TRILEGAL

UPDATES

Budget 2022: Key Indirect Tax Proposals

This update covers:

The Union Budget 2022-23 seeks to make various changes to the indirect tax regime through the proposed amendments to the Central Goods and Services Tax Act, 2017, the Customs Act, 1962, the Customs Tariff Act, 1975 and the Central Excise Act, 1944.

The Finance Bill, 2022 (**Bill**) presented by the Finance Minister on 1 February 2022, proposes changes to various aspects of the indirect tax regime in India.

Under the Central Goods and Services Tax Act, 2017 (**CGST Act**), the two-way communication between supplier and recipient in filing returns will be done away with. Instead an auto-generated form providing information regarding available Input Tax Credit (**ITC**) will be implemented. This is likely to impact the eligibility of a recipient to avail ITC and may affect recipients who are dependent on the information provided solely by supplier. This is also likely to have a negative impact on the working capital of the recipient. Consequently, taxpayers will have to be more diligent while transacting with suppliers in order to avoid loss of ITC.

Further, with the concept of provisional claim of ITC also proposed to be removed, recipients will be unable to claim ITC provisionally if the supplier has not reported the necessary information.

On a positive note, there has been an extension in certain time limits which will provide taxpayers more time for availing ITC, rectifying errors in their returns, etc.

Under the Customs Act, 1962 (**Customs Act**), the definition of 'proper officer' will now be amended to empower the Central Board of Indirect Taxes and Customs (**Board**) to appoint officers of the Directorate of Revenue Intelligence (**DRI**) as 'proper officer' to issue show cause notices and also adjudicate upon them. This overcomes a decision of the Supreme Court which held that DRI officers, not being 'proper officers', lack the jurisdiction to issue show cause notices.

The Bill also proposes to allow the withdrawal of an application for advance ruling at any time before its pronouncement to provide flexibility to applicants.

In a bid to protect the data and sensitive information that may be filed by importers and exporters with the customs authorities, amendments are proposed to ensure that such data and sensitive information is not published, except in accordance with law.

The Bill proposes to streamline customs duty rates in a phased manner and also seeks to align the tariff with the Harmonised System-2022, which is a nomenclature system used worldwide for the uniform classification of goods traded internationally.

To provide a level playing field to domestic producers, the basic customs duty in various sectors has been reviewed and will be rationalised. Further, to encourage the consumption of blended motor spirit, an additional basic excise duty on unblended petrol and diesel will be imposed with effect from 1 October 2022 under the Central Excise Act, 1944.

1 Central Goods and Services Tax Act, 2017

1.1 Auto-generated statement for availing ITC to replace the current matching/reconciliation process

Presently, the return filing process under the GST laws envisages a two-way communication between supplier and recipient followed by matching/ reconciliation of the details mentioned in their respective returns. Basis the respective returns filed by the supplier and the recipient, the liability of output tax and the availability of ITC is determined. Going forward, only the supplier will be required to file the details of outward supply while the requirement of furnishing the details of inward supplies by the recipient will be done away with. This process will be replaced with an auto-generated statement to be provided to the recipient (by amendment of Section 38 of the CGST Act).

The auto-generated statement would consist of: (i) ITC that may be available to the recipient and (ii) ITC not available to the recipient. Further, the recipient's credit will be dependent on the details furnished by the supplier and could be affected by defaults on part of the supplier such as defaults in making GST payment, availing ITC above the amount available in auto-generated statement, etc.

Given that a contravention by the supplier may be beyond the recipient's control, these changes may have an unfair prejudicial impact on recipients.

1.2 Additional restriction on availing of ITC

Section 16 of the CGST Act provides the eligibility conditions for availing ITC by recipients. The Bill proposes to insert a new clause (ba) to Section 16 (2) to provide that if the auto-generated statement (under the amended Section 38) specifies that the ITC on goods and services is restricted, then the recipient cannot avail such ITC.

1.3 Mandatory sequential filing of outward supply return

The Bill proposes to make it mandatory for a taxpayer to file sequential return of outward supplies. Thus, a taxpayer will not be allowed to file a return of outward supplies for the current month unless such return has been filed by it for the previous tax period. This requirement of sequential filing was already in place for filing of GSTR 3B (periodic summary return) and now it will also apply to outward supply returns.

