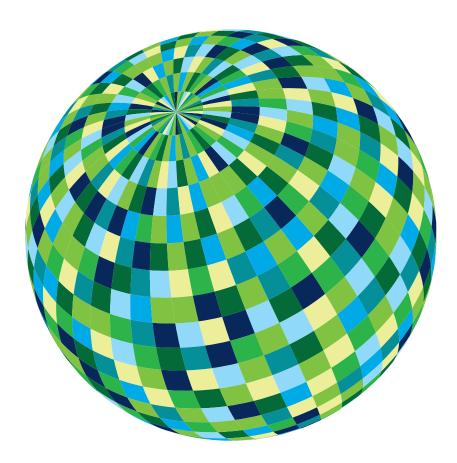
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India Global Trade Advisory Newsletter Delivering clarity

The focus of Union Budget 2020 was, amongst other things, on increasing ease of doing business and ensuring level playing field for domestic industry. With a focus to boost domestic manufacturing and entice large investments in mobile phones, electronic equipment, and semiconductor packaging, a detailed scheme will be announced.

Further, Finance Minister also mentioned that customs duty exemptions will be comprehensively reviewed by the government by September 2020. Customs law and procedures will also be reviewed for their alignment with needs of changing times and ease-of-doing business.

Parliament received the assent of the President on the 27 March, 2020. <u>Click here</u> to read the detailed document.

Legislative changes - Customs

Facility of **"Electronic Duty Credit Ledger"** will be provided in customs' automated system to enable duty credit in lieu of duty remission to be given for exports or any other benefit provided by Customs authorities.

What's next?

Once the electronic duty credit ledger will be provided, then importers can use the amount credited in such ledger for payment of duty on imported goods. **Preferential Trade Agreements – Compliance requirements** Provisions relating to administration of Rules of Origin (ROO) under various Free Trade Agreements (FTA) have been introduced in Customs Law. This has been done with the objective to curb undue concessions claimed under FTAs and to protect domestic industry. Few key aspects are as under:

- Importer to provide declaration that goods qualify for FTA benefit
- Importer to possess sufficient information regarding origin criteria, value addition content etc.
- Mere submission of certificate of origin shall not absolve the importer's responsibility of reasonable care
- Authorities can temporarily suspend preferential tariff treatment pending verification as per rules of FTA
- Goods imported with undue benefit under FTA are liable for confiscation
- Goods may be released on furnishing of security or deposit of differential duty in cash ledger
- Request for verification to determine the origin can be made within period of five years from date of import under FTA and suspension of preferential benefit under FTA can also be extended to identical goods imported from same producer or exporter

What's next?

The importer in India availing concessional rate under various FTAs would need to adopt an "Origin Management" system so that compliance with newly introduced provisions can be made, and seamless supply chain can be achieved.

The scope of measures to safeguard domestic industry will be enhanced beyond levy of safeguard duties. **The scope of "safeguard measures"** will also include the following:

- Application of tariff-rate quota
- Such other measures as may be considered appropriate

Additional ad hoc incentive of 2% granted on export of mobile phones under MEIS

Directorate General of Foreign Trade (DGFT) vide Notification No. 43/2015-2020, dated 29 January 2020, granted an additional ad hoc incentive of 2% on export of mobile phones by amending the provisions of Chapter 3 of Foreign Trade Policy 2015-2020 (FTP) for exports made with let export order date from 1 January 2020 to 31 March 2020.

The DGFT earlier in the month of December 2019 had reduced this export incentive from 4% to 2% for all exports except garments and made-ups on 31 December 2019.

What's next?

This one time incentive has been given to boost export of mobile phones from India considering the need of industry.

Alignment between Indian Customs Tariff and HSN at 8 digits

Changes introduced vide Section 88(b) of Finance (No.2) Act 2019, in Customs Tariff made applicable w.e.f. 01.01.2020, with following objectives:

- a. to create specific tariff line items for specified products, earlier classified as 'others'; and
- b. to align Indian Customs Tariff with updated HSN issued by World Customs Organisation

Due to change in Indian Customs Tariff at 8-digit level, DGFT has amended import policy to align the import policy with new tariff.

What's next?

Effective this change, importers are required to use amended Customs Tariff and also review the classification practices being followed presently.

What's next?

The government is now empowered to impose a tariff quota in addition to existing power of imposing safeguard duty. Hence, it will need to be seen what measures government take under this in times to come.

