



UNION BUDGET 2021

INDIRECT TAX PROPOSALS

Budget 2021

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01.

CUSTOMS LAW AND PROCEDURE

Proposed legislative changes in the Customs Act, 1962

- To enhance "**ease of doing business**", a Common Customs Electronic Portal would be launched for customs transactions such as filing of import/ export documents, payment of customs duty, service of notice, orders and the like [Refer Section 154C].

Comments: The experience gained in Indian Customs Portal (ICEGATE) and Goods and Services Tax Network (GSTN portal) would be gainfully deployed in the proposed portal. This will digitize customs business and transactions and facilitate faceless assessment.

- All existing conditional customs duty exemptions would automatically lapse on 31 March 2023 unless otherwise specified or rescinded. Further, all conditional customs duty exemption will be subject to a sunset clause of 31 March falling immediately after two years from the date of the said exemption. [Refer Section 25]
- An importer will be mandatorily required to file an advance Bill of Entry before the end of the day (including holidays) preceding the day of the arrival of the vessel/ aircraft. Earlier, importers were required to file Bill of Entry before the end of the next day following the day (excluding holidays) of the arrival of vessel/ aircraft. Failure to file Bill of Entry within prescribed timelines attracts a late fee at the rate of rupees five thousand per day for the initial three days of default and at the rate of rupees ten thousand per day for each day of default thereafter. [Refer Section 46].

Comments: With a view to decongest ports, some customs formation were directing importers for advance Bills of Entry for imported cargo. Henceforth, all imported goods are subject to the requirement of advance Bill of Entry. As any default attracts significant late fees, importers will

need to realign their logistics to comply with this new requirement.

- An investigation resulting in a show cause notice/ demand notice under Section 28(1) or 28(4) must necessarily completed within a period of two years from the initiation of the investigation (audit, search, seizure summons), subject to an extension of one year by the Commissioner of Customs. [Refer Section 28BB]

Comments: Under Section 28(1), a demand notice is required to be issued within two years or five years under Section 28(4) from the relevant date. A question remains whether this proposed insertion will extend the aforesaid time limits. In our view, the periods of limitation prescribed under Section 28 are sacrosanct and the proposed Section 28BB adds additional fetters on the investigating authority.

- Goods entered for exportation under a wrong claim of rebate/ remission/ refund will be liable to confiscation. [Refer Section 113(ja)]
- Fraudulent avilment of input tax credit under goods and services tax (GST) to claim rebate/ remission/ refund on export of goods will attract penalty. [Refer Section 114AC]
- To ease disposal of seized gold, the Commissioner (Appeals) has been empowered to certify inventory and issue requisite orders. Hitherto, this power vested with the jurisdictional magistrate. [Refer Section 110]

Proposed legislative changes in the Customs Tariff Act, 1975

- Countervailing duty (CVD) will not apply to 100% Export-Oriented Unit (EOU) or Special Economic Zone Units (SEZ) unless either of the following conditions are attracted [Refer Section 9]:
 - It is specifically made applicable in such notification; or

The Union has placed greater emphasis on customs duties with some significant changes including on exemptions and impetus to local manufacturing"

"On the customs front, introduction of sunset clauses is a game-changer and will give a fillip to the Atmanirbhar scheme"

"The review of all customs duty exemptions marks a new era and fingerprint will have to be analyzed carefully in the coming times. Industries and businesses should take this opportunity with both hands."

"The impetus and importance given to MSMEs and domestic manufacturers by way of rate rationalization and trade duties such as anti-dumping and CVD is a good signal to the Industry

Dinesh Agrawal
Executive Director,
Indirect Tax



(ii) The article is either cleared as such into the Domestic Tariff Area (DTA) or used in the manufacture of any goods that are cleared into DTA. In this case, CVD shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

- Similar to above, Anti-Dumping Duty (ADD) has now been extended to SEZ Units and their clearances which earlier was imposed only on EOU Units. [Refer Section 9A]
- Safeguard Duty (SG) on clearances by SEZ/ EOU Units has been aligned with CVD/ ADD with the addition of "or", aligning the same with ADD and CVD.