1.4 Prohibition on filing of GSTR 3B without submitting outward supply return

The Bill proposes to prohibit the filing of GSTR 3B if the return of outward supplies is not filed by the supplier. With a view to curb evasion of taxes, this amendment will ensure that the taxpayer files both its returns i.e., the return for outward supplies as well as the periodic summary return for each tax period.

1.5 Concept of provisional claim of ITC removed

The Bill proposes to do away with the concept of claim of eligible ITC on a provisional basis by the recipient. Currently, the recipient can provisionally claim ITC until matching/reconciliation of the details of outward supply and inward supply are furnished by the supplier and the recipient, respectively.

Further, the Bill proposes that ITC may be availed as per self-assessment by the taxpayer; reversal of ITC along with interest, if the tax is not paid by the supplier and re-availment of ITC once the tax is paid by the supplier.

The mechanism of matching of returns as envisaged originally under GST laws could not be implemented on account of certain technological limitations. This matching mechanism theoretically was advantageous to taxpayers because of its inherent design to modify/ revise details of transactions recorded in returns on the basis of a two-way communication between suppliers and recipients. On the contrary, the proposed system is dependent on details furnished only by suppliers and dilutes the original return filing and matching process. In light of the proposed changes in the return filing system, the provisional claim of ITC will become inconsequential.

1.6 Changes with respect to credit and cash ledger

The Bill proposes to allow a registered person to transfer amounts available in its electronic cash ledger (ECL) to a distinct person. Under GST Laws, a person who has obtained, or is required to obtain more than one registration is treated as a distinct person in respect of each such registration. However, as per the proposed clause, such facility will not be available if there is an outstanding GST liability against the registered person.

1.7 Restriction on utilisation of ITC

The Bill proposes to restrict the maximum proportion of output tax liability which can be paid through the ECL. GST laws currently do not provide for such restrictions. Given this, a supplier or class of suppliers (a list of which will be notified separately), may have to discharge a portion of output tax liability in cash, despite having sufficient ITC in their ECL.

This may prove to be a harsh restriction on the taxpayer and may result in cash flow issues.

1.8 Interest on wrongly availing and utilising ITC

The Bill proposes to impose interest up to the rate of 24% on ITC which is wrongly availed and utilised by a registered person. While the upper limit of the rate of interest is capped at 24%, the interest on the wrongly availed and utilised ITC is proposed to be levied at 18%.

1.9 Extension of timelines

The Bill proposes to extend the time limit for (i) availing ITC against invoice and debit/credit note, (ii) issuing credit notes, (iii) rectifying an error in outward supply/GSTR 3B return, etc. up to the 30 November of the subsequent financial year or filing of the annual return, whichever is earlier.

GST laws currently provide that such actions can be taken up to the date of filing of return for September in subsequent financial year (i.e. 20 October) or the date of filing of the annual return, whichever is earlier. The extension of the time limit up to 30 November will provide taxpayers more time for availing ITC, rectifying errors in their returns, etc.

2 Customs Act, 1962

2.1 Amendments pursuant to Supreme Court's decision in Canon India

The Bill proposes certain amendments to overcome the decision of the Supreme Court in *Canon India Pvt. Ltd. v Commissioner of Customs* in which it was held that DRI officers are not 'proper officer' under the Customs Act and therefore, the DRI officers lack jurisdiction to issue show cause notices. This decision resulted in quashing of show cause notices issued by DRI by various high courts and tribunals. Accordingly, the proposed amendments will now enable the Board to appoint, by notification, officers of DRI as 'proper officer'. Further, the Bill also seeks to validate: (i) issuance of show cause notices by DRI, (ii) notifications under which DRI officers were appointed as 'proper officer', and (iii) give retrospective effect to the relevant amendments, by deeming fiction, to address the defect identified by this decision of the Supreme Court.

2.2 Rules in respect of valuation of imported goods

The Bill seeks to empower the Central Government to frame rules enabling the Board to specify additional obligations on importers and checks to be exercised where there are reasons to believe that a certain class of imported goods are undervalued.

