



UNION BUDGET 2023



INDIRECT TAX PROPOSALS

COVERAGE

- GST
- Customs
- Legacy Issues

GOODS AND SERVICE TAX

RETROSPECTIVE AMENDMENT IN SCHEDULE III

- ❑ Schedule III specifies the transactions which are neither supply of goods nor supply of services
- ❑ Certain transactions like third country sales, customs bonded warehouse to DTA sales and high sea sales were covered in Schedule III vide Central Goods and Services Tax (Amendment) Act, 2018 with effect from February 1, 2019.
- ❑ Above said entries will now have retrospective application with effect from 01.07.2017.
- ❑ Where tax has already been collected till 31 January 2019 in respect of any such transactions, no refund shall be available.

IMPACT

- ❑ Positive Amendment for the legacy issues
- ❑ Denying the refund for the past period is against the provisions of Article 265 of the Constitution of India
- ❑ Consequential changes in ITC provisions in Section 17(3) would have negative impact- it has been proposed that while calculating the exempted turnover for the purpose of proportionate reversal of ITC, the value of the supply of warehoused goods, would be added along with the value of land.
- ❑ Fate of Bombay High Court judgment in the case of *Sandeep Patil* and Kerala High Court in the case of *CIAL Duty Free & Retail Services Limited*

ITC ON CORPORATE SOCIETY RESPONSIBILITY

- ❑ Section 17(5) of the CGST Act, 2017 provides for negative list on which ITC is blocked.
- ❑ Proposed Section 17(5) to restrict credit in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under CSR as per Section 135 of the Companies Act, 2013.
- ❑ Why different treatment when credit is available for other Statutory Obligation- Factory Canteen?
- ❑ Fate of the contradictory rulings of the Tribunal and AAR
- ❑ Impact on the past period and for ongoing litigation

PENALTY ON E-COMMERCE OPERATOR

- ❑ Section 122 of the CGST Act provides for penalty for certain offences
- ❑ An amendment is proposed for imposing penalty of INR 10,000 or the amount of tax involved, whichever is higher, on Electronic Commerce Operators, in the following cases:
 - If ECO allows supply of goods or services or both by an unregistered person other than those explicitly exempted;
 - If ECO allows inter-state supply of goods or services or both by ineligible persons;
 - If ECO fails to furnish statement containing the details of outward supplies of goods or services or both effected through it.
- ❑ More compliance issues on ECO

CHANGES IN THE PROSECUTION PROVISIONS

- ❑ Minimum threshold to launch prosecution is increased to 2 Cr. except in the case of fake invoice
- ❑ Decriminalizing the minor offences (except in the case of fake invoice):
 - Obstructing or preventing any officer from discharging their duties;
 - Tampering or destruction of any material evidence or document;
 - Failure to furnish information or furnishing false information summoned under the Act.
- ❑ Upper and lower limit for compounding has been reduced from 50% to 25% and from 150% to 100% except in the case of fake invoice

OTHER SUBSTANTIVE CHANGES

- ❑ **Welcome change in Section 16(2)** - now in case the vendor is not paid the value of the supplies along with GST within 180 days. The non-payment would now attract reversal of ITC instead of addition in the output tax and interest would be paid under Section 50
- ❑ **Welcome change in Section 54(6)** - now while calculating the provisional refund of 90% in case of zero rate supplies, the provisional ITC would not be excluded. Provisional ITC has been understood that the ITC in respect of which the tax has not been paid by the input supplier.
- ❑ **More powers have been delegated for determining the interest on delayed refund** - Interest on delayed refund would be calculated in the manner prescribed. Currently the liability to pay interest arises after 60 days from the date of filing the refund application

OTHER SUBSTANTIVE CHANGES

- ❑ **Composition scheme benefit extended to the dealers operating through ECO**
 - Welcome change for the Composition Dealer
 - Adding more pains to ECO to ensure compliance

- ❑ **Consent based sharing of Information of taxpayer** - New Section 158A has been inserted to seek consent and confirmation from the taxpayer for sharing the information available with the GST portal with respect to various filings, with other agencies

OTHER MISC. CHANGES

- ❑ Maximum time limit of three years from the relevant date has been prescribed to file GSTR-1, GSTR-3B, GSTR-9 and GSTR-8.
- ❑ **Welcome change** - Section 23 has been special status to override the provisions of Section 22 and 24. Now the persons engaged exclusively in supply of exempted goods or services or an agriculturist would not be liable to be registered under GST.

