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BUDGET 2020
AN INSIGHT INTO INDIRECT TAX PROPOSALS

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PREFACE

Union Budget 2020 – "Aspiring, Developing and Caring India"

In midst of acute economic slowdown, Hon'ble Finance Minister had the responsibility to steer the Indian economy and restart the growth trajectory by increasing purchasing power, attracting foreign investment and incentivizing domestic market. These over-arching goals coupled with the aim of **'Aspiring, Developing and Caring India'** were themes of Union Budget 2020. Government proposed various initiatives and launched several schemes to bolster these objectives.

In taxation, the focus was majorly kept on Direct tax reforms including introduction of **'Vivad se Vishwas' Scheme** after a massive success of 'Sabka Vishwas Legacy Dispute Resolution' Scheme. Surprisingly, the industry expectations of a similar scheme in Customs Law remained unfulfilled.

The changes in Indirect tax realm aimed at Government's 'Make in India' ambition by increasing customs duty incidence on several products majorly comprising of furniture, footwear, electric vehicles, mobile parts etc. Imposition of **'Health Cess'** at 5 percent on import of medical equipment will also hurt the sentiments of importers in health-care sector. Besides, the **FTA benefits** have been put to stringent check in order to ensure correctness of claims.

The amendments proposed in GST law primarily include delinking of credit eligibility on debit notes from the date of invoices to imposition of penalty on beneficiaries of fake credits. In her speech, the Finance Minister also restated Government's earlier commitment of introduction of **New Returns System** and **E-Invoicing** from April 1, 2020.

These legislative as well as tariff changes require a closer analysis to understand their impact on businesses. The appended booklet contains our insight on various Indirect tax proposals introduced in the Union Budget 2020.

Trust you find it an interesting read.

We would be happy to have your thoughts / comments on the booklet at updates@nityatax.com

Disclaimer:

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1. Amendments in Customs law

Legislative changes (Customs Act)

- Section 11 amended to empower the Central Government to **prohibit** importation or exportation of any goods (earlier limited to gold and silver) to prevent injury to the economy.

- Union Budget 2018 introduced following provisions towards **recovery of customs duty**, which included:

    - Pre-notice consultation.
    - Supplementary SCN treated as original SCN.
    - Strict timelines prescribed for adjudication of SCN i.e. 6 months (in normal cases) and 1 year (in cases of fraud etc.) except where matter kept in call book.
    - SCN for extended period to be treated for normal period if fraud etc. not proved.

  It has now been specified that these provisions **will not apply to SCN issued before March 29, 2018**.

- **Electronic Duty Credit Ledger** introduced to maintain duty credit claimed as remission of duty and any other financial benefit. Such credit balance can be transferred or utilized for payment of customs duty.

  The introduction of Electronic Duty Credit Ledger seems to be a step towards the proposed export incentive scheme, i.e. Rebate of State and Central Taxes and Levies. The new scheme is likely to come from April 1, 2020.

- 'Safeguard Duty' rechristened as **'Safeguard Measures'** along with introduction of tariff-rate quota for its application.

- To monitor the imports under FTAs, a **new Chapter** governing Administration of **Rules of Origin** Under Trade Agreement introduced wherein:

    - An importer needs to make a specified **declaration**.

    - An importer can be asked to **furnish information** as to how goods satisfy origin criteria. Proper officer may call for further information, if needed.

    - On failure to furnish such information, proper officer can **temporarily suspend** the preferential tariff treatment.

    - After suspension, proper officer can seek **specific information** within 5 years from claim of preferential benefit, regarding origin of goods from **issuing authority**. If issuing authority does not provide specific information, proper officer can disallow preferential tariff treatment.

    - Preferential treatment can also be **withdrawn** wherein tariff item is not eligible for preferential tariff treatment, certificate of origin is defective, not authenticated or is expired.

Unilateral framing of provisions to doubt or reject the certificate of origin issued by authorities in another country and fastening onus on importer, is unlikely to withstand the judicial scrutiny.

