

Excise Duty on Textile Sector: Increased cost and Compliance Burden

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Textile has been subjected to duty of excise at different point of time. In 2004, exemption was granted on textile articles falling under chapter 61, 62 and 63 from duty of excise by issuing Notification No. 30/2004-CE. It was again subjected to duty in 2011-12. After remaining liable for one year, it was rolled back by then finance minister P Chindabaram and since then textile was out of central excise purview. In Union Budget 2016-17, branded readymade garments has again been made liable to duty of excise. It is to be noted that the present levy is different in many aspects as compared to earlier. The paper writer has made an attempt to discuss various aspects on applicability of excise duty on textile.

Legal Background:

Under Central Excise Law the levy is on the taxable event of manufacture of excisable goods and the ownership of the goods are irrelevant to decide the question of levy of central excise duty. The question of holding any goods liable to duty of excise would arise where process is undertaken on the goods which amount to manufacture u/s 2(f) of the Central Excise Act 1944. Usually the person who undertakes the manufacturing activity is the manufacturer irrespective of who has supplied the materials.

In the Budget 2016-17 proposal, Notification No. 15/2016-CE has been issued amending the original exemption notification 30/2004. By virtue of this, exemption is withdrawn on all goods falling under chapter 61, 62 and 63 of CETA bearing a brand name or sold under a brand name and having a retail sale price (RSP) of Rs.1000 and above. There would be two options for payment of duty: 2% without Cenvat and 12.5% with Cenvat. The salient feature of taxability on these products post Budget proposal would be as follows:

Taxability after Budget 2016 proposals

- i. The duty would be applicable on textile articles bearing a brand name or sold under a brand name and having a retail sale price (RSP) of Rs.1000 and above
- ii. The rate of duty would be 2% without Cenvat and 12.5% with cenvat.
- iii. The tariff value for readymade garments and made up articles of textile has been increased from 30% to 60%

- iv. The levy shall not apply to retail tailoring establishments that stitch garments in a customized manner to the size and style specifications of individual customers.
- v. The brand name owner, who gets the goods manufactured on his own account on job work, shall pay the duty leviable on such goods as if the goods were manufactured by him.
- vi. Brand name owner may alternatively authorise his job-worker to pay the duty leviable on the goods.
- vii. Manufacturer selling goods to brand owner without getting raw material from him would not be considered as job worker. He would be liable to pay duty of excise.
- viii. Brand owner may claim exemption of Rs. 150 lacs provided removal in previous year does not exceed Rs. 400 lacs. The pro rata exemption for the remaining period of current financial year has been 12.5 lacs. Once this limit is crossed, excise duty would be applicable.
- ix. Duty would be applicable on the goods which were manufactured on or before 29.2.2016 and are removed after 29.2.2016.
- x. Manufacturer may avail the credit of duty paid on stock remaining unsold at the time of removal of exemption of levy based on the certificate of chartered accountant.

There are many practical aspects relevant to imposition of excise duty on textiles. These are explained in the form of FAQ for the ease of understanding:

Levy

1. I am a brand owner and manufacture the goods in my own factory. Am I liable to pay duty of excise?

Excise Duty is payable on fulfilment of following conditions:

- a. The goods bearing a brand name or sold under a brand name.
- b. The RSP of product is Rs. 1000 or more.
- c. The product fall under chapter 61, 62 or 63 of the CETA.

If both the above conditions are satisfied, you will be liable to charge duty of excise.

2. I am purchasing textile articles from other manufacturer bearing my brand name. Who shall be liable to duty of excise?

Where the goods are purchased from other manufacturer bearing your brand name, the liability to pay duty of excise is on original manufacturer provided the RSP is fixed at the time of removal of goods from his factory. If MRP is not

declared at the time of removal of goods from his factory but affixed in your factory/warehouse, the liability would be at your end at the time of removal of goods from your premise/warehouse/factory.

3. I am purchasing finished goods and repacking the same by affixing my brand. Am I liable to pay excise duty under the notification?

Chapter notes of chapters 61, 62 and 63 contains provision that affixing a brand name on the product, labelling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to "manufacture". If you are undertaking any of the above activity for yourself but not as job worker for other manufacturer, you will be liable to duty of excise. On the other hand, if these activities are undertaken as job worker for some other manufacturer, liability to get registration and discharge duty will be on that manufacturer.

4. If I am manufacturing the goods on job work for other manufacturer? How would I be impacted by the new notification?

Duty of excise is applicable on the person who undertakes the manufacturing activity. Ownership of goods is not relevant. Hence, normally liability to pay duty is on job worker when the process undertaken by him amount to manufacturer.

