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Analysis of Union Budget 2023-24 : Proposals on Indirect Taxes



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This article aims at making an analysis of the proposals made in the Union Finance Bill, 2023, being presented in the Parliament on 1st February, 2023 by the Hon'ble Union Finance Minister of India, Smt. Nirmala Sitharaman. This analysis is limited to amendments proposed under the indirect tax laws. Since there is no amendment proposed under the Central Excise Law, we are restricting our discussion to the extent of amendment proposals made in the Customs Act, 1962, Customs Tariff Act, 1975, Central Goods and Services Act, 2017 and Integrated Goods and Services Tax Act, 2017.

[A] AMENDMENTS IN THE CUSTOMS ACT, 1962

1. Clause 123 amending section 25(4A): Power to grant exemption from duty

Section 25(4A) of the Customs Act is proposed to be amended to insert a proviso to the effect that the validity period of two years shall not apply to exemption notifications issued in relation to multilateral or bilateral trade agreements; obligations under international agreements, treaties, conventions or such other obligations including with respect to UN agencies, diplomats, international organizations; privileges of constitutional authorities; schemes under Foreign Trade Policy; Central Government schemes having validity of more than two years; re-imports, temporary imports, goods imported as gifts or personal baggage; any duty of customs under any law for the time being in force including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.

2. Clause 124 amending section 127C: Procedure on receipt of an application under section 127B

A new sub-section (8A) is proposed to be inserted in section 127C so as to specify a time limit of 9 months from the last day of the month in which the application is made, for disposal of the application filed before the Settlement Commission.

[B] AMENDMENTS IN THE CUSTOMS TARIFF ACT, 1975

Retrospective Amendments (w.e.f. 01.01.1995)

3. Clause 125 amending sub-sections (6) & (7) of section 9: Countervailing duty on subsidized articles

Sub-sections (6) & (7) of section 9 of the Customs Tariff Act, 1975 are proposed to be amended to remove ambiguity and clarify that determination and review for countervailing duty refers to determination and review of countervailing duty in a manner prescribed by rules under the Act.

4. Clause 125 amending sub-sections (5) & (6) of section 9A: Anti-dumping duty on dumped articles

Sub-sections (5) & (6) of section 9A of the Customs Tariff Act, 1975 are proposed to be amended to remove ambiguity and clarify that determination and review for anti-dumping duty

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A new sub-section (8A) is proposed to be inserted in section 127C so as to specify a time limit of 9 months from the last day of the month in which the application is made, for disposal of the application filed before the Settlement Commission.

refers to determination and review in a manner prescribed by rules under the Act.

5. **Clause 125 amending section 9C: Appeal**

Section 9C of the Customs Tariff Act, 1975 is proposed to be amended to remove ambiguity and clarify that appeals under this section lie against the determination or review thereof made by an authority in a manner as specified by rules notified under sections 8B, 9, 9A and 9B of the Act. An explanation is also proposed to be inserted to provide the meaning of determination or review thereof.

[C] AMENDMENTS IN THE CGST ACT, 2017

(It seems that there is an inadvertent mistake in the Bill of not mentioning the date of effectiveness of the proposed amendments. However, the Memorandum to the Bill has made a mention of the effectiveness of the proposed amendments.)

6. **Clause 128 amending sub-sections (2) & (2A) of section 10: Composition levy**

Sections 10(2)(d) and 10(2A)(c) of the CGST Act are proposed to be amended so as to remove the restriction imposed on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the Composition Levy.

Comments:

- (i) The amendment indicates that the restrictions in the case of supply of service remain intact as earlier for availing the benefit of composition scheme.
- (ii) This amendment means that only intra-State supplies can be made through ECO's by a composition taxpayer. This may make the proposed amendment to be merely an academic proposition.
- (iii) Further, the ECO's may face penal action under proposed section 122(1B) wherein a sum of Rs. 10,000/- or an amount equivalent to the amount of tax involved may be imposed as a penalty in case it allows inter-state supply by a unregistered person or by a composition taxpayer.

7. **Clause 129 amending section 16(2): Eligibility and condition for taking input tax credit**

Second and third provisos to section 16(2) of the CGST Act are proposed to be

amended to align the said sub-section with the return filing system provided in the said Act.

