

Highlights of Union Budget 2018-19 relating to Indirect Taxes

CUSTOMS

Amendments to be effective from 2nd February, 2018

- A social welfare surcharge at 10% of the aggregate customs duties has been levied on imported goods in place of existing 3% education cesses. However, this surcharge will not be leviable on integrated tax and GST compensation cess on imported goods.
- In order to provide impetus to domestic industry and giving boost to “*make in India*” campaign, Customs duty rate has been increased in certain sectors, like food processing, electronics, auto components, footwear and furniture. It would also encourage starting of some high tech products to be manufactured in India.

Amendments to be effective from the date on which Finance Bill, 2018 receives the assent of the President

- Central Board of Excise and Customs is to be renamed as “Central Board of Indirect Taxes and Customs”.
- Section 1 proposed to be amended so as to expand the scope of the Customs Act to any offence or contravention committed thereunder outside India by any person.
- Section 2 proposed to be amended so as to substitute the definition of assessment in sub-section (2); to extend the limit of 'Indian Customs Waters' into the sea from the existing 'Contiguous zone of India' to the 'Exclusive Economic Zone (EEZ)' of India, incorporate the definition of notification. Considering that 'levy' now stands attracted at 200 nautical miles, this is a very significant amendment. But the assessment of duty continues to be on the 'date' specified in section 15.
- Section 17 relating to assessment of duty to be amended so as to:
 - Expand the scope of verification beyond self-assessment to all the entries made under section 46 or section 50.
 - insert a new sub-section (2A) to provide legal backing for the risk-based selection of self-assessed Bill of Entry or Shipping Bill through appropriate selection criteria;
 - extend the scope of re-assessment by omitting specific reference to

valuation, classification and exemption or concessions of duty availed consequent to any notification issued therefor under this Act from sub-section (5);

- omit sub-section (6) providing for audit of assessment of duty, in view of the new dedicated Chapter for Audit;
- Section 18 dealing with provisional assessment of duty is proposed to be amended so as cover export consignments under provisional assessment of duty by amending sub-section (1). For the first time, exporters are also allowed facility of provisional assessment.
- Further, a new sub-section (1A) also to be inserted to empower the Board to issue regulation for providing time-limit for the importer/exporter to submit the documents and information, for finalization of provisional assessments and for the proper officer to finalize the provisional assessment. Failure to submit documentation to finalize provisional assessments can prove disadvantageous to assessee;
- Reference to import manifest and export manifest, wherever they occur in the Customs Act, to include Arrival Manifest and Departure Manifest respectively.
- A new section 25A to be introduced in the Customs Act to empower the Central Government to exempt goods imported for repair, further processing or manufacture ['Inward Processing of Goods'] from payment of whole or any part of duty of customs, leviable thereon subject to certain conditions. Similarly, outward processing of goods also proposed to be exempted vide a new section 25B. While the goods imported (and exported) will be exempt from customs duties, the consideration for such repair or processing activity will be liable to GST as the Place of Supply will continue to the 'in India' and not qualify as export under section 13(3)(a).
ICAI has made representations to set this anomaly right by including these activities in the proviso in IGST Act.
- Section 28 dealing with recovery of duty to be amended so as to:
 - provide pre-notice consultation in cases not involving collusion, willful mis-statement, suppression etc. before issue of demand notice. The manner of pre-notice consultation shall be provided in the regulations. Such consultations are welcome as they could reduce litigation since the option of payment of reduced penalty before issue of SCN has not seen much success;
 - provide for issuance of supplementary show cause notice in circumstances and in such manner as may be prescribed within the existing time period. It

would be interesting to see the 'circumstances' when supplementary SCN would be issued, which is not the same as 'statement of demand' that has been followed in other laws for coverage of subsequent period but on identical issue;

- provide for extension of time to pass orders on a SCN issued and where no orders are passed even after such extension, the SCN itself will abate. The benefit of such provision is that orders will forcibly be passed. Keeping SCN in abeyance (also called 'on call book') is not accommodated in cases where the same issue is pending before an appellate authority.
- Section 30 pertaining to delivery of import manifest or import report to be amended so as to include export goods in addition to imported goods as part of the information provided in the manifest, provide for prescribing the manner of delivery of manifest through regulations.
- Section 41 pertaining to delivery of export manifest or export report also to be amended so as to include imported goods in addition to export goods as part of the information provided in the manifest, provide penalty provisions for late filing of manifest upto maximum limit of Rs. 50,000 and provide for prescribing the manner of delivery of manifest through regulations.
- Section 46 relating to entry of goods on importation to be amended to clarify the time limit for the prior presentation of bill of entry, by substituting the words, 'within thirty days of' with the words, 'at any time not exceeding thirty days prior to' in sub-section (3). Further, a new sub-section (4A) to be inserted so as to provide for observance of the accuracy, authenticity, validity of the declarations made by the importer under this section and compliance to the prohibitions or restrictions under this act or any other law for the time being in force.
- Section 47 relating to clearance of goods for home consumption to be amended so as to have a provision for clearance of goods by Customs Automated System in addition to existing clearance by the proper officer.
- **Amendments in provisions of Advance Ruling**
 - (i) Section 28E is proposed to be amended so as make the following changes-
 - The definition of 'activity' to be omitted as it is no longer relevant;
 - The existing definition of advance ruling to be substituted with the following definition: -
 - "advance ruling" means a written decision on any of the questions referred to in section 28H raised by the applicant in his application in respect of any goods prior to its importation

