



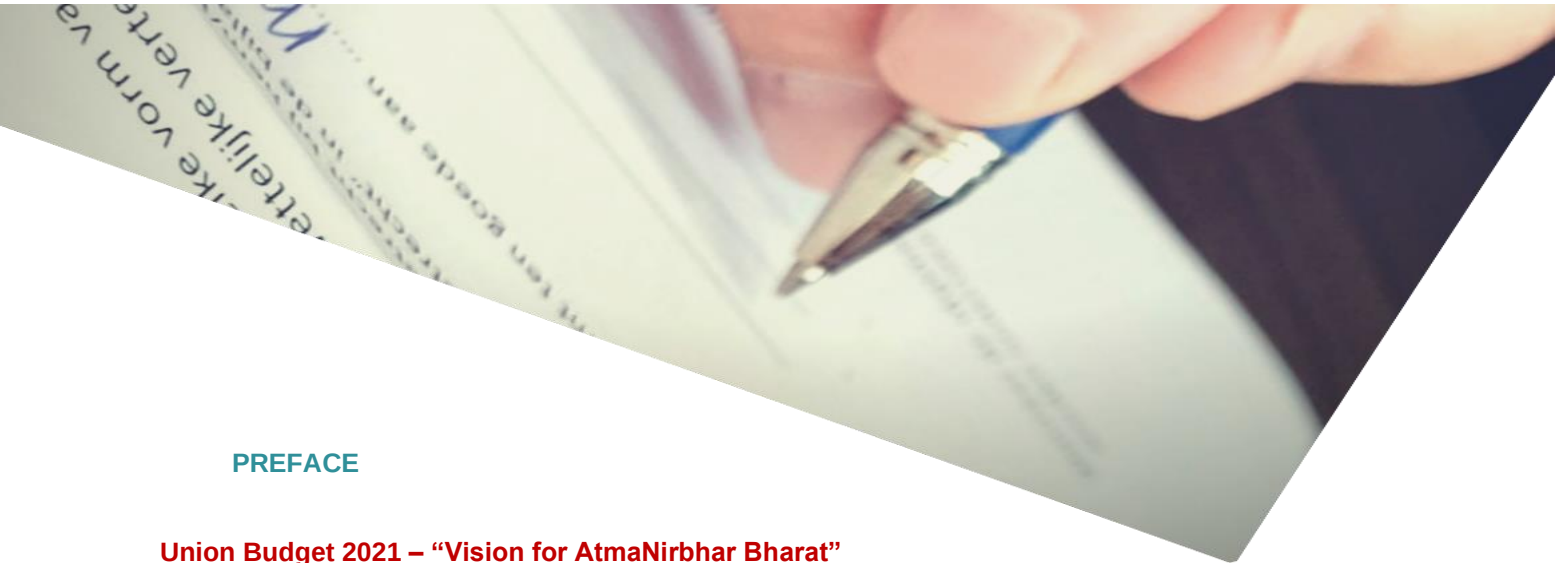
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A photograph showing a close-up of hands writing on a document. One hand holds a red pen, and another holds a yellow pen. The document has some handwritten notes and a small table. In the background, a laptop keyboard and a mouse are visible. The image is partially covered by a dark grey diagonal band.

BUDGET 2021
AN INSIGHT INTO INDIRECT TAX PROPOSALS

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PREFACE

Union Budget 2021 – “Vision for AtmaNirbhar Bharat”

The Finance Minister, Nirmala Sitharaman presented the Union Budget 2021 focusing on AtmaNirbhar Bharat. Before presenting, Finance Minister called it ‘Never Before Budget’ and emphasized on need to incentivize manufacturing sector. In this light, it was not surprising that the Budget focused on increasing customs duties on many categories of goods.

The Finance Minister has proposed significant changes in Direct Tax and Indirect Tax laws. Key Indirect Tax changes include introduction of defined sunset period for conditional customs duty exemptions, Common Customs Electronic Portal, 100 percent matching requirement for availing GST Input Tax Credit, changes in process of claiming GST refund on exports, doing away with requirement of GST Audits from external Chartered Accountant etc.

