

**POST-BUDGET MEMORANDUM 2020-21: INDIRECT TAXES**  
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**POST-BUDGET MEMORANDUM 2020-21: INDIRECT TAXES**

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|        | <b>GST</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                             |
| 1.     | <p><b>Clause 124 of finance Bill 2020</b></p> <p>After Section 122(1), it is proposed to insert Section 122(1A) vide which any person who retains the benefit of any of the following transactions and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on: Supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply [Section 122(1)(i)] Issues any invoice or bill without supply of goods or services or both in violation of the GST provisions [Section 122(1)(ii)]. Takes or utilizes input tax credit without actual receipt of goods or</p> | <p>Covering penal provisions in case of issuance of <b>incorrect invoices</b> towards supplies of any goods or services or both is an area of concern.</p> <p>This section is brought in to crack down on fake invoicing and fraudulent availment of input tax credit. Those fraudulently availing of ITC without invoice or bill.</p> <p>Therefore, issuing false invoice is understandable however in case of genuine transaction due to oversight or understanding of supplier of goods or services, incorrect invoice is issued, like applied incorrect GST rate, HSN code, place of supply etc. in such cases the receiver of goods or services should not be penalised.</p> | <p>The Chamber recommends removing penal provisions in case of issuance of incorrect invoices as it will lead to unnecessary harassment of the receiver of goods or services.</p> <p>The receiver of goods or services is liable to pay GST and book the invoices, he must assume the supplier of goods or services has rightly charged proper GST rates applying proper HSN codes and place of supply.</p> |

| Sr. No | Proposed provision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Issue | Suggestions                                                                                                                                                                                                                         |
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| 2      | <p>services or both either fully or partially, in contravention of the GST provisions [Section 122(1)(vii)]</p> <p>Takes or distributes input tax credit in contravention of Section 20, or the rules made thereunder [Section 122(1)(ix)]</p> <p><b>Clause 125 of the Finance Bill 2020</b></p> <p>Fraudulent availment of input tax credit has been added in the list of activities which attract punishment under section 132 of the CGST Act. While the aforesaid amendment has been made keeping in view the various GST scams identified by tax authorities, there is no specific definition in the law to determine the meaning of the term 'fraud' or 'fraudulent availment of input tax credit'</p> |       | <p>It is recommended that in the explanations to Section 132 of the CGST Act, 2017, another explanation be added, wherein the meaning and ambit of the term 'fraudulent availment of input tax credit' is defined exhaustively.</p> |

| Sr. No | Proposed provision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Issue                                                                                                                                                                                                                                                                                                    | Suggestions                                                                                                                                                                                                                                                                                                                                                                                        |
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| 3      | <p><b>Clause 118 of the Finance Bill 2020</b></p> <p><b>Section 16(4) of the CGST Act provides time limit to claim input tax credit.</b></p> <p>As per Section 16(4), "A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier."</p> <p>In other words, time limit to claim input tax credit w.r.t. a debit note is linked to the data of invoice pertaining to such debit note.</p> <p>It is proposed that the words "invoice relating to such" shall be omitted from</p> | <p>Delinking of underlying invoices while determining the financial year to which a debit note pertains is a necessary and welcome amendment. But it should be given retrospective effect since most tax payers would have generally read the law in the amended form without realizing the nuances.</p> | <p>The Chamber recommends that a clarification should be issued, either by way of proviso to the relevant section of the Finance Act, 2020 (Section 118 of the Finance Bill, 2020) or by issuing a circular, which specifies that the delinking of debit notes from the date of issuance of invoices for claiming input tax credit is applicable retrospectively with effect from 1 July 2017.</p> |

| <b>Sr.<br/>No</b> | <b>Proposed provision</b>                                                                                                                                                                                                                                                                                                                                                                      | <b>Issue</b> | <b>Suggestions</b> |
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|                   | <p>Section 16(4) in order to delink the date of issue of debit note from the date of issue of the invoice to which the debit note relates, for the purpose of claiming input tax credit.</p> <p>Hence, time limit to claim input tax credit w.r.t. a debit note shall be determined basis the date of debit note itself and not basis the invoice date, to which such debit note, relates.</p> |              |                    |

