

**BUDGET 2014**  
**ANALYSIS OF**  
**INDIRECT TAX PROPOSALS**

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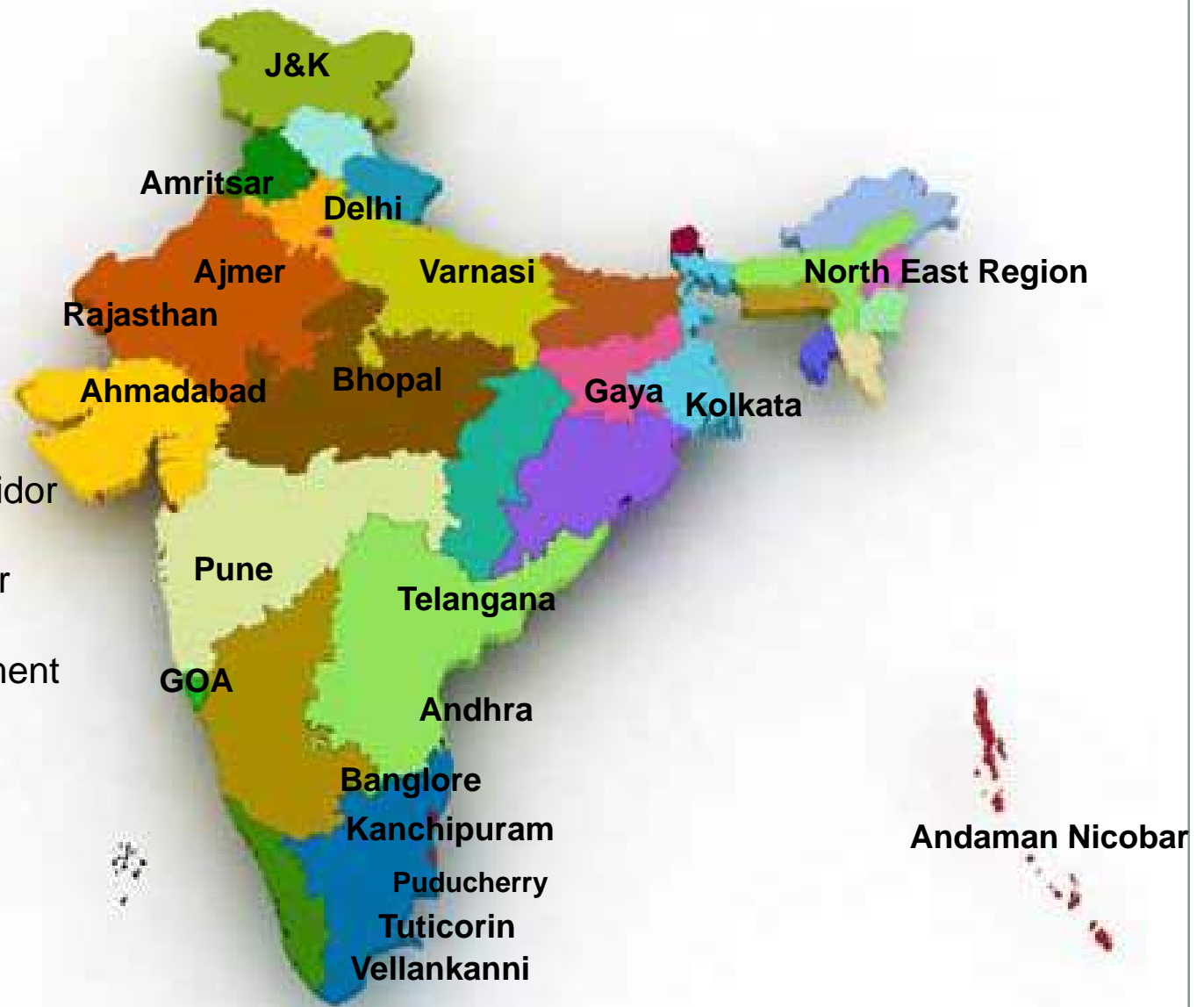
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- AIMS
- Humanities Centre
- IITs
- IIMs
- Urban Metro
- Agri University
- Horticulture University
- Ports
- Airports
- Sports Stadium
- Organic Farming
- National Industrial Corridor
- Textile Mega Clusters
- Ultra Mega Solar Power Project
- Heritage City Development



