BUDGET 2011 - NOTE ON CHANGES.

Index

BUDGET 2011 -12

CHANGES ON CENTRAL EXCISE, CUSTOMS & SERVICE TAX.

SERVICE TAX

PART – I (a) CHANGES EFFECTIVE FROM 1st March 2011.

A. **Rate of service tax:** There is no change in the rate of service tax.

B. **Changes made w.e.f 1st March, 2011.**

1. Restriction of credit in case of payment of service tax on full value of some of services to the service provider in the case of works contract service (Notification 1/2011-ST):

   Under works contract services, assessee is eligible only for input services and capital goods credit. Sub-contractors were indirectly transferring the input credit to the main contractor or person who is covered under the work contract service by paying on full value of the service of 'Erection, commissioning or installation', 'Commercial or industrial construction' and 'Construction of complex' services after availing Cenvat credit on inputs i.e. without availing exemption notification 1/2006-ST dated 01.03.2006. To restrict such indirect credit of input a sub-rule (2A) is being inserted in rule 3 of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 which provides that the credit of tax on input services of 'Erection, commissioning or installation', 'Commercial or industrial construction' and 'Construction of complex' services as available to a person providing 'Works contract service' shall be **restricted to 40% of tax paid**, when such tax has been paid on full value of the service after availment of Cenvat credit on inputs.

2. Exemption to an organizer of business exhibitions (Notification No. 5/ST-2011):

Exemption is being provided to services provided by an organizer of business exhibitions in relation to business exhibitions held outside India.

The service in relation to business exhibition outside India is treated as export as the same is performed outside India subject to receipt of the consideration in foreign currency. Now even if the organizer did not receive the consideration in foreign currency then also there is no need to pay service tax as he can claim the exemption under notification no. 5/2011-ST.

3. Abatement under 'Transport of goods through coastal and inland shipping' (Notification No. 16/2011-ST)

An abatement of 75% from the taxable value is being provided for the purpose of levy of service tax under 'Transport of goods through coastal and inland shipping'.

4. Exemption under 'Jawaharlal Nehru National Urban Renewal Mission' and 'Rajiv Awaas Yojana' (Notification No. 6/2011-ST):

Exemption is being provided to 'Works contract' service provided for construction or Completion and finishing of new residential complex under 'Jawaharlal Nehru National Urban Renewal Mission' and 'Rajiv Awaas Yojana'.

5. Exemption under 'Rashtriya Swasthya Bima Yojana' (Notification No. 7/2011-ST):

Exemption is being provided to 'Rashtriya Swasthya Bima Yojana' under the 'General insurance' service.

6. Exemption is being provided under 'Works contract' to services provided within a port or other port or an airport (Notification No. 10 & 11/2011-ST):

Any service provided within airport by airport authority or any other person to any person is already taxable under Airport Services. The exemption is being

provided vide Notification no. 10/2011-ST under 'Works contract Services' to services provided within an airport, so as to avoid double taxation.

Similarly, services rendered at port are covered under port services and therefore exemption is being provided vide Notification no. 11/2011-ST in relation to execution of 'Works contract' for services like construction, repairs, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways provided within a port or other port, so as to avoid double taxation.

7. Valuation of taxable service in the case of Telecommunication services (Notification No. 02/2011-ST)

An explanation is being added to rule 5(1) of Service Tax (Determination of Value) Rules, 2006 to clarify that for the purpose of Telecommunication services, the value of the taxable service shall be gross amount charged by the telegraph authority from the service receiver. Thus in case of service provided by way of recharge coupons or prepaid cards or the like, the value shall be the gross amount charged from the subscriber or the ultimate user of the service and not the amount paid by the distributor or any such intermediary to the telegraph authority.

8. A modified scheme is being introduced to refund service tax to SEZ units and developers and notification No. 9/2009-ST is being superceded (Notification No. 17/2011-ST):

The notification 9/2009-ST provided exemption from payment of service tax on input services provided in relation to authorised operations of SEZ unit/developer. The notification 17/2011-ST dated March 1, 2011 has superseded the said notification to provided for a modified scheme for grant of exemption.

I) The modified scheme is as under:

(a) The service provider will have an option not to pay service tax on the services which will be 'wholly consumed' inside the SEZ. The option is also available for service tax payable under reverse charge.

(b)For services which are not provided wholly inside the SEZ area or the developer/unit has not availed above benefit then exemption will be available by way of refund.

The manner to determine place of consumption of a service is based on Export of Service Rules,2005. The following service will be considered as provided wholly inside the SEZ area:

(a)The categories of service listed in Rule 3(1)(i) of Export of Services Rules, 2005 viz is used in relation to immovable property situated inside the SEZ area and

(b)The category of service listed in Rule 3(1)(ii) of Export of Services Rules, 2005 viz will performed wholly inside the SEZ area.

The categories of services which are not prescribed in clause (i) and (ii) rule 3(1) of the export service rules, shall be considered to be wholly consumed inside the SEZ area only if SEZ developer/unit does not own or carry on any business other than operation in the SEZ area.

For ex: The services provided by telecom operators for telephone installed inside the SEZ area, services provided by a Chartered Accountant or Cost Accountant in relation to activity related to SEZ area will not be considered to wholly consume inside the SEZ area if the developer/unit owns or carry on any operations other than that of in SEZ area like a unit in DTA area.

Hence for those services which do not fall in (a) and (b) above and Developer/unit own or carry out any operation other than in SEZ area like a unit in DTA unit the quantum of **refund will be based on turnover basis.** The formula to compute refund is as follows:

$$\text{Maximum refund} = \frac{\text{Service tax paid on specified services used for SEZ Authorised Operations X Export turnover of SEZ Unit shared with DTA Unit for the period for the period}}{\text{Total turnover for the period}}$$

The 'total turnover' will be sum total of turnover of all the dutiable/exempted services rendered and all excisable/non-excisable goods cleared including value of exports and sale of bought out items. The turnover will for the period for which invoice of input service provider pertain to and exporter claim refund.

The 'SEZ turnover' will be based on FOB value of export of goods for manufacturing unit and on realisation of export proceeds for service sector unit. The period of turnover will be based on period for which invoice pertain. For ex: The input service provider has raised bill on March 5, 2011 and exporter claim refund on April 2, 2012 then the turnover for the period March, 2011 will be taken to compute above ratio.

In case the SEZ developer carries out operation outside the SEZ area then it will also have to claim refund on proportionate basis.

II) Modification in procedure to claim refund:

1) In addition to approval of list of input service from the Development Commissioner the developer/Unit which have operation only in SEZ area will have furnish a declaration to that effect in Form A-1.
   The details of name, address and service tax code of the input service provider is required to be furnished in Form A-1. Hence this declaration will have to be submitted each time the developer/unit use service of a any new service provider.
2) The superseded notification provided that the claim had to be mandatory submitted at Central Excise department having jurisdiction at SEZ area. Under this notification in addition to above option has been provided to the developer/unit to file refund claim with Assistant or Deputy Commissioner of Central Excise having jurisdiction over registered/head office of the developer/unit. Hence the companies which have included SEZ unit in its centralized registration will have an option to file claim at head/registered office.

However paragraph (g) provides that prior to sanction of claim the AC/DC should verify the information submitted in refund claim. The AC/DC at jurisdiction level is at better position to verify the details. Therefore it is advised that claim should be filed with AC/DC having jurisdiction over SEZ level only.

