

*Clause 88* of the Bill seeks to amend sub-section (3) of section 137 of the Customs Act to,—

(a) empower the Central Government to make rules to provide for the manner of compounding of offences;

(b) exclude compounding of certain serious offences and in certain circumstances by inserting a proviso to that sub-section.

*Clause 89* of the Bill seeks to amend section 156 of the Customs Act with a view to empower the Central Government to make rules regarding the manner of compounding.

*Clause 90* of the Bill seeks to amend section 157 of the Customs Act with a view to empower the Board to make regulations to provide for the manner of,—

(i) (a) export of goods, relinquishment of title to the goods and abandoning to customs, and; (b) destruction or rendering the goods commercially valueless in the presence of proper officer.

(ii) filing the application for refund of duty and form thereof.

*Clause 91* of the Bill seeks to give retrospective effect to the notification published vide G.S.R. No. 173(E), dated 17th March, 2009, appointing officers of customs under sub-section (1) of section 4 read with sub-section (1) of section 5 of the Customs Act and specifying their area of jurisdiction and to validate actions taken by such officers of customs on and from 9th day of May, 2000 as if the notification specifying their area of jurisdiction was in force at all material times.

*Clause 92* of the Bill seeks to amend the notification number G.S.R. 260(E) dated the 1st May, 2006 retrospectively with effect from the 1st day of May, 2006 so as to,—

(a) allow the facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or CENVAT credit under CENVAT Credit Rules, 2004, in respect of materials which have been locally procured and have been used in the manufacture of goods exported under the Duty Free Import Authorisation scheme;

(b) provide that, the duty free replenishments in respect of which the facilities stated in (a) above have been availed, shall be used for the manufacture of dutiable goods in the factory of the exporter or in the factory of his supporting manufacturer even after the discharge of the export obligation;

(c) provide that the importer shall pay an amount equal to the additional duty of customs together with interest at the rate of fifteen per cent. per annum from the date of clearance of the said materials, in case,—

(i) materials are imported against an authorisation transferred by the Regional Authority, or

(ii) the imported materials are transferred with the permission of Regional Authority;

But no such amount shall be payable in respect of Authorizations issued from 1st May, 2006 till 31st March, 2007; and

(d) define the word 'dutiable goods' for the purposes of the said notification.

#### *Customs Tariff*

*Clause 93* of the Bill seeks to amend section 3 of the Customs Tariff Act so as to provide that where the Central Government has fixed tariff value for an article produced or manufactured in India under sub-section (2) of section 3 of the Central Excise Act, 1944 for the collection of central excise duty, the value of a like imported article shall be deemed to be such tariff value.

*Clause 94* of the Bill seeks to amend section 8B of the Customs Tariff Act retrospectively so as to extend the provisions of the

#### *Customs*

*Clause 84* of the Bill seeks to insert a new section 26A in the Customs Act to provide for refund of import duty paid at the time of clearance for home consumption on imported goods capable of being easily identified if, the goods have been found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods, the goods are identified to the satisfaction of the officer of customs, the goods have been exported or the importer has relinquished his title to the goods, etc., so as to comply with the standards under the International Convention on the Simplification and Harmonisation of Customs Procedure (Revised Kyoto Convention).

*Clause 85* of the Bill seeks to amend section 28F of the Customs Act with a view to provide that the Central Government may, by notification, authorise the Authority for Advance Ruling constituted under section 245-O of the Income-tax Act to act as an Authority under the said Act with the modification that a member from Indian Customs and Central Excise Service who is qualified to be a Member of the Board shall act as the member of the said authority and all the applications and proceedings pending before the authority constituted under the Customs Act shall be transferred to such notified authority from the date of authorisation. Sub-section (2B) of said section provides that the Authority constituted under sub-section (1) shall remain dormant on the issuance of a notification under sub-section (2A).

