

GONE WITH THE WIND
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Every Budget brings all the four seasons, namely, Summer, Winter, Autumn and Spring to the Indian economic climate. In this Budget too, we have witnessed the fall of autumn, to many notifications, of which, this piece deals with the withering away of few age-old dried leaves!

Notification 115/75 dated 30/4/1975 is a vintage Notification. It has survived over three decades, whereby, it exempted the goods manufactured in factories covered by Coir industry / Cashew industry / Tanning industry / Oil mill and Solvent extraction industry / Rice milling industry, save a few exceptions. In other words, this is a blanket notification exempting all the goods manufactured by such industries. This notification had gone through a thorough judicial review and had been the subject matter of a number of cases, which had traveled till the Supreme Court. In a very interesting case of **M/s. Bombay Oil Industries Ltd. Vs CCE, Cochin {1997 (91) ELT 538 (SC)}**, the Department tried to interpret that the entry, namely, Oil mill and Solvent Extraction industry, appearing in the said notification, shall be read together and the goods manufactured, **only** from a factory, which is both an "Oil mill and Solvent extraction" are exempted under this notification. In the said case, the Hon'ble Supreme Court had given a landmark judgment, wherein, the Apex Court had held that the products manufactured in an Oil mill industry as well as Solvent extraction industry, whether independently or separately, shall also be covered by this Notification. This thirty-year old notification has now been withdrawn, leaving the factories falling under the above said industries, under the excise net.

The next major casualty in this Budget is the Notification No.215/84 dated 09.11.84. The said notification exempted certain specified goods, if cleared for display in fair or exhibition. Most of the automobile manufacturers and FMCG manufacturers used the benefit of the notification, to clear their new products for display in a fair/exhibition. This notification is now rescinded in the present Budget. Now such goods are to be cleared on payment of duty. With the wisdom best known to the mandarins of the North block, we are not able to subscribe to the reasoning behind the withdrawal of this notification.

Rule 16 (C) of the Central Excise Rules, 2002, prescribes a special procedure for removal of excisable goods for carrying out "tests". Normally, the goods displayed in a fair or exhibition is only for the study of market response for the newly developed product of a manufacturer. This market response is nothing but a "test" for the marketability of the product. As the marketability is the essential characteristic for the excisability of the product, we feel that the manufacturers can remove their goods for display in fair/exhibition under this Rule 16 (C) of the Central Excise Rules, 2002 and still enjoy the juice of the exemption available under the rescinded Notification 215/84. Whereas, the benefit of the Notification 215/84 was available only to certain specified goods, Rule 16 (C) is available for all excisable goods, thus making it as a blessing in disguise.

Another significant amendment in this Budget is an amendment brought to another age-old Customs notification No.80-Cus. Dated 29.08.1970. This notification exempted the articles supplied free of cost under warranty as a replacement for the defective ones, which were originally imported on payment of appropriate Customs duties. The sub clause (1) of the said notification, before its present amendment, read as:

(i) *the defective articles were brought into India earlier from places outside India and are **private personal properties** of the importer;*

The above term "Private Personal Properties" underwent an intrinsic legal battle. In the case of **M/s. Quality Steel Tubes Pvt. Ltd. VS CC, Bombay {1987 (30) ELT 447}**, the Hon'ble Tribunal interpreted the term "private personal property" and held that the benefit of this notification shall be applicable only to the "Private Personal Properties" i.e an individual and not for a firm. In other words, the exemption was denied to the imports made by Companies.

This judgment was overruled by the Hon'ble High Court of Bombay in the case of **M/s. Echjay Industries Pvt. Ltd. Vs UOI {2004 (175) ELT 93 (BOM)}**, whereby, the Hon'ble High Court of Bombay has held that the exemption under this notification shall be available for the "Private Personal Properties" belonging to the Companies also. The CBEC vide its Circular No.01/2005-Cus dated 11.01.05, while explaining the scope of the exemption under the said notification, for the words

"Private Personal Properties", have communicated that the intention of the notification was to allow the benefit of the notification only to the "private personal properties" of the "individuals". The said Circular, after discussing the above decision of the Bombay High Court, has proceeded to decide against the same based on an unreported Bombay High Court decision in the case of M/s. Birla Erickson and Others Vs UOI. Knowing the legal consequences, in the present Budget, the Government has amended the said notification, which now reads as:

- (i) *the defective articles were brought into India earlier from places outside India by an importer who is an individual and the defective articles are his private personal properties.*

This amendment puts the issue to a rest and as on date, the exemption contained under the said notification, under "Private Personal Properties" shall be restricted only to "individuals" and not available to "companies / commercial establishments".

Before Parting ...

Apart from the above said vintage notifications, the major casualties of this Budget are two major bathroom ingredients, namely, soap and water. The exemption for the soaps manufactured without the aid of power or steam has been withdrawn and thus soaps like "Medimix" are brought under the excise net. The exemption in respect of the unbranded waters is also withdrawn thus raising an intriguing question as to whether the water lorry wallahs also would now be under the excise net. (of course, subject to the SSI exemption).