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# NITYA Insight | Union Budget 2023

February 2, 2023

## Index

<i>PREFACE</i> .....	3
<b>PART A: CUSTOMS LAW</b> .....	<b>4</b>
1. Automatic expiry of conditional exemption Notifications .....	4
2. Time limit for passing order by Settlement Commission.....	4
3. Appeal against levy of Safeguard Duty, Countervailing Duty and Anti-dumping Duty .....	5
4. Customs Rate Changes .....	5
<b>PART B: GST LAW</b> .....	<b>6</b>
1. Retrospective exemption to merchanting sales, sale of warehoused goods and high sea sales.....	6
2. Definition of Online Information and Database Access or Retrieval Services .....	6
3. Place of supply of transportation of goods outside India .....	6
4. ITC related changes .....	7
5. Interest on delayed refund .....	7
6. Registration related changes .....	7
7. Upper time-limit for filing returns .....	8
8. Imposition of penalty on E-Commerce Operators.....	8
9. Decriminalization of offences under GST and compounding thereof .....	8
10. Consent based sharing of information furnished by taxable person.....	9
<b>PART C: CST LAW</b> .....	<b>10</b>
1. Shifting of jurisdiction to settle inter-state disputes under CST Act to CESTAT.....	10
<i>ANNEXURE-1</i> .....	11

### PREFACE

#### **Union Budget 2023 – First budget of “Amrit Kaal”**

Honorable Finance Minister Nirmala Sitharaman presented Union Budget 2023, laying emphasis on key sectors such as infrastructure, agriculture, education and employment, crucial for overall development of country.

On Tax front, key focus continued to remain on boosting domestic manufacturing and value addition. In line with this objective, various BCD exemptions have been reviewed and withdrawn. Under GST, major proposals include barring of ITC on CSR expenses, restriction on filing of GST returns beyond 3 years from due date, introduction of penalty on E-Commerce Operators for defaults of vendors supplying through their platform, consent-based sharing of information with other systems etc. The Government has also given effect to several decisions taken in last meeting of the GST Council like decriminalization and compounding of certain offences.

It is noteworthy that Budget remained silent on several strategic fronts including highly anticipated Customs Amnesty scheme, new SEZ law (DESH Bill), introduction of new FTP and GST Appellate Tribunal.

This booklet provides our insights into various Indirect Tax proposals introduced in the Union Budget 2023 and analyzes their impact on businesses.

We hope you find it a valuable read.

We would appreciate your feedback and comments on the booklet, which can be sent to [updates@nityatax.com](mailto:updates@nityatax.com).

#### **Disclaimer:**

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### PART A: CUSTOMS LAW

#### 1. Automatic expiry of conditional exemption Notifications

- Section 25(4A) of the Customs Act is amended to provide that automatic expiry of conditional exemptions within 2 years **will not apply** to following exemptions:
  - Exemption under multilateral or bilateral trade agreement [Free Trade Agreements ('FTAs')]
  - 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 (like imports by United Nations)
  - Exemption in relation to privileges of Constitutional Authorities
  - Exemption under schemes having specific validity of more than two years

*(Effective from enactment of Finance Bill)*

**NITYA Comments:** Section 25(4A) of the Customs Act was inserted in statute book effective March 28, 2021 to provide expiry date of 2 years for all conditional exemption Notifications. Accordingly, many exemptions would have expired on March 31, 2023. Hence, it was necessary to introduce above exceptions.

*Notably, expiry date of exemption on many goods is extended till March 31, 2024 and March 31, 2025. On other hand, for goods where extension is not provided, exemption will expire on March 31, 2023.*

#### 2. Time limit for passing of Order by Settlement Commission

- Section 127C(8A) is inserted in the Customs Act to provide that the Settlement Commission need to pass its Order within 9 months (extendable by 3 months) from last day of month in which application is received. If order is not passed within such time, settlement proceedings shall abate and proceedings will be sent back to original jurisdictional authority.

*(Effective from enactment of Finance Bill)*

**NITYA Comments:** Practically, Settlement Commission takes significant time to dispose applications leading to delay in closure of cases. Instead of improving disposal process, provisions for automatic abatement of proceedings have been introduced. This will effectively take away taxpayer's right for an alternate dispute resolution mechanism without its fault.

### 3. Appeal against levy of Safeguard Duty, Countervailing Duty and Anti-dumping Duty

- Section 9C of the Customs Tariff Act, 1975 ('CTA') is amended to allow filing of appeal against 'determination or review' of levy of Safeguard Duty, Countervailing Duty and Anti-dumping Duty.