3) The time limit to claim refund has been extended from six months from the date of actual payment of service tax to one year from the end of month in which payment has actually been made to input service provider.
4) It is provided that original invoices and proof of payment should be submitted along with refund claim. However the claimant can submit certified copy of invoice along with claim and produce original copy at the time of verification.
5) The refund claim will be filed in Form A-2. The turnover details to be provided in Table 'C' to the notification will have to be certified by the statutory auditor of the SEZ unit.
6) The exemption from payment of service tax on services consumed wholly inside the SEZ area will be available on production of list of services approved by Approval Committee and declaration in Form A-1 if required.
7) In addition for services for which refund is claim the records of receipt and use of service is required to be maintained for services consumed wholly inside SEZ area also.

Part I - (b) - Changes w.e.f 1st April 2011

1. Valuation in the case of Money Changing services (Notification no. 02/2011-ST):

The valuation in the Money Changing service was not defined in the anywhere in the Act or rules made thereunder. Now, It is being defined by inserting new rule (2B) in Service Tax (Determination of Value) Rules, 2006, which is equal to:

- ✓ In case of exchange from or to the Indian rupees:
  - the units of currency exchanged multiplied by the difference in the buying rate or the selling rate, as the case may be, and the RBI reference rate for that currency for that day.
  - If RBI reference rate is not available the value shall be 1% of the value of money exchanged in Indian rupees
- ✓ In case of neither of the currencies exchanged is the Indian rupees:
  - 1% of the lesser of the amounts receivable if the two currencies are converted at RBI reference rate.

Reduction in composite rate under Rule 6(7B) of the service tax rules:

The rate of composition under rule 6(7B) has been lowered from 0.25% to 0.1% of the gross amount of money exchanged towards discharge of service tax liability. The said amendment has been made so as bring in parity with deemed value concept (valuation at 1%) when as envisaged in Rule 2B above i.e. deemed value has been taken as 1% and service tax liability on the same comes to 0.1%.

Further, the proviso relating to paying tax on billed charges (i.e. non-entitlement of composite rate option in case of service charges separately shown) has been deleted. Thus now the assessee will have the option to pay tax @0.1% of gross amount exchanged or else at standard rated on the value of service in terms of rule 2B, as mentioned above.

2. Point of Taxation Rules, 2011 (Notification No. 18/2011-ST)

Until today, service tax was levied on receipt basis. Thus, service tax was receipt based and the receipt was the point of taxation. But vide this budget, "Point of Taxation Rules, 2011 has been incorporated which has changed the chargeability of service tax receipt basis to **accrual basis** with effect from 1st April 2011. Thus, service tax will now be earliest of the Date on which service is provided or to be provided; or Date of invoice; or Date of payment.

A) Point Of taxation incase of change of rate of Tax.

Provision of service	Payment made	Invoice Issued	Point of Taxation	Rate Applicable
1. Before change of rate	After rate change	After rate change	Date of issue of invoice or date of payment, whichever is earlier	New rate
	After rate change	Before rate change	date of issue of invoice	Old Rate
	Before rate change	After rate change	Date of payment.	Old Rate
2.After change of rate	After rate change	Before rate change	Date of payment.	New Rate
	Before rate change	Before rate change	Date of issue of invoice or date of payment, whichever is earlier	Old rate
	Before rate change	After rate change	date of issue of invoice	New Rate

B) Point Of Taxation incase of introduction of new services.

- Tax is not leviable to the extent invoices have been issued and payments has been received before introduction of such taxable service.

- If payment is received before levy of tax on a new service but invoice is issued after the date of levy of tax on the new service, it will be exempt under this rule if and only if the invoice is issued within the limit prescribed under rule 4A i.e within 14 days of receiving the payment.

The above provisions will not be applied in the case of Continuous Supply of service.

C) Point of Taxation in case of continuous supply of service

- "Continuous supply of service" means any service which is provided, or to be provided continuously, under a contract, **for a period exceeding three months**, or where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition;
- The point of taxation in case of continuous supply of service will be the date on which payment is liable to be made periodically or from time to time, **as prescribed in the contract**.
- But if any payment is received or any invoice is issued before the period mentioned in the contract, then the point of taxation will be the date on which payment is received or the date on which invoice is issue, whichever is earlier.
- Incase of import of service under section 66A, the point of taxation will be the date on which payment is received or the date on which invoice is issue, whichever is earlier.

D) Point of taxation incase of Associate enterprise

Previously, liability incase of associate enterprise arises when any debit or credit entry has been made in the books of accounts. But with effect from 1st April 2011, point of taxation incase of associate enterprises will be:

- Date of debit or credit entry in the books of accounts.
- Date of issue of invoice.
- Date of payment.

Whichever is earlier.

E) Point of Taxation incase of copyrights, etc.

Point of Taxation incase of royalties or payment pertains to copyrights, patents, etc. where the amount of consideration is not ascertainable at the time when service is performed, will be deemed to be provided each time on the date on which the provider of such service receives any consideration from the use or benefit of such rights or invoice issued by the provider, whichever is earlier.

3. Amendment in Service Tax Rules, 1994 (Notification No.03/2011-ST)

Consequential to the introduction of the Point Of Taxation Rules, there are a few changes in the existing Service Tax Rules, 1994:

- The explanation relating to the associated enterprise under rule 6 & the second proviso to rule 6 of the Service Tax Rules 1994 has been deleted to align the existing rules with Point of Taxation Rules.
- A new rule 5B has been introduced to provide that the applicable rate of tax shall be the rate prevailing at the time when the services are deemed to have been provided.
- It has also been provided that when an invoice has been issued or a payment received for a service which is not subsequently provided either wholly or partially, the assessee may take the credit of the service

tax earlier paid when the amount has been refunded by him to the recipient or by the issue of credit note, as the case may be.

Further following amendment has been made in the said rules:

- The amount stated in rule 6(4B)(iii) for adjustment of excess amount paid by an assessee is being enhanced to Rs. 2 lakhs.
- A new sub-rule 6A has been introduced in rule 6 to provide that if an amount of service tax has been self-assessed but not paid, the same shall be recoverable alongwith interest under section 87 of the Act. Thus, there shall be no need to resort to the requirements of section 73 for the recovery of such self-assessed amounts.

4. Export of Services Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 are being amended so as to move some of the specified services from one category to another (Notification 12, 13, 8 and 9/2011-ST):

Certain services are rearranged so as to move from origin based levy to destination based levy in tune with global practice of taxation, which are as follows:

(i) Service provided by builders [Section 65(105)(zzzzu)] is being added to sub-rule 1(i) of Rule 3 and will thus be considered as exported, subject to compliance with other conditions, ***if the immovable property is situated outside India.***

(ii) Rail travel agent [65(105)zz] which was covered under the sub-rule 1(iii) of Rule 3 where the services were taxable under the recipient based category is now shifted to sub-rule 1(ii) of Rule 3 where in it will be considered as exported ,subject to the compliance with other conditions, ***when they are performed outside India***, Also health check-up and preventive care [65(105)(zzzzo)] is added to sub-rule 1(ii) and will thus be considered as exported, subject to compliance with other conditions, when they are performed outside India and

(iii) Services of credit rating agency [65(105)(x)], Market research agency [65(105)(y)], technical testing and analysis [65(105)(zzh)], transport of goods by air [65(105)(zzn)], goods transport agency [65(105)(zzp)], opinion poll [65(105)(zzs)] and transport of goods by rail [65(105)(zzzp)] are being deleted from sub-rule 1(ii) and thus the additional condition of performance outside India will stand removed. Thus they will be considered as exported, subject to compliance with the relevant conditions, ***if the recipient is located abroad.***

Similar, changes have been made in the Rule 3 of the taxation of services (provided from Outside India and received in India) Rules, 2006 vide Notification No. 13/2011-ST.