Further, amidst farmers’ protests for continuation of Minimum Support Price for agricultural products and repeal of farm laws, Government introduced new levy of ‘Agriculture Infrastructure and Development Cess’ on importation of specified goods. The new Cess seems to be another tool of Central Government to increase its own collections.

The appended booklet contains our insight on various Indirect Tax proposals (legislative as well as tariff changes) introduced in the Union Budget 2021 including our analysis on their impact on your businesses.

Trust you find it an interesting read.

We would be happy to have your thoughts / comments on the booklet at updates@nityatax.com

Disclaimer:

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1. Amendments in Customs law

Introduction of Common Portal

- Section 2(7B) of the Customs Act has been introduced to define ‘Common Portal’. It means Common Customs Electronic Portal referred to in Section 154C.
- Section 154C has been introduced to empower CBIC to notify Common Customs Electronic Portal for following functions:
 - (i) Registration
 - (ii) Filing Bills of Entry, Shipping Bills, other forms & documents
 - (iii) Payment of duty
 - (iv) Other specified purposes
- A new clause is inserted in Section 153 to enable service of any decision, order, summon, notice or other communication under the Customs Act and Rules on Common Portal.

Common Customs Electronic Portal is similar to Common Goods and Services Tax Electronic Portal under GST law. Even after 3 years of introduction of GST, taxpayers regularly face issues and glitches on GST portal and many such issues (like transitional of pre-GST credits etc.) have knocked doors of Courts. Government must endeavor that Common Customs Electronic Portal functions properly without any glitches from inception.

(Effective from date of enactment of Finance Bill)

Time limit for Conditional Exemptions

- Time limit has been introduced prescribing validity period of Conditional Exemptions. These exemptions would be valid till **March 31 of second financial year post financial year of their issuance** (unless such exemptions are varied, rescinded or provided otherwise).
- Conditional exemptions in force (on date of enactment of Finance Bill) would be valid till March 31, 2023. This is explained with following example:

Situation	Month of issuance of Exemption	Last date of validity
Situation 1	May 2020	March 31, 2023
Situation 2	January 2022	March 31, 2024

This provision is in line with Government’s strategy for timely review of exemptions under Customs law. Implementation of this provision will pose challenges for importers as they need to track sunset date for each exemption, its amendment etc. Further, it defies logic as to why Government restricted this to Conditional exemptions and did not apply it to Unconditional exemptions as well.

(Effective from date of enactment of Finance Bill)

Time-limit for conclusion of investigations culminating into SCN

- Section 28BB has been inserted to prescribe time-limit of **2 year for issuance of SCN from date of initiation of audit, search, seizure or summons**. This period can be extended by 1 more year by Principal Commissioner / Commissioner of Customs.
- This provision will only apply to audit, search, seizure or summons initiated on or after date of enactment of Finance Bill.

The provision does not contain express consequence that proceedings will be deemed to be concluded in case SCN is not issued within prescribed period.

(Effective from date of enactment of Finance Bill)

Procedural changes

- Section 46(3) dealing with filing of bill of entry, has been amended as follows:
 - Bill of entry needs to be **filed in advance** i.e. prior to day of arrival of conveyance
 - CBIC can notify different time limits for filing of bill of entry in certain cases. Such time limit shall not be later than end of day on which conveyance arrives.

(Effective from date of enactment of Finance Bill)

- Section 149 deals with amendment of documents. Proviso is inserted in Section 149 to provide for authorization or amendment of documents electronically through customs automated system and enable certain amendments to be done by importer / exporter on Common Customs Electronic Portal.

(Effective from date of enactment of Finance Bill)

Amendments in the IGCR Rules

- Key amendments in the IGCR Rules, are as follows:

Definitions

- Definition of 'job work' has been inserted to mean treatment, process etc. on goods (except gold, jewellery and article thereof) belonging to the importer.
- Definition of 'output service' has been amended to exclude 'after-sale service' by using imported goods.

Furnishing of information by importer to jurisdictional AC / DC

- Importer needs to provide following additional details to jurisdictional AC / DC:
 - Name and address of importer's job worker
 - Process undertaken at manufacturing facility of importer / job worker
 - Nature of output service rendered using imported goods

Furnishing of information regarding receipt of imported goods to jurisdictional customs officer

- Importer is now required to provide information to jurisdictional customs officer about receipt of imported goods in the premises in which **job work** or output service shall be rendered.

