

Rajput Jain & Associates

Chartered Accountant

An ISO 9001:2008 Certified Firm



Budget Update

(2022-23)

RJA

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CHANGES IN GST ACT 2017

1. Additional condition for ITC availment & Increase in Time limit

(Clause 99 of the Finance Bill)

a. A new clause (bat) has been added under section 16(2) which is as follows:

"The details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted"

Comments: The list of ineligible ITC as mentioned in GSTR-2B would not be allowed as ITC from the notified date. However, such ineligibility is linked with supplier's defaults which is practically out of the Recipient control. It also adds an additional responsibility to have regular check on suppliers compliance for ITC availment. Introduction of this amendment fortifies that ITC cannot be denied in the past for similar grounds (supplier's defaults in remitting taxes or registration cancelations etc.).

The legal validity of this provisions shall be tested judicially. In the past, there are HC decisions holding that ITC shall not denied directly without attempting to recover from the suppliers. Further, decisions under VAT regime categorially held default of supplier cannot be a ground to deny the ITC. Few of them are - Commissioner Vs. Arise India Limited and others [TS-2-SC-2018-VAT]; Quest Merchandising India Pvt Ltd Vs Government of NCT of Delhi 2017-TIOL-2251-HC-DEL-VAT; ONXY Designs vs. The Asst. Comma of Commercial Tax Bangalore 2019(6) TMI 941 etc.

b. Omission of section 43A in clause (c) of section 16(2).

Comments: As the existing system of GSTR-1 & GSTR-3B is being continued, the provisions relating to alternative system of returns are omitted.

c. In sub-section (4) of section 16, for the words and figures "due date of furnishing of the return under section 39 for the month of September", the words "thirtieth day of November" shall be substituted.

Comments: This is a welcome amendment as it has provided additional time for availment of ITC till 30th November of next F.Y. This appears to have been done to make in line with the closure of Books of accounts & Income tax returns which generally happens by 30th Nov of next F.Y. Since the amendment is in 'substitution' form, it can be said that it applies retrospectively (for FY 2018-19 to 2021-22 also).

2. Change in return default period for cancellation of registration

(Clause 100 of the Finance Bill, 2022)

- a. In clause (b) of section 29(2), for the words *"returns for three consecutive tax periods"*, the words *"the return for a financial year beyond three months from the due date of furnishing the said return"* shall be substituted.

Comments: Presently taxpayers under composition scheme are liable to file only one return in a year (no monthly returns). This amendment is brought to make in line with that to specify registration would be cancelled if return is not filed by 3 months from the due date of such annual return.

- b. In clause (c), for the words *"a continuous period of six months"*, the words *"such continuous tax period as may be prescribed"* shall be substituted.

Comments: Presently registration would be cancelled if returns > 6 months continuously was not filed. By this amendment the default period will now be prescribed in rules which could defer for the different categories of taxpayers (> or < 6 months).

3. Increase of time limit for raising and disclosing credit notes

(Clause 101 of the Finance Bill, 2022)

In sub-section 2 of section 34, for the word *"September"*, the words *"the thirtieth day of November"* shall be substituted.

Comments: This is a welcome amendment as it has provided additional time for issuing credit note till 30th November of next F.Y. This appears to have been done to make in line with the closure of Books of accounts & Income tax returns which generally happens by 30th Nov of next F.Y. Since the amendment is in 'substitution' form, it can be said that it applies retrospectively (for FY 2018-19 to 2021-22 also).

4. Conditions and restrictions for filing of GSTR-1

(Clause 102 of the Finance Bill, 2022)

- a. In sub-section (1) of section 37, after the words *"shall furnish, electronically,"*, the words *"subject to such conditions and restrictions and"* shall be inserted.

Comments: With this amendment, the legal backing has been given on the condition specified in Rule 59(6) that GSTR-1 cannot be filed if GSTR-3B of previous period is not filed. This fortifies that existing restriction is not sufficiently backed with section 37 and may run ultra vires to the Act till this amendment is notified.

- b. In sub-section (1) of section 37 for the words *"shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed"*, the words *"shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies"* shall be substituted;

Comments: With this substitution, the communication of details of the outward supplies shall be made subject to conditions and restriction as may be prescribed in the rules.

- c. The following were omitted

- First proviso to section 37(1)
- Section 37(2)
- In section 37(3), the words and figures "and which have remained unmatched under section 42 or section 43"

Comments: As the provisions are relating to GSTR-2 and GSTR-3 are omitted the changes have been made in section 37 to make in line with law.

- d. Section 37(3) another amendment has been made to increase the time for rectification of omission & mistakes in the GSTR-1 of previous F.Y by 30th Nov of the next F.Y. (earlier it was up to filing of Sep return of next F.Y)

- e. Section (37)(4) was inserted namely: -

"A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him;

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies under sub-section (1), even if he has not furnished the details of outward supplies for one or more previous tax periods"

Comments: With this sub-section insertion, the taxpayers cannot file GSTR-1 without filing GSTR-1 for the previous months. This restriction was already implemented in GST portal without any legal backing and this amendment is made to support the above restriction. Further, the Government can issue notification for relaxation of the said provision for specified class of persons.

5. Communication of details of inward supplies

(Clause 103 of the Finance Bill, 2022)

As there is no need to file inward supplies returns (GSTR-2 now), section 38 was suitably amended to support the existing system of GSTR-2A/GSTR-2B (auto-generated statement of inward supplies). This auto-generated statement would reflect the list of supplies eligible and ineligible for ITC availment. The list of supplies which are said to be ineligible (cannot be availed) would consist of invoices uploaded by following suppliers:

- Supplier in the cooling period of taking new registration. (Period to be prescribed)
- Supplier who has defaulted the tax payment for continuous period as prescribed in rules
- Supplier who has paid tax in GSTR-3B < the tax payable in GSTR-1 subject to allowed limits
- Supplier who has availed ITC more than allowed limits under section 38(2)(a).
- Supplier who defaulted in complying mandatory payment of tax liability in cash if applicable (1% of tax liability)
- Other class of suppliers as may be prescribed in rules.

Comments: As commented above the restrictions specified under this section are linked to defaulters of the suppliers to deny the ITC to the recipient. This restriction requires to be tested judicially as recipient cannot be punished/denied ITC for every fault of suppliers. There are many challenges in implementations of this conditions on the GST portal and department officers for verification of ITC claims. Further, these restrictions are in conflict with the conditions prescribed in section 41.

6. Various Amendments relating to returns filing

(Clause 104 of the Finance Bill, 2022)

- a. In sub-section (5) of section 39, for the word “twenty”, the word “thirteen” shall be substituted.

Comments: The time limit for filing of GSTR-5 by a non-resident taxpayer was reduced from 20 days to 13 days.

- b. In sub-section (7) of section 39, for the first proviso, the following proviso shall be substituted, namely: –

“Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed, –

(a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or

(b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed."