The changes in Export of Service Rules, 2005 and Taxation of services (provided from Outside India and Received in India) Rules, 2006 inter-alia, will make certain services taxable if the recipient is located in India even when the service is performed outside India. In order to avoid inconvenience in respect of certain services, exemption has been granted vide **Notification 8/2011-ST** to Services related to transportation of goods by road, rail or air when both the origin and the destination are located outside India is being exempted from service tax. Further exemption has also been given vide **Notification 9/2011-ST** to the value of air freight included in the assessable value of goods for charging customs duties for the purpose of levy of service tax under the 'Transport of goods by air' service in order to avoid taxing this service twice.

5. Rate of service tax in the case of Transport of passengers by air (Notification No. 04/2011-ST):

The rates of service tax on travel by air are being revised as follows:

- ✓ Economy class
  - Domestic travel

10% of the gross value of the ticket or Rs.150 whichever is less

- International travel

  10% of the gross value of the ticket or Rs.750 whichever is less

✓ Other than economy class

  10% of the gross value of the ticket

6. Rate of interest on delayed payment as well as excess collection has been increased from 13% to 18% vide Notification No. 15 and 16/2011-ST respectively.

PART – I (c) - Amendment effective from date of enactment of Finance Act 2011.

1. Amendment in penal provisions:

- Omit sub-section (1A) of section 73 together with both the provisos to sub-section (2) of section. As a result, the benefit of reduction of penalty available in cases of fraud, collusion, etc. under proviso to section 73 (1A) shall not be available. Further, a new sub-section 4A is being inserted in section 73 to provide for reduced penalty in cases where **during the course of audit**, verification or investigation it is found that the transactions not reported to the department are **available in the records or invoices**. Moreover, penalty is being reduced to 1% per month of the tax amount for the duration of default upto a maximum of 25%, if assessee during the course of audit, verification or investigation pays the tax dues, together with interest and the reduced penalty.
- Amend section 78 to revise the maximum penalty. Penalty will be hereafter mandatory and equal to tax evaded. If the transactions not reported to the department are available in the records or invoices, the penalty shall be 50% of the tax amount. Further, the penalty is being reduced to 25% of the tax amount, if the tax dues are paid within thirty days from the date of the order together with interest and reduced penalty. For assessees having a turnover of upto Rs.60 lakh in any of the years covered in the show cause notice or in the preceding year, the period of one month shall be revised to 90 days.
- Amend the power to waive penalty under section 80. While penalties under section 76 and 77 are being retained, penalty under section 78 is being waived only in cases where the transactions are captured in the specified records. Further section 80 has not been amended so as to include penalty under section 73(4A) and therefore penalty under said section cannot be waived.
- Reduce the penalty for delayed payment under section 76 from 2% to 1% per month or Rs.100 per day, whichever is higher. Maximum penalty reduced to 50% of the tax amount.
- Increase the maximum penalty under section 77 from Rs.5,000 to Rs.10,000

- Increase the maximum penalty for delay in filing of return under section 70 from Rs.2000 to Rs.20000. The maximum penalty is presently reached after a delay of 40 days.
- **Reduce interest rate by 3%** for assessees with a **turnover of upto Rs.60 lakh**, both under section 73B and section 75

2. Reintroduce the provisions relating to prosecution:

The provisions relating to prosecution under section 89 shall apply in the following situations after the previous approval of the Chief Commissioner:

- Provision of service without invoice;
- Availment and utilization of Cenvat credit without receipt of inputs or input services;
- Submitting false information; and
- Non-payment of collected amount of service tax for a period of more than six months.

Punishment

- Offence involving service tax amount exceeding Rs. 50 Lakh, imprisonment for a term which may extend to 3 years but not less than 6 months
- In any other case, imprisonment for a term which may extend to one year.
- In case of any subsequent offence, imprisonment for a term which may extend to 3 years but not less than 6 months

3. A new section 88 is being inserted so as to create first charge on the property of the defaulter for recovery of service tax dues from such defaulter subject to provisions of section 529A of the Companies Act, the Recovery of Debt due to Bank and Financial Institution Act, 1993 and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

4. Give power to issue search warrant under section 82 at the level of Joint Commissioner and the execution of such warrant at the level of Superintendent.

5. Retrospective Amendments:

Exemption under 'Club or association service':

Exemption from service tax on the **membership fees** under 'Club or association service' is being given to the **associations or chambers representing industry or commerce** for the period from 16.06.2005 to 31.03.2008.

Thus assessee who has already paid the service tax for the said period are advised to file the refund claim.

Exemption under 'Tour Operator Services':

The exemption was granted to the tour operator having a contract carriage permit or a tourist vehicle permit for inter-state or intrastate transportation of passengers under Notification no. 20/2009-ST dated 07.07.2009. The Retrospective effect is being given to the said notification by exempting service tax for the period from 01.04.2000 to 06.07.2009.

Thus assessee who has already paid the service tax for the said period are advised to file the refund claim.

PART – I (d) - Amendment effective from date to be notified after enactment of Finance Act 2011.

A. Introduction of New services:

1) Services provided by a restaurant:

Statutory Definition:

"(*zzzzv*) to any person, by a restaurant, by whatever name called, having the facility of air-conditioning in any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises"

Comments:

Services provided in relation to serving of food or beverage by a restaurant are brought into the tax net. The services relate to the use of restaurant space and furniture, air-conditioning, well-trained waiters, linen, cutlery and crockery, music, live or otherwise, or a dance floor. However, only restaurants fulfilling the following criteria are covered:

- The restaurant shall have the facility of air-conditioning in any part of the establishment.
- Such facility may be available for part of the financial year.
- The restaurant shall have the licence to serve alcoholic beverages.

It must be noted that service tax is not only on serving of alcoholic beverage but also covers serving of food.

During budget speech, the Finance Minister has announced 70% abatement in the said category.

2) Short term accommodation:

Statutory Definition:

"(zzzzw) to any person by a hotel, inn, guest house, club or campsite, by whatever name called, for providing of accommodation for a continuous period of less than three months"

Comments:

Accommodation services provided by any hotel, inn, guest house, club or campsite for a continuous period of less than 3 months are covered by this category.

It has been proposed as mentioned in the TRU letter that the levy shall be restricted only to those hotel, inn, guest house, club or campsite which have a declared tariff of Rs. 1000 per day or higher. Thus, if such hotel, inn, guest house, club or campsite has a declared tariff value of less than Rs. 1000 per day then it shall not be covered by this category.

Further, it must be noted that the actual amount charged may be less than Rs. 1000.

Also, during budget speech, an abatement of 50% has been announced in the said category.