Time period for initiating verification of certificate of origin is five years from the date of import. Section 28 of the Customs Act provides for issuance of SCN for recovery within two years (normal case) and five years (fraud, etc.) from the date of import. There is no power for recovery beyond two years (where no fraud exists) / five years (in general).

(Effective from enactment of Finance Bill, 2020)

Imposition of Health Cess

- Heath Cess introduced in the **form of customs duty** on specified **medical instruments** and appliances falling under **headings 9018 to 9022** of the First Schedule to the CTA.

- The proceeds of Heath Cess shall be used for **development of health infrastructure and services**.

- Health Cess shall be chargeable at the rate of **5 percent** in addition to customs duty on the **value of imported goods**. Such cess will not be creditable and will become a **cost** for the importer. Overall customs duty incidence on import of such goods shall be as under:

Particulars	Rate	Base on which duty will be calculated	Assessable value = Rs. 100
BCD	10 percent	Assessable value of goods	Rs. 10
Social Welfare Surcharge	10 percent	BCD	Rs. 1
Health Cess	5 percent	Assessable value of goods	Rs. 5
IGST	18 percent	Assessable value + all duties	Rs. 20.88
		Total tax incidence	**Rs. 36.88**

(Effective from midnight Feb 1, 2020)

Rate changes

- In order to encourage domestic manufacture in India, basic customs duty on various goods has been **increased** to promote manufacture of indigenous goods. The basic customs duty on several goods has also been **reduced**. A summary of change in rate of important items is attached as **Annexure-1**.

  (Effective from applicable date as per Annexure - 1)

- The Government has **extended exemption from SWS** to specified products such as maize, tiles, commercial vehicles (including electric vehicles) etc. On the other hand, **SWS exemption is withdrawn** from several products such as electronic switches, printed circuit assemblies, information technology software etc. mainly falling under Chapter 84 and 85.

2. Amendments in CGST Act

Definitions

- Under Section 2(114), definition of **'Union Territory'** amended to include **Ladakh** within its ambit. Similar amendment has been made in UTGST Act.

Time limit to claim ITC on debit note

- Section 16(4) prescribes **time limit to claim ITC** on invoice and debit note, as earlier of:
  - Due date of filing return for the month of September following the financial year to which (i) invoice, or (ii) invoice relating to debit note pertains, or
  - Date of filing of relevant annual return.
- Now, the linkage to invoice has been removed for debit note. Hence, the date of debit note only shall be reckoned for determining last date of availing ITC. This is explained with following example:

Particulars	Before Amendment	After Amendment
Date of invoice	July 1, 2018	July 1, 2018
Date of debit note	May 1, 2019	May 1, 2019
Last date to avail ITC on debit note	*Due date of September 2019 GSTR-3B*	*Due date of **September 2020** GSTR-3B*

This relaxation in availment of ITC will only be available for debit notes issued after this amendment comes into effect.

Registration

- Commissioner or Additional / Joint Commissioner empowered to **condone delay in filing** an application for **revocation of cancellation of registration** by a taxpayer.

Invoicing

- Enabling provisions inserted to specify the **categories of services** in respect of which a **tax invoice** shall be issued in **prescribed time and manner**.

The Government is expected to bring special provisions for issuance of tax invoice for e-commerce, banking and insurance companies etc. under this provision.

Penalties and Punishment

- Section 122 imposes **penalty on the supplier / recipient** committing following offences:
    - Supply of goods or services or both without issuance of any invoice or issuance of incorrect or false invoice
    - Issuance of invoice or bill without supply of goods or services
    - Claim of ITC without actual receipt of goods or services
    - Improper availment / distribution of ITC under ISD mechanism
- A new stringent provision inserted to **penalize** any person who **retains the benefit** of above-mentioned transactions and **on whose instance such transactions are conducted**.
- The **amount** of penalty shall be amount of **tax evaded, or ITC availed or passed on**.
- Section 132 prescribes **punishment to person committing** prescribed offences. In line with the amendment made in Section 122 above, the scope of this provision has been expanded as follows:
    - Apart from person committing the offence, now a person **who commits the offence** and a person who **retains the benefit arising** from prescribed offences, can also be punished.
    - Fraudulently claim of **ITC without possession of any invoice** or bill, is also covered within the ambit of this provision.