*(Effective from enactment of Finance Bill)*

***NITYA Comments:** In the case of **Panasonic Energy India Company Limited v. UOI, 2017 (357) ELT 1110 (Tri.-Del.)**, the Tribunal held that only Order imposing Safeguard Duty, Countervailing Duty or Anti-dumping Duty passed by the Central Government is appealable. On other hand, if Designated Authority did not recommend imposition of such duties after its determination or review, such recommendation is not appealable. Amendment in Section 9C will allow taxpayers to appeal against such recommendations of Designated Authority.*

### 4. Customs Rate Changes

- Number of BCD slabs are reduced from 21 to 13. Further, BCD rates are rationalized on many goods.
- Solar power plants / projects are excluded from scope of Chapter 98 governing Project Imports. Further, as an abundant caution, specific exclusion of Solar power plants / projects are made from Project Import Regulations, 1986.

*(Effective from enactment of Finance Bill)*

- Several changes are made in First Schedule of the CTA wherein new tariff items are inserted. However, such changes have no impact on BCD rates.

*(Effective from May 1, 2023)*

- Summary of other key changes including changes in BCD rates and extension in sunset clauses are detailed in **Annexure-1**.

### PART B: GST LAW

#### 1. **Retrospective non-levy of GST on merchanting sales, sale of warehoused goods and high sea sales**

- Entry No. 7, 8(a) and 8(b) of Schedule III of the CGST Act dealing with non-levy of GST on merchanting sales, sale of warehoused goods and high sea sales respectively were introduced effective February 2019. To remove doubts on taxability of such transactions for prior period, these entries are made effective from July 2017. Notably, refund of tax paid on such transactions for prior period will not be allowed.

*(Effective from July 2017 after enactment of the Finance Bill and issuance of Notification)*

**NITYA Comments:** This amendment will remove ambiguity on taxability of such transactions for past period since multiple rulings held that this change is prospective. Practically, many taxpayers received Show Cause Notices demanding tax for past period. This issue was extensively covered in [NITYA Outlook / Issue 96 | GST Implications on Merchant Trading Transactions executed prior to February 2019](#).

#### 2. **Definition of Online Information and Database Access or Retrieval Services**

- Section 2(17) of the IGST Act is amended to exclude phrase 'essentially automated and involving minimal human intervention' from definition of 'Online Information and Database Access or Retrieval' ('OIDAR') Services.

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

**NITYA Comments:** Revenue is expected to interpret this amendment widely to expand scope of OIDAR Services significantly. On other hand, disputes on interpretation of expression 'minimal human intervention' discussed in multiple advance rulings, will set to rest.

#### 3. **Place of supply of transportation of goods outside India**

- Section 12(8) of the IGST Act is amended to remove proviso prescribing place of supply as destination of goods where goods are transported outside India. Thus, place of supply of such services will be determined in normal course i.e. basis location of registered recipient.

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

**NITYA Comments:** Proviso to Section 12(8) of the IGST Act was inserted vide the CGST Amendment Act, 2018 (effective February 2019) to eliminate GST on these services by making place of supply outside India. However, due to legislative flaws, these services continued to remain taxable. Pursuant thereto, doubts arose on eligibility of ITC to recipient as place of supply was in State other than State of registration of taxpayer. Recently, CBIC issued **Circular No. 184/16/2022-GST** dated **December 27, 2022** clarifying entitlement of recipient to avail ITC on such services even though place of supply of such services is outside India. Vide this amendment, position as existed prior to February 2019 is restored and aforesaid Circular will only be relevant for intervening period.

#### 4. ITC related changes

- Second Proviso to Section 16(2) of the CGST Act is amended to incorporate reference of Section 50 for levying interest on ITC reversal pursuant to non-payment of consideration to supplier within 180 days.
- Explanation to Section 17(3) is amended to include value of supply of warehoused goods in value of exempt supply for purpose of ITC reversals. The Government will prescribe valuation mechanism in this regard.
- Section 17(5)(fa) is inserted to bar ITC on goods and services received for discharging Corporate Social Responsibility ('CSR') obligations.

