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[Training Material for Departmental Use]

E-BOOK

On

-Budgetary Changes- Effective Dates

Note:

1. In this E-book, attempts have been made to explain about *Effective dates for Applicability of Budget Proposals Relating to Customs/Central Excise/Service Tax*. It is expected that it will help departmental officers in their day to day work.
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5. This e-book has been prepared with active assistance and contribution of **Shri R. K. Shukla, Assistant Director, NACEN, RTI, Kanpur**. I appreciate his participation and willingness to prepare e-books so as to help fellow departmental officers in capacity building and upgrading their knowledge.
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Sd/-

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Understanding Effective dates for Applicability of Budget Proposals Relating to Customs/Central Excise/ Service Tax

1. Introduction

- 1.1. Each year, Budget is presented by Union Finance Minister in the Parliament normally on 28th February. From Customs /Central Excise officer's interest point of view, it, inter alia, contains proposal for amendments of Statutory provisions of Indirect Tax laws, namely, Customs Act, 1962; Customs Tariff Act, 1975; Central Excise Act, 1944; Central Excise Tariff Act, 1985; Finance Act, 1994 etc., changes in duty rates, issuance of new rules/ amendment of existing rules, retrospective amendments of provisions of laws often arising out of adverse Court pronouncements, imposition of new levy etc.
- 1.2. While Finance Bill containing proposed amendments in various tax statutes is presented in the Parliament, we find that large numbers of Tariff and Non-Tariff notifications are also issued. While Tariff Notifications are issued providing duty exemptions, the non-tariff notifications are issued effecting amendments in various Rules.
- 1.3. At times, the field officers remains uncertain about the date of applicability of various provisions of the Budget, an attempt has been made in this E-book to help the field officers in this regard.

2. Difference between Tariff and Non-Tariff Notifications

- 2.1. Tariff Notification is a notification which contains matters relating to tariff i.e. rate of duty. In other words, any notification having impact on effective rate of duty or in other words, providing for lower rate of duty (i.e. effective rate of duty) than the prescribed tariff rate of Central Excise duty/Customs duty, would be termed as Tariff Notification. The duty exemption provided through tariff notification may be either full or partial exemption from payment of duty/tax. Further, such exemption from

payment of duty may be unconditional or may be subject to fulfillment of condition (s) specified in the notification. On other hand, notification used for amending existing rules or laying out new rules/ regulation or implementing various other provisions of the tax Statute, which does not have any impact on rate of duty, are called Non-Tariff notifications.

- 2.2. Non-Tariff Notification is distinguished from a Tariff notification by putting (N.T.) after the notification number. The words i.e. Central Excise or Customs or Service Tax is written just after number to distinguish as to whether notification issued relates to Central Excise or Customs or Service Tax law.

3. *Effective Date of Tariff or Non-Tariff Notifications*

- 3.1. A notification normally become effective on the date of publication in the official Gazette unless it is specifically mentioned in the notification that this notification will come into effect on the date (other than date of publication in the official Gazette) as mentioned in the notification itself. For example, if a notification No is mentioned as Notification No. 1/2015 – Central Excise, dated 1st March 2015, it means, it is a tariff notification relating to central Excise duty which would be effective from 01.03.2015. However, it is also probable that the notification may contain a date in the body of notification that it shall come into force on xx/yy/zz. Then, in such situation, it would come into force from the prescribed date (xx/yy/zz) only.
- 3.2. While Tariff and non-tariff notifications are distinguished in case of Custom duty and Central Excise duty, by putting letters NT in case of non-tariff notification, in case of service tax, no such distinction is made. In service tax, notification dealing with exemption from payment of service tax or dealing with amendment of rules etc. are numbered in the same manner, as the rate of Service Tax is prescribed in Section 66B of the Finance Act, 1994 itself and there is no separate Tariff Act for Service Tax.

- 3.3. Notifications are allotted Serial number, Calendar year wise, not Financial year wise.
- 3.4. There are separate number series for Tariff and Non-Tariff notification. Likewise, in Customs, there are separate number series for notification relating to Anti Dumping Duty (ADD) and Safeguard Duty (SG). The notifications relating to Anti Dumping duty and Safeguard duty are distinguishing by suffixing words ADD and SG respectively.