Comments:

- (i) As per the current provisions, if a recipient does not make the payment of the value of supply to the supplier within 180 days, he would be required to add the ITC availed to his output tax liability. To align with the return filing system, the amended proviso to section 16(2) of the CGST Act 2017 provides for ITC reversal along with interest u/s 50 in such cases. The respective change in the corresponding rule 37 had already been carried out vide *Notification No. 19/2022 - CT dated 28.09.2022 w.e.f 1st October 2022.*
- (ii) Further, after making payment of such amount, one can re-avail the credit without any time limit. To clarify further, it has been provided that re-availment would only be allowed if the said value of supply has been paid to the supplier. This may bring into question cases where a recipient makes the payment of the value of supply to any other person other than the supplier (e.g., disputed rent paid under the Rent Control law, direct payment to the Government instead of the creditor as part

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of recovery provisions under section 79 etc.)

8. Clause 130 amending sub-sections (3) & (5) of section 17: Apportionment of credit and blocked credits

Explanation to section 17(3) of the CGST Act is proposed to be amended so as to restrict availment of input tax credit in respect of certain transactions specified in Para 8(a) of Schedule III of the said Act, (supply of warehoused goods to any person before clearance for home consumption is neither supply of goods nor supply of services) as may be prescribed, by including the value of such transactions in the value of exempt supply.

Further, section 17(5) is also proposed to be amended so as to provide that input tax credit shall not be available in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility (CSR) referred to in section 135 of the Companies Act, 2013.

Comments:

(i) It seems that the explanation to section 17(3) is proposed to be amended to overturn the decisions of *Sandeep Patil v. UOI* [2019(31) GSTL 398-Mum] and *CIAL Duty Free* [2020(42) GSTL 481-Kerala], wherein it was held that supply of warehoused goods before clearance for home consumption

would not preclude the supplier's claim of ITC.

(ii) However, the amendment may give rise to litigation as to whether the same will have prospective or retrospective effect. In the case of *Commissioner v. Prakash Shree Processing* [2017 (345) ELT 178 (SC)], the Hon'ble Apex Court held that amendment made by way of insertion of explanation seeks to clarify the existing provision of law and thereby construed as being applicable retrospectively. However, in this case, the amendment increases the scope of the provision and is not merely clarifying the existing provision.

(iii) It may be worth mentioning that high sea sales (i.e., goods sold after dispatch from the port of origin outside India before clearance for home consumption) would still not be treated as an exempt supply for the purpose of ITC reversal.

(iv) It has always been a matter of debate whether ITC would be eligible to companies in respect of goods or services or both used for meeting the obligations of Corporate Social Responsibility under section 135 of the Companies Act 2013. It was argued

that the same not be considered as a gift which is gratuitous and without any contractual obligations and hence, the disallowance under section 17(5)(h) could not be attracted.

(v) However, all such dispute have been put to rest by the proposed amendment which provides that such obligations met by eligible companies as part of their CSR would not be eligible to avail ITC. Since this amendment is prospective, one can take a stand that ITC on such expenses would be eligible before this amendment stands notified. It may also be noted that only the companies mandated for CSR under section 135 of the Companies Act, 2013 would be affected by this amendment.

9. Clause 131 amending sub-section (1) & (2) of section 23: Persons not liable for registration

Sub-section (1) & (2) of section 23 of the CGST Act are proposed to be amended, with retrospective effect from 1st July, 2017, to provide that persons eligible for registration in terms of section 22(1) and compulsory registration under section 24 need not register, if exempt under section 23.

Comments:

Section 23 provides for exemption from registration

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under the GST law. On the other hand, Section 24 provides for compulsory registration under the GST law. There was a great deal of confusion about whether a person would require registration under the GST law if he fall under both of the above provisions. For example, a person is making wholly exempt supplies and also falls under the reverse charge liability notification.

Now, section 23 (persons not liable for registration) is proposed to be amended, to prevail over Section 22 (turnover-based registration limits) and Section 24 (persons liable for compulsory registration). Hence, a person exempt from registration under Section 23 would not be required to take registration irrespective of coverage under other registration provisions.

10. **Clauses 132, 133, 134 & 135 amending sections 37(5), 39(11), 44(2) & 52(15): Furnishing of returns in Forms GSTR-1, GSTR-3B, GSTR-9/9C & GSTR-8**

These sections of the CGST Act are proposed to be inserted so as to provide a time limit upto which the details of supplies under such sections can be furnished by a registered person. Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons.

