

INDIRECT TAX LAWS AMENDMENTS MADE BY THE FINANCE ACT, 2013

AMENDMENTS MADE IN CUSTOMS

1. Amendment to Section 11(2)(n)

- **SECTION 11. Power to prohibit importation or exportation of goods**
 - (2) (n) the protection of patents, trademarks, copyrights, **design and geographical indications**;
- Design and geographical indications added in list of goods that can be prohibited.

2. No refund below ₹100

- In Section 27 following proviso added.
- Provided also that where the amount of refund claimed is less than rupees one hundred, the same shall not be refunded.

3. No demand for amount below ₹100

- In Section 28 Proviso is added
- “Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.”

4. Reference to Section 28(4) Notice as well in Sec. 28BA

- Section 28BA – Provisional attachment to protect revenue in certain cases –
- Reference in that section was only to notices issued under section 28(1).
- Amendment is made to include notices issued under sec. 28(4) as well.

5. Activity redefined for Advance Ruling

- In Section 28E(a) the term activity was defined as ““activity” means import or export”.
- It is now amended as – “activity” means import or export and includes any new business of import or export proposed to be undertaken by the existing importer or exporter, as the case may be;

6. Amendment to Section 29

- Arrival vessel or aircraft in India at any place other than customs port or airport as may be called or landed if permitted by the Board.

7. Filing of e-manifest

- Section 30/41 is amended requiring to file import/export manifest filing electronically
- If not feasible then commissioner may permit filing in any other manner.

8. Section 47(2) Amended

- Section 47(2) is amended to reduce the time period available for payment of duty after return of the BOE from 5 days to 2 days.

9. Storage in public warehouse pending clearance

- No time limit was existing. Now it section 49 is amended to put 30 days time limit, which can be extended by Commr. of Customs 30 days at a time.

10. Re-export of warehoused goods

- Section 69(1)(a) is amended to permit re-export of warehoused goods even by post.

11. Section 104(6) substituted

- Earlier it said the offences under Customs Act, was bailable.
- Now – Offence punishable u/s 135 relating to
 - (a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or
 - (b) prohibited goods notified under section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of section 135; or

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- (c) import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or
- (d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds Fifty Lakhs rupees,

- Is made non-bailable – Other offence are bailable

12. Consequential changes in Sec. 135

- The amount of ₹30 Lakhs which were mentioned earlier in section 135 is increased to ₹50 Lakhs pertaining to
 - evasion or attempted evasion of duty
 - fraudulently availing of or attempt to avail of drawback or any exemption from duty

13. Stay by Tribunal – Sec. 129B(2A)

- Earlier it was set out that stay order would get vacated after expiry of 180 days of such order.
- Now it is provided that on application being made by the appellant it can be extended for a further period of 185 days. If the appeal is not disposed off within 365 days from the date of order, stay stands vacated.

14. Single member bench scope increased

- Earlier single member bench of tribunal was permitted to hear cases upto monetary limit of ₹ 10 Lakhs.
- The same is now increased to ₹50 Lakhs.

15. Recovery method added – Sec. 142

- In addition to existing methods of recovery set out in Sec. 142, recovery is permitted by issue of notice to
 - Any person from whom money is due or may become due – to person who is due.
 - Any person who holds or may subsequently hold money for or on account of - person who is due.
 - Such persons should pay to Govt. directly.
 - If not he is deemed to be defaulter.

16. Sec. 143A Omitted

- Section 143A which dealt with duty deferment for advance licence is omitted.

17. Sec. 144 (3) amended to remove monetary limit

- Sec. 144 (3) gave waiver of duty on samples taken for testing which gets consumed or destroyed during the course of testing if the duty amounts ₹5 or more.
- The said monetary limit is omitted.

18. Re-naming of 'Agent' to 'Broker'

- Sec. 146 & 146A is amended to rename 'custom house agent' to 'custom house broker'.
- Section 147 is amended to cast liability under the Act on Agent/broker.

