

ERGO

Budget 2023

INDIRECT TAX PROPOSALS

UNION BUDGET

2023



**KHAITAN
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PROPOSED LEGISLATIVE CHANGES IN THE CUSTOMS ACT

- **Sunset Clause:** A proviso is proposed to be inserted to Section 25(4A) of the Customs Act to exclude exemption notifications in respect of free / preferential trade agreements, diplomatic / consular imports amongst other categories from sunset clauses. A sunset clause was inserted under Section 25(4A) in 2021 which provided for an automatic lapse of conditional exemptions, unless specified otherwise, on 31 March falling immediately after two years from the date of the conditional exemption.

| [Clause 123 of the Finance Bill]

- **Time limit for settlement of case:** Section 127C of the Customs Act is proposed to be amended by insertion of sub-clause (8), which provides for time-bound settlement of cases by the Settlement Commission, within a period of nine months from the date of application and a further extension of three months. If the prescribed timelines are not adhered to, the settlement proceedings would stand abated and the adjudicating authority will proceed to adjudicate the case as if no such settlement application was made.

| [Clause 124 of the Finance Bill]

01

Customs Law

PROPOSED LEGISLATIVE CHANGES IN THE CUSTOMS TARIFF ACT

- Appeal procedure in respect of trade protection measures: Sections 9(6), 9(7), 9A(5), 9A(6), and 9C of the Customs Tariff Act are proposed to be amended to differentiate between determination of amount of subsidy or the margin of dumping by the DGTR and imposition of countervailing / anti-dumping duties by way of issuance of a notification by the Central Government.

COMMENTS

Per the proposed amendments, an appeal under Section 9C of the Customs Tariff Act can be made against the final findings issued by the DGTR determining amount of subsidy in countervailing duty investigations or the margin of dumping in anti-dumping duty investigations. However, no appeal can lie against a notification issued by the Central Government imposing countervailing / anti-dumping duties or against an office memorandum issued for not imposing such duties. The proposed amendments are retrospective in their operation w.e.f. January 1995, i.e., the date of introduction of the trade remedial measures in the Customs Tariff Act.

Initially, courts have held that the Central Government is not bound to impose countervailing / anti-dumping duties even if there is a positive finding of subsidy or dumping.¹

However, in a few recent cases², courts have ordered that the act of issuing an office memorandum not imposing countervailing / anti-dumping duties is a quasi-judicial exercise and therefore, subject to judicial scrutiny.

The proposed amendments result in a situation where the decision of the Central Government of India to impose / not impose countervailing / anti-dumping duties is beyond the statutory appeal mechanism. The recent trend has also been to not impose trade remedial duties despite positive findings by the DGTR. Therefore, injured Indian manufacturers / Domestic Industry are entitled to only invoke writ remedies before the constitutional courts despite positive findings by the DGTR recommending imposition of such duties. However, the extent of interference in writ jurisdiction is a question of law that would be decided in the future.

| [Clause 125 of the Finance Bill]

1: (a) Saurashtra Chemicals Ltd. vs Union of India | (b) Indian Spinners Association vs Designated Authority

2: (a) Apcotex Industries Limited vs Union of India | (b) Jubilant Ingrevia Limited vs Union of India

BCD RATE CHANGES

- **Rationalisation of rates:** The Central Government has simplified the rate structure to reduce compliance burden and improve tax administration. Number of BCD rates have been reduced from 21 to 13. Further, inverted duty structure in respect of specified products has been rectified.
- **Changes for tax revenue augmentation / policy objective**
 - A number of concessions / exemptions have been phased out or extended to promote exports, boost domestic manufacturing, enhance domestic value addition, encourage green energy and mobility.
 - The Central Government has provided concession on import of raw materials for manufacture of aquafeed and lab grown diamond, considering their high export potential.
 - The Central Government has shown continued interest in encouraging domestic manufacturing by extending concessions to specified capital goods / inputs for manufacture of lithium-ion cells, parts of mobile phones, open cells of television, and ensuring availability of raw materials at affordable prices for industrial production.
 - While the Central Government has withdrawn the exemption on import of raw materials required for manufacture of specified

equipment for oil exploration and exploitation purposes, the exemption on import of such specified equipment has been retained. This is at variance with the policy initiative of the Central Government to encourage domestic manufacturing.

