



BUDGET

**INDIRECT TAX**  
Budget Updates

## CUSTOMS

### **'Proof of origin' introduced for claiming preferential rate of duty:**

Amendment to Section 28DA of the Customs Act, 1962 (Customs Act) has been proposed to substitute 'certificate of origin' with 'proof of origin'.

The amendment has been proposed to align Section 28DA of the Customs Act (which provides for the procedure for claiming a preferential rate of duty) with new trade agreements that provide for self-certification by enabling the acceptance of different types of proof of origin. The proposed amendment seeks to include not only a certificate of origin but also declarations issued by Issuing Authority that the goods fulfil the country-of-origin criteria as per the relevant trade agreement as proof of origin.

### **Central Government can specify manufacturing processes and operations not permitted in a warehouse:**

Insertion of proviso to Section 65 of the Customs Act has been proposed to empower the Central Government to specify manufacturing processes and other operations in relation to a class of goods that will not be permitted in a warehouse.

The proposed amendment comes in the backdrop of the ruling by the Delhi High Court which upheld the applicability of the Manufacture and Other Operations in Warehouse Regulations, 2019 (MOOWR) to solar power generating units. MOOWR provides for duty deferment on the import of capital goods and inputs intended to be used in manufacturing and other operations within a customs bonded warehouse.

### **No GST compensation cess on import of goods in Special Economic Zones:**

Retrospective effect has been given to Notification No. 27/2024-Customs dated July 12, 2024, so as to provide exemption from GST compensation cess leviable on imports by SEZ unit or developer for authorised operations

with effect from July 01, 2017.

*This comes in the backdrop of the ruling by Andhra Pradesh High Court, which had held that GST compensation cess is leviable on the import of goods by SEZ Units. The proposed amendment will accordingly benefit the SEZ units and developers who are not be required to pay GST compensation cess on imports with effect from July 01, 2017.*

### **Maintenance, repair and operations (MRO) Sector:**

To promote the MRO sector, as a trade facilitation measure, the time period for:

- (a) duty- free re- import of goods (such as parts, components of aircraft replaced or removed during the course of maintenance and repair) that are exported, has been increased from 3 to 5 years; and
- (b) export, in case of aircraft and vessels imported duty- free for maintenance, repair and overhauling, has been increased from 6 months to 1 year.

*This is yet another step in the direction of giving the MRO sector a major push as previously customs duty exemptions had been extended to import of parts, equipment, tools, etc. by MRO sector and very recently uniform rate of 5% IGST was applied to imports of parts, components, testing equipment, tools and toolkits of aircrafts, irrespective of their HS classification.*

**Rate changes:** Duty rate reductions/exemptions have been extended under the Budget with a view to promote and give fillip to various sectors such as critical minerals, aquafarming and marine, textile and leather, electronic goods and equipment, solar energy etc.

## **GOODS AND SERVICES TAX**

### **No GST on un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption:**

Section 9 of the Central Goods and Services Tax Act, 2017 (CGST Act) has been proposed to be amended so as not to levy Central Goods and Services Tax (CGST) on un-denatured extra neutral alcohol (ENA) or rectified

spirit used for manufacture of alcoholic liquor for human consumption. Corresponding amendment has also been proposed in Section 5 of the Integrated Goods and Services Tax Act, 2017 (IGST Act) and Section 7 of the Union Territory Goods and Services Tax Act, 2017 (UTGST Act).

*The taxability of undenatured ENA under GST had been vexed since alcoholic beverages for human consumption are outside the purview of GST. Earlier, the Allahabad High Court had held that under GST, states do not have the legislative competence to tax ENA. However, despite the said judgement, the GST Council in its 52nd meeting had recommended to keep ENA used for manufacture of alcoholic liquor for human consumption outside the purview of GST and subsequently, Section 9 of the CGST Act was recommended to be amended by the GST Council in its 53rd Meeting, which is sought to be implemented by the proposed amendment. The proposed amendment accordingly settles the issue and brings clarity on the non-taxability of ENA under GST, much to the relief the alcobev industry.*

### **Government empowered to regularise non- levy or short levy of GST:**

A new Section 11A has been proposed to be inserted to the CGST Act empowering the Government not to recover GST on tax not levied or short- levied as a result of general trade practice. Similarly, insertion of Section 6A of the IGST Act, Section 8A of the UTGST Act, Section 8A of the Goods and Services Tax (Compensation to States) Act, 2017 (Compensation Act) has also been proposed.

