Pre - Budget Memorandum 2022 - 23

Indirect Taxes - Customs

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AMCHAM Pre-Budget Memorandum
Recommendations for Union Budget 2022-23

Customs - Indirect Tax

Contents

Classifications and duty rates

SL. No	Area of Challenge	Issue	Justification/ Recommendation
A.1	Basic Customs Duty (BCD) on Telecom products	• India applies a 20 percent customs duty on certain telecommunication products falling under tariff item nos. (hereinafter referred as HSN) 8517 12 10 and 8517 12 90 of the First Schedule to the Customs Tariff Act, 1975 (First Schedule). • It is important to note that India is at the cusp of a digital revolution, rolling out 4G services, auction of 5G spectrum and large-scale digitization of all sectors, most importantly, the finance sector and Micro, Small and Medium Enterprises (MSMEs). The duty has not only impacted Original Equipment Manufacturers (OEMs), but also telecom operators and the end-consumers. • India is a signatory to the Information Technology Agreement (ITA), whereby the authorities agree that there would be no application of ordinary customs duties at a level of 10 percent or 20 percent to any switching apparatus.	• Authorities should consider revisiting the application of BCD on key telecommunication networking products, including Switches.

SL No	Area of concern	Issues	Justification/ Recommendation
A.2	Ambiguities in Customs Tariff Act, 1975 (Customs Tariff Act) on telecom products that are eligible for exemption	• Various notifications issued, granting and withdrawing exemptions under Customs Tariff Act have created ambiguities on appropriate rate of BCD for items falling under HSN 8517 62 90 and HSN 8517 69 90.	• Amend the Notification No. 57/2017 – Customs dated 30 June 2017 in the following manner:

		• Notification No. 57/2017 – Customs dated 30 June 2017 prescribes an effective rate of 10 percent (Sl No. 20) for items falling under HSN 8517 62 90 and 8517 69 90. However, specific items have been excluded from the benefit of the concessional rate and therefore would attract rate of 20 percent. • In addition to the confusion that the exclusion list has created, it is important to note that several of these items such as Voice over Internet Protocol (VoIP) Phones are ITA products, however, have been included in the exclusion part of Notification No. 57/2017 – Customs dated 30 June 2017, thus attracting a higher rate of BCD at 20 percent. • For example, VoIP Phones which have been classified under HSN 8517 69 90 by Notification No. 57/2017 – Customs dated 30 June 2017, would merit a classification under HSN 8517 18 10 - Telephone sets, including telephones for cellular networks or for other wireless networks (Others/ Push button type) attracting Nil rate of BCD. • In view of the above, the Notification No. 57/2017 – Customs dated 30 June 2017, has created confusion and conflicts regarding the classification and rate of these products.	- to bring all the ITA products (including VoIP), under Nil rate of BCD - alternatively/ in the meantime, amend Sl. No. 20 of the Notification No. 57/2017 – Customs dated 30 June 2017 to delete the exclusions, thereby allowing the benefit of concessional rate of 10 percent to be extended to all products covered under HSN 8517 62 90 and HSN 8517 69 90.

SL No	Area of concern	Issues	Justification/ Recommendation
A.3	Ambiguities in Customs Tariff Act on telecom products that can seek exemption	• As per Sl. No 20 of the exemption Notification No. 57/2017 – Customs dated 30 June 2017, Carrier Ethernet Switches have been excluded from the benefit of lower customs duty at the rate of 10 percent. • However, Carrier Ethernet Switches get confused with Ethernet Switches (ie Non-Carrier), and often the customs authorities impose 20 percent customs duty on the Non-Carrier Ethernet Switches as well. • Ethernet Switches are different from Carrier Ethernet Switches (which are classified under 8517 62 90 and attract customs duty at 20 percent). • Ethernet Switches are used within enterprise for their internal information and communication Technology. Further, these are used for establishing Local Area Network (LAN) connection to PC's Laptops, Printers and other IP enabled end points which are part of the single business entity. • On the contrary, Carrier Ethernet Switches are used by telecommunications network providers/ internet service providers to provide Ethernet services to their customers. • Therefore, Ethernet Switches (without carrier) are different from Carrier Ethernet Switches and hence should not be classified under the exclusion part of the Notification No. 57/2017 – Customs dated 30 June 2017.	• A clarification should be issued differentiating between Non-Carrier Ethernet Switches (Enterprise-grade Switches) and Carrier Ethernet Switches to avoid confusion in duty rates for both the products at the time of customs clearance.

		Consequently, Ethernet Switches (without carrier) should merit a BCD rate of 10 percent as per the said Notification. • As stated above, this has created ambiguity in the technical classification of products between the Customs Tariff Act and the exemption Notification No. 57/2017 – Customs dated 30 June 2017, because of which the Indian customs authorities have been imposing 20 percent duties even on Non-Carrier Ethernet Switches.	

SL No	Area of concern	Issues	Justification/ Recommendation
A.4	Alignment of goods classification with global best practices	• The HSN Code 8517 has a broad line of products - Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line system or for digital line systems; videophones telephone sets; videophones. • This category holds multiple products such as Routers, Switches, Base Stations, Access Points, videoconferencing equipment, Phones, etc. • However, broad definitions of products have led to inclusion of a lot of products in the "Others category" leading to a range of products attracting 20/10 percent BCD. There is a need to demystify these definitions for appropriate classifications and rate of customs duty.	• There is a need to categorize these equipments appropriately to ensure the right BCD is applicable and there is growing clarity during trade. A recommended list has been provided in Annexure A. • In the absence of such an exercise, there should be no unforeseen increases in BCD rates for these products.

SL. No	Area of Challenge	Issues	Justification/ Recommendation
A.5	Basic Customs Duty on Preform of Silica to be reduced to Nil	• Corning imports Preform of Silica, which is a raw material, used for manufacturing of telecommunication grade Optical Fibre. The BCD on Preform of Silica was levied at the rate of 10 percent in 2016 budget, but after the Optical Fibre industry raised concerns with regards to this, the BCD was reduced to 5 percent in May 2016 and subsequently eliminated in July 2017. However, in the Union Budget 2018, the custom duty on Preform of Silica was raised to 5 percent again. • The Preform of Silica is used to produce Optical Fibre, which is currently being manufactured in India and is extremely important for the successful implementation of Digital India, BharatNet and Smart Cities plans of the Government. • It should be emphasized that Preform of Silica is not a product or component, it is a raw material crucial for the manufacture of Optical Fibre. The increase in duty on Preform of Silica not only affects the ease of doing business prospects and threatens the economic viability for telecommunication network expansion, but also impacts many of the Government's other flagship projects such as Digital India & Smart Cities. • Further, Optical Fibre attracts Nil customs duty and hence, duty rate of 5 percent on Preform of Silica, ie, the raw material of Optical Fibre reduces the cost	• BCD on Preform of Silica should be reduced to Nil with immediate effect to give relief to optical fibre industry and enable a level-playing field for manufacturers in India. The Preforms of Silica are the primary raw material for manufacturing finished goods namely Optical Fibre used in Optical Fibre Cables. • This will enable fair competition, encourage/ protect investments in Optical Fibre and Optical Fibre preforms in India.

		competitiveness of Indian manufacturers and discourages investments in the Optical Fibre manufacturing industry.	

SL No	Area of challenge	Issues	Justification/ Recommendation
A.6	BCD exemption on goods used in pharmaceutical and biotechnology sector	• Vaccine and drug development are an essential element to achieve sustainable healthcare in the country, particularly in view of COVID 19. • As per Notification No. 50/2017 – Customs dated 30 June 2017, goods used in pharmaceutical and biotechnology sector that are specified under List 21 and 22 of the notification, attract 5 percent and Nil BCD rates (respectively), when such goods are imported by a manufacturer/ researcher registered with the Department of Scientific and Industrial Research (DSIR), in the Ministry of Science and Technology of the Government of India.	• The following critical/ essential products covered under the List 21 and 22 corresponding to Sl. No. 430 of the Notification No. 50/2017 – Customs dated 30 June 2017 should be exempted from all import duties including a waiver from all the conditions highlighted under 60(i) and 60 (ii) of the Annexure to the aforesaid notification: <u>List 21</u> (a) Cell cultivation devices, namely, roller bottle systems and spinner flasks

		• The said exemption/ concession is not extended to other importers that are not registered with DSIR, and hence results into increased cost of medicines, drugs and vaccine in India. • In times of global pandemic, the Government should take steps to ensure that medical help is cheap and affordable for its citizens, and hence exemptions/ concessions in duty rate should be available to all importers.	(b) Electrophoresis system – (Protein & DNA; 2D) (c) ELISA Reader, ELISA Plates and Stripwell Plates (d) Cartridges and membranes for ultra-filtration, micro-filtration, reverse osmosis, sterile filtration, and viral removal (e) Cell cultivation devices like roller bottle systems, spinner flasks etc (f) Centrifuges-tubular, explosion proof, disk stack, Centrifuge Tubes (g) DNA/Oligonucleotides Synthesizers and DNA Analysers, Micro centrifuge tubes & tips (h) Electrophoresis system (protein and DNA; 2D) (i) Flow Cytometer/FACs, Round bottom tubes (j) Gel Documentation System List 22 (a) UV/Visible spectrophotometer, either with PDA and/or kinetics measurement and low bandwidth, UV Plates (b) Robotic sample processing system, Robotic Tips (c) Sample preparation instrument, micro volume tips, filter tips, maximum recovery tips

			(d) CO2 incubator, Cell culture consumables (e) Polymerase chain reaction machine, PCR tubes, PCR plates, PCR strip tubes *Note: the products that are underlined are currently not covered under the List 21 and 22 and have been added to include more products. It is requested that exemption is provided to such added products too.* • It is further requested that the exemption on above goods is provided unconditionally, ie, without the conditions 60(i) and 60(ii) that are otherwise stipulated in the said notification for availment of concessional/ Nil BCD. • The exemption will help in improving the supplies as well as affordability for COVID 19 testing and vaccines by bringing down the cost of vaccines and testing components. • Hence, the above exemption should be provided for at least next few years, till India is able to build sufficient supplies indigenously to fight COVID 19.

SL No	Area of concern	Issues	Justification/ Recommendation
A.7	BCD exemption for sterilizers to improve device reprocessing	• Device reprocessing is a critical process in any healthcare facility to reduce the infections. These are life saving devices and hence sterilization of the same should be cheap and affordable. • Ethylene oxide (EO) sterilization is the most common industrial sterilization technique for medical devices. It is a relatively 'cold' sterilization technique and offers high compatibility with most materials used in the manufacture of medical devices, such as plastics, polymers, metals and glass. • Hence, EO sterilizers provide the cheapest cost of sterilizing for each load. However, India does not have any reputed and certified manufacturers for EO sterilizers in India, and hence, the same is required to be imported.	• It is recommended that EO sterilizers are exempted of customs duty, so as to bring down the cost of sterilization of medical devices, thereby decreasing the cost of medical services to the patients in general.

SL No	Area of concern	Issues	Justification/ Recommendation
A.8	Amendment to Notification No. 52/2003 - Customs dated 31 March 2003 or to the Rule 96(10) of the Central Goods and Services Tax Rules, 2017 (CGST Rules)	• As per Notification No. 52/2003 - Customs dated 31 March 2003 (amended *vide* Notification No. 78/2017- Customs dated 13 October 2017 and last amended *vide* Notification No. 19/2021 – Customs dated 30 March 2021), the EOU units have been granted an exemption from customs duty and Integrate Goods and Services Tax (IGST) on all imports till 31 March 2022, provided the specified conditions are met.	• It is recommended that the IGST exemption under Notification No. 52/2003 - Customs dated 31 March 2003 is further extended.