- or exportation;
 - definition of 'appellate authority' to be included- Appellate Authority" means the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961. This is welcome where rulings of AAR need not be carried to High Court;
 - the definition of 'applicant' to be substituted in order to make it broad based by providing that "applicant" means any person, —
 - holding a valid Importer-exporter Code Number granted under section 7 of the Foreign Trade (Development and Regulation) Act, 1992; or
 - exporting any goods to India; or
 - with a justifiable cause to the satisfaction of the Authority, who makes an application for advance ruling under section 28H;';
 - the definition of 'authority' proposed to be substituted to mean the Customs Authority for Advance Ruling as referred to in section 28EA;
 - In the definition of "chairperson" and "member", the term "authority" to be substituted with "Appellate Authority".
- (ii) A new section 28EA relating to 'Customs Authority for Advance Rulings' proposed to be inserted, which empower the Board to appoint officers of the rank of Principal Commissioner of Customs or Commissioner of Customs as Customs Authority for Advance Rulings by way of notification. Till such appointment by the Board, existing Authority shall continue to pronounce Advance Rulings.
- (iii) Section 28F proposed to be amended so as to substitute the word "Authority" with the words "Appellate Authority" and to provide that on appointment of Customs Authority for Advance Rulings, the applications and proceedings pending before the erstwhile Authority shall stand transferred to Customs Authority for Advance Rulings.
- (iv) Section 28H relating to application for advance ruling is proposed to be amended so as to amend sub-section 2(d) thereof to include the word "tax" in addition to "duty" mentioned therein. Further, it is proposed to enable Central Government to notify any other matter on which advance ruling can be sought by an applicant.
- A new sub-section (5) to be inserted to provide that an applicant may be represented by a duly authorized person who is resident in India. The definition of resident shall be same as provided in clause (42) of section 2 of Income Tax Act, 1961.
- (v) Section 28-I (6) to be amended so as to reduce the time from 6 months to 3 months within which the authority shall pronounce its advance ruling.

(vi) Section 28K to be amended so as to-

- a. omit the expression 'after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section' in sub-section (1);
- b. insert a proviso to sub-section (1) stating that the period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded from the time period of two years and five years respectively specified in section 28.

(vii) A new section 28KA relating to Appeal provisions in respect of Advance Ruling to be inserted with effect from a date to be notified providing that-

- Any officer authorised by the Board, by notification, or the applicant may file an appeal to the Appellate Authority against any ruling or order passed by the Authority, within 60 days from the date of the communication of such ruling or order, in the prescribed form and manner.
 - Also, where the Appellate Authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period so specified, it may allow a further period of 30 days for filing such appeal.
 - The provisions of section 28-I and 28J shall, *mutatis mutandis*, apply to the appeal proceedings'.
- Section 50 stipulates the provisions regarding filing of Bill of Entry/Shipping Bill for exportation. Sub-section (1) and proviso thereof are proposed to be amended to insert a reference to Customs Automated System, i.e. the Bill of Entry/Shipping Bill which is required to be presented electronically are to be presented electronically on Customs Automated System.
A new sub-section (2A) is inserted in section 50 so as to provide for observance of the accuracy, authenticity, validity of the declarations made in the Bill of Export/Shipping Bill by the exporter and compliance to the prohibitions or restrictions under the Customs Act, 1962 or any other law for the time being in force.
 - Section 51 to be amended to provide that order for clearance of goods for exportation may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.
 - A new Chapter VIIA on 'Payments through Electronic Cash Ledger' is proposed to be inserted. The provisions are contained in newly inserted section 51A. It

provides for advance deposit which would enable payment of duties, taxes, fee, interest, and penalty through electronic cash ledger. This is a welcome measure that will avoid delays in payment of duty or amounts being transferred to CHA towards payment of duty. With this ECL, money can be transferred in advance and appropriated in respect of each demand;