**ARUN JAITLEY EXPRESS.... States and Union Territory Covered in the Budget**

# **CUSTOMS and EXCISE**

# RATE

- Customs duty has been reduced to nil on fatty acids, crude palm, RBD when used for manufacture of soaps. Similarly there is a reduction on crude glycerine.
- Customs duty on denatured ethyl alcohol is reduced from 7.5% to 5%.
- Export duty on bauxite increased from 10% to 20%.
- **Coal – BCD at 2.5% and CVD at 2%**
- BCD on ethane, other goods under 2901 10 00, ethylene, propylene and butadiene is reduced from 5% to 2.5%.
- **BCD on stainless steel flat products increased from 5% to 7.5%.**
- Clean energy cess increased from Rs.50 per ton to Rs.100 per ton w.e.f. 11.07.2014.

# SOLAR POWER

- BCD exemption of flat copper wire for use in manufacture of PV ribbon for solar PV cells or modules.
- BCD at 5% and CVD exemption for machinery equipment required for initial setting up of solar energy production projects.
- BCD exemption in respect of specific raw materials used in the manufacture of solar backsheet and EVA sheet for used in manufacture of solar PV cells or modules.
- ED exemption for raw materials used in the manufacture of backsheet and EVA sheet for manufacture of solar PV cell or module.
- ED exemption on flat copper wire used in the manufacture of PV ribbons for manufacture of solar cells or modules.
- ED exemption on solar tempered glass used in the manufacture of solar PV cells or modules, solar power generating equipment or systems and flat plate solar collectors.
- ED exemption for machinery equipment for initial setting up of solar energy production projects.

# BIO-CNG

- Concessional customs duty of 5% on machinery equipment required for setting up Bio-CNG.
- Full ED exemption on machinery equipments for setting up compressed bio-gas plant.

# WINDPOWER

- Nil excise duty on forged steel rings used in the manufacture of bearings of WEG.
- Full exemption from SAD on parts and raw materials for use in the manufacture of wind operated electricity generators.

# TELEVISION

- BCD on LCD / LED TV panels below 19 inches reduced to nil.
- BCD on colour picture tubes for manufacture of cathode ray TV reduced to nil.
- BCD exemption on specified parts of LCD and LED panels for TV.
- This initiative could boost manufacture as most international players are in the big screen segment.



# IT & TELECOM SECTOR

- BCD reduced to nil for E-Book readers.
- Education cess on certain electronic goods
- **BCD on telecommunication products not covered under ITA agreement increased to 10%.**
- 1997 agreement does not cover 3G and 4G network equipments.
- Whether this will facilitate manufacture of telecom equipment in India or only increase costs?
- **SAD on all inputs for manufacture of laptop, desktop and tablets is exempted.**
- Level playing field
- Hardware manufacture impetus coupled with the investment allowance on investments over Rs.25 crores.

# OIL & GAS

- Excise duty on branded petrol is reduced from Rs.7.50 per lit. to Rs.2.35 per lit.
- ED exemption to liquefied propane, butane mixture, liquefied propane, liquefied butane, LPG supplied to non-domestic exempt category customers by IOC, HPCL, BPCL retrospectively from 08.02.2013 and exemption continues.

# SODA TAX

- Pigovian tax (named after economist Arthur Pigou) is a tax applied to a market activity that is generating negative externalities.
- Additional duty of excise at 5% on waters including aerated waters **containing added sugar falling under 2202 10, lemonade 2202 10 20 and others 2202 10 90** w.e.f. 11.07.2014.
- Spurious beverages on account of price increase?
- Price stability due to cost control?

# SODA TAX – OTHER COUNTRIES

- Norway – Excise on refined sugar products including softdrinks
- Mexico tax on soda along with tax on junk food.
- In 2009, The US president was keen on levying excise tax on sweetened beverages as part of health care reform but the proposal was ultimately abandoned.
- State level soda taxes exists many States in US.

# FOOD PROCESSING

- ED on machinery for preparation of meat, poultry, fruits, nuts, vegetables, presses, crushes, wine, cider, fruit juices or similar beverages and packaging machinery reduced from 10% to 6%.