4. Budget Proposal relating to Increase of Tariff Rate of duty or Imposition of fresh Central Excise Duty/Customs duty.

- 4.1. A Tax officer is well aware that there is difference between Tariff rate of duty and effective rate of duty. While tariff rate of duty is the duty rate mentioned in the Customs Tariff Act/ Central Excise Tariff Act against the commodity, the effective rate of duty for any commodity is worked by checking whether any exemption notification has been issued by the Government in respect of that commodity providing either full exemption or partial exemption from payment of duty.
- 4.2. Sometimes, the Finance Bill (Budget) may contain proposals relating to increase of Tariff rate of Custom /Central duty/ Service tax or imposition of fresh levy. In normal course, any Bill, be it Finance or otherwise, comes into effect from the date of enactment i.e. date on which the Bill is passed by the parliament, gets assent of the President of India. After getting assent of the President of India, the Bill is known as Act. Every Act is given is known by its unique number and this number is written in Bracket (No.XX of year YYYY).
- 4.3. At times, the Government wants to implement the proposed duty increase/ fresh imposition of duty with immediate effect i.e. from the mid-night of date of announcement i.e. the date of presentation of budget. To empower the Government to collect duty at increased rate or to collect fresh levy, the provisions contained in the Provisional Collection of Taxes Act, 1931 are invoked.

- 4.4. Section 3 of the Provisional Collection of Taxes Act, 1932 provides as under:-

“when a Bill to be introduced in the Parliament on behalf of Government provides for the imposition or increase of duty of Customs or Excise, the Central Government may cause to be inserted in the Bill, a declaration that it expedient, in the public interest that any provision of the Bill relating to such imposition or increase shall have immediate effect under this Act”

- 4.5. To find out whether any increase of Tariff rate of duty or fresh levy have immediate effect or not, we need to look in the Finance Bill for declaration made under Section 3 of the Provisional collection of Taxes Act, 1931. It is normally available at the end of the Finance Bill. Thus, to bring into immediate effect any Budget proposal, the relevant clause of the Finance Bill are declared under Section 3 of this Provisional Collection of Taxes Act, and unless it has been so declared, it will not have immediate effect. For example, in the Finance Bill, 2015 the Tariff Rate of Central Excise Duty is proposed to be increased from 12% to 12.5% by amending the Schedule 1 of the Central Excise Tariff Act, 1985. This increase has come into effect from 1.3.2015 as this clause of the Finance Bill, 2015 providing for increase of tariff rate of Central Excise Duty from *12% ad valorem to 12.5% ad valorem* has been declared in the Finance Bill, 2015 in exercise of power given under section 3 of the Provisional Collection of Taxes Act, 1931.

It may carefully be noted that Section 3 talks about only imposition/ increase of duty of Customs or Excise only but the word “Service Tax” does not find mention in Section 3 of the Provisional Collection of Taxes Act, 1931. Therefore, any increase/ imposition of Service Tax cannot be declared under the Section 3 of the Provisional collection of taxes Act and consequently, cannot have immediate effect.

5. *Effective Date of Increased Rate of Service Tax*

- 5.1. As explained above, since 'Service Tax' has not been covered under the provisional Collection of Taxes Act, any increase of Rate of Service Tax or imposition of fresh Tax cannot be made effective immediately, as the relevant clause cannot be declared under section 3 of the Provisional Collection of Taxes Act. In case of service tax, the increased rate of service tax is to come into effect after enactment of the Finance Bill i.e. after Bill gets assent of the President of India. For example, in the Finance Bill, 2015, it is proposed to increase the rate of Service Tax from 12% ad valorem to 14% ad valorem, from a notified date. Thus this increased rate of service tax will come into effect after enactment of the Finance Act, 2015 from the date to be notified by the Government by issuing a notification.
- 5.2. Normally, the relevant clause of the Finance Bill contains words like "with effect for such date as the Central government may prescribe by notification in the official gazette". In other words, to make that provision of the Finance Act effective, the Government has to issue notification notifying the date of coming into force that provision of the Finance Act. Thus, the proposal for increasing Service Tax from 12% to 14% shall be effective from 'a notified date', after enactment of Finance Bill, 2015 and not immediately on the date of presentation of budget as in case of Central Excise duty / Customs duty.