- **Sector specific rate movements:** Sector specific duty impact and rate movements can be accessed [here](#).

| [Clause 126 of the Finance Bill]





PROPOSED LEGISLATIVE CHANGES

The Finance Bill has proposed various amendments to the CGST Act and the IGST Act, which are in line with the recommendations of the GST Council. The key amendments are summarized below:

- **Availment of Input Tax Credit (“ITC”):**
 - Clause (fa) is proposed to be inserted after clause (f) to the effect that ITC in respect of goods or services intended to be used for CSR obligations under the Companies Act, 2013 would be ineligible.
 - Explanation to Section 17(3) of the CGST Act is proposed to be amended to provide that value of exempt supply for the purposes of reversal of input credit reversal will include the value of activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of Schedule III of the CGST Act.

COMMENTS

The proposed amendments, especially in respect of CSR activities is a setback to corporates. This is especially given the fact that CSR expenses are mandatory for undertaking business. Further, CSR activities also assist corporates in brand-building exercises which is undisputedly in the course or furtherance of business. Nonetheless, the proposed amendment seeks to put to rest this controversy, which arose on account of conflicting AAR rulings.³

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Goods & Services Tax

The proposed amendment enlarges the scope of exempt supply for reversal of input tax credit and also enables government to prescribe valuation machinery to determine the value in respect of sale of goods within customs bonded warehouses.

| [Clause 130 of the Finance Bill]

- **Limitation for filing returns:**

- The maximum time limit for belated furnishing of return(s) pertaining to outward and inward supplies, annual return and TCS has been fixed to 3 years from the due date of furnishing the said return, subject to any extensions. These proposals are to be effected through the insertion of Sections 37(5), 39(11), 44(2), and 52(15) of the CGST Act, respectively.

| [Clauses 132 to 135 of the Finance Bill]

- **Decriminalisation of offences:**

- Offences pertaining to – (a) preventing an officer from discharging their duties; (b) tampering or destroying any material evidence or documents; (c) failure to supply information; and (d) abetment thereof (Section 132(1)(l)); are proposed to be decriminalised by way of deletion of sub-clauses (g), (j), and (k) of Section 132(1) of the CGST Act.
- The threshold for launching prosecutions for an offence has been increased from INR 10 million to INR 20 million, save with respect to fake invoicing for which the earlier threshold will continue to apply.

COMMENTS

The offences proposed to be decriminalised are minor and bailable. The enhancement in the threshold for launching prosecution has not met the expectations of the taxpayer community, as they were seeking a significantly higher threshold. Considering the push of the Central Government to decriminalise white-collar offences across a spectrum of laws, this was an opportune time to exhaustively decriminalise offences under the GST.

| [Clause 139 of the Finance Bill]

- **Focus on e-com operators:**

- Section 122(1B) is proposed to be inserted in the CGST Act wherein, (a) failure to furnish the statement under Section 52; (b) allowing the platform for supply of goods / services by unregistered suppliers (unless exempted); and (c) allowing inter-State supply by ineligible persons such as composition dealers, shall result in a penalty of INR 10,000 or an amount equivalent to the tax involved, whichever is higher on the said e-com operator.

COMMENTS

E-com operators are obligated to conduct due diligence for onboarding suppliers and adopt mechanisms for continuous verification to plug tax leakages.

| [Clause 138 of the Finance Bill]

3: (a) Dwarikesh Sugar Industries Ltd

(b) Adama India Private Limited

- **Compounding of offences:**

- Proviso to Section 138(a) of CGST Act is proposed to be amended to provide for compounding of all offences, save for offences relating to issuance of invoices without supply of goods or services or both.
- The minimum and maximum amounts to be paid for compounding of offences have also been proposed to be rationalised and reduced.

