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E-BOOK

On

Infrastructure Cess

(IC)

Infrastructure Cess

Note:

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Sd/-

(Shiv Kumar Sharma)
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1. Introduction

- 1.1 The Union Government in the Finance Bill, 2016 imposed a new Cess as a duty of excise to be called “Infrastructure Cess”. The Infrastructure Cess has been levied on certain goods specified in the Eleventh Schedule of the Finance Act, 2016.
- 1.2 The legal provisions for levy of the Infrastructure Cess are contained in Section 162 of the Finance Act, 2016. It provides as under:-

162. (1) In the case of goods specified in the Eleventh Schedule, being goods manufactured or produced, there shall be levied and collected for the purposes of the Union, a duty of excise, to be called the Infrastructure Cess, at the rates specified in the said Schedule for the purposes of financing infrastructure projects.

(2) The cess leviable under sub-section (1), chargeable on the goods specified in the Eleventh Schedule shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act, 1944 or any other law for the time being in force.

(3) The provisions of the Central Excise Act, 1944 and the rules made there under, including those relating to assessment, non-levy, short-levy, refunds, interest, appeals, offences and penalties, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under sub-section (1) in respect of the goods specified in the Eleventh Schedule as they apply in relation to the levy and collection of the duties of excise on such goods under the said Act or the rules, as the case may be.

(4) The cess leviable under sub-section (1) shall be for the purposes of the Union and the proceeds thereof shall not be distributed among the States.

- 1.3 The Eleventh Schedule of the Finance Act, 2016 specified the goods, which are subjected to levy of Infrastructure Cess and also specified the rate of such Cess. The Eleventh Schedule of the Finance Act, 2016 provides as under:-

Eleventh Schedule

Item No.	Description of goods	Rate
(1)	(2)	(3)
1.	All goods falling under heading 8703 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).	4%

- 1.4 This new levy was imposed through clause 159 of the Finance Bill, 2016 [clause 159 has been renumbered as 162 at the time of passing of Finance Bill, 2016] and this clause was declared under the Section 3 of the Provisional Collection of Taxes Act, 1931. Therefore, by virtue of section 4(1) of the said Provisional Collection of Taxes Act, 1931, new levy of Infrastructure Cess came into force with effect from 01.03.16, i.e. midnight of 29.02.2016/01.03.16.

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1.5 In the Budget Speech, regarding infrastructure Cess, the Hon'ble Finance Minister said as under:-

“The pollution and traffic situation in Indian cities is a matter of concern. I propose to levy an Infrastructure Cess, of 1% on small petrol, LPG, CNG cars, 2.5% on diesel cars of certain capacity and 4% on other higher engine capacity vehicles and SUVs.”

The purpose of Infrastructure Cess is to finance infrastructure projects.

1.6 The heading 87.03 of the Central Excise Tariff Act Covers “Motor cars and other motor vehicle principally designed for the transport of persons (other than those of heading 87.02) including station wagon and racing car”. The Tariff Heading 87.02 covers “motor vehicle for the transport of ten or more person including the Driver”. Thus, the applicability of this cess extends to motor cars/vehicles excluding motor vehicle for the transport of ten or more persons.

1.7 The Government of India *vide* Notification No. 1/2016-Infrastructure Cess, dated 01.03.2016 has prescribed the following effective rates and subject to certain conditions as prescribed in the notification:-

(a) Nil on:

- i. Three wheeled vehicles,
- ii. Electrically operated vehicles,
- iii. Hybrid vehicles,
- iv. Hydrogen vehicles based on fuel cell technology,
- v. Motor vehicles which after clearance have been registered for use solely as taxi (subject to prescribed conditions),
- vi. Cars for physically handicapped persons (subject to prescribed conditions), and
- vii. Motor vehicles cleared as ambulance or registered for use solely as ambulance (subject to prescribed conditions);

(b) 1% on Petrol/LPG/CNG driven motor vehicles of length not exceeding 4m and engine capacity not exceeding 1200cc;

(c) 2.5 % on Diesel driven motor vehicles of length not exceeding 4m and engine capacity not exceeding 1500cc;

(d) 4% on all categories of motor vehicles other than those listed at (a), (b) and (c) above;

1.8 Further, the CENVAT Credit Rules, 2004 have been amended *vide* notification 13/2016-CE(NT), dated 01.03.16 to provide that CENVAT credit cannot be

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utilised for payment of Infrastructure Cess. Moreover, no credit of the Infrastructure Cess would be available under the CENVAT Credit Rules, 2004.