Procedure for job work

- Following procedure has been prescribed for job work:
 - Procedure for sending goods by importer to job worker
 - Time period for which goods can be kept at job worker's premises
 - Importer's liability where it fails to prove that goods sent to job worker are used for prescribed purpose
 - List of records to be maintained by job worker
 - Procedure for sending goods back by job worker to importer or another job worker

Re-export or clearance of unutilized or defective goods

- A new sub-rule is inserted **allowing sale of capital goods** after their use for specified purpose, on payment of prescribed duty along with interest.

Records & Returns

- Importer is now required to maintain records of following additional transactions:
 - Quantity of goods sent for job work and nature of job work carried out
 - Quantity of goods received after job work
- Format of quarterly return is amended to incorporate details of transactions between importer and job worker.

Penalty

- Penalty of Rs. 50,000 can be imposed on importer or job worker for contravention of the IGCR Rules. This penalty is without prejudice to other actions taken under the Customs Act, Rules or Regulations or any other law for the time being in force.

(Effective from February 2, 2021)

Penal provisions

- Section 113(ja) has been inserted to provide for confiscation of export goods where wrongful claim of remission or refund of any duty or tax or levy is made.

(Effective from date of enactment of Finance Bill)

An Insight into Indirect Tax proposals

- Section 114AC has been inserted to prescribe penalty for fraudulent utilization of ITC for claiming output GST refund on export goods. Where exporter has obtained any invoice by means of fraud, suppression etc. and ITC on such invoice is utilized to pay output tax liability on export goods, penalty not exceeding **5 times of refund amount** can be imposed.

Extant provisions already exist under GST for penalizing taxpayers in such cases. Legislature seems to have traversed beyond the scope of Customs law by introducing such stringent penalties. The provision is susceptible to challenge before the Courts.

(Effective from date of enactment of Finance Bill)

Change in CTA

- CVD and ADD shall not apply on imports made by 100 percent EOU or unit in SEZ, except where:
 - Such levy is specifically notified to be applicable to such unit; or
 - Imported article is cleared in Domestic Tariff Area or used in manufacture of goods cleared in Domestic Tariff Area

Similar provision already exists for levy of Safeguard Duty. This is now extended to CVD and ADD.

- **‘Absorption of ADD / CVD’** – To counter effect of ‘absorption of ADD / CVD’, the Central Government may modify ADD / CVD from date of initiation of investigation. Absorption of ADD / CVD is explained as under:
 - In case of CVD: Where export price of article is decreased without any commensurate change in resale price of imported goods in India from exporting country.
 - In case of ADD: Where export price of article is decreased without any commensurate change in cost of production or export price of goods to other countries or resale price of such imported article in India.
- In case of circumvention of CVD and ADD, such duty can be retrospectively levied from date of initiation of inquiry.
- On temporary revocation of CVD and ADD, such revocation shall not exceed one year at a time.

(Effective from date of enactment of Finance Bill)

Imposition of AIDC

- AIDC will be levied:
 - As duty of customs on certain goods covered under First Schedule to the CTA in addition to BCD
 - As duty of excise on goods covered under Seventh Schedule of the Finance Bill (on petrol and diesel) in addition to Excise Duty
- AIDC will be utilized for financing agriculture infrastructure and other development expenditure. Notably, there has been corresponding decrease in BCD on goods on which AIDC is levied.

- Illustration explaining computation of AIDC on imported goods is given below:

Particulars	Rate	Basis of computation	Amount (in Rs.)
Assessable value of goods	-	-	100.00
BCD	15 percent	Assessable value of goods	15.00
AIDC	5 percent	Assessable value of goods	5.00
SWS	10 percent	BCD + AIDC	2.00
IGST	18 percent	Assessable value + all duties	21.96
Total tax incidence			43.96

(Effective from February 2, 2021)

Rate changes

- To encourage domestic manufacturing in India, BCD has been increased on various goods. BCD on several goods has also been reduced for reasons like introduction of AIDC. A summary of change in rate of key items is detailed in Annexure-1.