		• Further, as per Rule 96(10) of CGST Rules, a person cannot claim refund of IGST paid on output exports of goods or services if the said person has claimed benefit under the aforesaid Notification No. 52/2003 - Customs dated 31 March 2003. • Hence, as per the above, an EOU availing the benefit of BCD and IGST exemption on import of goods (including capital goods) can only claim refund of the accumulated input tax credit under Rule 89 of the CGST Rules. However, as per Rule 89 of the CGST Rules, refund of GST paid on capital goods is not allowed/ provided. • Accordingly, a combined reading of the above provisions and notifications suggests that with effect from April 1, 2022, EOU units will not be allowed to claim rebate of the IGST paid on export of goods/ services, and also will not be able to claim refund of the IGST paid on import of capital goods, owing to the limitation under Rule 89 of the CGST Rules. • This means that once the exemption from IGST is removed, there will be an unintended cost associated with the IGST paid on import of capital goods, which will neither be available as refund, nor as rebate in the form of output IGST. • It is to be noted that such IGST is not a cost within the Domestic Tariff Area and can be reclaimed as an input tax credit or rebate.	

SL No	Area of concern	Issues	Justification/ Recommendation
A.9	BCD and health cess exemption on sight-saving and sight-enhancing medical devices & equipment	• According to the World Health Organization's 2010 Global Data on Visual Impairments, 20 million individuals or 51 percent of the world's blind population—have vision loss due to cataracts. Approximately 12 million Indians suffer from preventable blindness and nearly 28 percent of global cataract procedures (6.4 million in 2015) are performed in India. • However, the Government, in its mission of 'Make in India' has currently not provided for BCD exemption on sight-saving and sight-enhancing medical devices and equipment (used for treatment of preventable blindness and cataract), particularly under the HSN 9021 39 00 and 9018 50 90 which is subject to BCD at the rate of 7.5 percent *(Refer Sl. No. 563A to Notification No. 50/2017 – Customs dated 30 June 2017).* • Further, an additional health cess at 5 percent on the assessable value (as per Section 141 of the Finance Act, 2020) only adds to the increased cost of such devices and equipment, thereby making the treatment more inaccessible to the general public. • While the domestic medical devices industry is still evolving in India, they have limited capacity to meet the patients' needs for quality devices due to lack of product know-how and the right technology.	• It is recommended that BCD and health cess on sight-saving and sight-enhancing medical devices and equipment under the HSN 9021 39 00 and 9018 50 90 should be exempted, at least till the domestic manufacturing industry in India is appropriately evolved and capable.

		• Therefore, till the domestic manufacturing industry in India is appropriately evolved, the Government should not take such steps to discourage imports and put the financial burden on finished products in its efforts to bolster domestic manufacturing. This, in our opinion, will be counterproductive and will only have a negative impact on the patient access to quality treatment.	

SL No	Area of concern	Issues	Justification/ Recommendation
A.10	Reduction of BCD rate on Lenscare solution, which is subservient to usage of contact lenses	• Contact lenses are subject to 10 percent BCD under Chapter Heading 9001, however, Lenscare solution is subject to 20 percent BCD under Chapter Heading 3307. • Lenscare solution is a lens disinfectant which is used regularly by the patients and is a mandatory requirement for wearing contact lenses. However, currently it is taxed at 20 percent BCD as 'Cosmetics', even though it neither fits into the category of cosmetics, nor has any cosmetic purpose. • Due to this very high customs duty, the product that is technology and quality intensive, has become costlier resulting in customers moving away from contact lens category. This has impacted contact lens consumption in India adversely, and has moved the customers to using spectacle lenses.	• Lenscare product being used in conjunction with the usage of contact lenses, should be taxed at the same rates as contact lens, so that a level playing field can be provided to contact lenses with spectacle lenses. • It is therefore recommended that BCD on Lenscare solution is reduced to 10 percent, in line with the BCD on contact lenses and spectacle lenses.

		• Since usage of Lenscare solution is ancillary to the usage of its primary product, ie, contact lenses, there is no case of taxing these at a higher BCD rate.	

SL No	Area of concern	Issues	Justification/ Recommendation
A.11	Reduction in BCD rate on Olive Oil	• Olive oil is not a native crop to India and there is no domestic production of olive oil in India. Hence, there are no domestic producers who would be affected by olive oil imports. • India also holds the No.1 rank in the world in cardiac disease and diabetes. Olive oil comprises about 75 percent mono-unsaturated fatty acids which helps in lowering bad cholesterol, thereby reducing cardiac risk. Olive oil also helps in reducing the risk of Type 2 diabetes and cancer as olive oil is rich in antioxidants. • Therefore, there is a need to decrease import duties on olive oil, so that cheaper medical help can be provided to the general public.	• It is recommended that BCD on olive oil is reduced to 10 percent so that the overall cost of procurement of the same can be considerably reduced.

SL No	Area of concern	Issues	Justification/ Recommendation
A.12	Frequent tariff duty rate changes and consequent possibility of disputes	• The Government has notified multiple tariff duty rate changes in the last one and half years. Each of these duty rate changes results in a possibility of fresh focus on classification practice from the past and consequent possibility of duty demands.	• It is recommended that any upward revision of duty rates should be accompanied with protection for reopening of assessment practice of the

		• Such tariff duty rate changes are undertaken with a strategic view for the future, but they also result in disputes for the past period. This is because customs department and the trade had been following a particular practice for a consistent period of time which suddenly gets a new attention and focus in light of the change in tariff rate. • These sudden changes widen the horizon of the authorities with respect to classification of a particular product, which results in the possibility of creating fresh tax/duty demands for the previous periods.	past period, which can possibly precipitate disputes for the past period. • Such protection can be granted under Section 28A of the Customs Act, 1962 subject to 'reasonable care' being demonstrated by the importer and any other anti-abuse provisions to safeguard the revenue interest of the Government.

SL No	Area of concern	Issues	Justification/ Recommendation
A.13	Reduction in BCD rate on mobile phones	• As stated above, the Government, in its mission of 'Make in India' has currently not provided for BCD exemption/ concession on cellular mobile phones, thereby making the import of final product, ie, cellular mobile phones very expensive. • The high BCD rate on cellular mobile phones leads to duty arbitrage which helps the operations of illegal importation in the grey market and results in loss to the exchequer.	• It is recommended that BCD on high-end cellular mobile phones should be rationalized, and appropriate duty exemption/ concession should be provided on the BCD rate of cellular mobile phones. • This will result into a cleaner market environment and will also keep a check on the grey market operations.

Safeguard measures

SL No	Area of concern	Issues	Recommendation
B.1	Imposition of safeguard duty on optic fibre recommended by Directorate General of Trade Remedies (DGTR)	• Single-mode Optical Fiber is imported from various countries including China, Japan, the U.S. and Korea. The major quantity is imported from China. The DGTR in its investigation noted a significant surge in imports of Optical Fiber from China over the past two years. This increased volume from China forced the domestic market to respond which resulted in a price declines of ~20 percent in 2019 and another 35 percent decline in 2020. DGTR, in its investigation, concluded that the product is being imported into India in increased quantities can cause or threaten to cause serious injury to the domestic manufacturers. Hence, the DGTR has recommended imposing a 10 percent safeguarding duty on Single-mode Optic Fiber.	• Expedite the process of imposition of 10 percent safeguarding duty on Single-mode Optic Fiber to support the industry.

Special Valuation Branch (SVB)

SL No	Area of challenge	Issues	Recommendation
C.1	SVB not applicable for clearance to Free Trade Warehousing Zone (FTWZ)	• There is lack of clarity whether SVB would only be applicable on clearance made from FTWZ to related parties.	• Clarify the non-applicability of provisions related to SVB for clearances into FTWZ.

		• FTWZ is a flagship initiative for creating trade-related infrastructure and to facilitate the import and export of goods and services with the freedom to carry out trade. • As per Section 53 of the Special Economic Zone Act, 2005 (SEZ Act), FTWZ is deemed to be a port outside the customs territory of India for the purposes of undertaking authorized operations. “Customs frontier” as defined under Section 2(4) of IGST Act, 2017, include a “customs port”. Therefore, as long as the goods are in a “port”, i.e., FTWZ, the same would be deemed to have not crossed the customs frontiers of India. • Section 26 of the SEZ Act provides for exemption from customs duty under the Customs Act, 1962 or the Custom Tariff Act on import of goods into FTWZ (SEZ). As per Section 51 of the SEZ Act, 2005, SEZ laws have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. • It is also pertinent to note that Chapter XA of Customs Act, 1962 inserted on 15 August 2003 for SEZs, was specifically omitted effective 11 May 2007. Consequently, all customs aspects related to SEZ such as assessment, procedure, clearance etc. was omitted. • Therefore, on conjoint reading of the above provisions, it is our understanding that - (a) Goods imported into a FTWZ does not invoke any Custom assessment and valuation;	

		(b) Goods cleared from a FTWZ is subject to Customs assessment and valuation. • On the clearance of goods from FTWZ, being the first inbound clearance into the Indian Customs territory, customs assessment and valuation applies. Therefore, we understand that SVB would only be applicable on clearance made from FTWZ to related parties (if any).	

SL No	Area of concern	Issues	Recommendation
C.2	Levy of Extra Duty Deposit (EDD) under the SVB process	• As per Circular No. 5/2016-Customs dated 09/02/2016, the levy of EDD was reviewed by the Board and it was decided that EDD shall be discontinued, while imports will continue to be assessed provisionally till the completion of investigation. In other words, the imports were continued to be assessed provisionally on the basis of a Provisional Duty (PD) Bond but without any EDD. • It was provided that EDD at the rate of 5% can be levied upto the period of 3 months in case the required information and documents are not submitted by the importer within 60 days of the requisition. • However, EDD continues to be levied beyond the period of 3 months, even if the information has been submitted by the importer and since the SVB applications are not disposed-off in timely basis, EDD gets levied till the time the same gets disposed-off.	• It is recommended that a suitable instruction/ amendment is made, which provides that once an importer submits the requisite information, discontinuation of EDD should be strictly followed.

