



## **Post - Budget Memorandum 2021 - 22**

### **Indirect Taxes**

#### **American Chamber of Commerce in India**

PHD House, 4<sup>th</sup> Floor, 4/2, Siri Institutional Area, August Kranti Marg, New Delhi-110016

Tel: 91-11-2654 1200, 91-11-4650 9413 Fax: 91-11-2654 1222

Email: [amcham@amchamindia.com](mailto:amcham@amchamindia.com) [www.amchamindia.com](http://www.amchamindia.com)

**AMCHAM Pre-Budget Memorandum  
Recommendations for Union Budget 2021-22**

**Indirect Tax**

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## Central Sales Tax Act, 1956 ('CST Act')

### 1. **Procurement against issuance of C form**

#### Issue/rationale

The Hon'ble Finance Minister in the Budget proposal for CST Act, has proposed to amend the provision of section 8(3)(b) which deals with procurement of goods against Form C. The amendment proposes to deny the facility of procurement of goods at concessional rate for use in manufacturing or processing of goods covered under GST, in mining, or in generation or distribution of power, or in telecommunication network, etc.

Section 2(d) of the CST Act defines 'Goods' and includes (i) petroleum crude; (ii) high speed diesel;(iii) motor spirit (commonly known as petrol); (iv) natural gas; (v) aviation turbine fuel; and (vi) alcoholic liquor for human consumption;

The inter-state procurement of these petroleum products (specifically natural gas, petrol, diesel) at a concessional rate of tax @ 2% provides a breather to the industry, since petroleum products are not under the GST regime and GST paid on procurement of goods/ services is not eligible as input tax credit since Natural Gas/ Petrol/ Diesel is not under the GST regime. This increases the cost of manufacturing of goods as well as the logistics cost in India.

Furthermore, petroleum products are subject to higher rates of tax as compared to other commodities. The rate varies from state to state for example, the State of Andhra Pradesh levies VAT @ 24.5% on sale of natural gas whereas other states (e.g. Tamil Nadu, Kerala) levy VAT @ 5%, thereby leading to distortions. Also, this would indicate that import of gas would be cheaper in comparison to domestic procurement since custom duty is levied at 2.5% only.

With the Government of India's aim to promote domestic manufacturing, it is advisable that issuance of Form C should continue as this would ensure reduction in import of petroleum products and encourage domestic procurements.

**Recommendation/ Suggestion**

Re-instate the language of Section 8(3)(b) of the CST Act similar to what was there prior to the Amendment proposed in the Union Budget 2021-22 and allow the facility of issuance of Form C for the respective activities.

Ensure a uniform rate of CST by including petroleum goods under the in line with the concept of declared good and levy tax @ 4% on the same.

**Integrated Goods and Services Tax Act, 2017 ('IGST Act')**

**2. Export with payment of Integrated Goods and Services Tax ('IGST')**

**Issue/rationale**

Clause 114 of the FB'21 proposes to substitute section 16(3) of the IGST Act, which deals with claim of refund by a registered person making zero rated supply.

The proposed amendment seeks to insert a new sub-section (4) after section 16(3) to restrict the refund claim by the exporters making zero rated supply with payment of IGST only to notified class of persons and/or for notified class of goods or services, as against the existing provision which allows this facility to all class of exporters and for all class of supplies.

The proposed amendment is expected to increase the compliance burden of genuine exporters, who will now be required to maintain and submit voluminous documents at the time of filing of refund claim and will directly impact the working capital.

**Recommendation/ Suggestion**

To re-instate/withdraw the proposed amendment as it will have a negative impact on the exporter community and reduce their competitiveness in global market.

### 3. **Non-realization of Foreign exchange**

#### **Issue/rationale**

Clause 114 of the FB'21 proposes to substitute section 16(3) of the IGST Act, which deals with claim of refund by a registered person making zero rated supply.

The proposed amendment seeks to provide for recovery of refund amount granted in case of non-realization of foreign exchange within the time prescribed under the Foreign Exchange Regulation Management Act ('FEMA').

The above amendment aims to provide a legal backing to Rule 96B of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') which was inserted vide notification no. 16/2020-Central Tax dated 23 March 2020. Rule 96B prescribed rules for recovery of refund amount granted upon non-receipt of foreign exchange.

However, the proposed amendment to section 16(3) and the corresponding rule 96B has not prescribed, whether

- a. the said amendment will apply even to those exporters who have already filed their refund claim prior to the amendment and the same is pending before the department for sanction;
- b. the said amendment would apply to those exporters who have exported the goods prior to the amendment coming into effect; and
- c. once the refund amount has been recovered consequent to the amendment, the exporter can claim the refund upon subsequent receipt of the foreign currency;

#### **Recommendation/ Suggestion**

To issue a clarificatory circular to address the issues or concerns laid above.

#### **Central Goods and Services Tax Act, 2017 ('GST Act')**

#### **4. Provision for detention, seizure and release of goods**

##### **Issue/rationale**

Clause 108 of the FB'21 proposes to delink the proceedings under section 129 from the proceedings provided under section 130 relating to confiscation of goods or conveyances and levy penalty.

The proposed amendment provides for levying penalty equivalent to 200 per cent of tax (earlier 100 per cent) for release of such confiscated goods or conveyance.

By virtue of the above amendment, in case of confiscation of goods and/or conveyance, the taxpayer will now be required to pay penalty of 200 per cent of the tax payable. Imposition of penalty as high as 200 per cent is likely to affect genuine taxpayer, as there has been many reported cases where the goods/conveyance have been confiscated for mere clerical errors. The new provision is prone to misuse by the field officers even for minor/inadvertent errors.

##### **Recommendation/ Suggestion**

Withdraw the proposed amendment or alternatively issue clear guidelines/instruction depicting the cases where penalty may be levied instead of blanket provision requiring penalty in all cases. Further, the scale/quantum of penalty may be fixed considering the severity of non-compliance.

#### **5. Provisional attachment of property**

##### **Issue/rationale**

Clause 106 of the FB'21 has proposed to substitute Section 83(1) of the CGST Act. As per the existing provision, the proceedings for provisional attachment may be initiated by the Commissioner for a restricted category of assessments, search and seizure, and demand and recovery proceedings. These restricted categories were in the nature of provisional attachment of property of non-filers, unregistered persons, summary assessment in certain cases, etc.

The proposed amendment seeks to empower the commissioner with the power to initiate provisional attachment immediately after the initiation of proceedings under chapter XII, chapter XIV or chapter XV.

The proposed amendment seeks to bring within its ambit all the provisions contained under Chapter XII which includes self-assessment, provisional assessment, scrutiny of returns, etc., Chapter XIV which includes inspection of goods in movement, and chapter XV of the CGST Act.

It is prudent to note that here that most of the sections under the aforementioned chapters may or may not culminate into raising of demand due to any fraud, misrepresentation or misuse. However, the amendment extending the power of attachment of property is likely to be misused by the field officers.

**Recommendation/ Suggestion**

To withdraw the proposed amendment and attachment may be mandated only in case of severe cases of evasion.