*Clause 86* of the Bill seeks to amend section 130 of the Customs Act retrospectively with effect from 1<sup>st</sup> day of July, 2003 so as to make express provision empowering the High Court to condone the delay in filing of appeals beyond the period of one hundred and eighty days, as the Supreme Court and the High Courts in certain judgments have held that the High Courts have no power to condone the delay under the said provision. The amendment is of procedural nature hence it shall apply to all the appeals and review petition including the application or appeal or review petition, as the case may be, pending before Supreme Court or High Court.

*Clause 87* of the Bill seeks to amend section 130A of the Customs Act retrospectively with effect from 1<sup>st</sup> day of July, 1999 so as to make express provision empowering the High Court to condone the delay in filing of application or memorandum of cross-objections, beyond the relevant period as specified in sub-sections (1) and (3), as the case may be, as the Supreme Court or the High Court in certain judgments have held that the High Courts have no power to condone the delay under the said provision. The amendment is of procedural nature hence it shall apply to all applications, appeals and review petitions including the application or appeal or review petition, as the case may be, pending before Supreme Court or High Court.

Customs Act, 1962 and rules and regulations made thereunder including those relating to, the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties to that section in respect of safeguard duty.

*Clause 95* of the Bill seeks to validate certain actions taken under any rule, regulation, notification or order made or issued under the Customs Act. This has become necessary in order to validate certain actions affected by certain judicial pronouncements.

*Clause 96* of the Bill seeks to amend section 8C of the Customs Tariff Act retrospectively so as to extend the machinery provisions of the Customs Act, 1962 including those relating to, the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties to that section in respect of country specific safeguard duty.

*Clause 97* of the Bill seeks to validate certain actions taken under any rule, regulation, notification or order made or issued under the Customs Act. This has become necessary in order to validate certain actions affected by certain judicial pronouncements.

*Clause 98* of the Bill seeks to amend section 9 of the Customs Tariff Act retrospectively so as to extend the machinery provisions of the Customs Act, 1962 including those relating to, the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties to that section in respect of countervailing duty on subsidised articles.

*Clause 99* of the Bill seeks to validate certain actions taken under any rule, regulation, notification or order made or issued under the Customs Act. This has become necessary in order to validate certain actions affected by certain judicial pronouncements.

*Clause 100* of the Bill seeks to amend section 9A of the Customs Tariff Act as follows,-

(a) sub-clause (i) seeks to insert the words "by an exporter or producer" in sub-section (1).

(b) sub-clause (ii) seeks to insert a new sub-section (6A) to provide that the margin of dumping in relation to an article exported by an exporter or producer shall be determined on the basis of records concerning normal value and export price maintained by such exporter or producer.

(c) sub-clause (iii) seeks to extend the machinery provisions of the Customs Act, 1962 including those relating to, the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties to section 9A in respect of anti dumping duty with retrospective effect.

*Clause 101* of the Bill seeks to validate certain actions taken under any rule, regulation, notification or order made or issued under the Customs Act. This has become necessary in order to validate certain actions affected by certain judicial pronouncements.

*Clause 102* of the Bill seeks to amend Para (A) of Note 2 of SECTION XI of First Schedule to the Customs Tariff Act to provide that in respect of goods classifiable in chapters 50 to 55 or heading 5809 or 5902 and of a mixture of a two or more textile materials, the same shall be classified as if consisting wholly of that one textile material which predominates by weight over any other single textile material. But, when no one textile material predominates by weight, the goods are to be classified as if consisting wholly of that one textile material which is covered by the heading which occurs last in numerical order among those which equally merit consideration.

#### *Excise*

*Clause 103* of the Bill seeks to amend section 9A of the Central Excise Act with a view to amend sub-section (2) thereof by inserting the words "and in such manner" and a proviso in sub-section (2)

thereof so as to provide for the manner of compounding of the offences and further to provide that certain offences and circumstances wherein the offences shall not be compoundable.

*Clause 104* of the Bill seeks to amend section 14A of the Central Excise Act by inserting the words "chartered accountant" in sub-section (1) and sub-section (2) and by adding an *Explanation* to said section so as to empower the Chief Commissioner of Central Excise to nominate chartered accountant or cost accountant for special Audit under this section and to explain the expression "chartered accountant".