Comments: With this amendment option would be given to pay tax on adhoc basis instead of actual liability for the prescribed persons. Currently, the small taxpayers under QRMP scheme are having this facility.

- c. In sub-section (9) to section 39, for the words and figures "*Subject to the provisions of sections 37 and 38, if*", the word "*Where*" shall be substituted

Comments: Since GSTR-1 and GSTR-2 were not implemented, the relevant provisions were omitted.

- d. In the proviso to section 39(9), for the words "*the due date for furnishing of return for the month of September or second quarter*", the words "*the thirtieth day of November*" shall be substituted

Comments: This is a welcome amendment as it has provided additional time for any omission or incorrect particulars till 30th November of next F.Y. This appears to have been done to make in line with the closure of income tax returns which generally happens by 30th Nov of next F.Y.

- e. In sub-section (10), for the words "*has not been furnished by him*", the following shall be substituted, namely: –

"Or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under sub-section (1) of section 37 for the said tax period."

Comments: Before this amendment the GSTR-3B cannot be filed only if the earlier months GSTR-3B was not filed. From now the taxpayers cannot file GSTR-3B without filing GSTR-1 of such month or GSTR-3B of previous months. However, government may relax for certain persons which may be prescribed.

For easy reference: Summary of increase in time limits for adjustments/ITC availment in monthly returns

Section	Particulars	Old due date	New due date
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16(4)	Due date for availment of ITC for F.Y	20 th October of next F.Y	30 th November of next F. Y
34	Time limit for issue of credit notes and corresponding adjustment of tax liability	Filing of Sep return of next F. Y	30 th November of next F. Y
37(3)	Rectification of errors or omissions in GSTR-1 for the F. Y	11 th October of next F. Y	30 th November of next F.Y
39(9)	Rectification of errors or omissions in GSTR-3B for the F. Y	20 th October of next F. Y	30 th November of next F.Y

7. ITC availment in monthly returns (not on provisional basis)

(Clause 105 of the Finance Bill, 2022)

In the sub-section (1) of section 41, the words **"on the provisional basis"** have been removed. The sub- section (2) has been inserted as follows:

"The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:"

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed."

Comments: With this amendment

- The concept of provisional ITC is removed, and ITC availed in monthly returns would be considered as final.
- ITC may have to be reversed along with interest (ITC is utilized), if not paid by supplier.
- ITC can be re-availed once the supplier pays the tax.

This amendment is conflicting with the conditions in section 16(2) and section 38(+ proposed amendments). Further, applicability of time limit u/s 16(4) for re-availment is not clear. In our view, it can be said that time-limit is not applicable for re-availment cases. Government may remove the conflicts and clarify the scope & object of this amendment.

8. Omission of section 42, 43 and 43A

(Clause 106 of the Finance Bill, 2022)

The section 42, 43 and 43A relating to the matching, reversal and reclaim of ITC, output tax liability has been omitted

Comments: As the existing system of GSTR-1 & GSTR-3B is being continued, the provisions relating to alternative system of returns are omitted.

9. Late fee for delay in TCS returns

(Clause 107 of the Finance Bill, 2022)

In the sub-section (1) of section 47, the words “or inward”, “or section 38” are omitted. In the same sub-section after the words “section 45” the words “or section 52” is inserted.

Comments: Filing of inward supply return is dispensed with, the corresponding late fee provisions are deleted. Further, the late fee is prescribed for delay in filing TCS return (GSTR-8) by ECO u/s 52.

10. Removal of reference to inward supplies return

(Clause 108 of Finance Bill 2022)

In the sub-section (2) of section 48, the words “the details of inward supplies under section 38” has been omitted.

Comments: Filing of inward supply return is dispensed with, the corresponding provisions are deleted.

11. Transfer of balance in ECL within same PAN and legal provision backing Rule 86B

(Clause 109 of Finance Bill, 2022)

In sub-section (2) of section 49 the words “or section 43A” have been omitted.

In sub-section (4) of section 49 after the words “subject to such conditions”, the words “and restrictions” shall be inserted.

The sub-section (10) of section 49 is substituted as follows:

“A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for, –

- a. integrated tax, central tax, State tax, Union territory tax or cess; or*
- b. integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25,*

in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:

Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.”.

Sub-section (12) has been inserted which is as follows:

*"Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such **maximum proportion of output tax liability under this Act or under the Integrated Goods and Services Tax Act, 2017 which may be discharged through the electronic credit ledger** by a registered person or a class of registered persons, as may be prescribed."*

Comments: With this amendment

- The taxpayer can transfer the balance of IGST and CGST in electronic cash ledger to any other GSTIN in the same PAN, subject to that there is no unpaid liability in the electronic liability ledger.
- Provisions have been inserted to provide legal backing for Rule 86B (1% of tax liability mandatory to be paid in cash by specified persons even though ITC is available). This amendment fortifies that Rule 86B as in vogue now is ultra vires to the Act.

12.No interest on un-utilized ITC

(Clause 110 of Finance Bill, 2022)

Sub-section (3) of section 50 is substituted as follows:

"Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed."

Comments: Interest is liable only on wrongly utilized ITC and not on mere availment. This provision is amendment retrospectively w.e.f. 01.07.2017 to avoid disputes for the past period. Before this amendment also, the existing provisions were sufficient to say that interest is not liable on the un-utilized ITC. Further, the rate of interest is clarified as 18% for wrongly utilised ITC not 24%.

13.Time limit extended for rectification of errors in the statement (form GSTR 8) furnished by electronic commerce Operator

(Clause 111 of Finance Bill, 2022)

As per section 52, every electronic commerce operator (ECO) who collects tax at source requires to furnish a statement in form GSTR 8 mentioning all the required details in it. If ECO has made any errors, discovers any omissions or incorrect details while filing form GSTR 8, he is allowed to rectify such errors, omissions and incorrect details in the form GSTR 8 for the month during which

such errors are noticed. Earlier, the last date for such rectification was provided as the due date of filing of GSTR 8 for the month of September following the end of the financial year or the actual date of filing of the relevant annual statement, whichever is earlier.

As per the proposed amendment, the said time limit got extended to 30th day of November of next financial year. Accordingly, now the rectification would be allowed till the 30th Day of November of next financial year or the date of filing of annual statement whichever is earlier. The effective date of the amendment is yet to be notified.

Comments: Earlier, time limit for carrying out any rectification of any omission or incorrect particulars in Form GSTR 8 was kept based on the **due date** for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier. With the proposed amendment, this time is extended to 30th November of next financial year. It is pertinent to note that the time limit for filing GSTR 8 is 10th of the succeeding month, which means that earlier the effective date of rectification was available up to 10th October of the next financial year.

However, now the static date is kept at 30th November which means that the assessee needs to carry out the rectification in the return to be filed for the month of October of the subsequent financial year i.e., by Nov 10th of the subsequent month. Ideally, it must have been kept as the due date for filing the GSTR 8 of the November for the subsequent month.

