

# **PRE-BUDGET MEMORANDUM 2024**

## **Customs**



*GST & Indirect Taxes Committee*

**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, 2024 on Customs to the Government of India. We believe that addressing the said issues would make Customs law simple, fair and transparent and avoid litigation.

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

The contact details are:

Name and Designation	Contact Details	
	Ph. No.	Email Id
CA. Sushil Goyal Chairman, GST & Indirect Taxes Committee	9830088400	<a href="mailto:skgoyal@icai.org">skgoyal@icai.org</a>
CA. Rajendra Kumar P. Vice-Chairman, GST & Indirect Taxes Committee	9444017087	<a href="mailto:rk@icai.in">rk@icai.in</a>
CA. Smita Mishra Secretary, GST & Indirect Taxes Committee	9205559863 0120-3045922	<a href="mailto:gst@icai.in">gst@icai.in</a>

# Pre-Budget Memorandum 2024

## Customs

### 1. Amendment in the definition of warehouse to facilitate trade via FTWZ

#### Issue

Supply of warehoused goods to any person before clearance for home consumption is not liable to GST by virtue of Para 8(a) of Schedule III to section 7 of the CGST Act, 2017. The para has been inserted in Schedule III retrospectively w.e.f. 01.07.2017. Explanation 2 to Schedule III states that, for the purposes of paragraph 8, the expression “warehoused goods” shall have the same meaning as assigned to it in the Customs Act, 1962.

Section 2(43) of the Customs Act, 1962 defines “warehouse” to mean a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A. As per section 2(44) of the Customs Act, 1962 “warehoused goods” means goods deposited in a warehouse.

Section 2(n) of the SEZ Act, 2005 defines a Free Trade and Warehousing Zone (FTWZ) to mean a Special Economic Zone wherein mainly trading and warehousing and other activities related thereto are carried on. The term ‘warehousing’ is not defined in the SEZ Act, 2005. However, section 2(zd) of the said Act provides that words and expressions used and not defined in this Act but defined in the Central Excise Act, 1944, the Industries (Development and Regulation) Act, 1951, the Income-tax Act, 1961, the Customs Act, 1962 and the Foreign Trade (Development and Regulation) Act, 1992 shall have the meanings respectively assigned to them in those Acts.

It is being contended that FTWZ are not bonded warehouses as defined under Customs Act and hence transactions within FTWZ will be liable to IGST.



In the erstwhile tax regime and even in the present regime, warehousing in FTWZ has been considered as warehousing for purpose of Customs Act as well. In fact, there is no inconsistency between the provisions of the Customs Act, 1962 and the SEZ Act, 2005 and the SEZ Rules, 2006 with respect to warehousing. Like clearance for customs warehouse, clearance for FTWZ is also made by filing an into-bond bill of entry in view of the provisions of SEZ Act, 2005. Thus, FTWZ is akin to customs warehouse where goods can be deposited without payment of duty by filing into-bond bill of entry.

Provisions of the IGST Act, 2017 and Sch III of the CGST Act [Para 8(a)] should be construed harmoniously. Proviso to section 5(1) of the IGST Act, 2017 states the integrated tax on goods other than the goods as may be notified by the Government on the recommendations of the Council imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975. Section 7(2) of the IGST Act, 2017 states that supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

Thus, until the goods in customs bonded warehouse or FTWZ unit are cleared on payment of customs duties under the Customs Tariff Act, 1975, the same are treated as in the course of import.

The GST Council, in 2019, had amended Schedule III to avoid double taxation of goods kept in the warehouse by retrospectively inserting para 8(a). Going with the said reasoning, in the case of FTWZ as well, tax should not be leviable on any transfers while the goods are stored therein.

### **Suggestion**

The definition of “warehouse” under section 2(43) of the Customs Act, 1962 may be amended to include within its scope a SEZ or a FTWZ.

## 2. Exemption for import of share certificates for the purpose of dematerialization

In terms of the amendments made in the Companies (Prospectus and Allotment of Securities) Rules, 2014, all private companies are required to dematerialize their shares by the end of September, 2024. For this purpose, the shareholder has to submit the physical share certificates to the concerned Depository Participant. Therefore, all the shareholders who reside outside India and are holding physical share certificates can get the same dematerialized either by sending them to their agent/relative in India through courier or by bringing the certificates with them, as a part of their baggage, when travelling to India.