*Clause 105* of the Bill seeks to amend section 14AA of the Central Excise Act by inserting the words "chartered accountant" in sub-section (1) and sub-section (2) and by adding an *Explanation* to said section so as to empower the Chief Commissioner of Central Excise to nominate chartered accountant or cost accountant for special Audit under this section and to explain the expression "chartered accountant".

*Clause 106* of the Bill proposes to amend section 23A of the Central Excise Act by amending the definition of "Authority" in clause (e) thereof.

*Clause 107* of the Bill seeks to amend section 35G of the Central Excise Act retrospectively with effect from 1st day of July, 2003 so as to make express provision empowering the High Court to condone the delay in filing of appeals beyond the specified period of one hundred and eighty days, as the Supreme Court and the High Courts in certain judgments have held that the High Courts have no power to condone the delay under the said provision. The amendment is of procedural nature hence it shall apply to all the appeals and review petitions including the application or appeal or review petition, as the case may be, pending before Supreme Court or High Court.

*Clause 108* of the Bill seeks to amend section 35H of Central Excise Act retrospectively with effect from 1st day of July, 1999 so as to make express provision empowering the High Court to condone the delay in filing of application or memorandum of cross-objections beyond the relevant period as prescribed in sub-sections (1) and (3), as the case may be, as the Supreme Court and the High Courts in certain judgments have held that the High Courts have no power to condone the delay under the said provision. The amendment is of procedural nature hence it shall apply to all the applications, appeals and review petitions including the application or appeal or review petition, as the case may be, pending before Supreme Court or High Court.

*Clause 109* of the Bill seeks to amend section 37 of the Central Excise Act with a view to empower the Central Government to make rules regarding the manner of compounding.

*Clause 110* of the Bill seeks to amend notification numbers G.S.R. 448(E), dated the 1st August, 1997, G.S.R. 503(E), dated the 30th August, 1997 and G.S.R. 130(E), dated the 10th March, 1998 with retrospective effect i.e. from the date of issue of respective notifications, so as to provide that the Central Government had the power to notify rates of excise duty under these notifications by virtue of powers conferred on it by the erstwhile section 3A of the Central Excise Act.

#### *Excise Tariff*

*Clause 111* of the Bill seeks to amend the First Schedule to the Central Excise Tariff Act (i) by substituting Note 1 of Chapter 8 so as to specify that certain items shall not be covered under the said

Chapter, (ii) by inserting Note 6 in Chapter 21 so as to declare the process of adding or mixing certain ingredients to betel nut as amounting to “manufacture” and (iii) by amending entry against tariff item 5801 22 10 so as to provide unit quantity and rate of duty therein.

### Service Tax

Clause 112 of the Bill seeks to amend section 65 of the Finance Act, 1994 as under, -

sub-clause (1) seeks to amend clause (19) of the said section by redefining “Business Auxiliary Service” so as to provide that only those processes which result in the manufacture of excisable goods as defined in Central Excise Act shall be excluded from the purview of “Business Auxiliary Service”.

sub-clause (2) seeks to amend clause (101) of the said section with a view to exclude sub-brokers from the purview of taxable service.

sub-clause (3) seeks to amend clause (105) of the said section as under, -

Item (a) thereof seeks to amend sub-clause (zzzp) so as to include imposition of service tax on transportation of goods by railways.

Item (b) thereof seeks to amend sub-clause (zzze) for the purpose of fixing liability to pay service tax only on “provider” and not the “acquirer” of the right to use information technology software and therefore, it is proposed to substitute the word “acquiring” with the word “providing” with retrospective effect from 16<sup>th</sup> May, 2008, the date on which the service under sub-clause (zzze) was included in Chapter V of Finance Act, 1994.