19. Retrospective amendment

- In Notification No. 27/2011-Cus in Sl. No. 56, the entries '7210 30, 7212 30' is replaced retrospectively as '7210, 7212'
- 7210 - **Flat-rolled products of iron or non- alloy steel, of a width of 600 mm or more, clad, plated or coated**
- 7212 - **Flat-rolled products of iron or non- alloy steel, of a width of less than 600 mm, clad, plated or coated**

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20. Amendments in the Schedules to the Customs Tariff Act 1975

FIRST SCHEDULE	<ol style="list-style-type: none"> 1. change in the present description of tariff item 03022400 and 03033400 to "Turbot (Psetta maxima)" 2. omit the tariff item 1517 90 20 (Peanut butter). 3. insert Supplementary Note in Chapter 48. 4. enhance the tariff rate against items under heading 8703 from 100% to 125%. 5. enhance the tariff rate against items under heading 8903 from 10% to 25%.
SECOND SCHEDULE	<ol style="list-style-type: none"> 1. To substitute the entry in column (2) against Sl. No. 43, with the entry "7210, 7212", retrospectively with effect from 01.03.2011. 2. Insertion of Entry 9A – Prescribe a tariff rate of export duty of 20% on raw sugar, white or refined sugar under heading 1701; 3. Insertion of Entry 23A and 23B – Prescribe a tariff rate of export duty of 30% on Bauxite(natural), not calcined and Bauxite(natural), calcined under heading tariff items 26060010 and 26060020 respectively. Effective rate is being prescribed at 10%. 4. Insertion of Entry 24A and 24B – Prescribe a tariff rate of export duty of 30% on Ilmenite, unprocessed and Ilmenite, upgraded (beneficiated Ilmenite including Ilmenite ground) under heading tariff items 26140010 and 26140020 respectively. Effective rate is being prescribed on unprocessed Ilmenite at 10% and on upgraded Ilmenite at 5%.

21. Amendment to Baggage Rules:

Category of Passenger	Duty Free Allowance (₹)	
	Previous Rate	Existing Rate
Duty free allowance in respect of jewellery for an Indian passenger who has been residing abroad for over one year or a person who is transferring his residence to India		
(A) Gentleman	₹10,000	₹50,000
(B) Lady Passenger	₹20,000	₹1,00,000
Crew member of vessel/aircraft	₹600	₹1,500

AMENDMENTS MADE IN CENTRAL EXCISE

22. Limit increased for offences liable for higher punishment

- In case of offences set out at Section 9(1) relating to any excisable goods, where the duty leviable thereon exceeds **Fifty Lakhs** of rupees, is punishable with imprisonment for a term which may extend to seven years and with fine:
- Earlier it was **Thirty Lakhs**

23. Amendment to Sec. 9A

- Section 9A(1) is replaced with -
 - "(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences under section 9, except the offences referred to in sub-section (1A), shall be non-cognizable within the meaning of that Code.
 - (1A) The offences relating to excisable goods where the duty leviable thereon under this Act exceeds fifty lakh rupees and punishable under clause (b) or clause (bbbbb) of sub-section (1) of section 9, shall be cognizable and non-bailable."

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24. Section 11 – recovery amended

- Similar to Section 142 of Customs Act.

25. Insertion of sub-section 7A in Sec. 11A

- Periodical SCN merely by way of statement containing details of duty

26. Amendment in Sec. 11DDA – Provisional attachment of property

- Reference to Sub-section (1) of 11A is omitted.
- Correction

27. Amendment to Sec. 20 & 21

- Sec. 20 - Procedure to be followed by officer in charge of police station.
- Sec. 21 – Central Excise officer has also power similar to officer in charge of police station.
- These sections are amended to admit to bail in cases where it is non-cognizable.

28. Activity redefined for Advance Ruling

- In Section 23E(a) the term activity was defined as ““activity” means production or manufacture of goods”.
- It is now amended as
 - “activity” means production or manufacture of goods and includes any new business of production or manufacture proposed to be undertaken by the existing producer or manufacturer, as the case may be;

29. Other changes in Advance Ruling

- Sec. 23C(2)(e) is amended
 - It was earlier covering only credit of duty,
 - It is now amended to include credit of input services as well.
- Sec. 23F – error to reference to 28-I was changed to 23D

30. Amendment to Sec. 35C(2A) & 35D

- Similar to 129B(2A) and 129C of Customs – Stay of Tribunal and power of single member bench of Tribunal.

31. Amendment to Section 37C

- Section 37C – Service of decisions, orders, summons etc. – now speed post with proof of delivery or by courier approved by CBEC. Delivery by post or courier recognised.

