

Wealth-tax

Clause 60 of the Bill seeks to amend section 35HA of the Wealth-tax Act relating to offences by companies.

Under the existing provisions of the said section, where an offence has been committed by a company, the company as well as the person who was in charge of, and was responsible to, the company for the conduct of its business at the time when the offence was committed shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of the offence. Further, if in the case of a company it is proved that the offence had been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of the offence and shall be liable to be prosecuted and punished accordingly.

It is proposed to insert sub-section (3) in the said section so as to provide that if an offence under the Act has been committed by a person, being a company and the punishment for such offence is punishable with imprisonment and fine, then, such company shall be punished only with fine but every person who was in-charge of and was responsible to the company for the conduct of the business of the company or a director, manager, secretary or other officer of such company with whose consent or connivance or neglect such offence was committed, shall be liable to be proceeded against and punished in accordance with the provisions of the Act.

This amendment will take effect from 1st October, 2004.

Customs

Clause 61 of the Bill seeks to omit proviso to section 41 of the Customs Act so as to make it mandatory for shipping lines, air lines, their agents, etc., to deliver to proper officer the export manifest or export-import before the departure of the vessel, aircraft, etc.

Clause 62 of the Bill seeks to amend section 129A of the Customs Act so as to increase the fees for filing the appeal, and specify the fees for filing an application in an appeal for grant of stay, etc., filed before the Appellate Tribunal.

Clause 63 of the Bill seeks to amend section 137 of the Customs Act so as to provide for compounding of offences under Chapter XVI of the Customs Act, by the Chief Commissioner of Customs on payment of compounding amount to be specified by the rules.

Clause 64 of the Bill seeks to amend section 156 of the Customs Act, which empowers the Central Government to make rules to specify the amount to be paid for compounding of offences.

Clause 65 of the Bill provides for retrospective validation of certain actions taken by the Central Excise Officers as the officer of customs in respect of hundred per cent. export-oriented undertakings.

Clause 66 of the Bill seeks to amend section 9A of the Customs Tariff Act to a further application of certain provisions of the Customs Act and rules and regulations made thereunder to anti-dumping duty under that section.

Clause 67 of the Bill seeks to amend section 9C of the Customs Tariff Act so as to specify the amount of fees for filing appeal and application in an appeal for grant of stay, etc., before the Appellate Tribunal.

Clause 68 of the Bill seeks to amend the First Schedule to the Customs Tariff Act so as to increase the customs duty on tariff items 1108 12 00, 1108 14 00, 1108 19 10, 1108 19 90, 1903 00 00, 3505 10 10 and 3505 10 90 and to substitute the entry “--- Monosodium glutamate” for the entry in column (2) of tariff item 2922 42 20.

Clause 69 of the Bill seeks to amend section 9A of the Central Excise Act so as to provide for compounding of offences under Chapter II of the Central Excise Act by Chief Commissioner of Excise on payment of compounding amount prescribed by the rules.

Clause 70 of the Bill seeks to amend section 11 so as to provide that if a person from whom some recoveries are due, transfers his business to another person, then the excisable goods, plant, machinery, etc., in the possession of the transferee can be attached and sold for recovery.

Clause 71 of the Bill seeks to insert a new section 33A in the Central Excise Act so as to provide that adjournment of hearing shall be granted not more than three times by the Adjudicating authority.

Clause 72 of the Bill seeks to amend section 35 of the Central Excise Act so as to provide that adjournment of hearing shall not be granted to a party more than three times by the Commissioner (Appeals).

Clause 73 of the Bill seeks to amend section 35B of the Central Excise Act so as to increase the fees for filing appeal and specify the fees for filing an application in an appeal for grant of stay, etc., before the Appellate Tribunal.

Clause 74 of the Bill seeks to amend section 35C of the Central Excise Act so as to provide that adjournment of hearing shall not be granted to a party more than three times by the Appellate Tribunal.