One may take a view that if the rectification is carried out in the books before 30th November and the effect of the same is given in the return filed for the month of November by 10th of December, then it must still be a sufficient compliance. However, this aspect is not clear as of now.

14. Delinking of refund of electronic cash ledger with GSTR 3/ GSTR 3B:

(Clause 112 of Finance Bill, 2022)

Originally, upon introduction of GST, the refund of any balance lying in the Electronic Cash ledger was supposed to be refunded to the registered person based on filing of GSTR 3 u/s 39. However, due to implementation of GSTR 3B in place of GSTR 3, this system of claiming refund of cash ledger through Form GSTR 3 could never be implemented.

Since, GSTR 3 is kept in abeyance, therefore by virtue of this amendment, it is provided that a registered person can claim the refund of the balance lying in the electronic cash ledger in such form and manner as may be prescribed. The effective date of the amendment is yet to be notified.

Comments:

Since this difficulty was faced by the taxpayers, the GST common portal enabled a mechanism for taxpayers to claim the refund of the balance lying in electronic cash ledger. This amendment is merely to a post facto change brought in the law to give effect to the change already carried out

on the GST common portal. However, originally, the refund of the balance lying in the electronic cash ledger was supposed to be automatic and was expected to be credited based on disclosure made in GSTR 3 without any question being asked. However, with prescription of separate form, all the applications are now routed through the jurisdictional officers, which leads to unnecessary departmental intervention and delays in the sanction of refund claim. It is also seen that the refunds of cash balances are being denied based on simple procedural grounds which is leading to unnecessary litigation.

15. Extension of time-limit for filing of refund application in case of specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation, Consulate or Embassy of foreign countries

(Clause 112 of Finance Bill, 2022)

The time limit of claiming refund of tax paid on inward supplies of goods or services or both by a specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation, Consulate or Embassy of foreign countries or any other person or class of persons, notified under section 55 has been provided as to two years from the last day of the quarter in which such supply was received. Earlier, the time limit to claim the refund was six months from the last day of the quarter in which such supply was received. The effective date of the amendment is yet to be notified

Comments:

This is a beneficial amendment, and the time-limit is increased to be kept on par with other situations where the refund is granted. In our view, this benefit would be eligible even for the refund applications that are filed for the past period where the time-limit exceeds 6 months provided that the application is filed after the amendment is made effective.

16. The scope of withholding of or recovery from refunds is extended for all types of refund

(Clause 112 of Finance Bill, 2022)

The proper officer has the power to withhold the payment of refund or to deduct the same from any tax, interest, penalty due from the taxpayer in case where the registered person has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority.

Earlier, this power of recovery, withholding of refund was restricted to only refund of any unutilised input tax credit i.e., refunds on zero rated supply and inverted rate structure. However, vide this amendment is made in section 54(10) of the CGST Act, 2017 the power to withhold, deduct the refund is now extended to all other types of refund as well. The effective date of the amendment is yet to be notified

Comments: This amendment would adversely impact the taxpayers who would file the application for refund of the balances lying in the electronic cash ledger. This extension can lead to proper officer opening up the full-fledged investigation for the simple refund application, thereby leading to adjustment, recovery of monies of refund.

17. Relevant date for refund against supplies made to SEZ units and SEZ developers is provided.

(Clause 112 of Finance Bill, 2022)

In respect of Zero-rated supply of goods or services to a Special Economic Zone developer or a Special Economic Zone unit, where a refund of tax paid is available in respect of such supplies themselves i.e., (Refund of tax on payment of tax without LUT), there was a confusion as to the relevant date from when the time limit of 2 years must be considered for filing of the refund application since there was no specific mention for the same.

By way of this amendment, a new sub-clause (ba) in clause (2) of explanation is inserted to clarify that the relevant date for filing refund claim in respect of supplies made to a SEZ developer or a SEZ unit would be the due date of furnishing of return under section 39 in respect of such supplies. The effective date of the amendment is yet to be notified.

Comments:

Since there was no specific provision in the law providing for the relevant date for computation of 2 years, the taxpayers were facing harassment at the hands of the refund sanctioning officer with each officer interpreting the time-limit as per its whims and convenience. For instance, in the case of **M/S S.R. Enterprises vs Deputy Commissioner 2021 (7) TMI 808 - COMMISSIONER (APPEALS)**, the refund was denied by holding a view that the relevant date must be taken from the date of supply of goods as per clause (a) of explanation 2 of sub section (14) of Section 54 of CGST Act, 2017 and not from the date of payment of tax. Therefore, this amendment is a welcome move and would lead to clarity among the taxpayers and also the field formations in granting the refund for taxes paid for supply of goods or services to SEZ.

18. Consequential Amendment in section 168 to remove the reference of section 38

(Clause 113 of Finance Bill, 2022)

Section 38 is now amended thoroughly to do away with two-way communication process in return filing. Reference of section 38 was given in section 168 empower the commissioner for issuance of instructions or directions. However, since the section 38 itself is now fully amended, this is a consequential deletion of the reference from section 168. The effective date of the amendment is yet to be notified.

19. www.gst.gov.in is notified as the Common Goods and Services Tax Electronic Portal, retrospectively w.e.f. 22.06.2017

(Clause 114 of Finance Bill, 2022)

Notification No. 9/2018 – Central Tax, dated the 23rd January, 2018, is being amended so as to notify www.gst.gov.in as the Common Goods and Services Tax Electronic Portal, retrospectively, with effect from 22nd June, 2017 for all functions provided under Central Goods and Services Tax Rules, 2017, other than those provided for e-way bill and for generation of e-invoices.

Comments:

The earlier amendment brought out in Notification No. 9/2018 specifying GST common portal stated the amendment to be effective from the 16th day of January 2018 which led to a confusion for a period between July 1, 2017, to Jan 15, 2018. By virtue of this amendment giving retrospective effect to this notification, the issue is put to rest.

20. Interest to be paid @ 18% on wrong availment and utilization of ITC

(Clause 115, 118 and 121 of Finance Bill, 2022)

Retrospective amendment w.e.f. 01.07.2017 is made in Notification No. 13/2017 – Central Tax, dated the 28th of June 2017 to notify the rate of interest @ 18% on wrong availment and utilization of input tax credit. Earlier the rate of interest was @ 24% on wrong availment and utilization of input tax credit.

Similar amendment is also made in Notification No. 6/2017 – Integrated Tax, dated the 28th of June 2017 and Notification number 10/2017 – Union Territory Tax, dated the 30th of June 2017 so as to reduce the earlier rate of interest @ 24% to 18% on wrong availment and utilization of input tax credit.

Comments: This is the welcome move from the Government. While the rate of 24% was mentioned for levy of interest in case of undue or excess claim of input tax credit, however the same was linked to cases where the ITC was not matching based on auto-system based mis-match u/s 42 and 43. However, since the mechanism of two-way system-based matching was itself never implemented, therefore the levy of interest rate @ 24% was not correct. However, at the field formations, the officers were issuing show cause notices demanding interest @ 24% in all cases of ITC matter leading to unnecessary confusion among the taxpayers and a litigation thereon. This retrospective amendment must settle the dust in this regard.

