



# BT Associate Chartered Accounts, India

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## NEWS LETTER

[FROM THE DESK OF BT ASSOCIATES - A FIRM OF PROFESSIONAL CONSULTANTS BASED AT KOLKATA PROVIDING SERVICES IN THE FIELD OF CUSTOMS, EXCISE, SERVICE TAX, EXIM & VAT]

### NOTICATIONS POST BUDGET '2006

**Tax India Online**  
 CAN Service Tax be used as an instrument to curb Central Excise evasion? Sounds unheard of hypothesis! But the author, a 'thinking' anti-evasion management strategist, Mr K R Bhargava, Commissioner of Central Excise, believes that it is not Income Tax or VAT that encourages manufacturers to resort to all sorts of evasion stratagems but Service Tax which can take away ...  
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**The Economic Times**  
 Nymex is in talks to acquire a 9% equity stake in MCX, but both the parties deny any comments.  
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**Kolkata Custom House**  
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**Director General of Foreign Trade**  
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**Central Board of Excise and Customs**  
 Seeking views on proposed measures to provide deterrence to tax evaders in the manufacturing sector  
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- Vide Notification No. 35 (RE-2006)/2004-2009 dated 5/10/2006 para 3.8.3 of the Foreign Trade Policy has been amended; wherein the credit taken on duty paid can be used for import of inputs, goods and capital goods, provided such goods are freely importable under ITC(HS) classifications of Export and Import Items.
- Vide Notification No. 31 (RE-2006)/2004-2009 dated 8/9/2006 para 6.9(b) has been added. It states that supplies to DTA against foreign exchange received from overseas will be counted for the purpose of fulfillment of positive Net Foreign Exchange (NFE) made by any EOU/STP/EHTP/BTP.
- Vide Notification No. 13 (RE-2006)/2004-2009 dated 15/6/2006 has amended para 8.2(a), 8.3(a), 8.4.1(i) and 8.4.1(ii) dealing with deemed exports.
  - (a) Supply of goods against Advance Authorisation/Advance Authorization for Annual Requirement/DFRC/DFIA by the main or subcontractors shall be regarded as "Deemed Exports", provided the goods are manufactured in India.
  - (b) In respect of supplies made by a supplier to an EOU against Advance Authorisation/DFRC/DFIA, the supplier shall be entitled to Advance Authorisation/DFRC/DFIA for intermediate supplies.
  - (c) If the supplies are made to an EOU against Advance Release Order (ARO) or Back to Back Letter of Credit issued against Advance Authorisation / DFIA, suppliers shall be entitled to the benefits of deemed exports as laid down in para 8.3(b) and (c) of the Policy.
- Vide Notification No. 12 (RE-2006)/2004-2009 dated 14/6/2006 amendment has been made in Served From India Scheme; wherein utilization of duty free credit scrip earned under the aforesaid Scheme shall be permitted for payment of excise duty for procurement from domestic sources of such inputs that are permitted for imports.
- Vide Notification No. 11 (RE-2006)/2004-2009 DATED 14/6/2006 amendment has been made in para 5.1 of the Policy (dealing with EPCG Scheme) so as to allow import of motor cars, sports utility vehicles, all purpose vehicles to hotels, travel agents, tour operators or tour transport operators and companies owning or operating golf resorts subject to certain conditions that total foreign exchange earned by the aforesaid concerns is Rs. 1.5 crores or more in the current and the preceding three licensing years.
- Vide Notification No. 9 (RE-2006)/2004-2009, dated 13/6/2006 para 3.9.6 has been inserted in the Policy wherein the entitlement under the Focus Market Scheme shall be granted to all shipments that are exported through Customs EDI enabled ports.
- Vide Notification No. 8 (RE-2006)/2004-2006 dated 12/6/2006 the entitlement under Target Plus Scheme would depend on the minimum percentage incremental growth of 20% in FOB value of exports in the

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current licensing year over the previous licensing year, and the rate of entitlement shall be 5% of the such growth.