Clause 75 of the Bill seeks to amend section 37 of the Central Excise Act which empowers the Central Government to make rules for providing amounts to be paid for compounding of offences and providing credit of service tax leviable under Chapter V of the Finance Act, 1994, paid or payable on taxable services used in, or in relation to, the manufacture of excisable goods.

Clause 76 of the Bill seeks to amend the Third Schedule to the Central Excise Act so as to omit the expression “other than monochrome”.

Clause 77 of the Bill provides for validation of certain actions taken by an officer of customs in respect of hundred per cent. export-oriented undertakings.

Clause 78 of the Bill seeks to amend the *Explanation* to clause (b) of sub-rule (6) of rule 3 of the CENVAT Credit Rules, 2002 retrospectively, with effect from the 1st day of March, 2003 so as to provide that the credit of Additional Duties of Excise (AED) paid in terms of Additional Duties of Excise (Goods of Special Importance) Act, 1957 can be utilised for payment of CENVAT and special duty of Excise on final products only when AED was paid on or after 1st day of April, 2000.

Clause 79 of the Bill seeks to amend the First Schedule to the Central Excise Tariff Act so as to (i) impose excise duty on sub-heading Nos. 5004.11, 5004.90, 5005.10, 5005.20, 5005.90, 9001.10 and 9504.10 and to insert a Note in Section XV; and (ii) to specify drawing or redrawing into wire shall amount to ‘manufacture’.

Clause 80 of the Bill seeks to amend Chapter V of the Finance Act, 1994 relating to service tax in the following manner, namely:—

(i) sub-clause (a) seeks to amend section 65 of the Finance Act, 1994 so as to modify the scope of certain existing taxable services and to impose service tax on the following services provided—

(1) to any person, by airports authority or any person authorised by it, in an airport or a civil enclave;

(2) to any person, by an aircraft operator in relation to transport of goods by aircraft;

(3) to any exhibitor, by the organiser of a business exhibition in relation to business exhibition;

(4) to a customer, by a goods transport agency in relation to transport of goods by road in a goods carriage;

(5) to any person, by a commercial concern in relation to construction service;

(6) to any person, by the holder of intellectual property rights in relation to intellectual property service;

(7) to any person, by an opinion poll agency in relation to opinion poll;

(8) to any person, by an outdoor caterer;

(9) to any person, by a programme producer, in relation to a programme;

(10) to a customer, by any person in relation to survey and exploration of mineral;

(11) to a client, by a pandal or shamiana contractor in relation to a pandal or shamiana in any manner and includes the services, if any, rendered as a caterer;

(12) to any person, by a travel agent in relation to the booking of passage for travel;

(13) to any person, by a member of a recognised association or a registered association, in relation to a forward contract;

(ii) sub-clause (b) seeks to substitute section 66 so as to impose service tax on the new taxable services incorporated in clause (105) of section 65 and also to raise the rate of service tax from eight per cent. to ten per cent. for all taxable services;

(iii) sub-clause (c) seeks to amend section 67 so as to clarify that the interest on loans will not be included in the value for payment of service tax and that where the gross amount charged is inclusive of service tax, the tax value shall be so calculated that with addition to the tax payable thereon it is equal to the gross amount charged;

(iv) sub-clause (d) seeks to omit sections 71 and 72 which provide for verification of assessment and best judgment assessment respectively;

(v) sub-clause (e) seeks to substitute section 73 which pertains to recovery of service tax to bring it in line with the provisions for recovery under the Central Excise Act;

(vi) sub-clause (f) seeks to amend section 74, which pertains to rectification of orders passed by Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, to bring it in line with the amendments made to section 73;

(vii) sub-clause (g) seeks to amend section 75 which pertains to interest payment on delayed payment of tax so as to provide that the rate of interest chargeable may be fixed by Central Government, by notification, which may be minimum ten per cent. and maximum thirty-six per cent.;

(viii) sub-clause (h) seeks to omit section 75A to do away with the mandatory penalty for non-registration;

(ix) sub-clause (i) seeks to amend section 76, so as to make it explicit that the minimum penalty for non-payment of service tax is rupees one hundred per day for failure to pay the tax;

(x) sub-clause (j) seeks to substitute section 77 which presently provides for penalty for non-filing of return, so as to provide for a general penalty of maximum rupees one thousand

for violation of any provisions of Chapter V or any rules made thereunder for which no other penalty is separately provided in the said Chapter.

