

Experts Explain



Mr Vijai Kumar is a Consultant and Advocate and appears before various forums in Customs, Excise and Service Tax taxation matters. He is a former Additional Commissioner in Indian Revenue Service (Central Excise and Customs) and retired in July, 2010. He writes regularly in various journals and is a guest faculty to various Institutes. He is associated with various associations of trade and industry. He has vast experience of working in the Ministry of Finance in various capacities and was associated with the framing of policy in Customs and other areas for the Union Budget 2012-13. Here he is writing exclusively for *The FISME Factor* on the impact of tax proposals in this year's Budget on small and medium enterprises (SMEs).

Changes in Customs Duty Laws ups penalties, leaves rates unchanged

In Finance Bill, 2012, there is no significant change in rates of Customs Duty or the procedures relating to assessment and recovery of Customs Duty. The rates of Customs Duty remained same with minor adjustments here and there. The changes proposed in the Finance Bill are regarding the provisions relating to the Criminal liability of the persons who have violated the provisions of the Customs Act. The Small, Medium and Micro industries in India are hardly affected in their imports and exports operations. All the Exemptions and Export Promotion Schemes are not touched.

The Finance Bill, 2012, proposes the following changes in legal provisions relating to Customs Laws:

1. Air Freight Stations

Vide Clause 114 of the Finance Bill; clause (1) of section 2 is proposed to be amended to include air freight stations in the definition of "customs airport".

[*Clause 114*] and vide Clause 115 of the Finance Bill, clause (aa) of Section 7 is proposed to be amended to include “air-freight stations”. [*Clause 115*]

These amendments would empower the Central Board of Excise and Customs to appoint air freight stations for unloading of import cargo and loading of export cargo as in the case of Inland Container Depots.

2. Recovery of Duty from the person to whom DEEC, etc issued

Vide Clause 116 of the Finance Bill; a new section 28AAA is proposed to be inserted to provide for recovery of duties, from the person to whom the instrument was issued without prejudice to any action that may be taken against the importer.

The provisions of the Customs Act enable recovery of duty not-levied or short-levied by reason of collusion, or willful misstatement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter.

Certain cases have been detected relating to utilization of instruments, such as duty credit scrips, where the instrument was obtained by means of collusion or willful misstatement or suppression of facts by the person to whom the instrument was issued or his agent or employee and not by the importer who utilized it. In order to recover duty from the person who has committed fraud, section 28 AAA is being inserted in the Customs Act.

3. Provisional attachment of property for recovery of Duty from the person to whom DEEC, etc issued

Vide Clause 117 of the Finance Bill, section 28BA is proposed to be amended to make the provisions relating to provisional attachment of property applicable to the proposed Section 28AAA for recovery of Duty from the person to whom DEEC, etc issued.

4. Duty Payment Electronically

Vide Clause 118 of the Finance Bill, section 47 is being amended to insert a new proviso therein to provide that the Central Government may, by notification in the official gazette, specify the class or classes of importers who shall pay customs duty electronically.

5. Interest on Drawback

In Finance Act, 2011, Sections 28AA and 28AB of the Customs Act were merged in Section 28AA, dealing with Interest on delayed payment of duty.

In Section 75 A dealing with interest on drawback, reference was made of Section 28AB, it was not amended in Finance Act, 2011. Vide clause 119 of the Finance Bill, Section 75A is proposed to be amended to substitute the reference to section 28AB with section 28AA. The amendment is also being given retrospective effect from 08.04.2011.

6. Offences- non-cognizable and bailable

Vide Clause 120 of the Finance Bill, section 104 is being amended to provide that notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under the Act (except an offence punishable with term of imprisonment of three years or more under section 135 shall be non-cognizable and bailable.

Hence **Offences under section 132,133 and 134 shall be non-cognizable and bailable**

7. Offences- Cognizable

Vide Clause 120 of the Finance Bill, section 104 is being amended to provide that all offences punishable with a term of imprisonment of three years or more under section 135 shall be cognizable.