CHANGES IN IGST

- ❑ Definition of OIDAR has been widened to exclude the condition of ‘essentially automated and involving human intervention’. Hence, it would now cover almost all online services.
- ❑ Definition of ‘Non-Taxable online Recipient’ has been substituted to cover ‘any unregistered person receiving OIDAR services in taxable territory’. Unregistered person would also cover the person registered merely to deduct TDS under GST provisions.
- ❑ Proviso to Section 12(8) has been omitted- it will have huge negative impact on cross-border transportation which is currently
- ❑ Proposed amendment in Section 12 (8) will be in line with the provisions under Service Tax regime

CUSTOMS

AUTOMATIC EXPIRY OF CONDITIONAL NOTIFICATION

- ❑ Section 25(4A) introduced in 2021 provides for mandatory expiry date of two years for conditional exemption notification. Now a proviso has been inserted to cover the following cases where provisions of Section 25(4A) will not have any impact:
 - Exemption under multilateral or bilateral trade agreement Free Trade Agreements (FTA).
 - Exemption under FTP (like Advance Authorization, EPCG schemes etc.)
 - Exemption relating to re-imports, temporary imports, goods imported as baggage or gifts.
 - Exemption for duty of customs other than BCD (like IGST)
 - Exemption under obligations relating to international agreements, treaties and conventions
 - Exemption in relation to privileges of Constitutional Authorities.
 - Exemption under schemes having specific validity of more than two years.

SETTLEMENT COMMISSION

- ❑ Section 127C has been amended to provide time limit of 9 months which can be further extended by 3 months to decide the application.
- ❑ In case, the application is not decided within the specified time, then the settlement proceedings will be ceased and the matter will be transferred to original jurisdictional authority
- ❑ Welcome change but can have a serious implications?

CHANGES IN CUSTOMS TARIFF ACT

- ❑ Retrospective amendment has been proposed in Section 9, 9A and 9C of the Customs Tariff Act to provide clarity on its coverage
- ❑ The Finance Bill proposes to amend the General Rules for interpretation of the First Schedule – Import Tariff of the CTA as under:
 - Paragraph 1 of the General Explanatory Notes is proposed to be amended to the effect that where the description of an article or group of articles is preceded by “-----”, the said article or group of articles shall also be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has “-- -”.
 - This amendment is proposed to come into effect from 01.05.2023.

CHANGES IN CUSTOMS TARIFF

- ❑ New tariff entries have been introduced in Chapter 3, Chapter 4, Chapter 9, Chapter 10, Chapter 12, Chapter 13, Chapter 19, Chapter 27, Chapter 29, Chapter 31, Chapter 38, Chapter 39, Chapter 48, Chapter 52, Chapter 54, Chapter 57, Chapter 61, Chapter 62, Chapter 63, Chapter 69, Chapter 71, Chapter 84, Chapter 85, Chapter 87.
- ❑ Misc. rate changes have been introduced either in the First Schedule or in Notification No. 50/2017-Cus keeping in mind the theme of “Make in India”
- ❑ SWS and AIDC are being exempted on certain items
- ❑ Solar Power Plant or Solar Power Projects have been excluded from the Project Import Regulations

LEGACY ISSUES - CST TRIBUNAL

CESTAT WILL TAKE OVER CST ISSUES

- ❑ Section 19 of the CST Act which provides for functions, powers and composition of the Central Sales Tax Appellate Authority is proposed to be substituted.
- ❑ As per the new provision, CESTAT will have jurisdiction to adjudicate any dispute relating to inter-state sales
- ❑ Welcome change given the fact that CST Tribunal was not in functional from quite a long time.



THANK YOU!