(Effective from dates as per Annexure-1)

2. Amendments in CGST Act

Supply

- Definition of supply under Section 7 of the CGST Act has been amended to **levy GST** on activities or transactions **between associations and its members** for consideration. These transactions are taxable irrespective of whether they are 'in the course or furtherance of business' or otherwise.
- An Explanation has also been inserted to deem association and its members as two separate persons.

*The Supreme Court in case of **State of West Bengal v. Calcutta Club, 2019-VIL-34-SC-ST** held that Association (club) and its members are not different persons and transactions between them do not attract Sales Tax or Service Tax. The ratio of this judgment was equally applicable in GST regime. The present amendment overrules aforesaid jurisprudence.*

(Effective from July 1, 2017, after enactment of Finance Bill and issuance of Notification)

Conditions to claim ITC

- Section 16(2) of the CGST Act has been amended to **allow ITC only if supplier uploads Invoices and Debit Notes** in its statement of outward supply and same are communicated to recipient.

*Post this change, only ITC visible to taxpayer in its **GSTR-2A** will be allowed. Accordingly, taxpayers will need to undertake monthly reconciliation to claim ITC. As a natural consequence, 5 percent buffer for claiming ITC on Invoices and Debit Notes not appearing in GSTR-2A under Rule 36(4) of the CGST Rules will no longer be available.*

Notably, this provision will not apply for claiming ITC on Bills of Entry, ISD invoices and self-invoices.

(Effective from date appointed in Notification issued after enactment of Finance Bill)

GST Audit

- Section 35(5) of the CGST Act has been omitted, thereby **removing requirement to get accounts audited** from Chartered Accountant / Cost Accountant.
- Taxpayers will now be required to submit annual return containing **self-certified reconciliation statement** of GST turnover with audited financial statements. Commissioner may exempt certain class of taxpayers from furnishing annual return.

*This is a welcome amendment for taxpayers. This amendment will **not apply for GST Audit of FY 2019-20** whose due date is **February 28, 2021**. The amendment is likely to be applicable for GST Audit of FY 2020-21 onwards if this amendment gets notified in next few months.*

(Effective from date appointed in Notification issued after enactment of Finance Bill)

Interest on net tax liability

- Proviso to Section 50 of the CGST Act provides for payment of interest on net tax liability i.e. liability payable in cash after adjusting ITC. This proviso has been revised and made **effective from July 1, 2017**.

*GST Council in its 39th Meeting decided to make this proviso effective retrospectively from July 1, 2017. The Government also issued **Press Release dated August 26, 2020** and internal **Instruction dated September 18, 2020** clarifying the same. This amendment has effectuated this intent.*

(Effective from July 1, 2017, after enactment of Finance Bill and issuance of Notification)

Demands and recovery

- Section 73 and 74 of the CGST Act deals with issuance of SCN for recovery of tax. In case SCN is issued to other persons and proceedings are concluded against main person, proceedings to pay penalty under Section 122, 125, 129 and 130 against such other persons is also concluded.
- These provisions have been amended and such proceedings shall not be deemed to be concluded for penalty payable under Section 129 and 130. Accordingly, if proceedings against taxpayer has been concluded, penalty proceedings under Section 129 against transporter etc. can still continue.
- Explanation has also been inserted in Section 75(12) to expand meaning of **‘self-assessed tax’** to include tax on outward supplies disclosed in GSTR-1 but not paid through GSTR-3B.
- Section 83 of the CGST Act has been amended to widen Commissioner’s power to pass orders for provisional attachment for more type of proceedings including scrutiny cases where there is a difference between GSTR-1 and GSTR-3B. Further, provisional attachment order can be passed even if proceedings are not pending.

Attachment proceedings under Section 83 has been subject matter of dispute with varied High Court rulings on meaning of ‘pending proceedings’ and provisions under which such proceedings are initiated / pending. The amended Section 83 grants wide powers to Commissioner to provisionally attach property for varied matters and is likely to lead to taxpayers’ harassment.