Comments: There was a confusion in respect of levy of SG/ ADD/ CVD on DTA clearance of goods by EOU/ SEZ Units. Now, the conditions for levy of such duties are disjunctive and have been aligned in their application.

Further, in as much as (i) above is concerned, it creates a level playing field between SEZ/ EOU Units vis-à-vis DTA manufacturers. However, imposition of ADD/ CVD/ SG vide (ii) above will render manufacturing operations of SEZ/ EOU Units unviable as clearance of resultant final product manufactured will also include ADD/ CVD/ SG in addition to customs duty on the final products whereas, import of such final product will not have any embedded ADD/ CVD/ SG. This creates an unintended distortion between manufacturing operations of SEZ/ EOU Units vis-à-vis regular imports of final products, especially considering that SEZ/ EOU Units are struggling with significant idle capacity.

- Other proposed amendments in relation to SG, ADD and CVD:
 - Retrospective imposition of ADD/ CVD from the date of initiation in cases of circumvention;
 - Anti-absorption provisions to counter situations where, by reduction of export prices or otherwise, the ADD/ CVD levied is sought to be absorbed, diluting the intended impact of such duties;

- Temporary revocation of ADD/ CVD shall not exceed one year at a time;
- Final Findings are to be issued in ADD/ CVD investigations in review proceedings, by the Designated Authority, at least three months prior to expiry of the ADD/ CVD under review. [Refer Sections 8B, 9 and 9A]

Comments: This effectively negates the impact of extension of ADD/ CVD by one year in cases where the review could not be completed till the date of expiry of the anti-dumping review.

Agriculture Infrastructure and Development Cess (AIDC)

- The Union Budget has proposed imposition of a levy of AIDC on imports/ manufacture of specified goods to augment the rural and farming sector of the economy.

Please visit this [link](#) for details of levy of AIDC

- [Refer Section 115 of the Finance Bill, 2021, effective from 2 February 2021]

Comments: AIDC imposition would not have the effect of increasing taxes as simultaneous with this, the rates of Basic Customs Duty and Excise Duty have been reduced. The Central Government has also introduced concessions/ exemptions on various items from this new cess including exemption from Social Welfare Surcharge. However, there may be an indirect impact in terms of drawback available on export of goods from India.

Customs duty increased on number of raw materials and inputs for many sectors including agriculture, textiles and MSMEs. This might seem as a protectionism measure under the garb of boosting domestic productions. However, its impact will only be felt in the long-term to see of the indigenous manufactures are up to the challenge or it dents India's growth.

- **Rashmi Deshpande,**
Partner, Indirect Tax

02.

CUSTOMS DUTY RATE CHANGES

Customs Duty Rate Movements

| Commodity | Movement |
|---|----------|
| Agricultural products & by-products such as denatured ethyl alcohol, etc. | ↑ |



| | |
|-------------------------------|---|
| Fuels, Chemicals and plastics | ↑ |
| Textile products | ↑ |
| Gems and Jewelry | ↑ |
| Metals | ↑ |
| IT, Electronics and Renewable | ↑ |
| Automobile | ↑ |
| Aviation | ↓ |
| Medical equipment | ↓ |
| Projects | ↓ |

*Please click [here](#) for movement in rates of customs duty.

[Refer Notification 02/2021-Cus to 15/2021-Cus all dated 1 February 2021, effective from 2 February 2021]

Anti-Dumping and Countervailing duty

- ADD is temporarily revoked from 2 February 2021 till 30 September 2021, on imports of the following goods:
 - straight length bars and rods of alloy-steel, originating in or exported from China;
 - high speed steel of non-cobalt grade, originating in or exported from Brazil, China and Germany;
 - Flat rolled product of steel, plated or coated with alloy of aluminum or zinc, originating in or exported from China, Vietnam and Korea.

[Refer Notification Nos. 05/2021-Cus(ADD) to 07/2021-Cus(ADD) all dated 1 February 2021, effective from 2 February 2021]

- CVD has been temporarily revoked from 2 February 2021 till 30 September 2021 on imports of certain hot rolled and cold rolled stainless steel flat products, originating in or exported from China.