Policy Issues and Recommendations/ AEO accreditation

SL No	Area of concern	Issues	Recommendation
D.1	Various issues regarding Authorized Economic Operator (AEO) programme Guidelines	• As per Circular No. 33/2016 - Customs dated 22 July 2016: - For holders to AEO Tier III - The assessing/examining custom officer will rely on the self-certified copies of documents submitted by them without insisting upon original documents. However, in practice, the officials insist on submitting the original copy of the Free Trade Agreement (FTA) for each shipment - For holders to AEO Tier III - AEO would not be required to furnish any Bank Guarantee (BG), except for provisional release of seized goods. However, in practice the officials are demanding a BG even for clearance of import shipment meant for reexport after repair - For holders to AEO Tier II and III - AEOs are given the facility to paste MRP stickers in their premises. However, in practice, the officials are not allowing to paste MRP stickers in the premises of the importer. The same is only allowed under Custom Bonded Warehouse - For holders to AEO Tier II and III - AEOs will be given access to their consolidated import/export data	• It is recommended that a suitable instruction is issued for allowing the holders to AEO Tier II and III certificate, to be able to avail the benefit of the AEO scheme in the following manner: - The customs authorities should accept the self-certified copy of the FTA - Furnishing of a BG should be waived off for all category of imports, especially for AEO Tier III holders - MRP stickers should be allowed to be pasted in AEO Tier II and III holder's premises - Access to consolidated import/export data through ICEGATE should be enabled at the earliest. In the meantime, the same should be available in a report format from customs

		through ICEGATE from a date that would be communicated separately. However, the said facility is yet not provided • Further, certification process is a time taking process and timeline for processing the application is not followed in the current scenario to provide the required benefit to the entity. This delay in certification impacts import cycle time, which in turn affects the project timelines.	system on payment of nominal fee • Further, the prescribed timelines for processing registration applications are not adhered to by the ground-level officers, hence, there is a need to introduce provision with respect to "deemed acceptance" of the application in case the same is not processed within the given timelines. • Additionally, it is recommended that the AEO certified importers: - be exempted from first check during customs clearance and any query regarding such clearance to be raised as part of post audit - be allowed to import used item / equipment without MOEF license for internal use purposes or for spares / warranty replacement

SL No	Area of concern	Issues	Recommendation

D.2	Late Charges on non-submission of Bill of Entry (BoE)	• As per Circular No. 08/2021 - Customs dated 8 March 2021, read with Circular No. 12/2017 - Customs dated 31 March 31 2017, late charges are levied in case the BoE is not filed within the prescribed timelines, ie, latest by a day prior to the arrival of the shipment by sea and by the day of arrival of the shipment by air.	• It is requested that such late charges are waived off for AEO Tier III holders, keeping in mind the spirit of the AEO program.

SL No	Area of concern	Issues	Recommendation
D.3	Amendment to Notification No.104/1994 - Customs dated 16 March 1994, relating to exemption to containers of durable nature	• The customs Notification No.104/1994 - Customs dated 16 March 1994, forms the basis of duty-free import of durable packing material in India subject to re-export conditions. • As per the said notification, separate continuity bond is to be executed and required to be produced for each shipment and bill of entry, which results in delay in assessment and increases the dwell time of the shipment. • Further, in practice, at the time of re-export custom clearance, the customs authorities undertake open examination of the goods, which results in delay and undue cost.	• It is recommended that packing material used as instrument of international trade should not be required to be disclosed as a separate line item of assessment in the bill of entry and separate bond should not be required to be produced for each bill of entry. Such exemption should at least be provided to the certified AEO holders. • Open examination of the shipment at the time of re-export should be discontinued and the same should be allowed with Factory stuffing permission, especially at least for AEO Tier II and III exporters. • The Notification No.104/1994 - Customs dated 16 March 1994

			should be appropriately amended to this effect.

SL No	Area of concern	Issues	Recommendation
D.4	Amnesty Scheme for Customs	• Currently, there is no amnesty scheme for legacy issues on Customs similar to Vivaad se Vishwas (for Income tax) & Sabka Viswaas Scheme (applicable for Central Excise and Service Tax regulations).	• It is recommended that an amnesty scheme for the resolution of legacy disputes Customs be introduced. • This will help taxpayers, especially small businesses, immensely in getting rid of their past baggage of disputes and move ahead with a clear slate.

Other Miscellaneous Issues

SL No	Area of concern	Issues	Recommendation
E.1	Levy of demurrage on holidays/ weekends	• While calculating the demurrage charges, holidays and weekends are also counted. while there may not be any fault of the importer.	• It is recommended that the demurrage/ penalty for long weekend/ holidays on which

			importer is not responsible should not be charged. • Accordingly, the holidays (as per the Customs Act, 1962) should be kept out for calculation of penalty/ demurrage charges at customs port.

SL No	Area of concern	Issues	Recommendation
E.2	Refund claim contrary to an assessment order	• In the judgment of the Apex Court in the case of ITC Limited v. Commissioner of Central Excise, Kolkata, 2019-VIL-32-SC-CU, it was held that a refund claim contrary to an assessment order is not maintainable unless the assessment order is reviewed or modified in appeal under section 128 of the Customs Act, 1962. • The SC ruling has been quite unsettling for the assessees who intends to claim refund, as their refund claims are being rejected on account of non-challenge to the self-assessed assessment orders. • Section 27 of the Customs Act, 1962 is a complete code in itself as far as refund of duty is concerned. It does not put filing of an appeal as a pre-condition to claim refund.	• It is recommended that a suitable clarification should be inserted within Section 27 of the Customs Act, 1962 to enable the importer to file a refund with a self-assessed Bill of Entry and without seeking an appeal.

SL No	Area of concern	Issues	Recommendation

E.3	Facilitation for bulk clearance of e-commerce import / export shipments	• On account of huge increase in the e-commerce segment in India in the recent years, a substantial volume of goods is imported into and exported out of India. This modern approach focuses on finding a balance between control and facilitation, using information and communication technology, data and performance measures all aimed at promoting compliance rather than focusing only on enforcement. • Currently, the importers/ exporters are required to submit individual/ separate clearance documents for each package with the Indian Customs. • Managing international trade documentation and information requirements, the obligation to meet international and foreign domestic standards, and other shipping and logistics challenges drive up the costs of importers/ exporters and hamper their ability to trade in India. Further, separate filing and submission of documents for each package results in additional time and cost for such importers/ exporters.	• In order to support the growth of e-commerce in India, the facility for bulk clearance of import/ export shipments is required for e-commerce import/ export shipments (i.e. clearance off a consolidated document such as a manifest with minimal details). • Additionally, simplified process in case of return of e-commerce shipments is also recommended. This would facilitate cross border trade and promote e-commerce growth and investment.

SL No	Area of concern	Issues	Recommendation
E.4	Refund of Countervailing Duty (CVD) and Special Additional Duty (SAD(paid on pre-GST imports	• Under the export promotional schemes, exporters are required to fulfil certain export obligations. In case of non-fulfilment of export obligation in relation to export promotion schemes, there is a requirement to pay	• Central Board of Indirect Taxes & Customs (CBIC) should lay out the complete procedure, formats for claim of refund of duty paid, notify

		differential customs duty, which has a component of CVD and SAD. It may be noted that in pre-GST regime, i.e. prior to July 1, 2017, in case such differential Customs duty was paid, then the assessee was eligible to claim credit of CVD and SAD. • However, after introduction of GST, in case there arises a requirement to pay differential customs duty (including CVD and SAD) for non-fulfillment of export obligation under export promotion schemes, there is no provision which deals with the credit/refund of CVD and SAD. • The provisions of 142(6) of the CGST Act, 2017 dealing with the transitional provisions are inadequate to deal with such circumstances. Hence, in such cases, component of duty i.e. CVD and SAD becomes a cost, which actually was available as credit in the erstwhile regime This amount paid, should actually be made available as refund by the Central Government. • Presently, there are no proper guidelines with respect to procedural requirements for claiming refund of CVD and SAD. In order to ensure that the businesses do not come across any difficulty with respect to processing of such refund claims, it is important to have guidance or circular in place which defines the procedural aspects such as refund form, defined responsibilities of the officer, mode of payment, processing times, window for checking status of the refund, etc.	proper officer for processing of such refund.

SL No	Area of concern	Issues	Recommendation
E.5	Valuation under Customs and Transfer Pricing for transaction between related parties	• Both Customs and Transfer pricing laws require taxpayer to establish arm's length principle with respect to transactions undertaken between related parties. The main objective under respective laws is to provide safeguard measures to ensure that taxable values (whether it is import value of goods or reported tax profits) are the correct values on which respective taxes are levied. The above objective, while established on a common platform, has diverse end-results as seen below: - To increase customs duty amounts, the Customs Cell would prefer to increase the import value of goods - To increase tax, the Revenue Authorities would prefer to reduce purchase price of goods • The diverse end-results create ambiguity in the manner in which the taxpayer should report values under the Customs and Transfer Pricing. • There are various contradicting judicial precedents which favour and contradict the use of custom valuation while establishing arm's length price under Transfer Pricing.	• Such contradicting decisions necessitate a greater need for convergence of Transfer Pricing mechanism under the Customs Act, 1962 and the Customs Regulations. • There is a need for a common platform that would provide a 'middle-path' of arm's length price that is equally acceptable under Customs Laws and Transfer Pricing.

SL No	Area of concern	Issues	Recommendation

E.6	Payment of pre-deposit and under protest payment through manual TR-6 Challan	• Presently, the payment in relation to mandatory pre-deposit (under section 35F of the Customs Act, 1962) or payment of duty under protest is made via a physical demand draft and the same is further required to be submitted with the respective Customs station along with TR-6 manually.	• It is recommended that, in the era of digitization wherein the entire process of imports is being digitized, such payments should also be integrated and routed through ICEGATE.

Annexure A

Demystify "Others" - Broad Definitions

Router -
Sends information between networks. Routers use an internal routing table or routing considerations to look at the address of the incoming packet and determine whether to send the packet out or keep it within the network.
Routers can forward packets between a Local Area Network (LAN) and Wide Area Network (WAN), as well as to the Internet.

Switch -
Newton's Telecom Definition
Switches work at Layers 1 (Physical) and 2 (Data link) of the OSI Reference model, with emphasis on Layer 2. A switch looks at incoming data (voice data, or data) to determine the destination address. Based on that address, a transmission path is set up through the switching matrix between the incoming and outgoing physical communications ports and links.

Access Point -
Access points give a user's endpoint access to a Local Area Network LAN using radio signals also know as Wi-Fi. Wireless LAN Controllers enable groups of access points to function in collaboration within a LAN.

Transceiver -
Newton's Telecom Definition

1. Any device that transmits and receives. In sending and receiving information, it often provides data packet collision detection as well. 2. In IEEE 802.3 networks, the attachment hardware connecting the controller interface to the transmission cable. The transceiver contains the carrier-sense logic, the transmit/receive logic, and the collision-detect logic. 3. A device to connect workstations to standard thick Ethernet-style.

Videoconferencing System -
Video conferencing Systems are collaboration tools that enable real-time voice with video communications. The essential component for transmitting and receiving the voice and video simultaneously is the codec used for coding and decoding data.

Networking Card (including Line Cards)
Networking cards and interface cards are used within a device to provide network connectivity.

Wireless Headset -
Wireless headsets use DECT or Bluetooth technology to send and receive voice data and convert analog signals to digital and vice versa.

Security Appliance -
PC Mag definition
A stand-alone device used to provide security for a network.

Recommended break-outs:

- 851762XX – Videoconferencing apparatus, codecs
- 851762XX – Access Points, Wireless LAN controllers
- 85176230 – Modems
- 851762XX – Network Switches
- 851762XX – Service Provider WAN Switches (carrier ethernet)
- 851762XX – Other Switches
- 851762XX – Wireless Headsets
- 851762XX – Routers

- 851762XX – Multiplexers, Networking / Line cards, Transceivers
- 851762XX – Firewall/ Network Security Appliances
- 85176290 – Other (such as SDH)

SDH, PLCC, HDSL, DLC, and voice frequency telegraphy are outdated, general terms, and not specific to one type of product.

Set top boxes are for broadcasting most will be classified under 852871, those with network connectivity will most likely fall under 851769.

Antennas will be 851770, WCO plans to create a new 6-digit code for these.

Base stations can be classified under 851761. This may refer to access points, which are sometimes referred to as base stations.

Multiplexers and Modems below remain with the same code as previously. For products classifiable currently under SDH, if they are not more appropriately described by the newly proposed descriptions then they could fall under other 85176290. In such a format this code would contain few products as opposed to the majority.

