

BOMBAY CHAMBER OF COMMERCE & INDUSTRIES
POST-BUDGET MEMORANDUM 2021-22: INDIRECT TAXES

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POST-BUDGET MEMORANDUM 2021-2022

INDIRECT TAXES

A. GOODS AND SERVICES TAX

Sl.	Finance Bill Clause / Notification Reference	Budget Proposals	Issues and Rationale	Recommendations
1.	100	ITC claim restricted to details furnished by the supplier	<ul style="list-style-type: none"> As per proposed clause (aa) in section 16(2) of CGST Act, input tax credit shall be admissible in respect of invoice or debit note which has been furnished by the supplier in the statement of outward supplies and the same have been communicated to the recipient in the manner specified under section 37 of CGST Act. Thus, input tax credit in respect of invoices or debit note which are not reported by the supplier in its GSTR-1 will not be available to the recipient of supply. At present, as per rule 36(4) of CGST Rules, the taxpayer can claim input tax credit in respect of invoices or debit notes which have not been reported by the suppliers in GSTR-1 up to 5% of the eligible credit available in respect of invoices or debit notes which have been reported by the suppliers in GSTR-1. 	Chamber recommends that Rule 36(4) should be continued post introduction of clause (aa) in section 16(2).

2.	103	<p>Interest payable on “net liability” paid through cash</p>	<ul style="list-style-type: none"> • Notification 63/2020- CT dated 25 August 2020 notifies the date as 01 Sep 2020, for implementing the proviso to Section 50 i.e. payment of interest on net basis. Post which a press release was issued by the CBIC clarifying the amendment being made prospectively due to technical limitations and that no recoveries would be made for past periods to provide retrospective relief as approved by the GST Council. • Clause 103 of the Finance Bill 2021 proposes to amend proviso to Section 50(1) of the Central Goods and Services Tax Act, 2017 (“CGST Act, 2017”) to give it retrospective effect from 01 July 2017. Such amendment shall come into effect, post receipt of assent from the President and upon a date notified in the official gazette. • Whilst the legislation approves the provision for payment of interest on tax payable on a net basis (i.e. liability to be payable in cash that remains after utilising the available ITC), it covers only a situation whereby interest on net cash liability is payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39. • However, there are instances where tax payable arises on account of transactions missed to be reported or corrected in a subsequent period/s by 	<p>Chamber recommends that the provision for payment of interest on ‘net basis’ should not be limited to tax payable on account of delayed filing of return for the same month, but should be extended to cover all the cases of delayed payment which includes <i>suo-moto</i> corrective measures undertaken in subsequent tax periods (without any timelines) in Form GSTR-3B return.</p>
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			<p>the taxpayer and such taxpayer intends to voluntarily pay the liability then in such case for interest on delayed payment of tax, the proviso to section 50(1) would not be applicable and accordingly, will attract interest on a gross basis (i.e. liability before utilising ITC).</p> <ul style="list-style-type: none"> Given that there is no facility to amend / revise GSTR-3B returns available currently, the taxpayers are compelled to undertake corrective measures in subsequent GSTR-3B returns. Thus, the taxpayers should not be burdened with excess interest liability (i.e. on gross basis) for a facility that is not available under law. 	
3.	106	Expansion of scope of provisional attachment	<ul style="list-style-type: none"> Section 83 of the CGST Act, 2017 allows the tax authorities to resort to provisional attachment of property of the taxpayer to protect the interest of the revenue even in case of pendency of any proceeding of assessment of returns of non-filers, unregistered person and determination of tax by the proper officer by way of issuance of SCN. Scope of provisional attachment under Section 83 is proposed to be expanded vide clause 106 of the Finance Bill, 2021 to include entire Chapter XII (including self-assessment, provisional assessment, scrutiny of returns), Chapter XIV (Inspection, Search & Seizure) & Chapter XV (Demands & Recovery). 	<p>Chamber recommends that detailed guidelines should be issued for provisional attachment, specifically laying down the situations or circumstances when the provisional attachment should be resorted to by the tax authorities so as to ensure that such provisions is not used in a routine manner and only in rarest or the rare cases.</p> <p>Chamber also recommends that such guidelines should categorically specify that the provisions of provisional attachment should be resorted to only when the proceedings covered under Section 83 reach a stage when it becomes certain and the Commissioner forms an opinion that it is</p>

