

PRE-BUDGET MEMORANDUM 2021

Indirect Taxes



**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF
INDIA
NEW DELHI**



INTRODUCTION

The Institute of Chartered Accountants of India (ICAI) considers it a privilege to submit the Pre-Budget Memorandum, 2021 on Indirect Taxes other than GST to the Government of India.

The Memorandum contains suggestions on issues relating to Customs Duty for the consideration of the Government while formulating the tax proposals for the year 2021-22. We believe that addressing the said issues would make tax laws simple, fair and transparent and avoid litigation.

In case of any further clarification or data is considered necessary, we shall be pleased to furnish the same.

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I. EXECUTIVE SUMMARY

S. No.	Topics	Suggestions
A. CUSTOMS DUTY		
1.	Substitution of word 'consumer' in Section 28B of Central Excise Act, 1944 and Section 28-D of Customs Act, 1962	Section 28B of Central Excise Act, 1944 and Section 28-D of Customs Act, 1962 may be amended by substituting the word "buyer" with the word "consumer".
2.	Notification No. 52/2003-Custom (Tariff) need to be amended to provide for proportionate reversal of BCD foregone on Capital Goods	It is suggested that Notification No.52/2003-Cus(Tariff) be suitably amended to provide for proportionate reversal of BCD foregone on Capital Goods.
3.	Simplifying the procedures of debonding/exit from EOU	The procedures provided in Notification No.52/2003-Custom (Tariff) and FTP for debonding/ exit from EOU status take up to a year to de-bond from EOU status. Hence, it is suggested to make suitable amendment in FTP and Customs Notification No.52/2003- Custom (Tariff) to simplify the procedures of debonding/Exit within a time limit.
4.	Lack of adequate import duty concession for Research & Development (R & D)	It is suggested to issue suitable customs Notification so as to provide duty free import of Inputs and capital goods for R & D purposes. Further, it is suggested to allow refund of GST on procurement of inputs, capital goods and input services from DTA on payment of GST.
5.	Need to accelerate the grievance redressal mechanism	A number of export cases remain pending for a long time in the DGFT/DoC/ CBIC and other related Departments on EODC issues. Therefore, it is suggested to quicken up the grievance redressal mechanism without any red tapism.
6.	Classification issues in IT products	The Customs Tariff has to rationalize the rate of BCD for IT products to avoid any different



		classification being followed by customs authorities. This will help in reducing cost for the importers and exporters.
7.	Lacunae in Section 110A of Customs Act, 1962	Section 110A provides for provisional release of seized imported goods by the competent adjudicating authority which takes long time and the goods having shelf life or expiry dates could not be released on time. Hence, it is suggested for quick release of perishable goods or goods whose shelf life is at verge of expiry. Also, this section should include the case where order is pending with appellate authority.
8.	Free gifts and samples limit for import or export by Courier	It is suggested that the value limit of 'free gifts' and 'commercial samples' of import or export be increased from present Rs.25000 to Rs.5 lakhs. This needs an amendment in FTP also before amending the relevant Notification of Customs.
9.	Rate of duty on Laptop	It is suggested that the import of laptop may be given concessional rate with exemption from whole of IGST for a period of one year to enable the employers to continue the work from home system. This exemption may be given for both baggage and regular imports.
10.	Increase in Baggage Limits	It is suggested that the baggage provisions be amended to enhance the baggage limit from Rs. 50,000/- to Rs.1,00,000/- for duty free allowance considering the effect of inflation on exchange rate
11.	Circular No.37/2018 - Customs- Restriction on grant of refund of IGST	It is suggested that this Circular be withdrawn considering many High Court decision on the subject matter in favour of exporters. Where the Government contemplates expanding the scope of the restrictions for grant of refund, the same may have to be brought only by way of an amendment to the existing provisions of GST law.
12.	Exclusion of ship demurrage charges for the purpose of valuation	Since Ship demurrage is applicable after the ship reaches the port, it cannot be part of the value until the place of importation. Therefore, it is



		suggested to provide an exclusion in Rule 10 of Customs Valuation (Determination of Value of Imported Goods) for ship demurrage charges on chartered vessels.
B. OTHERS		
13.	Members of GSTAT	It is suggested that Chartered Accountants be made eligible for being appointed as Members of the GSTAT as in case of ITAT.
14.	Nomination of ICAI at GST Council	Considering the technical knowledge base of the Institute of Chartered Accountants of India in the area of Indirect Taxes/GST, it is humbly suggested that it may be nominated at Technical Committee on Indirect Taxes.