Comments:

While the law prescribes late fees for delayed filing of return, there is no outer time limit prescribed up to which the returns could be filed. Through the proposed amendment in Section 37, 39, 44 and 52, it is provided that GSTRS-1, 3B, 9, 9C and 8 would not be allowed to be filed after 3 years from the due date of furnishing of the respective returns/statements for that financial year. For a certain class of registered persons (yet to be prescribed), this outer time limit may be extended by the Government.

11. **Clause 136 amending section 54(6): Refund of tax**

Section 54(6) of the CGST Act is proposed to be amended to remove the reference to the provisionally accepted input tax credit to align the same with the present scheme of availment of self-assessed input tax credit as per section 41(1) of the said Act.

Comments:

- (i) During the introduction of GST, there was a concept of provisional ITC till the same stood matched and accepted by the recipient. Since the one to one matching of ITC by recipient in GSTR-2 was never implemented, this only remained a theoretical concept under the law. Hence, this provision was altered, and the concept of provisional ITC was scrapped at multiple places through Finance Act,

2022. However, it was omitted to be removed from the provisional refund provisions in section 54(6).

- (ii) To streamline this, the provisional refund provisions allowing 90% of claimable refunds have been modified to exclude the concept of provisional ITC therefrom. This will remove the anomaly which existed in the law as explained above.

12. **Clause 137 amending section 56: Interest on delayed refunds**

Section 56 of the CGST Act is proposed to be amended so as to provide for an enabling provision to prescribe manner of computation of period of delay for calculation of interest on delayed refunds.

Comments:

- (i) Section 56 of the CGST Act, 2017 provides for interest on delayed refund where the amount is not received within 60 days from the date of receipt of application. Currently, the law does not provide any specific manner of computation of interest and conditions / restrictions, if any, for this purpose.
- (ii) Section 56 is proposed to be amended to provide an enabling provision for manner of computation of such interest on delayed refunds along with the relevant conditions and

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Section 54(6) of the CGST Act is proposed to be amended to remove the reference to the provisionally accepted input tax credit to align the same with the present scheme of availment of self-assessed input tax credit as per section 41(1) of the said Act.

restrictions. Hence, one can expect the rules prescribing the manner and conditions/restrictions for computing the interest on delayed refund to be inserted after such provision gets notified.

13. **Clause 138 amending section 122(1B): Penalty for certain offences**

A new section 122(1B) of the CGST Act is proposed to be inserted to provide penal provisions applicable to Electronic Commerce Operators in case of contravention of provisions relating to supplies of goods made through them by unregistered persons or composition taxpayers.

Comments:

- (i) The responsibility has now been cast upon such electronic commerce operators to ensure that only eligible persons are allowed to supply through their portals.

(ii) In the following cases, the said electronic commerce operator would be liable to a penalty of a higher of Rs. 10,000 or the tax amount involved:

- A. Any unregistered person who was liable to be registered and not exempted by way of notification, is allowed to make the supply of goods or services through the website of such electronic commerce operators.
- B. A composition dealer (not otherwise permitted to make inter-state supply under GST) is allowed to make inter-state supply through the website of such electronic commerce operators.
- C. Fails to furnish information regarding supplies made by an unregistered person through its website in GSTR-8.

(iii) The tax amount involved in point (ii) would be computed assuming that the supply been made by a regular tax payer.

14. **Clause 139 amending section 132(1): Punishment for certain offences**

Section 132(1) of the CGST Act is proposed to be amended to decriminalize

offences specified in clause (g), (j) and (k) of the said sub-section and to increase the monetary threshold for launching prosecution for the offences under the said Act from one hundred lakh rupees to two hundred lakh rupees, except for the offences related to issuance of invoices without supply of goods or services or both.

Comments:

- (i) Through the proposed amendment in section 132 of the CGST Act 2017, the following offences would be decriminalized and no prosecution would be launched against them:
- a) Obstruction or prevention of an officer in discharge of his duties
 - b) Tampering with or destroying any material evidence or documents
 - c) Failure to supply information or supplying false information required under the law
- (ii) Further, the limit for prosecution is proposed to be increased from Rs. 1 crore to Rs. 2 crores for all the offences except if the person is engaged in the issuance of fake invoices without actual supply of goods or services. Only for the issuance of fake invoices, the limit of Rs. 1 crore would still continue for the purpose of prosecution.