- Provisional CVD is revoked on imports of flat products of stainless steel, originating in or exported from Indonesia.

[Refer Notification Nos. 01/2021-Cus(CVD) and 02/2021-Cus(CVD) both dated 1 February 2021, effective from 2 February 2021]

03.

CENTRAL SALES TAX

Proposed Legislative Changes

- Section 8(3) of the Central Sales Tax Act, 1956 (CST Act) is proposed to be amended to exclude goods used in the telecommunication network or in mining or in generation or distribution of electricity or any other form of power from the scope of central sales tax. This would necessarily mean that in a case of inter-state sales involving petroleum products by entities involved in the specified sectors, it would be taxed at rates under the originating state sales tax legislations which are usually high.

Comments: This amendment nullifies the decision of the Supreme Court in the case of Carpo Power Limited (Order dated 13 August 2018 in Special Leave Petition No. 20572/ 2018) which upheld the judgment of the Punjab & Haryana High Court dated 28 March 2018 wherein it was held that sale of natural gas purchased from sellers based in Gujarat to Carpo Power in Haryana will qualify as an inter-state sale pursuant to the extant Section 8(3)(b) of the CST Act. Accordingly, the Haryana Government was ordered to issue C Forms, regardless of goods and services tax (GST) laws being brought into effect. This decision had put to rest any confusion that reigned regarding issuance of C Forms under the CST Act on goods being purchased by entities in the specified sectors. However, with the present proposed amendment, the Pandora's box is opened yet again and these sectors will suffer increased tax costs, subject to a court challenge.



04.

GOODS AND SERVICES TAX

Proposed Legislative Changes

- A retrospective amendment (with effect from 1 July 2017) has been introduced to expand the scope of supply under Section 7 of the Central Goods and Services Tax Act, 2017 (CGST Act) to include any transaction involving supply of goods/ services between any person (other than an individual) and its members or constituents for a valuable consideration. In order to supplement this amendment and to avoid any conflict with judicial precedents, an explanation is proposed to be introduced which clarifies that the entity and its members / constituents would be considered to be distinct persons and that the supply would be construed to have been made from the entity to its members / constituents or vice-versa. Further, Entry 7 of Schedule II which relates to supply of goods by unincorporated associations or body of persons to a member thereof for cash, deferred payment or other valuable consideration being treated as supply for the purposes of GST is also being deleted retrospectively with effect from 1 July 2017.

Comments: Entry 7 to Schedule II to the CGST Act brought supply of goods between unincorporated entities and its constituent members within GST ambit but did not include supply of services by such unincorporated entities to its constituents / members. The proposed amendment will eliminate distinction between goods and services.

The Supreme Court in **Calcutta Club Ltd (Civil Appeal No. 4184/2009)** and **Ranchi Club Ltd (Civil Appeal No. 7497/2012)** has held that supply by unincorporated entities to its constituents / members would not be subject to sales tax or service tax owing to the doctrine of mutuality in spite of Article 366(29A)(e) of the Constitution of India and Section 65(25a)/ Section 65(25aa) of the Finance Act, 1994 which expressly sought tax on such supplies. This retrospective amendment would be tested on the touchstone of the doctrine of mutuality.

- An additional condition has been inserted for the availment of input tax credit in the form of Section 16(2)(aa) of the CGST Act wherein it is necessary now (i) for the supplier to provide details of the relevant invoice / debit note in its FORM GSTR-1; and (ii) for the details of such invoice / debit note to be communicated to the recipient of the supply.

Comments: The insertion of this condition has been done with the intent to introduce a substantive condition of furnishing the details in FORM GSTR-1 for availing input tax credit. Also, by making it necessary to communicate the said details, it provides statutory recognition to the newly introduced FORM GSTR-2B as well as FORM GSTR-2A.

- Sections 35(5) and 44 of the CGST Act relating to furnishing of annual returns and reconciliation statement have been amended to do away with the mandatory requirement of getting annual accounts audited and the reconciliation statement submitted by a chartered accountant or a cost accountant. It is now permitted for entities liable to file annual returns and reconciliation statements to submit self-certified reconciliation statements along with audited financials. Further, power has been granted to the Commissioner to exempt any class of persons from filing annual returns upon receiving such recommendation from the Goods and Services Tax Council (GST Council).

