Is it a mini budget or a step towards GST?

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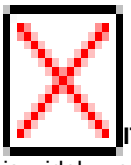

IT is widely understood that normally major tax changes are done only during annual budgetary exercise. Does the myth stands burst? On 17 th July, 2015, Government of India has amended various Central Excise Notifications which are going to have immediate impact on the industry. Notification Nos. 30/2004-C.E (popularly known as textile notification), 01/2012-CE- (nominal rate Notification) and 12/2012-CE- (jumbo Notification) have been amended by Notifications Nos. 34/2015-CE, 35/2015-CE and 36/2015-CE respectively all dated 17.07.2015.

2. Starting with textiles, in the year 2002, Notification No. 14/2002-CE dated 01.03.2002 was issued exempting various textile products subject to a condition that if made from textile materials on which appropriate duty of excise has been paid and no CENVAT credit of the duty paid on inputs or capital goods has been taken. As per Explanation-II in the Notification, it was provided that textile yarns or fabrics shall be deemed to have been duty paid even without production of documents evidencing payment of duty thereon. This explanation was added to overcome a ruling of the Constitutional bench of Hon'ble Supreme Court in ***CCE vs. Dhiren Chemical Industries*** - ***2002-TIOL-83-SC-CX-CB*** wherein it was held that if benefit of an Exemption Notification is subject to the condition that the appropriate duty on inputs has already been paid, then the benefit of the said notification will not be available to the goods manufactured out of the inputs attracting Nil rate of duty. The explanation was also correctly interpreted in the case of ***Arvind Products vs. CCE*** - ***2014-TIOL-2524-CESTAT-AHM-LB***.

3. In the year 2004, the then Finance Minister Mr. P.Chidambaram provided dual policy for textile industry. Two Notifications Nos. 29/2004-CE and 30/2004-CE dated 09.07.2004 were issued whereby under Notification No.29/2004-CE, concessional rates of excise duty on majority of textile products were provided with CENVAT credit facility and under Notification No, 30/2004-CE, majority of textile products were fully exemption subject to the condition that no CENVAT credit of duty on inputs or capital goods has been taken. Barring small tinkering of these notifications thereafter, the textile industry at large has been availing this optional scheme.

4. Now suddenly, on 17th July 2015, Notification No. 30/2004-CE which hitherto exempted textile products on not availing CENVAT credit has been amended. As per the amendment, the proviso relating to non-availing of CENVAT credit has been substituted with the following proviso:

> ***Provided that the said excisable goods are manufactured from inputs on which appropriate duty of excise leviable under the First Schedule to the Central Excise Tariff Act or additional duty of customs under section 3 of the Customs Tariff Act, 1975 (51 of 1975) has been paid and no credit of such excise duty or additional duty of customs on inputs has been taken by the manufacturer of such goods (and not the buyer of such goods), under the provisions of the CENVAT Credit Rules, 2004.***

5. The effect of the said amendment is that exemption will now be available only and only if the goods are manufactured from inputs on which appropriate duty of excise has already been paid. The phrase ***"appropriate duty has already been paid"*** was interpreted by the Hon'ble Supreme Court in the case of CCE vs. Dhiren Chemical Industries (supra) wherein it was held that due emphasis must be given to the words ***"has already been paid"*** . For the purposes of getting the benefit of the exemption under the notification, the goods must be made from raw material on which excise duty has, as a matter of fact, been paid, and has been paid at the ***"appropriate"*** or correct rate. Unless the manufacturer has paid the correct amount of excise duty, he is not entitled to the benefit of the exemption notification. Where the raw material is not liable to excise duty or such duty is nil, no excise duty is, as a matter of fact, paid upon it and thus to goods made out of such material the notification will not apply. Applying this ruling to the present amendment, unless ***"some duty"*** has been paid on the inputs, exemption would not be available.

6. Unlike in the case of Notification No. 14/2002-CE, there is no explanation in the present amendment to the effect the inputs purchased from the open market are to be considered as duty paid, without insisting for documentary evidence of payment of duty. Hitherto, textile industry at large has been working on basis that since no CENVAT credit is being availed on the inputs, exemption is available. Now after amendment, in order to continue to avail exemption under the Notification, it has to be ensured that appropriate duty has been paid on the inputs. It is going to be difficult task for the manufacturers to prove duty paid character of the inputs procured from open market. Therefore, virtually, the exemption under Notification No. 30/2004-CE has become redundant. As a result, tariff rate of excise duty would be applicable.

7. Coming to the nominal rate of duty under Notification No. 01/2011-CE, the exemption hitherto has been available on a number of products subject to the condition that facility of CENVAT credit on inputs/ input services has not been availed. This notification was issued in order to impose a nominal duty on certain products which have been fully exempted. As perthe present amendment, it has now been provided exemption will be available if the said excisable goods are manufactured from inputs or by utilising input services on which appropriate duty of excise or service tax has been paid. Therefore, in order to continue to avail the benefit of nominal rate of excise duty under the Notification, it has to be ensured that appropriate duty on the inputs and appropriate service tax on input services has been paid. It is going to be difficult task for the manufacturers to prove duty paid character of the inputs procured from open market and certain input services provided by small service providers. Therefore, virtually, the exemption under Notification No. 01/2011-CE has also become redundant. As a result, tariff rate would be applicable unless otherwise there is some other exemption Notification.

8. Mega Notification No. 12/2012-CE has also been subject to the same condition of not availing the facility of CENVAT credit. However, by the aforesaid amendments, certain items now can enjoy exemption only if appropriate duty / tax is paid on the input / input services and also the facility of CENVAT credit is not availed. This may also meet the same fate as discussed above.

9. Further, one more interesting point of dispute can be whether all the inputs, input services used by the manufacturers availing the said notification(s) are to duty paid/ tax paid, or duty paid/ tax paid character of any or some of the input or input service will satisfy the conditions of the said notifications. Manufacturers use a number of inputs and/ or input services. A majority of manufacturers may not be able to meet the requirement of all the inputs and input services to be duty paid/ tax paid For example, a manufacturer may avail the services of a mechanic for repair of the machinery and such mechanic being a small service provider may not be paying service tax. Either the manufacturer has to resort to clandestine measures or to forego the exemption.

10. One more new introduction to the proviso to these notifications is a phrase ***"(and not the buyer of goods)"*** . The purpose behind introduction of this phrase is to deny benefit of CVD exemption in case of imported goods. It appears that the phrase has been introduced to overcome the judgment of the Hon'ble Supreme Court in the case of ***SRF Ltd. Vs. CC â€¦ 2015-TIOL-74-SC-CUS*** , wherein the Hon'ble Supreme Court relying on its earlier judgment in the case of ***AIDEK Tourism Services Pvt. Ltd. vs. CC - 2015-TIOL-23-SC-CUS*** has held that for satisfying the conditions attached to the notification, it shall be presumed as if the like goods (goods identical to imported goods) are manufactured in India. In other words, Supreme Court held that since the manufacturer of imported goods situated outside India is not entitled to take the credit, it shall be treated that the condition of non-availment of credit attached to the exemption notification stands satisfied.

11. Though the proposed amendments have been made to overcome the judgment, it appears that inadvertently, the amendment seeks to ensure duty paid character of the inputs/ input services, which may not have been intended.

12. Be that as it may, by the present amendment in the form it has been made, a large number of manufacturers are likely to be effected. Therefore, if the matter is not clarified immediately, it can be safely assumed that the present amendment is another step towards GST, the purpose of which is to bring transparency and rationalization of tax structure and to bring down the cascading effect of taxes.

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