

A quick analysis of Finance Bill, 2016 fine print indicates that a host of proposed amendments may impact some CESTAT & Court decisions.

Taxsutra Team has compiled an update on indicative list of case-laws that are likely to be overruled / impacted when the amendments take effect.

S.No.	Proposed Amendment	Case Laws
<b>EXCISE</b>		
1.	<b>Excise duty exemption on Ready Mix Concrete</b>  Exemption from excise has been extended to 'Ready Mix Concrete'.	<b>Overruled:</b>  <b>Larsen &amp; Toubro Ltd &amp; Another vs. Commissioner of Central Excise, Hyderabad [TS-544-SC-2015-EXC]</b>  SC held that excise duty exemption is not available to 'Ready Mix Concrete' as same is distinct from 'Concrete Mix'.
2.	<b>CENVAT Credit non-availability where Capital Goods used for exempted goods manufacture for 2 years</b>  CENVAT credit shall not be available on capital goods used/installed for manufacture of exempted goods or provision of exempted service for 2 years from date of commencement of commercial production or provision of service.	<b>Overruled:</b>  <b>Brindavan Beverages Pvt. Ltd. vs. CCE, Meerut [TS-469-Tribunal-2014-EXC]</b>  CESTAT held that, it was not necessary that the capital goods should be used both for manufacture of dutiable as well as exempt finished products and if there was clear intention right from beginning that capital goods were to be used for both purposes, credit could not be denied merely because the machinery manufactured exempted goods first and dutiable goods later.
3.	<b>Interest on provisionally assessed excisable goods</b>  In case of finalization of provisional assessment, interest will be chargeable from original date of payment of duty i.e after due date till date of actual payment, whether such amount is paid before or after issue of order for final assessment.	<b>Overruled</b>  <b>Steel Authority of India Ltd vs. Commissioner of Central Excise, Raipur [TS-675-SC-2015-EXC]</b>  SC observed that, when principal amount viz. excise duty itself was not payable (i.e. on differential) on date of clearance of goods, there cannot be any question of law to pay interest. Matter was referred to LB, stating that, decisions in SKF and Auto International require a re-look as Bench did not consider effect of expression " <i>ought to have been paid</i> " in Sec 11AB, and that principle laid down by 3 member Bench in case of MRF Ltd would continue to prevail.
4.	<b>Deletion of requirement regarding</b>	<b>Overruled:</b>

	<p><b>publishing /offering of sale of Notification</b></p> <p>The requirement of publishing and offering for sale any notification issued u/s 5A(1) or 5A(2A), by Directorate of Publicity and Public Relations of CBEC proposed to be omitted</p> <p>Similarly, condition of publishing and offering for sale of any Notifications issued u/s 25(1) or 25(2A) of Customs Act by the Directorate of Publicity and Public Relations, Customs and Central Excise, New Delhi under CBEC, is also proposed to be omitted.</p>	<p><b>UOI vs. Param Industries Ltd. [TS-277-SC-2015-CUST]]</b></p> <p>SC held that, for a notification to come into force and make it effective, two conditions are mandatory, viz., (i) Notification should be duly published in the official gazette, (ii) it should be offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi.</p>
5.	<p><b>Capping rebate claim to Indian Market Price</b></p> <p>Rebate claim under Rule 18 of Central Excise Rules, capped to Indian market price of goods exported</p>	<p><b>Overruled:</b></p> <p><b>Dr. Reddy's Laboratories vs. Union of India [TS-362-HC-2014(DEL)-EXC]]</b></p> <p>Delhi HC held that in terms of Rule 18 of Central Excise Rules, market price must necessarily refer to market where goods are sold.</p>
6.	<p><b>Application of time limit u/s 11B of Central Excise Act to rebate claims filed under Rule 18 of Central Excise Rules</b></p> <p>The time limit of 1 year under Section 11B will now be applicable to rebate claims.</p>	<p><b>Deputy Commissioner of Central Excise vs. Dorcas Market Makers Pvt. Ltd. [TS-752-HC-2015(MAD)-EXC]</b></p> <p>Madras HC held that, Rule 18 of Central Excise Rules, 2002 has to be construed independently, and said Rule itself does not stipulate a period of limitation. It was further held that, definition of expression "relevant date" under Section 11B (5) does not take care of this contingency.</p> <p><b>JSL Lifestyle Ltd. vs. UOI [TS-751-HC-2015(P&amp; H)-EXC]</b></p> <p>P&amp;H HC held that, rebate claim is not barred by period of limitation prescribed u/s 11B and claim for refund would be governed by rule 18 of Central Excise Rules, 2002. It was further held that, Notification issued thereunder does not provide any period of limitation for a claim for rebate.</p>
7.	<p><b>Wagons classifiable as capital goods</b></p> <p>Wagons falling under Sub-heading 860692 have been explicitly</p>	<p><b>Overruled:</b></p> <p><b>Bulk Cements Corporation (India) Ltd. vs. Commissioner of Central Excise [TS-9-</b></p>