Comments: The proposed amendment is a welcome relief for trade as an additional compliance is done away with. However, the trade has to be cautious, as the provisions enabling filing extensions have been done away with, and therefore the timelines will have to be followed strictly. It is to be seen if the substitution of Section 44 of the CGST Act has come with an unintended deletion of the provision to accommodate filing extensions.

- The proviso relating to levy of interest on 'net cash liability' under Section 50 of the CGST Act has been retrospectively made applicable from 1 July 2017 instead of 1 September 2020.

Comments: The legislature has sought to rectify the problems that were created when the provision was prospective in nature. This

As expected, there has been a lot of focus on rate rationalisation as there is understandably a need to broaden the tax base. Another area of concern has been fake GST invoices and the endeavour of the government would now be to focus on artificial intelligence to track such cases of fake invoices. Further, there has been certain amendments in customs to address issues of differential tax ambiguities such as in case of denatured ethyl alcohol. This is a big industry issue and must be resolved pragmatically.

- **Abhishek A Rastogi**
Partner, Indirect
Tax



has given legal sanctity to the assurances of the Central Government to the trade and industry by way of this retrospective amendment.

- An explanation is proposed to be inserted to Section 75 of the CGST Act to clarify that recovery proceedings, in respect of 'self-assessed tax' on outward supplies which have been declared in FORM GSTR-1 but not included in FORM GSTR-3B, can be initiated even without resorting to proceedings under Section 73 or Section 74 thereof.

Comments: This amendment is made to reconcile with situations where entities will only be furnishing monthly FORM GSTR-1 and FORM GSTR-3B on a quarterly basis as permitted under the Quarterly Return Monthly Payment Scheme. Also, it appears the Central Government will now have the leeway of initiating recovery proceedings against persons who may show supplies in their FORM GSTR-1 which may not be followed by due payment without requirement of following the due process set out under Section 73 or 74 of the CGST Act. Considering this deeming fiction of 'self-assessed tax' that is created, it may be possible for recipients to take the defence (against disputes concerning availing of input tax credit) that once the supplies have been adequately reflected in the FORM GSTR-1, which would be followed by FORM GSTR-2A/2B, the condition requiring actual payment of GST for availing input tax credit has been diluted since adequate mechanism for direct recovery of the said tax exists.

- Scope of the power to provisionally attach any property (including bank accounts) under Section 83 of the CGST Act is proposed to be widened. In addition to the person who is the subject of the investigation, Commissioners are now empowered to provisionally attach, to protect the interest of revenue, any property belonging to persons who retain the benefits arising out of an offence or at whose instance the offence is committed. Such power can now be exercised even at the summons' stage.

Comments: This amendment is a follow-up to the amendment introduced by the Finance Act 2020 which had empowered the Government to proceed against abettors and

punish such persons along with the person who had actually committed the offence. This has been carried out considering the rising number of cases of circular trading/ fake invoicing.

- Necessary amendments have been carried out to Section 74 of the CGST Act to separate proceedings relating to seizure and confiscation of goods and conveyances in transit from proceedings involving *simpliciter* recovery of GST. Therefore, even if the primary proceedings (whether or not involving suppression/ misstatement etc.) for recovery of tax relating to a person has been concluded, it will not automatically result in the closure of proceedings relating to seizure/ confiscation of goods initiated under Sections 129 and 130 respectively.

Comments: The intended effect of this amendment is that seizure and confiscation proceedings will be analysed independently and no relief will be granted to other persons who may become liable to pay penalty under allied provisions concerning seizure/ confiscation, even if the primary proceedings are settled.