32. Amendment to Third Schedule

- Third schedule amended –
- Sl.no.31A introduced –
 - Medicaments exclusively used in Ayurvedic, Unani, Siddha, Homoeopathic or Bio-Chemic systems, manufactured as per formulae in authoritative books or Pharmacopoeia. Such medicaments sold under a brand name.

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AMENDMENTS MADE IN SERVICE TAX

33. Sec. 65B - Definitions

- Changes in Definition – Section 65B
- (11) (i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training **or State Council for Vocational Training** offering courses in designated trades notified under the Apprentices Act, 1961;
- (iii) **a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India; - omitted**

34. Sec. 65B - Definitions

- 65B(40) – Definition of Process amounting to manufacture or production of goods –
- “the Medicinal and Toilet Preparations (Excise Duties) Act, 1955” was added - Unintended omission earlier corrected – whether retrospective?.

35. Explanation to Section 66B

- Explanation provided in section 66B was omitted
- But in the books there was no such explanation.

36. New Sec. 66BA introduced

- (1) For the purpose of levy and collection of service tax, any reference to section 66 in the Finance Act, 1994 or any other Act for the time being in force, shall be construed as reference to section 66B thereof.
- (2) The provisions of this section shall be deemed to have come into force on the 1st day of July, 2012”
 - To take care of error in amendments made.

37. Sec. 66D - Negative List

“(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;”

- In services relating to agriculture among other thing, only testing of Seed was considered as non-taxable.
- Now by omitting the word ‘seed’ it is made to cover all types of testing.

38. Saving demand for normal period – insertion of section 73(2A)

- Demands are –
 - For normal period (18 months from relevant date)
 - For extended period (5 years from relevant date)
- If Notice is issued under 5 years, the demand for normal period would not survive – S.C. Decision in the case of Alcobex Metals
- Now amend the provision to save the demand for normal period in such cases.

39. Penalty for non-registration

- Sec. 77(1)(a) – ₹10000/- or ₹200/day whichever is higher no outer limit
- It is amended to say upto ₹10000/- thereby fixing maximum limit.
- In our view this is not applicable for failure to amend, instead it is to register only.

40. Penalty on company officers – insertion of section 78A

- Penalty upto ₹1 Lakh
- Applicable to –
 - Any Director; Manager; Secretary; Other officers

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- Who at the time of specified contravention was
 - in charge of and responsible for the conduct of business of company
 - was knowingly concerned with such contravention

41. Contraventions attracting penalty

- evasion of service tax; or
- issuance of invoice/bill/challan without provision of taxable service
- availment and utilisation of credit without actual receipt of goods or taxable service
- failure to pay beyond 6 months from due date any amount collected as service tax to the credit of the Central Government

42. Offence and prosecution

- Offences Notified under Section 89 of the Finance Act 1994–
 - Knowingly evades the payment of service tax; or
 - availment and utilisation of credit without actual receipt of goods or taxable service
 - maintains false books of account or fails to supply any information which he is required to supply supplies false information;
 - Exception - reasonable belief, that the information supplied by him is true
 - failure to pay beyond 6 months from due date any amount collected as service tax to the credit of the Central Government

43. Punishment Provided

- Is punishable, -
 - In the case of first three offence – where amount exceeds ₹50 lakh - imprisonment – upto 3 Yrs
 - In case of last offence – where amount exceeds ₹50 lakhs – imprisonment – upto 7 Yrs.
- In the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, Minimum imprisonment - six months;
 - In case of other offences – imprisonment – upto 1 year.

44. Repeated offence

- Where imprisonment is for 3 yrs or 1 yr. the next offence would be again 3 yrs
- Where imprisonment is for 7 yrs, the next offence would be again for 7 yrs.

45. Cognizable and non-cognizable

- **What is cognizable offence – Arrest without warrant**
- Failure to pay to the credit of the Central Government beyond 6 months from due date any amount collected as service tax, which is more than ₹50 Lakhs.- Cognizable
- Whether Bailable – No specific mention
- All other cases it is non-cognizable and bailable

46. Power of commissioner to issue order of arrest

- Commissioner has reason to believe that any person has committed
 - Specified offence - more than ₹50 Lakhs –
 - He may by general or special order authorise any officer of central excise not lesser than SCE
 - To arrest such person.

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Changes – Exemptions

47. Education auxiliary services

- It was earlier covering both **provided by and provided to** Educational institution who are exempted (non-taxable).
- **W.e.f. 1.4.2013** provided by educational institution in relation education auxiliary services is made taxable
- Eg. Transport facility to students (may be exempted under other places).

