



ERGO

Analysing developments impacting business

INDIAN BUDGET 2020 | INDIRECT TAX PROPOSALS

2 February 2020

CUSTOMS LAW

Proposed legislative changes in the Customs Act, 1962

- Power to prohibit import and export of goods under Section 11 is proposed to be expanded to all goods, the uncontrolled import or export of which, can cause injury to the economy of India. Hitherto this was limited to gold and silver only.

Khaitan Comment: This amendment seeks to move India to a mature sanctions-based regime similar to that of the United States of America.

- A retrospective amendment is proposed to remove the limits on time-bound adjudication by providing that show cause notices issued on or before 29 March 2018 under Section 28 (*i.e. date when Finance Act, 2018 came into force*) would be governed by the provisions as they stood on that date.

Khaitan Comment: Mandatory adjudication periods were introduced vide the Finance Act, 2018. This clarificatory amendment seeks to specifically exclude the requirement of mandatory adjudication within a period of 2 years to show cause notices issued prior to 29 March 2018.

- Section 28DA to be introduced to prevent misuse of Free Trade Agreement/ Preferential Trade Agreements. As per the existing scheme, any dispute pertaining to Certificate of Origin issued under such agreements is required to be dealt with as per the treaty provisions. The proposed insertion requires importers to possess sufficient information satisfying claim for preferential rate of the duty as also casts an obligation to exercise reasonable care of the accuracy and truthfulness of the Certificate of Origin. Any wrongful claim may render the imported goods liable to confiscation under the proposed Section 111(i).

Khaitan Comment: This proposed change seeks to legislatively over-rule a recent judgment of the Supreme Court (*Kothari Metals Limited v Union of India*). This judgment was concerned with the issue of customs authorities having the power to challenge the validity of a Certificate of Origin issued under a Free Trade Agreement inspite of contrary treaty provisions entered into between the Government of India and Government of Malaysia.

- Electronic ledger of duty credit is proposed under Section 51B for credit in lieu of duty remission or other financial benefits incentives under any act or scheme of the Central Government. The duty credit in the Electronic ledger can be used for

payment of customs duties. Rules operationalizing this provision are yet to be notified.

Duty credit in the Electronic ledger is transferable and can be used to pay customs duties. Simultaneously, Section 28AAA is proposed to be amended to recover customs duties from the person who has been granted duty credit in case where such duty credit is transferred and utilized by persons other than the original beneficiary. Prior to the amendment, Section 28AAA was restricted to instruments issued under the Foreign Trade (Development and Regulation) Act, 1992 only.

Proposed legislative changes in the Customs Tariff Act, 1975

- Safeguard measures imposed under Section 8B, which were hitherto limited to imposition of safeguard duty, are proposed to be expanded to include tariff-rate quota fixations or any other measures, as deemed fit. Under tariff-rate quota, a lower tariff rate is imposed on imports of a given product within a specified quantity and a higher tariff rate on imports exceeding that quantity to provide the desired degree of import protection.
- The rules operationalizing anti-dumping and anti-subsidy actions are sought to be amended to bring them in line with international best practices to provide clarity. Substantive amendments are noted below:
 - Anti-subsidy rules now include a provision for circumvention which was not there earlier;
 - Anti-dumping rules relating to circumvention have been broadened to include any manner of change in trade or pattern which renders anti-dumping duty ineffective as per the discretion of the Directorate General of Trade Remedies.

Introduction of Health Cess

- The budget has imposed a Health Cess on import of medical equipment of classified in Customs Tariff Heading 90.18, 90.19, 90.20, 90.21 and 90.22 for augmenting and financing health infrastructure and related services. Salient features are below:
 - The applicable rate is 5% on the assessable value of the imported goods;
 - Medical devices which are exempt from Basic Customs Duty would not be subjected to Health Cess; and
 - Credit of Health Cess is not available to the importer.