*The proposed amendment aligns the GST provisions with existing tax laws, specifically Section 11C of the Central Excise Act, 1944, and Section 28A of the Customs Act, which empower the government to waive duties not levied or underpaid due to general practices. By acknowledging the reality that tax practices, though common, might not always align with the precise requirement of the law, the proposed amendment creates a more business-friendly tax system. The proposed amendment was also recommended by the GST Council in its 53rd Meeting.*



## **Availment of Input Tax Credit (ITC):**

Section 16 of the CGST Act is proposed to be amended to provide that in respect of an invoice or debit note for the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, a registered person can take ITC in any return under Section 39, i.e., FORM GSTR- 3B, which is filed up to the November 30, 2021. Further, availment of ITC has been proposed to be allowed in respect of an invoice or debit note in a return filed for the period from the date of cancellation of registration/ the effective date of cancellation of registration till the date of order of revocation of cancellation of registration. The ITC can be availed in (a) return filed up to 30th November following the financial year to which invoice/ debit note pertains or (b) return filed within 30 days of the date of order of revocation of cancellation of registration, subject to the condition that the time-limit for availment of credit in respect of the said invoice or debit note should not have already expired under sub-section (4) of the Section 16 on the date of order of cancellation of registration, whichever is later. These amendments are proposed to be given effect from July 01, 2017.

*The proposed amendment offers significant relief for those assesseees who availed ITC for F.Y. 2017-18, 2018-19, 2019-20, and 2020-21 beyond the prescribed period of November of the following financial year (but before November 30, 2021). Further, the relaxation of ITC availment in cases where returns have been filed after revocation of cancellation of registration will also benefit the assesseees.*

**Ineligibility for ITC eased:** Section 17(5)(i) of the CGST Act has been proposed to be amended to restrict the non-availability of ITC in respect of tax paid under Section 74 of CGST only for demands up to F.Y. 2023-24.

*The proposed amendment to Section 17(5)(i) of the CGST Act excludes any proceedings initiated under Section 129 and 130 of the CGST Act for the purposes of restricting availment of ITC. Importantly, such restriction on availment of ITC on tax paid under Section 74 (which pertains to determination of tax in case of fraud, suppression, etc.) will be limited to*

*F.Y. 2023-24.*

## **Government to prescribe time period for issuance of invoice by recipient in case of Reverse Charge Mechanism (RCM):**

Section 31 of the CGST Act has been proposed to be amended to empower the Central Government to prescribe the time period for issuance of invoice by the recipient in case of reverse charge mechanism supplies by rules.

*The proposed amendment may have bearing on the recent clarification issued by the Department which provided that relevant financial year for the purposes of Section 16(4) of the CGST Act to avail ITC on RCM will be the financial year in which the self- invoice has been issued by the recipient.*

## **No refund in cases where goods are subject to export duty:**

Amendments to Section 54 of the CGST Act have been proposed to deny the refund of not just unutilised ITC but also of the IGST paid on zero-rated supplies, where such supplies are subjected to export duty. Similar amendment has also been made in Section 16 of the IGST Act.

*The proposed amendments are based on the recommendations of the 53rd GST Council Meeting and expand the restriction to refund to not just unutilised ITC but also to cases involving IGST payment on exports.*

**Summons may be attended by authorised representatives:** Insertion of Section 70(1A) of the CGST Act has been proposed to enable an authorised representative to appear on behalf of the summoned person before the proper officer in compliance of summons.

*The proposed amendment is likely to also prevent harassment of senior management of corporate taxpayers, who may not always be involved in the day to day running of operations, but yet be summoned. In view of proposed amendment, the authorised representative (which include relative, regular employee, advocate, chartered accountant, etc.) of the summoned person can appear before the authorities. Additionally, the investigation agencies are also likely to benefit*

*from the amendment since the Proper officer can proceed with its inquiries or investigations without delays caused by the non-availability of the summoned person.*

## **Common time period for tax determination from FY 2024-25:**

Amendments to Section 73 and 74 and insertion of Section 74A has been proposed to restrict the determination of tax liability under Section 73 (non- fraud cases) and under Section 74 (fraud cases) up to FY 2023-24 and provide a common time limit for both fraud as well as non- fraud cases qua issuance of Show Cause Notice (SCN) and determination of tax for FY 2024-25 onwards. Under the newly proposed Section 74A, the SCN will be required to be issued within 42 months from the due date for furnishing annual return for the financial year to which the tax dues relate to. Also, the proper officer will be required to issue order adjudging the SCN within 12 months from the date of issuance of the SCN (extendable further by a maximum of 6 months). Further, the proposed Section 74A will contain various provisions related to determination of tax such as interest, penalty, etc.