| Sr. No | Proposed provision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Suggestions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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|        | <b>Customs</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 1.     | <p><b>Clause 108 of the finance Bill, 2020</b></p> <p><b>Section 28DA under new Chapter VAA of Customs Act, 1962</b></p> <p>The section obligates the importer to possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied.</p> <p>Further, in case of doubt regarding the genuineness of the origin of the imports at PR, authorities can suspend the PTA and seek requisite information on origin of the goods. Such verification can be undertaken within a period of 5 years from date of claiming PR, and till such period the PTA shall remain suspended.</p> <p>While the above provision has been incorporated with an objective of</p> | <p>The word "<b>sufficient information</b>" is not defined and not elaborated as to what all details would be required to be submitted by the importer.</p> <p>The section imposes the onus of checking the fulfilment of regional value content on the importer. However, the Importer will not have any visibility of the regional value content met by the exporter due to data confidentiality on the cost structure. Hence, submission of any details in this regard would practically be very difficult for any importer</p> | <p>In order to do away with extra burden of compliance upon the importers, and with the motto of promoting 'ease of doing business', the temporary suspension of PTA until verification is completed should be eased out. Subsequent to completion of the proceeding, where it is identified that the criteria to claim PR is not fulfilled, the importer could be directed to discharge the differential duty along with interest and penalty, as applicable.</p> <p><b><u>The Chamber recommends the following:</u></b></p> <ul style="list-style-type: none"> <li>- Clause (ii) of sub-section 1 of Section 28DA be suitably worded elaborating what all <b>sufficient information /details</b> are required to be submitted by the importer considering the fact that all cost details of exporter will not generally be available.</li> <li>- clause (ii) of sub-section 9 of Section 28DA be removed or suitably modified to state that pending verification, the importers shall be</li> </ul> |

| Sr. No | Proposed provision                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Issue                                                                                                                                                                                                                                                                                                                                                                                     | Suggestions                                                                                                                                                                                                                                                                                                                                                                           |
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|        | <p>disallowing unwarranted benefits to bogus importers, a prolonged period of 5 years for verification (and suspension) could cause difficulties for genuine importers and could affect the industry adversely. Such increased powers in the hands of tax authorities may put practical challenges on the importer, thereby being detrimental to the trade.</p>                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                           | <p>allowed to claim the benefit of preferential rate of duty on a provisional basis, until conclusive order is issued by the proper officer.</p> <p>- the period of 5 years should be relaxed to a period of 12 months at maximum as this 5-year duration is exorbitantly high for taking a decision on the matter and importer would not be encouraged to take this PTA benefit.</p> |
| 2.     | <p><b>Clause 106 of the Finance Bill, 2020</b><br/> <b>Time limit to pass adjudication order after issuance of SCN</b></p> <p>Section 28 of Customs Act, 1962 deals with recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.</p> <p>As per Sec. 28(9), prior to its amendment in 2018, proper officer shall determine the amount of duty and interest within six months or one year, as the case may be, after the issuance</p> | <p>In the case of Harkaran Dass Vedpal<sup>1</sup>, Punjab and Haryana High Court dealing with case where SCN was issued on 20 February 2009 but the same was not adjudicated till 2019, had observed that section 28 was amended prospectively w.e.f. 29 March 2018 to provide a specific time limit to adjudicate SCN. Applying the principles of retroactive amendment, High Court</p> | <p>It is suggested that Government should prescribe an outer time limit for passing orders in respect of SCNs issued prior to 29 March 2018. This will help timely and faster adjudication of such SCNs.</p> <p>Thus, the new Explanation 4 can be reworded as follows:<br/> <i>"For the removal of doubts, it is hereby declared that notwithstanding anything to the</i></p>        |