B. Changes in definition of Existing services and other amendment.

1. Business Support Services.

Current Status:	The definition of the said category as given under section 65(104c) includes "operational assistance for marketing".
Amendment in brief:	The words mentioned in the said definition "operational assistance for marketing" is proposed to be substituted with the words "operational or administrative assistance in any manner."
Implications:	The said substitution attempts to spread the tax net to assistance for any sort of administrative activity related to business of the assessee & not restricting to merely marketing. Moreover, emphasis is placed on the word operational or administrative assistance **of any kind.** Due to the addition of the words "of any kind", outsourcing of any operation or administrative activity related to the assessee's business shall get covered.
Remark:	As clarified in the TRU letter, the words "operational or administrative assistance" have wide connotation and can include certain services already taxed under any other head of more specific description. The correct classification will continue to be governed by section 65A.

2. Authorized Service Station's Service:

Current Status:	i) Services provided by only "authorised" service stations are covered under the said category. ii) Service covers repairs, reconditioning or restoration. iii) Service provided to any motor car, light motor vehicle or two-wheeled motor vehicle is taxable.
Amendment in brief:	i) Service provided by any person i.e. whether authorize service station or not are now proposed to be covered. ii) In addition to service in relation to repair, reconditioning, restoration, service in relation to decoration or any other similar activity are also proposed to be covered. iii) Services will now be applicable to all motor vehicles other than

	vehicles used for goods transport and three-wheeler scooter auto-rickshaw.
Implications:	Intention of the legislature is to recover service tax on all kind of service stations may it be authorized service station or non-authorized service station. Also, the scope has been expanded by including decoration service & by using the words "any other similar services". Moreover, levy of service tax is now on all the vehicles except those as specifically excluded as stated above.

3. <u>Health Services:</u>

Current Status:	i)	Only hospitals, nursing home & multi-specialty clinic are currently being covered under the said category.
	ii)	Service tax is leviable only if such hospitals, nursing home & multi-specialty clinic receive payment directly from Insurance companies or employees of any Business Entity
	iii)	Services covered included check-up, preventive care & treatment.
Amendment in brief:	i)	Hospitals, maternity home, nursing home, dispensary, clinic, sanatorium or any such institution having central air-conditioning & more than 25 beds (termed as 'clinical establishment') are now proposed to be covered under the said category.
	ii)	The term 'clinical establishments' also include entities carrying out diagnostic tests of any kind or investigative services with the help of a laboratory or medical equipment.
	iii)	Services covered include diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine.
	iv)	The taxable service definition also covers doctors providing the aforesaid services who are not an employee of any clinical establishment providing services for diagnosis, treatment or care for illness, disease, injury deformity, abnormality or pregnancy in any system of medicine.
	v)	Specific exclusion has been granted to Government or local authority

	controlled establishments
Implications:	i) The scope of service has been enlarged considerably by including all kind of clinical establishments along with doctors as mentioned above. ii) Also, the scope has been expanded by removing the restriction on only check-up, preventive care & treatment activity as all sort of activities namely diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine are covered.

4. <u>Commercial Training or Coaching Service:</u>

Current Status:	The term "commercial training or coaching centre" specifically excludes pre-school coaching centre or any establishment imparting education recognized by law.
Amendment in brief:	The exclusion granted to such establishments have now been removed from the definition of the term "commercial training or coaching centre".
Implications:	Currently, institutes which are engaged in providing recognized as well as unrecognized courses are getting the exemption benefit even for unrecognized courses, because such establishments get excluded from the definition of "commercial training or coaching centre" itself. Now, owing to the proposed amendment, such institutes will be covered under the term "commercial training or coaching centre". It has been specified in the TRU letter that specific exemption will be given to preschool coaching and training and to coaching or training relating to educational qualifications that are recognized by law. Thus, any institute providing unrecognized course will get covered under such category henceforth.

5. Club or Association:

Current Status:	The definition of the term "club or association" included persons providing services, facilities or advantages for a subscription or any other amount, to its members
Amendment in brief:	It has been proposed to substitute the words "to its members" by "primarily to its members"
Implications:	Currently, members & their guests are covered under the said category as it is service provided to members. However, due to the said amendment, even non-members will get covered under the said category as the service is being **primarily** provided to members.

6. Legal Consultancy Service:

Current Status:	i) Services provided by any business entity to any other business entity is only covered ii) Services by way of appearance before any Court, Tribunal or authority are specifically excluded.
Amendment in brief:	i) Services provided by business entity **to any person** are proposed to be taxed. ii) Services provided by any person to any business entity by way of appearance before any Court, Tribunal or authority will now be covered under the definition of taxable service. iii) Also, services provided by arbitral tribunal to any business entity are proposed to be included in the scope of the taxable service.
Implications:	Earlier, only services received by business entity were covered. However, now the scope of the service has been increased considerably by including services received by any person & services provided by arbitral tribunal. Further, services provided by way of appearance before any Court, Tribunal or authority are also included in the taxable service.

7. Life Insurance Services:

Current Status:	The taxable service definition specifies that only service provided in relation to the risk cover in life insurance is covered.
Amendment in brief:	The words "in relation to risk cover in life insurance" have been removed from the definition of taxable service as provided under clause 65(105)(zx).
Implications:	Earlier, only premium towards risk cover was covered under the said category. However, owing to the proposed amendment, entire premium i.e. towards risk cover & investment management will be taxable now. It must be noted that the entire premium excluding risk cover is not invested. Some portion is set aside as commission, deduction towards mortality etc. It is proposed (as given in the TRU letter) that if such break-up is indicated in the document issued to the policy holder, then service tax is to be levied on such charges in addition to premium towards risk cover. However, in case such break-up is not indicated then an option will be given to pay tax @ 1.5% of the gross amount of premium.

C. <u>Amendment under Rule 6(7A) of the Service Tax Rules, 1994:</u>

Rule 6(7A) of the Service Tax Rules, 1994 is being amended to provide that that an insurer carrying on life insurance business shall have the option to pay tax,—

(a) <u>Break-up of Premium is shown separately in any documents given to policy holder:</u>

on the amount of gross premium charged from a policy holder **reduced by the amount allocated for investment**.

(b) <u>In any other case:</u>

On an amount calculated @ **1.5% of the gross amount of premium** charged from a policy holder (Rate has been increased from 1% to 1.5%)

Such option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance.

PART II

BUDGET CHANGES IN CENVAT CREDIT RULES, 2004:

I) Changes in the definitions under Rule 2 of CCR '04:

All the amendments in the said rule are applicable from 1st April 2011 except otherwise specified.

1) Capital goods:

The definition of the capital goods has been amended to extend the credit of the duty paid on goods which are used outside the factory for generation of electricity for captive use within the factory.

2) Exempted Goods:

The scope of the goods that are termed as "Exempted Goods" under Rule 2(d) has been enhanced by inserting the words "*and goods in respect of which the benefit of an exemption under notification No. 1/2011 – CE, dated the 1st March, 2011 is availed*".

The said notification i.e. 1/2011 has levied a nominal duty of 1% ad valorem on specified goods. These goods are thus treated as exempted goods for the purpose of CCR, 2004 **w.e.f. 1st March 2011**.

3) Exempted Service:

The meaning of the term "Exempted Service" under Rule 2(e) included only those services which are specifically exempted from the levy of service tax or those services on which no service tax is levied u/s 66. The scope of the same has been enhanced by including services on which abatement has been taken & notification providing abatement is subject to condition that no credit of duty on inputs or capital goods or service tax paid on input services. It also includes trading activity.