Since no specific exemption is available for import of share certificates, the same are liable to effective customs duty @ 24.32% (10% BCD, 10% SWS and 12% IGST) when sent through courier and @ 38.5% (35% BCD and 10% SWS) when brought in as baggage.

CBIC Circular No. 60/2000-Cus dated 12.07.2000 had clarified that the importer may avail the benefit of Notification No. 94/1996-Cus dated 16.12.1996 (now Notification no. 45/2017-Cus dated 30.06.2017) which permits duty free re-import of goods into India which were originally exported from India.

However, Notification No. 45/2017 Cus exempts reimportation of goods, *inter alia*, when such re-import is made within three years from the date of export and the let export order for the goods has been given on or after 1<sup>st</sup> July, 2017. Thus, exemption cannot be availed where the share certificates were taken outside India more than three years ago. Also, let export order is passed at the time of export of goods for which the exporter has filed a shipping bill. It is highly improbable that anyone would have filed shipping bill while taking the share certificates outside India.

Thus, it seems that the re-import of share certificates would be liable to customs duty. However, in that case valuation would be an issue as whether it would be the value



of paper on which the share certificate has been issued / printed or the face value of the share or the intrinsic value of the share.

### **Suggestion**

Either the re-import of share certificates be exempted or *Notification No. 45/2017 Cus* be amended to remove the condition of re-import within three years and issue of let export order in case of re-import of share certificates for the purpose of dematerialization.

Considering that the re-import of share certificates is necessitated on account of the amendment made by another Ministry of the Government, the transaction ought to be facilitated and not taxed.

### **3. Amnesty Scheme for Customs**

#### **Issue**

As per media reports<sup>1</sup> there are an estimated 30,000 customs cases pending in various courts, involving a substantial amount exceeding Rs 40,000 crore.

#### **Suggestion**

In Union Budget 2019, the Sabka Vishwas Legacy Dispute Resolution Scheme was introduced to facilitate quick closure of pending disputes under the central indirect tax laws. A similar amnesty scheme may be introduced under the Customs, for providing opportunity to taxpayers to clear the past baggage and reduce the litigation. This initiative would not only boost Government revenue but also offer significant relief to businesses, allowing them to focus on growth and compliance.

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<sup>1</sup> <https://www.financialexpress.com/business/industry-industry-demand-amnesty-scheme-for-customs-settlement-3347206/>  
<https://www.taxscan.in/customs-dispute-settlement-industry-demands-amnesty-scheme/357264/>



#### **4. Increase in Baggage Limits**

##### **Issue**

The current general duty-free baggage allowance for an Indian resident or a Foreigner residing in India or a Tourist of Indian origin arriving from any country other than Nepal, Bhutan and Myanmar, is Rs. 50,000. In other words, such persons are allowed duty free clearance of goods up to Rs. 50,000 as part of their *bonafide* baggage. This limit has not been revised for a long time.

##### **Suggestion**

The general duty-free baggage allowance be increased from Rs. 50,000 to Rs. 2,00,000 to take into account the inflationary impact on the goods.

#### **5. Clearance of capital goods after use in MOOWR Scheme**

##### **Issue**

The MOOWR 2019 does not allow depreciation on the value of imported capital goods (on which duty has been deferred) when duty is to be paid on them at the time of clearance for home consumption after use.

##### **Suggestion**

Considering that every capital goods has a period of useful life and when it is cleared after being used, the benefit of depreciation ought to be allowed. Similar benefit is allowed under EOU & SEZ. Accordingly, it is suggested that depreciation be allowed on imported capital goods when they are cleared for home consumption after use.

#### **6. Addressing third-party invoice issues for FTA imports**

##### **Issue**

There are delays in the release of goods and denial of the Free Trade Agreement (FTA) benefits in cases of third-party invoicing. Third Party invoicing means bill-to-



ship-to transactions where an FTA exists between India and the exporting country despite the selling party being located elsewhere. There are challenges in determining the eligibility for FTA benefits and establishing appropriate valuation criteria based on commercial invoices.

### **Suggestion**

There is an urgent need to formulate a clear and precise procedure to streamline the import process and to recognize the value depicted in the commercial invoice as the definitive import value.