1.9 Since this imposition of Infrastructure Cess is through different legislation, it is to be shown separately in the invoice meant for removal of goods. Accounting codes allotted by the office of the Controller General of Accounts for Infrastructure Cess are as under:-

- Major head “0038-Union Excise Duties”
- Sub-Major head “03-Non-Sharable Duties”
- Minor Head “506-Infrastructure Cess”
- Under above minor head, other sub-heads are as under:-

S.No.	Minor Head	Sub-Head description	Head of Accounts	Major Head Serial Code	SCCD Code
1.	0038-03-506 Infrastructure Cess	01-Cess collection	0038.03.506.01	00380387	119
2.		02-other receipts	0038.03.506.02	00380388	110
3.		03-deduct refunds	0038.03.506.03	00380389	111
4.		04-Penalties	0038.03.506.04	00380390	111

2. Summary of Legal Provisions at a Glance

The legal provisions relating to Infrastructure Cess are as given in Table I below: -

Table I

Sr. No.	Relevant Section / Rules / Notification/ Circular / Instruction	Subject
1.	Clause 159 of the Finance Bill, 2016/ Section 162 of the Finance Act, 2016 <i>Note: Clause 159 of the Finance Bill, 2016 has been re-numbered as 162 at the time of passing of Finance Bill, 2016.</i>	It lays down statutory provision for levy and collection of Infrastructure Cess.
2.	Eleventh Schedule to the Finance Act, 2016.	It specifies the goods subjected to levy of Infrastructure Cess as well as rate of such cess.
3.	Notification No. 1/2016- Infrastructure Cess, dated 01.03.2016	It notifies effective rate of infrastructure cess to be levied on motor vehicle falling under Tariff Heading 87.03 of the Central Excise Tariff Act, 1985.

3. Text of Notifications/Circulars/Instructions issued by CBEC

3.1 Text of notification No.1/2016-Infrastructure Cess, dated 1.3.2016

Notification No.1/2016 – Infrastructure Cess, dated 1.3.2016

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) read with sub-clause (3) of clause 159 of the Finance Bill, 2016, which clause has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (3) of the table below and falling under heading of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) specified in the corresponding entry in column (2) of the said table from so much of the Infrastructure Cess leviable thereon under sub-clause (1) of clause 159 of the said Finance Bill, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said table and subject to the relevant conditions annexed to this notification, if any, specified in the corresponding entry in column (5) of the table aforesaid:

Table

Sl. No.	Heading	Description of excisable goods	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
1	8703	Motor vehicles cleared as ambulances duly fitted with all the fitments, furniture and accessories necessary for an ambulance from the factory manufacturing such motor vehicles	Nil	-
2.	8703	Motor vehicles (other than three wheeled motor vehicles for transport of upto seven persons), which after clearance has been registered for use solely as ambulance	Nil	1
3.	8703	Motor vehicles (other than three wheeled motor vehicles), which after clearance has been registered for use solely as taxi	Nil	1
4.	8703	Electrically operated vehicles, including three wheeled electric motor vehicles <i>Explanation.</i> -For the purpose of this entry, “electrically operated vehicles” mean vehicles which are run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include electric motor -assisted cycle rickshaws driven by rechargeable solar batteries, also known as “soleckshaw”	Nil	-
5.	8703	Hybrid motor vehicles Explanation. - For the purpose	Nil	-

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		of this entry, “hybrid motor vehicle” means a motor vehicle, which uses a combination of battery powered electric motor and an internal combustion engine to power the vehicle to drive trains, but does not include such micro -hybrid motor vehicle with start and stop technology, using battery powered electric motor only while in static condition		
6.	8703	Three wheeled vehicles	Nil	-
7.	8703	Cars for physically handicapped persons	Nil	2
8.	8703	Hydrogen vehicles based on fuel cell technology <u>Explanation.-</u> For the purpose of this entry, “Hydrogen vehicle” means a motor vehicle that converts the chemical energy of hydrogen to mechanical energy by reacting hydrogen with oxygen in a fuel cell to run electric motor to power the vehicle drive trains	Nil	-
9.	8703	Motor vehicles of length not exceeding 4000 mm, namely petrol, liquefied petroleum gases (LPG) or compressed natural gas (CNG) driven vehicles of engine capacity not exceeding 1200 cc <u>Explanation.-</u> For the purpose of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under	1%	-
10	8703	Motor vehicles of length not exceeding 4000 mm, namely diesel driven vehicles of engine capacity not exceeding 1500 cc <u>Explanation.-</u> For the purpose of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under	2.5%	-

