

EXCISE DUTY ON BRANDED GARMENTS (AN ANALYSIS)

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### Introduction

Union Budget for the financial year 2011-2012 ('Budget 2011') is a growth oriented budget that aims to build on India's strengths and to address the problems and challenges that are faced by the country. Keeping this approach in mind, the Finance Minister introduced Budget 2011 with the aim to strengthen and build on the country's growth drivers through infrastructure and social sector development, deal with challenges of inflation, poverty, fiscal management and other social problems and to promote overall growth of the economy. Though, overall Budget 2011 focuses on areas requiring major investments, while seeking to take forward the process of fiscal consolidation, certain changes proposed in Budget 2011, have become topics of much discussion throughout the country. One such change is the imposition of Central Excise Duty @ 10% on 'branded ready-made garments' and 'made-up articles of textiles'. These goods fall under Chapters 61, 62 and 63 of the First Schedule of the Central Excise Tariff Act, 1985.

Budget 2011 has left the garment industry under severe shock with the announcement that the erstwhile optional excise duty scheme has been now converted into mandatory route at a unified rate of 10% for 'branded ready-made garments' and 'made-up articles of textiles' with CENVAT credit facility. This move will certainly result in an increase in transaction and administrative costs with respect to the branded ready-made garments, which will ultimately result in escalation in prices of these garments. Let us examine the effect of changes that have been made under Budget 2011 regarding payment of Central Excise Duty with respect to 'branded ready-made garments' and 'made-up articles of textiles'.

### Position Prior to Budget 2004

Prior to 2004, garment manufacturers were required to pay Central Excise Duty in accordance with the Central Excise Tariff. Under Central Excise Tariff for 2003-2004, the standard rate of Central Excise Duty

with respect to all products classifiable under Chapter 61, 62 and 63 (except the Indian National Flag) was leviable @ 16%. However, certain exemptions with respect to products classifiable under Chapter 61, 62 and 63 were provided vide Notification No.15/2002-C.E., dated 01.03.2002 (as amended vide Notification No.16/2003-C.E., dated 01.03.2003). For products classifiable under Heading 61.01 of Chapter 61 i.e. Articles of apparel, knitted or crocheted, exemption was provided under Serial Nos.14 and 15 of Notification No.15/2002. In terms of Serial No.14 of Notification No.15/2002, a product classifiable under Heading 61.01 of Chapter 61 on which no credit of the duty paid on inputs or capital goods has been taken, was fully exempted from payment of Central Excise Duty. However, in the event such product was made from knitted or crocheted textile fabrics, whether or not processed, on which appropriate excise duty and Additional Duty (under excise or custom) has been paid, then in terms of Serial No.15 of Notification No.15/2002, Central Excise Duty was leviable @ 12%. Further, in terms of Serial No.16 and 17 of Notification No.15/2002, for products classifiable under (i) Heading 62.01 of Chapter 62 i.e. Articles of apparel, not knitted or crocheted, and (ii) all products classifiable under Chapter 63 (except jute blankets and sacks and bags of jute used for packing of goods), which are made from woven or knitted or crocheted textile fabrics, whether or not processed and on which appropriate excise duty and Additional Duties (under excise or customs) have been paid, Central Excise Duty was leviable @ 12%. Apart from the above, all other products classifiable under Heading 61.02 and 62.02 under Chapter 61 and 62 respectively, were taxable in accordance with the standard rate of excise duty i.e. 16%.

#### Position during 2004-2011

The above mentioned position witnessed much awaited changes in the year 2004, wherein, the option of either paying excise duty by availing CENVAT Credit or claiming full exemption from payment of duty without availing CENVAT Credit was introduced by the Government. Prior to Finance Bill, 2011, ready-made garments and made-up articles, falling under Chapters 61, 62 and 63 (except products under Sub-sub-heading 63090000 i.e. worn clothing and other worn articles and Heading 6310 i.e. Used or new rags, scrap twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables, of textile materials) were exempted from payment of Central Excise Duty, subject to the condition that no credit of duty on inputs was availed by the manufacturer in terms of Notification No.30/2004- C.E., dated 9<sup>th</sup> July, 2004 (as amended vide Notification No.12/2009-C.E., dated 07.07.2009). However, in the event any credit of duty on inputs was availed by the manufacturer, then the applicable rate at which Central Excise Duty was payable by such manufacturer was 4% (a.v.) for goods of cotton, not containing any other textile material, and 10% for others products in terms of Notification No.29/2004-

C.E., dated 07.07.2004 (as amended vide Notification No.6/2010-C.E., dated 27.02.2010) read with standard rate of Central Excise Duty provided under Chapters 61, 62 and 63.

