Indirect Taxation

Cessation of Authority for Advance Ruling for the purposes of Custom Duty

[Section 245-O, 245Q]

The Finance Act, 2017 has merged the Authority for Advance Ruling (AAR) for income-tax, central excise, customs duty and service tax. Therefore, the Authority for Advance Rulings constituted under Income-tax Act shall be the Authority for giving advance rulings for the purposes of the Customs Act as well.

It is now proposed that the Income-tax Authority shall cease to act as an Authority for Advance Rulings for the purposes of the Customs Act, 1962 on and from the date of appointment of the Customs Authority for Advance Rulings.

Retrospective exemptions in service tax

a) The services provided by Goods and Services Tax Network (GSTN) to the Central Government or State Government are exempted from the service tax retrospectively for the period March 28, 2013 to June 30, 2017.

b) Services provided by way of grant of license to mine petroleum crude or natural gas is exempted from service tax retrospectively for the period April 1, 2016 to June 30, 2017 on the consideration paid to the Central Government in the form of share of profit petroleum of Central Government. The said exemption is still continued under the Goods and Services Tax (GST).

c) The life insurance services provided by the Naval Group of insurance fund to personnel of Coast guard is also exempted from service tax retrospectively for the period September 10, 2004 to June 30, 2017.

Changes in Excise Law

a) The basic excise duty on branded and unbranded petrol & Diesel have been reduced by Rs. 2 per liter.

b) Central Board of Excise and Customs (CBEC) has been renamed as Central Board of Indirect Taxes and Customs (CBIC).

c) Additional Duty of Excise (Road Cess) leviable on Petrol and High Speed Diesel has been abolished.

Amendments in Custom Law

a) The scope of Custom Act has been expanded in order to cover the persons who are situated outside India and make contravention of any provisions of Custom Act. Earlier, Government was not allowed to take action against such persons who are situated outside India and commit any offence under Custom Acts. This will empower Government to control offences committed by any person whether In India or outside India.

b) The limit of Indian Custom Water has been extended for the coverage under the Customs Act.

c) Now, Central Government is empowered to exempt or to grant partial exemption for re-importation and exportation thereof within a period of 1 year for repairs or further processing from the date of let export order.

d) Now show-cause notice will have to be issued within the period of limitation. However, only the senior rank officers will be allowed to extend the time limit by 6 months and if it could not be extended, the proceedings will be deemed to be concluded.

e) Definition of activity has been omitted mainly to enhance the scope of advance ruling authority. Now, advance ruling can be applied only prior to importation or exportation.

f) Advance Ruling Authority for customs will include the officer in the rank of Principal Commissioner of Customs or Commissioner.

g) Representation can be made only by Indian resident before Authority for Advance Ruling and Appellate Authority. This provision is introduced to stop the entry of non-Indian for representation before Authority for Advance Ruling and Appellate Authority

h) Now, the Advance Ruling Authority shall pronounce its Advance Ruling in writing within 3 month of the receipt of application.

i) 'LET' import for home consumption, in case where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, will be allowed electronically or through Customs Automated Systems of ICE Gate.

j) New Chapter PAYMENTS THROUGH ELECTRONIC CASH LEDGER has been introduced, so as to allow taxpayers to pay in advance the amount of duty, tax, penalty, interest etc. However, effective date will be notified separately. This is a welcome provision which will reduce the period required for importation.

k) Drawback under Section 74 of Customs Act is allowed even on the export shipment made by post.

l) Time limit for depositing the fine is fixed which shall be maximum 120 days from the date of order until the appeal is filed against such order.

m) Government is empowered to prescribe procedure or documentation for specific class of importers or exporters or categories of the goods to simplify or provide different procedures to facilitate the trades, which will reduce the transaction cost and remove the difficulties.

n) SCN or orders or Summons or any letters can be issued by hand and can be delivered to employee, 'CHA', Advocate or any adult member of family or can be issued by Post or sped post or courier with acknowledgement receipt or electronically through email on the address available with customs, publishing in newspaper or affixing the same on the last known address of the office / business or uploading of the official website of the notice board.

o) The Govt. has made amendments in rates of basic custom duty (BCD). Such changes would be applicable from February 02, 2018. The comparative analysis of

Custom Duty is shown in below table:

S.No.	Commodity	Old Rate	New Rate
1	Food Processing	30%	50%
2	Perfumes and toiletry preparations	10%	20%
3	Automobiles parts	7.5%/10%	15%
4	Footwear	10%	20%
5	Jewellery	15%	20%
6	Cellular Mobile phones	15%	20%
7	LCD/LED/OLED panels	7.5%/10%	15%
8	Furniture	10%	20%
9	Watches and Clocks	10%	20%
10	Toys and Games	10%	20%

Prevention of Money-Laundering Act, 2002

Amendment to the Definition of 'Proceeds of Crime'

As per existing definition of 'Proceeds of crime' under Section 2(1)(u) of the Prevention of Money Laundering Act, 2002, it means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country.

Under the proposed definition of crime proceeds, the property equivalent in value held within the country or abroad shall be treated as proceeds of crime.