COMMENTS:

While the compounding provisions have been there since the very inception, there have been no known instances of compounding under GST law, possibly due to the high monetary thresholds. With these proposed reductions, it is hoped that compounding remedy shall be realistically achievable for taxpayers.

| [Clause 140 of the Finance Bill]

- **Miscellaneous changes proposed:**

- Second proviso to Section 16(2) of the CGST Act has been proposed to be amended to the effect that a recipient who fails to make the payment against receipt of supplies within 180 days, would be liable to pay an amount equivalent to the ITC availed along with interest under Section 50. Further, a clarificatory amendment has also been proposed to bring clarity that a recipient can re-avail the ITC upon payment to supplier.

COMMENTS

The proposed amendment is to align the statutory provisions with the return filing system, whereby the ITC availed on overdue payments is not only added to the output GST liability of recipient but is also required to be paid or reversed at the time of filing of relevant monthly return immediately following the period of 180 days from the date of issue of the invoice.

| [Clause 129 of the Finance Bill]

- Section 10 of the CGST Act is proposed to be amended to relax the criteria for availing composition scheme by way of removing the restriction on intra-state supply of goods through e-com operators.

COMMENTS

It appears that a distinction is being made between suppliers of goods and suppliers of services, who supply through e-com operators. While a supplier of goods can opt for composition levy, a supplier of services is seemingly restricted. Such distinction may be vulnerable to a constitutional challenge on grounds of treating equals unequally.

| [Clause 128 of the Finance Bill]

- Section 23 of the CGST Act has been proposed to be amended to provide an overriding effect to the requirements of registration prescribed in Section 22 and 24.

COMMENTS

The proposed amendment is in nature of a clarification, viz. that the exemption from registration under Section 23 of the CGST Act is not required in the prescribed circumstances.

[Clause 131 of the Finance Bill]

- Section 54(6) of the CGST Act has been proposed to be amended to provide for refund of GST on a provisional basis without excluding the provisionally accepted ITC component in respect of zero-rated supplies. This was hitherto excluded.
- Section 56 which provides for interest on delayed refunds is also proposed to be amended. While the liability to pay interest triggers on delayed refund, henceforth the same will be subjected to certain conditions as may be prescribed.

COMMENTS

In case of delayed refunds, the right to interest was an unfettered right. However, in light of proposed amendment such right stands restricted which may lead to litigation.

[Clause 136 of the Finance Bill]

- Section 158A is proposed to be inserted to increase and automate information and intelligence sharing amongst the various branches of the Central Government, the modalities of which are to be notified. The proposed amendment also includes a safeguard provision on obtaining consent from the relevant stakeholders.

COMMENTS

While the proposed amendment contains safeguards of consent, the modalities and practical implementation may impede the operation of such safeguard.

[Clause 141 of the Finance Bill]

- A retrospective amendment to certain exemptions i.e., (a) supply of goods from a place in the non-taxable territory to another place in the non-taxable territory; and (b) supply of warehoused goods before clearance, with effect from 1 July 2017 is proposed. However, no refunds of GST paid on this account will be granted.

COMMENTS

While the retrospective amendment is a welcome step to bring certainty of tax position and eliminate unnecessary litigation but denial of refund for transactions which are not even taxable as per the statute itself is vulnerable to a constitutional challenge.

[Clause 142 of the Finance Bill]

- **Amendments proposed under the IGST Act:**

- The definition of ‘non-taxable online recipient’ is proposed to be substituted to provide a broader coverage i.e., include every unregistered person within the taxable territory who receives the OIDAR services. It is further clarified that the unregistered person will also include persons who are liable to deduct tax at source under Section 51 of the CGST Act.

COMMENTS

The expansion in the definition is aimed at reducing the possibility of litigation on account of interpretational difficulties in the provision.

[Clause 143(a) of the Finance Bill]

- Definition of OIDAR services is proposed to be amended to eliminate the requirement of such services being ‘essentially automated and involving minimal human intervention’.

COMMENTS

The proposed amendment is targeted to cover all services which are provided over the internet and is effectively a significant enhancement of the ambit of ‘digital services tax’ under GST laws. The proposed change may lead to classification related disputes since the nature of services entailing significant human intervention but mediated through the internet may merit classification under the relevant taxable service category.