For example, 60% abatement is granted under Mandap keeper services. Thus, if a service provider is paying service tax under the said category, he shall be eligible for 40% of the cenvat credit as 60% value shall be considered as exempted service.

Similarly, a service provider providing any taxable service along with being engaged in trading activity, shall take the credit by taking into consideration the profit earned from such trading activity. The said amendment is in line with the observation made by the Tribunal in the case of M/s Orion Appliances.

4) Inputs:

The definition of 'input' contained in rule 2(k) has been revised. The scope of the definition is explained as follows:

a) Earlier, there was a specific requirement that the goods to be treated as inputs should be used in or in relation to the manufacture of final products whether directly or indirectly. The said condition has been replaced with the condition of good being used in the factory. Thus with this amendment all those goods which is used by the manufacturer of the final product in the factory shall be treated as inputs under Rule 2(k)(i) of the CCR,2004.
b) The proposed amendment includes **any goods** including accessories cleared along with the final product. There is an additional condition imposed that the value of such goods cleared along with the final product shall be included in the value of the final product. Also, goods used for providing free warranty have been included in the said definition.
c) All goods used for generation of electricity or steam being used for captive consumption have specifically been included in the said definition.
d) Eligibility of goods used for providing output service remains the same.

Exclusions:

a) As earlier, the goods namely Light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol continue to be excluded from the definition.
b) The goods used for the construction of a building or a civil structure or laying of foundation or making of structure for support of capital goods have been

excluded. This exclusion shall not apply in case of some of the specified services as provided in the said clause.

c) Capital goods except when used as parts or components in manufacture of final product.

d) Earlier, the exclusion of motor vehicle was restricted merely to service provider. However, now the restriction has also been imposed on manufacturer.

e) The goods used primarily for personal use or for consumption of any employee including food articles etc. have expressly been excluded. Thus for example goods used in a guest house, residential colony, club or recreational facility or in a clinical establishment meant for personal use or consumption of the employees are not eligible.

f) Goods having no relationship with the manufacture of final product whatsoever have specifically been excluded. The said exclusion is in lines with earlier definition which provided that only those goods are to be treated as inputs which are used in or in relation to manufacture of final product.

5) Input services:

The definition of "Input Services" contained in Rule 2(l) has been revised. The inclusive part of the definition has been amended to exclude the words "activities relating to business" & accordingly credit is eligible only for the service specifically mentioned in the said inclusive clause.

Exclusions:

a) Certain specified services (Architect, Port, Other Port, Airport, Commercial or Industrial Construction, Construction of Residential Complex & Works Contract services) are not treated as input services if they are used for
   - Construction of building or civil structure or part thereof or,
   - Laying of foundation or making of structures for support of capital goods

b) Certain specified services (General insurance, Rent-a-cab, Authorised Service Station, Supply of Tangible Goods service) are not to be treated as input

services if they relate to motor vehicle. However, the said exclusion shall not be applicable if the said motor vehicle is used for providing taxable service & the same is treated as capital goods under rule 2(a) of CCR '04.

c) Certain specified services (for example - outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance etc.) in the nature of staff welfare when used for personal use or consumption of any employee is not eligible for cenvat credit.

6) Manufacturer or Producer:

The scope of the definition has been expanded to include persons in relation to goods falling under chapters 61,62 or 63 of the CETA, 1985 & who are liable to pay duty under rule 4(1A) of CER, 2002

II) <u>Changes in Rule 3:</u>

1) As stated above, the notification i.e. 1/2011 has levied a nominal duty of 1% ad valorem on specified goods. The cenvat credit on such goods is not eligible. (This provision is made applicable from 1st March 2011)
2) The credit with respect to CVD u/s 3(1) of Customs Tariff Act on ships, boats & other floating structures for breaking up falling under tariff item 8908 00 00 shall be allowed only to the extent of 85%. (This provision is made applicable from 1st March 2011)
3) Sub-rule 4 has been amended to provide that manufacturer availing benefit of exemption notification 1/2011 cannot pay the said nominal duty by utilising cenvat credit. (This provision is made applicable from 1st March 2011)
4) As explained above, the definition of inputs has been amended to include goods which are used for providing free warranty for the final product. Accordingly, changes have been made in sub-rule 5 to provide that no duty is liable to be paid on removal of such goods from the factory. It must be noted that the rule is silent on removal of accessories or any other goods along with final product.

5) Earlier, manufacturer or service provider was liable to pay an amount equivalent to cenvat credit availed if inputs or capital goods before being put to use on which cenvat credit has been taken are fully written-off in the books of accounts. Sub-rule 5B has been amended to provide that even in the case of partial write-off the said rule shall be applicable. (This provision is made applicable from 1st March 2011)

III) <u>Changes in Rule 4:</u>

1) As explained above, the definition of capital goods has been amended to include credit of the duty paid on goods which are used outside the factory for generation of electricity for captive use within the factory. Sub-rule 2(a) has accordingly been amended to provide for the said inclusion. Thus, credit on the said items shall also be restricted to 50% of the duty paid on such goods in the same financial year.

2) Sub-rule 7 provides that credit with respect to input services is eligible on payment basis. A proviso has been added in the said rule to provide that in case any payment or part thereof has been refunded on such services then the proportionate cenvat credit availed on the same will have to be paid.

Amendment in Rule 6 :

Major amendments have been made in Rule 6 of Cenvat Credit Rules, 2004 for providing the manner in which the Cenvat Credit will be availed by the manufacturer of exempted and dutiable goods or the provider of taxable and exempted services.

1. Rule 6(2) is amended to specify the manner in which the separate accounts will be maintained by the manufacturer or provider of output service and Cenvat Credit will be eligible in case of maintenance of such separate accounts.

2. The current Cenvat Credit Rules provides for option of payment of amount equal to 5% of value of exempt goods or 6% of value of exempted services. W.e.f. 1st April, 2011 the amount payable under Rule 6(3) in case where such option has been availed will be 5% of the value of exempted services.

3. The amended Rule 6(3) will also provides an additional option to determine the amount attributable to the inputs services used in relation to manufacturer of exempted goods or provision of exempted services. Consequently to the said amendment the manufacturer or provider of output services has following option:

   i) Payment of an amount equal to 5% of value of exempted goods or exempted services.
   ii) Payment of amount determined under sub-rule 3(A) i.e. reversal of cenvat credit based on the proportionate of dutiable as well as exempted turnover.

   iii) A New option wherein separate accounts can be maintained for the availement of cenvat credit on inputs and the quantum of cenvat credit taken on input services can be determined on the basis of manner given in Rule (3A) i.e. on proportionate basis.

4. In case of services wherein abatement has been availed an amount of 5% is required to be paid on the value of which exemption has been claimed.

5. The Concept of 16 specified services wherein full credit eligible if such services are used for dutiable as well as exempted goods or services has been dispensed with. Thus, the credit of such services has to be availed along with the credit of other services.

6. Special provision has been made for the service provider who are a banking company and a financial institution including a non-banking financial company providing services under the category of "Banking and other Financial Service". Such assessee would be required to reverse an amount of 50% of value availed on input and input service. Such assessees are not required to follow any other provision of Rule 6.

7. Similar provision has been incorporated with respect to service provided under the category of "Life Insurance and Management of ULIP service" wherein these services provided are required to reverse an amount of 20% of Cenvat Credit availed by them.