However, it has been provided in Rule 4 (1A) of Central Excise Rules, 2002 that a person getting the goods falling under chapter 61, 62 and 63 manufactured on his account from job worker is required to get registration and discharge the duty leviable on such goods. Job worker is not required to obtain the registration. Thus, if you are acting as job worker, you will not be impacted by this notification if brand owner pays duty.

5. If brand owner asks me (job worker) to discharge excise duty, what should I do?

Rule 4 (1A) requires manufacturer to discharge duty on goods manufactured through job work. However, the burden of the excise duty levy can also be shifted to the job worker. The merchant manufacturer may authorize the job worker to obtain registration and comply with all formalities of Central Excise including payment of duty. But brand owner may not compel you to discharge duty.

6. Goods removed earlier on payment of duty are received back which needs to be resent after some process i.e. repacking/dry-cleaning etc. What would be duty liability in such cases?

Where goods removed earlier are received back in the factory/warehouse, treatment is provided in Rule 16 of Central Excise Rules as follows:

- a. Take credit of duty charged at the time of clearance of goods originally
- b. If the process subsequently undertaken amounts to manufacture, pay duty at the time of removal of goods after reworking etc.
- c. If the process does not amount to manufacture, pay duty equivalent to credit availed at the time of receiving of goods.

In case of Textile articles falling under chapter 61, 62 and 63- exemption is granted vide Notification No. 31/2011-C.E. from payment of duty on removing the goods after second time. However, exemption is available only when the aggregate clearance made after reworking does not exceed 10% of the aggregate value of clearances for home consumption from the same factory or premises in the preceding financial year.

Hence, no duty payable if it is within limit of 10% of removal in previous year. If it exceeds, there would be liability to pay duty.

7. Goods supplied by principal manufacturer only bears their name tag. These are not branded and marketed by him as such. Could it be said to be in the nature of brand for the purpose of charging duty of excise?

The Brand name has been defined very comprehensively in the chapter note of said products to mean the following:

"brand name" means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.

The definition is very wide and covers link of product in any manner with its owner. Hence, there may be liability to pay duty of excise in such cases.

Valuation

8. On what value the duty needs to be charged?

Excise duty needs to be paid on 60% value of the MRP. Actual transaction value shall be irrelevant.

9. I have been selling goods to brand owner. Do I also need to pay duty on MRP less abatement?

Notification No. 20/2001-NT provides that when a manufacturer sale the branded goods to brand owner without declaring MRP, the transaction value shall be treated as tariff value and on which duty of excise needs to be paid. But in the context of present notification, no duty liability unless MRP is fixed. Once MRP is fixed (by any person in the chain), duty liability shall arise on 60% of MRP.

Hence, when you are selling goods having MRP of Rs. 3,000/- to brand owner at Rs. 1,400/-, the liability to pay duty would be on MRP less abatement i.e. Rs. 1,800/- (3000*60%) not on transaction value.

10. If I am acting as job worker, what would be my liability in above scenario? I am charging only job work charges of Rs. 600 from brand owner.

Assuming that brand owner has put onus on you to discharge duty of excise, you shall be liable to pay duty on MRP less abatement i.e. on Rs. 1,800/-. Job work charges are irrelevant. There is no service tax liability also on job work charges as exemption is granted under Notification No. 25/2012-ST.

[Applicable rate](#)

11. What is applicable rate of duty?

The applicable rate of duty could be following:

- a. Goods bearing brand name and having MRP of equal to or more than Rs. 1000/-: 2% (without Cenvat) or 12.5% (with Cenvat)
- b. Cotton goods not falling in (a) above: Nil (without Cenvat) or 6% (with Cenvat)
- c. Textile articles not falling under (a) and (b) above: Nil (without Cenvat) or 12.5% (with Cenvat)

12. Which option should be chosen for charging duty?

Option should not be chosen merely based on the rate of tax. If option to pay duty @ 2% is chosen, you shall be denied cenvat credit. The option must be evaluated in the light of customer profile, vendor profile, extent of value addition in the process, whether product manufactured is intermediate or final product, margin, extent of mechanisation, composition of domestic and export sales, etc.

13. I am selling a readymade shirt of MRP Rs. 2500/- to retailer at Rs. 1,300/-. What would be duty liability?

The transaction value with retailer is not relevant. Duty needs to be paid on Rs. 1,500 (Rs. 2,500*60%) at the rate of 2% or 12.5%, depending upon option chosen. Effective duty liability would be 1.2% or 7.5% when calculated on MRP.

Transition provision

14. Do I need to pay duty on removal of goods which were manufactured prior to 29.2.2016?

Duty needs to be paid at the rate applicable at the time of removal of goods from place of removal. Hence, you need to pay duty on the goods which were manufactured prior to 29.2.2016 but cleared after midnight 29.2.2016.

15. I had sent certain goods to agent on 20.2.2016 and the same were received back on GRN dated 28.2.2016 and lying in the stock. Now I wish to resend the same to agent. Do I need to charge excise duty?