<sup>1</sup> 2019 (368) ELT 0546 (P&H)

| Sr. No | Proposed provision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Issue                                                                                                                                                                                                                                                                                                                                                          | Suggestions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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|        | <p>of SCN, <b>where it is possible to do so.</b></p> <p>Finance Act 2018 deleted words “<b>where it is possible to do so</b>” in sec. 28(9) and thus provided specific time limit within which the SCN needs to be adjudicated.</p> <p>Further, Explanation 4 was inserted u/s 28 vide Finance Act 2018 to provide that where SCN has been issued after the 14th day of May, 2015, but before the date on which the Finance Bill, 2018 received President assent, they shall continue to be governed by the provisions of section 28 as it stood immediately before the date on which such assent is received.</p> <p>This Explanation 4 has been now substituted vide Finance Bill, 2020, so as to provide that notwithstanding anything contained in any judgment, order of any Court, show cause notice</p> | <p>held that the orders, with respect to SCNs issued prior to 29 March 2018, need to be passed within one year from the date of amendment.</p> <p>The present amendment seems to nullify the High Court ruling and reemphasizing the intent of the Government that there is no last date to pass orders with respect to SCN issued prior to 29 March 2018.</p> | <p><i>contrary contained in any judgment, decree or order of the Appellate Tribunal or any Court or in any other provision of this Act or the rules or regulations made thereunder, or in any other law for the time being in force, in cases where notice has been issued for non-levy, short-levy, non-payment, short-payment or erroneous refund, prior to the 29th day of March, 2018, being the date of commencement of the Finance Act, 2018 (13 of 2018), <b>the proper officer shall determine the amount of duty or interest under sub-section (8)–</b></i></p> <p><b><i>(a) within six months from the date on which the Finance Bill, 2020 receives the assent of the President, in respect of cases falling under clause (a) of sub-section (1);</i></b></p> <p><b><i>(b) within one year from the date on which the Finance Bill, 2020 receives the assent of the President, in respect of cases falling under sub-section (4).”</i></b></p> |



| Sr. No | Proposed provision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Issue                                                                                                                                                                                                                                                               | Suggestions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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|        | <p>(SCN) issued prior to 29 March 2018 shall be governed by the provisions of section 28 as it stood immediately before such date.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 3.     | <p><b>Clause 107 of Finance Bill 2020</b><br/> <b>Recovery of duties discharged through instruments</b></p> <p>Section 28AAA(1) of the Customs Act, deals with the recovery of duties where an instrument, which has been obtained by means of collusion, willful misstatement or suppression of facts, is used for discharging the customs duty.</p> <p>The said sub-section is amended so as to provide for recovery of duty against utilization of instruments issued under any other law, or under any scheme of the Central Government, for the time being in force, in addition to the Customs Act, 1962 and Foreign Trade (Development and Regulation) Act, 1992.</p> <p>Explanation 1 under sec. 28AAA(1), defines the term "Instrument" to mean</p> | <p>While section 28AAA(1) has been amended to include instrument issued under any other law or any scheme of the Central Government for recovery measures, corresponding amendment has not been made in the definition of instrument provided in Explanation 1.</p> | <p>It is recommended that the words "any other law or any scheme of the Central Government" should be inserted in the definition of "Instrument".</p> <p>Thus, the Explanation 1 can be reworded as follows:</p> <p><i>"For the purposes of this sub-section, "instrument" means any scrip or authorisation or licence or certificate or such other document, by whatever name called, issued under the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) or any other law or any scheme of the Central Government, or duty credit issued under section 51B, with respect to a reward or incentive scheme or duty exemption scheme or duty remission scheme or</i></p> |