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15. Clause 140 amending section 138(1): Compounding of offences

First proviso to section 138(1) of the CGST Act is proposed to be amended to simplify the language of clause (a), to omit clause (b) and to substitute the clause (c) of said proviso to exclude the offences relating to issuance of invoices without supply of goods or services or both from the scope of compounding as provided under the said Act. It further seeks to amend sub-section (2) to rationalize the amount for compounding of various offences by reducing the minimum as well as maximum amount for compounding.

Comments:

- (i) Section 138 of the CGST Act 2017 allows for the compounding of certain offences upon payment of the applicable amount and offers protection from further proceedings under the GST law. The following amendments have been proposed to such provisions:
- Value limit of Rs. 1 crore for supply in respect of compounding of certain offences is proposed to be removed.
 - Earlier, a person accused of committing an offence under any other law could not apply for compounding. This restriction is proposed to be removed.

- (ii) Certain offences are proposed to be removed from prosecution provisions (as provided in point no. 14 above). Therefore, there would not be compounding for such offences for which prosecution is not provided under law.

- (iii) Revised limits for compounding amount:-

Section 138(2) of the CGST Act 2017 provides the minimum and maximum limit for compounding of offences. The limit for compounding is proposed to be revised as below:

Nature	Current	Revised
Minimum Limit	Higher of Rs. 10,000 or 50% of tax involved	25% of the tax involved
Maximum Limit	Higher of Rs. 30,000 or 150% of tax involved	100% of the tax involved

16. Clause 141 amending section 158A: Sharing of information by GST portal with other systems

A new section 158A is proposed to be inserted in the CGST Act to prescribe the manner and conditions for sharing of the information furnished by the registered person in his return or in his application of registration or in his statement of outward supplies, or the details uploaded by him for generation of electronic invoice or e-way bill or any other details, as may be prescribed, on the common portal with such other systems, as may be notified.

Comments:

The Government is planning sharing the following information with other systems after obtaining the consent of the relevant supplier/recipient:

- Application for registration
- GSTR-1, GSTR-3B and GSTR-9 / 9C
- Invoices uploaded on the GST portal for e-invoice
- E-waybill particulars
- Other prescribed details

17. Clause 142 amending Schedule III of CGST Act

Schedule III of the CGST Act is proposed to be amended to give retrospective applicability to Para 7, 8(a) and 8(b) of the said Schedule, with effect from 1st July, 2017, so as to treat the activities/ transactions mentioned in the said paragraphs as neither supply of goods nor supply of services. It is also being clarified that where the tax has already been paid in respect of such transactions/ activities during the period from 1st July, 2017 to 31st January, 2019, no refund of such tax paid shall be available.

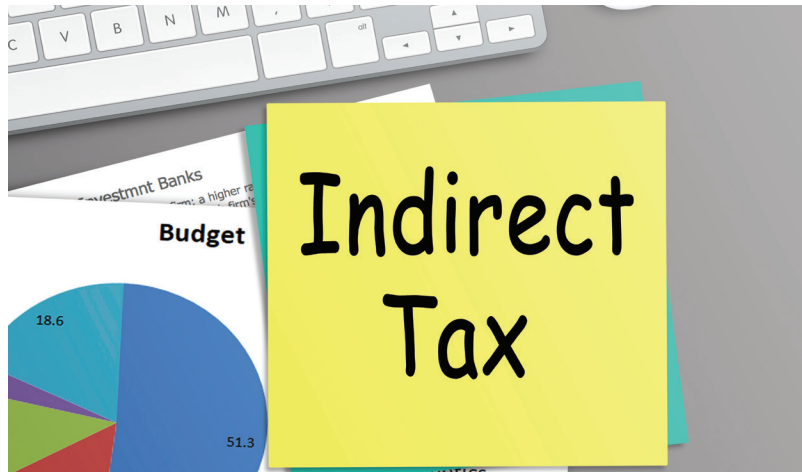
Comments:

- (i) Serial No. 7 and 8 of Schedule III of

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the CGST Act 2017 has been proposed to be applicable retrospectively from 1st July 2017. These entries are as follows:

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8. (a) Supply of warehoused goods to any person before clearance for home consumption;
- (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption. [High Sea Sale]
- (ii) The aforesaid transactions are popularly called as high sea sales, sales from customs bonded warehouses and merchant trading sales i.e. where sales take place before clearance for home consumption. Such supplies have been considered as neither a supply of goods nor a supply of services under Schedule III of the CGST Act 2017 effective from 1st February 2019. Due to persisting debates and doubts for the earlier period i.e., 1st July 2017 to 31st January 2019, Schedule



III is proposed to be amended to provide that this amendment would be applicable for the said period also.

[D] AMENDMENTS IN THE IGST ACT, 2017:

18. Clause 143 amending section 2(16) & 2(17): Non-taxable online recipient & OIDAR

Section 2(16) of the IGST Act is proposed to be amended so as to revise the definition of "non-taxable online recipient" by removing the condition of receipt of online information and database access or retrieval services (OIDAR) for purposes other than commerce, industry or any other business or profession to provide for taxability of OIDAR service provided by any person located in non-taxable territory to an unregistered person receiving the said services and located in the taxable territory. Further, it also seeks to clarify that the persons registered solely in terms of clause (vi) of Section 24 of CGST

Act shall be treated as unregistered person for the purpose of the said clause.

Also, clause (17) of the said section is proposed to be amended to revise the definition of "online information and database access or retrieval services" by removing the condition of rendering of the said supply being essentially automated and involving minimal human intervention.

Comments:

- (i) The OIDAR services are defined under section 2(17) of the IGST Act to mean services such as, advertising on the internet, providing cloud services, e-books, movie, music, software, gaming, etc.
- (ii) **OIDAR**
The scope of OIDAR services was restricted to cases which were essentially automated and not involving human intervention and were impossible to ensure in absence of information technology.

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The definition of online information and database access or retrieval services has been amended to omit the condition that the supply should be essentially automated and involving minimal human intervention. After the amendment, the only condition would be that the supplies are impossible to ensure in absence of IT. Without checking for automation or minimum human intervention, the supplies would be classified as OIDAR if they cannot be supplied without the assistance of information technology. Thereby, the scope of such OIDAR services seems to have been significantly expanded.

(iii) **Non-taxable online recipient**

Where services are provided in the nature of 'online information and database access or retrieval services' (like internet ads, cloud services, online e-books/music/movie/software/digital content/gaming etc.) and the same are received by a non-taxable online recipient for purposes other than commerce, industry or business, the tax is liable to be paid by the supplier even if located outside India.

(iv) Further, the condition that it should not be for business purposes is proposed to be removed. Therefore, any unregistered person taking such services for business purposes would not be liable to register under GST and pay taxes under RCM. Such taxes would continue to be discharged by the foreign supplier.

19. **Clause 144 amending section 12(8): Place of supply of services by way of transportation of goods**

Proviso to section 12(8) of the IGST Act is proposed to be omitted so as to specify the place of supply, irrespective of destination of the goods, in cases where the supplier of services and recipient of services are located in India.

Comments:

- (i) With effect from 1st February 2019, proviso to section 12(8) was inserted to provide the place of supply in case of transportation of goods as the destination of goods where the location of the supplier and recipient were in India and the destination of goods was outside India.
- (ii) Therefore, the logistics company taking goods out of India have been invoicing with IGST by showing the place of supply as 'Other territory' or 'Foreign

Country'. Thus, the revenue from such supply has not been accruing in the favor of the state where the recipient is located. In such cases, these have been disputes with regard to ITC. Recently a clarification has been issued vide Circular no. 184/16/2022-GST dated 27th December 2022 that the ITC would be fully available in such cases.

(iii) Despite this clarification, the recipient state (i.e. where the exporter is located) would be incurring a loss because it would not receive the revenue directly from the original supply but still provide ITC benefit to the exporter. To remove this anomaly and confusion regarding ITC availability, the place of supply provisions has been amended.

(iv) The place of supply even where the destination of goods is outside India would be as follows for the transportation of goods:

- a) Supply to registered person - Location of the registered person
- b) Supply to unregistered person - Location at which such goods are handed over for transport.