Majority of new technology would fall into one of the categories described above for the foreseeable future. We do find that some new products, when excluded from other subheading and having individual functions, are only classifiable under 854370.

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Indirect Taxes - GST

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AMCHAM Pre-Budget Memorandum
Recommendations for Union Budget 2022-23

Goods and Services Tax (GST) - Indirect Tax

Contents

Input Tax Credit

SL. No	Area of Challenge	Issue	Recommendation
A.1	Applicability of interest in case of reversal due to non-payment	• As per proviso to section 16(2) of Central Goods and Services Tax Act, 2017 ('CGST Act') read with Rule 37(3) of Central Goods and Services Tax Rules 2017 ('CGST Rules'), where a recipient fails to pay to the supplier of goods or services within 180 days from invoice date, an amount equal to the input tax credit availed by the recipient is added to his output tax liability, along with interest thereon payable from date of availment of input tax credit till addition of the said amount as output tax liability. • In case of non-payment of consideration to the supplier, there is no revenue loss and hence, liability to pay interest from the date of availment of input tax credit is too onerous and should be removed especially the scenario where interest has to be paid from the date of availment of credit. • The intention of the said provision is to ensure that credit is being availed correctly. However, the levy of interest would be unfair in cases where the payments are delayed due to genuine reasons such as accounting delay, negotiations etc.	• It is recommended that second proviso to Section 16(2) of the CGST Act should be amended to remove the term '*along with interest thereon'* in case where input tax credit is reversed in compliance with Second proviso to Section 16(2) of the CGST Act. • Alternately, Rule 37(3) of the CGST Rules should be amended to levy interest only after the expiry of 180 days (and not from the date of availment of input tax credit) till the payment of the amount of input tax credit availed.

SL No	Area of concern	Issues	Recommendation
A.2	Time limit for availing input tax credit and amendment in GSTR-1 for the Financial Year	• As per Section 16(4) of the CGST Act, credit for a Financial Year cannot be claimed beyond September of the subsequent Financial Year. Further in terms of Section 37(3) of the CGST Act, the last date to make any edit in the details furnished in GSTR-1 pertaining to a Financial Year is October 11 of the subsequent Financial Year. Considering the unprecedented COVID situation in the country there is a need to relook at the above time limits.	• It is recommended that availment of input tax credit is allowed for invoices pertaining to a Financial Year up to the period of December of the subsequent Financial Year. • Similarly, allow rectification of error or omission in respect to GSTR-1 for the Financial Year up to the period of December of the subsequent Financial Year. • This relaxation will be of immense help to the taxpayers specifically where due to fault of the supplier, the recipients have not been able to get credit. • Alternately, recipient should be allowed to claim credit on provisional basis before the September of the subsequent Financial Year based on the invoice copy even if such details are furnished by the supplier in its GSTR-1 and therefore appears in GSTR 2A in subsequent months.

SL No	Area of concern	Issues	Recommendation
A.3	Section 16(2) of the CGST Act: Condition for input tax credit availment	• Once recipient has paid the invoice value including taxes charged thereon to the supplier, the benefit of input tax credit of same should not be denied to the recipient merely on the basis that the supplier has not remitted the underlying taxes to the Government. • The recipient has paid the taxes in good faith and the supplier only acts as an agent of the Government for collection of taxes. The recipient cannot be made responsible for the default committed by the supplier as it is the duty of the Government to identify such tax evaders.	• It is recommended to amend section 16(2) of the CGST Act to remove the condition of payment of tax by supplier to Government, making the recipient entitled to claim input tax credit benefit of taxes charged by supplier and duly paid to him by the recipient.

SL No	Area of concern	Issues	Recommendation
A.4	Relax restriction on availment of input tax credit on gifts and samples	• As per Section 17(5) of the CGST Act, input tax credit is not allowed in respect of goods, destroyed, written off or disposed of by way of gift or free samples. • Accordingly, input tax credit is not available on the free samples received from suppliers to test the effect and benefits/ utility of such products. Hence, the GST paid on such free samples becomes a cost to the suppliers. • Samples/free trials/demos are required in order to satisfy the customers on efficacy of product. Cost of such sample is already built into cost structures and hence a business expense.	• As free samples and gifts are provided to encourage the customers to try the product or to test its efficacy or to promote its business, these expenses are incurred for promotion of business and cost of such expense is built in the overall price of the product. • Hence, input tax credit should not be restricted on such expenses. Thus, Section 17(5) of the CGST Act should be amended to remove restriction on

		• Gifts are given to customers/ dealers at the time when company is running promotional scheme/ offers. Company incurs such expenses in order to promote its business and hence is again a business expenditure.	availment of input tax credit on gifts and free samples.

SL. No	Area of Challenge	Issues	Recommendation
A.5	Relax restriction on medical/ life insurance, catering and transportation	• As per Section 17(5) of the CGST Act, input tax credit is not allowed to be availed on employee insurance, catering and transportation services. It is discouraging the businesses from providing the above benefits to its employees. • These are particularly relevant in COVID times where employers need to provide safe and healthy working environments to their employees.	• It is recommended to remove restrictions under clauses (i) and (iii) of Section 17(5)(b) of the CGST Act for availing GST credits on employee related insurance, transportation and catering services. • COVID has pushed companies to provide better facilities keeping in mind the well-being of employees and such expenses where GST is not available as credit, add on to the working capital cost.

SL No	Area of challenge	Issues	Recommendation
A.6	Input tax credits to overseas online information database access and retrieval ('OIDAR') service providers	• As per Section 16 of the CGST Act, every registered person shall, subject to such conditions and restrictions, be entitled to take credit of input tax charged on supplies which are used or intended to be used in the course or furtherance of his business. • There is no specific provision under the GST laws to allow input tax credit to the overseas OIDAR service providers. Also, there is no specific provision which restricts the ability of overseas OIDAR service provider to claim input tax credits.	• It is recommended that credit eligibility is decided regardless of whether the overseas OIDAR service provider has a fixed establishment or place of business in India or not. • These credits should be allowed to be offset against overseas OIDAR service provider's output GST liability towards OIDAR services. Further, along with the credit of GST, even the credit of Tax Collection at Source (TCS) should be allowed in the case of B2B OIDAR supplies over an electronic commerce (e-commerce) platform. • Since, overseas OIDAR service provider are required to charge GST on the services provided to 'non-taxable online recipients' in India, they should also be allowed to claim eligible input tax credits on goods and/ or services procured on which GST has been paid.

SL No	Area of challenge	Issues	Recommendation
A.7	Allow input tax credit of GST paid on advances, at the time of payment of GST and reporting of the same in the monthly returns	• As per Section 16 of the CGST Act one of the conditions of availing input tax credit by the recipient of a supply is that such supply should indeed be received by such recipient. • Hence as per above provision, in case of advance payments, the credit of the GST paid on such advances is not allowed till the corresponding supply against such advance payment is made by the respective supplier. • Practically, in case of advances, the seller reports the proforma invoices/ advance voucher as B2B transactions in GSTR-1 and pays GST on the same. In case, where nature of underlying supply and place of supply is known, the tax is paid at the correct rate with correct place of supply at the time of receipt of advance itself. Subsequently on provision of service, the supplier issues a GST invoice which is not reported in GSTR-1 (as the same transaction is reported earlier and GST has been discharged on the same). • Hence, while the credit is available only once the actual supply is made, GST on such advance payment is payable at the time of payment of such advance itself.	• It is recommended that input tax credit of the GST payable on advances should be eligible to the recipient at the time of payment of such GST where nature of underlying supply and place of supply is known, and not when the corresponding supply is made. • Since the recipient would pay tax to the supplier and such supplier would pay tax to the Government once the payment has been received, on principles of equity such input tax credit should be allowed to the recipient at the time of payment of tax itself.

		• This creates a time lag between payment of GST and availment of the corresponding credit, thereby blocking the working capital for the recipient in such cases.	

SL No	Area of concern	Issues	Recommendation
A.8	Alignment of the method of reversal of input tax credit on supply of used capital goods under Section 18(6) of the CGST Act	• Currently, there are two competing rules governing the method of reversal of input tax credit on supply of used capital goods under Section 18(6) of the CGST Act. The rules are – Rule 40(a) and Rule 44(1)(b) of the CGST Rules.	• It is recommended that the rules under the law are aligned in a way that appropriate clarity is provided for the method of calculation to be adopted for reversal of input tax credit pertaining to capital goods.

SL No	Area of concern	Issues	Recommendation
A.9	Relaxation in matching requirement of input tax credit for quarterly return filing vendors	• As per Rule 36(4) read with Rule 59(2) of CGST Rules, a recipient of goods/ services can claim input tax credit only pertaining to those transactions, details of which have been furnished by the suppliers in their monthly GST returns or via the Invoice Furnishing Facility (IFF) in case of suppliers filing quarterly returns. • In addition to this, the law provides for an additional 5 percent credit (of the claimable input tax credit amount) that can be claimed by the recipient in a month. • Since the IFF facility is provided as an option to the suppliers filing quarterly returns, there are instances where	• It is recommended that Rule 36(4) of the CGST Rules is amended wherein input tax credit on supplies made by quarterly return filing suppliers in a month should be allowed in full, whether or not the same is appearing in GSTR-2A/ 2B of the recipient. • This will ensure that the working capital of the recipient is not affected, and the recipient is able to claim input tax credit of the GST paid to such suppliers.

		such suppliers do not file IFF and directly file their quarterly returns. • This leads to a loss/ time lag in availing input tax credit for the corresponding recipients in the respective months, adding to the working capital burden for the recipient.	

SL No	Area of concern	Issues	Recommendation
A.10	Relaxation of availing 5 percent extra input tax credit under Rule 36(4) of the CGST Rules should be taken into consideration at the time of audits/ assessments/ refund calculations	• As stated above, per Rule 36(4) of the CGST Rules, input tax credit to be availed by a recipient in respect of invoices or debit notes, the details of which have not been furnished by the suppliers in GSTR-1 shall not exceed 5 percent of the eligible credit available in respect of invoices or debit notes the details of which have been furnished. • However, it is seen practically that the ground officers do not accept this method of valuation at the time of audits/ assessments/ refunds.	• Suitable clarifications may be issued clarifying that benefit of 5 percent difference between GSTR 2A and input tax credit register workings should be allowed to the taxpayers at the time of audits/ assessments/ disposal of refund applications also.

SL No	Area of concern	Issues	Recommendation
A.11	Amendment in Section 50 of the CGST Act to provide for no interest exposure even in case of previous period liability paid through input credit ledger	• As per Section 50 of the CGST Act, in case the monthly return in Form GSTR-3B for a particular period is not filed within the prescribed time limit, the interest on GST liability due for that period will be levied only on the GST liability that is payable via the electronic cash ledger. In other words, no interest will be payable for the GST liability	• It is recommended that a clarification is provided in the proviso to Section 50(1) of the CGST Act to waive the interest liability in all cases of delayed payment of GST, where the input tax credit equivalent to the said liability was available in the electronic

		declared in the said return and paid via the electronic credit ledger. • While the intent of the law is to not levy interest on late payment of GST in cases where such GST is paid/ payable by utilizing the input tax credit, the benefit is practically extended only in such cases where the GST liability pertains to a particular period and GSTR-3B of the said period is filed after the due date. • The said benefit is not extended in cases where the GST liability is pertaining to a previous period, but is disclosed in the Form GSTR-3B of subsequent tax periods and discharged through utilization of input tax credit. • This creates disparity even though the intent of the amendment approved by the GST Council was to provide relaxation by levying interest only on the liability payable through cash.	credit ledger at the time and for the period when the said liability became due for payment. • This will be in line with the intent of the Government to not penalize the assessee for delayed payment of GST liability in case where the said liability could have been discharged by utilizing the credit available.