Thus, prior to Budget 2011, a manufacturer of goods falling under Chapters 61, 62 and 63 (except products under Sub-sub-heading 63090000 i.e. worn clothing and other worn articles and Heading 6310 i.e. Used or new rags, scrap twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables, of textile materials) was entitled to claim exemption from payment of Central Excise Duty, subject to the condition that no credit of duty on inputs was taken by such manufacturer. However, in the event any credit of duty on inputs was taken by the manufacturer, then the applicable rate at which Central Excise Duty was payable by such manufacturer was 10% (a.v.), except for goods of cotton, which does not contain any other textile material for which the rate of duty was only 4% (a.v.).

As regards valuation of these goods, the tariff value was calculated at the rate of 60% of the retail sale price in terms of Notification No.20/20010-C.E.(N.T.), dated 30.04.2001 (as amended vide Notification No.07/2011-C.E. (N.T.), dated 01.03.2011). In other words, abatement of 40% of the retail sale price was allowed with respect to these products while calculating the value on which Central Excise Duty was payable.

#### Position post Budget 2011

##### Branded ready-made garments and made-up articles

The above mentioned position has undergone crucial changes under Budget 2011. Under Budget 2011, the optional excise duty scheme with respect to ready-made garments and made-up articles, bearing a brand name or sold under a brand name, falling under Chapters 61, 62 and 63 (except products under Heading 6310 and Sub-sub-heading 63090000), has been converted into a mandatory route at a unified rate of 10% vide Notification No.12/2011-C.E, dated 01.03.2011. As per Notification No.12/2011, manufacturers of ready-made garments and made-up articles (including cotton products, which were earlier required to pay concessional duty), bearing a brand name<sup>1</sup> or sold under a brand name, will be

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<sup>1</sup>As per Chapter Note 11 of Chapter 61, Chapter Note 10 of Chapter 62 and 3(iv) of Chapter 63, "**Brand Name**" means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.

required to pay Central Excise Duty at the rate of 10%. However, the benefits of CENVAT credit will be available with respect to these goods. Thus, the optional excise duty scheme will only be applicable on those goods, falling under Chapters 61, 62 and 63, which do not bear a brand name or are not sold under a brand name.

The provision of concessional rate of excise duty with respect to goods of cotton bearing a brand name or sold under a brand name, which does not contain any other textile material, is also amended vide Notification No.11/2011-C.E., dated 01.03.2011. Post-Budget 2011, the concessional rate of excise duty is only available to goods of cotton that do not contain any other textile material, and do not bear a brand name or not sold under a brand name. However, the concessional rate of excise duty, which was 4% (a.v.) prior to Budget 2011, has been increased to 5% (a.v.).

This change in excise law has led to widespread protests by the garment manufacturers throughout the country. In response, the Government vide Notification No.12/2011 CE (NT) dated 24<sup>th</sup> March, 2011, increased the abatement with respect to the calculation of the value of such ready-made garments and made-up articles. Pursuant to the above mentioned change by the Government, the tariff value for goods falling under Chapters 61, 62 and 63 (heading Nos.63.01 to 63.08) has been reduced from 60% to 45% of the Retail Sale Price.

#### Non-Branded ready-made garments and made-up articles

It is important to note that under Budget 2011, change in the optional excise duty scheme has only been made with respect to goods falling under Chapters 61, 62 and 63 (except products under Heading 6310 and Sub-sub-heading 63090000), which bear a brand name or are sold under a brand name. No change has been made with respect to goods which do not bear a brand name or are not sold under a brand name - such goods are still entitled to enjoy optional excise duty scheme.

#### Liability to pay Excise Duty

Some changes have also been made vide Budget 2011 regarding the onus to pay the Central Excise Duty. In garment and made-up article industry, it is common practice for brand owners to get the goods manufactured from several job-workers. The brand owner may or may not, themselves, possess any manufacturing facility or undertake any manufacturing activity. In this regard, the Central Excise Rules, 2002, have been amended by inserting a new Sub-rule (1A) in Rule 4, whereby it is provided that where goods are manufactured by the brand owners through job-workers, the liability to pay excise duty and

comply with Central Excise procedures shall lie on the brand owner on whose behalf the goods are manufactured by the job-workers. For this purpose, the brand owner would be required to register his/its private store-room or warehouse in which inputs are received for distribution to job-workers and finished goods received from job-workers and comply with all other provisions of the Central Excise Law as well. The job-workers are exempted from liability to pay excise duty if the brand owner/merchant manufacturer pays the duty. However, this liability to pay Central Excise Duty may be shifted to the job-workers. For this shift, the job-workers shall obtain registration and comply with all formalities of Central Excise Law including payment of duty.

Another question that has attracted due attention is that in some cases the job-worker does not fix the brand name and it is done by the brand owner himself. In this situation, the liability to pay the Central Excise Duty will be on the brand owner; in terms of Chapter Note 12, 11 and 5 of Chapters 61, 62 and 63 respectively, which provides that "In relation to a product of this Chapter, affixing a brand name on the product, labelling or relabeling of containers or repacking from bulk to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to 'manufacture'".