# TOBACCO

- Excise duty increased from
  - 12% to 16% on pan masala;
  - 50% to 55% on unmanufactured tobacco;
  - 60% to 65% on gutka;
  - **11% to 72% in respect of cigarettes w.e.f. 11.07.2014.**

# GEMS & JEWELLERY

- No change in the rate of customs duty on import of gold.
- No change in the 80:20 Rule.
- **Unbranded articles of precious metals exempted from ED retrospectively from 01.03.2011 to 16.03.2012 through Section 102 of the Finance (No.2) Bill, 2014.**
- Full exemption from BCD to pre-forms of precious and semi precious stones.
- BCD on half-cut or broken diamonds increased from nil to 2.5% and from 2% to 2.5% in respect of cut and polished diamonds including lab grown diamonds and coloured gem stones.

# THE FIAT STORY

- In the case of *CCE Vs. Fiat India Pvt. Ltd. (2012) 283 ELT 161*, the Company was selling cars at a price lower than the cost of manufacture.
- In fact the Company was selling cars in the market continuously for a period of 5 years at a loss price and contended that it had to do so only to compete with the other manufacturers and penetrate the market.
- The issue before the Court was whether such a methodology adopted for competing and penetrating the market can be considered as 'extra commercial consideration' and thus affecting the value.



# THE FIAT STORY

- The Supreme Court held that
  - (i) The main reason for selling cars at prices lower than the manufacturing cost is to penetrate the market. This constitutes extra commercial consideration and therefore price is not the sole consideration. This position will apply even after 01.07.2000 since even under the new Section 4(1)(a), price has to be the sole consideration.
  - (ii) Valuation done by using the residuary rule with the assistance of the report of the cost accountant for ascertaining the correct price is in order.

# THE FIAT STORY

- Supreme Court dissented from its earlier decision in the case of *CCE Vs. Guru Nanak Refrigeration Corp. (2003) 153 ELT 249* wherein the Court had held that **there was no flow back of money from the buyer** to the assessee even though the cost of production is more than the cost of wholesale price.
- Is it not possible for a business to be conducted at a loss?
- Concept of loss well understood in income tax law.
- Complex Board Circular dated 15.01.2014.

# AMENDMENT TO RULE 6 OF CENTRAL EXCISE VALUATION RULES

- A proviso has been inserted by Notification No.20/2014 w.e.f. 11.07.2014 and reads as under:-  
*"Provided that where price is not the sole consideration for sale of such excisable goods and they are sold by the assessee at a price less than manufacturing cost and profit, and no additional consideration is flowing directly or indirectly from the buyer to such assessee, the value of such goods shall be deemed to be the transaction value."*

# SECTION 15A

- New Section 15A provides that an assessee, local authority, public body or association, authority of State Government responsible for collection of VAT or Sales Tax; income tax authority, banking company, electricity board, electricity distribution or transmission licensee, registrar or sub-registrar, RoC, Collector – land acquisition, recognized stock exchange, depository, RBI officer who is responsible for maintaining records of registration, accounts or returns or details of tax or transactions of goods or services or transaction pertaining to a bank or consumption of powers, etc. **shall furnish an information return in the format specified to such authority or agency as may be prescribed.**

# SECTION 15A

- Where the prescribed authority considered that the information is defective, time would be given to rectify the defect within 30 days or extended period.
- Where a person required to furnish the information does not furnish within the time specified, notice can be issued and if a person still fails, the prescribed authority can impose penalty of Rs.100 per day for the period of default.
- Who is the prescribed authority?
- No amendment to Section 37 to enable framing of Rules.
- Provisions similar to Section 285BA of the Income Tax Act except that it also covers **any authority of the State Government responsible for the collection of value added tax or sales tax; an income tax authority; banking company; State electricity board; RoC.**

# APPEALS

- Discretionary powers for CESTAT to dismiss appeals increased from Rs.50,000/- to Rs.2,00,000/-.
- Demands and stay orders.
- ***Kumar Cotton*** decision.
- Concept of 365 days and vacation of stay.
- Recent decisions of the Tribunal ***in Salasar Steel*** and ***Suresh Jaiswal***.
- Gujarat High Court has referred to recurring extensions with reasons in the case of ***SIDBI***.

