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**Union Budget 2021: Setting the right
legal framework**

With the Indian economy ailing on account of global pandemic, India Inc. keenly watched over the Union Budget 2021 'like never before'. Unlike the last few budgets which were generally populist, the Finance Minister had the burden to set-right the economy as also to facilitate the trade. Being the first ever digital Budget, the impetus on digitisation in taxation framework was only obvious.

Overall, the Budget rose to the expectation and held itself high!!

On the Indirect Tax front, the Budget touched upon various aspect ranging from instilling the confidence of the taxpayers to putting in order the loopholes in statutory provisions. Underlining the intent, the Budget strikes the right balance of 'legal system and economic growth'.

Since inception of GST Law, stakeholders witnessed challenges to various statutory provisions before Constitutional Courts. The list includes challenge to prescription of time limit in rules for claiming transitional credit, GSTR-3B is a prescribed return or not, claim of Input Tax Credit ('ITC') basis the details uploaded by the suppliers etc. Close observation of the disputes raised so far would suggest a trend that they mainly revolved around inadequate statutory framework in place. Given that, it was high time for the Government to plug in the gaps in law and remedy the law itself so as to shoo away the disputes.

This intent came out in the Budget, loud and clear. Number of amendments in GST Law focuses on nullifying the disputes (even from retrospective effect), for instance:

- Taxability of goods / services supplied to members by clubs and association. The origin of the dispute dates back to Service Tax regime where the issue was decided by the Supreme Court in *Calcutta Club & Others*. The dispute will no longer be relevant under GST as such transactions have been included within the definition of 'Supply'.
- Under CGST Act, there was no statutory provision entitling input tax credit ('ITC') basis the details uploaded by suppliers (in Form GSTR-2A). Consequently, the validity of Rule 36(4) of the CGST Rules was challenged before multiple High Courts. While the challenges are still to be decided, the Government has proposed to prescribe condition for entitlement of ITC basis invoices / debit notes furnished in GSTR-2A.
- Recovery of interest basis net cash liability for the period prior to amendment (September 1, 2020) remained a dispute. Despite positive rulings and CBIC Circular prescribing that recovery cannot be initiated for past, the authorities create past demands on gross liability in the absence of a statutory provision. The budget proposal to retrospectively amend Section 50(1) from July 1, 2017 puts the issue to rest.
- One of the popular disputes under GST is detention and seizure of goods under transit for contravention of provisions of the statute. The statutory provision provided for payment of 100% tax and an equivalent penalty. Considering this, the provision was criticized for levying double tax on same transaction. The dispute has now been set to rest by fixing penalty of 200% on any such contravention.

Another noteworthy proposal that Industry observed was reduction in compliance burden of filing audited reconciliation statement (in GSTR-9C). Rather, a taxpayer will be required to file the statement in GSTR-9 on self-certification basis. Well to say, a needed respite.

While the Budget is generous enough to herald growth, an amendment in Section 16 of the IGST Act leaves a bad taste for the exporter community. It now restricts refund of tax paid on exports to only notified class of taxpayers and notified goods or services. The amendment seems to follow the recommendation of the Law Committee which prescribed the change to avoid frauds and aligning with international practices.

One of the most unlikely change was witnessed in the CST Act, wherein it has been proposed that statutory declaration in Form C can be issued only for procurement of goods that are re-sold or used in manufacture of goods which are subject to CST or VAT. While regressive for industry, this removes a long-standing dispute of Form C being available for generation of electricity, in mining, telecommunication network etc.

On the Customs Law front, the Government has stayed true and in line with the consistent efforts of 'Make in India'. Depictive of its vision, the Budget witnessed plethora of rate changes, primarily an increase of customs duty incidence to promote domestic production in sectors like automotive, solar power, electronic industry (including cellular phones). Optically such changes give a flavour of an 'Atma nirbhar Bharat'.

To mark greater transparency between taxpayers and the Government, a common portal under Customs (like under GST) is proposed to be set-up. Not only this, the proposal to harmonise the Customs Tariff Act, 1975 with significant amendments to harmonised nomenclature (to come into effect from January 1, 2022) was much needed to reduce classification disputes.

Having said that, the entire industry was expecting a Customs Amnesty Scheme to resolve the pending disputes on lines of similar schemes under Direct and other Indirect Tax Laws. In addition to this, the industry expected a framework for amendment of bills of entry as per Section 149 of the Customs Act, 1962 (which despite a specific amendment vide the Finance Act, 2019 lacks a procedural set-up). The Budget has remained silent on such expectation.

One of the highlights of Budget is imposition of an Agriculture Infrastructure & Development Cess on notified products to aid the agriculture sector. The cess will be levied as customs duty and is not uniform and accordingly varies from product to product. However, it causes no additional burden for taxpayers as the BCD rates on such products has been reduced. The measure comes as a welcome measure amidst the country-wide protest by farmers against farm bills and aims at inculcating confidence amongst them.

The Budget endeavours to address several key areas of concern for the industry. It clearly indicates a massive boost for the economic sentiments and has fulfilled the requisite expectation of the industry at large. While there were certain let downs, the Budget has struck balance between remedial measures in law and populism. Overall, it is a growth-oriented Budget and will support the economic development in longer run.



Kulraj Ashpnani
Director
(Author)
NITYA Tax Associates



Sourabh
Senior Associate
(Co-Author)
NITYA Tax Associates