21. Retrospective exemption from central tax, Union territory tax and Integrated tax in respect of supply of unintended waste generated during the production of fish meal

(Clause 116,119 and 122 of Finance Bill, 2022)

Amendment made in the rate notifications to provide the retrospective exemption from levy of Central Tax, Union Territory Tax and Integrated Tax on supply of unintended waste generated during the production of fish meal (falling under heading 2301), except fish oil during the period commencing from the 1st day of July 2017 and ending with the 30th day of September 2019 (both days inclusive).

Further it is proposed that no refund would be available of all such tax which has been collected, but which would not have been so collected in line with the above retrospective exemption.

Comments: The amendment is provided to grant exemption during the period 01.07.2017 to 30.09.2019 with the condition that refund would not be allowed even if the taxes were collected during the said period. In our view making retrospective amendment of exemption for the past period with the condition that the refund is not available if taxes were paid would not make real sense to brough such amendment. However, even if the refund is allowed for the past period, it would be difficult for the assessee to prove that the burden of tax is not pass on to the ultimate consumer.

22. Notifications providing the grant of alcoholic liquor license neither a supply of goods nor a supply of service as per Section 7(2) of CGST Act, 2017 have been given retrospective effect from 01.07.2017

(Clause 117, 120 and 123 of Finance Bill, 2022)

Service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee has been declared as an activity or transaction which shall be treated neither as a supply of goods nor a supply of service vide notification No. 25/2019- Central Tax (R) dated 30.09.2019, notification No. 24/2019- Integrated Tax (R) dated 30.09.2019 and notification No. 25/2019- Union Territory Tax (R) dated 30.09.2019. With the proposed amendment these notifications have been given retrospective effect from 01.07.2017. However, it is proposed that no refund would be available of all such tax which has been collected, but which would not have been so collected in line with the above retrospective amendment.

Comments:

The amendment is provided to give retrospective effect to the notifications issued dated 30.09.2019 from 01.07.2017 with the condition that refund would not be allowed even if the taxes were collected before 30.09.2019. In our view making retrospective amendment for the past period with the condition that the refund is not available if taxes were paid would unnecessarily saddle the taxpayer with the excess tax burden. If the levy itself was not there since the inception of the GST, the taxes paid could take the colour of money deposited with the government and the same should be refunded back to the taxpayer. However, it would be difficult for the taxpayer to prove that the burden of tax is not pass on to the ultimate consumer.

CHANGES IN CUSTOMS ACT, 1962

1. Scope of 'Proper Officer' under Customs Act, 1962 widened

(Clause 85, 86 and 87 of Finance Bill, 2022)

- A. **Changes in Section 2(34):** Section 2(34) has been proposed to be amended to specifically state that assignment of functions to an officer of Customs by the Board or the Principal Commissioner of Customs or the Commissioner of Customs shall be done under the newly inserted sub-sections (1A) and (1B) of Section 5 in the Customs Act, 1962 (52 of 1962).
- B. **Changes in Section 3:** Section 3 of Customs Act, 1962 has been proposed to be amended to include officers of Customs (Preventive) and Directorate General of Revenue Intelligence and Audit as the officers of Customs. The provision before the amendment and the proposed amendment is as follows:

Provision before Amendment	Proposed Amendment
SECTION 3. Classes of officers of customs. - There shall be the following classes of officers of customs, namely: - <ol style="list-style-type: none"> Principal Chief Commissioners of Customs. Chief Commissioners of Customs. Principal Commissioners of Customs. Commissioners of Customs. Commissioners of Customs (Appeals). Joint Commissioners of Customs. Deputy Commissioners of Customs. Assistant Commissioners of Customs. such other class of officers of customs as may be appointed for the purposes of this Act. 	"Section 3. Classes of Officers of Customs: - There shall be the following classes of officers of customs, namely: - <ol style="list-style-type: none"> Principal Chief Commissioner of Customs or Principal Chief Commissioner of Customs (Preventive) or Principal Director General of Revenue Intelligence; Chief Commissioner of Customs or Chief Commissioner of Customs (Preventive) or Director General of Revenue Intelligence; Principal Commissioner of Customs or Principal Commissioner of Customs (Preventive) or Principal Additional Director General of Revenue Intelligence or Principal Commissioner of Customs (Audit); Commissioner of Customs or Commissioner of Customs (Preventive) or Additional Director General of Revenue Intelligence or Commissioner of Customs (Audit); Principal Commissioner of Customs (Appeals); Commissioner of Customs (Appeals);

	<p><i>g. Additional Commissioner of Customs or Additional Commissioner of Customs (Preventive) or Additional Director of Revenue Intelligence or Additional Commissioner of Customs (Audit);</i></p> <p><i>h. Joint Commissioner of Customs or Joint Commissioner of Customs (Preventive) or Joint Director of Revenue Intelligence or Joint Commissioner of Customs (Audit);</i></p> <p><i>i. Deputy Commissioner of Customs or Deputy Commissioner of Customs (Preventive) or Deputy Director of Revenue Intelligence or Deputy Commissioner of Customs (Audit);</i></p> <p><i>j. Assistant Commissioner of Customs or Assistant Commissioner of Customs (Preventive) or Assistant Director of Revenue Intelligence or Assistant Commissioner of Customs (Audit);</i></p> <p><i>k. such other class of officers of customs as may be appointed for the purposes of this Act."</i></p>
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- C. **Changes in Section 5:** Sub-section (1A) and (1B) have been proposed to be inserted in Section 5 of the Act to explicitly provide power of assignment of function to officers of customs by the Board or as the case may be by the Principal Commissioner of Customs or Commissioner of Customs as under:

"(1A) Without prejudice to the provisions contained in sub-section (1), the Board may, by notification, assign such functions as it may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions.

(1B) Within their jurisdiction assigned by the Board, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, by order, assign such functions, as he may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions."

Also, Sub-section (4) to Section 5 is being inserted to delineate the criteria which the Board may adopt while imposing limitations or conditions under sub-section (1) or while assigning functions under sub-section (1A) to the officer of Customs as under:

"(4) In specifying the conditions and limitations referred to in sub-section (1), and in assigning functions under sub-section (1A), the Board may consider any one or more of the following

criteria, including, but not limited to— (a) territorial jurisdiction; (b) persons or class of persons; (c) goods or class of goods; (d) cases or class of cases; (e) computer assigned random assignment; (f) any other criterion as the Board may, by notification, specify.

Further, Sub-section (5) to Section 5 is being inserted to ensure that wherever necessary, for the proper management of work, two or more officers of customs, can concurrently exercise powers and functions as follows

(5) The Board may, by notification, wherever necessary or appropriate, require two or more officers of customs (whether or not of the same class) to have concurrent powers and functions to be performed under this Act."