# NEW SYSTEM – PRE-DEPOSIT

- Section 35F substituted.
- In respect of an appeal before Commissioner (Appeals), appeal shall not be entertained unless the Appellant has **deposited 7.5% of the duty demanded or penalty imposed or both** in pursuance of an order passed by an officer lower in rank than the Commissioner of Central Excise.
- In respect of an appeal to the Tribunal against the order of the Commissioner, **7.5% of the duty demanded or penalty imposed or both**.
- In respect of an appeal to the Tribunal against the order of the Commissioner (Appeals), **10% of the duty demanded or penalty imposed or both** in pursuance of the decision or order appealed against.

# NEW SYSTEM – PRE-DEPOSIT

- **Amount required to be deposited shall not exceed Rs.10 crores.**
- Provisions not applicable to stay petitions and appeals pending before any appellate authority prior to the commencement of Finance (No.2) Act, 2014.
- Duty demanded includes Section 11D; amount of erroneous credit taken; amount payable under Rule 6.
- **Far reaching implications.**
- While the stay related issues are addressed, there could be huge cash outflows even where there is an arbitrary or routine order



# SERVICE TAX

# REVENUE RECEIPTS (in crores)

Tax	Actual 2012-13	Revised 2013-14	Budget 2014-15
Customs	165,346	175,056	201,819
Excise	175,844	178,787	206,356
Service Tax	132,600	164,927	215,973

- Customs duty has its origin in 1786 and Uniform Tariff Act was introduced in 1859 all over India.
- **Consolidated customs law from 1962.**
- Excise duty on cotton yarn in 1894.
- **Comprehensive Central Excise Levy from 1944.**
- Service tax had its origin in 1994.
- **From Rs.410 crores to an estimate of Rs.215, 973 crores in 20 years.**

# SELLING OF SPACE FOR ADVERTISEMENT

- Negative List amended whereby only selling of space for advertisement in print media **alone** is kept out of service tax.
- Service tax on sale of space in theatres, web-sites, ATM, billboards, buildings, conveyances, cell phones, commercial publications, tickets, etc.
- Entry 55 of the State List empowers the State to levy tax on advertisements other than advertisements published in news papers and advertisement broadcast by radio or TV.
- There is a Tamil Nadu Advertisements Tax Act, 1983 which provides for a tax on advertisement exhibited on a screen.
- Print media defined to exclude business directories, yellow pages, trade catalogues primarily meant for commercial purposes.
- Print media includes books and newspapers.

# RADIO TAXI

- Transportation of passengers by radio taxi whether air-conditioned or not would be taxable.
- Abatement as available to a rent-a-cab operator is available.
- Radio taxi is defined in the exemption Notification to mean a taxi including a radio cab by whatever name called which is in two way radio communication with a Central Control Office and is enabled for tracking using global positioning system (GPS) or general packet radio service (GPRS)

# OTHER CHANGES IN FINANCE ACT

## 1994

- Rate of exchange for conversion would be determined through Rules to be prescribed – Explanation to Section 67A.
- Adjudication within 6 months where it is possible to do so and one year where it is possible to do so in cases involving extended period.
- Where tax is due and a person transfers or disposes his business or effect change in ownership, goods in the custody of the **successor** can be attached and sold for the purpose of recovery.
- **Discretion under Section 80 for penalty under Section 78 is removed.**
- Search authorization would be given by the JC or Additional Commissioner or such other officer to any Central Excise Officer (old provision referred to Superintendent).

# REVERSE CHARGE MECHANISM

- Existing provisions for renting of motor vehicle simplified whereby if the provider does not take abatement tax is payable in the ratio of 50:50 by both parties from 01.10.2014.
- Introduced for service provided or agreed to be provided by a recovery agency to a banking company or a financial institution or a NBFC – 100%.
- Service provided by a director to a body corporate is brought under reverse charge mechanism – 100%.
- Point of Taxation Rules amended to provide that PoT in respect of reverse charge would be **payment date or first day that occurs immediately after the expiry of three months from the date of invoice whichever is earlier.** Amendment applicable only to **invoices issued after 01.10.2014.**

# WORKS CONTRACT - VALUATION

- From 01.10.2014, taxable value increased **from 60% to 70%** maintenance or repair or completion or finishing services such as glazing, plastering or floor or wall tiling or installation of electrical fittings of immovable property.
- Double Taxation issue not addressed.
- VAT law treats 70% of contract value as material and service tax treats 70% of contract value as service.
- **Amendment effective from 01.10.2014.**

# ADVANCE RULING

- Section 96A is now applicable to resident private limited company.
- Ruling can be obtained only in respect of service proposed to be provided.



