

POST-BUDGET MEMORANDUM 2018

Indirect Taxes



THE INSTITUTE OF CHARTERED ACCOUNTANT OF INDIA
NEW DELHI



INTRODUCTION

The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Post-Budget Memorandum to the Government of India.

In this memorandum, we have suggested certain amendments to the proposals contained in the Finance Bill, 2018 which would help the Government to achieve the objective of simple unambiguous laws, ease of doing business, dispute avoidance and resolution.

In formulating our suggestions in regard to the Finance Bill 2018, we have considered, the objectives stated above and the practical difficulties/hardships faced by taxpayers and professionals in application of the Indirect Tax Laws.

We look forward to contributing in the drafting of simple, transparent, & fair IDT laws in India.

In case any further clarifications or data is considered necessary, we shall be pleased to furnish the same. The contact details are:

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POST BUDGET MEMORANDUM, 2018

CUSTOMS

1. Levy of Integrated Tax on goods remaining in Bonded warehouse

Clause 100 of the Finance Bill, 2018 has inserted sub-section (8A) and (10A) in Section 3 of Customs Tariff Act, 1975 which provides the method of valuation of goods deposited in custom bonded warehouse which are sold to any person before clearance for home consumption or exported, for the purpose of calculating the Integrated Tax and compensation cess under GST Act (to be effective from the date of enactment of the Finance Bill, 2018).

Issue

Proviso to section 5(1) of IGST Act delegates the 'levy' of IGST to Customs Tariff Act on 'goods imported into India'. Thus, goods 'not yet' imported into India cannot be brought back into section 5(1) of IGST Act. If this is allowed, then goods that are directly purchased from Country 'A' and shipped to Country 'B' by an Indian entity (called merchant Trading) will also be liable to IGST merely basis the location of the supplier being within India, even though the goods supplied do not enter taxable territory at any point of time. If this is also to be subject to IGST, then clause 100 will transform GST into a person-based tax rather than territory-based tax. This, however, does not seem to be the intention of the legislature. Goods that are 'yet' to cross the 'customs frontiers' of India are liable to duties under Customs Act (even if it is equal to IGST and cess) depending upon whether they will be cleared on ex-bond BE or re-exported outside India.

Suggestion:

Levy of integrated tax on in-bond transactions, not being in the nature of Customs Duty, is a levy without statutory authority. Hence, it is suggested that clause 100 of the Finance bill be omitted since integrated tax and Cess leviable under section 3(7) and 3(9) of Custom Tariff Act, 1975 are in the nature of 'Customs Duty'.

2. Audit of assessment of imported or exported goods.

Clause 88 of the Finance Bill, 2018 has inserted Chapter XII A in Customs Act, 1962 which provides that proper officer may carry out the audit of assessment of imported goods or export goods or an auditee under this Act either in his office or in the premises of the auditee in the prescribed manner (to be effective from the date of enactment of the Finance Bill, 2018).



Issue

Powers to investigate and issue SCN is available to departmental Officers. Diligent tax payers will now be subject to harassment after having gone through the process of customs clearance. Recurring audits will make room for unwanted interference by customs authorities at the business premises. Requirement of another audit indicates that Government is not confident of its customs clearance procedure and thus need further customs audit.

Suggestion:

It is suggested to withdraw clause 88 of the Finance Bill, 2018 as subjecting an assessee who has already been assessed (whether final or provisional BE) by customs authorities, to an audit will cause undue hardship to the assessee.

3. Power to issue supplementary notice

Clause 92 of the Finance Bill, 2018 has inserted a proviso to section 124 of Customs Act, 1962 which provides that proper officer may issue a supplementary notice in addition to Show cause notice before confiscation of goods, explaining the grounds on which it is proposed to confiscate the goods or to impose a penalty. (To be effective from the date of enactment of the Finance Bill, 2018)

Issue

If the Supplementary notice is intended to be a corrigendum to the SCN, this will allow loopholes in the SCN to be filled up through a Supplementary Notice which is illegal and violative of natural justice.

Suggestion:

It is suggested that Clause 92 of the Finance Bill, 2018 be withdrawn as the concept of Supplementary Notice appears to be inferior to the requirements of a regular SCN under section 124.

4. Communication of an order, decision, summon, notice etc. under Customs Act, 1962 through electronic mails.

Clause 97 of the Finance Bill, 2018 has substituted section 153 of the Customs Act, 1962 which provides various modes of communication of an order, decision, summons, notice etc under Customs Act, 1962 which includes serving through e-mail as one of the mode. (To be effective from the date of enactment of the Finance Bill, 2018)

Issue

Tax authorities themselves use publicly available 'free email' service therefore it can't be taken as reliable mode of communication. Further, it is not possible for the assessee to ensure that the correct email id is available with the tax administration. If e-mails are sent to some unknown or expired email ids, even then same will be construed as valid service of notices.



Suggestion:

It is suggested that clause (c) of section 153 as proposed in Clause 97 of the Finance Bill be withdrawn as 'service' is a very significant legal step and if email is accepted as a valid mode of 'service', then it may adversely affect the tax payer's rights to remedy in law.

5. Requirements for being an applicant of Advance ruling

Clause 62 of the Finance Bill has substituted clause (c) of section 28 E of the Customs Act, 1962 which provides the conditions to be fulfilled by person for being an applicant of advance ruling which includes that a person must be holding a valid importer-exporter code number granted under section 7 of the Foreign Trade (Development & Regulation) Act, 1992 as one of the condition.

Issue

Requirement of holding a valid importer-exporter code for seeking an advance ruling may curtail the assessee's opportunity to file application for advance ruling. Further, item (iii) of clause (c) requires satisfaction of the authority before accepting application which is very subjective and has scope for litigation.

Suggestion:

It is suggested to expand clause (c) of section 28 E of the Customs Act, 1962 to cover IEC, PAN or GSTIN as primary requirements for being an applicant because an expansive sub-clause (i) will fulfill the Government's objective of making the advance ruling facility available to large stakeholders.

6. Sections 25A and 25 B

Clause 60 of the Finance Bill, 2018 has inserted two new sections 25 A and 25 B. Section 25A provides the Central Government with the power to issue notification to exempt the goods which are imported for repair or further processing from whole or any part of duty of customs with a condition of re-export within a period of 1 year.

Similarly, Section 25B empowers the Central Government to issue notification to exempt the goods which are exported for repair or further processing from whole or any part of duty of customs with a condition of re-import within a period of 1 year.

Issue

The scope of section 25A and 25B is already covered by section 25 where the Central Government, by issuing notification, exempts generally goods of any specified description from the whole or any part of duty of customs leviable thereon. Even with the insertion of the two new sections, Government is still required to issue notification to allow exemptions. These sections are surplus and unwarranted. Therefore, what is sought to be achieved is possible under section 25 and has been continually achieved since 1962. Conditions in the new sections can be amended more effectively in the notifications rather than in the sections itself.



Suggestion:

It is suggested to withdraw clause 60 of the Finance Bill, 2018 as these proposed sections are merely a duplication of power already given under section 25.

7. Appellate Authority for AAR

Clause 64 of the Finance Bill, 2018 has provided that the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act shall be the Appellate Authority for giving advance rulings for the purposes of this Act.

Issue

With this proposal, an appeal against decision of AAR can now be filed. This will undermine the significance of AAR as there would be no finality of the issue.

Suggestion:

It is suggested that Clause (60) of the Finance Bill, 2018 be withdrawn so that the ruling given by the AAR be final.