			<ul style="list-style-type: none"> • The proposed amendment has expanded the ambit of provisional attachment even for cases of self-assessment, provisional assessment, scrutiny of returns, assessment of non-filers & unregistered person. • Given this there are apprehensions that in absence of any specific guidelines or procedures for provisional attachment, could lead to unnecessary hardships for the taxpayers as the authorities may invoke this provision in a routine manner. For instance, it is apprehended that the provisional attachment of property or bank accounts could be resorted to even at the stage of receipt of letter of assessment (Form GST ASMT 10) or even if there is any delay in finalisation of provisional assessment. 	<p>absolutely necessary to resort to provisional attachment to protect the interest of the revenue. In this regard, safeguards as espoused by the Division Bench of Punjab & Haryana High Court in case of Bindal Smelting Private Limited vs Additional Director General¹ can be referred to.</p> <p>Chamber believes that this will bring in consistency in application of this provision amongst the field formations and would avoid unnecessary disputes and litigations.</p>
4.	107 and 108	Detention and seizure of goods and conveyances	<ul style="list-style-type: none"> • Section 129 of the CGST Act states that transportation of goods in contravention of provision of CGST Act shall be liable to detention or seizure and shall be released on payment of prescribed penalty. The proposed amendment provides for higher penalty as compared with the existing provision. Further, in case of non-payment of such penalty determined the order issued under the said detained goods shall be sold. 	<p>Chamber understands that the purpose of the amendment is to introduce stringent approach towards non-compliance of provision with respect to conveyance of goods; however, for ease of business and to undue hardship, Chamber would like to make following recommendations:</p> <ul style="list-style-type: none"> • Reduce the proposed higher penalty and retain it at existing level. Alternatively, retain existing penalty in case of detentions

¹ CWP No. 31382 of 2019, order dated 20 December 2019

			<ul style="list-style-type: none"> • The proposed amendment increasing the penalty is harsh as it does not distinguish cases of clerical errors, bonafide mistakes vis-à-vis clandestine supplies. Secondly, Section 129(6) is proposed to be amended to allow authorities to sale or dispose of goods or conveyance so detained or seized. • A proviso is proposed to be inserted to Section 107(6) of the CGST Act which requires taxpayer to pay an amount equal to 25% of the penalty before filing an appeal against the order passed under Section 129(3) of the CGST Act (i.e. order for detention/seizure of goods and conveyances in transit). 	<p>due to clerical or typo errors in invoice, E-way bill or other corresponding documents with respect to movement of goods.</p> <ul style="list-style-type: none"> • Penalty should not be applicable in case of any default of documentation of exempted goods. • Proposed amendment of pre deposit of 25% of penalty before filing of appeal against the order for detention/seizure of goods and conveyances in transit should be withdrawn.
5	NA	Widening the scope of refund due to inverted duty structure	<ul style="list-style-type: none"> • Currently as per notification No 11 of 2017 the concessional rate of tax @ 12% is applicable on all works contract services pertaining to Railways/ Metro or services to Govt etc. and in certain projects GST rate applicable is 5% • However, all the input and input services suffer high GST rates: <ul style="list-style-type: none"> ○ Works Contract Service - 12% ○ Input services - 18% ○ Cement -28% ○ Other major inputs (e.g. Steel) - 18% • As per current provisions of Sec 54 (3) of CGST Act read with Rule 89 of CGST Rules, in case of 	<p>Chamber recommends that the provisions of Section 54 and rule 89 be suitably amended to allow seamless refund in case of inverted duty structure for both inputs and input services.</p>