(xi) sub-clause (k) seeks to amend section 78, which pertains to penalty in case of non-payment of service tax, etc., to bring it in line with the amendments made to section 73;

(xii) sub-clause (l) seeks to omit section 79;

(xiii) sub-clause (m) seeks to amend section 80 so as to delete the reference to section 79, which is sought to be omitted vide sub-clause (l);

(xiv) sub-clause (n) seeks to omit section 81;

(xv) sub-clause (o) seeks to amend section 85 so as to omit the reference to sections 71 and 72 as those sections are sought to be omitted;

(xvi) sub-clause (p) seeks to amend section 86 so as to increase the fees for filing appeal and specify the fees for filing an application in an appeal for grant of stay, etc., before the Appellate Tribunal;

(xvii) sub-clause (q) seeks to amend section 94 so as to empower the Central Government to make rules to provide for determining export of taxable services, grant of exemption to, or rebate of service tax paid on, taxable services which are exported out of India; rebate of service tax paid on the taxable services consumed or duties paid or deemed to have been paid on goods used for providing a taxable services exported out of India;

(xviii) sub-clause (r) seeks to amend section 95 so as to empower the Central Government to issue orders for removal of difficulty arises in case of implementing or assessing the value of new taxable services incorporated in clause (105) of section 65 within two years from the date of the assent by President.

Clause 81 of the Bill provides for levy and collection of Education Cess as surcharge for the purposes of the Union to fulfil the commitment of the Government to provide and finance universalised quality basic education. The sums of money of the Education Cess levied under sub-section (11) of section 2 and Chapter VI may be utilised by the Central Government for the purposes of sub-section (1) after due appropriation made by Parliament by law made in this behalf.

Clause 82 of the Bill provides that the words and expressions used in Chapter VI and defined in the Central Excise Act, 1944, the Customs Act, 1962 or chapter V of the Finance Act, 1994, shall have the meanings respectively assigned to them in those Acts or Chapter, as the case may be.

Clause 83 of the Bill provides for Education Cess on excisable goods at the rate of two per cent., calculated on the aggregate of all duties of excise (including special duty of excise or any other duty of excise but excluding Education Cess on excisable goods) which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue), under the provisions of the Central Excise Act, 1944 or under any other law for the time being in force.

Clause 84 of the Bill provides for Education Cess on imported goods at the rate of two per cent., calculated on the aggregate of duties of customs which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue) under section 12 of the Customs Act, 1962 and any sum chargeable on such goods under any other law for the time being in force, as an addition to, and in the same manner as, a duty of customs, but not including, (a) the safeguard duty, (b) the countervailing duty, and (c) the anti-dumping duty referred to in sections 8B, 8C, 9 and 9A of the Customs Tariff Act, 1975 respectively and the Education Cess on imported goods.

Clause 85 of the Bill provides for Education Cess on taxable services at the rate of two per cent., calculated on the tax which is levied and collected under section 66 of the Finance Act, 1994.

Securities Transaction Tax

Chapter VII (containing clauses 86 to 105) 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.

Clause 86 of the Bill deals with the extent, commencement and application of the Chapter.

Clause 87 of the Bill defines various terms and expressions like "Appellate Tribunal", "Assessing Officer", "Board", "derivative", "Government security", "option insecurities", "option premium", "recognised stock exchange", "securities", "strike price", "taxable securities transaction", etc., used in the Chapter.

Sub-clause (13) of this clause defines taxable securities transactions to mean a transaction of purchase of securities entered into in a recognised stock exchange in India.

The other definitions are self-explanatory.