***NITYA Comments:** There has been long debate on eligibility of ITC on CSR expenses with contrary rulings in Service Tax and GST regime. With this specific restriction, taxpayers will not be able to avail ITC on such expenses in future. Having said that, being substantive provision barring benefit of ITC to taxpayers, this amendment will be prospective. Thus, taxpayers can claim ITC on such expenses till amendment comes into effect.*

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

#### 5. Interest on delayed refund

- Section 56 is amended to empower Central Government to prescribe manner of computation of period of delay for payment of interest on delayed refund.

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

***NITYA Comments:** The Government is likely to cover cases where authorities cannot process refund due to filing of incomplete application by taxpayers, technical glitches on portal etc. and may prescribe date of filing of complete / proper refund application as starting date.*

#### 6. Registration related changes

- Section 23 is amended to give it overriding effect over Section 22 and 24 to exempt specified class of persons from obtaining GST registration even where such persons were otherwise required to obtain registration.

*(Effective from July 2017 after enactment of the Finance Bill and issuance of Notification)*

***NITYA Comments:** There was an anomaly that a person exclusively engaged in making exempt supplies or making supplies on which tax is payable under RCM, had to take GST registration if it receives supplies covered under RCM. This dispute arose because such taxpayer got covered by both Section 23 (exemption from registration) and Section 24 (mandatory registration). This change will bring clarity on this issue.*

### 7. Upper time-limit for filing returns

- Section 37, 39, 44 and 52 is amended to restrict filing of GSTR-1, GSTR-3B, GSTR-4, GSTR-6, GSTR-7, GSTR-8, GSTR-9 and GSTR-9C beyond **three years** from due date.

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

**NITYA Comments:** This amendment is unjust and arbitrary. Notably, the High Court in the case of **Mayflower Hotels and Resorts LLP v. PCSGST, 2022-VIL-721-GAU** observed that the Government should encourage taxpayers to pay taxes rather than disrupting business operations by cancelling registration. A taxpayer must be permitted to file its Returns even after three years if it is paying tax, interest, penalty, late fee etc.

*Notably, even after this amendment, there is no upper time-limit to file job-work return 'GST ITC-04' (Details of goods/capital goods sent to job worker and received back).*

### 8. Imposition of penalty on E-Commerce Operators

- Section 122(1B) the CGST Act is inserted to impose penalty on E-Commerce Operators ('ECOs') if:
  - It allows unregistered persons otherwise required to obtain registration, to supply goods or services through its platform
  - It allows composition dealers to make inter-state supply of goods or services through its platform
  - It fails to furnish correct details in GSTR-8.

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

**NITYA Comments:** This provision is inequitable as it penalizes bona-fide ECOs for violations made by persons supplying goods or services through their platform. Further, penalty is already being imposed on such persons for these violations.

### 9. Decriminalization of offences and compounding thereof

- Section 132(1) the CGST Act is amended to decriminalize following offences:
  - Clause (g) - Obstructing or preventing any officer in discharge of his duties
  - Clause (j) - Deliberate tampering with material evidence
  - Clause (k) - Failure to supply information
- Minimum threshold for launching prosecution is increased from Rs.1 Crore to Rs. 2 Crore for all offences except in cases of fake invoicing.



- Section 138(1) is amended to withdraw option of compounding of offences relating to fake invoicing.
- Section 138(2) is amended to reduce compounding fee in different cases. Quantum of fee pre and post amendment is tabulated below:

Particulars	Pre-Amendment	Post-Amendment
Minimum amount	Rs. 10,000 or 50 percent of tax involved whichever is higher	Rs. 10,000 or 25 percent of tax involved whichever is higher
Maximum amount	Rs. 30,000 or 150 percent of tax involved whichever is higher	Rs. 30,000 or 100 percent of tax involved whichever is higher

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

### **10. Consent based sharing of information furnished by taxable person**

- Section 158A is inserted in the CGST Act to allow Common Portal to share specified information furnished by taxpayers with other systems as notified by the Government, after obtaining due consent from taxpayers.

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

### PART C: CST LAW

#### **1. Shifting of jurisdiction to settle inter-State disputes under CST Act to the CESTAT**

- Section 19 of the CST Act is amended to shift jurisdiction of inter-state disputes falling under Section 6A and Section 9 of the CST Act from the AAR constituted under Income Tax Act, 1961 ('IT Act') to the CESTAT. All appeals filed and pending before the AAR under IT Act will now be transferred to the CESTAT.