*The proposed amendment is based on the recommendations of the 53rd GST Council Meeting. A common time period for the issuance of SCNs and the determination of tax liability, streamlines administrative procedures by reducing the complexity involved in handling different timelines for fraud and non-fraud cases. Interestingly, the proposed amendment is a significant departure from erstwhile indirect tax laws which provided different time limits for fraud and non-fraud cases for issuing SCNs and determining tax liabilities.*

## **Relevant amendments in respect of filing of appeals before Appellate Authority and Appellate Tribunal:**

- Maximum amount of pre-deposit for filing appeal before Appellate Authority proposed to be reduced from INR 25 crores to INR 20 crores (CGST) and from INR 50 crores to INR 40 crores (IGST);
- Proposed amendment to empower the Principal Bench of the Appellate Tribunal to examine or adjudicate anti- profiteering matters;



- Proposed amendment to empower the Government to notify the date for filing appeal before the Appellate Tribunal and provide a revised time limit for filing appeals or application before the Appellate Tribunal with effect from August 01, 2024;
- Proposed amendment to enable the Appellate Tribunal to admit appeals filed by the Department within three months after the expiry of the specified time limit of six months; and
- Proposed amendment to reduce the maximum amount of pre-deposit for filing appeals before the Appellate Tribunal from the existing 20% to 10% of the tax in dispute and also reduce the maximum amount payable as pre-deposit from INR 50 crores to INR 20 crores (CGST) and from INR 100 crores to INR 40 crores (IGST)

*The proposed amendments are based on the recommendations of the 53rd GST Council Meeting and are in line with the earlier clarification issued by the Department. These amendments aim to create a more accessible and efficient appellate system by reducing the financial burden on business and individuals and enhancing procedural flexibility.*

## **Waiver of interest and penalty:**

Section 128A has been proposed to be

inserted so as to provide for conditional waiver of interest and penalty in respect of demand notices issued under Section 73 of CGST Act (non- fraud cases) for the FY 2017-18, 2018-19 and 2019-20, except the demand notices in respect of erroneous refund. It has been proposed that in cases where interest and penalty have already been paid in respect of any demand for the said financial years, no refund will be admissible.

*The amendment provides relief across various sectors, as it applies broadly to non-fraud cases for the specified financial years (pertaining to initial years of GST implication). The waiver for past non-fraudulent cases can significantly reduce the number of disputes and litigations between taxpayers and tax authorities which may have ensued on account of interpretational issues or evolving GST law during the implementation phase. Consequently, it will potentially reduce the backlog of cases and enable the courts to operate more efficiently.*

## **Sunset clause for anti- profiteering**

**provisions:** Section 171 of the CGST Act has been proposed to be amended so as to empower the Government to notify the date from which the Authority under the said section shall not accept any application for anti-

profiteering cases.

*The proposed amendments are based on the recommendations of the 53rd GST Council Meeting. Further, the transfer of pending anti-profiteering cases to the Principal Bench of the GST Appellate Tribunal may potentially lead to more efficient handling and quicker resolutions of these cases, owing to the expertise of the Tribunal.*

**Entry 9 and 10 to Schedule III of the CGST Act proposed to be inserted to provide that (a) activity of apportionment of co- insurance premium by lead insurer to the co-insurer for the insurance services jointly supplied and (b) services by the insurer to the re-insurer, for which the ceding commission or the re-insurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, to be neither supply of goods nor supply of services and thus, outside the purview of GST.**

The proposed amendments are based on the recommendations of the 53rd GST Council Meeting and are in accordance with recent clarification issued by the Department in this regard. The proposed amendment is beneficial for the insurance industry.



## KEY PEOPLE



**Shashank Shekhar**

Partner

Shashank Shekhar is a Partner in the Indirect Tax Practice at DMD Advocates, bringing over two decades of experience to the role. He has extensive court-room experience while representing clients at various fora including Supreme Court of India, High Courts and Tribunals and has obtained favourable judgments and orders for the clients from Courts and Tribunals.



**Tushar Joshi**

Principal Associate

Tushar Joshi is a Principal Associate with 10 years of experience in indirect tax litigation and advisory. He handles a wide range of matters related to GST, Customs, Service Tax, SEZ, Foreign Trade Policy, etc., and has represented clients at the adjudication and appellate stages, as well as before Tribunals, High Courts, and the Supreme Court.

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