	mentioned as 'capital goods'.	<b>CESTAT-2012(Mum)-EXC]</b>  CESTAT held that 'Wagons' classifiable under Chapter 86 are not covered under definition of 'capital goods'.
<b>SERVICE TAX</b>		
1.	<b>Services provided by Selling or Marketing agent of lottery ticket on behalf of State Govt. to a distributor</b>  Clarifies that services provided by selling / marketing agent of lottery ticket on behalf of State Government to distributor shall be subject to service tax.	<b>Overruled:</b>  <b>Future Gaming &amp; Hotel Services (Private) Limited &amp; Anr vs. UOI [TS-564-HC-2015(SIK)-ST]</b>  Sikkim HC held that buying and selling lottery tickets on behalf of State Govt. is not rendering service to State and, therefore, their activity does not fall within meaning of 'service' as provided under Clauses (31A) and (44) of Section 65B. In view of this, Sikkim HC quashed 2015 Finance Act amendments levying service tax on such activity.
2.	<b>Services in respect of Transportation of passengers by stage carriage</b>  Services of transportation of passengers by a stage carriage has been made taxable w.e.f. June 1, 2016. However, services by non-air-conditioned contract carriage will continue to be exempted.	<b>Overruled:</b>  <b>Jai Somnath Transport and Ors. vs. Commissioner of Service Tax, Mumbai – II [TS-635-CESTAT-2015-ST]</b>  CESTAT held that supply of vehicles on contract carriage basis is not liable to service tax under 'Tourist Vehicle Service'. CESTAT held that activity of planning / scheduling / organizing / arranging the package tours must be present to impose service tax under said category.
3.	<b>Distribution of CENVAT Credit allowed to 'outsourced manufacturing units'</b>  Input Service Distributer (ISD) can distribute the input service credit to an outsourced manufacturing unit also, in addition to its own manufacturing units.	<b>Overruled:</b>  <b>Sunbell Alloys Co. of India Ltd. vs. CCE, Belapur [TS-214-Tribunal-2013-EXC]</b>  CESTAT held that, ISD related provisions governing registration and distribution are special provisions and the scheme does not envisage distribution of credit to manufacturing units belonging to others. Consequently, credit distributed by Principal to job-worker was disallowed.
<b>CST</b>		
1.	<b>Section 3 of Central Sales Tax Act, 1956 is being amended so as to insert an explanation</b>	<b>Affirmed:</b>  <b>Reliance Industries Limited vs. State of</b>

<p>Following Explanation has been inserted in Section 3:</p> <p>Where the gas sold or purchased and transported through a common carrier pipeline or any other common transport distribution systems becomes co-mingled and fungible with other gas in the pipeline or system and such gas is introduced into the pipeline or system in one State and is taken out from the pipeline in another State, such sale or purchase of gas shall be deemed to be a movement of goods from one state to another.</p>	<p><b>U.P. [TS-10-HC-2012(ALL)-EXC]</b></p> <p>Allahabad HC held that, where natural gas is handed over to bailee or transporter under agreement in one State and it reaches another State, movement of such gas is indicative of fact that sale is an inter-state sale.</p> <p><b>Note:</b> Revenue has preferred an appeal against HC decision, which is pending before SC.</p>
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