ANNEXURE

Condition No.	Conditions
1.	<p>(a) The manufacturer pays the Infrastructure Cess at the rate specified under the Eleventh Schedule of the Finance Bill, 2016 read with exemption contained in any notification of the Government of India in the Ministry of Finance (Department of Revenue), at the time of clearance of the vehicle;</p> <p>(b) the manufacturer takes credit of the amount equal to the amount of Infrastructure Cess paid in excess of that specified under this exemption, in the Account Current, maintained in terms of Part V of the Excise Manual of Supplementary Instructions issued by the Central Board of Excise and Customs and thereafter files a claim for refund of the said amount of Infrastructure Cess before the expiry of six months from the date of payment of duty on the said motor vehicle, with the Deputy Commissioner of Central Excise or Assistant Commissioner of</p>

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	<p>Central Excise, as the case may be, having jurisdiction, along with the following documents, namely:-</p> <ol style="list-style-type: none">(1) an intimation that the amount of refund of Infrastructure Cess claimed has been credited by the manufacturer in his Account Current, also stating the amount of credit so taken;(2) a certificate from an officer authorised by the concerned State Transport Authority, to the effect that the said motor vehicle has been registered for sole use as ambulance or taxi, as the case may be, within three months or such extended period not exceeding a further period of three months as the said Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, may allow, from the date of clearance of the said motor vehicle from the factory of the manufacturer;(3) a copy of the document evidencing the payment of Infrastructure Cess, as payable in paragraph (a) above;(4) where the manufacturer has collected an amount, as representing the Infrastructure Cess, in excess of the Infrastructure Cess payable under this exemption from the buyer, an evidence to the effect that the said amount has been duly returned to the buyer; and(5) where the manufacturer has not collected an amount, as representing the Infrastructure Cess, in excess of the Infrastructure Cess payable under this exemption from the buyer, a declaration by the manufacturer to that effect; <p>(c) the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, within seven days of the receipt of the said claim for refund, after such verification as may be necessary, shall determine the amount refundable to the manufacturer and shall intimate the same to the manufacturer. In case the credit taken by the manufacturer is in excess of the amount so determined, the manufacturer shall, within five days from the receipt of the said intimation, reverse the said excess credit from the said Account Current maintained by him. In case the credit availed is lesser than the amount of refund determined, the manufacturer shall be eligible to take credit of the balance amount; and</p> <p>(d) the recovery of the credit availed irregularly or availed in excess of the amount of credit so determined, and not reversed by the manufacturer within the period specified under paragraph (c), shall be recovered as if it is a recovery of duty of excise erroneously refunded. In case, such irregular or excess credit is utilised for payment of duty of excise on clearance of excisable goods, the said goods shall be considered to have been cleared without payment of duty to the extent of utilisation of such irregular or excess credit.</p>
2	<p>If,-</p> <ol style="list-style-type: none">(i) an officer not below the rank of Deputy Secretary to the Government of India in the Department of Heavy Industries certifies that the said goods are capable of being used by the physically handicapped persons; and(ii) the buyer of the car gives an affidavit that he shall not dispose of the car for a period of five years after its purchase.

[F.No. 334/8/2016-TRU]
Under Secretary to the Government of India

ADDENDUM

3.2 Text of notification No.2/2016-Infrastructure Cess, dated 14.05.2016

Notification No. 2/2016 – Infrastructure Cess dated 14th May, 2016.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification
No. 2/2016 - Infrastructure Cess

New Delhi, the 14th May, 2016

G.S. R. (E).- In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 162 of the Finance Act, 2016 (28 of 2016), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 1/2016-Infrastructure Cess, dated the 1st March, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 255 (E), dated the 1st March, 2016 (hereinafter referred to as the said notification), namely: -

In the said notification,-

- (i) for the words, figures and brackets “sub-clause (3) of clause 159 of the Finance Bill, 2016”, the words, figures and brackets “sub-section (3) of section 162 of the Finance Act, 2016” shall be substituted;
- (ii) the words, figures and brackets “which clause has, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law,” shall be omitted;
- (iii) for the words, figures and brackets “sub-clause (1) of clause 159 of the said Finance Bill”, the words, figures and brackets “sub-section (1) of section 162 of the said Finance Act” shall be substituted.

[F.No.334/8/2016 -TRU]

(Anurag Sehgal)
Under Secretary

Note.- The principal notification No. 1/2016-Infrastructure Cess, dated the 1st March, 2016, was published in the Gazette of India, Extraordinary vide number G.S.R. 255 (E), dated the 1st March, 2016.