Item (c) thereof seeks to insert, -

sub-clause (zzzk) to impose service tax on services provided or to be provided to any person, by any person, in relation to cosmetic surgery or plastic surgery other than the surgery undertaken to restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma.

sub-clause (zzzl) to impose service tax on services provided or to be provided to any person, by any person, in relation to transport of coastal goods and goods through inland water.

sub-clause (zzzm) to impose service tax on services provided or to be provided to any business entity, by any business entity, in relation to advice, consultancy or assistance in any branch of law excluding appearance before any court, tribunal or authority and the term ‘business entity’ has been defined to include association of persons, body of individuals, company or firm but not to include an individual.

Clause (B) proposes to make consequential amendments in section 66 for the purpose of bringing under its purview new services inserted vide sub-clauses (zzzk), (zzzl) and (zzzm).

Clause (C) proposes to substitute section 84 with a view to align the appeal procedure of service tax with that of Central Excise. Therefore, it is proposed to do away with the power of revision by the Commissioner of Central Excise under section 84. By amendment to the said section, it is proposed to provide a procedure for referring the orders passed by any authority subordinate to the Commissioner of Central Excise to the Commissioner of Central Excise (Appeals), within the prescribed period, where any such direction is made by the Commissioner reviewing such orders. Further, it is proposed to include a saving clause by way of an explanation to provide that the amended provision shall not apply to any order passed by an authority subordinate to the Commissioner before the commencement of this Bill.

Clause (D) proposes to make consequential amendments in section 86 by omitting the words and figures “or section 84”.

Clause (E) proposes to amend section 94 for empowering the Central Government to make rules with respect to the date for determination of rate of service tax and the place of provision of taxable service by inserting clause (hhh) in sub-section (2) thereof.

Clause (F) proposes to amend section 95 to empower the Central Government to remove difficulties by making an order.

Clause (G) proposes to validate certain actions taken or anything done by virtue of the provisions of items (v) and (vi) of sub-clause (zzze) of clause (105) of section 65 retrospectively with effect from 16<sup>th</sup> day of May, 2008.

Clause (H) proposes to validate the exemption given to a person providing specified taxable services to goods transport agency by the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. G.S.R. 10(E), dated 5<sup>th</sup> January, 2009, retrospectively with effect from 1<sup>st</sup> January, 2005.

This has become necessary in order to validate certain actions affected by certain judicial pronouncements.

Clause (I) proposes to amend section 96A by amending the definition of “Authority” in clause (d) thereof.

### Miscellaneous

Clause 113 of the Bill seeks to amend section 13 of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002.

The existing provisions contained in sub-section (1) of section 13 of the said Act provide that notwithstanding anything contained in the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax or income, profits or gains, no income-tax or any other tax shall be payable by the administrator in relation to the specified undertaking up to 31st March, 2009 in respect of any income, profit or gains derived, or any amount received in relation to the specified undertaking.

It is proposed to amend sub-section (1) of the said section so as to extend the exemption from the period beginning on the 1st April, 2009 to 31st March, 2014.

This amendment will take effect retrospectively from 1st April, 2009.

Clause 114 of the Bill seeks to insert new section 113A in Chapter VII of the Finance (No. 2) Act, 2004 relating to Securities Transaction Tax.

The existing provisions contained in the said Chapter provides for levy of a tax on taxable securities transactions entered in a recognised stock exchange payable by the purchaser from the date on which this Chapter comes into force by way of notification in the Official Gazette by the Central Government.

It is proposed to insert a new section in the said Chapter so as to provide that the provisions of the said Chapter shall, notwithstanding anything contained in this Chapter, not apply to “taxable securities transactions” entered into by any person for, or on behalf of, the New Pension System Trust.

This amendment will take effect from 1st October, 2009.

Clause 115 of the Bill seeks to insert a new section 121A to the Finance Act, 2008 which relates to provisions of Chapter VII not to apply to commodities transaction tax.

The existing Chapter VII provides for provisions relating to commodities transactions tax. It is proposed to insert new section 121A so as to provide that the provisions of Chapter VII relating to taxable commodities transaction entered on or after the 1st April, 2009 shall not apply.

The proposed amendment will take effect retrospectively from 1st April, 2009.

Clause 116 of the Bill seeks to repeal the Finance Act, 2009 (26 of 2009).