- Section 54 contains provisions pertaining to transshipment of certain goods without payment of duty. It is proposed to be amended so as to empower the Board to make Regulations provide manner of presenting a bill of transshipment and declaration for transshipment.
- Sections 60, 68 and 69 are to proposed be amended to provide that order for clearance of goods from customs station for the purpose of deposit in a warehouse, order for clearance of warehoused goods for home consumption and order for clearance of warehoused goods for export may be made electronically through the customs automated system in addition to existing mechanism of clearance by the proper officer.
- The scope of sections 83 and 84 has been widened to include reference to goods imported or exported by courier through the authorized courier. The extant provisions in the sections relate to goods imported or exported by post only.
- A new Chapter XIA containing the provisions relating to 'Audit' is proposed to be inserted. The provisions are contained in newly inserted section 99A. It seeks to empower the proper officer to carry out the audit of assessment of imported goods or export goods or of an auditee under Customs Act, 1956 either in his office or in the premises of the auditee in such manner as may be prescribed. This is remarkable new reach that the Customs authorities are availing themselves for the first time. It will be realized later if this provision opens new areas of concern due to roving inquiries under the guise of 'audit' will commence in Customs also;
- The proper officer is proposed to be empowered to undertake controlled delivery through the newly inserted section 109A. It seeks to authorize the proper officer or any other officer authorized by him to undertake controlled delivery of any consignment of goods to any destination in India or a foreign country. The consignment of goods for which controlled delivery is applicable and the manner of the same is to be prescribed in the Regulations by the Board.

- Section 110(2) stipulates that a show cause notice is to be issued to the person from whom the goods are seized within six months of the seizure of the goods. Second proviso is proposed to be inserted to said sub-section to provide that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.
- Section 122 to be amended so as to substitute the extant clauses (b) and (c) to empower the Board to fix monetary limits for adjudication of cases by officers below the rank of Joint Commissioner by way of notification.
- Second proviso to be inserted to section 124 to provide for issuance of supplementary show cause notice under such circumstances and in such manner as may be prescribed through regulations.
- Section 125 to be amended to provide that where the demand proceedings against a noticee / co-noticees have been closed on grounds of having paid the dues mentioned in section 28, then the provisions of section 125 shall not be applicable if the goods are not prohibited or restricted.
Further, sub-section (3) is proposed to be inserted to provide that option to pay redemption fine would become void if redemption fine is not paid within a period of 120 days from the date of option given, except in cases where any appeal against such order is pending.
- Section 128A proposed to be amended to allow Commissioner (Appeals) to remand back the matters to original adjudicating authority in specified categories of cases. This is a reversal of amendment made in 2001 when 'power of remand' was withdrawn so as to compel authority to reach a clear finding. And since then, in spite of this restriction, by recording a finding on facts or law, appellate authority was remanding the matter for computation or verification;
- Board is proposed to be empowered to prescribe trade facilitation measures or separate procedure or documentation for a class of importers or exporters or for categories of goods or on the basis of the modes of transport of goods for:
 - ✓ Maintenance of transparency in import and export documentation and procedure; or
 - ✓ expeditious clearance or release of goods entered for import or export; or

- ✓ reduction in the transaction cost of clearance of importing or exporting goods; or
 - ✓ maintenance of balance between customs control and facilitation of legitimate trade vide new section 143AA proposed to be inserted.
- A new section 151B proposed to be inserted providing for reciprocal arrangement for exchange of information facilitating trade.
 - Section 153 stipulates provisions pertaining to service of order, decision, etc. It is to be substituted so as to align it with the provisions of the section 169 of the CGST Act, 2017 to include speed post, courier, and registered email as valid modes of delivery and in case of non-service by such means, to also provide for affixing it at some conspicuous place at the last known place of business or residence in addition to affixing it on the notice board of the Customs House etc.
 - Section 157 to be amended so as to empower the Board to make regulations relating to manner to deliver or present, a bill of entry, shipping bill, bill of export, import manifest, import report, export manifest, export report, bill of transshipment, declaration for transshipment, boat note and bill of coastal goods; time and manner of finalization of provisional assessment; manner of conducting pre-notice consultation; circumstances under which, and the manner of issuing supplementary notice; form and manner in which an application for advance ruling or appeal shall be made, and the procedure for the authority; manner of clearance or removal of imported or export goods; documents to be furnished in relation to imported goods; conditions, restrictions and the manner for deposits in electronic cash ledgers, the utilization and refund therefrom and the manner of maintaining such ledger; manner of conducting audit; goods for controlled delivery and the manner thereof; measures and the simplified or different procedures or documentation for a class of importers or exporters or categories of goods or on the basis of the modes of transport of goods.

Amendments proposed in the Customs Tariff Act, 1975

New sub-sections (8A) and (10A) are proposed to be inserted to provide the method to compute the value of imported article for the purpose of calculating the integrated tax and GST compensation cess in case where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act. This amendment is

remarkable considering that section 15 prescribed that the 'date for determination of value' is the date of filing ex-bond bill of entry under section 68 which has been followed for decades. It must be appreciated that goods stored in a bonded warehouse have not yet 'crossed the point' where customs duties are liable for assessment. Further, in prescribing the valuation, an expression 'transaction value' is used which is neither in alignment with section 14 of Customs Act or section 15 of CGST Act (made applicable to IGST).