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KEY AMENDMENTS MADE TO THE FINANCE BILL 2023 WITH RESPECT TO GST AND CUSTOMS

30 March 2023 *Introduction*

The Hon'ble Finance Minister had presented the Finance Bill 2023 on 1st February 2023 which essentially focused on encouraging domestic manufacturing and gave effect to several decisions taken in the GST Council Meeting. The Finance Bill 2023 which proposed such changes was presented and passed by the Lok Sabha on 24th March 2023.

The Lok Sabha passed the Finance Bill 2023 with 64 official amendments which includes amendments to the Central Goods and Service Tax Act, 2017 (CGST Act), Integrated Goods and Service Tax Act, 2017 (IGST Act) and Customs Act, 1962 (Customs Act) amongst others.

One of the important amendments to the Finance Bill 2023 was the introduction of Section 65A to the Customs Act which places an additional condition on the assessee for goods in relation to which any manufacturing process or other operations are carried out in terms of Section 65 of the Customs Act. Another important amendment was with respect to the constitution of the Goods and Services Tax Appellate Tribunal (GSTAT) by substituting Section 109 and Section 110 of the CGST Act.

The key indirect tax amendments to the Finance Bill 2023, which shall come into force from the date the provisions are notified by the Central Government in the official gazette, are discussed below. (For our comments and an overview of the amendments as originally proposed by the Finance Bill 2023, please refer to our Budget special Ergo edition [here](#).)

Key amendments

Customs:

1. PAYMENT OF IGST AND COMPENSATION CESS ON GOODS STORED FOR MANUFACTURING AND OTHER OPERATIONS IN WAREHOUSE.

- Section 65 of the Customs Act permits the owner of any warehoused goods to carry on any manufacturing process or other operations in the warehouse subject to the permission of the Principal Commissioner of Customs or Commissioner of Customs. Currently, the Customs Act (ie., prior to the Finance Bill 2023 coming into force) permits such manufacturing process or other operations in warehouse without payment of Duties of Customs which include IGST and Compensation Cess.

- As per Section 46 of the Customs Act, the importer has to file a Bill of Entry (BOE) for warehousing and thereafter, to clear such goods for home consumption, the importer has to file BOE for home consumption. The Custom Duties are payable only after the goods are cleared for home consumption from the warehouse.
- As per the amendment to Section 65 of the Customs Act, the owner of the warehoused goods can carry on such manufacturing process or other operations subject to Section 65A of the Customs Act. However, Section 65A of the Customs Act has been inserted to provide for payment of IGST and Compensation Cess while depositing the goods in warehouse for carrying out manufacturing and other operations as per Section 65 of the Customs Act.
- As per Section 65A(B)(i) of the Customs Act the importer will, after the Finance Bill 2023 comes into force, need to file a BOE for home consumption (instead of a BOE for warehousing) even for the purpose of depositing the goods in warehouse. Consequently, the importer, while filing such BOE for home consumption has to pay IGST and Compensation Cess.
- Further, the transfer of goods from one warehouse to another in terms of Section 67 of the Customs Act, will only be permitted upon filing of a BOE for home consumption and on payment of IGST and Compensation Cess.
- Section 65A of the Customs Act is applicable prospectively inasmuch as it will not be applicable to goods which have already been deposited to the warehouse prior to notifying of Section 65A.
- The Central Government has retained the power to exempt certain categories of goods, importers or exporters or industry from the purview of Section 65A of the Customs Act.
- No amendment is proposed in the existing provisions for the levy of Basic Customs Duty, which will continue to be paid by the importer when the goods are cleared for home consumption from the bonded warehouse.
- Consequential amendment is carried out in Section 157 of the Customs Act to include Section 157(2)(ca) which empowers the Board to make regulations with respect to the manner and conditions for payment of duty and removal of goods under Section 65A(1)(C).

Our Comments

Insertion of Section 65A of the Customs Act is purportedly aimed at simplifying the process of levy and collection of IGST and GST Compensation Cess on the deposited goods that are stored in customs bonded warehouses and are undergoing manufacturing or other operations. By levying IGST and GST Compensation Cess at the time of entry of goods to the warehouse, the Government probably aims to ensure that tax liability is determined upfront and that the process of claiming ITC and refunds is streamlined. However, this could cause cash flow issues for several importers/exporters.