Rate changes (effective 2 February 2020, unless specified otherwise)

Commodity	Movement
Agricultural and dairy products such as milk, whey, butter, maize, edible oil, raw sugar etc.	↑
Footwear and parts thereof	↑
Household articles such as tableware, kitchenware, glassware water filters, padlocks, brooms, brushes, mops, hand sieves, combs, vacuum flask etc.	↑

Electric / electronic appliances for household such as fans, grinders & mixtures, ovens, grillers, toasters, shavers, heaters, radiators and other appliances for domestic use	↑
Commercial freezers, compressor of refrigerators and air conditioner, industrial fans, water cooler, Vending machine (other than automatic)	↑
Furniture and toys	↑
Stationary products	↑
Artificial flowers, glass beads, bells, gongs, statuettes, trophies, other ornaments of base metal, photograph, picture or similar frames, mirrors, etc.	↑
Calcined petroleum coke	↓
Newsprint	↓
Microphone parts	↓

*[*Please click here for movement in rates of customs duty](#)*

Exemptions/ removals from customs duty

- Exemption from social welfare surcharge for specified electronic and media products has been withdrawn;
- Exemptions per the multilateral Information Technology Agreement has been expanded to specified items

Khaitan Comment: This is the first set of pruning and rationalization of customs duties. The budget speech has made a mention of further review by September 2020. To this effect, suggestions are sought to be crowdsourced. This is an opportune moment for industry chambers / trade associations to pro-actively work with the Central Government.

Anti-Dumping and Safeguard Duty

- Anti-Dumping Duty on Purified Terephthalic Acid and its variants (Tariff Item 29.17 36 00), when exported from Peoples Republic of China, Iran, Indonesia, Malaysia, Taiwan, Korea RP and Thailand has been revoked;
- Safeguard duty on imports of solar panels, imposed vide Notification No 1/2018-Cus. (SD) dated 30 July 2018, has been amended to bring in line with the customs tariff amendments proposed in the budget.

CENTRAL EXCISE LAW

- Proposed increase in the rates of National Calamity Contingent Duty (NCCD) levied as a surcharge on duties of Excise, under Section 136 of the Finance Act, 2001.

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Khaitan Comment: Changes in effective rate of excise duty by way of increase in the rates of NCCD comes as a measure to replenish reserves towards core corpus in the

National Calamity Contingency Fund while disincentivizing consumption of sin goods at the same time.

Goods and Services Tax

Proposed Legislative Changes

- Amendments in the Central Goods and Services Tax Act, 2017 (CGST Act) are introduced to map the consolidation of Dadra and Nagar Haveli and Daman and Diu in line with the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Act, 2019, along with creation of the new union territories of Ladakh and Jammu and Kashmir (with Legislature) pursuant to the Jammu and Kashmir Reorganisation Act, 2019.
- The scope of restrictions on the composition scheme has been widened to prohibit those suppliers of goods who also render exempted services, or are involved in inter-state supplies of services, or make any supply of services through an e-commerce operator. Earlier such restrictions were only limited to such supplies of goods.

Khaitan Comment: The proposed amendment has brought the supplier who primarily supplies goods (availing the composition scheme) with suppliers who otherwise avail the composition scheme under the balance provisions. This takes care of the anomaly that provided an unfair advantage to the supplier of goods who may also supply exempted services or inter-state supplies of services.

- The time limit prescribed for availment of input tax credit would now require consideration of the date of debit note (whenever issued) as opposed to the date of issue of the connected invoice.

Khaitan Comment: The proposed amendment is a welcome relief for trade as issuance of a debit note is a common practice and availment based on the date of invoices, substantially reduced the available credit.

- Provision for cancellation of voluntary registration under GST has been proposed.

Khaitan Comment: At the time of transition to GST, there were cases that automatically got registered under the CGST Act. There were certain other cases where due to confusion in terms of applicability of GST, registrations were applied for only to later realise that no registration was required. As there were no provisions for cancellation of GST registration by the assesses, the required compliance was an unnecessary burden.

- Powers are to be granted to jurisdictional Additional / Joint Commissioner to permit extension up to 30 days for filing an application to revoke the order of cancellation of registration.
- The Government shall be empowered (subject to the recommendations of the GST Council) to notify special provisions relating to time and manner of issuance of invoice which would apply in case of identified class of supplies.