SL No	Area of concern	Issues	Recommendation
A.12	Facility of transfer of Input tax credit of CGST & IGST from one GST Identification Number (GSTIN) to another GSTIN of same PAN	• Under GST, the input tax credit belonging to one GSTIN cannot be utilized by another GSTIN, even if both the GSTINs are under the same PAN. • Owing to the above, there are instances wherein input tax credit accumulates under one GSTIN for the company, and in another GSTIN the same company pays taxes	• It is suggested that Government should introduce facility for transfer of unutilized input tax credit of CGST and IGST from one GSTIN to another GSTIN registered under same PAN.

		through cash. This has an adverse impact on the working capital of the company. • The taxpayers do not have the liberty to optimize their tax and credit balances across the business. • It is understood that the credit balances of a particular State (SGST) can still be considered to be specific to the operations of that State, however, the credit balances of central taxes (i.e. CGST and IGST) should be allowed to be fungible across all registrations of an entity at a PAN level.	• The same will provide a significant relief to the businesses to manage their working capital much more optimally.

Supplies to SEZ unit

SL No	Area of concern	Issues	Recommendation
B.1	Lay down procedure for endorsement of receipt of services for authorized operations in respect of supplies to a Special Economic Zone (SEZ) unit or a SEZ developer	• As per Rule 89 of the CGST Rules, in case of zero-rated supply of services to an SEZ unit or a developer, the supplier is entitled to claim the rebate of GST paid on such zero-rated supply or refund of unutilized input tax credit attributable to such supplies. • However, at the time of claiming the rebate/ refund, the supplier needs to submit the evidence regarding receipt of services by SEZ for authorised operations as endorsed by the specified officer of the Zone, along with the refund application filed by such supplier.	• It is recommended that no endorsement from specified officer should be required to be submitted with the refund application in respect of the specified services notified as default authorized operations by Ministry of Commerce under the SEZ Act and provisions thereunder. • In case the above is not possible, then it is recommended to amend the CGST Rules to prescribe the common procedure and manner for getting a

		However, the manner and procedure in which the said endorsement is to be obtained from the specified officer is not prescribed in the CGST Rules.	one-time vendor wise endorsement from specified officer, instead of invoice wise endorsement on individual invoices, regarding the receipt of services for authorized operations by a SEZ unit/ developer. • In this respect, the earlier practice of Form A-1 as was prevalent in the Service Tax regime can be considered to be revived.

SL No	Area of concern	Issues	Recommendation
B.2	Amendment in input tax credit refund formula for zero-rated supply to SEZ unit/ developer	• As per Section 16(1) of the Integrated Goods and Services Tax Act, 2017 (IGST Act), supply of goods or services to an SEZ unit/ developer is considered to be a zero-rated supply. Similarly, export of goods or services is also considered to be zero-rated under Section 16(1) of the IGST Act. • Further, in accordance with Section 16(3) of the IGST Act, in both the above cases, the supplier may supply goods or services under bond or Letter of Undertaking, without payment of Integrated GST (IGST) and claim refund of unutilised input tax credit.	• Since, there is no condition of receipt of payment from SEZ unit/ developer in case of supply of services to SEZ unit/ developer, it is recommended that in the input tax credit refund formula under Rule 89(4) of the CGST Rules, 'Zero-rated supply of services' should be reworded to include the aggregate of: – payments received during the relevant period for zero-rated supply of services by way of export of services adjusted by advance receipt and advance adjustment, and

		• It is to be noted that for export of services, there is condition of receipt of payment in convertible foreign exchange, however there is no such condition for supplies to SEZ unit/ developer to qualify as a zero-rated supply. For treating the supply of services to SEZ unit/ developer as a zero-rated supply, the only condition is that such supply should be used/ consumed by SEZ unit/ developer for its authorized operations. • However, the formula for calculating the refund amount prescribed under Rule 89(4) of the CGST Rules to claim refund of unutilised input tax credit is same for export outside India as well as supplies made to SEZ. • In the said formula, for the purpose of numerator of the formula, 'Zero-rated supply of services' is the aggregate of the payments received during the relevant period for zero-rated supply of services adjusted by advance receipt and advance adjustment during the relevant period. • However, since the condition of receipt of payment in convertible foreign exchange does not exist for SEZ supplies, the above formula in terms of considering the aggregate of payments received (instead of aggregate of	– turnover/ billing of zero-rated supply of services (instead of realization) by way of supply of services to SEZ unit/ developer.

		total SEZ billing /turnover) is undue hardship for refunds relating to SEZ supplies.	

SL No	Area of concern	Issues	Recommendation
B.3	Reverse charge applicability on domestic procurement by SEZ	• Section 16(1) read with section 5(3) of the IGST Act deals with the reverse charge applicability on domestic procurement of goods or services by SEZ units/ developer. • Under existing provisions, the supplier does not charge IGST or charge 0 percent IGST under forward charge on supplies made to SEZ unit or developer against a Letter of Undertaking (LUT)/ Bond. • Further SEZ unit or developer is not required to pay IGST on inward supplies of goods or services by way of import as the import of goods or services by SEZ unit/ developer has been specifically made exempt *vide* exemption notifications under Custom / IGST Act. • However, there is applicability of IGST on specified categories of domestic supplies of goods or services under reverse charge in the hands of SEZ unit/ developer and there is an ambiguity whether SEZ unit/ developer can procure domestic goods or services covered	• It is recommended to exempt GST on domestic procurement of goods or services covered under reverse charge by SEZ unit/ developer in line with import of goods or services, or to allow such procurement without payment of tax against LUT in line with the forward charge provisions applicable to the supplier.

		under reverse charge without tax against the LUT.	

Tax collected at source ('TCS')

SL No	Area of challenge	Issues	Recommendation
C.1	Exemption from 1 percent TCS on exports transactions undertaken on e-commerce marketplaces	• Indian GST registered sellers exporting through e-commerce platforms suffer TCS of 1 percent under GST laws, since GST laws do not exclude zero rated export supply from TCS levy affecting their working capital. • The Government should incentivize exports from India by providing necessary clarifications to exclude levy of TCS under GST laws on zero rated export sales made by the online sellers.	• It is recommended that a clarificatory amendment is issued to provide that an Electronic Commerce Operator (ECO) is not obliged to hold back TCS on goods exported by seller through the ECO. • This would reduce the compliance burden and improve working capital of the sellers, thereby incentivizing exports from India.

SL No	Area of concern	Issues	Recommendation
C.2	Inclusion of overseas OIDAR supplies in GSTR-8	• An ECO is required to collect and deposit TCS in each state where the supplier listed on its portal and furnish supplier-wise TCS details in Form GSTR-8 every month. Further, the deposit of TCS is linked to the GSTIN of the supplier making the supplies over the ECO platform. • Certain ECOs have offshore suppliers of digital content listed on Indian electronic marketplaces whose services	• It is recommended that a clarification is issued and system design is updated to allow the inclusion of supplies by the OIDAR service providers in the GSTR-8 which will be in interest of both the ECO and the suppliers of OIDAR services.

		are classifiable as OIDAR services. Such services are taxable in the hands of the overseas suppliers when supplied to 'non-taxable online recipients. • As TCS is being collected by ECO in respect of their supplies, such suppliers are treated at par with the domestic suppliers as far as the ECO is concerned. • Given the design of the GST portal, the ECOs cannot disclose the supplies made by such OIDAR service providers in the GSTR-8 for TCS purposes. • This leads to a situation where ECOs are unable to file returns for the TCS withheld for such suppliers and suppliers are unable to view their TCS credits.	• Such TCS should be allowed to be used by the overseas OIDAR service suppliers while they discharge their tax liabilities. • Further, an appropriate extension for filing of GSTR-8 should be provided along with the waiver of interest and penalties owing to the above issue. The supplier should also be allowed to credit of TCS collected even if time limit for claiming the same has lapsed.

Registration requirements

SL No	Area of concern	Issues	Recommendation
D.1	Requirement of mandatory registration for small sellers selling goods on online marketplaces	• In terms of Section 24(ix) of the CGST Act, every supplier who is supplying goods and/ or services through an ECO is required to mandatorily obtain a GST registration, irrespective of the turnover of such supplier. However, service providers have been provided exemption from obtaining mandatory registration in case they are supplying services through ECOs in terms of Notification No. 65/ 2017-Central Tax dated November 15, 2017.	• It is recommended that the benefit of the turnover threshold is extended for intra-state suppliers of goods making supplies through an e-commerce platform, in order to provide a level playing field for suppliers of goods. • In order to ensure that such supplies are duly reported, necessary checks can be built in as follows:

		• In case of suppliers of goods, no such exemption is provided. Hence, all suppliers selling goods online are required to register with GST, while the same suppliers making intra-State supplies of goods offline are eligible for a threshold exemption. • The above threshold criteria leads to disparity in the benefit on the threshold exemption for service providers when compared with the supplier of goods on an e-commerce platform. Further, it also leads to disparity between online and offline sale of goods within the same State. • The requirement for suppliers of goods through an ECO to take registration mandatorily, irrespective of the turnover achieved is resulting in an increased compliance burden on such sellers and penalizes small sellers who want to increase their business. The lack of a level playing field for small sellers is arbitrary and negatively impacts Small and Medium Enterprises (SMEs). • Further, most of these suppliers are usually small and if not for the fact that they are on the e-commerce platform, they would not have been required to obtain a registration under the GST laws, on account of the lower turnover threshold limits. This also adversely impacts small businesses, specifically homemakers who earn their livelihoods and are trying to improve their standard of living by selling their products online.	– Restricted to intra-state sales – Mandatory PAN and/ or Aadhaar verification – PAN based reporting by the ECO in GSTR-8 • It will encourage small sellers to get market visibility and sell online, hence increasing their turnover. This also sets right the distortion in the offline vs online channel and services vs goods supplies.

		• This also discourages the sellers from enrolling into online modes of supplies, thereby impacting the Government's move on digital economy.	

SL No	Area of concern	Issues	Recommendation
D.2	Restriction on Composition scheme sellers from selling through ECO	• As per the provisions of Section 10(2)(d) of the CGST Act, a person making supplies of goods (and/or services) through an ECO liable to collect TCS, is not eligible to opt for composition scheme. • Due to the limitation imposed *vide* the provisions of above Section 10(2)(d), a supplier registered under the composition scheme is not allowed to supply online through an ECO liable for TCS. However, the same supplier can make intra-State sale of goods in the offline model. Hence, this leads to disparity between online and offline sale of goods by sellers under composition scheme. • This also discourages the sellers from enrolling into online modes of supplies, thereby impacting the Government's move on digital economy. • Further, as the intention of the composition scheme is to reduce the burden of taxes and compliance, and motivate small dealers, this kind of disparity defeats the said objective of the Government and limits small businesses.	• It is recommended that the suppliers registered under the composition scheme are allowed to effect sales through an ECO liable for TCS, however the same can continue to be restricted to intra-State sales only as per Section 10(2)(c) of the CGST Act. • We further recommend that the TCS mechanism be continued for sellers of goods registered under the composition scheme, as the same seller is anyway required to deposit GST at 1 percent in cash under the composition scheme. • The above will encourage small sellers to get market visibility and sell online, hence increasing their turnover. This also sets right the

			distortion in the offline vs online channel of sale.