Hence **Offences under section 135 shall be cognizable and non- bailable**

8. Bail by Magistrate

Vide Clause 121 of the Finance Bill, section 104A is being inserted to provide that bail in the case of offences punishable with a term of imprisonment of three years or more under section 135 shall not be granted by a Court or Magistrate without an opportunity being given to the Public Prosecutor to present his case. It also provides that in the case of minors, infirm and women, the Magistrate may grant bail. It also excludes the jurisdiction of police officers to initiate investigation of offences under the Customs Act, unless authorized in this behalf by the Central Government by a special or general order.

9. Adjudication Powers

Vide Clause 122 of the Finance Bill; section 122 is proposed to be amended to enhance the monetary limits for adjudication of cases involving confiscation of goods and imposition of penalty from Rupees two lakh to Rupees five lakh for Deputy/ Assistant Commissioners and from Rs.10,000 to Rs.50,000 for Gazetted officer lower in rank to Assistant/ Deputy Commissioner.

In other words, the adjudication power of D.C./A.C. are being raised for the cases involving goods liable for confiscation from Rs. 2 lakhs to Rs. 5 Lakhs and Superintendent/ Appraisers from Rs. 10,000/ to Rs. 50,000/.

10. Summary trial of offences

Vide Clause 123 of the Finance Bill, section 138 is proposed to be amended to exclude offences punishable with term of imprisonment of three years or more under section 135 from summary trial of offences. Section 138 deals with summary trial of offences and the offences under section 135 are punishable with term of imprisonment of three years or more and such offences are proposed to be being made .

11. Service of order, decision etc.

Vide Clause 124 of the Finance Bill; section 153 is proposed to be amended to bring 'courier services' within its ambit for the purpose of serving any order/decision/summons/notice by the Commissioner.

12. Exemption to foreign going vessels

Vide clause 125 of the Finance Bill, the exemption from additional duty is being provided retrospectively to "foreign going vessels" for the period from 1st March, 2011 to 16th March, 2012.

AMENDMENTS IN CUSTOMS TARIFF ACT, 1975:

13. Provisions regarding Safeguard Duty

Section 8C of the Customs Tariff Act, 1975 empowers the Central Government to levy safeguard duty on imports from Peoples' Republic of China. It is being amended to provide that such duty may continue if the Central Government is of the opinion that such articles or goods continue to be imported into India so as to cause or threaten to cause market disruption to domestic industry even though the latter has taken measures to adjust to such disruption. The amendment would align the provisions of the section with the Transitional Product Specific Safeguard Mechanism under Chinese Accession Protocol signed with WTO in 2001. [*Clause 126*]

14. Other amendments – Vide clause 127 of the Finance Bill, the First schedule to the Customs Tariff Act is proposed to be amended to:

(i) revise the length of the lowest slab of both filter and non-filter cigarettes of length not exceeding 60 millimeters or exceeding 60 millimeters to length exceeding 65 millimeters or not exceeding 65 millimeters respectively.

(ii) revise the description of tariff items 2601 11 10 to 2601 11 90 dealing with iron ore and concentrates based on Fe content.

(iii) insert Note 13 in Chapter 48 to provide that notwithstanding anything contained in Note 12, if the paper and paper products of heading 4811, 4816 or 4820 are printed with any character, name, logo, motif or format they shall remain classified under Chapter 48 as long as such products are intended to be used for further printing. This would prevent classification disputes.

(iv) align the entries relating to copper scrap, brass scrap, nickel scrap, aluminium scrap, lead scrap and zinc scrap with the revised ISRI classification.

(v) enhance the rate of basic customs duty on bicycles from 10% to 30% and on parts of bicycles from 10% to 20%.

15. Rate of export duty on chromium ore

Vide clause 128 of the Finance Bill, the Second Schedule to the Customs Tariff Act is being amended to enhance the rate of export duty on chromium ore from Rs. 3000 per tonne to 30% ad valorem.

The changes at para 14(v) and 15 will come into effect immediately owing to a declaration under the Provisional Collection of Taxes Act, 1931.

16. Baggage

Vide Notification No.21/2012-Customs (N.T.), the Baggage Rules,1998 have been amended and the free allowance for the Passengers of and above 12 years of age and returning after stay abroad of more than three days is being raised from Rs. 25,000/ to Rs. 35,000/ and of Passengers up to 12 years of age from Rs. 12,000/ to Rs. 15,000/.