## CIRCULARS POST BUDGET '2006

- Vide Policy Circular No. 19 (RE-2006)/2004-2009 dated 11/9/2006 exports effected through third party and foreign exchange realized in the name of the third party for those goods which have been manufactured in the EOU and are directly transferred from the unit to the port of shipment are eligible exports and this export is also counted for the purpose of fulfillment of export obligation of EOU. The EOU is eligible to get DTA sale benefits on exports effected through third party. For availing this benefit the Shipping Bills must indicate the names of both the manufacturer and the third party.
- Vide Policy Circular No. 18 (RE-2006)/2004-2009 dated 4/9/2006 shipping bills where the name of the foreign buyers are defaced, can be accepted for processing by Regional Authorities under various export promotion schemes, if the applications are otherwise in order. This has been done to prevent leakage of confidential information.
- Vide Policy Circular No. 17 (RE-06)/2004-2009 dated 24/8/2006 where the exporter seeks redemption and transferability of DFIA on completion of stipulated E.O. (post export DFIA), documentary evidences such as SSI / Central Excise Registration of supporting manufacturer / jobber may not be insisted upon.
- Vide Policy Circular No. 15 (RE-2006)/2004-2009 dated 27/7/2006 a new system for issuance of Importer-Exporter Code Number has been introduced, making the process simpler. Now application for Importer-Exporter Code Number can be submitted online and print out of such application form can be physically submitted to DGFT.
- Vide Policy Circular No. 13 (RE-2006)/2004-2009 dated 20/7/2006 duty would mean basic customs duty with regard to Para 3.2.5 of Handbook of Procedures (Vol.I) of EXIM Policy (2002-07) and sub Para 3.7.6 of Foreign Trade Policy.
- Vide Policy Circular No. 8 (RE-2006)/2004-2009 dated 6/6/2006 exporters making an application to authorized agencies for issue of Certificate of Origin (NP), may leave Column No.2 of the Certificate listed in Appendic-4-C of the Hand Book of Procedure Vol.I blank and this column may be filled up after the same is certified and signed by the authorized agency.
- Vide Policy Circular No. 4 (RE-2006)/2004-2009 dated 20/4/2006 second hand capital goods are freely importable without a specific license, provided such a declaration has been made by the importer at the time of clearance of the goods.
- Vide Policy Circular No. 3 (RE-2006)/2004-2009 dated 18/4/2006 all the applications for availing the various export promotion scheme has to be done online with digital signature on the DGFT website. Payment of licence fee will also have to be made through the EFT payment gateway of the DGFT designated banks. In case of DEPB claims based on EDI DEPB shipping bills, the applications need to be filed through the ECOM mode.

## NON TARIFF NOTIFICATIONS POST BUDGET '2006

- Vide Notification No. 94/2006-Customs (NT) dated 31/8/2006 Rules of Determination of Origin of Goods under the Asia-Pacific Trade Agreement, (formerly known as the Bangkok Agreement) Rules, 2006 has been made effective from 1/9/2006. Participating State (Bangladesh, People's Republic

of China, Republic of Korea, Sri Lanka) shall be eligible for tariff concessions ranging from 14% to 100% if they conform to the origin requirement.

- Vide Notification No. 81/2006-Customs (NT) dated 13/7/2006 the rate of drawback duty has been determined subject to certain conditions especially in cases when cenvat facility has not been availed.
- Vide Notification No. 80/2006-Customs (NT) dated 13/7/2006 the Customs and Central Excise Duties Drawback Rules, 1995 has been amended and renamed as Customs, Central Excise Duties and Service Tax Drawback (Amendment) Rules, 2006, certain changes has been made in the drawback in relation to any goods manufactured in India and exported.
- Vide Notification No. 79/2006-Customs (NT) dated 11/7/2006 certain new tariff items like handbags, headgears, combs and hair accessories have been introduced in Chapter 42, 65 and 96.
- Vide Notification No. 75/2006-Customs (NT) dated 30/6/2006 Rules of Determination of Origin of Goods under the Agreement on South Asian Free Trade Area (SAFTA) came into force from 1/7/2006 between SAARC countries. Under the said agreement no product shall be deemed to be the produce or manufacture of any Contracting State i.e. People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of Maldives, the Kingdom of Nepal, the Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka unless the conditions specified in the rules are complied with.