| Sr. No | Proposed provision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Issue                                                                                                  | Suggestions                                                                                                                                                                                                                                                                                                                                 |
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|        | <p>any scrip or authorization or license or certificate or such other document, by whatever name called, issued under the Foreign Trade (Development and Regulation) Act, 1992, with respect to a reward or incentive scheme or duty exemption scheme or duty remission scheme or such other scheme bestowing financial or fiscal benefits, which may be utilised under the provisions of this Act or the rules made or notifications issued thereunder.</p> <p>The same has been amended to include duty credit issued under section 51B of Customs Act, 1962.</p> |                                                                                                        | <p><i>such other scheme bestowing financial or fiscal benefits, which may be utilised under the provisions of this Act or the rules made or notifications issued thereunder."</i></p>                                                                                                                                                       |
| 4.     | <p><b>Para 138 of the Budget speech Customs Notfn.No.50/2017 dt. 30.06.2017</b></p> <p>Para 138 of Budget Speech proposed for comprehensively reviewing remaining items by September 2020 for taking a view on their relevance. Further suggestions are invited for such review.</p>                                                                                                                                                                                                                                                                                | <p>Need to sustain the concession on Crude Palm Stearine at Sr.No.66 of said Customs Notification.</p> | <p>This material imported is a key ingredient for use in the manufacture of Toilet Soaps, Shampoos etc. which are of mass consumption and for most of the Oleochemicals such as fatty alcohols, fatty acids, etc. India has huge installed capacity for manufacture of Toilet Soaps, and Oleochemicals to meet growing domestic demand.</p> |

| Sr. No | Proposed provision | Issue | Suggestions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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|        |                    |       | <ul style="list-style-type: none"> <li>• The Basic Customs duty on import of Toilet Soaps (HS Code 3401.11) and Fatty Alcohols (HS Code 3823.70) is “NIL” if imported from ASEAN Countries in terms of basic Notification No. 46/2011-Cus dated 1.6.2011 as amended Notification No. 82/2018-Cus., dated 31.12.2018.</li> <li>• It is pertinent to note that there is no import substitution possibility for subject input materials in the manufacture of Soaps and Oleochemicals globally and hence the Govt. of India in all its wisdom had provided duty concession for the import of CPS against “Actual User condition”. The intent of the Govt is to encourage mass consumption items like soaps at a competitive price.</li> <li>• These exemptions are based on ‘Actual User Condition’ which ensures benefit is limited to actual producers of specific products and avoid any leakage of revenue because of concession. Basis this historic concession, Soap making industries have invested and</li> </ul> |

| Sr. No | Proposed provision | Issue | Suggestions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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|        |                    |       | <p>set up splitting facility in their factories. This concession goes a long way in setting up huge capacities for manufacture of soaps and oleochemicals thereby creating ancillary industries and generating employment opportunities across India in line with promoting <b><u>"Make in India"</u></b> policy. Leveraging the duty concession, the soap manufacturers were offering soaps at a competitive price.</p> <p><b><u>Govt. prescribed safeguards to prevent misuse</u></b></p> <ul style="list-style-type: none"> <li>Govt prescribed safeguards while granting such concessions to industries. For e.g. Crude Palm Stearin [CPS] is used for soap making and to ensure that such industrial crude palm stearin is not misused and strictly used as stipulated, the Government has prescribed important safeguards that such CPS should be admixed with at least 20% free fatty acids (FFA).</li> </ul> |

| Sr. No | Proposed provision | Issue | Suggestions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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|        |                    |       | <p><b><u>Impact due to the change in the duty structure contrary to Make in India</u></b></p> <ul style="list-style-type: none"> <li>We humbly submit that any change in the duty structure for Crude Palm Stearin levied will have severe and adverse impact on the domestic Toilet Soaps and Oleochemicals industries and push up end consumer prices for categories of mass consumption result into retail inflation. This also may put pressure on the closure of Indian manufacturing plants and result into shifting our Indian manufacturing capacities to attractive locations in ASEAN countries. In that case our country will wholly depend on imports of all these mass consumptions finished products into India and employment of several thousand people may be lost. We are sure that the Govt would not like to encourage such situation.</li> </ul> <p><b><u>Options under INDO-ASEAN and other Treaties</u></b></p> <ul style="list-style-type: none"> <li>It is relevant to add here that India has signed FTA with ASEAN countries and effective from January 2010, customs duties</li> </ul> |

