

BEHIND THE 'BAR' BUDGET!

(By S. Jaikumar, Advocate Swamy Associates)

DDT in its analysis of Budget 2011 had quoted that, "Budget speeches are like mini-skirts as what they reveal is interesting and what they conceal is fascinating!" To me, be it a Budget or a mini - skirt, what is revealed is may be interesting but what is concealed may not be always fascinating – though definitely **"surprising!"** After long, this Budget has tons of surprises, which has been categorised as "New Sense" and "Nuisance" hereunder:

NEW SENSE

Though the Finance Minister has played it safe by not tinkering with the peak rates of duty in either central excise or service tax (retained @ 10%) or in customs (retained @ 7.5%), he had hiked rate of duty to 5% on all the goods, which were hitherto attracting 4% duty. When the merit rate was @ 8%, these goods were given concessional rate of 4%. Once the merit rate has been increased to 10%, as a natural consequence, this 4% should also have been increased to 5%, which has been done now.

In a move towards GST, about 130 items, hitherto enjoying full exemption or attracting "nil" rate of duty have been brought under excise net with a 1% duty without cenvat credit facility. Alternatively, the manufacturers of these goods can also opt to avail cenvat credit and pay duty @ 5% instead of 1%. For all these products (except for Pan Masala, Adhesive Tapes) the SSI exemption is made available (Interestingly the SSI exemption of Rs. 1.5 crores is made available for these goods for the month of March 2011 itself, for this year!).

Further, this 1% duty has to be debited only in cash (PLA) and cannot be debited out of cenvat credit and the buyers of such 1% duty products are also not entitled to take cenvat credit of such 1% duty. In Cenvat Credit Rules (CCR), the 1% duty products are included under the category of "exempted goods" under Rule 2(d) of CCR and the obligation under Rule 6 of CCR has to be discharged for such 1% duty products, if such goods are manufactured along with other dutiable products.

In a significant re-introduction of levy, this Budget has brought the branded Readymade Garments / Made Ups articles falling under Chapter 61, 62 and 63 of Central Excise Tariff Act, 2005 under a compulsory levy of 10%. The "deemed manufacture" concept of making activities like labeling, relabeling etc, has been introduced to Chapter 63.

Hitherto, supply of all goods to Mega Power Projects and Ultra Mega Power Projects were exempted vide Serial No. 91(A), 91(B) and 91(C) of Notification 6/06 – CE subject to a condition that the goods are also entitled for exemption under Customs. Now the said condition has been removed and instead “all goods” have been substituted with a Tariff description contained in Heading No.9801 of the Customs Tariff.

Significant changes have been proposed under Section 11A of the Central Excise Act (CEA), whereby, a new limb has been introduced with a reduced mandatory penalty of 50%. Similar amendments have also been carried out under Section 11AC of CEA to this effect.

Section 12F has been introduced to empower the JC / ADC to authorize the search operations and the provisions of Code of Criminal Procedure has been made applicable.

Hitherto all clearances of “manufactured goods” from SEZ to DTA were exempted from SAD, if such goods are not exempted from VAT / Sales Tax. In this Budget, all clearances from SEZ to DTA are being exempted from SAD, if such goods are not exempted from VAT / Sales Tax.

The Security Amount, tendered at the time of registering contracts under Project Imports has been reduced to 2% of the contract value with the ceiling of Rs.1 crore, which shall be provided in the form of a Bank Guarantee and the same need not be renewed if the finalization of assessment does not happen within six months from the date of submission of all relevant documents by the Importer.

The Self - Assessment provision has been introduced to import and export of goods by the importer / exporter.

The time limit for claiming refund of duty under the Customs Act is enhanced from six months to one year under Section 28 of the Customs Act.

In a major departure from the fundamentals in Service Tax, henceforth, payment of service tax has to be on accrual basis instead of receipt basis, w.e.f 01.04.2011. No audit for the individuals whose turnover is below Rs.60 lakhs and the rate of interest chargeable, if any, from such tax-payers is kept at 15% instead of 18% for the rest.