SL No	Area of concern	Issues	Recommendation
D.3	Registration of warehouses of e-commerce companies, as additional places of business by the sellers registered with such e-commerce companies	• The GST laws require a supplier to obtain registration from each place of business from where the supplier makes taxable supplies. • In the e-commerce ecosystem, a seller listed on the e-commerce platform may be undertaking taxable supplies from various warehouses that are owned and/ or operated by an ECO and since the supplies are being made from these warehouses, the sellers are required to add the respective warehouses as additional places of business under their existing registration. • This is done by a process of amendment of "core fields" to their original registration. Supporting documents also need to be submitted. • Thereafter, in case the jurisdictional officer has any queries, further responses have to be provided to the officer for closure. Once all outstanding items have been clarified the additional place of business registration is approved by the officer.	• We suggest the following cumulative recommendations: – **Recommendation 1 -** ECOs, on obtaining an authorization from the sellers, (currently registered in different States due to TCS requirements) should be enabled with the option of intimating the addition/ deletion of additional place of business of sellers operating on the marketplace – **Recommendation 2** - In other cases, the self-declaration by the ECO platform shall be deemed to be full proof of additional place of business on behalf of the seller • These recommendations will help in improving the ease of doing

		• While the registration process is entirely digitized and is on an online platform, 3-4 weeks' time lag occurs between the time of filing an application for the addition to the date of grant of amendment by the authorities due to queries raised by tax authorities which have to be addressed.	business and achieve the following goals: – Timely reporting of amendments in the additional place of business resulting in accurate information being provided to GST authorities in a timely manner resulting in better controls for the GST authorities; – Simplified approval/notification process for jurisdictional GST officers handling multiple seller amendment requests including managing documentation/ e-commerce business model related questions etc.; – Simplified registration process and reduced costs for sellers and administrative costs for the Government. • This can be done by inserting a new Rule in Chapter III of the CGST Rules to enable e-commerce platforms to undertake reporting/ amendment process, on behalf of sellers on such e-commerce

			platforms in a State, by obtaining an authorization from the sellers.

SL No	Area of concern	Issues	Recommendation
D.4	Simplification of the registration process for additional place of business	• The GST laws require a supplier to obtain registration for each place of business from where the supplier makes taxable supplies. • Based on the business requirement, the supplier is also required to obtain additional place of business registration in a State where the supplier already has an existing registration. This additional place of business registration may be sought at a location that is not leased or rented to the supplier. • The application for registration provides for a submission of the proof for registration where the premises are not rented or leased. However, the tax officials often raise queries on the rental agreement and seek other documents for registration. • Further, the Government of India has also enabled Aadhar based verification, the intention of which is to help in achieving overall compliance and ensuring protection of revenue reporting.	• It is recommendation that a clarification is issued to State authorities that in a State where a supplier already has an existing registration, no documents should be required to be submitted for registration of an additional place of business in that State. • Easing the registration process by reducing the additional cost and time involved in getting registration will go a long way in supporting growth of businesses, especially when the Aadhar verification is already proposed.

SL No	Area of concern	Issues	Recommendation
D.5	Simplify the entire Principle place of business ('PPoB') requirement especially for online sellers by making it digital and not requiring physical presence to expand their reach outside their home State	• Micro, Small and Medium Enterprises (MSMEs) are required to have their own physical presence and obtain a PPoB registration in every State (maintain accounting books, records and related compliances), as a condition to conduct business in that State. • This is a significant friction for online sellers, especially MSMEs to scale and sell across States. • Apart from the PPoB constraints noted above, this requirement also involves financial cost of yearly rentals which is a big burden for small sellers.	• It is recommended that the PPoB registration process should be simplified by replacing the requirement of a physical PPoB with a "place of communication" in the State and simplifying the existing 12 documents required for registration to minimal document requirements. • The Government of India has enabled Aadhar based PPoB verification, and the same should be strictly implemented, which will help in achieving overall compliance and ensuring protection of revenue reporting. • Alternatively, eliminating the requirement of State specific PPoB should also be considered, which will facilitate sellers to get State level GST registrations on a single national place of business. This will enable quick onboarding of sellers selling through e-commerce marketplace using ECO's warehouse services and scale their

			reach to customers, thereby increasing sales and also contributing more GST revenues to the Government.

SL No	Area of concern	Issues	Recommendation
D.6	Arbitrary cancellation of GST registrations on frivolous grounds	• As per Section 29 of the CGST Act, a proper officer has the powers to cancel the registration on account of various reasons. • While assessees have been complying with all prescribed regulations, there have been instances where cancellation of registrations has been done on arbitrary grounds by wide range of officers, which impedes legitimate businesses and goes against the principle of 'ease of doing business'.	• It is recommended that the power to cancel registration should be vested with jurisdictional Commissioner (in consultation with inputs from the jurisdictional officer). • The assessee should be provided with a reasonable opportunity of being heard along with proper reasons of cancellation of the registrations, before the decision of cancelling the GST registration is taken.

SL No	Area of concern	Issues	Recommendation
D.7	Suspension of registration without providing an opportunity of being heard	• Rule 21A(2) of the CGST Rules provides for suspension of registration without affording 'reasonable opportunity of being heard' if the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 of the CGST Act or under Rule 21 of the CGST Rules. • Suspension of registration without opportunity of being heard is unjust and against the very principles of natural justice as sudden suspension without a proper intimation and time allowed to the assessee puts the day-to-day business of the assessee on hold and creates significant other procedural challenges for the assessee (such as inability to raise invoices, issue eway bills etc.)	• It is recommended that a reasonable opportunity of being heard should be provided to the assessees (including but not limited to cases where registration is suspended on account of PPoBs operating out of minimal manpower/physical infrastructure) before suspension of registration, and route of suspension should be avoided where assessees can make prima facie case in their favour.

Rate rationalisation

SL No	Area of concern	Issues	Recommendation
E.1	Rationalization of GST rates for e-books	• Printed books sold in India are presently NIL rated. E-books where a printed version exists (sold by OIDAR supplier) to Indian customers is chargeable to 5 percent GST, whereas, e-books where print version is not available and audible books (whether or not a printed version exists) sold to Indian customers is chargeable to 18 percent GST.	• We recommend a complete GST exemption should be extended to all digital products including audio books and platforms instead extending only to e-books for which print version is available. This will also bring in parity for e-books and printed books.

			• Alternatively, it is recommended that all the other digital products including audio books and platforms which are currently taxed at the rate of 18 percent should be reduced to 5 percent GST which is at par with e-books for which print version is available. • Higher costs lead to fewer universities and their faculty and students being able to purchase the materials, fewer students pursuing these career opportunities and in the long run, serves as a deterrent to economic growth. Also, the GST has negatively impacted Indian trade with outside publishers.

SL No	Area of concern	Issues	Recommendation
E.2	IGST on import of Aircraft parts, accessories and components	• Currently the Government provides for a 5 percent lower GST rate on import of aircraft parts covered under Chapter Heading 8803.There are still lingering issues on classification and credits that should be addressed.	• It is recommended that harmonization of the 5 percent lower GST rate entry to include all parts, components and accessories of aircrafts is undertaken.

SL No	Area of concern	Issues	Recommendation

E.3	Maintenance, Repair and Overhaul (MRO) services provided by Indian Companies	• Effectively April 1, 2020, GST rate is reduced to 5 percent on MRO services related to Aircraft – which is a welcome development.	• The reduced 5 percent rate for MRO is welcomed – however a further reduction to 0 percent is recommended to make the Indian MRO companies even more comparable and competitive with foreign MRO companies.

SL No	Area of concern	Issues	Recommendation
E.4	GST rate on subservient and allied products or accessories being higher than the primary product	• Contact lenses and surgical equipment are taxed at 12 percent GST under Chapter Headings 9001 and 901850 respectively, however, Lenscare and accessories to surgical equipment are taxed at 18 percent GST under Chapter Headings 3307 and 903300 respectively. • Lenscare is a lens disinfectant which is used regularly by the patients and is a mandatory requirement for wearing contact lenses. However, currently it is taxed at 18 percent GST as 'Cosmetics', even though it neither fits into the category of cosmetics, nor has any cosmetic purpose. • Similarly, accessories of surgical equipment, which are used for making use of the respective surgical equipment are currently taxed at 18 percent GST. • Since usage of Lenscare and/or accessories of surgical equipment is ancillary to the usage of their primary products, there is no case of taxing these at a higher GST rate.	• It is recommended that Lenscare and/or accessories of surgical equipment which are ancillary to the usage of their primary products are taxed at the same rate as the respective primary product. • Hence, Lenscare and accessories of surgical equipment should be brought under the 12 percent tax net of GST and relevant amendment should be undertaken in the Notification No.1/2017-Central Tax (Rate) dated June 28, 2017 so that level playing field can be provided to contact lenses with spectacle lenses.

SL No	Area of concern	Issues	Recommendation
E.5	Reduction of GST rate on medical equipment and devices	• The current GST rate of medical equipment, devices and instruments is 12 percent *(refer Sl. No. 218 of Schedule II of Notification No. 01/2017-Central Tax (Rate) dated June 28, 2017).* • Given the global pandemic, the healthcare industry of India and the expansion of the same should be promoted through reduced costs improving patient accessibility and overall share of healthcare industry in the national GDP.	• It is recommended that medical equipment, devices and instruments should be brought at par with other preferential products and taxed at preferential GST rate of 5 percent. • This will reduce cost and provide a boost to the healthcare industry in India.

SL No	Area of concern	Issues	Recommendation
E.6	GST classification and rate of Hand Sanitizers	• The Hand Sanitizers were earlier classified under the 12 percent GST bracket (for medicament – Chapter Heading 3004) and 18 percent GST bracket (for alcohol-based consumer use – Chapter Heading 3808). The difference in classification is basis the difference in chemical composition of both the types of hand sanitizers. • However, in result of the various disputes and advance rulings on this matter, wherein the assessees were charging 12 percent GST on alcohol based hand sanitizers, the GST Council clarified that such hand sanitizers would be taxable at 18 percent, as also any reduction in tax rates would lead to inverted duty structure on the final product.	• Since the hand sanitizers have now become an essential commodity for general public, the GST rate on the same should be kept at a lower rate, to ensure the accessibility of the public and more importantly for curbing the spread of COVID. • Accordingly, Notification No. 05/2021-Central Tax (Rate), dated June 14, 2021 should be extended for a minimum period of 6 months, ie, up till March 2022, and the GST rate

		• Further, in view of the global pandemic, *vide* Notification No. 05/2021-Central Tax (Rate), dated June 14, 2021, the Government reduced the rate of GST on hand sanitizers to 5 percent up till September 2021.	on hand sanitizers should continue to be 5 percent. • With effect from April 2022, the GST rate on alcohol-based hand sanitizers should also be brought in line with medicament purpose hand sanitizers and should be reduced to 12 percent. The rate of GST on inputs and input services used for manufacture of such hand sanitizers should also be scaled down to that effect, in order to avoid inverted tax structure in the chain.