# EDUCATIONAL INSTITUTION

- Services **provided by** an Educational Institution to its students, faculty and staff exempt.
- Services **provided to** an Educational Institution by way of
  - (i) Transportation of students, faculty and staff
  - (ii) Catering including any mid-day meals scheme approved by the Government
  - (iii) Security or cleaning or housekeeping services performed in such educational institution
  - (iv) Services relating to admission to or conduct of examination by such institution
- *Imparting skill / knowledge / education or development of course content, knowledge enhancement activities by service providers to educational institutions are no longer exempt.*

# OTHER EXEMPTIONS / MODIFICATIONS

- Transportation by rail or vessel from one place to India to another of chemical fertilizer or organic manure, oil cakes, cotton ginned or baled is exempt. Similar exemption for GTA.
- Exemption for life macro insurance product approved by IRDA having maximum cover of Rs.50,000/-.
- Loading, packing, storage or warehousing of rice, cotton, ginned or baled is exempt.
- Services received by RBI from outside India in relation to management of forex reserves are exempt.
- Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India is exempted.

# ACCOMMODATION

- Amendment to Entry 18, Notification No.25/2012 to remove the word '*commercial*'.
- TRU clarifies that even accommodation offered by Dharmashalas or Ashrams would be taxable.
- The Andhra Pradesh High Court in the case of ***Tirumala Tirupathi Devasthanam Vs. Supd. Cus. C.E.St. (2013) 30 STR 27*** has held running guest houses by whatever name they are called whether it is a shelter for pilgrims or otherwise is liable to service tax.
- TTD has challenged the levy in Supreme Court and the Government was restrained from collecting the tax.

# RELIGION AND TAXATION

- The Madras High Court in the case of ***Tirumala Tirupathi Devasthanam Vs. State of Madras (1972) 29 STC 266*** has held that as under:-  
*"TTD besides being a charitable institution, is a Hindu institution of age old antiquity, which has gained importance for the way in which the Devasthanam is functioning and propagating the Hindu religion and serving the needs of those who often visit the hills for getting the darshan of the Lord. It is difficult to hold the view that Devasthanam was doing a business or was indulging in a commercial activity, though not for a profit motive. Business which is intricately connected with commerce is unknown to the Devasthanam and it is impossible to conceive that when they dispose of their articles of silver, etc. found in the Hundi, they were doing a business. Their object is something very different from doing business. Their objects are not only enumerated by the Legislature of Andhra Pradesh State, but their accredited objects are more salutary and more important to the community and to the country than mere commercial activity as thought by the respondent.*

# RELIGION AND TAXATION

- Distributing prasadam is not an activity of business – Madras High Court in ***Arulmigu Dhandayuthapani Swami Thirukoil***.
- Providing accommodation to devotees by trust of temple without profit motive is not business – Madras High Court in ***Palani Dhandayuthapani Devasthanam***.
- Where the object of the trust is both charitable and religious, it does not mean that the trust is totally religious and hence eligible for exemption under Section 11 of the Income Tax Act – Supreme Court in ***Dawoodi Bohra Jamat***.

# POP RULES

- Definition of intermediary now covers even an intermediary for goods.
- Commission agent located in India – Principal outside India.
- Commission agent located outside India – Principal in India.
- Commission agent located outside India – Principal outside India.
- Rule 4(a) is amended to provide that it will not apply to service provided in respect of goods that are temporarily imported into India for repairs and are exported after repairs without being put to any use in the taxable territory.
- Rule 9(d) is substituted to cover services consisting of hiring of all means of transport other than
  - (i) Aircraft and
  - (ii) Vessels except yachtsupto a period of one month.