*(Effective from enactment of Finance Bill)*

### ANNEXURE-1

A Changes in BCD in the CTA					
S. No.	Chapter / Heading	Description of Goods	Old Rate	Revised Rate	Effective Date
1	7113, 7114	Articles of precious metals	20%	25%	February 2, 2023
2	7117	Imitation Jewellery <i>SWS is exempted</i>	20% or Rs. 400 per kg., whichever is higher	25% or Rs. 600 per kg., whichever is higher	February 2, 2023
B Changes in BCD (without change in effective rate i.e., BCD+AIDC+SWS)					
1	2701, 2702, 2703	Coal, peat, lignite <i>AIDC of 1.5% is exempted</i>	1%	2.5%	February 2, 2023
C Changes in BCD in various Notifications					
1	2207 20 00	Denatured ethyl alcohol for use in manufacture of industrial chemicals	5%	Nil	February 2, 2023
2	84, 85	Specific capital goods/machinery for manufacture of Lithium-ion cell for use in battery of EVs. <i>BCD was already exempted on capital goods used in manufacture of battery of mobile hand sets</i>	As applicable	Nil	February 2, 2023
3	8529	Specified parts for manufacture of open cell of TV panel	5%	2.5%	February 2, 2023
4	Any Chapter	Camera lens and its inputs / parts for use in manufacture of camera module of cellular mobile phone	2.5%	Nil	February 2, 2023
5	8703	Vehicle in Semi-Knocked Down (SKD) form where engine or gearbox or transmission mechanism is in pre-assembled form but not mounted on a chassis or body assembly <i>SWS is exempted</i>	30%	35%	February 2, 2023
6	8703	EVs in SKD form where battery pack, motor, motor controller, charger, power control unit, energy monitor, contactor, brake system, electric compressor (as parts, components or sub-assemblies) are inter-connected with each other but not mounted on chassis	30%	35%	February 2, 2023

# Union Budget 2023

## An insight into Indirect Tax Proposals

		<i>SWS is exempted</i>			
7	8703	Vehicle in Completely Built Unit (CBU) form (other than with CIF more than USD 40,000 or with engine capacity more than 3,000 CC) for petrol run vehicle and more than 2,500 CC for diesel-run vehicles, or with both	60%	70%	February 2, 2023
		<i>SWS is exempted</i>			
8	8703	EVs in CBU form, other than with CIF value more than USD 40,000	60%	70%	February 2, 2023
		<i>SWS is exempted</i>			
<b>D</b>	<b>BCD exemption for following Notifications extended to March 31, 2024</b>				
<b>S. No.</b>	<b>Notification No.</b>	<b>Subject</b>			
1	80/1970 - Customs	Articles supplied under warranty as replacement for defective one			
2	134/1994 - Customs	Goods for carrying out repairs, reconditioning, testing calibration or maintenance			
3	50/1996 - Customs	Specified equipment, instruments, raw material etc. imported for R&D projects			
4	51/1996 - Customs	Research equipment by publicly funded and research institutions, Govt. Dept., laboratory, IIT etc.			
5	05/2017 - Customs	Machinery, components for setting up fuel-cell based power generation plant			
<b>E</b>	<b>BCD exemption for following goods (under Notification No. 50/2017-Customs) extended to March 31, 2024</b>				
<b>S. No.</b>	<b>Description</b>				
1	Drugs and materials				
2	Moulds, tools and dies for manufacture of parts of electronic components/equipment				
3	Goods required for basic telephone / internet service and their parts				
4	Capital goods/ Machinery for printing industry				
5	All parts for use in manufacture of LED lights or fixtures including LED lamps				
6	All inputs for use in manufacture of LED driver or MCPCB for LED lights and fixtures or LED lamps				
7	Batteries for EVs, including two and three wheeled electric motor vehicles				
8	Specified goods for use in manufacture of Liquid Crystal Display (LCD) and LED TV panel				

# Union Budget 2023

## An insight into Indirect Tax Proposals

9	Open cell for use in manufacture of LCD and LED TV panels of Heading 8524
10	Medical and surgical instruments, apparatus and appliances including spare parts and accessories thereof
11	Lithium-ion cell for use in manufacture of battery or battery pack of cellular mobile phone
12	Lithium-ion cell for use in manufacture of battery or battery pack of EVs or hybrid motor vehicle
<b>F</b>	<b>BCD exemption for following goods (under Notification No. 50/2017-Customs) extended to March 31, 2025</b>
<b>S. No.</b>	<b>Description</b>
1	Specified Drugs, medicines, diagnostics kits or equipment, bulk drugs used in manufacture of drugs or medicines



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