Transitional credit

- Section 140 prescribes conditions to claim transitional credit in various situations.
- This provision has been amendment to empower Government to prescribe **'time'** in which transitional credit was available. **This amendment is effective retrospectively from July 1, 2017**

In various judicial pronouncements, the Courts held that Section 140 of the CGST Act do not provide any 'time limit' of claiming transitional credit. The Courts further held that such limitation cannot be imposed through the delegated legislation viz. the CGST Rules. The present amendment intends to overcome these judicial pronouncements. Importantly, there were other reasons like credit being substantive right of taxpayer etc. adopted by the Courts. Such grounds will continue to hold relevance even after this amendment

Removal of difficulty order

- Section 172 allows Government to issue a 'General Order' or a 'Special Order' if any **difficulty arises in giving effect to** any **provisions** of this Act.

- **Time limit** to issue above orders is **increased from 3 years to 5 years** from the date of commencement of the CGST Act. Similar amendment has been made in IGST Act, UTGST Act and Compensation Act.

Amendment in Schedule II

- Schedule II covers activities or transactions to be treated as **supply of 'goods' or 'service'**.

- Transfer of **business assets**:

  - Where goods forming part of the assets of a business are transferred or disposed of by person carrying on the business so as no longer to form part of those assets, such transfer shall be considered as a supply of goods. This is irrespective of whether there is receipt of **consideration** or not.

  - Where goods used for business purpose are put to any private use or for non-business use then use of such goods is a supply of service. This is irrespective of whether there is receipt of **consideration** or not.

- Amendment has been made **to delete condition of receipt / non-receipt of consideration** from above entry.

> ***Section 7 of the CGST Act was retrospectively amended to provide that Schedule II can classify only those transactions as supply of goods or services which satisfy definition of 'supply'.***
>
> ***Receipt of consideration is one of the essential conditions to satisfy the definition of supply. The condition for receipt / non-receipt of consideration in Schedule II has been deleted to avoid any ambiguity in interpretation of scope of supply.***

(Effective from enactment of Finance Bill, 2020)

Annexure-1

1. List of major goods on which basic customs duty has been increased

(Rate change effective from midnight Feb 1, 2020)

Sl. No.	Tariff Heading	Description of goods	Old rate	Revised rate
1.	1701	Raw Sugar up to an aggregate of three lakh metric tonnes subject to satisfaction of certain conditions	25%	100%
2.	1702	Dextrose Monohydrate	20%	30%
3.	1703	Molasses	10%	30%
4.	4114 20 10	Patent leather	0%	10%
5.	6401 to 6405	Footwear	25%	35%
6.	6406	Parts of footwear	10% / 15%	20%
7.	8301	All goods (except locks used in motor vehicles)	10%	20%
8.	8414 30 00	Compressors used in refrigerating equipment	10%	12.5%
9.	8414 80 11	Gas compressors used in air-conditioner equipment	10%	12.5%
10.	8414 51 10, 8414 51 20, 8414 51 30	Table fans, ceiling fans and pedestal fans	10%	20%
11.	8414 51 40	Railway carriage fans	7.5%	10%
12.	8414 51 50, 8414 51 90	Wall fans and other fans (other than above)	7.5%	20%
13.	8414 59 20	Blowers, portable	10%	20%
14.	8418 (other than 8418 10 90, 8418 21 00, 8418 29 00, 8418 91 00, 8418 99 00)	Refrigerators, Freezers and other refrigerating or freezing equipment, Electric or other; Heat pumps other than air conditioning machines of heading 8415	7.5% / 10%	15%
15.	8501 (other than 8501 64 70,	Electric motors and generators (excluding generating sets)	7.5%	10%