# INTEREST

- Upto 6 months 18%
- More than 6 months upto 1 year – 18% upto first 6 months and 24% for delay beyond 6 months.
- More than one year – 18% for first 6 months, 24% for period beyond 6 months upto one year and 30% for any delay beyond one year.
- **New interest regime from 01.10.2014.**

# SEZ – REFUND PROCEDURES

- Authorization in Form A-2 to be issued within 15 days from the date of receipt of Form A-1 (declaration furnished by the developer)
- Authorization will have validity from the date of verification of Form A-1 by the specified officer.
- If Form A-1 is furnished after 15 days from the date of verification, the authorization shall have validity from the date of furnishing the Form A-1 to the Central Excise Officer.
- The unit / developer is entitled to avail upfront exemption on the basis of Form-A1 pending issuance of Form A2. Copy of authorization to be furnished within 3 months from the date of receipt of specified services. If not the service provider shall pay service tax on the service so provided.
- For services covered under full reverse charge, service provider's service tax registration number is not required.
- Service will be treated as exclusively used for SEZ operations when invoices in the name of unit / developer and services used exclusively for furtherance of authorised operations.
- The Authority for refunds is Jurisdictional DC / AC of Central Excise.
- Units having centralized registration have option to file a common service tax refund for all units or to file unit wise refund.



# CENVAT CREDIT

- **Definition of place of removal introduced w.e.f. 11.07.2014.**
- Cenvat credit cannot be taken after 6 months of the date of issue of any of the documents specified in Rule 9 – Amendment effective from 01.09.2014.
- Where the whole of the service tax is payable by the recipient, credit shall be allowed after the service tax has been paid – 11.07.2014
- Where the recipient is liable to pay part of the service tax then credit shall be allowed on or after the day on which the payment is made of the value of input service and service tax paid or payable as indicated in the invoice, bill or as the case may be, challan referred to in Rule 9.
- Where credit is taken and the payment is not made within three months, credit should be reversed and credit can be taken after making the payment.
- **Transfer of credit in terms of Rule 12A for LTU is only in respect of credit taken on or before 10.07.2014 by one or more of its registered manufacturing premises.**

# GST

- *The debate whether to introduce a Goods and Service Tax (GST) must now come to an end. We have discussed the issue for the past many years. Some States have been apprehensive about surrendering their taxation jurisdiction; others want to be adequately compensated. I have discussed the matter with the States both individually and collectively.*
- *I do hope we are able to find a solution in the course of this year and approve the legislative scheme which enables the introduction of GST.*
- *This will streamline the tax administration, avoid harassment of the business and result in higher revenue collection both for the Centre and the States.*
- *I assure all States that government will be more than fair in dealing with them.*

# GST

- *States have a long standing claim with reference to CST compensation from Centre and have expressed dissatisfaction on not being granted compensation from 2011-2012.*
- *In the year 2013-2014 a provision of Rs.9,300/- crores was made out of which only Rs.1,940 crores has been released.*
- ***For the year 2014-2015 the grant for compensation to States for revenue losses due to phasing out of CST is Rs.1 lakh only.***
- *GST???*

# SPEECH OF THE FIRST FINANCE MINISTER OF INDEPENDENT INDIA

- *Our borrowing programme will be such as will enable us to obtain funds required by the Government as cheaply as possible without in any way affecting the flow of investment into industry. **It is also my intention to reorganize the small savings movement which was considerably expanded during the war years, so that it might be retained as a peacetime organisation with the primary purpose of encouraging savings among the middle classes.** -*
- *If the standard of living of our people is to be substantially raised by undertaking large schemes of development, both rich and the middle classes should come forward to **place their savings at the disposal of the Government.***
  - *--Shri R.K. Shanmukham Chetty on 26.11.1947*

# SPEECH OF THE FINANCE MINISTER SHRI ARUN JAITLEY

- *To address the concerns of decline in savings rate and improving returns for small savers, I propose to revitalize small savings.*
- *Kisan Vikas Patra was a very popular instrument among small savers. I plan to reintroduce the instrument to encourage people, who may have banked and unbanked savings to invest in this instrument.*
- *Para 136 and Para 27 of the Finance Minister's speech on 10.07.2014.*

# THANK YOU

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