Beneficial retrospective exemptions has been given to the associations / chambers representing commerce and industry in respect of the membership fees under “club or association service” for the period from 16.06.2005 to 31.03.2008 and also to inter-state or

intra-state passengers in a vehicle bearing contract carriage and tourist vehicle permit for the period from 01.04.2000 to 06.07.2009.

In another significant amendment to SEZ Notification, the scope of the service has been widened to include services which are "wholly consumed within SEZ"

Works Contract Composition Rules amended to restrict the availment of credit on input services such as erection, commission and installation, commercial or industrial construction services and construction of residential complex services to 40%, when the tax has been paid on such services after availing input credit.

The monetary limit for adjustment under Service Tax has been enhanced to Rs.2 lakhs from the present Rs.1lakh. New Point of Taxation Rules has been notified to determine the applicable rate of Service Tax.

Coming to Cenvat credit, this Budget has proposed very significant amendments have been effected...

"Exempted services" definition has been amended to include "trading" and "taxable services" whose part of value is exempted on a condition that no credit of inputs and input services shall be taken (w.e.f 01.04.2011).

In a major relief, the credit of Service Tax paid under Rule 66(a) has been added in the eligible list with effect from 18.04.2006.

Under Rule 6 of CCR for applying the formula Under Rule 6 3(a), the value of trading service has been prescribed to be the difference between the sale price and purchase price of such traded goods.

A flat 50% credit reversal scheme has been prescribed the banking and financial institutions and no credit needs to be reversed of provision of tax and free service to SEZ. Similarly, no need to reverse credit on input taken outside the factory for providing free warranty services.

The definition of "capital goods" has been expanded to include specific goods used outside the factory for generation of electricity for captive use within factory (with effect from 01.04.2011).

NUISANCE

The rate of duty on Cement Clinker has been abnormally increased, thus causing extraordinary burden to the reality sector affecting the interest of the common man. The full exemption, hitherto available for paper and paper-boards upto an aggregate clearance of 3500 MT per annum stands withdrawn and the said goods will henceforth attract a 5% duty, thus making paper costly. Similarly, the full exemption on parts of computers has also been withdrawn and such goods would also attract a 5% duty, hereafter.

In a draconian move, the rate of interest under Central Excise, Customs as well as Service tax has been increased from 13% to an exorbitant 18%. Time and again, the Apex Court has held that the "interest" is based on equity and not a penal measure. With this steep increase to 18%, I am afraid interest is no more based on equity but a lethal penalty and that too, when the bank interest rate is around 12%. That too, when the interest rate for the refunds are still retained at an abysmal 6%, increasing the interest rate for demands and recovery is not only against equity but greedy and ugly!

In Service tax, while the penalty for the delay in filing returns has been increased to Rs.20,000/- from the present Rs.2,000/-. In a significant amendment, "Prosecution" has been introduced to Service Tax".

Under Cenvat Credit Rules, the definition of inputs and input services has been re-structured and a negative list of inputs and input services has been prescribed for availment of credit. Defying the ratio spelt out in many settled cases, Cenvat Credit has been denied to many services, namely, out-door catering, general insurance, rent – a - cab etc.

In another mean amendment, Cenvat Credit needs to be reversed on inputs and capital goods, which are partially written off/ provision to write off partially. Hitherto, such reversal was contemplated only when the inputs/capital goods were fully written off or provision to write off fully has been made.

Last but not the least nuisance, the Cenvat Credit which was available on the 16 common services specified under Rule 6(5) of CCR, which were used for the provision of exempted services as well as taxable services and manufacture of exempted goods as well as dutiable goods, is deleted.

Before Parting...

Now to the title of this article. To me, this Budget has been behind the following "Bars", namely:

- (i) bar & restaurants (levy has been introduced restaurants serving liquor)
- (ii) advocates' bar (levy has been expanded to the representational services in law) and
- (iii) proposal to put the service tax evaders "behind the bar" (prosecution)