Cabinet approval for Remission of duties and taxes on exported products

Union Cabinet, on 13 March 2020, has given approval for "Remission of Duties and Taxes on Exported Products (RoDTEP)" scheme, for all products other than textile sector, to boost exports to international market. Some of the basic features of the proposed scheme are as under:-

- a. The objective of the scheme is to make Indian exports cost competitive and create a level playing field for exporters in international market;
- b. RoDTEP scheme is WTO compliant, will reimburse taxes/ duties/levies at the central, state and local level, which are currently not being refunded such as VAT on fuel used in transportation, Mandi tax, duty on electricity used during manufacturing etc.;
- c. To give boost to employment generation in various sectors;
- Items will be shifted in a phased manner from existing scheme MEIS to RoDTEP with proper monitoring & audit mechanism; and
- e. RoDTEP will be in addition to refund of duty drawback and IGST

What's next?

A close watch needs to be kept on this space to remain updated with provisions, rules, regulation, etc. to be issued by the government on this matter.

Introduction of Faceless Customs Assessment

CBIC has introduced a white paper on faceless assessment as a part of its Turant Customs. The main features of the said scheme are as follows:-

- Restructuring of existing Commissionerates into two distinct categories namely:-
- National Assessment Commissionerates (NACs); and
- Jurisdictional Port Commissionerates (JPCs)
- The NACs would be the "Virtual Commissionerates" and would have an all India jurisdiction & comprise of a cluster of "Faceless Assessments Groups" (FAG). The FAGs shall perform the assessment of the BOEs and the NACs shall monitor the assessment practise followed by FAGs and also ensure that uniformity of classification, valuation, exemption benefit and enforcing import policy conditions.
- Under the faceless assessment, the assessment of the products following shall be on based on Chapter under which the products falls irrespective of the port the goods have arrived. For e.g assessment of products under Chapter 1-26 shall be at Nhava Sheva II, Chapter 30-38 shall be at Mumbai I import, Chapter 72-83 shall be at Delhi TKD and likewise. The same shall bring anonymity in the assessment and delink the assessment part with the geographical location of the goods.

- In case the importer doesn't agree with the assessment done by FAG, then hearing shall be conducted exclusively through video conferencing or other reliable technological means thereby cutting down the physical interface between Assessing officer and importer.
- Further, the JPCs will have one Port Assessment Group (PAG) to cater to the assessment in cases where a reference is made by FAGs to the port of import for any reason.

What's next?

The government is moving towards digital economy, however, the practical implementation of faceless assessment needs to be seen. With introduction of faceless assessment, there would be less dependency on custom house agents (CHA) for routine compliances like filing bill of entry (BOE), etc. Thus, companies can explore the possibility of setting up in-house teams for handling routine customs clearance matters.

New duty drawback rates on export of goods effective from 4 February 2020

Government notified revised rates of Duty Drawback, also referred to as All Industry Rates (AIRs), vide Notification No. 07/2020-Customs (N.T.) dated 28.01.2020 which will come into force on 04.02.2020. Salient features of the revised rates of Duty Drawback are explained by Circular No. 06/2020-Customs dated 30 January, 2020.

What's next?

Companies were obliged to take updated rates for claiming duty drawback from 4 February 2020.

Perks to authorised economic operator (AEO) Status holder-Lucidity in terminal handling charge (THC) payments

THC are charges collected by terminal authorities at each port, for handling equipment and maintenance. Presently, the THC levied by the port is levied by the port terminals on the shipping lines for services in relation to exports and imports. The shipping lines, in turn, recovers this amount as a reimbursement from the importers/exporters as an extra charge along with the ocean freight. In this regard, the importers / exporters have indicated that the shipping lines were recovering THC charges higher than the amount actually paid by them at the port. On 13 January 2020, CBIC has issued the guideline to all Custom Houses to issue the public notice/trade notice to see that Direct Port Delivery and AEO companies are permitted to pay terminal charges directly to the terminals.

What's next?

This initiative has been undertaken in light of ease of doing business as earlier various representations have been filed stating that the THC collected by shipping lines are at variance with what shipping lines have paid as THC to port terminal operators. Industry can take benefit of this change.

Incoterms[®] 2020-What's New and important for Global trade

The Incoterms[®], first introduced by International Chamber of Commerce (ICC) in 1936, are revised periodically. Recently, the ICC has revised and published the International Commercial Terms, to introduce Incoterms[®] 2020. The new Incoterms[®] 2020 are into effect from January 1, 2020. The Incoterms[®] 2020 will be valid as of 2020 subject to contractual agreement between the parties, if not the Incoterms[®] 2010 will hold good even after 2019. The revised edition of Incoterms[®] 2020 is in response to changes in global commercial practices, and to enhance accessibility and ease of use.

