

## Recent changes proposed under GST and Customs

*India is progressively reviving itself from the pandemic and marking its “Azadi ka Amrit Mahotsav” this year. As it is rightly said, “A journey of a thousand leagues begins with a single step.” The Budget 2022 seeks to lay the foundation and give a blueprint to steer the economy over the Amrit Kaal of next 25 years and focussing on the vision India@100. With the key vision, India@100, the Budget 2022 is set on 4 pillars—PM Gati Shakti, Inclusive Development, Productivity Enhancement & Investment, Sunrise Opportunities, Energy Transition, and Climate Action, and Financing of Investment. On the Indirect tax front, the Finance Bill 2022 proposes radical changes around various aspects such as ease of doing business, rationalisation of duties and taxes, review of existing exemptions, stronger compliance and trade facilitation measures. Read on...*



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The present article highlights important changes proposed in the Finance Bill 2022 relating to Customs and GST:

### Part I: Important changes proposed in Customs vide Finance Bill 2022

The proposed amendments in the Customs laws are based on key intent of domestic capacity creation, providing a level playing field to MSMEs, easing out raw material supply constraint and enhancing ease of doing business. Also, a measure has been taken to protect the import and export data submitted to Customs by importers or exporters in their declarations by making publishing of such information

unless provided by the law, as an offence under Customs Act.

### Specific conditions to be imposed to curb issue of undervaluation of imports

In lines with the intent of laying the budget, the section 14 of the Customs Act, 1962 which deals with valuation of goods is proposed to be amended to specify certain obligations on the importer of certain goods as may be notified to ensure imports are not undervalued. This will ensure additional revenue to the government exchequer and also a level playing field for domestic players. Further, as valuation has always been a point of litigation in various laws including



Customs, we can foresee diverse views basis the criteria being put forth in the notification.

### Additional responsibility entrusted on the adjudicating officials

An interesting amendment to the Customs Act is insertion of Section 110AA. As per the said section, an officer conducting an audit, inquiry, search or investigation on a subject matter and has *reasons to believe* that duty is short paid or erroneously refunded or drawback has been erroneously allowed, such officer would after inquiry, investigation or audit, transfer the documents along with a written report to the adjudicating officer or the officer to whom the adjudicating officer reports. This amendment will bring in further stricter compliance verification and ensure a high level of diligence at the adjudication level.

### Putting an end to the DRI story

- A crucial amendment brought in by the Finance Bill 2022 is inclusion of the Directorate of Revenue Intelligence (DRI), officers of Customs (Preventive) and audit officers as “Proper officer” in terms of Section 2(34) of the Customs Act. The Hon’ble Supreme Court decision in the case of Canon India Private Ltd was the talk of the town since March 2021. As per said decision, the DRI officers were not empowered to issue any show cause

notices and pass any adjudication orders to the taxpayer. This decision was in lines with the term used in Section 28, “the” proper officer. Basis the same DRI was not empowered as proper officer in terms of Section 2(34) and Section 5 of the Customs Act, 1962.

- Keeping an eye on the revenue loss to the government exchequer, the Finance Bill 2022 has brought in a provision with a retrospective effect. It is a well-accepted principle that the legislatures possess unlimited power to introduce retroactive provisions in the tax laws. As per the said retroactive amendment, the DRI and Preventive officers are empowered as “proper officer” under Section 2(34) and entrusted powers and functions in terms of Section 5 and 6 of the Customs Act, 1962. Further, the explanation as provided under the clause 96 of the Finance Bill 2022 specifies that – *any case pending for disposal as on date of commencement of the amended act, will be disposed in accordance with recent amendment.* Although, there may be various views mentioning that the aforesaid retroactive amendment is against the principle of natural justice, so far tax payers were able to take shelter under the rulings pronounced in the case of



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M/s. Canon India Private Limited and other similar rulings. However, with the amended provision the government has ensured the revenue leakage is plugged due to administrative loop hole in the powers entrusted to officials.

- Co-relating to the aforementioned amendment with the introduced section 110AA, it is pertinent to note that DRI officers who conduct inquiry, investigation etc. will be required to transfer the documents to adjudicating officer as the powers of adjudication lies with jurisdictional officer. Hence, ideally where on one end the actions taken by DRI till date will be considered valid, on the other hand the powers to issue notices and adjudicate are taken away.

### Rationalisation of duties

- With increased focus on ‘Make in India’, the Finance Bill proposes to thrust

upon easy access to raw materials and exports of Indian goods. Several exemption entries have been removed to bring in line with the domestic players. Sunset date is being stipulated as per section 25(4A) of the Customs Act, 1962 in respect of conditional exemption entries in respective notifications. This section, as brought in last year, prescribes validity period of conditional exemptions. Certain exemptions, like international commitments such as FTA, ITA, concessions emanating from Foreign Trade Policy like Advance Authorisation, and concessions under Phased Manufacturing Programmes (PMP) have been excluded from the purview of automatic expiry.