It has also been pointed out by many manufacturers in the garment industry that persons owning a brand name often get garments bearing their brand name manufactured from other smaller units without providing the raw materials or inputs to such smaller units. Such smaller units do not fulfil the criteria to be categorised as "job-worker" and are required to register and pay duty on such garments. It has been pointed out that these smaller units may face certain difficulty in discharging duty on tariff value since the Retail Sale Price of the garments are not disclosed to them by the brand owner. In this regard it is important to note that if Retail Sale Price is not affixed or marked on garments when they are cleared in the course of sale from the factory of a manufacturer to the brand owner, the whole sale price declared by the manufacturer would be deemed to be the tariff value for the payment of duty. Further, since the process of labelling or re-labelling constitutes a process of "manufacture" duty on the tariff value (based on the actual Retail Sale Price), would one again be payable as and when the brand owner labels the garments with the Retail Sale Price and clears the goods for further sale. The garments purchased by the brand owner being duty-paid, he would be entitled to claim and utilize the credit of duty already paid for the payment of duty when he clears the garments after affixing the Retail Sale Price.

Manufacturers and the garment industry associations have also raised their concern that it is a common practice in the garment industry for goods/garments to be cleared by the manufacturer to the wholesale

dealer/ retailer on consignment basis. As a result, the duty-paid stock that remains unsold with the wholesale dealer/ retailer is returned to the manufacturer either at the end of the season or from time to time. Such returned goods are cleared either as such or after “re-finishing” operations to another wholesaler or retailer for sale (often at reduced prices). The re-finishing operations could involve cleaning, ironing, re-folding, repacking or re labelling -some of which constitute “manufacture” in terms of the relevant Chapter Notes. Normally, rule 16 of the Central Excise Rule, 2002 would cover such cases. However, it has been represented that often one -to - one correlation of such returned goods with the original invoice (against which they were cleared initially) is not possible. In this regard full exemption from payment of Central Excise duty has been accorded to the manufacturer with respect to the duty-paid goods returned to such manufacturer during a financial year up to an aggregate ceiling not exceeding 10% of the value of clearances for home consumption made in the preceding financial year by such manufacturer. For availing this exemption the manufacturer would be required to observe the following procedure for this purpose: a. To submit an intimation within 48 hours of the receipt of the returned goods about the value of returned goods received in his factory/ registered premises; b. To maintain proper accounts/ record of the receipt, finishing operations, and dispatch of returned stock indicating the monthly and cumulative value of the returned stock received during the financial year and to produce the same as and when required. In addition to the above, all terms and conditions of Notification No.31/2011-CE dated 24th March, 2011 issued by the department in this regard need to be fulfilled by the manufacturer. Moreover, the benefit of this exemption is available only if the manufacturer does not take Cenvat Credit of the duty paid on the garments/ made-ups at the time they were initially cleared from the factory.

#### SSI Exemption

Under Budget 2011, apart from the above changes, the benefit of SSI Exemption has also been extended to branded ready-made garments and made-up articles attracting levy in terms of Notification No.8/2003-C.E., dated 01.03.2003. Earlier, the SSI exemption was provided to the manufacturer of dutiable goods; however, since as per Rule 4(1A) of the Central Excise Rules, the liability to pay duty has been shifted to brand owner on whose behalf Job-workers are doing the manufacturing, therefore Notification No.8/2003-C.E., dated 01.03.2003 has also been amended vide Notification No.8/2011-C.E., dated 01.03.2011, which provides that in case Rule 4(1A) of the Central Excise Rules, 2002 is applicable, the person liable to pay the duty (i.e. the merchant manufacturer/ brand owner) will be deemed to be the manufacturer for the purpose of SSI exemption under Notification No.8/2003-C.E., dated 01.03.2003 (as amended vide Notification No.8/2011-C.E., dated 01.03.2011). Thus, at present even if the goods

are manufactured by the job-worker, who is the actual manufacturer, the benefit of SSI Exemption will be given to the person liable to pay the excise duty in terms of Rule 4(1A) of the Central Excise Rules, 2002.

Another question that arises for consideration is whether the SSI Exemption is available to brand owner as well as to job workers. A careful reading of Notification No.8/2003-C.E., dated 01.03.2003 (as amended vide Notification No.8/2011-C.E., dated 01.03.2011) makes it clear that SSI Exemption is available to the person who is liable to pay the excise duty.

#### Conclusion

Under Budget 2011, goods falling under Chapter 61, 62 and 63 (including cotton products) having a brand name or being sold under a brand name have been brought under the tax net which will become dutiable @10% on the tariff value, without any option to pay concessional duty or any exemption. However, non branded goods falling under these Chapters would still continue to enjoy optional duty scheme. Earlier, assesses were paying duty as per their own decision, but now it is mandatory for them to pay duty on branded garments. Non-branded garment manufacturers will still be entitled to get excise duty exemption, if they do not avail CENVAT credit on inputs.