With this enhancement in scope, the Indian GST authorities may become more aggressive in enforcing compliance requirements under OIDAR in India against non-resident service providers based out of India.

[Clause 143(b) of the Finance Bill]

- Supply of transportation of goods services to an unregistered person outside India as stated in the proviso to Section 12(8) of the IGST Act is proposed to be removed.

COMMENTS:

The place of supply of goods when such transportation services are provided to an unregistered person in India, is the place where they are handed over for transportation in India, even for goods destined outside of India. The place of supply for goods transported outside India has been de-linked with the place of destination of such goods, for cases entailing both supplier and recipient within India, when such supply is to an unregistered recipient. This can adversely impact ‘export of service’ positions under GST for services like courier services (by an Indian courier agency to an Indian client for delivery of goods outside India).

[Clause 144 of the Finance Bill]

PROPOSED CHANGES

The Finance Bill has proposed amendments to the Seventh Schedule to the Finance Act, 2001

- With effect from 2 February 2023, amendments has been made to the Seventh Schedule to the Finance Act, 2001 revising the NCCD on cigarettes under Heading 2402 of the Central Excise Tariff, which can be accessed [here](#).

| [Clause 153 of the Finance Bill]

- **Removing cascading effect of taxes:**

- With the intent to promote green fuel adoption and usage as also to avoid cascading effect of taxes on blended compressed natural gas, a central excise duty exemption is being provided to blended Compressed Natural Gas ('blended CNG'), i.e., compressed natural gas blended with Biogas or Compressed Bio Gas ('CBG'), equal to the amount of GST paid on procurement of Bio Gas / Compressed Bio Gas contained in the blended CNG subject to the following conditions:
 - a. Maintenance of detailed records regarding the procurement and quantity of Biogas or CBG blended with CNG, along with the value thereof;
 - b. Submission of a reconciliation statement, certified by the statutory auditor to the jurisdictional Commissioner of Central Excise by 10th of the



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Central Excise

month following every quarter;
and

- c. Payment of the short-paid duty of excise along with applicable interest after such reconciliation.
- The exemption can be usefully illustrated as below:
 - a. Value of blended CNG: **Rs. 100**
 - b. Rate of Excise Duty on blended CNG: **14%**
 - c. Value of CBG contained in the blended CNG: **Rs. 40**
 - d. Rate of GST applicable on CBG: **5%**

On the basis of the exemption, the excise duty payable is as follows:

SI No.	Particulars	Amount in INR
A.	Excise duty on Blended CNG (14% of INR 100)	14
B.	Less: Exempted amount (5% GST on INR 40)	2
C.	Effective Excise Duty [A-B]	12

[Notification No. 05/2023-Central Excise,
Dt 1 February 2023]

PROPOSED LEGISLATIVE CHANGES IN THE CST ACT

- The Central Sales Tax Appellate Authority, constituted under Section 19 of the CST Act for deciding on disputes pertaining to inter-state sales of goods is proposed to be abolished. Henceforth, such disputes are proposed to be decided by the CESTAT. The CESTAT is a tribunal created under customs law to adjudicate on disputes of import / export and allied indirect tax laws such as erstwhile Central Excise Duty and Service Tax.

| [Clause 149 of the Finance Bill]



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Central Sales Tax

List of abbreviations

AAR	Authority for Advance Ruling
BCD	Basic Customs Duty
BCNG	Blended Compressed Natural Gas
CBG	Compressed Bio Gas
CNG	Compressed Natural Gas
CGST Act	Central Goods and Services Tax Act, 2017
CSR	Corporate Social Responsibility
Customs Act	Customs Act, 1962
Customs Tariff	Customs Tariff Act, 1975
DGTR	Directorate General of Trade Remedies
E-com operators	Electronic Commerce operators
Finance Bill	Finance Bill, 2023
GST	Goods and Services Tax
GST Council	Goods and Services Tax Council
ITC	Input Tax Credit
IGST Act	Integrated Goods and Services Tax Act, 2017
NCCD	National Calamity Contingent Duty
OIDAR Services	Online Information and Database Access or Retrieval services
TCS	Tax Collected at Source

- **KCO | Indirect Tax Team**

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