- Exemption from Health Cess, Agriculture Infrastructure and Development Cess (AIDC) and Road and Infrastructure Cess (RIC) has been provided for import of certain goods from neighbouring countries such as Bhutan, Nepal, Bangladesh. This will move towards reduction of dependency on imports from countries like China. Also, few exemptions have been provided in relation to the Anti-dumping duty levied for goods originating from Germany, Vietnam, China PR considering the

necessity and requirements in domestic market.

- Further, to make the Indian industry more efficient and competitive and to facilitate domestic manufacturing for the ambitious goal of 280 GW of installed solar capacity by 2030, an additional allocation of INR 19,500 crore for Production Linked Incentive for manufacture of high efficiency modules has been made in the Finance Bill 2022. Thereby, ensuring a step further towards successfully implementing the “*Atmanirbhar Bharat Abhiyaan*”.
- In concurrence with the National Policy for Rare Diseases, 2021, a new exemption is introduced for drugs or medicines, which are used for the treatment of rare diseases, when imported by Centre of Excellence (CoE) listed specifically or any other person/institution as recommended.
- With increased focus on generating more employment opportunities and digitisation in the country, the Telecom Sector is expected to roll out 5G mobile services within FY 2022- 23 through private telecom providers.
- The focus amongst the electronics sector is to promote the component producers and for the same, the customs duty

has been rationalised by introduction of phased wise manufacturing programme for the hearing, wearables and smart meters.

## Time-limit for validity of advance rulings changed

Where a taxpayer resorted to availing the benefit of advance ruling to save itself for future litigation and comply appropriately with the Customs law, the advance rulings were earlier valid up to the time there are any changes in law or facts on the basis of which the advance ruling has been pronounced. The proposed Finance Bill 2022 has introduced a validity time line of 3 years or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier. For taxpayers operating based on the judgement announced in the advance rulings earlier, such rulings will be valid up to 3 years from the date the bill receives its assent. Hence, going forward, the taxpayer will have to wisely choose between the options of advance rulings or assessments depending on the criticality and longevity of the case.

## Import of Goods at Concessional Rate Rules, 2017

- The important aspect in the duty concessions announced is the reliance placed on the Import of Goods at Concessional Rate Rules, 2017. The IGCR Rules, 2017 have been introduced for bonafide

exporters subject to fulfilling the requirement of exporting value added products manufactured using inputs imported under exemptions, within a period of six months. The amended rules bring in stronger compliance mechanism through ICEGATE and promote a digital compliance arena. The amendment brings in reduction in the time limit for periodic review from a quarterly basis to monthly basis.

- Although, the amendment to the rules have brought in greater flexibility in terms of digital compliances, there are certain specific requirements to be fulfilled by an importer. One such new requirement is submission of IIN (Import of goods at concessional rate Identification Number) and continuity bond number details while filing the bill of entry. This bond will be a running account wherein duty is debited once goods are cleared for home consumption. Further, last year the IGCR were amended to allow clearance of imported capital goods used for the specified purpose on payment of differential duty, along with interest, on depreciated value. The recent amended rules have prescribed the rates of depreciation on capital goods. While these amendments have provided clarification for importers,

few confusions have also arisen. For example,

- a) introduction of the continuity bond for all importers including EOU who import duty free under B 17 bond as per Notification 52/2003 Customs N.T. are presently unclear if the requirement for taking an additional continuity bond is required.
- b) The depreciation norms prescribed under the amended rules are different from the rate of depreciation prescribed under Notification 52/2003 Customs N.T. These practical challenges have to be represented to bring out a suitable circular clarifying the requirements for tax payers to carry on IGCR compliances.

Therefore, the Custom reforms have at one end initiated stricter vigilance requirements and at the other end aim at establishing a global supply chain to fulfil the deeply rooted motto of the Government “*vocal for local and local for global*”.

## Part II - Important changes proposed in GST vide Finance Bill 2022

### Amendment in Input tax credit eligibility

- The GST is now almost 5 years old, has its own highs and lows in terms of practicality. GST has been

introduced with the intent of seamless flow of input tax credit. However, such seamless flow of credit was expected through timely return mechanism between supplier and recipient i.e., the details of invoice reported by supplier in GSTR 1 would reflect in GSTR 2 of the recipient basis which the credit can be accepted/rejected and availed through monthly return GSTR 3. However, the system was not supportive due to lack of adequate infrastructure. Considering the same, provisions of matching of credits under Section 42 and 43 were not in force. Hence, during the inception period of GST, the credit was availed if the same is used in course or furtherance of business, taxpayer is in possession of valid tax invoice and has received the goods or services or both.

- In order to curb the practice of fake invoicing, Rule 36(4) of CGST Rules, 2017 was inserted effective from 9<sup>th</sup> October 2019 which provided for 20% provisional credit over and above the credit reflecting in GSTR 2A. To enforce stricter compliance the provisional credit was reduced to 10% from January 2020 and 5% from January 2021. However, the condition that the recipient is in position of valid tax invoice was no longer an appropriate argument as the amendment

# Indirect Taxes

vide Finance Act 2021 required that credit is availed if supplier declares the same in GST returns for outward supplies and remits tax liability. Such provision to ensure the supplier remits the liability was time and again challenged in various court of law considering it as against the principles of natural justice, taking shelter of doctrine of impossibility and beyond limitation.