The Manufacture and Other Operations in Warehouse Regulations (MOOWR), which was revamped and reintroduced a couple of years ago as an initiative to encourage local manufacturing, might become less rewarding owing to this new Section 65A.

GST:

2. CONSTITUTION OF GOODS AND SERVICE TAX APPELLATE TRIBUNAL

Section 109 of the CGST Act has been substituted for constitution of GSTAT.

- The Central Government through notification shall constitute a Principal Bench of the GSTAT at New Delhi which shall consist of a President (judicial), one Technical Member (Centre) and one Technical Member (State).
- On the request of States, the Government by notification shall constitute such number of State Benches with such jurisdictions as may be recommended by the GST Council. The State Benches shall comprise of two Judicial Members, one Technical Member (Centre) and one Technical Member (State).
- An appeal which does not involve an amount of INR 50 Lakh or question of law, will be heard by a Single Member and in all other cases, the appeal will be heard by a division bench comprising one Judicial Member and one Technical Member.
- In case of a difference of opinion between the Members, the President shall refer such case for hearing:
 - where the appeal was originally heard by Members of a State Bench, to another Member of a State Bench within the State or, where such other State Bench is not available within the State, to a Member of a State Bench in another State; or
 - where the appeal was originally heard by Members of the Principal Bench, to another Member from the Principal Bench or, where such other Member is not available, to a Member of any State Bench.

Substituted Section 110 provides for qualification and appointment of President and Members

- The qualification criteria of President and Members of GSTAT has also undergone substantial changes. It is pertinent to highlight that the High Court in the case of Revenue Bar Association. v. UOI, 2019- VIL-466-MAD recommended for eligibility of lawyers to be appointed as Judicial Members in GSTAT to maintain uniformity between various Tribunals such as ITAT, CESTAT etc. However, the recommendation has not been considered by the Government - lawyers are not eligible to become judicial members of the GSTAT.

Our Comments

The constitution of GSTAT is not only a welcome move but will also be a great relief to taxpayers – one hopes that the GSTAT starts full-fledged functioning across the country at the earliest.

3. Amendments to Section 62 of the CGST Act

- A new proviso has been inserted to Section 62 of the CGST Act which states that a registered person who fails to furnish a valid return within 60 days from the service of the assessment order under Section 62(1) of the CGST Act, would

be granted an additional period of 60 days to furnish such returns on payment of Rs. 100/- for each day for delays beyond a period of 60 days.

- The proviso also states that if the registered person furnishes the valid returns within the extended period i.e. 120 days from the service of assessment order, the assessment order passed under Section 62(1) of the CGST Act shall be deemed to be withdrawn but the liability to pay interest and late fee shall continue.

IGST:

4. Omission of Sub-section (9) of Section 13 of the IGST Act

- Section 13(9) of the IGST Act provided that the place of supply of services of transportation of goods, where the location of the service provider or the service recipient is outside India, is the place of destination of such goods.
- GST Council in its 49th Meeting had recommended the deletion of Section 13(9) of the IGST Act so that the place of supply of services of transportation of goods would be the location of recipient of such service.
- Thus, the location of the service recipient would be considered as the place of supply of services of transportation of goods where either the location of the supplier or the recipient is located outside India.

GST (Compensation to States) Act, 2017:

5. Amendment to Schedule of GST (Compensation to States) Act, 2017

- The Schedule has been proposed to be amended to change the levy of GST Compensation Cess from ad valorem to specific tax-based levy on the retail sale price for products like Pan Masala, Tobacco and manufactured tobacco substitutes, etc. 'Retail sale price' has been defined for various scenarios by way of Explanation to the said Schedule.
- The GST Compensation Cess is currently levied on an *ad valorem* basis as a percentage of the value of the goods which has apparently led to under-invoicing and clandestine removal of goods. Thus, this amendment would aim to plug such leakages and boost first stage collection of revenue.

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