SL No	Area of concern	Issues	Recommendation
E.7	Extend upfront exemption from GST on local procurements to Export Oriented Units (EOUs)/ Software Technology Parks (STPs) similar to SEZs.	• As per Section 16 of the IGST Act, 2017, supplies made to SEZ in India are considered as zero-rated, however, no such exemption from payment of GST applied to supplies made to EOUs/ STPs has been granted. • However, in case of goods supplied to an EOU/ STP unit, the same are considered to be deemed supplies which are subject to GST *(refer Section 147 of the CGST Act, 2017 read with Notification No. 48/2017-Central Tax dated October 18, 2017)*, refund of which can be filed either by the supplier or the recipient.	• It is recommended that upfront GST exemption is provided to all supplies made to EOU/ STP units, in the same manner as SEZ units. This will reduce the refund related administrative burden and cost as well as disputes with the department for claiming such refunds.

SL No	Area of concern	Issues	Recommendation
E.8	Extension of GST exemption benefit provided to Government borne training services across the supply chain	• As per Sl. No. 72 of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017 and Sl. No. 75 of Notification No. 9/2017-Integrated Tax (Rate) dated June 28, 2017, the services provided to the Central Government, State Government, Union territory administration under any training programme for which 75 percent or more of the total expenditure is borne by the Central Government, State Government, Union territory administration is exempt from GST. • However, it seems that the above benefit is only available to the service provider contracting with the Government customer, and not to other sub-contractors/ input or input service providers in the supply chain. • This leads to cascading of taxes within the supply chain.	It is recommended that the GST exemption benefit provided to the Government borne training services is extended across the supply chain and should not be restricted only to the main contractor level.

SL No	Area of concern	Issues	Recommendation
E.9	Clarification on classification of 'parts' and 'accessories' of motor vehicles in lieu of the Supreme Court decision in the case of Westinghouse Saxby Farmer (2021-VIL-33-SC-CE) (hereinafter referred as Westinghouse)	• The Supreme Court in its decision has relied upon Note 3 of Section XVII which deals with 'parts' and 'accessories' to state that since parts are used solely and principally for Railway signaling/traffic control equipment, hence the same is classified under HSN 8608.	• The Government should issue a detailed Circular clarifying that the said decision of Westinghouse may not be applied uniformly to all parts and accessories which are being used by motor vehicles/two wheelers

		• The judgment of the Supreme Court provides relief to the 'parts' which are used in 'railway equipment's' however its interpretation is resulting in wide ranging ramification for other industry players, specifically the industry players in the automobile sector. • This is because, there are various parts and accessories which are principally designed for use in motor vehicles/two wheelers, but which have specific HSN classifications. Further, such classification has been derived after applying the Section notes, Chapter notes and explanatory notes of World Customs organization (WCO). • The Supreme Court had arrived at classification of parts only from the perspective of its use in Railways signaling/traffic control equipment and thus did not require to look into the other classification principles such as WCO explanatory notes etc. • However, taking the garb of the Supreme Court decision, the Revenue is now applying this principle in a general manner in a way that whichever parts or accessories are being principally designed for use in motor vehicles, the same merits classification as parts of such motor vehicles. • Such classification dispute is leading to levy of higher rate of GST at 28 percent under Chapter 87 and also leading to unwarranted litigation for the auto industry players.	for its classification under Chapter 87. • To classify 'parts' & 'accessories' for the vehicles classified under Chapter 87, following principles may be ascertained as has been provided in the explanatory notes to WCO and all such conditions stated below should be cumulatively satisfied: – The said part must not be excluded by the terms of Note 2 to the Section XVII – The said part must be suitable for use solely or principally with the articles of Chapters 86 to 88 – The said part must not be more specifically included elsewhere in the Nomenclature Appropriate clarification by the Government would bring relief to the automotive industry which presently is in dilemma and has uncertainty with the respect to classification of various products which are being used in motor vehicles/two wheelers.

Dispute resolution

SL No	Area of concern	Issues	Recommendation
F.1	Setting up of MSME focused tax committee	• MSMEs face several tax challenges especially in terms of tax compliance requirements in the early years of commencement of business. • However, there is no specific tax forum that the MSME can approach with regards to the issues faced or in case of any clarity required under the GST laws.	• It is recommended that a MSME focused tax committee is formed so as to address the direct and indirect tax issues faced by MSMEs on a fast track basis. • Given the renewed focus of the Government of India on MSMEs and 'Aatmanirbhar Bharat' initiative, a focused committee would help in growth of business of MSMEs.

Invoices/Credit Notes/Receipt Voucher

SL No	Area of concern	Issues	Recommendation
G.1	Issuance of credit notes in cases of bad debts/ amendment requirement in invoices	• A debt becomes a bad debt when a reasonably prudent commercial person would conclude that there is no reasonable likelihood that the debt will be paid in whole or in part by the debtor or by anyone else. In such an instance, the company writes off the debt in its books of account. • There is no provision in GST laws for providing any relief with regards to GST paid on transactions which convert into bad debts (non-payment of consideration by the	• It is recommended that a provision be included in Section 34(1) of the CGST Act allowing the re-claim of credit in relation to bad debts written off by the company and in cases where the invoice is required to be amended.

		recipient of goods/services). Hence, GST already paid on bad debts cannot be adjusted and becomes a cost to the service provider. • In the current scenario, where the entire industry has been hit by COVID and there are increasing cases of non-recoveries, the instances of bad debts have increased multi-fold and the tax- payers are forced to take major hit in their cash flow. • At this juncture, we wish to highlight that various countries have already provided for credit reversal/ adjustment in case of bad debts as follows: – **New Zealand**: The GST law allows a person to deduct that portion of the amount of tax charged in relation to that supply as the amount written off as a bad debt bears to the total consideration for the supply, on satisfaction of conditions relating to return furnishing and writing off of bad debts – **Australia**: The Australian GST laws provide for recovery of GST in case of bad debts written off on satisfaction of conditions in relation to period of non-recovery of debt and accounting system • Further, there are many instances where the recipient of a supply insists on adding certain additional details like the PO number, LUT reference number or some other specific details (that are not covered under Rule 46 of the CGST Rules) as a condition to make payment to the	• This can be done by amending Section 34(1) of the CGST Act in the following manner: *"34. (1) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the taxable value and/ or tax charged is not recovered by the supplier and is treated as bad-debts in the books of account of the supplier, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, or where a tax invoice is required to be amended by the supplier, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed."* •

		supplier. In such cases, the supplier is bound to make amendments on the invoice to receive payment from its customers. However, Section 34(1) of CGST Act does not cover such situations either.	

SL No	Area of concern	Issues	Recommendation
G.2	Non-applicability of receipt voucher on advance received against supply of goods	• As per the Notification No. 66/2017-Central Tax dated November 15, 2017, all suppliers of goods who have not opted for composition scheme, have been exempted from payment of GST on advances received. For such categories of taxpayers, time of supply arises only at the time of issuance of tax invoices. • However, the requirement to issue a receipt voucher against advances received, as per Section 13(3)(d) of the CGST Act has not been removed. • This means that while the supplier of goods is not required to pay GST at the time of receipt of advance, he is still required to issue and maintain receipt vouchers against advances received, leading to unwarranted compliance burden for taxpayers, especially small businessmen.	• It is recommended that suitable amendment is made to section 31(3)(d) of the CGST Act to clarify the non- applicability of receipt voucher on advance received against supply of goods. This will help the taxpayer from unwanted compliance burden.

Place of Supply

SL No	Area of concern	Issues	Recommendation
H.1	Parity/ zero-rated GST on Air Courier mode for exports	• The current GST laws have an incidence of 18 percent IGST on air courier/ express mode of shipment. Sellers can claim refund of this post realisation of export proceeds, but this increases MSMEs working capital costs. In this model, the logistics cost is increased to the extent of the GST component charged by Indian logistics entity to foreign entity. This is impacting the cost competitiveness of MSME exporters from India.	• It is recommended that a clarification be issued stating that the place of supply for courier service of export shipments shall be recipient based (and not performance based), in line with the FAQs on place of supply for transportation of goods services. • This will bring in parity in place of supply for services of transportation of goods and courier services for export shipments. • Having courier service charges being zero rated will ensure that cross border shipping costs remain competitive for Indian service providers, thus providing a boost to exports from India.

Time of Supply

SL No	Area of concern	Issues	Recommendation
I.1	Time of supply provisions for reverse charge transactions to be amended to increase the time limit by when the liability should be discharged	• As pe Section 12 of the CGST Act, the time of supply in case of goods covered under reverse charge is the earliest of the following: (a) the date of the receipt of goods or (b) the date of payment to supplier or (c) the date immediately following 30 days from the date of issue of invoice. • Similarly, under Section 13 of the CGST Act, the time of supply in case of services covered under reverse charge is the earliest of the following: (a) the date of payment to the supplier or (b) the date immediately following 60 days from the date of issue of invoice. • As per the above provisions, practically for the recipient of supplies of goods/ services under reverse charge, the time period for the payment of tax within 30 or 60 days (as the case may be) from the date of issue of invoice by the supplier becomes quite short, considering the time taken for submitting the invoice, taking various internal approvals and processing of invoice. This time lag creates unnecessary interest liability if invoice payment is not made within 30 or 60 days (as the case may be).	• It is recommended that the time limit (time of supply) prescribed in case of supply of goods and services under reverse charge mechanism is increased to at least 90-120 days (from 30/ 60 days), as was prescribed in the erstwhile service tax laws. This will reduce the burden of undue interest liability on recipients owing to the internal procedural lapses that are usually out of control.

Reverse Charge

SL No	Area of concern	Issues	Recommendation
J.1	Utilization of input tax credit for payment of liability on reverse charge transactions	• As per Rule 85(4) of CGST Rules reverse charge liability is required to be discharged in cash by the recipient of services. The said liability cannot be discharged by utilizing the input tax credit available with such recipient of services. • This results in unnecessary cash outflow by the recipient of services, as irrespective, the transaction is revenue neutral, as the assessee can claim input tax credit of such GST paid. • In times of the global pandemic, the industry is grappling with cash constraints, and hence, cash payment of reverse charge liability causes additional burden and blockage of working capital.	• It is recommended that the requirement of payment of reverse charge liability in cash should be removed by way of amending the Rule 85(4) of the CGST Rules, thereby allowing the payment of GST under reverse charge by utilizing the eligible input tax credit available with the recipient of such supplies. This will relieve the pressure on working capital as taxpayers will be saved from cash outflow as well as possible refund scenario due to credit accumulation.

SL No	Area of concern	Issues	Recommendation
J.2	Payment of GST on sponsorship services under forward charge	• Presently, GST on sponsorship services provided to body corporate or partnership is required to be paid under the reverse charge mechanism, wherein the recipient of services is liable to discharge the GST liability on the same.	• It is recommended that the Notification No. 13/2017-Central Tax (Rate) dated June 28, 2017 is amended to provide the service provider with an option to pay tax

		• Further, supplies falling under the reverse charge mechanism qualify as exempt supply from the supplier's perspective. • In terms of Section 17(2) of the CGST Act, the registered person who uses inputs and input services to effect both taxable and exempt supplies (including supplies paid by the recipient of services under reverse charge mechanism) is allowed to avail input tax credit attributable only to effecting the taxable supplies (and not the exempt supplies). • Therefore, even though the tax is paid under reverse charge by the service recipient, the turnover relating to the sponsorship amount is subject to reversal of input tax credit (as it gets qualified as an exempt turnover) in the hands of the service provider. • This causes loss of input credit to the service provider and hardship in undertaking the procedure and calculation for reversal for inputs, input services as well as capital goods, as the case may be.	under forward charge, similar to the option made available to Goods Transport Agencies. • This is important in order to mitigate the cumbersome process of reversal of input tax credit in the hands of supplier.