- Provisions pertaining to detention, seizure and release of goods and conveyances in transit (Section 129 of the CGST Act) and those pertaining to confiscation of goods or conveyances (Section 130 of the CGST Act) are proposed to be delinked. Consequences of detention and seizure of goods and conveyances in transit are proposed to be made harsher and amount of penalty payable in such cases is proposed to be increased. The important changes proposed in this regard are below:
 - Goods and conveyances once detained and seized, shall be released upon payment of penalty of 200% of the tax payable on such goods, and in case of exempted goods, on payment of an amount equal to 2% of the value of goods or INR 25,000, whichever is less, **where the owner of the goods comes forward for payment of penalty**; or on payment of penalty equal to 50% of the value of goods or 200% of tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to 5% of the value of goods or INR 25,000, whichever is less, **where**



the owner of the goods does not come forward for payment of penalty.

- Penalty proceedings shall be conducted in an expedited and time-bound manner, viz., notice has to be issued within 7 days of detention / seizure and order to be passed within the next 7 days.
- Non-payment of penalty within 15 days of the order shall render the goods or conveyances liable to be sold to recover the penalty payable.
- Appeals against orders passed subsequent to seizure or detention of goods or conveyances, can be filed before the Appellate Authority only after depositing 25% of the penalty imposed.
- Penalty payable in case of confiscation of goods or conveyances shall be imposed independent of all other penalties and shall extend up to hundred per cent of the tax payable on such goods.

Comments: The Gujarat High Court in Synergy Fertichem Pvt. Ltd (Special Civil Application No. 4730 of 2019) had held that sections 129 and 130 of the CGST Act were mutually exclusive and independent of each other. By legislatively delinking the two, the Central Government has now clarified the position.

The Central Government has also addressed the previously existing ambiguity insofar as cases where movement of tax-paid goods was considered, which resulted in payment of tax twice before the goods or conveyance could be released.

The above amendments prescribe harsher punishments which the Government will undoubtedly seek to strictly enforce, given the increase in the number of illegal movements across the country. However, officers in charge of implementing these provisions on the ground should be sensitized to ensure that clerical errors / omissions and those are not looked at with the same lens as violations undertaken with an intent to evade tax.

05.

INTEGRATED GOODS AND SERVICES TAX ACT, 2017

Proposed Legislative Changes

- Section 16 of the Integrated Goods and Services Tax Act, 2017 is proposed to be amended to introduce the following changes:
 - restrict the benefit of zero-rates supply made to a special economic zone only when the same is for authorized operations;
 - linking the refund of unutilized input tax credit to realization of sale proceeds from export of goods and obligating the exporter to return the refund amount along with interest, in case of failure to realize the sale proceeds within the time limit prescribed under the Foreign Exchange Management Act, 1999; and
 - restricting the option of zero-rated supply on payment of tax, to notified class of taxpayers or supplies of goods or services.

Comments: The proposed amendment seeks to rationalize the procedure with intent of the government. We believe that it is likely to cause hardships to exporters who were claiming refund after paying IGST on exports since they may now have to necessarily go through the bond or LUT route (unless included in the notified categories of exceptions).

Further, the amendment seeks to plug the gap in GST laws by granting power to the legislature to restrict refund of the IGST paid on zero rated supplies only to a few notified categories. Earlier, since no such restriction could have been placed in absence of such powers under the statute, the rules which placed such restrictions, for example Rule 96 (10) of the CGST Rules (pertaining to exporters availing benefit of certain notified exemptions vis-à-vis the inputs used by them in manufacturing the export goods) were amenable to Constitutional challenge which may not be the case going forward.

The amendment linking the receipt of foreign exchange remittance in case of export of goods with refund claims therefor is akin to a similar



linkage for export of services and to that extent, harmonizes the treatment of export of goods and services.

Lastly, restricting benefits of the zero-rated supply only to made to special economic zones to authorized operations appears to provide legislative authority to similar interpretations reached by various advance ruling authorities (which were criticized since the IGST Act did not provide for such a restriction).

- KCO | Indirect Tax Team

For any queries please contact: editors@khaitanco.com

06.

CENTRAL EXCISE

The Finance Bill 2021 proposes changes in Chapter 24 in the Fourth Schedule of the Central Excise Act, 1944 in accordance with upcoming Harmonised System Nomenclature (2022). For ease of reference, we have detailed the changes under separate headings, which can be accessed at [link](#).



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