| Sr. No | Proposed provision | Issue | Suggestions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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|        |                    |       | <p>on all these finished products such as Toilet Soaps, Fatty Alcohols and many other Oleochemicals have been gradually reduced and have almost become Zero. Similarly, imports from Least Developed Countries (LDC) will also attract Zero percent Customs duty on imports of Soaps. When the finished products themselves are exempt from customs duty, levying duties on its raw material would indirectly drive the manufacturers to import finished product like soaps which are of mass consumption in an established market and huge foreign exchange would outflow from India.</p> <p><b><u>Threat of higher inflation</u></b></p> <ul style="list-style-type: none"> <li>• We further submit that, such levy will be detrimental to the growth of Soaps and Oleochemical industry, pushing retail inflation higher for categories of mass consumption and resulting shift to higher import of finished goods with job losses in India.</li> </ul> |

| Sr. No | Proposed provision                                                                                                                                                                                                                                                                                                                                           | Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Suggestions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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|        |                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <ul style="list-style-type: none"> <li>In order to sustain plant capacity utilisation, reduce dependency from imports of finished products and save valuable foreign exchange for the country besides sustenance of employment opportunity, it is suggested that the Government to consider to sustain this concession granted for import of CPS and oblige.</li> </ul>                                                                                                                                         |
| 5.     | <p><b>Notification No. 50/2017 (Sr No.7) read with Notification No. 1/2020-Cus.</b></p> <ul style="list-style-type: none"> <li>Vide notification there is Withdrawal of concession given towards import of items covered under HSN 0402.10 or 0402.21.00 [ <b>Skimmed Milk Powders (SMP)</b> vide Notification No. 01/2020 – Cust. dated 1.2.2020</li> </ul> | <ul style="list-style-type: none"> <li>India is the largest milk producer and consumer in the world. Total production of milk in 2018/2019 was 187.3 billion litres.</li> <li>Most of this milk is consumed as fresh milk and indigenous products like (ghee, cheese, butter etc.). Only 4% (~ 630,000 MT) of this is directly used as Skimmed Milk Powder [‘SMP’] in the foods industry for further processing.</li> </ul> <p>The key end uses of this SMP are –</p> <ul style="list-style-type: none"> <li>Confectionery and Bakery – 35%</li> </ul> | <ul style="list-style-type: none"> <li>In view of the circumstance and constraints, the Government may consider allowing import of <b>limited quantity of 10,000 MT of SMP at 15% duty for specific end-use</b> in Food Processing industry which will on the one-hand help in securing supplies and stabilizing prices for the food processing sector while on the other hand will not impact milk prices and hence protect farmer realization. This can be reviewed annually in terms of quantity.</li> </ul> |

| Sr. No | Proposed provision | Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Suggestions |
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|        |                    | <ul style="list-style-type: none"> <li>• Infant formula – 24%</li> <li>• Sports and Nutrition – 18%</li> <li>• Prepared Dry Mixes – 12%</li> <li>• Dairy Products – 8%</li> <li>• Others – 3%</li> <li>• India milk prices have started to go up from beginning of 2018 with sharp jump happening in the last 9 months. This has been largely a result of poor rains, higher cost of feed and lower investment in animal husbandry.</li> <li>• The situation has become more critical as during flush season, milk collection has declined by ~ 10%. This comes with a backdrop of very low carry-forward stocks of SMP this season due to export of almost 64,000 MT in 2018.</li> <li>• While this has led to milk prices going up by 67% from beginning of 2018, the increase in SMP has been almost double at approximately</li> </ul> |             |



| Sr. No | Proposed provision | Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Suggestions |
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|        |                    | <p>128%. (based on current market prices @ Rs. 330-340 per kg).</p> <ul style="list-style-type: none"> <li>• The current stock levels of SMP during flush season poses a significant risk of SMP post flush, as the suppliers are struggling to meet even current demand. This has also led to speculative pricing with prices offers being revised upwards almost every week.</li> <li>• The above scenario both from an availability and pricing perspective has the potential to disrupt key food processing sectors like Bakery, Infant formula, Nutrition, Dairy Products etc. and dent the overall growth of this very important sector.</li> </ul> |             |