- With lots of confusions and litigation on the credit availability, the situation has now been streamlined to some extent by removing the matching concept through Section 42 and 43 of the CGST Act, 2017.
- The proposed amendment to Section 16(2) (ba) mandates that credit can be availed basis an auto generated statement appearing in the GST portal at a specified period basis the details uploaded by the supplier in GSTR 1 returns. The auto generated statement will capture the details of eligibility and ineligibility of credits.
- The credit will be availed on a self-assessment basis only and not on provisional basis. It is pertinent to note that outward supplies as reported in GSTR 3B should not be lesser than reported in GSTR 1 of the same month. Hence, the proposed amendment will now overcome the previous issues in terms of payment

of tax by the supplier, which will be monitored through payment during GSTR 3B of the supplier. Further, recipient's ITC has also been subjected to the condition of supplier availing ITC correctly in accordance with the ITC in his auto generated statement, on which recipient has no control and if availed in excess, the same will have to be reversed. Also, to curb fake invoicing the credit can be availed only if the same is paid by the supplier.

- This will plug in the loopholes and progress towards a stabilised return filing mechanism and avoiding any further litigation on this front. However, the proposed amendments seem to severely impede and restrict the conduct of business as it will result into a credit blockage at the recipient's end if the supplier does not upload the details appropriately on time.
- Although, the government has tried its hand on plugging in the loop holes, it also requires the tax payer to be more diligent and vigilant in terms of vendors screening, timely vendor communication, validating the credit available in auto generated statement as eligible or ineligible under the GST laws.
- As the proposed amendment has done away



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with the matching concept under Section 42 and 43 of CGST Act, 2017, the provisions of Section 50(3) have been proposed to be amended retrospectively. As per Section 50(3), interest will be payable only when the credit has been **wrongly availed and utilised**

- The time limit for availing any credit pertaining to a financial year has been changed from 30<sup>th</sup> September of next financial year to 30<sup>th</sup> November of the next financial year. This would provide suitably increased time to tax payers to reconcile their yearly balance with vendors and follow-up communications wherever required, to ensure credit is availed on eligible inward supplies.
- Similarly, the time limit to raise credit note or debit note for a financial year has been changed from 30<sup>th</sup> September of next financial year to 30<sup>th</sup> November of next financial year. The additional time granted will

be beneficial to tax payers to ensure timely reconciliation entries passed in financials can be given effect in GST returns as well.

### Transfer of balance in cash ledger

Earlier, the possibility of transfer of balance available in inter head was possible by filing form GST PMT-09. The present budget proposes amendment to transfer the balance of cash available in cash ledger for tax, interest, penalty, fee or any other amount available in the electronic cash ledger to the integrated tax and central tax of different registrations of the same PAN. It is pertinent to note that such transfer is viable only when there is no pending liability under the electronic liability register and considered as refund of cash available in electronic cash ledger. This will ensure fungibility to tax payers where cash has been paid in excess inadvertently and be transferred to other registration under same PAN.

### Registration cancellation

We have observed the officials



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cancelling the GST registration on a suo moto basis where notice u/s 46 have been issued to defaulters who have not filed returns for consecutive period of 6 months. With the proposed amendment cancellation of GST registration will be automated where a tax payer does not file returns beyond 3 months from due date of filing returns in a financial year. This will ensure robust compliance mechanism amongst tax payers and feasibility of eligible credit for genuine tax payers.

### Special Economic Zone

SEZ is considered to be the backbone of the economy focussing on the government's vision of promoting exports from India. In lines with the intention, several exemptions were available to such units operating as SEZ. The proposed Finance Bill 2022 intends to bring in a new legislation by 30<sup>th</sup> September 2022 focussing on optimally utilising the available infrastructure and to enhance exports from India. Also, the operational portal for SEZ compliances will be monitored through the Customs portal for easing out compliances. Another amendment proposed with respect to SEZ under the GST laws, the relevant date for filing refunds has been prescribed as 2 years from the due date for furnishing of return under section 39 in respect of such supplies.



Ensuring facilitation measures such as more time for input credit availment, fungibility to taxpayers for using GST balances at central level across states, retrospective amendment for levy of interest on input tax credit wrongly availed and utilised would re-affirm the government's endeavour to further simplify the GST regime.

### Conclusion

All in all, the Finance Bill 2022 focused on strengthening programmes to help India during its Amrit Kaal to achieve vision India@100. Ensuring facilitation measures such as more time for input credit availment, fungibility to taxpayers for using GST balances at central level across states, retrospective amendment for levy of interest on input tax credit wrongly availed and utilised would re-affirm the government's endeavour to further simplify the GST regime. These measures coupled with further rationalisation of Customs Duty rates, digitisation of IGCR compliances and revamping of SEZ laws would go long way in India's pursuit of ease of doing business and reducing litigations. Our steps are in positive direction and we will have to wait for a few years to reap the harvest.