8. The provision for computation of the value of services for compliance to Rule 6(3) are as follows:

   i) The value for such goods and services shall be as determined under section 67 of the Finance Act, 1994 or under section 4 or 4A of The Central Excise Act, 1944.
   ii) In case of provision of trading services the value of exempted service will be the difference between the sale price and the purchase price of the goods traded.
   iii) In case of service where there is a concessional rate for eg: 4.12% under works contract category than the value would be equal to the service tax paid ÷ by the rate of service tax.

9. Rule 6(6A) is being inserted to provide that no reversal of cenvat credit is required in cases where services are provided to SEZ unit or developer without payment of service tax for the authorized operation in such unit or developer.

Part III

Budget changes in Central Excise

A. Changes effective from 1st March, 2011:

1. **Important Rate changes and Exemptions**: Some of the notable products wherein the rate of duty has been changed in the Current budget are as follows;

   i. Duty imposed on Ready made Garments and other articles covered under chapter 61, 62 and 63 which bear a brand name or are sold under a brand name – Exemption available earlier restricted only to non-branded goods. (**Notification No: – 4/2011 Central Excise (N.T.), 8/2011 Central Excise and 12/2011 Central Excise)**

   Exemption to goods falling under chapter 61, 62 and 63 vide notification no 30/2004 C.E., dated 09-07-2004 will no more be available to branded goods or goods bearing a brand name. The said goods will now be chargeable at the duty rate prevailing in the chapter i.e. 10% ad valorem.

   The tariff value for such goods has been fixed at 60% of MRP i.e. duty is payable on 60% of MRP. The detailed provisions are given in page 38 to 43.

   ii. Levy of duty on approx 130 products items w.e.f 1st March 2011 – Option of payment of 1% concessional rate of duty without facility of cenvat credit or payment of duty @ 5% with cenvat credit facility. (Notification No: – 1/2011 Central Excise & (Notification No: – 2/2011 Central Excise)

   Duty has been imposed on approx 130 items. The following options for duty payment are available:

   a. Payment of Concessional Duty @ 1% without availing cenvat credit.

      i. The levy is effective from 1st March 2011 and duty is payable from such date.

ii. The benefit of SSI exemption will be eligible to such clearances subject to the coverage in the annexure of notification no 8/2003-CE and meeting the turnover criteria of previous financial year.

iii. The payment of 1% concessional cannot be made by utilization of cenvat credit and has to be paid through PLA (in cash).

iv. The credit of duty paid on inputs and tax paid inputs services is not available in case such benefit is availed. However the credit of Capital goods can be availed for utilization against duty on other manufactured products.

v. The goods cleared at concessional rate of duty of 1% are required to be treated as exempted goods for the purpose of Cenvat Credit Rules, 2004 w.e.f 1st April 2011.

b. Payment of duty @ 5% with the benefit of Cenvat Credit.

i. The manufacturer also has the option to pay duty @ 5% on such goods and with the facility of cenvat credit.

ii. The cenvat credit on inputs, capital goods and input services is available in such cases.

Some notable products mentioned in the list of products provided in the mentioned notification are as follows: –

Sr. No.	Product or Item Description	Falling under Chapter
1	Medicaments of various types specified in the notification.	30
2	Ready Mix Concrete (RMC).	3824 50 10
3	Articles of Jewelery manufactured or sold under a brand name.	7113

4	Mobile handsets including cellular phones and radio trunking terminals.	8517 or 8525 60
5	Pencils and pencil leads	9608 and 9609

iii. Rate of duty is increased from 4% to 5% **on items such as** prepared foodstuff like sugar confectionary, pastry and cakes; starches; paper and articles of paper; textile intermediates & textile goods; drugs, medical equipments, etc.

iv. Exemption has been granted to Packaged / Canned Software wherein it is not required to declare MRP as per the provisions of Legal Metrology Act, 2009 on the value which represents the consideration paid or payable for the transfer of right to use the goods under. The exemption is available subject to the following:

a. Manufacturer submits a declaration to the Jurisdictional Assistant / Deputy Commissioner with respect to the consideration paid for the transfer of right to use.

b. The person providing right to use should be registered under Service Tax provisions.

v. Exemption has been provided to perfumes known as Attars when removed from retail shops after process of re-packing, labeling, re-labeling provided that the manufacturer pays the duty on such goods when cleared in bulk from the factory on value representing the assessable as per section 4 or 4A of the goods which are sold from the retail outlets. The notification also provides that the manufacturer is required to observe the procedure specified by the jurisdictional Commissioner.

2. Registration to be obtained: Since the levy is made effective from 1st March 2011, all manufacturers who are liable to pay duty have to obtain registration with the Central Excise Department on the online aces system. The goods removed without registration will be treated as cleared in contravention of the Central Excise Provisions.

3. Goods to be removed from the factory of the manufacturer at the changed rate effective from 1st March, 2011. The manufacturer has to clear the final product which is in stock in the factory as on 28th February 2010 at the new rate as

applicable consequent to the Budget. In case of decrease in rate of some of the products the reduced rate will be applicable to products cleared w.e.f 1st March 2011.

4. Eligibility of Cenvat Credit of stock of inputs with the manufacturer as on 28th February, 2011 - In case where duty has been imposed vide this budget (other than manufacturer who opt to avail concessional rate of duty @ 1%) the cenvat credit can be availed on the duty paid on stock of inputs, inputs contained in finished goods and work-in-progress. The manufacturer should declare the stock of inputs, inputs contained in finished goods and work-in-progress with the department on application of registration to avail the cenvat credit of the same.

5. Processes deemed to be manufactured w.e.f 1st March 2011: The following processes have been deemed to manufacture vide amendments to the chapter notes:

i. Chapter note has been introduced to cover goods under heading 1501, 1502, 1503, 1504, 1505 and 1516 1000 and all goods of Chapter 22 under the deemed manufacture concept. Therefore, mere labeling or re-labeling or repacking from bulk to retail packs or adoption of any other treatment to render marketability in respect of will be considered as manufacture.

ii. The process of conversion of ores into concentrates is specified as a deemed manufacture for the products covered under Chapter 26.

iii. Refining of dore bar is also treated as deemed manufacture under chapter 71.

iv. The process of galvanization has been deemed as manufacture for the products of chapter 72.

6. Amendment is proposed to be made in notification no 20/2001 and section 4A of the Central Excise Act, 1944 to substitute 'Legal Metrology Act, 2009' for 'Standard Weights and Measures Act, 1976' from 1st March, 2011 in view of the repeal of the 'Standard Weights and Measures Act, 1976 with Legal Metrology Act, 2009. The amendment in section 4A will be retrospectively inserted w.e.f 1-03-2011 after the enactment of the Finance Bill, 2011.

B. Changes effective from 1st April, 2011: –

1. **Increase in the rate of interest for delayed payment of excise duty. (Notification Nos: – 5/2011 C.E (N.T.) and 6/2011 C.E (N.T.)) –** The rate of interest on delayed payment of duty is increased from 13% p.a. to 18% p.a.