(Effective from date appointed in Notification issued after enactment of Finance Bill)

Detention, seizure, release and confiscation of goods or conveyance in transit

- Section 129 provides for detention and seizure of goods, conveyance and related documents in transit when transportation or storage of goods is in contravention of provisions of the CGST Act.
- Section 129 is amended to allow release of goods, conveyance and related documents on payment of below mentioned penalty:

Situation 1 – Where owner of goods comes forward for payment of penalty

- (i) Taxable goods – Penalty equivalent to 200 percent of tax payable (*Earlier this amount was 100 percent of tax payable and equivalent penalty*).

- (ii) Exempted goods – Penalty equivalent to 2 percent of value of goods or Rs.25,000, whichever is lower. (No change).

Situation 2 – Where owner of goods does not come forward for payment of penalty

- (i) Taxable goods – Penalty equivalent to 50 percent of value of goods or 200 percent of tax payable, whichever is higher (Earlier this amount was tax payable and penalty equivalent to 50 percent of value of goods reduced by actual tax paid).
- (ii) Exempted goods – Penalty equivalent to 5 percent of value of goods or Rs.25,000, whichever is lower. (No change).

The earlier provision was susceptible to challenge on account to dual demand of tax, first on supply and thereafter under Section 129. Some taxpayers used to adjust tax paid under this provision with tax liability in GSTR-3B. The amended provision has removed these doubts by prescribing 200 percent penalty.

- Time limit of 7 days has been prescribed for the Proper Officer to issue notice for detention or seizure of goods, conveyance and related documents from date of detention or seizure of goods. Similarly, time limit of 7 days has been prescribed for passing order from date of service of notice.
- Proper officer is now empowered to sell detained / seized goods or conveyance where owner or transporter fails to pay penalty within 15 days from date of receipt of order. However, conveyance (not goods) shall be released where transporter pays penalty amount or Rs.1,00,000, whichever is lower.
- Taxpayers (opting for release of goods by furnishing security like bank guarantee) need to make pre-deposit of 25 percent penalty for filing appeal before first Appellate Authority.

(Effective from date appointed in Notification issued after enactment of Finance Bill)

3. Amendments in IGST Act

Refund of IGST / ITC on exports

- Section 16 of the IGST Act relating to zero rated supply, is proposed to be substantially amended. The existing provisions and proposed changes are tabulated below:

Exports	Existing provisions	Proposed changes
Exports without payment of IGST	Exporter can claim refund of ITC on goods and services used for exports	This option continues. Refund needs to be returned along with interest where export consideration is not realized within timelines provided under the Foreign Exchange Management Act, 1999.
Exports on payment of IGST	Exporter can claim refund of IGST paid on exports	This refund will not be allowed to taxpayers in general. In exceptional cases, the Government may notify: - Class of taxpayers - Class of goods / services to or on which this refund will be admissible.

Output stage 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. Non-availability of this option will be big blow for exporter community. This will result in increased working capital requirement and increased compliance burden and departmental interactions. Government should reconsider this change and give option of output stage refund to all genuine taxpayers.

Regarding input stage refund, the Government introduced Rule 96B in the CGST Rules which provides for return of refund where sales proceeds are not realized. Such amount can be reclaimed where unrealized amount is received in future. This amendment provides legal backing to Rule 96B.

(Effective from date appointed in Notification issued after enactment of Finance Bill)

Supplies to SEZ

- Supply of goods and services to **SEZ** shall now be treated as zero rated supply only if such supply is made for **authorized operations**.

The CGST Rules already contains this condition. This amendment has created consistency between the IGST Act and the CGST Rules.

(Effective from date appointed in Notification issued after enactment of Finance Bill)

4. Amendment in CST Act

- Section 8(3)(b) of the Central Sales Tax Act, 1956 has been substituted to **bar** inter-state purchase of goods (like petroleum products) at concessional CST (under **Form-C**) **for generation or distribution of electricity, mining and telecommunication network**.

The amendment nullifies rulings of various High Courts wherein post implementation of GST, benefit of Form-C was extended on inter-state purchase of petroleum products meant for generation or distribution of electricity.