Effective Date: Date of assent of President of India to Finance Act, 2022`

Comments: Powers to perform various functions were assigned to the various officers of Customs by virtue of Notification No. 40/2012-Customs (N.T.). However, this notification has been issued by the Central Board of Excise and Customs in exercise of non-existing power under Section 2 (34) of the Customs Act.

Hence, it was held by the larger bench of the Apex Court in the case of *Canon India Pvt. Ltd. 2021-TIOL-123-SC-CUS-LB* that the case initiated by the Additional Director General of the DRI by issuing show cause notices are invalid without any authority of law since the notification is invalid having been issued by an authority which had no power to do so in purported exercise of powers under a section which does not confer any such power.

As a consequence, it is manifest that only such a Customs Officer who has been assigned the specific functions of assessment and reassessment of duty in the jurisdictional area where the import concerned has been affected, by either the Board or the Commissioner of Customs, in terms of Section 2(34) of the Act is competent to issue notice under section 28 of the Act. Any other reading of Section 28 would render the provisions of Section 2(34) of the Act otiose inasmuch as the test contemplated under Section 2(34) of the Act is that of specific conferment of such functions.

In order to overcome this infirmity in the law various legislative changes have been brought out as under:

- Meaning of the term 'Proper officer' u/s 2(34) is modified to cover the officers who is assigned those functions by the Board or the Principal Commissioner/ Commissioner of Customs u/s 5 of the Customs Act, 1962.
- Further, in order to remove any ambiguity as regards the class of officers of Customs. Amendment is brought under Section 3 of the Customs Act to include Officers of DRI, Audit and Preventive formation as the class of officers of Customs.
- Further, since mere drawing of powers from the definition clause is not sufficient, therefore a specific power is now inserted in the main section by inserting section (1A) and (1B) to Section 5 of the Customs Act, 1962 conferring the power upon the board/ Principal

Commissioner/Commissioner of Customs to assign such functions as it deems fit, to a proper officer of customs.

- Further, while assigning functions to the officers, very wide powers have been given to the board to cover various one or more criteria's such as territorial jurisdiction, class of persons, class of goods, class of cases, computer assigned random assignment or any other criterion as the board may notify.
- It is further stated that board may wherever necessary, entrust concurrent powers and functions upon two or more officers of customs (whether or not of the same class). This can be very draconian as it could lead to multiple agencies (viz., audit, investigation, preventive etc.) performing parallel proceedings against the same assessee for the same transaction.

2. Additional Obligations on importer to check the menace of Under Valuation

(Clause 88 of Finance Bill, 2022)

Section 14 is proposed to be amended enabling the Board to prescribe the Rules by specifying the additional obligations of the importer in respect of a class of imported goods whose value is not being declared correctly, the criteria of selection of such goods, and the checks in respect of such goods. In sub-section (1), in the second proviso, after clause (iii), the following clause shall be inserted, namely:

–
"(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria:".

Effective Date: Date of assent of President of India to Finance Act, 2022

Comments: Generally, the transaction value of the goods imported is accepted under Customs where the buyer and seller are not related, and price charged is the sole consideration. However, in order to arrest the menace of under valuation in Customs, it is now provided that in respect of certain class of imported goods, where the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria, then in such cases the importer would be required to undertake some additional obligations and certain additional checks to be exercised.

Although, the rules in this regard are not prescribed yet, however it is clear that the compliance burden on the importer is going to increase with additional declarations, verifications and checks to be brought out at the time of import of certain class of goods. Since swift and fast clearances of goods

from the customs is one of the determining parameters in the international trade, therefore any delay on this count could adversely affect the importers entire supply chain and can directly go against the governments initiative of ease of doing business. Although, the actual impact of this amendment at the ground level and the practical challenges can be only known once the rules are prescribed in this regard.

3. Changes in Application for Advance Ruling Provisions under Customs

(Clause 89, 90, 91 and 92 of Finance Bill, 2022)

- A. Section 28E is proposed to be amended to omit the Explanation under clause (c) and omit clause (h).

Effective Date: Date of assent of President of India to Finance Act, 2022

Comments: Earlier, the scope of the term 'applicant' who were eligible for making an application for advance ruling was linked to such person being a "joint venture in India" or a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident. However, vide amendment in Finance Act, 2018, the scope of the term persons being an 'applicant' eligible for advance ruling is widened to cover any person holding a valid Importer-exporter Code Number. However, this amendment is incidental wherein the definitions given to the terms 'joint venture in India' or 'non-resident' or 'Indian company' or 'foreign company' are being omitted as they are no more relevant.

- B. Section 28H is proposed to be amended to make provisions for prescribing appropriate fees by Board relating to application for advance Ruling and also give flexibility to the applicant to withdraw his application at any time before a ruling is pronounced. The proposed amendment is as follows

(a) in sub-section (1), after the words "an application in such form and in such manner", the words "and accompanied by such fee" shall be inserted;

(b) sub-section (3) shall be omitted;

(c) in sub-section (4), for the words "within thirty days from the date of the application", the words "at any time before an advance ruling is pronounced" shall be substituted.

Effective Date: Date of assent of President of India to Finance Act, 2022

Comments: Presently, while making an application for the advance ruling, it is stated that the application must be submitted in quadruplicate, and it must be accompanied by a fee of Rs. 10,000/-. However, by virtue of this amendment, the details of application fees of Rs. 10,000/- as provided in the act has been removed and the power is provided to the board to prescribe the fees by way of rules. The actual details of the application fees would be known once the same is

prescribed in the rules. Further, currently, the time limit to withdraw the application is pegged at 30 days from the date of application. Now, by way of this amendment, the flexibility is given to the applicant to withdraw his application at any time before a ruling is pronounced from the current 30 days' time period.

C. Section 28I (7) is proposed to be amended which earlier as stood as under-

*(7) A copy of the advance ruling pronounced by the Authority, duly signed **by the Members** and certified in the prescribed manner shall be sent to the applicant and to the “ [Principal Commissioner of Customs or Commissioner of Customs], as soon as may be, after such pronouncement.*

is now being amended to exclude the words **by the members**.

Comments– After this amendment, advance ruling pronounced by the Authority can be signed any Proper officer like Secretary to Customs Authority for Advance Ruling it need not be the Member of the Bench.

D. Section 28J (2) is now proposed to be substituted which earlier stood as under-

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

is now being substituted to read as under -

“(2) The advance ruling referred to in sub-section (1) shall remain valid for three 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:

Provided that in respect of any advance ruling in force on the date on which the Finance Bill, 2022 receives the assent of the President, the said period of three years shall be reckoned from the date on which the said Finance Bill receives the assent of the President.”

Comments – As an effect of this amendment, any advance ruling sought by the assessee shall be valid only for maximum of 3 years, subject to changes in the law or facts of the case. Before the amendment, the advance ruling was binding on the assessee for lifetime until there was change in law or change in the facts of the case. The proposed amendment has given room for adopting the interpretation in favour of the revenue developed during the course of time, even when there is no change in the law to such effect after 3 years of passing the advance ruling.