DETAILED SUGGESTIONS

A. CUSTOMS DUTY

1. Substitution of word 'consumer' in Section 28B of Central Excise Act, 1944 and Section 28-D of Customs Act, 1962

Section 28B of Central Excise Act, 1944 and Section 28-D of Customs Act, 1962 may be amended to the effect that 'Every person who has paid the duty on any goods under this act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of duty to the 'consumer' of such goods.

Suggestion

The term 'buyer' may be substituted for the word 'consumer'.

2. Notification No. 52/2003-Custom(Tariff) need to be amended to provide for proportionate reversal of BCD foregone on Capital Goods

On introduction of GST levy from 01/07/2017, where a 100% EOU/EHTP/STP/BTP supplies goods in DTA, GST is payable. The issue was clarified through FAQs at the CBIC Portal that the proportionate customs duty foregone on the import content used in DTA supplies has to be reversed. The clarification deals with reversal of proportionate Import duty on 'inputs' and does not cover 'capital goods'.

Rational

Notification No. 52/2003-Cus(Tariff) dated 31st March, 2003 has no suitable provision to pay proportionate BCD foregone. The provisions available in Notification No. 52/2003-Cus enables to pay customs duty foregone where imported goods are not used in manufacture or clearance of manufactured goods in DTA and export and not for reversal of proportionate BCD alone.

Suggestion

It is suggested Notification No.52/2003-Cus(Tariff) be suitably amended to provide for proportionate reversal of BCD foregone on Capital Goods.

3. Simplifying the procedures of debonding/exit from EOU

The procedures provided in Notification No.52/2003-Custom (Tariff) and FTP for deboning/ exit from EOU status take up to a year to de-bond from EOU status.

Suggestion

It is suggested that FTP and Customs Notification No.52/2003- Custom (Tariff) be amended to simplify the procedures of deboning/Exit within a time limit.



4. Lack of adequate import duty concession for Research & Development (R & D)

We need to focus on R&D and product innovation to give impetus to our export promotion strategy and to survive in a dynamic and transformational market. It is ironic that though over 300 out of 500 Fortune companies have their R&D base in India, we are amongst the lowest spenders on R&D. Exports have to be treated as a 'National Priority' and all stakeholders (Central and State Governments, regulatory and promotional agencies, service providers and entrepreneurs) need to be on the same page to facilitate exports. An institutional set-up to address the problems and challenges faced by exporters in the shortest time frame is the need of the hour. A three-tier structure with the district, State and Central level working on an electronic platform would be ideal and the officers attending such meetings should be empowered to take quick decisions. Despite a thriving domestic market, exports are an important and integral part of our economy. Therefore, a rebound in exports during the post COVID-19 period is essential for a revival of the domestic economy. A resilient exports sector has successfully done so in the past and with the support of an enabling and supportive ecosystem, it can certainly deliver now as well.

Suggestion

It is suggested to issue suitable customs Notification so as to provide duty free import of Inputs and capital goods for R & D purposes. Further, it is suggested to allow refund of GST on procurement of inputs, capital goods and input services from DTA on payment of GST.

5. Need to accelerate the grievance redressal mechanism

A number of export cases remain pending for a long time in the DGFT/DoC/CBIC and other related Departments on EODC issues. While CBIC/DoC are taking measures towards ease of doing business, the approach of field formations is that no action on any issues is being taken up with the regional DCs. Even the meeting the ADE/JD is only formality and no redressal is there for exporters. At times, provisions of FTP, Customs/Central Excise/Service Tax Acts, etc. are interpreted differently at different locations.

Suggestion

There is a dire need to quicken up the grievance redressal mechanism without any red tapism.



6. Classification issues in IT products

Classification issue in IT products adds to the cost of importers and exporters. It is necessary to resolve the classification issues of IT products by a committee as numerous IT products get introduced into the market and classification by customs under different headings or sub-headings sometimes with just slight modifications and there is no specific classification available in the customs tariffs for these products.