6. *Point of time when the imposition or increase in excise or customs duties becomes effective.*

- 6.1. As per Section 4 of the Provisional Collection of Taxes Act, 1931, a declared provision shall have the force of law immediately on the expiry of the date on which bill containing is introduced. In other words, the imposition or increase in duties of excise & customs being a declared provision (declared in Finance Bill under Section 3 of the Provisional Collection of Taxes Act, 1931) shall have effect from the mid night of date on which the bill is introduced in the Parliament. For example, if Finance Bill is presented on 28thFebruary, the imposition or increase in Excise or Customs shall be effective from midnight of 28th February/1stMarch, in view of Section-4 of the Provisional Collection of Tax Act, 1931.

7. *Effective date in Case of reduction or Decrease of Excise duties/ Customs duties/Service Tax*

7.1. At times, Government wants to prescribe lower rate of Central Excise Duty/ Customs Duty/ Service tax than Tariff Rate prescribed under the relevant law. This can be done any time by the Central Government by issuing general exemption notification. Such reduction of duty at rates lower than tariff rate can be done with immediate effect or from such dates as may be prescribed in the notification.

8. *Amendment / Withdrawal of Exemption Notification*

8.1. Sometime Government intends to revise certain duty /tax exemption already granted. This is done by issuing another tariff notification whereby the principal notification granting the exemption is amended. For example, if a Tariff Rate of a particular commodity is 14% and its effective rate is 12% by virtue of Notification X/yyyy-CE, and Government wants to alter the effective rate. This would be done by issuing another notification Z/yyyy-CE, dated.... proposing to amend notification No.X/yyyy-CE, dated ..., by replacing 12% by the desired rate. So the X/yyyy-CE would now be read as X/yyyy-CE as amended by Z/yyyy or alternatively, as X/yyyy-as amended only. Here the words “as amended” means “as amended upto date”. But principal Notification number would remain as X/yyyy-CE in the books.

Like wise, in case Government wants to withdraw any exemption notification, it can be done by issuing a notification, rescinding that particular exemption notification. Then that exemption notification ceases to have effect. Normally, such amending /rescinding notification have immediate effect unless specifically mentioned in the amending /rescinding notification.

9. **Reference Material: The Provisional Collection Of Taxes Act, 1931**

9.1. The Provisional Collection Of Taxes Act, 1931

ACT NO. 16 OF 1931 [28th September, 1931.]

An Act to amend the law providing for the immediate effect for a limited period of provisions in Bills relating to the **imposition or increase of duties of customs or excise.**

1. Short title. This Act may be called the Provisional Collection of Taxes Act, 1931.
2. Definition. In this Act, a "declared provision" means a provision in a Bill in respect of which a declaration has been made under section 3.
3. Power to make declarations under this Act. Where a Bill to be introduced in Parliament on behalf of Government provides for the imposition or increase of a duty of customs or excise, the Central Government may cause to be inserted in the Bill a declaration that it is expedient in the public interest that any provision of the Bill relating to such imposition or increase shall have immediate effect under this Act.
4. Effect of declarations under this Act, and duration thereof.
 - (1) A declared provision shall have the force of law immediately on the expiry of the day on which the Bill containing it is introduced.
 - (2) A declared provision shall cease to have the force of law under the provisions of this Act—
 - (a) when it comes into operation as an enactment, with or without amendment, or
 - (b) when the Central Government, in pursuance of a motion passed by Parliament, directs, by notification in the Official Gazette, that it shall cease to have the force of law, or

- (c) if it has not already ceased to have the force of law under clause (a) or clause (b), then on the expiry of the seventy- fifth day after the day on which the Bill containing it was introduced.

5. Certain refunds to be made when declarations cease to have effect.

- (1) Where a declared provision comes into operation as an enactment in an amended form before the expiry of the seventy- fifth day after the day on which the Bill containing it was introduced, refunds shall be made of all duties collected which would not have been collected if the provision adopted in the enactment had been the declared provision: Provided that the rate at which refunds of any duty may be made under this sub- section shall not exceed the difference between the rate of such duty proposed in the declared provision and the rate of such duty in force when the Bill was introduced.
- (2) Where a declared provision ceases to have the force of law under clause (b) or clause (c) of sub- section (2) of section 4, refunds shall be made of all duties collected which would not have been collected if the declaration in respect of it had not been made.

6. [Repealed]