Schedule to GST Acts

SL No	Area of concern	Issues	Recommendation
K.1	Taxability of services/ perquisites (perks) provided by employers to their employees	• As per Schedule III to the CGST Act services by an employee to the employer in the course of or in relation to his employment shall be treated neither as a supply of goods nor as a supply of services. This means that the services provided by an employee to an employer in relation to his employment do not qualify as a supply under GST, and hence, is not taxable. • However, services provided by an employer to its employees, as part of recruitment perks and benefits, for which there is no consideration given by the employee to the employer, are considered as a supply by 'related persons' (refer Section 15 of the CGST Act), and hence, gets covered under Clause 2 of Schedule I to CGST Act as an activity treated as a 'supply' even without consideration. Hence, supply of services by employer to employee becomes taxable under GST, whether or not there is a corresponding consideration involved. • In a business, employer provides various services/ facility/ perks to its employees in the course of or in relation to his employment to perform his duties in well and efficient manner, with or without charging any consideration from	• It is recommended: – to remove employer and employee from the meaning of related persons given u/s 15 of CGST Act so that no tax is chargeable on providing of facility/ services by an employer to its employees without any consideration as per Schedule I to the CGST Act, in so far as the same is covered by the employment contract. to include supply of services by an employer to the employee in the course of or in relation to employment also in Schedule III to the CGST Act, so as to make the same neither a supply of goods nor a supply of services (ie, 'non supply') under GST law.

		employees such as free or concessional food, insurance, transportation and other facilities. • Further, given the global pandemic where companies were bound to allow work from home to its employees, the employers also allowed more perks and benefits to the employees to motivate them and create a more work friendly environment for the employees within their homes (such as allowance for free furniture and other accessories to the employees). • In view of the above said provisions, such free or concessional facilities provided by employer to employee in course of or in relation to employment becomes supply and chargeable to tax, including the cases where there is no consideration payable by employee to employer.	

SL No	Area of concern	Issues	Recommendation
K.2	Taxability of import of services without consideration	• As per Entry 4 of Schedule I to the CGST Act, import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business is deemed as a supply of services, even if the same is made without any consideration. • It is to be noted that in most of the cases, the recipient is eligible to claim an input credit for such GST paid on free of cost import of services, thereby making the GST payment a revenue neutral transaction for the taxpayer.	• It is recommended that the applicability of Entry 4 of Schedule I to the CGST Act is limited to only those cases where the recipient of services is ineligible to claim full input tax credit of the GST payable on such import of services without consideration.

		Hence, the entire exercise of paying GST on such transactions is a futile one.	

Other Miscellaneous issues

SL No	Area of concern	Issues	Recommendation
L.1	GST on healthcare services – to be made from exempt to zero-rated	• Healthcare services are exempt from GST under the Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017 and Notification No. 9/2017-Integrated Tax (Rate) dated June 28, 2017. • Accordingly, input tax credit of GST paid on inputs and input services is not available on such services, and hence become a cost for the industry. • Given the global pandemic, the healthcare industry of India should be motivated and made as cheap as possible for general public, and hence, any additional cost should be avoided.	• It is recommended that healthcare services should be placed under the category of 'zero-rated services' under Section 16 of the IGST Act. • This will enable the industry to claim rebate of the GST paid on inputs and/ or input services used for the provision of output healthcare services, thereby decreasing the cost of the overall healthcare services.

SL No	Area of concern	Issues	Recommendation
L.2	Extension of time-limit of 6 months to 24 months on Sale on Approval (SOA) transactions under GST	• Section 31(7) of the CGST Act provides for the timelines for issuance of invoice where goods are sent or taken on approval for sale or return basis. In terms of the said section, invoice, in respect of goods sent on approval for	• A reasonable period of 24 months will allow device suppliers to keep entire variants without issue of GST exposure on unconsumed items,

		sale or return basis, shall be issued at earliest of: (i) time of supply or; (ii) date immediately after the expiry of 6 months from the date when goods were removed. • In healthcare industry, sale on approval is a common model, wherein the hospitals require the suppliers of medical devices and equipment to stock all variants of critical devices, as the actual need is only clear at the time of a surgery/ medical procedure. • With the above provision, the suppliers are able to stock such goods only till 6 months' putting the hospitals in a distress situation in the times of critical patient needs due to the nature of their business.	while also not impacting critical patient care. • Accordingly, Section 31(7) of the CGST Act should be reasonably amended to take this requirement of the healthcare industry into consideration.

SL No	Area of concern	Issues	Recommendation
L.3	Detail of 'GST TDS credit received data' deducted by the Government customers, should be displayed at invoice level on GST portal	• Currently the 'GST TDS credit received data' is displayed on the GST portal of the deductee at the customer level. However, TDS is deducted at invoice level, depending on the amount of invoice. • This makes the reconciliation of deductions difficult for the deductees.	• It is recommended that the GST system and portal, particularly the GSTR-2A (Part C) is amended to reflect the TDS deduction details at invoice level, and not at customer level. • This would ease the reconciliation activity and would also help ensure TDS is deducted on correct invoices.

SL No	Area of concern	Issues	Recommendation
L.4	Addition of provisions under Section 77 of the CGST Act and 19 of the IGST Act to cover instances where GST is paid to the treasury of an incorrect State	• As per Section 77 of the CGST Act and Section 19 of the IGST Act read with relevant sections under the respective State GST/Union Territory GST (SGST/ UTGST) Acts, in case IGST is paid in place of SGST/ UTGST and CGST, and vice-versa, the said taxes so paid will be refunded and no interest will be levied on non-payment of the correct type of tax, provided the correct type of tax is paid subsequently. • The said provision, however, does not apply in cases where the correct type of tax is paid, however to the treasury of an incorrect State.	• The objective of Section 77 of the CGST Act and Section 19 of the IGST Act is to provide relaxation from payment of interest in case where full tax amount has been discharged but the tax type is incorrect. This means that the intent of the law is that essentially, in case of revenue neutral situations, interest and penalty exposure should not apply. • Hence, keeping in view the intent of the law, it is recommended that this logic is extended to correct type of taxes that are incorrectly discharged to the treasury of an incorrect State, ie, where IGST is paid to the account of one State instead of another, and/or in rare circumstances, CGST and SGST are paid to the wrong State.

SL No	Area of concern	Issues	Recommendation
L.5	Streamlining of GST audit for big corporate entities (e.g. turnover in excess of INR 500 Cr.)	• As per the GST laws, each assessee is allotted either to the central Government or State Government jurisdiction in each State for the purpose of audit/ assessments. However, with Central and State Government authorities cross empowered to undertake audit/ assessment/ investigation, there are situations where assessees are issued multiple notices/ summons on the same issue. • This issue assumes greater significance for assessee having PAN India business as they may be sitting with hundreds of notices.	• It is recommended to direct GST audit for entities bearing a turnover exceeding INR 500 Cr. towards the Central GST authorities. • This would aid in streamlining the audit process and lead to greater transparency and ease of closure of the entire audit process. • Alternately, cross empowerment should not be allowed as it creates additional challenges for the assessee.

SL No	Area of concern	Issues	Recommendation
L.6	Inclusion of petroleum products in GST	• Petroleum products viz. crude oil, natural gas, motor spirit, high-speed diesel and aviation turbine fuel are currently outside GST and are subject to the indirect taxes as per the erstwhile regime. Sale of such goods attract Value Added Tax (VAT)/ Central Sales Tax (CST). • The inputs, capital goods and services used for production of above goods attract GST, whereas the output is subject to VAT/ CST, owing to which the GST paid becomes a stranded cost for most of the sectors.	• It is recommended that necessary amendments should be made to subsume petroleum products under GST to pass on the benefit of such petroleum products and provide hassle free flow of input credit. This shall not only result in cost efficiency, but also reduce the tax related complications.

		• At the same time, petroleum products are required by all automotive sector i.e. motor vehicles and airlines as fuel, but the taxes paid (VAT / CST) on such procurement is not eligible as input tax credit to the industry and accordingly becomes cost for the entire industry. Furthermore, these goods are also a key source of fuel used by the manufacturing and service industry, especially, where the source of electric power is not uninterrupted, and thus the VAT/ CST paid on procurement is also a cost to the manufacturing and service sector as well. • Taxes paid (VAT/ CST) on procurement of petroleum products are not eligible as input tax credit to the industry and accordingly becomes a cost in the entire chain. • Having a separate tax structure goes against the basic premise of GST of 'one nation, one tax'. This also is against the principles of 'ease of doing business'. It also adds to the complication and multiplicity of taxes.	• Further, till such an amendment is made, the Government should provide a mechanism of cross credit utilization of VAT/ CST and GST.

SL No	Area of concern	Issues	Recommendation
L.7	Concept of 'payment under protest' to be included in the GST regime	• Payment of tax under protest is a concept where in case the assessee is not able to ascertain the tax treatment on an issue/ product, or when there are divergent views emerging due to ambiguity in the law, the assessee pays applicable tax/ duty under protest, subject to the same being refunded if the matter is decided in favour of the	• It is recommended that the concept of 'payment of tax under protest' is reintroduced in the GST regime as well, so that the benefit of the same can be availed by the taxpayers.

		assessee and the incidence of such tax/ duty is not passed on to the buyers/ recipient. • The concept of 'payment under protest' was a well-recognized concept under the erstwhile indirect tax laws. However, under GST, there are no specific provisions and mechanism to support payment of taxes under protest. • Further, as per the Final GST FAQ 3rd Edition dated December 15, 2018, it has been clarified that GST law does not recognize the concept of payment of tax under protest *(refer Question 55).* • This brings in discomfort within the taxpayers willing to pay tax under protest, in absence of clear guidelines regarding the refund/ treatment of such taxes in case the disputed matter is decided in favor of the assessee or in cases where the assessee feels obligated to make tax payment under the stress of tax investigations.	

SL No	Area of concern	Issues	Recommendation
L.8	Clarification on issues relating to post-sale discounts	• The treatment of post-sale discounts under the indirect tax laws have always been a matter of intense litigation. • In order to put such disputes at rest, the Central Board of Indirect Taxes & Customs (CBIC) had issued the following two circulars:	• It is recommended that an urgent clarification is issued to address the open aspects around post-sale discount, including the following: – No reversal of input tax credit will be required against post-sale

		– Circular No. 92/11/2019-GST dated March 7, 2019 and – Circular No. 105/24/2019-GST dated June 28, 2019 • The above circulars had attempted to address the various issues relating to post-sale discounts and eligibility of input tax credit in such circumstances. • However, various industry representations were made expressing apprehensions on the implications of the Circular No. 105/24/2019-GST dated June 28, 2019, which led to the withdrawal of the same *ab initio vide* Circular No. 112/31/2019 – GST dated October 3, 2019. • The withdrawal of the Circular No. 105/24/2019-GST dated June 28, 2019, without issuance of another clarificatory circular/ notification has led to more confusion and ambiguity within the industry on various aspects and types of post-sale discounts, and their GST treatment. In addition to this, various conflicting Advance Rulings on the matter has also increased the confusion.	discounts that are extended through issuance of financial/ commercial credit notes – Reimbursement of additional discount to the dealer by the supplier of goods will not constitute as 'consideration' flowing from the supplier of goods to the dealer for the supply made by dealer to his customer • Clear guidelines should be issued to identify the kinds of activities/ obligation undertaken by the dealer that would qualify as a separate transaction attracting the levy of GST.