If require the Applicant can apply for Ruling once again after 3 years to safeguard his interest.

The above amendment shall also apply for the Rulings already given as on the date of assent given to the subject Finance Bill. So past Rulings also requires the validation after the elapse of three years from the date of assent.

4. Action subsequent to inquiry, investigation or audit or any other specified purpose

[Clause 93 of Finance Bill, 2022]

New section 110AA was proposed to be introduced which reads as under-

"110AA. Where in pursuance of any proceeding, in accordance with Chapter XIIA or this Chapter, if an officer of customs has reasons to believe that—

(a) any duty has been short levied, not levied, short paid or not paid in a case where assessment has already been made;

(b) any duty has been erroneously refunded;

(c) any drawback has been erroneously allowed; or

(d) any interest has been short-levied, not levied, short-paid or not paid, or erroneously refunded, then such officer of customs shall, after causing inquiry, investigation, or as the case may be, audit, transfer the relevant documents, along with a report in writing—

(a) to the proper officer having jurisdiction, as assigned under section 5 in respect of assessment of such duty, or to the officer who allowed such refund or drawback; or

(b) in case of multiple jurisdictions, to an officer of customs to whom such matter is assigned by the Board, in exercise of the powers conferred under section 5,

and thereupon, power exercisable under sections 28, 28AAA or Chapter X, shall be exercised by such proper officer or by an officer to whom the proper officer is subordinate in accordance with sub-section (2) of section 5."

Comments – If a proper officer has initiated an audit for assessment of imported/ exported goods of an auditee, or if he has initiated search or seizure and in the process of verification has encountered discrepancies which are prejudicial to the interest of revenue, then such officer shall record his findings and share the same with the proper officer having the jurisdiction, who shall then initiate proceedings under section 28, 28AAA, by way of issuance of notice. The intention is that the officer, who originally exercised such jurisdiction shall have the sole authority to exercise jurisdiction for further action like reassessment, adjudications, etc. consequent to the completion of such inquiry, investigation, audit or any other purpose.

This amendment would enable independence, unbiasedness on the adjudication process by the adjudicating authority, he need not be prejudiced or pre-judged with the observations of audit or investigating authority. He can take his independent decision.

5. Stringent provisions for Protection of Data of the taxpayer

[Clause 94 of Finance Bill, 2022]

The new section – 135AA reads as under-

(1) If a person publishes any information relating to the value or classification or quantity of goods entered for export from India, or import into India, or the details of the exporter or importer of such goods under this Act, unless required so to do under any law for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to fifty thousand rupees, or with both.

(2) Nothing contained in this section shall apply to any publication made by or on behalf of the Central Government. Explanation. -- For the purposes of this section, the expression "publishes" includes reproducing the information in printed or electronic form and making it available for the public.'

Comments - When any person publishes any information pertaining to the details of imports, exports, quantities, classification, details of importers and exporters which is not so required by the law, he shall be sentenced to imprisonment. This amendment has the effect of strengthening the faith invested by the assessee on the department to maintain confidentiality, as those details are price sensitive information and has impact on business on a whole.

6. Minor change in section Cognizance of offences in line with the above amendment -

[Clause 95 of Finance Bill, 2022]

Section 137(1) was amended by inserting the words section 135AA to give effect to the new section in the said section, the amended sub-section reads as under-

*(1) No court shall take cognizance of any offence under section 132, section 133, section 134 or ¹ [section 135 **or section 135AA**], except with the previous sanction of the ² [Principal Commissioner of Customs or Commissioner of Customs].*

7. Retrospective Validation of certain actions taken under Customs Act-

[Clause 96 of Finance Bill, 2022]

To give retrospective effect to section 3 as amended through this Finance bill, 2022, to propose that the officers of Customs (Preventive) and Directorate General of Revenue Intelligence and Audit are to be regarded as the officers of Customs, the following clarification through section 96 of the Finance Bill, 2022 was made-

96. *Notwithstanding* anything contained in any judgment, decree or order of any court, tribunal, or other authority, or in the provisions of the Customs Act, 1962 (hereinafter referred to as the Customs Act), –

(i) anything done or any duty performed, or any action taken or purported to have been taken or done under Chapters V, VAA, VI, IX, X, XI, XII, XIII, XIV, XVI and XVII of the Customs Act, as it stood prior to its amendment by this Act, shall be deemed to have been validly done or performed or taken.

(ii) any notification issued under the Customs Act for appointing or assigning functions to any officer shall be deemed to have been validly issued for all purposes, including for the purposes of section 6;

(iii) for the purposes of this section, sections 2, 3 and 5 of the Customs Act, as amended by this Act, shall have and shall always be deemed to have effect for all purposes as if the provisions of the Customs Act, as amended by this Act, had been in force at all material times.

Explanation – For the purposes of this section, it is hereby clarified that any proceeding arising out of any action taken under this section and pending on the date of commencement of this Act shall be disposed of in accordance with the provisions of the Customs Act, as amended by this Act.

Comments - Powers to perform various functions were assigned via notification issued by the Central Board of Excise and Customs in exercise of non-existing power under Section 2 (34) of the Customs Act. The same was appreciated by the larger bench of the Apex Court in the case of Canon India Pvt. Ltd. 2021-TIOL-123-SC-CUS-LB stating that the case initiated by the Additional Director General of the DRI by issuing show cause notices are invalid without any authority of law since the notification is invalid having been issued by an authority which had no power to do so in purported exercise of powers under a section which does not confer any such power.

Now, the amendment in section 3 is being made to rectify the above defect in the law, and all the acts done by such class of officers in the intervening period have been proposed to be ratified by this clarification, thereby reversing the above referred decision and re-instating the non-existential powers.

This amendment is irrespective any judgment or decree or order of any court. For all the pending proceedings, this amendment would apply. So, the show cause notices issued by the DRI Officers, it may be pending at any level these show cause notices should be considered as issued by the proper authority only.