Suggestion

The Customs Tariff has to rationalize the rate of BCD for IT products to avoid any different classification being followed by customs authorities. This will help in reducing cost for the importers and exporters.

7. Lacunae in Section 110A of Customs Act, 1962

Section 110A provides for provisional release of seized imported goods by the competent adjudicating authority upon a request made by the owner of the seized goods, with such security and conditions as the adjudicating authority may require". Provisional release of goods takes long time and the goods having shelf life or expiry dates could not be released on time. Also, this provision includes provisional release of goods when order is pending before adjudicating authority only and not does not includes cases where order is pending before appellate authority.

Suggestion

It is suggested a quick release of perishable goods or goods whose shelf life is at verge of expiry. Also, this section should include the case where order is pending with appellate authority.

8. Free gifts and samples limit for import or export by Courier

The value limit of 'free gifts' and 'commercial samples' of import or export were revised in 2007 to boost exports. Since GR forms are dispensed with, the provision containing GR waiver is redundant and consequently the value limit of export by courier requires enhancement.

Suggestion

It is suggested that the value limit of 'free gifts' and 'commercial samples' of import or export be increased from present Rs.25000 to Rs.5 lakhs. This needs an amendment in FTP also before amending the relevant Notification of Customs.



9. Rate of duty on Laptop

Import of one laptop under Baggage is exempted from BCD. But there is no exemption from IGST. Due to Complete and partial lockdown in India on account of pandemic, the demand for laptop has gone up.

Suggestion

It is suggested that the import of laptop may be given concessional rate with exemption from whole of IGST for a period of one year to enable the employers to continue the work from home system. This exemption may be given for both baggage and regular imports.

10. Increase in Baggage Limits

Rule 3 of Baggage Rules provides that an Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant, arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage used personal effects, travel souvenirs and articles other than those specified, upto the value of **50 thousand rupees** if these are carried on the person or in the accompanied baggage of the passenger.

Suggestion

It is suggested that the baggage provisions be amended to enhance the baggage limit from Rs. 50,000/- to Rs.1,00,000/- for duty free allowance considering the effect of inflation on exchange rate.

11. Circular No.37/2018 – Customs- Restriction on grant of refund of IGST

As per Circular No.37/2018 – Customs dated 9th October 2018, if the exporters had availed the option to take drawback at higher rate in place of IGST refund on their own volition as part of the prescribed documentation/ forms, it would not be justified allowing exporters to avail IGST refund after initially claiming the benefit of higher drawback.

Issue

While the intention of the CBIC and GST authorities by applying the provisions of the Circular was to ensure that no exporter is doubly benefitted for the same transaction, the same does not have authority under the existing provisions of GST law to deny the legitimate refund of duty suffered.

Suggestion

It is suggested that this Circular be withdrawn considering many High Court decision on the subject matter in favour of exporters. Where the Government contemplates expanding the scope of the restrictions for grant of refund, the same may have to be brought only by way of an amendment to the existing provisions of GST law.



12. Exclusion of ship demurrage charges for the purpose of valuation

As per Customs Valuation (Determination of Value of Imported Goods) Amendment Rules, 2007, the transaction value is to be determined at the place of importation and all expenses till the goods reaches place of importation is included as per Rule 10 of the said rules. Further explanation to Rule 10 provides that ship demurrage charges on chartered vessels is includable in the cost of transport of the imported goods.

Issue

Since Ship demurrage is applicable after the ship reaches the port, it cannot be part of the value until the place of importation.

Suggestion

It is suggested to provide an exclusion in Rule 10 of Customs Valuation (Determination of Value of Imported Goods) in case of ship demurrage charges on chartered vessels.

B. OTHERS

13. Members of GSTAT

Suggestion

It is suggested that Chartered Accountants be made eligible for being appointed as Members of the GSTAT as in case of ITAT.

14. Nomination of ICAI at Technical Committee on Indirect Taxes/GST

Suggestion

Considering the technical knowledge base of the Institute of Chartered Accountants of India in the area of Indirect Taxes/GST, it is humbly suggested that it may be nominated at Technical Committee on Indirect Taxes.