Khaitan Comment: This shall enable the Government to issue necessary relaxations for specified sectors considering the demands of the trade practices. Under the earlier regime, such relaxations were present for the banking sector.

- Powers to be granted to the Government to prescribe rules pertaining to the issuance of certificate as proof for tax deducted at source (TDS) in cases where such deduction is mandated by a governmental / local authority, governmental agencies or persons notified by the Government.
- Provisions are introduced for levy of penalty (equivalent to the demand of duty / input tax credit that has been incorrectly availed) on persons who retain the

benefit of the transaction or at whose instance the following offences have been committed:

- Supply of goods / services without an invoice or incorrect invoice
- Issue of invoice without any underlying supply
- Availment or utilisation of input tax credit without actual receipt of goods / services
- Incorrect availment or distribution of input tax credit by an Input Service Distributor

Khaitan Comment: The intention of Parliament is clear that the scope of penal provisions is being widened to include accomplices or beneficiaries of prescribed offences.

➤ Following changes are introduced to the punitive provisions under the CGST Act:

- Persons who retain the benefits, or causes to commit, or at whose instance such offences prescribed under Section 132 have been committed, are now liable for punishment.
- Fraudulent availment of input tax credit without an invoice / bill has now been made a cognizable and non-bailable offence.

Khaitan Comment: This appears to be expanding the scope of punitive action and appears to give teeth to the Government to initiate action relating to alleged fraudulent availment of credit for which they would have had to otherwise procure necessary warrants.

➤ Retrospective amendments (effective from 1 July 2017) are introduced in the transitional provisions under the CGST Act to validate the time limits, and methods of carrying forward the unavailed input tax credit, that are prescribed under the Central Goods and Services Tax Rules, 2017.

Khaitan Comment: This appears to be a knee-jerk reaction to the host of petitions which had challenged the time limits prescribed for the filing of Form TRAN-1 and for the restriction of one year period prescribed for the availment of excise duties in relation to traded goods available as stock with dealers in specified situations.

➤ Jurisdictional Commissioners are empowered to issue necessary directions pertaining to following provisions:

- Pay the accountant appointed for the purposes of special audit.
- Grant of extensions for the period specified for the return / supply of inputs or capital goods from the job-worker's premises upon expiry of the specified period of 1 or 3 years respectively.

Khaitan Comment: This ensures that such routine procedural activities can be carried out in a timely manner without the need for escalation to the Joint Secretary or Commissioner posted with the Board.

➤ Section 172 of the CGST Act is amended to extend the time limit for the Central Government to make provisions for removal of difficulties under the said Act, from 3 to 5 years.

Identical amendments are incorporated in the Integrated Goods and Services Tax Act, 2017, the Union Territory Goods and Services Tax Act, 2017 and the Goods and Services Tax (Compensation to States) Act, 2017.

- The following transactions, when made without consideration, have been omitted from Schedule II to the CGST Act (which treats activities or transactions as supply of goods or supply of services), with retrospective effect from 1 July 2017:
 - Transfer or disposal of goods by a person forming part of the assets of a business so as no longer to form part of those assets; and
 - Putting goods held for business purposes to any private use or making available such goods to any person for private use.
- Notification disallowing refund of GST Compensation Cess on account of inverted duty structure for tobacco and manufactured tobacco substitutes, has been given retrospective operation from 1 July 2017.
- Scope of the Union Territory Goods and Services Tax Act, 2017 is extended to cover the newly reorganised Union Territory of Dadra and Nagar Haveli and Daman and Diu and the newly formed Union Territory of Ladakh.

Tariff changes

Period	Chapter Heading	Description of goods	Old rate	New rate* (retrospectively applicable)
1 July 2017 to 30 September 2019	2301	Fishmeal	5 %	Exempt
1 July 2017 to 31 December 2018	8483	Pulley, wheels and other parts of agricultural machinery	18 %	12 %

* Refund of tax paid on supply of the aforesaid goods till date shall not be available

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For any queries please contact: editors@khaitanco.com

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