(Effective from date of enactment of Finance Bill)

Annexure-1

1. List of major goods on which BCD is increased

Rate change effective from February 2, 2021

S. No.	Tariff Heading	Description of Goods	Old Rate	Revised Rate
1	2207 20 00	Denatured Ethyl Alcohol and other spirits of any strength	2.5%	5%
2	2528	Boron ores	Nil	2.5%
3	7007	Safety glass, consisting of toughened (tempered) or laminated glass used for motor vehicles	10%	15%
4	7318	Screws, Bolts, Nuts, Coach-Screws, Screw Hooks, Rivets, Cotter-Pins, Washers (including Spring Washers) and similar articles of Iron or Steel	10%	15%
5	8414 30 00	Compressors of a kind used in refrigerating equipment	12.5%	15%
6	8414 80 11	Compressors of a kind used in air-conditioning equipment	12.5%	15%
7	8430	Tunnel boring machines	Nil	7.5%
8	8431	Parts and components for manufacture of tunnel boring machines with actual user condition	Nil	2.5%
9	8504 40	Solar Inverters	5%	20%
10	8504 90 90	Printed Circuit Board Assembly (PCBA) of charger or power adapter	10%	15%
11	8512 90 00	Parts of electrical lighting or signaling equipment, windscreen wipers, defrosters and demisters for motor vehicles	10%	15%
12	8544 (other than USB Cable and goods of tariff item 8544 70 and 8544 30 00)	All goods	7.5%	10%
13	8544 30 00	Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships	10%	15%
14	8714 91 to 8714 99	All goods other than bicycle parts and components	10%	15%
15	9104 00 00	Instrument panel clocks and clocks of a similar type for vehicles, aircraft, spacecraft or vessels	10%	15%
16	9405 50 40	Solar lanterns or solar lamps	5%	15%
17	Any Chapter	All parts for use in manufacture of LED lights, fixtures, LED lamps, LED drivers and MCPCB of LED lights	5%	10%

Rate changes effective from April 1, 2021

S. No.	Tariff Heading	Description of Goods	Old Rate	Revised Rate
1	Any Chapter	Inputs or parts used for manufacture of PCBA, camera module, connectors, back cover, side cover, side keys etc. of cellular mobile phones	Nil	2.5%
2	Any Chapter	Inputs or raw materials (other than Lithium-ion cell and PCBA) of Lithium-ion or battery pack	Nil	2.5%
3	Any Chapter	Parts or components of PCBA of Lithium-ion battery or battery pack	Nil	2.5%

2. List of major goods on which AIDC has been imposed and BCD has been decreased:

Rate changes effective from February 2, 2021

S. No.	Tariff Heading	Description of Goods	Old Rate	Revised Rate
1	2204	Wine of fresh grapes	150%	50%
2	2205	Vermouth and other wines of fresh grapes	150%	50%
3	2206	Other fermented beverages; mixtures of fermented beverages	150%	50%
4	2208	Undenatured Ethyl Alcohol of an alcoholic strength of less than v/w 80%	150%	50%
5	2528	All goods other than Boron ores	10%	2.5%
6	2701	Various types of coal (Anthracite, bituminous, coking, steam etc.)	2.5%	1%
7	2702	Lignite coal	2.5%	1%
8	2703	Peat coal	2.5%	1%

GLOSSARY OF TERMS

Abbreviations	Meaning
AC/DC	Assistant Commissioner / Deputy Commissioner
ADD	Anti-Dumping Duty
AIDC	Agriculture Infrastructure and Development Cess
CBIC	Central Board of Indirect Taxes and Customs
CGST	Central Goods and Services Tax
CGST Act	Central Goods and Services Tax Act, 2017
CGST Rules	Central Goods and Services Tax Rules, 2017
Customs Act	Customs Act, 1962
CTA	Customs Tariff Act, 1975
CVD	Countervailing Duty
EOU	Export Oriented Unit
Finance Act	Finance Act, 2021
Finance Bill	Finance Bill, 2021
FTA	Free Trade Agreement
FY	Financial Year
IGCR	Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017
ITC	Input Tax Credit
ISD	Input Service Distributor
IGST	Integrated Goods and Services Tax
IGST Act	Integrated Goods and Services Tax Act, 2017
SEZ	Special Economic Zone
SCN	Show Cause Notice
SWS	Social Welfare Surcharge



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