8. Changes in Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (Not No.07/2022-Customs (NT) dated 101.02.2022- w.e.f 01.03.2022)

Rule	Before Amendment	After Amendment
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3	---	<p>Clause (ab), (ac) and (ad) has been introduced to define common portal, customs automated system, date of import</p> <p>Comment: The entire procedure has been made online through common portal; therefore, the corresponding definitions has been inserted.</p>
4	<p><u>Information about intent to avail benefit of exemption notification</u></p> <p>a. Importer who intends to avail the benefit of an exemption notification shall intimate DC/AC where the imported goods shall be put to use for manufacture or for rendering output service</p>	<p><u>Importer to give prior information</u></p> <p>a. Importer shall provide one-time information on the common portal in Form IGCR-1 along with details of applicable exemption notification along with intended port of import</p> <p>b. On acceptance, an Import of Goods at Concessional Rate Identification Number (IIN) shall be generated.</p> <p>c. Importer shall submit a continuity bond with surety or security as deemed appropriate by the DC or AC with an undertaking to pay the differential duty</p> <p>Comment: The Form IGCR-01 has been prescribed to file online which reduces the manual intervention and to provide a unique number as "IIN".</p>
5	<p><u>Procedure to be followed</u></p> <p>I. Importer who intends to avail exemption shall provide</p> <p>a. Estimated quantity and value of goods to be imported, particulars of exemption notification, port of import in respect of particular consignment for a period not exceeding one year</p> <p>b. In one set, to DC/AC at the Customs Station of importation.</p>	<p><u>Procedure to be followed</u></p> <p>a. The importer shall mention the IIN and continuity bond number while filing the Bill of Entry</p> <p>b. The DC/AC at the Customs Station of importation shall allow the benefit of exemption</p> <p>c. On filing BOE, the bond would get automatically debited in customs automated system</p> <p>Comment: The new procedure eliminated the manual intervention and also provides for</p>

	II. Importer shall submit a continuity bond with surety or security as deemed appropriate by the DC or AC with an undertaking to pay the differential duty	automatic update of the records which results in speedy clearance of imported goods.
6	<p><u>Importer to give information regarding receipt of imported goods and maintain records</u></p> <p>a. Importer shall inform the receipt of imported goods in premises within 2 days to Jurisdictional officer.</p> <p>b. Importer shall maintain certain specified details</p> <p>c. File quarterly return</p>	<p><u>Importer to maintain records</u></p> <p>a. Not required to intimate the jurisdictional officer on receipt of goods</p> <p>b. Importer shall maintain certain specified details including the date of receipt of imported goods in relevant premises</p> <p>c. Form IGCR-2 to be filed in case of non-receipt or short receipt of goods imported</p> <p>d. Monthly statement on common portal in IGCR-3 should be filed</p> <p>Comment: Previously, the importer has to file the return quarterly. However, the same shall be now filed monthly. Further, a new form IGCR-2 has been inserted for intimation for intimation of short or non-receipt of goods.</p>
6A	<p><u>Procedure for allowing imported goods for job work</u></p> <p>a. Should be intimated to Jurisdictional Customs officer of his intension of sending imported goods for job work (except gold, jewellery and articles thereof and other precious metals or stones for job work)</p> <p>b. The importer shall specify, name and address of job worker, nature and description of job work, quantity and</p>	<p><u>Procedure for allowing imported goods for job work</u></p> <p>a. Shall maintain records of goods sent for job work and mention the same in monthly statement IGCR-02</p> <p>b. Shall send goods under an invoice or wherever applicable through E-way bill as specified in CGST Act, 2017</p> <p>c. Maximum period for which goods can be sent for job work is 6 months from date of invoice or E-way bill</p> <p>Comment: Now the importer shall send the goods by issuing the invoice or E-way Bill as against the procedure of sending it through challan. This</p>

	<p>description of goods intended to be sent to job worker</p> <p>c. Jurisdictional Customs officer shall forward a copy of intimation to concerned Customs Officers under whose jurisdiction the premises of job worker is situated</p> <p>d. Shall send the goods enclosing the challan specifying the description and quantity of goods</p> <p>e. Maximum period for which goods can be sent for job work is 6 months from date of challan</p>	<p>enhances better tracking of goods and eliminates misuse of exemptions.</p>
6B	NA	<p><u>Procedure for allowing imported goods for unit transfer</u></p> <p>a. Shall maintain records of goods sent for unit transfer and mention the same in monthly statement IGCR-02</p> <p>b. Shall send goods under an invoice or wherever applicable through E-way bill as specified in CGST Act, 2017</p> <p>Comment: Specific rule has been incorporated prescribing the procedure to be followed in case of unit transfer and the same is similar to job work procedure.</p>
7	<p><u>Re-export or clearance of unutilised or defective goods</u></p> <p>a. The importer may re-export the unutilised or defective goods within 6 months from date of import with permission of AC/DC</p>	<p><u>Re-export or clearance of unutilised or defective goods</u></p> <p>a. Shall use the goods within 6 months from date of import</p> <p>b. W.r.t unutilised or defective goods, the importer has the option either to re-export or clear the same for home consumption with the said period</p>

	<p>b. Value of such re-export shall not be less than value of such goods at time of import</p> <p>c. The importer may also clear the unutilised or defective imported goods within a period of 6 months on payment of duty along with interest</p> <p>d. The importer has an option to clear the capital goods Imported on payment of duty on depreciated value at specified %</p>	<p>c. The importer shall maintain the details of re-export in monthly statement and value of such re-export shall not be less than value of such goods at time of import</p> <p>d. On clearance of defective or unutilised goods for home consumption, duty along with interest shall be paid</p> <p>e. The importer has an option to clear the capital goods Imported on payment of duty on depreciated value at specified %</p> <p>Comment: Time limit has been specified for use of imported goods which was not there earlier.</p>
8	<p><u>Recovery of duty in certain cases</u></p> <p>In event of failure on part of importer to comply with conditions specified, the DC/AC shall take action by invoking the bond to initiate the recovery proceedings</p>	<p><u>Recovery of duty in certain case</u></p> <p>In event of failure on part of importer to comply with conditions specified, the DC/AC shall take action by invoking the bond to initiate the recovery proceedings</p> <p>Comment: Corresponding changes in recovery procedure has been made considering the changes made in previous rules</p>

CHANGES IN CUSTOMS TARIFF ACT

[Click here of Annexures](#)

1. Tariff Rate Changes (Annexure I)

a. Amendment Effective 02.02.2022 (Increase in effective rate)

Rate of Basic Customs Duty has been increased for certain goods such as umbrellas, imitation jewellery, certain electrical and electronic goods

b. Amendment Effective 01.05.2022 (No Change in effective rate)

It is an exercise for simplification of the Customs tariff structure, as one was required to parallelly verify the exemption/concessional notifications along with the Customs Tariff Act. Current applied rate of Basic Customs Duty on the specified commodities operates through their respective exemption/concessional notifications. Such corresponding entries would be omitted from the concerned notifications with effect from the 01.05.2022, as the same would operate through the Customs Tariff Act, 1975

c. Amendment Effective 02.02.2022 (Reduction in effective rate)

Initially, w.e.f. the effect of reduced rate of Basic Customs Duty would be introduced by amending certain exemption/concessional notifications (including Notification No.50/2017).

With effect from 01.05.2022, these entries would be omitted from the respective notification and the same (i.e., concessional rate) would operate through the Customs Tariff Act, 1975 (as part of the exercise for simplification of Customs Tariff structure).

2. New entries added to the First Schedule Effective 01.05.2022 – Alignment of Indian Tariff

Amendments proposed to align the Indian Tariff with the Complementary Amendments to the HS-2022 published by WCO, as signatory to HS Convention. These complementary amendments include minor changes across chapters in the Tariff, aimed at bringing greater clarity to the HS. Further, New Tariff entries are introduced by accommodating the requests from different Ministries and Departments.

