken but not utilised to be deemed as 'utilised' in view of Rule 14(2)?

How does Rule 14(2) work where CENVAT balances are carried forward for many months?

EXAMPLE FOR THE AMENDED RULE 14(2)

32

Month 1:

Opening Balance	100
Add: Admissible credit	10
Add: Inadmissible credit	10
Less: Utilized	<u>(30)</u>
Closing Balance	<u>90</u>

Next month:

Opening Balance	90
Add: Admissible credit	10
Add: Inadmissible credit	10
Less: Utilized	<u>(40)</u>
Closing Balance	<u>70</u>

THANK - YOU