Computing period of 180 days for provisionally attachment of property

A new proviso is proposed to be inserted in Section 5(1) which provides for attachment of property involved in money-laundering. As per the new proviso for computing the period of 180 days for provisional attachment of the property, the period during which the proceedings under this section is stayed by the High Court shall be excluded and a further period not exceeding 30 days from the date of order of vacation of such stay order shall be counted.

Proposal to tighten provisions relating to Bail

An amendment has been proposed to Section 45 which prescribes offences to be cognizable and non-bailable. Under the proposed amendment, no person accused of an offence under this Act shall be released on bail or on his own bond unless following two conditions are satisfied:

a) Public Prosecutor has been given an opportunity to oppose the application for such release;

b) Where Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

Under the extant norms, those offences which are punishable for a term of imprisonment more than 3 years under part A of the Schedule are considered cognizable and non-bailable.

It is interesting to note that recently, in the case of *Nikesh Tarachand Shah v Union of India [2017] 87 taxmann.com 257,* The Supreme Court held that "Additional twin conditions provided in section 45(1) for release of accused on bail violates Articles 14 and 21 of Constitution." However, there has not been any amendment to the section 45 in line with the Apex Court's ruling.

Bail in case of offences involving money laundering less than 1 Crore

First proviso to Section 45(1) has been proposed to be amended to include a person who is accused on his own or along with other co-accused of money-laundering of a sum of less than Rs. 1 Crore may be released on bail, if Special Court so directs. Currently there is no such monetary limit for categorizing offence as bailable or non-bailable.

Disclosure of information by Director or any other authority

New sub section (2) has been proposed to be inserted in section 66 that Director or such other authority shall share the information with the concerned agency for necessary action if such Director or other authority specified is of the opinion on the basis of information or material in his possession that the provisions of any other law for the time being in force are contravened.

Punishment for fraud under Companies Act, 2013 to be included in scheduled offence

Section 447 of the Companies Act, 2013 which deals with punishment for fraud has been included in the list of Scheduled offence under the Prevention of Money Laundering Act, 2002. The implications of this proposal is that any offence of fraud committed by any person under section 477 Companies Act, 2013 shall also attract PMLA. The term any person can include Company's Director, Company Secretary, Key Managerial Person, or any person who commits fraud.

The Bill also proposes a proviso to section 8(8) of the Prevention of Money-Laundering Act, 2002. The proposed proviso empowers the Central Government to make rules for considering the claim of the claimant for the purposes of restoration of confiscated properties during the trial of the case.

Securities Laws

SEBI can impose penalty under SEBI Act and SCRA

Amendments in SEBI Act and SCRA are proposed so as to allow the market regulator for imposing penalties on any person who had contravened any provisions under such Acts. At present, only adjudicating officer has authority to imposed penalty.

REITs and InVITs come under scanner of law maker

Whosoever managing the Real Estate Investment Trust and Infrastructure Investment Trust can face the huge penalty if they fail to comply with the provision of listing or delisting norms under SCRA, 1956.

Hefty penalty proposed on Market Intermediaries

New penalty provisions proposed to be inserted under SCRA, SEBI & Depositories Act in case where market intermediaries fails to conduct their business in accordance with prescribed rules or regulations:

a) Minimum fine of Rs. 5 crore under the SCRA on Stock Exchanges and Clearing Corporation.

b) Minimum penalty of Rs. 1 lac under SEBI Act, 1992 on Investment Advisers and Research Analyst

c) Minimum penalty of Rs. 5 crore under Depositories Act, 1996 on Depositories

Proposal to credit Consolidated Fund of India for all settlement amount realized under SEBI, SCRA and Depositories Act

It has been proposed that all settlement amount realized under SEBI, SCRA and Depositories Act shall be credited to the Consolidated Fund of India. Revenues received by the government and expenses made by it, excluding the exceptional items, are part of the Consolidated Fund of India. No money can be withdrawn from this fund without the Parliament's approval.

Legal Representative liable to pay dues of decreased person

New provisions relating to continuance of the legal proceedings are proposed to be inserted in the SCRA, SEBI and Depositories Act, 1996 whereby legal representative shall be liable to pay in case penalty has been imposed before the death of deceased person.

FCRA, 2010

Retrospective amendment to definition of 'Foreign Source'

The Finance Bill 2018 has proposed an amendment to the FCRA 1976 w.e.f from 5th August, 1976. It is pertinent to note that proposed amendment relates to an act which has been repealed since September 2010.

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Earlier, the Finance Act 2016 had amended the Section 2(1)(j)(vi) of the FCRA, 2010. By virtue of this amendment all contributions made by Indian Companies with foreign shareholding in excess of 50% were excluded from the definition of foreign source. It may be noted that prior to this amendment all Indian Companies with more than 50% shareholding by foreigners were treated as foreign source and FCRA law was applicable. Ironically under this law even some well-known Indian companies were not entitled to give donations even to their own foundations without FCRA prior permission or registration.

RBI Act

Amendments to the Reserve Bank of India Act, 1934

Section 17 of the said Act prescribes the business which the bank may carry out. A new clause (1A) has been proposed to be inserted to Section 17 of the RBI Act, 1934 whereby the Bank has been authorized to accept money as deposits repayable with interest from banks or any other person under Standing Deposit Facility Scheme for the purpose of liquidity management. The Standing Deposit Facility helps the RBI to absorb surplus funds without having to provide lenders collateral in exchange.

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