Notification No. 31/2011-C.E. has been issued under central excise exempting payment of duty on textile where goods are removed after reworking upto certain limit. The condition of notification needs to be fulfilled to claim exemption from levy of duty.

SSI exemption

16. Is there any exemption from payment of duty?

Textile manufacturer may avail the exemption from payment of excise duty of Rs.150 lacs, this exemption is subject to condition that the previous year clearance should not exceeded Rs.400 lacs. To explain with an example in case the clearance for FY 2015-16 is 320 lacs then in FY-16-17 the first 150 lacs clearance can be claimed as exemption and the balance has to be offered to excise duty. The table mentioned hereunder gives some clarity on the subject.

Situation	Turnover	Previous T/o Less than 400 lacs	Exemption	Dutiable
I	120 lacs	Yes	120 lacs	Nil
II	175 lacs	Yes	150 lacs	25 lacs
III	410 lacs	Yes	150 lacs	260 lacs
IV	10 lacs	No	Nil	10 lacs
V	200 lacs	No	Nil	200 lacs

For the Financial Year 2015-16 the clearances of upto Rs. 12.5 lakhs is exempted only since there being only a month, however it is very important to check that the clearance of FY 16-17 is less than 400 lacs.

17. How the value needs to be arrived at for calculating SSI exemption?

If duty needs to be paid on MRP less abatement, the value needs to be calculated as below:

- a. Value of clearance in previous financial year has to be less than Rs. 400 lacs. If it is grossed up based on MRP, it comes to Rs. 666.67 lacs (400/60%).
- b. Exemption in subsequent year available upto MRP value Rs. 250 lacs (150/60%)
- c. For FY 2015-16, limit for March is Rs. 20.83 lacs (MRP value of 12.5/60%)

If duty needs to be paid on transaction value, that needs to be considered without grossing up.

18. Whether contract manufacturer selling goods to brand owner may claim SSI exemption?

SSI exemption may not be claimed when the goods are sold under Brand name of other. Hence, contract manufacturer may not claim SSI exemption.

export

19. What if I am an exporter engaged in export of goods outside India and making domestic sales also?

If you are engaged in export of goods outside India and your value of clearance other than export does not exceed Rs. 400 lacs, you may claim exemption upto domestic turnover of Rs. 150 lacs (12.5 lacs for the month of March 16). For export turnover, you need not to charge excise duty.

20. I am an exporter and purchasing the duty paid inputs from my supplier. Am I entitled to claim the refund/rebate of duty paid on the raw material?

Till now, you could make export of goods under simplified procedures. But now export needs to be made under bond or LUT. If goods are exported under rule 18 of the Central Excise Rules, you may claim rebate of duty or tax paid on input, input service and capital goods. However if duty drawback is being claimed, then the duty drawback would get affected and reduced rate of drawback will only be eligible. This aspects need to be evaluated before taking final call.

21. I am a merchant exporter and purchasing finished goods for exportation outside India. Can I obtain the same without payment of duty?

Yes, you may obtain the goods manufactured without payment of duty on the basis of CT-1 form.

22. I want to purchase certain raw material to be used in manufacturing if textile article to be exported outside India. Can I purchase it without payment of duty?

There is provision under Central Excise which provides for procurement of excisable goods without payment of duty in accordance with Rule issued in 2001. These Rules have been substituted by new simplified rule in Budget 2016. You may purchase the goods without payment of duty by complying with the rule.

Miscellaneous

23. When am I required to take registration?

Registration may be taken within 30 days of the product becoming dutiable. However the duty has to be paid from the date it become applicable and not from the date of registration.

24. I have been paying service tax on certain activities such as renting of factory, manpower supply etc. Can I adjust the tax paid on these services against excise duty on final products?

It depends upon the option chosen for paying excise duty. If option to pay duty @ 2% is chosen, credit not admissible. On the other hand, if duty is charged @ 12.5%, credit may be take on all input, input service and capital goods.

25. I am sending goods to my warehouse in different states based on stock transfer challan. At what time, duty needs to be paid?

The duty needs to be paid on the removal of goods when goods are removed under MRP affixed. If the MRP is affixed at the warehouse, then the warehouse should be registered under CE and excise duty liability to be discharged.

26. What would be impact of excise duty imposition on cost of textile articles?

Excise duty imposition would badly hit the textile sector as many would be opting for paying excise duty at the rate of 2% without Cenvat. If product passes through multiple stages before reaching end customer, the burden could even be more.

Conclusion

In this article the paper writer has tried to bring an element of clarity on implications of the proposed changes made to levy of excise duty on textile sector. Feel free to revert for any query at rajesh@hiregange.com or ashish@hiregange.com

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