Clause 88 of the Bill seeks to make a provision for the charging of a tax called "Securities transaction tax" at the rate of 0.15 per cent. of the value of taxable securities transactions entered into in any recognised stock exchange and such tax shall be payable by the purchaser.

Clause 89 of the Bill provides the manner of computing the value of a taxable securities transaction. The value of a taxable securities transaction is to be computed as follows:—

(a) in the case of purchase of an option in securities, it shall be the aggregate of the strike price and the option premium, on such options in securities;

(b) in the case of purchase of "futures", it shall be the price at which such futures is traded; and

(c) in the case of purchase of any other securities, it shall be the price at which such securities are purchased.

Clause 90 of the Bill provides for collection and recovery of securities transaction tax by a recognised stock exchange from the purchaser. The amount of securities transaction tax collected by the recognised stock exchange has to be paid to the credit of the Government by 7th day of the month following the month in which the securities transaction tax is collected.

Sub-clause (1) of *Clause 91* of the Bill provides for furnishing by a recognised stock exchange (assessee) responsible for collection of securities transaction tax of a return in the prescribed form and prescribed manner and setting-forth such particulars as may be prescribed in respect of all taxable securities transactions entered into during a financial year on that stock exchange.

Sub-clause (2) confers power on the Assessing Officer to issue notice requiring any assessee who is responsible for collection of securities transaction tax, and has not furnished the return, to furnish such return within such time as may be specified in the notice.

Sub-clause (3) provides for furnishing of revised return before the assessment is made, in case of discovery of any omission or wrong statement in the return earlier furnished.

Clause 92 of the Bill contains provisions relating to assessment of the value of taxable securities transactions and securities transaction tax payable or refundable on the basis of such assessment. It also provides that no assessment shall be made after the expiry of two years from the end of the relevant financial year.

Clause 93 of the Bill provides for rectification of mistakes apparent from record of any order passed by the Assessing Officer within one year from the end of the financial year in which the order sought to be amended was passed. The Assessing Officer may rectify mistakes either *suo motu* or at the instance of the assessee. Further, any amendment which has the effect of

enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee shall be made only after giving the assessee a reasonable opportunity of being heard.

Clause 94 of the Bill provides for payment of simple interest at the rate of one per cent. for every month or part of a month where the securities transaction tax collected is not credited to the account of the Central Government within the period specified in clause 90.

Clause 95 of the Bill provides for imposition of penalty on the recognised stock exchange responsible to collect transaction tax. The penalty would be a sum equal to the amount of securities transaction tax not collected in a case where the assessee fails to collect whole or any part of securities transaction tax. In other cases, such penalty imposed will be one thousand rupees for every day of failure to pay securities transaction tax to the credit of the Central Government. However, the penalty imposable under this clause shall not exceed the amount of transaction tax that was to be paid.

Clause 96 of the Bill provides for penalty for failure to furnish return under clause 91. The penalty in such cases will be one hundred rupees for every day during which the failure continues.

Clause 97 of the Bill provides that any person who fails to comply with notice issued under sub-clause (i) of clause 92, shall be liable to pay, by way of penalty, a sum equal to ten thousand rupees for each failure.

Clause 98 of the Bill provides that no penalty will be imposable under clause 95, clause 96 or clause 97 if the assessee proves that there was reasonable cause for the failure to comply with the provisions of the said clause.

It is further proposed that no order imposing a penalty under this Chapter shall be made unless the assessee has been given a reasonable opportunity of being heard.

Clause 99 of the Bill provides that sections 120, 131, 133A, 156, 178, 220 to 227, 229, 232, 260A, 261, 262, 265 to 269, 278B, 282 and 288 to 293 of the Income-tax Act, 1961 which, *inter alia*, relate to issue of notice of demand, recovery and collection of tax, appeals to High Courts and Supreme Court, appearance of authorised representatives, etc., will, so far as may be, apply in relation to securities transaction tax.