C. Changes effective from the date enactment of the Finance Act, 2011: –

1. Changes in the 'Central Excise Act, 1944'.

(a) New section 11A governing recovery of short-paid or unpaid duty is proposed to be inserted in place of the existing provisions. The salient features of the new section are:

i. Closure of proceedings in case of duty paid with interest before issue of SCN in cases where there is no fraud, suppressions, willful misstatement, collusion, etc.

ii. A new provision to limit penalty to 50% of duty in cases where the extended period of limitation is invoked but the transactions to which such duty relates are entered in the specified records.

iii. In case short payment arises on account of fraud, suppressions, willful misstatement, collusion, etc and is detected in audit, investigations and verification the assessee has been given an option to pay the duty with interest and penalty equal to 1% of the duty amount per month subject to maximum of 25% of duty amount. On payment of such amount and communication of the same to the Central Excise Officer, there will be no issue of Show cause notice.

iv. U/s 11AC penalty is reduced to 25% of duty and interest within 30 days from the date of receipt of orders.

2. Modified section 11AA has been introduced for the imposing the payment of interest on all kinds of delayed payments of duty. The section 11AB is being deleted from such date.

3. Section 11DDA is introduced to provide a first charge on the assets of the defaulter after the dues against the specified acts such as Companies Act, Securitisation Act, etc have been meet with.

4. Power has been granted to the Joint and Additional Commissioners of Central Excise for the search and seizure of the documents or books or things and to carry out such proceedings under the act.

5. New section 35R to bring the policy of filling of appeals by the Department in line with the National Litigation Policy. The same is being given retrospective effect from 20-10-2010.

D. Changes w.e.f 1st January 2012 - The First Schedule to the Central Excise Tariff Act (CETA) is being amended to incorporate latest editorial changes in the Harmonized System of Nomenclature (HSN).

Readymade Garment & textile made up Sector :

1) Changes effective from 1st March 2011

The exemption from excise duty has been withdrawn on Readymade Garment & textile made up sector falling under chapter 61, 62 & 63 of the Central Excise Tariff Act, 1985 and excise duty is being imposed, which are as follows :-

Sr. No.	Chapter heading	Description of goods	Rate of duty	Notification No.
1	61, 62 and 63 (except 6309 0000 and 6310)	All goods of cotton, not containing any other textile material **without** brand name. Explanation – for removal of doubts, it is hereby clarified that 'goods of cotton, not containing any other textile material', shall include goods made from fabrics of cotton, not containing any other textile material, even if they contain sewing threads, cords, labels, elastic tapes, zip fasteners and similar items used for stitching, fastening, holding or adornment, of materials other than cotton	5% with cenvat facility	29/2004 amended by 11/2011
2	61, 62 and 63 (except 6309 0000 and 63 10)	All goods, **without** bearing a brand name or sold without brand name	Nil without cenvat facility.	30/2004 amended by 12/2011
3	61, 62 and 63 (except 6309 0000 and 63 10)	All other goods bearing as brand name or sold under a brand name	10% with Cenvat facility	Tariff Rate

(For reference **Chapter heading 6309 0000** is worn clothing and other worn articles & **Chapter heading 6310** is Used or new rags, scrap twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables, of textile materials)

2) Levy not applicable :-

The above levy is not applicable to retail tailoring establishments that stitch garments in a customized manner to the size and style specifications of individual customers, whether out of fabric purchased by the customer from the same establishment or fabric supplied by the customer.

3) Registration and duty payment - Options available.

a) The manufacturer can take the registration himself at the warehouse where the finished goods are stored or

b) The manufacturer can also authorized the job worker to get the registration at the job worker premises in his behalf, to discharge the duty liability. The duty is required to be paid by the job worker even though the goods are clear to the manufacturer who has authorized him.

The explanation to Rule 4(1A) of the Central Excise Rules defines the expression 'job workers'. The same is as follows :

Explanation.- for the purpose of this sub-rule, the expression 'job worker' means a person engaged in manufacture, or undertaking any process on behalf and under the instructions of such person for manufacturing, from any inputs or goods supplied by such person or by any other person authorized by such person so as to complete a part or whole of the process resulting ultimately in the manufacture of goods falling under chapter 61 or 62 or 63 of the First schedule of the Tariff Act, and the term 'job work' should be construed accordingly.

4) Eligibility of SSI Exemption –

The SSI exemption is eligible for the product falling under chapter 61, 62 & 63 of the Central Excise Tariff Act, 1985. The SSI exemption is eligible if the manufacturer has not crossed the value of clearance of Rs.4 crores in the previous financial year 2009-10. If the manufacturer has **not** crossed 4 crores in the previous financial year, then, the manufacturer can avail the SSI benefit in the current year and the manufacturer can clear the goods upto 1.5 crores without duty from 1st March 2011 onwards.

The job worker will not get the SSI benefit if the job worker affix the brand name of the manufacturer on the goods and the job worker chooses to pay duty.

5) Computation of value for 4 Crores for previous financial year :

The Assessable value shown in column (5) below should be consider for computing the value of clearance.

Sr. No,	Chapter Nos.	Basic Value / MRP	Abatement	Assessable Value
(1)	(2)	(3)	(4)	(5)
1	Chapter 61 & 62	100/- (MRP)	40	60
2	Chapter 63	100/-	0	100

As per para 4 of notification 8/203, the value of goods bearing brand name of other person is not required to be included in computing the value of Rs.4 crore. Thus, if the any job worker has affixed the brand name of other person on the product, the value of clearance of said goods should not be included in computing the aggregate value of Rs.4 crore. However, if the manufacturer himself affix his own brand name, the value of clearance of such goods will be including in computing the value of clearance of goods.

6) Procedure to be followed for payment of duty.

(a) Registration:

The law provides for option for payment of duty either by the brand name owner or job worker. The person intends to pay the duty will have to obtain registration. For example, if the brand name owner opts to pay duty, registration will be obtained by the brand owner or otherwise by the job worker. As per the specific provision the brand name owner is also considered as manufacturer of goods.

(b) Procedure for obtaining registration:

The person intending to obtain registration shall make an application through ACES system and submit copy of following documents physically:

(i) Hard copy of application
(ii) Copy of PAN
(iii) Copy of ground plan
(iv) Partnership deed/memorandum of association
(v) Rent / ownership documents

Thereafter the Assistant/Deputy Commissioner will give registration number.

(c) Cenvat credit on stock lying with the manufacturer:

The person obtaining registration will be entitled to claim cenvat credit of duty paid on input, work-in-process and finished goods available as on 1-3-2011 provided the person has documentary evidence to substantiate payment of duty on input lying in stock at various stages. The person thereafter shall prepare the statement of input along with details of duty paying documents and declare to the department before making any clearance.

In case documents evidencing payment of duty is not available, it is advisable to declare the stock of goods. It is likely that in future the provisions of deemed credit i.e. duty deemed to have been paid on the input may be notified. The stock declaration will help the person to avail the deemed credit as and when the same is announced.

After declaring the stock, the manufacturer can take the credit himself without awaiting for approval from the department on the basis of documentary evidence for payment of duty on the stock available as on 1-3-2011.

(d) Procedure to be followed for clearance of goods:

(i) Intimation for use of invoice book
(ii) Declare the name of authorized person signing excise documents
(iii) List of private records maintained
(iv) Return to be filed periodically.

(e) Process deemed to be manufacture:

It is specifically provided that affixing brand name on a product, labelling or re-labelling of containers or adoption of any other treatment to render the product marketable will be considered as process of manufacture. Therefore if in retail package labelling or relabelling or affixing of brand name is done, the process will be considered as deemed manufacture. It is advisable that no process shall be carried out on the product which have been received from job worker.