2.3 Advance Rulings

The Bill proposes that an application for advance ruling can be withdrawn at any time before the advance ruling is pronounced. This is in contrast to the existing procedure where the application could only be withdrawn within 30 days of its filing. Further, it has been proposed that the advance ruling will remain valid for three years or till there is a change in law or fact, whichever is earlier. Currently, the binding effect of the ruling is subject to there being no change in the law or facts on the basis of which the ruling had been issued.

2.4 Post-inquiry proceedings

The Bill proposes that if a customs officer, after his inquiry, investigation or audit, has reasons to believe that there was either short payment or short levy of duty or interest or erroneous refund or drawback, then such customs officer is to transfer such cases to the proper officer. It is the proper officer who will thereafter exercise the powers under the Customs Act, such as issue a show cause notice and subsequently adjudicate the same.

This proposed amendment comes in the wake of various decisions holding that only the officer carrying out the assessment will be the proper officer for the purpose of adjudicating any dispute arising therefrom.

2.5 Protection of data

The Bill seeks to make publishing of export or import information pertaining to value or classification or quantity of goods or details of exporter or importer punishable with imprisonment or fine or both.

This amendment aims to protect the data and sensitive information that may be filed by importers and exporters with the customs authorities.

3 Customs Tariff Act, 1975

3.1 Rationalisation of customs duty and tariff rates

In a bid to streamline effective Customs duty rates, the Bill proposes to move the effective rates from the numerous exemption/concessional notifications where they are currently contained, to the tariff itself. This is proposed to be introduced in a phased manner.

The Bill also proposes several amendments to the Customs tariff to align it with the Harmonised System-2022 published by the World Customs Organization. These amendments would bring greater clarity and uniformity in the tariff and related notifications.

3.2 Increase of basic customs duty on project imports

The Bill proposes to withdraw the concessional rate of basic customs duty/exemption available to project imports for projects such as power projects, including nuclear and solar power, coal projects, gas projects, iron ore projects, etc.

Existing projects registered till 30 September 2022 under project imports will be grandfathered till 30 September 2023 attracting old basic customs duty rates of 0% / 2.5% / 5% as applicable.

New projects registered after 30th September 2022 under project imports will attract 7.5% basic customs duty rate.

After 30 September 2023, all projects registered under project imports will attract 7.5% basic customs duty rate.

3.3 Withdrawal/phase out/revision of certain exemptions/concessions

The Bill proposes to withdraw, phase out or revise certain exemptions/concessions that will have an impact on several sectors/products. Few notable sectors are listed below:

a. Power sector including solar;

b. Petroleum sector;

c. Goods used in the manufacture of static converters of automatic data processing machines (PCBA, Transformer, Battery and Copper enamelled wires);

d. Goods used for research and development in Agro-Chemical Sector unit;

e. Pharmaceutical and bio-technology sector;

f. Wrist wearables (smart watches), hearable devices and smart meters;

g. Defence and internal security forces related items;

h. Capital goods used in manufacture of electronic items.

3.4 Clarification in relation to electric vehicles

In response to requests from industry regarding clarification on customs duty in respect of certain electric vehicles (**EV**) components, the Bill proposes amendments in relation to imports of completely knocked down (**CKD**) /semi knocked down forms (**SKD**) of EV (including commercial, passenger and two-wheeled electric vehicles). These amendments clarify that for an EV kit to be eligible for the duty benefits available to a CKD form of an EV, each individual component in the kit need not be in a disassembled form. Further, it has been clarified that even if some components are missing in the EV kit, the benefit of concessional rate of duty available to CKD/SKD kits would still be available provided that the kit as presented has the essential character of an EV.

Further, the Bill proposes to withdraw concession for 'electric compressor' and 'contactor' by way of deletion of the relevant entry, since these parts are not used in two-wheeled EVs.

3.5 Revocation of anti-dumping and countervailing duties

In order to control rising steel prices, the Bill proposes to permanently revoke anti-dumping and countervailing duties affecting imports of steel and steel alloys from certain countries.

4 Central Excise Act, 1944

The Bill proposes to levy additional basic excise duty on unblended petrol and diesel to promote blending of motor spirit, with effect from 1 October 2022.