			<p>inverted duty structure, refund is allowed only in respect of inputs and not input services.</p> <ul style="list-style-type: none"> • The non-availability of refund results in severe working capital blockage due to huge GST input credit accumulation. The impact is more in case of infrastructure EPC contractors who are engaged in construction of Railways / Metro etc. This is because the rate on supply of works contract service is 12% whereas most of the inputs and input services suffer tax @18%/28%. • The problem is graver when the project is executed under the JV/SPV model, formed specifically for execution of the projects. This is in view of the fact that unutilized input tax credit on closure of the projects, become sunk cost with no provision for refund. 	
6.	114	New Section 16(4) of IGST Act proposing to notify the class of persons who shall be eligible to claim refund of IGST paid on zero-rated supplies.	<ul style="list-style-type: none"> • Section 16(3) is proposed to be replaced with new section 16(3) and 16(4), which fundamentally changes the tax treatment of zero-rated supplies. Pursuant to proposed amendment, the suppliers are left with only the default option of export against LUT without payment of tax and refund of accumulated input tax credit. The rebate option would not be generally available to all taxpayers but only to class of persons or goods or services as may be notified separately under section 16(4). 	<p>Chamber recommends that the proposed amendment should be withdrawn and to continue the rebate option for claiming refund of IGST paid on zero-rated supplies.</p> <p>Alternatively, if the intention of the Government is to restrict the applicability of rebate provision only to genuine exporter, then the Star Export House Status holders should be notified under proposed section 16(4) of the IGST Act. 2017.</p>

			<ul style="list-style-type: none"> Under rebate option, receiving refund is much more convenient than input stage refund as it leads to faster processing of refunds and eliminates need of complex computations, reconciliation of ITC etc. <p>Further, the taxpayer could have utilized the input tax credit in respect of capital goods to pay IGST on exports and claim refund of such tax paid. Since refund of such ITC will not be available under input stage route, it will result in increased working capital requirement.</p>	<p>Notwithstanding the above, Government may opt to notify the list of taxpayers who shall not be eligible to claim refund under the rebate option. Similar approach was also followed by the Government in case of refund of inverted duty structure.</p>
7.	114	Deposit of refund in case of non-realisation of sale proceeds within the timeline prescribed under FEMA	<ul style="list-style-type: none"> As per the proviso to proposed section 16(3) of IGST Act, the registered person making zero rated supply of goods shall be liable to deposit the refund of unutilized input tax credit so received along with the applicable interest, in case of non-realisation of sale proceeds, within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances. It is relevant to note that currently rule 96B of CGST Rules, 2017 covers only export of goods. The proviso will cover both export of goods as well as supply of goods to SEZ. Further, at the time of claiming refund, the credit ledger was debited to that extent. In case the refund is deposited, the taxpayer will be at loss 	<p>Chamber has already recommended that the Government should reconsider substitution of the existing provisions of section 16(3), particularly the insertion of new sub-section (4) under section 16.</p> <p>Notwithstanding the said suggestion, the Proviso should be restricted to export of goods only instead of making it applicable to Zero rated supply.</p> <p>Further, in case where the refund is deposited, the credit originally debited from the ledger, should be re-instated to the electronic credit ledger of the taxpayer.</p> <p>Also, since the refund claimed was of input tax credit which was otherwise eligible for adjustment against output tax liability of the</p>

			<p>since it cannot re-claim the credit back which was debited earlier.</p> <ul style="list-style-type: none">• Furthermore, the taxpayer is required to pay interest along with deposit of refund. This interest may not be refundable even if the sale proceeds are received at a later point in time.	<p>taxpayer, interest should not be levied on deposit of refund. Alternatively, the same should be refunded in case the sale proceeds are received at a later point in time.</p>
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B. CUSTOMS

Sl.	Finance Bill Clause Reference	Budget Proposals	Issues and Rationale	Recommendations
1	82	All conditional exemption notifications unless otherwise specified shall be valid until 31 March 2023.	<ul style="list-style-type: none"> • It is mentioned that relevant notifications shall be reviewed before phasing out such exemption and concessions. • It is to be noted that Government of India has been granting exemptions or concessions for import of various raw materials, inputs, consumable packing materials etc. in order to promote 'Make in India' Policy and to enable the manufacturers to offer the finished products at a competitive rate. Every exemption / concession has a strong and valid reasons and granted basis the industry representations and rationale. This indeed creates economic activity besides keeping the inflation under control. • While phasing out such exemptions on key raw materials which have no import substitutions would impact the price competitiveness. Therefore, it is essential that the key raw materials which are not abundantly available in the domestic market need to be allowed exemption or at a concessional rate. 	<p>Chamber suggests that the concerned industrial trade bodies should be consulted, and their concerns are adequately addressed before withdrawing the exemptions.</p> <p>Also, the key inputs used for making finished goods meant for mass consumption, and which are currently allowed exemption / concession with "end use condition", may be continued.</p>