#### CIRCULARS POST BUDGET '2006

- Vide Circular No. 26/2006-Customs dated 26/9/2006 all pending provisional assessments in respect of the importation on or after 2/3/2001 should be finalised by including the ship demurrage charges in the assessable value of the imported goods in view of the Supreme Court judgement in the case of M/s. Indian Oil Corporation [2004 (165) ELT (SC) ].
- Vide Circular No. 25/2006-Customs dated 19/9/2006 'free of cost' material imported from foreign supplier should be added both to the FOB value of goods and CIF value of materials or this value should not be added to the FOB and CIF values at all. This would entitle the exporters to avail the facility of duty drawback. For brand rate claims and advance licensing scheme, certain clarifications has been laid down for this purpose.
- Vide Circular No. 24/2006-Customs dated 25/8/2006 bank guarantee has been waived on transshipment of import and export of air cargo through airports from one custom location to another. Carriers having annual transshipment volume above 2500 MT to or from any airport/port, the same would be exempt from Bank Guarantee for carriage of goods on transshipment.
- Vide Circular No. 23/2006-Customs dated 25/8/2006 examination norms concerning import and export through courier mode has been clarified wherein it is stated that 100% screening of import/export consignments is to be done through X ray or other NII techniques. Physical examination of export and import documents/goods is also required. Random examination of goods is allowed based on the discretion of Commissioner of Customs.
- Vide Circular No. 20/2006-Customs dated 21/7/2006 where import is made under Notification No. 53/2003-Cus dated 1/4/2003 & Notification No. 54/2003-Cus dated 1/4/2003 under DFCE scheme the importer needs to pay special CVD @ 4% in cash and take refund of the same if eligible through cenvat or drawback as the case may be.

- Vide Circular No. 20/2006-Customs dated 21/7/2006 the special CVD of 4% is not exempt under Notification No. 53/2003-Cus dated 1/4/2003 & Notification No. 54/2003-Cus dated 1/4/2003. The same cannot be debited through scrips issued under DFCE Scheme.
- Vide Circular No. 19/2006-Customs dated 13/7/2006 under All Industry Rates of Duty Drawback as notified under Notification No. 81/2006-Cus (NT) dated 13/7/2006, drawback rates for certain items have undergone changes as there has been changes in prices of inputs, duties etc.
- Vide Circular No. 18/2006-Customs dated 5/6/2006 special CVD of 4% is not leviable in case of imports under Advance Licence, EOU & SEZ schemes, EPCG Scheme. Export promotion schemes are exempt from basic customs duty and CVD is available subject to condition that the elements of these duties are debited in the duty scrips/ entitlement certificates issued under these schemes. There is no specific exemption of 4% special CVD allowed either in the Foreign Trade Policy or in the customs notification issued under the export promotion schemes.
- Vide Circular No. 16/2006-Customs dated 9/5/2006 Duty Free Import Authorization (DFIA) Scheme has been introduced and DFRC Scheme got abolished on 30/4/2006. Target Plus Scheme (TPS) is deleted from the policy.

#### Important notifications in Central Excise Tax (Non-Tariff)

- Vide Notification No. 23/2006 - Central Excise (N.T.) dated 12/10/2006 changes have been made in form ER-1 and ER-3 under Central Excise Rules, 2002 and Rule 9(7) of Cenvat Credit Rules, 2004. Certain details have been incorporated in the ER 1 form regarding large taxpayer unit, various details under Rule 12BB and abstract of account current. In the ER 3 form certain details have been added like name of the assessee and abstract of account current.
- Vide Notification No. 20/2006 - Central Excise (N.T.) dated 30/09/2006 any person, engaged in manufacture or production of goods (except goods falling under chapter 24 or Pan Masala falling under chapter 21 of the First schedule of the Central Excise Tariff Act, 1985) or a provider of taxable service, who has paid excise duty of more than rupees five hundred lakh or has paid service tax of more than rupees five hundred lakhs or advance tax of more than rupees ten hundred lakhs, under the Income Tax Act, 1961 is eligible to opt as large taxpayer. An application for the same can be filed with the Chief Commissioner of Central Excise, Large Taxpayer Unit for the city where the large taxpayer is presently assessed to income tax or corporate tax.
- Vide Notification No. 19/2006 - Central Excise (N.T.) dated 30/09/2006 Rule 12A has been added in CENVAT Credit Rules, 2004 facilitating a large tax payer whereby he may remove inputs, except motor fuel or capital goods on which CENVAT credit has been taken, from any of his registered premises to his other registered premises for further use in the manufacture of final products in recipient premises.
- Vide Notification No.18/2006- CE (NT) dated 30/9/2006 a large taxpayer may remove excisable goods, except motor fuel, without payment of excise duty, from any of his registered production or warehousing premises, to his other registered premises, for further use in the manufacture or production of such other excisable goods in recipient premises. This notification also defines "large taxpayer" as a person who, has one or more registered premises under the Central Excise Act, 1944 or under Chapter V of the Finance Act, 1994 and is an assessee under the Income Tax Act, 1961.