What's next?

Alignment with new Incoterms® 2020 should be made while executing new contracts or import/ export orders. At the same time the existing terms agreed in procurement supply chain should be re-visited in line with these changes.

Relaxation in procedure to set-up SEZ

In a Notification dated 17 December 2019, the Ministry of Commerce has brought in the Special Economic Zones (SEZ) Rules, 2019, for boosting set up of SEZs in India.

In light of above, requirements of minimum land area for setting up SEZ has been relaxed to encourage smaller companies to develop SEZ. For instance, minimum land requirement has been reduced from 500 hectares to 50 hectares for setting up multi product SEZ. Further, new SEZ Rules has allowed new SEZs to become multisector SEZs, thereby enabling coexistence of an SEZ unit from any sector along with any other SEZ unit.

What's next?

The benefit of amended provision can be availed by persons looking to set up new SEZ unit.

Legal bites

Refund claim cannot be entertained unless the order of assessment or self-assessment is modified - Supreme Court Hon'ble Supreme Court in the case of ITC Limited Vs Commissioner of Central Excise Kolkata [2019(9) TMI 802 -SUPREME COURT], has finally put an end to long-drawn battle between the Department and the assesse principally on the issue "whether in the absence of any challenge to the order of the assessment in appeal, any refund application against the assessed duty is maintainable".

In this regard, Larger bench of Supreme Court has ruled that a claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate appellate proceedings and it would not be within the ambit of Section 27 of the Customs Act, 1962 to set aside the order of selfassessment and reassess the duty for making refund.

With the above ruling, Supreme Court has upheld the decision made in the matter of Priya Blue Industries Ltd Vs Commissioner of Customs (Preventive) 2004 (172) ELT 145 (SC), wherein it was held that duty would be payable as per order of assessment and office considering refund claim cannot review an assessment order.

Further, Supreme Court has overruled the decisions of the Delhi High Court in the case of Aman Medical v. CC, 2010 (250) E.L.T. 30 (Del.) and Micromax Informatics Ltd. v. Union of India, 2016 (335) E.L.T. 446 (Del), considering it to be bad in law, which provided that refund application can be filed without filing an appeal against the assessment order.

What's next?

Companies need to consider the above law laid down by Supreme Court, and in case they are not satisfied with assessment made in relation to import/export, then an appeal needs to be filed within prescribed time limit to keep chances of getting refund by way of amendment in assessment.

Gujarat High Court strikes down levy of IGST on Ocean Freight

Levy of IGST on the estimated component of ocean freight paid for the transportation of the goods by a foreign seller, sought to be levied and collected from the 'importer' of goods, was challenged by Mohit Minerals in the Gujarat High Court. The Hon'ble Gujarat High Court declared Notification Nos. 8/2017 – IT (Rate) and 10/2017 – IT (Rate) [Entry 10] both dated 28 June 2017 as ultra vires the IGST Act, 2017, on the grounds that the notifications lack legislative competence.

A supply where both the supplier and the recipient are located outside India can be made leviable to tax only under Section 7(5)(c) of the IGST Act, provided, supply is in taxable territory.

Further that, IGST is already charged on the amount of freight included in the value of the imported goods, and hence the notifications levying tax again as a supply of service, are illegal and liable to be struck down.

The Hon'ble High Court held that a delegated authority must act strictly within the parameters of the authority delegated to it under the statute and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal authority. In view of the above, the notifications levying tax on supply of ocean freight service, and making the importer of goods as the person liable for paying the tax are also unconstitutional, as there is no statutory sanction for levy and collection of such tax.

What's next?

Double Taxation on goods imported, to the extent of ocean freight is eliminated. Now, IGST is payable on import of goods, on the CIF Value of goods and IGST again on the deemed ocean freight value is not required to be remitted.

Compliance to the extent of documentation required to be maintained for IGST paid under RCM on ocean freight is reduced. Cash flow to such extent would improve, considering that there would be no requirement to make payments in cash for IGST under RCM.

Though it provide a line of clarity to the trade about applicability of GST on ocean freight. However, one should keep a watch on what is happening on this issue in other states where the appeals are yet to be heard by their respective High Courts. At the same time, it is pertinent to note and see that how the Central Government reacts on this judgement. Whether to accept or appeal before Supreme Court.

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