			<ul style="list-style-type: none"> Further, the materials which are allowed exemptions / concessions with end use conditions should continue to be allowed especially for those are used for making finished products which are of mass consumption and offered at a competitive price. 	
2	84	The deadline for filing of Bill of Entry advanced by two days.	<ul style="list-style-type: none"> The imposition of penalty for the proposed filing of Bill of Entry, if filed belatedly, would lead to additional transaction cost for the importers. At times the importers do not receive the shipping documents before arrival of the vessel. 	<p>It is suggested that the existing time limit for filing the Bill of Entry may be continued.</p> <p>Further, public holidays and weekly holidays may be excluded while computing the time limit for filing Bill of Entry.</p>
3	87	Customs penalty for irregular GST refunds.	<ul style="list-style-type: none"> A new Section 114AC has been proposed to be inserted under the Customs Act to prescribe for imposition of penalty in cases where input tax credit under GST is claimed on the basis of invoices obtained fraudulently for discharging duty or tax on export of goods under a claim of refund. The penalty can extend up to five times the amount of the refund claimed. Similar penal provisions exist under the CGST Act 2017 for fraudulent avilment and utilisation of ITC and therefore perhaps, any penal provisions related to irregular GST refunds should be maintained under the GST law itself. 	<p>Chamber recommends that the proposed amendment to impose penalty of up to five times the amount of the refund claimed on account of invoices obtained fraudulently for discharging duty or tax on export of goods should be withdraw from the Customs law.</p>

4	Notification No. 09/2021 - Customs (N.T.)	Amendment to Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017	<ul style="list-style-type: none"> • The amendment to the IGCR 2017 does not provide ample clarity on treatment of left over or unused imported goods at the place of job worker i.e. whether the said left over or unused imported goods can be re-exported or can be disposed of. • Further, there is no clarity on treatment of defective or unused imported goods for job work of materials which are not re-exported within six months' time limit. 	Chamber recommends that the rules should be amended to provide clarity on the procedure to be followed for the treatment of the goods left over or unused imported goods at the place of job worker. This will avoid unnecessary disputes and litigations on account of divergent views being adopted by the field formations.
5	Press release dated 31 December 2020.	Notifying RoDTEP Rates	<ul style="list-style-type: none"> • Govt has already announced and implemented the RoDTEP scheme w.e.f. 1st January 2021. However, till date the rates have not been notified. • The export orders are booked by Indian manufacturers well in advance and in the absence of any clarity on RoDTEP rates, it's not possible to estimate the costing and quote the competitive price in the export market. • Even for the tender based contracts, where margin is very thin because of the intense competition from Chinese players, the unclarity of the RoDTEP rates is hampering the business. 	Chamber recommends that the Government should immediately complete the rate fixation for RoDTEP and should notify the same at the earliest. This will provide certainty to exporters and enable them to price the products appropriately in a highly competitive global market.

6	96	<p><u>HSN 2022</u> Proposes 351 amendments to the existing HSN covering wide range of goods.</p>	<p>India being part of WTO has adopted and aligned with HSN [ITC-HS Codes] of World Customs Organisation [WCO]. Most of the countries in the World have also aligned HSN with WCO.</p>	<p>Chamber recommends that proposed changes should be in line with entry description, definition and explanation as provided in the HSN of WCO and without impact on international trade.</p> <p>Proposed changes in the HSN may be circulated well in advance through trade bodies or placed under Customs Common Portal to enable the industry to appreciate and represent suitably before the issuance of notification.</p> <p>Further, any such changes should only be with prospective effect.</p>
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C. Central Sales Tax

Sl.	Finance Bill Clause Reference	Budget Proposals	Issues and Rationale	Recommendations
1.	141	<p>Sales against Form C under CST Act shall not be applicable on the goods procured for sale of goods other than Non-CST goods i.e.:</p> <ul style="list-style-type: none"> • petroleum crude; • high speed diesel; • motor spirit (commonly known as petrol); • natural gas; • aviation turbine fuel • alcoholic liquor for human consumption; 	<p>There will be an increase in the cost of procurement of goods covered under the CST Act, when such goods are used for manufacturing/processing for sale of non-CST goods and for mining industry</p>	<p>Chamber recommends that the benefit of concessional rate of CST against "Form C" for non-GST goods should be continued till such goods are subsumed in the GST law, as it will have cascading impact on the cost of production. It is therefore recommended that the proposed amendment in Section 8(3) of the CST Act should be withdrawn</p>