48. Cinematography rights

- Permitting the use of cinematograph rights was exempted in respect of all type of usages
- Now restricted to only cinema hall or theatre
- Rule 6 may have to be applied for credits if any availed on various input services credits if taken.

49. Restaurant; eating joints; Mess

- Earlier tax was applicable only for restaurants etc. that have both
 - Air conditioning/central air heating
 - Licence to serve liquor
- But w.e.f. 01.04.2013 it is applicable to all restaurants etc where there is
 - Air conditioning/central air heating
- It is in any part of establishment or any part of financial year

50. Transportation in Rail/Vessel

- Following goods made taxable
 - Petroleum and petroleum products
 - Postal mail or mail bags
 - Household effects

51. Transportation by GTA

- Following goods are made exempted –
 - Agricultural Produce
 - Foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;
 - Chemical fertilizer and oilcakes;
 - Newspaper or magazines registered with the registrar of news papers;
 - Relief materials for disasters, calamities, accidents or mishap victims
 - Defense or military equipments

52. Parking services

- Earlier exempted
- Now made taxable

53. Services by Govt. or LA

- To repair of aircraft is made taxable which was earlier exempted

54. Charitable activity

- Advancement of any other object of general public utility – revenue is excluded and made taxable

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55. Abatement developer

- For residential unit having carpet area upto 2000 square feet or where the amount charged is less than rupees one crore , where land value is also included - Abatement is reduced to 70%

56. Services provided to Government, a local/ governmental authority by way of repair/ maintenance of aircraft has been excluded from Mega Exemption List vide Notification No. 03/2013.

57. V. C. E. S

Voluntary Compliance Encouragement Scheme

- Whether Similar to VDS
- Discourser vs. Compliance
- Safeguard from other statute
- Immunity of What?
 - Interest
 - Penalty
 - Proceedings
- Different from 80(2) for Rental

Voluntary Compliance Encouragement Scheme

- Tax dues for the period 01.10.2007 to 31.12.2012.
- Start Date: Enactment - Last date: 31.12.2013
- Scheme is not available to:
 - Who has filed returns disclosing the value but not paid
 - Whom notice is served or order is passed covering any issue – for the same issue, for the subsequent period liability.
- Declaration may be rejected in case where -
 - Any person where any investigation is initiated by way of search/summons/information called
- Audit has been initiated.
- Voluntary Compliance Encouragement Scheme
- 50% of tax dues to be paid by 31.12.2013 and balance 50% by 30.06.2014.
- On payment of interest can be extended to 31.12.2014
- On payment of service tax dues total immunity from any proceedings under the Act.
- As per the rules, the payment cannot be made utilising credits.
 - Can it be questioned in court in writ?
 - Whether credit can be availed and utilised for subsequent period.

58. Procedure

- If not registered earlier, have to apply for the registration in Form ST-1 through ACES.
- Declaration to the designated authority in the 'Form VCES 1' in duplicate on or before 31st December 2013.
- The designated authority shall acknowledge in 'Form VCES -2', within 7 days from receipt.
- Has to pay 50% tax due by 31.12.2013 by GAR- 7 challan and submit the proof of such payment to the designated authority.

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- The balance of tax dues by 30.06.2014.
- If short paid, can be paid by 31.12.2014 along with interest for such short payment from 1.7.2014 to date of payment.
- If not paid in part or full, full declared value is subject to tax as per normal provisions.
- Details of the payment from time to time have to be furnished to designated authority.
- Upon full payment the designated authority shall issue acknowledgement in 'Form ACES - 3' for discharge of full dues along with interest (if any). – Within 7 working days from receipt of full details.

59. Other issues

- On receipt of discharge in Form ACES – 3 and no matter can be re-opened thereafter in any proceedings before authority or court for the period of declaration – exception if not true declaration.
- No refund under any circumstances
- Declared but not paid would be recovered without any further proceedings as dues

60. Re-opening

- If Commissioner has reasons to believe - declaration made was **substantially** false, he may serve SCN seeking why he should not pay the tax dues not paid or short-paid.
- No action after one year from the date of declaration
- General Provisions of adjudication apply.

[Note:- All the Notifications & Circulars issued 6 months prior to the date of examination will be applicable. For original notifications & Circulars please refer website www.cbec.gov.in.]