Sl. No.	Tariff Heading	Description of goods	Old rate	Revised rate
	8501 64 80)			
16.	8504 40	Static converters	10% / 15%	20%
17.	8516 (except 8516 50 00, 8516 90 00)	Electric instantaneous or storage water heaters and immersion heaters; Electric space heating apparatus and soil heating apparatus; Electro-thermic hair-dressing apparatus (for example, hair dryers , hair curlers, curling tong heaters) and hand dryers; Electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes; Electric heating resistors, other than those of heading 8545	10%	20%
18.	8517 70 10	Populated, loaded or stuffed printed circuit boards	10%	20%
19.	8517 70 90	Vibrator motor / ringer* Display assembly* Touch panel / cover glass assembly**	Nil	10%
20.	8518 30 00	Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers	10% / 15%	15%
21.	8702, 8704	Completely Built Units (CBUs) of commercial electric vehicles*	25%	40%
22.	8703	Semi-knocked Down (SKD) form of electric passenger vehicles, Three-wheelers*	15%	30%
23.	8702, 8704, 8711	SKD form of electric vehicles – Bus, Trucks and Two-wheelers*	15%	25%
24.	8702, 8703, 8704, 8711	Completely knocked Down (CKD) form of electric vehicles – passenger vehicles, Bus and Trucks, Three-wheelers, Two-wheelers*	10%	15%
25.	8702, 8704	CBUs of commercial vehicles (other than electric vehicles)*	30%	40%
26.	9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof	20%	25%

***Rate change applicable from April 1, 2020**
**** Rate change applicable from October 1, 2020**

2. List of major goods on which basic customs duty has been decreased:

Sl. No.	Tariff Heading	Description of goods	Old rate	Revised rate
1.	3903	All goods (Polymers of styrene, in primary forms)	10%	7.5%
2.	48	Newsprint (imported by a person registered with the Registrar of Newspapers, India) – (i) In strips or rolls of width exceeding 28 cm; or In rectangular (including square) sheets with one side exceeding 28 cm and the other side exceeding 15 cm in the unfolded state	10%	5%
3.	48	Uncoated paper used for printing newspapers, of which not less than 50% by weight of the total fiber content consists of wood fibers obtained by mechanical or chemi-mechanical process, unsized or very lightly sized, having a surface roughness Parker Print Surf (1 Mpa) on each side exceeding 2.5 micro meters (microns), weighing not less than 40 g/m^2 and not more than 65 g/m^2	10%	5%
4.	4810	Lightweight coated paper weighing up to 70 g/m^2, imported by actual user for printing of magazines	10%	5%
5.	8518 10 00	Microphone Cartridge, Microphone Holder, Microphone Grill, Microphone Body	15%	Nil

GLOSSARY OF TERMS

Abbreviations	Meaning
CGST	Central Goods and Services Tax
CGST Act	Central Goods and Services Tax Act, 2017
CGST Rules	Central Goods and Services Tax Rules, 2017
Customs Act	Customs Act, 1962
CTA	Customs Tariff Act, 1975
Finance Bill	Finance (No.2) Bill, 2019
FTA	Free Trade Agreement
FY	Financial Year
ITC	Input Tax Credit
ISD	Input Service Distributor
IGST	Integrated Goods and Services Tax
IGST Act	Integrated Goods and Services Tax Act, 2017
IGST Rules	Integrated Goods and Services Tax Rules, 2017
SGST	State Goods and Services Tax
SGST Act	State Goods and Services Tax Act, 2017
SGST Rules	State Goods and Services Tax Rules, 2017
SCN	Show cause notice
SWS	Social Welfare Surcharge
UTGST	Union Territory Goods and Services Tax

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