(f) Availment of cenvat credit where the brand-owner decides to pay duty.

The TRU letter provides that the brand owner register his private store-room or warehouse in which inputs are received for distribution to job workers and finished goods are received from the job workers. However, no corresponding amendments have been made in rule 9 of Central Excise Rules, which provides for registration.

As the existing rule now, registration can be obtained only in the manufacturing premises i.e. at the job workers premises where the manufacturing activity is being carried out. It cannot be obtained in warehouse or store-room. Further the rule provides for separate registration for each of the premises where the manufacturing activity is carried out.

Thus, assuming that the merchant-manufacturer has job workers located at Hyderabad, Aurangabad, Nagpur and warehouse at Mumbai. As per the existing rule, he will have to

obtain 3 registration separately at Hyderabad, Aurangabad & Nagpur. Further rule 9 does not provide for obtaining one single registration for merchant manufacturer at Mumbai as single premise. In case rule 9 is amended in future that can be applied prospectively and not retrospectively.

f) Valuation – Tariff value

The tariff value for charging duty on ready made garment and textile made ups would be @ 60% on the retail sale price. Therefore, the 60% value should be counted for computing 1.5 crores for clearance made from 1st March 2011 onwards.

g) Assuming that the Manufacturer including job worker has NOT crossed the turnover limit of 4 Crore in the previous financial year, then -

The Manufacturer can avail the benefit of SSI exemption of 1.5 crores in the current financial year 2010-11 and the clearance from 1st March 2011 will be counted for 1.5 crore.

There is no need to pay the excise duty, if the turnover limit is below 1.5 crores till 31st March 2011.

PART IV

BUDGET CHANGES IN CUSTOMS

A. No change in Peak Rate. It remains @ 10%. New rate of 2.5% is introduced for the goods hitherto attracting duty @ 2% and 3%.

B. Changes in duty rates of major items as applicable w.e.f 1st March 2011 are as follows:

Sr No	Description of goods	Earlier	Present
1	Lactose for use in the manufacture of homeopathic medicine	25%	10%
2	Cranberry products (fruit juices)	30%	10%
3	Gypsum	5%	2.5%
4	Caprolactam	10%	7.5
5	Ores and concentrates	2%	2.5%
6	Specified agriculture machinery viz. paddy transplanter, laser land leveler, cotton picker, reaper cum binder, straw or fodder balers, sugarcane harvesters and tracks used for manufacture of track type combine harvester	7.5%	2.5%
7	Parts and components required for manufacture of items mentioned in sr. no. 6 above	-	2.%
8	Micro-irrigation equipment (84248100)	7.5%	2.5%
9	Petroleum coke	5%	2.5%
10	Life saving drugs i.e. rasburicase, nilotinik, pneumococcal sacchride conjugagte vaccine absorbed 13 valent suspension for injection, micafungin sodium for injection and its bulk drugs	10%	5%
11	Raw materials such as Polypropylene, stainless steeel strips and stainless steel capillary tube for manufacture of syringes, needles, catheters, cannulate on actual user basis	10%	5%
12	Crude palm stearin for manufacture of laundry soap	20%	Nil
13	Sodium Polyacrylate	7.5%	5%
14	Polytetrametylene ether glycol	7.5%	5%
15	Waste paper	5%	2.5%
16	Printed books, Dictionaries & encyclopedias, (earlier exemption is available for printed books covered under chapter 49. Now the exemption is restricted for tariff item 49011010, 49019100 & 49019900)	nil	nil
17	Cotton waste	10%	Nil
18	Nylon fibre	10%	7.5%
19	Scrap of stainless steel for melting	5%	Nil

20	Ferro Nickel	5%	2.5%
21	Tunnel boring machine & parts thereof for highway development projects	-	Nil

C. **Duty on packaged/canned software**:

Currently the additional duty on import of software is payable on MRP basis. Notification 25/2011 -Cus dated 1-3-2011 provides exemption from levy of additional duty under section 3(1) of Customs Tariff Act to packaged software which do not require declaration of MRP under section 4A of Central Excise Act. Hence, on import of such packaged software customs duty will be payable on the value of media only. Service tax would be payable on the value of right to use the software.

D. **4% SAD is exempt for following products**:

1) P & P Medicine (chapter 30) (not. 23/2011)
2) Copper Dross, copper residues, copper oxide mill scale, brass dross and zinc ash (no5. 20/2011)
3) Gold dore bars having gold content not exceeding 80% imported for refining and manufacture of serially numbered gold bars
4) Inket & laser jet printers imported by actual user for manufacture of printer
5) Parts & components for manufacture of specified high voltage transmission equipment (list 44 of 21/2002 cus)
6) Parts of optical disc drives – actual user condition
7) LEDs used for manufacture of LED lights and light fixtures
8) Specified parts of the hybrid vehicles viz. battery pack, battery charger, AC/DC electric motors

E. **Export duty**

Sr. no.	Description	Rate of duty
1	Iron ore (fines & lumps). (Iron ore pallets is exempted from export duty).	20%
2	Luggage leather – case	25%
3	Industrial leathers	15%
4	Hydraulic/packing/belting/washer leather	15%
5	Industrial harness leathers	25%
6	Scrap of iron & steel	15%

F. **Security for Project Imports**

Cash security of Rs.50 lakh is done away and only bank guarantee of 2% of the cif value of project is required to be submitted now. Further, the bank guarantee need

not to be renewed after six months from the date of submission of documents for finalization of assessment for project imports.

G. **Changes in statutory provisions effective from date of enactment of Finance Act, 2011.**

i. Section 17 is being amended to provide self assessment of bill of entry/shipping bill/bill of export. The impact of this amendment is that importer will himself assess the goods and pay the appropriate duty. Based on risk parameters the Customs officer may re-assess the goods and re-verify the amount of duty computed by the importer. In case the importer is not a position to self assess the goods, he may opt for provisional assessment.

ii. Section 27 & 28 is being amended on the lines of Central Excise to provide the period of one year from the relevant date for issue of demand notice and claim refund.

iii. Section 28AB is merged to section 28AA which now provides that the Interest has to be paid from the first day of the month succeeding the month in duty ought to have been paid or erroneously refunded.

iv. The interest rate has been increased to 18% from 13%/15%. Interest is payable even if the duty is paid voluntarily.

v. Section 75 is proposed to issue notification to notify the circumstances under which drawback will be admissible even when the export proceeds have not been received.

vi. Section 110A is being amended to provide power to adjudicating authority to release seized goods instead of Commissioner of Customs.

H. **SEZ**:

Notification 45/2005 Cus dt 16-5-2005 exempts payment of 4% SAD on condition that VAT or CST is payable on clearance of goods manufactured/produced in SEZ to DTA. As per amendment in the said notification (18/2011 Cus dt 1-3-11) any goods cleared from SEZ to DTA will be eligible to claim the above exemption.

Corrigendum to Budget Note.

In the Budget Note sent earlier, kindly read the point 3 of Part-I(a) under Service tax as follows:

3. Abatement under 'Transport of goods through coastal and inland shipping' (Notification No. 16/2011-ST)

An abatement of 25% from the taxable value is being provided for the purpose of levy of service tax under 'Transport of goods through coastal and inland shipping.'