- Vide Notification No. 17/2006- CE (NT) dated 1/08/2006 the assessee who has paid excise duty less than one hundred lakh rupees from current account during the financial year to which Annual Financial Information Statement relates and Indian Ordnance Factories, Department of Defence Production, Ministry of Defence are exempted from, submitting an Annual Financial Information Statement for the preceding financial year to the Superintendent of Central Excise.
- Vide Notification No. 16/2006- CE (NT) dated 11/7/2006 on chewing tobacco, preparations containing chewing tobacco and jarda scented tobacco, the abatement as a percentage of retail sale price on the said goods shall be 50%. The valuation of the said goods shall be 50% less than the MRP.
- Vide Notification No. 15/2006- CE(NT) dated 19/06/2006 the excise duty payable on food preparations and waters, not cleared in sealed containers is exempted. Such exemption is allowed when the excise duty has not been levied on the said goods during the period commencing from 1/03/2006 and ending with 3/05/2006 in accordance with the practice which was generally prevalent under the Central Excise Act.

#### Important circulars and notifications in SERVICE TAX

- Vide Notification No. 23/2006-ST, dated 2/06/2006 abatement of 70% of gross value of taxable services is provided in relation to production or processing of parts and accessories used in the manufacture of cycles, cycle rickshaws and hand-operated sewing machines falling under Business Auxiliary Service.
- Vide Notification No. 25/2006-ST dated 13/07/2006, representational services provided by a practicing Chartered Accountant, Cost Accountant and a Company Secretary respectively, in their professional capacity, before any statutory authority in the course of legal proceedings have been exempted from service tax.
- Vide Notification No. 27/2006-S T dated 21 / 9 /2006 the assessee who has paid service tax of rupees fifty lakh or above in the previous Financial Year or who has already paid service tax of rupees fifty lakh in the present financial year, can deposit his service tax electronically through internet banking.
- Vide Notification No. 28/2006-ST dated 30/9/2006 the Service Tax (Fifth Amendment) Rules, 2006 has come into force. It defines large taxpayer and the procedures and facilities for paying tax for them. A large taxpayer have to submit returns for each registered premises, in case of centralized registration, consolidated return for all premises is required.
- Vide Notification No. 29/2006-ST dated 2/11/2006 Rule 4(2) of the Service Tax Rules, 1994 has been amended to include that when a person is liable to pay tax on a taxable service and receives such service in more than one premises or offices and has centralised billing system then he has to register such premises or offices from where centralised billing or centralised accounting systems are located.
- Vide Notification No. 13/2006- CE (NT) dated 1/06/2006 Rule 8 (3A) of Central Excise Rules 2002 has been amended to declare if the assessee fails to pay duty on the goods removed from the factory or warehouse beyond thirty days from the due date; the assessee shall pay excise duty for each consignment at the time of removal without utilizing the CENVAT credit till the outstanding amount including interest is paid; failing which it shall be deemed that goods have been cleared without payment of duty and consequentially penalties shall follow.

- Vide Notification No. 11/2006 CE (N.T.) dated 29-05-2006 following items have been specifically added, for valuation based on MRP a) parts, components and assemblies of automobiles, b) Plant-growth regulator and c) toothbrush.
- Vide Notification No. 10/2006 CE (N.T) dated 25-04-2006 the challan evidencing payment of Service Tax on Sponsorship Services provided to any body corporate or firm has been made a valid document for availing CENVAT Credit.
- Inclusion of the term "any other person" in section 65(12) of the Finance Act, 1994 has raised confusion as whether to include Postal Department within its purview for levy of service tax. Bank, other financial institutions or any other similar service provider providing banking and financial services similar to a bank are liable to service tax. But Vide Circular No. 83/1/2006-ST dated 4/07/2006 clarified that the Postal Department even if it provides services like money transfers ,operation of saving's account is not similar to bank financial institution and does not fall within category of similar service provider and is therefore exempted from service tax.
- S.65 (105) (z) of the Finance Act 1994 holds that any service or facilities provided by any club or association to its members for a subscription, are taxable services. S. 65(25a) (iii) of the Finance Act 1994 provides that a club or association means any person or body of persons providing services to its members for a subscription but does not include any person or body of persons engaged in public service of charitable , political or religious nature. Thus vide Circular No.84/2/2006-ST dated 19/9/2006 clarifies the issue that any club or association enjoying exemption from income tax on the ground of being a public charitable institution is not exempted from levy of service tax.
- Vide Circular No. 88/06/2006-ST dated 6/11/2006 the e-payment of service tax has been made mandatory wef 1/10/2006 for all assesses who has paid Rs. 50 lakh or more as service tax in the preceding financial year or in the current financial year. For the purposes of calculation of Rs 50 lakh the total service tax paid by cash plus CENVAT credit would be taken into account as service tax paid amount.