Clause 100 of the Bill provides for an appeal to the Commissioner of Income-tax (Appeals) when the assessee denies its liability to be assessed under this Chapter or against any order passed under clause 92 or clause 93 by an Assessing Officer. This clause contains provisions relating to time-limit for filing appeal, etc., and provides that provisions of sections 249 to 251 of the Income-tax Act, 1961 will, as far as may be, apply in such cases.

Clause 101 of the Bill provides for appeal to the Appellate Tribunal against an order passed by a Commissioner of Income-tax (Appeals) under clause 100. This clause contains provisions relating to time-limit and procedure for filing appeal before the Appellate Tribunal. This clause also provides that where an appeal has been filed under this clause the provisions of sections 252 to 255 of the Income-tax Act, 1961 shall, as far as may be, apply.

Clause 102 of the Bill provides for punishment, by way of imprisonment upto a period of three years and with fine, for submitting any statement in any verification, account or statement which is false. This clause also provides that an offence punishable under this clause shall be deemed to be non-cognisable within the meaning of the Code of Criminal Procedure, 1973.

Clause 103 of the Bill provides that no prosecution shall be initiated for an offence under clause 102 except with the prior sanction of the Chief Commissioner of the Income-tax.

Clause 104 of the Bill confers powers on the Central Government to make rules for the purposes of carrying out the provisions of this Chapter. This clause also provides that every rule made and notification issued under this clause shall be laid before each House of Parliament.

Clause 105 of the Bill confers power on the Central Government to issue orders for removal of any difficulty arising in giving effect to the provisions of this Chapter. This power is available to the Central Government for a period of two years from the date on which the provisions of this Chapter come into force. Every order made under this clause shall be laid before each House of Parliament.

Miscellaneous

Clause 106 of the Bill seeks to amend the Government Savings Banks Act, 1873.

The said Act contains certain provisions relating to Government Savings Banks. It is proposed to enable certain banking companies or other companies or institutions, as the Central Government may, by notification in the Official Gazette, specify in this behalf to accept deposits under certain schemes of the Central Government besides the Post Offices.

It is proposed to amend section 3 of the said Act to define the expression "Government Savings Bank" to mean a Post Office Savings Bank or banking company or any other company or institution, as may be notified by the Central Government under the Act. It is also proposed to re-define the word "Secretary".

This amendment will take effect from the date on which the Bill receives the assent of the President.

Clause 107 of the Bill seeks to amend the Indian Stamp Act, 1899 so as to provide definition of 'stamp', and to provide for composition and consolidation of duties in respect of policies of insurance and to enhance threshold above which stamp duty is charged on 'Receipt' from Rs. 500 to Rs. 5,000;

Clause 108 of the Bill seeks to amend section 8 of the Central Sales Tax, 1956 to extend the benefit of exemption from payment of Central Sales Tax to individual units in special economic zones for setting up, operation and maintenance of such units and also to developers of special economic zones who develop, operate and maintain such special economic zones.

Clause 109 of the Bill seeks to amend Chapter VI of the Central Sales Tax Act as directed to be inserted by section 3 of the Central Sales Tax (Amendment) Act, 2001 so as to restrict the jurisdiction of the Authority only to settle the inter-State dispute falling under section 6A read with section 9 of the said Act. The amendment also confers power on Authority relating to grant of stay in appeal, etc.

Clause 110 of the Bill seeks to amend section 4 of the Fiscal Responsibility and Budget Management Act, 2003 relating to fiscal management principles.

Sub-section (1) of section 4 of the said Act provides that the Central Government shall take appropriate measures to reduce the fiscal deficit and revenue deficit so as to eliminate revenue deficit by the 31st March, 2008 and thereafter build up adequate revenue surplus. Sub-section (2), *inter alia*, provides that the Central Government shall, by rules made by it, specify the annual targets for reduction of fiscal deficit and revenue deficit during the period beginning with the commencement of this Act and ending on 31st March, 2008.

It is proposed to amend the said section so as to enhance the existing time period as mentioned above to 31st March, 2009.

Clause 111 of the Bill seeks to repeal section 2 of the Finance Act, 2004.