3. Review of Customs Duty Concessions/Exemptions - Notification No. 50/2017 (Annexure II)

BCD exemption hitherto available on certain goods are being withdrawn by omitting the following entries of notification No. 50/2017- Customs dated 30.6.2017

- a. Capital Goods – Textile, Power, Petroleum, Leather, Food Packing and Other Sectors
- b. Project Imports for specified projects including Power projects, Coal projects and Gas projects
- c. Exemption removed from immediate effect on certain goods
- d. Exemption removed from specified future date on certain goods including wood in chips for manufacture of paper, paperboard and newsprint
- e. Exemption removed for certain specified entries w.e.f. 31.03.2023 (unless varied)
- f. Exemption removed for certain specified entries w.e.f. 31.03.2024 (unless varied)
- g. Exemption entries omitted being in the nature of technical change
- h. Exemption entries with partial changes (i.e., exemption continued only for certain type of goods)

Section 25 (4A) of the Customs Act, inserted vide Finance Act, 2021, prescribes that where any exemption is granted subject to any condition under sub-section (1), such exemption shall, unless otherwise specified or varied or rescinded, be valid up to 31st day of March falling immediately after two years from the date of such grant or variation. Accordingly, conditional exemptions will have validity in terms of this subsection. Therefore, entry being impacted on account of this clause have been identified and an explanation has been inserted in the notification No. 50 /2017-Customs.

4. Withdrawal of certain exemptions granted through other standalone notifications w.e.f. 31.03.2023 / 31.03.2024 (Annexure III)

Amendment impacting certain specified goods including

- Items relating to Defence and internal security forces
- Import of items relating to import of raw materials and parts for use in manufacture of electronic items
- Import of items relating to capital goods used in manufacture of electronic items
- Import of items relating to internal security agencies
- Export of specified goods covered under Notification No. 27/2011-Customs dated 01.03.2011

5. Withdrawal of certain exemptions granted through other standalone notifications with immediate effect, entries have become obsolete / their validity has expired (Annexure III)

6. Inclusion of End-date as per Section 25(4A) of the Customs Act, 1962, in certain stand-alone notifications (Annexure IV)

Amendment impacting certain specified goods including

- Specified sports goods, equipment and requisites imported by National Sports Federation
- Firearms and ammunition for renowned shot
- Equipment, instrument, raw materials, components, pilot plants, computer software for R&D project
- Machinery/components for initial setting up of power generation project
- Machinery, equipment, apparatus, components and appliances for initial setting up of fuel cell-based system for generation of power
- Specified drugs and medicines supplied free of cost to patients

[Notification No. 09/2022-Customs dated 01.02.2022]

7. Changes in effective Basic Customs Duty rates in respect of Phased Manufacturing Program [PMP] with respect to specific electronic goods (Smart Watches, Hearable Devices, Smart Meters) (Annexure V)

[Notification No. 11/2022-Customs, Notification No. 12/2022-Customs and Notification No. 13/2022-Customs dated 01.02.2022]

8. Other changes in rates of Basic Customs Duty (Annexure VI)

9. Exemption from Health Cess for Surgical needles imported for manufacture of Surgical sutures (Annexure VI)

10. Concessions on specified items when imported by bonafide exporters (Annexure VII)

Scheme for duty-free imports for the purpose of use in goods meant for export, based on end-use monitoring is being introduced for bonafide exporters subject to the requirement of exporting value added products manufactured using inputs imported under these exemptions, within a period of six months

11. Review of levy of social welfare surcharge [SWS] on various items by amending Notification No. 11/2018- Customs dated 02.02.2018 (Annexure VIII)

12. Other miscellaneous changes in various notifications providing concession on imports (Annexure IX)

Exemptions provided on Health Cess, Agriculture Infrastructure Development Cess and Road and Infrastructure Cess for import of specified goods from specified countries (in certain cases, by specified organisation)

[Notification No.08/2022-Customs dated 01.02.2022]

13. Certain clarificatory and technical changes made to Notification No.50/2017 (Annexure X)

14. Anti-Dumping duty is being permanently revoked on certain Goods (Annexure XI)

Revoked on import of Straight Length Bars and Rods of alloy-steel, High Speed Steel of Non-Cobalt Grade and Flat rolled product of steel (plated or coated with alloy of Aluminium or Zinc), from specified countries

[Notification No. 5/2022-Customs (ADD), Notification No. 6/2022-Customs (ADD) and Notification No. 7/2022-Customs (ADD) dated 01.02.2022]

15. Countervailing duty is being permanently revoked on certain Goods (Annexure XI)

Revoked on imports of Certain Hot Rolled and Cold Rolled Stainless Steel Flat Products originating in or exported from People's Republic of China

[Notification No. 1/2022-Customs (CVD) dated 01.02.2022]

16. Reduction of Export Duty rate from 40% to 30% for Raw hides and skins of buffalo (Chapter 41) (Annexure XII)

[Notification No. 10/2022-Customs dated 01.02.2022]

KEY CHANGES IN CENTRAL EXCISE ACT, 1944

9. Changes in Fourth Schedule – Tariff Changes

(Clause 98 of Finance Bill, 2022)

Tariff items 2710 12 39 to 2710 12 49 in Sub-heading 2710 12 of Chapter 27 has been Substituted as follows

Tariff item		Description of Goods	Unit	Rate of Duty
2710 12 39	"- - -"	Solvent 145/205	Kg
	"- - -"	Motor Gasoline conforming to standard IS 2796, IS 17021, IS 17586 or IS 17076:		
2710 12 41	"- - -"	Motor Gasoline conforming to standard IS 2796	Kg	14%+Rs.15.00 per litre
2710 12 42	"- - -"	E 20 Fuel conforming to standard IS 17021	Kg	14%+Rs.15.00 per litre
2710 12 43	"- - -"	E 12 Fuel conforming to standard IS 17586	Kg	14%+Rs.15.00 per litre
2710 12 44	"- - -"	E 15 Fuel conforming to standard IS 17586	Kg	14%+Rs.15.00 per litre
2710 12 49	"- - -"	M 15 Fuel conforming to standard IS 17076	Kg	14%+Rs.15.00 per litre

Effective Date: Date of assent of President of India to Finance Act, 2022

Comments: Two new tariff items, that is, 2710 12 43 and 2710 12 44, falling under Chapter 27, have been inserted in the Fourth Schedule to the Central Excise Act, 1944, relating to E12 and E15 fuel blends, conforming to the new BIS specification [IS 17586] that has been issued for Ethanol Blended Petrol with percentage of ethanol up to twelve (E12) and fifteen (E15) percent respectively. This will align the Fourth Schedule to the Central Excise Act, 1944, with the similar proposed amendment in the sub-heading 2710 12 in the First Schedule to the Customs Tariff Act, 1975.

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