

Pre - Budget Memorandum 2022 - 23

Indirect Taxes - Customs



American Chamber of Commerce in India

PHD House, 4th Floor, 4/2, Siri Institutional Area, August Kranti Marg, New Delhi-110016
Tel: 91-11-26541200, 91-11-46509413 Fax: 91-11-26541222 Email: amcham@amchamindia.com
www.amchamindia.com

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

Customs - Indirect Tax

Contents

| | |
|--|-----------|
| A. Classifications and duty rates..... | 4 |
| A.1. Basic Customs Duty (BCD) on Telecom products | 4 |
| A.2. Ambiguities in Customs Tariff Act, 1975 (Customs Tariff Act) on telecom products that are eligible for exemption | 4 |
| A.3. Ambiguities in Customs Tariff Act on telecom products that can seek exemption..... | 6 |
| A.4. Alignment of goods classification with global best practices | 7 |
| A.5. Basic Customs Duty on Preform of Silica to be reduced to Nil | 8 |
| A.6. BCD exemption on goods used in pharmaceutical and biotechnology sector | 9 |
| A.7. BCD exemption for sterilizers to improve device reprocessing..... | 12 |
| 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)..... | 12 |
| A.9. BCD and health cess exemption on sight-saving and sight-enhancing medical devices & equipment..... | 14 |
| A.10. Reduction of BCD rate on Lenscare solution, which is subservient to usage of contact lenses..... | 15 |
| A.11. Reduction in BCD rate on Olive Oil | 16 |
| A.12. Frequent tariff duty rate changes and consequent possibility of disputes | 16 |
| A.13. Reduction in BCD rate on mobile phones | 17 |
| B. Safeguard measures | 18 |
| B.1. Imposition of safeguard duty on optic fibre recommended by Directorate General of Trade Remedies (DGTR)..... | 18 |
| C. Special Valuation Branch (SVB)..... | 18 |
| C.1. SVB not applicable for clearance to Free Trade Warehousing Zone (FTWZ) | 18 |
| C.2. Levy of Extra Duty Deposit (EDD) under the SVB process | 20 |

| | |
|---|-----------|
| D. <u>Policy Issues and Recommendations/ AEO accreditation</u> | 21 |
| D.1. Various issues regarding Authorized Economic Operator (AEO) programme Guidelines | 21 |
| D.2. Late Charges on non-submission of Bill of Entry (BoE) | 23 |
| D.3. Amendment to Notification No.104/1994 - Customs dated 16 March 1994, relating to exemption to containers of durable nature | 23 |
| D.4. Amnesty Scheme for Customs | 24 |
| E. <u>Other Miscellaneous Issues</u> | 24 |
| E.1. Levy of demurrage on holidays/ weekends | 24 |
| E.2. Refund claim contrary to an assessment order | 25 |
| E.3. Facilitation for bulk clearance of e-commerce import / export shipments | 26 |
| E.4. Refund of Countervailing Duty (CVD) and Special Additional Duty (SAD(paid on pre-GST imports..... | 26 |
| E.5. Valuation under Customs and Transfer Pricing for transaction between related parties | 28 |
| E.6. Payment of pre-deposit and under protest payment through manual TR-6 Challan..... | 29 |
| F. <u>Annexure A</u> | 29 |

Classifications and duty rates

| SL. No | Area of Challenge | Issue | Justification/ Recommendation |
|--------|--|---|---|
| A.1 | Basic Customs Duty (BCD) on Telecom products | <ul style="list-style-type: none"> 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. | <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> 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. | <ul style="list-style-type: none"> Amend the Notification No. 57/2017 – Customs dated 30 June 2017 in the following manner: |

| | | | |
|--|--|--|--|
| | | <ul style="list-style-type: none"> • Notification No. 57/2017 – Customs dated 30 June 2017 prescribes an effective rate of 10 percent (SI 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. | <ul style="list-style-type: none"> - to bring all the ITA products (including VoIP), under Nil rate of BCD - alternatively/ in the meantime, amend SI. 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 | <ul style="list-style-type: none"> • 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. | <ul style="list-style-type: none"> • 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. |

| | | | |
|--|--|--|--|
| | | <p>Consequently, Ethernet Switches (without carrier) should merit a BCD rate of 10 percent as per the said Notification.</p> <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> 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. | <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> • 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 | <ul style="list-style-type: none"> • 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 | <ul style="list-style-type: none"> 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. | <ul style="list-style-type: none"> 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: <p><u>List 21</u></p> <p>(a) Cell cultivation devices, namely, roller bottle systems and spinner flasks</p> |

| | | | |
|--|--|--|--|
| | | <ul style="list-style-type: none"> • 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. | <ul style="list-style-type: none"> (b) Electrophoresis system – (Protein & DNA; 2D) (c) ELISA Reader, <u>ELISA Plates and Stripwell Plates</u> (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, <u>Centrifuge Tubes</u> (g) DNA/Oligonucleotides Synthesizers and DNA Analysers, <u>Micro centrifuge tubes & tips</u> (h) Electrophoresis system (protein and DNA; 2D) (i) Flow Cytometer/FACs, <u>Round bottom tubes</u> (j) Gel Documentation System <p><u>List 22</u></p> <ul style="list-style-type: none"> (a) UV/Visible spectrophotometer, either with PDA and/or kinetics measurement and low bandwidth, <u>UV Plates</u> (b) Robotic sample processing system, <u>Robotic Tips</u> (c) Sample preparation instrument, <u>micro volume tips, filter tips, maximum recovery tips</u> |
|--|--|--|--|

| | | | |
|--|--|--|--|
| | | | <p>(d) CO2 incubator, <u>Cell culture consumables</u></p> <p>(e) Polymerase chain reaction machine, <u>PCR tubes, PCR plates, PCR strip tubes</u></p> <p><i>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.</i></p> <ul style="list-style-type: none"> • 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 | <ul style="list-style-type: none"> • 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. | <ul style="list-style-type: none"> • 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) | <ul style="list-style-type: none"> • As per Notification No. 52/2003 - Customs dated 31 March 2003 (amended <i>vide</i> Notification No. 78/2017- Customs dated 13 October 2017 and last amended <i>vide</i> 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. | <ul style="list-style-type: none"> • It is recommended that the IGST exemption under Notification No. 52/2003 - Customs dated 31 March 2003 is further extended. |

| | | | |
|--|--|--|--|
| | | <ul style="list-style-type: none">• 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 | <ul style="list-style-type: none"> • 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 (<i>Refer Sl. No. 563A to Notification No. 50/2017 – Customs dated 30 June 2017</i>). • 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. | <ul style="list-style-type: none"> • 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. |

| | | | |
|--|--|---|--|
| | | <ul style="list-style-type: none"> • 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 | <ul style="list-style-type: none"> • 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. | <ul style="list-style-type: none"> • 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. |

| | | | |
|--|--|---|--|
| | | <ul style="list-style-type: none"> • 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 | <ul style="list-style-type: none"> • 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. | <ul style="list-style-type: none"> • 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 | <ul style="list-style-type: none"> • 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. | <ul style="list-style-type: none"> • It is recommended that any upward revision of duty rates should be accompanied with protection for reopening of assessment practice of the |

| | | | |
|--|--|--|---|
| | | <ul style="list-style-type: none"> 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. | <p>past period, which can possibly precipitate disputes for the past period.</p> <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> 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. | <ul style="list-style-type: none"> 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) | <ul style="list-style-type: none"> 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. | <ul style="list-style-type: none"> 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) | <ul style="list-style-type: none"> There is lack of clarity whether SVB would only be applicable on clearance made from FTWZ to related parties. | <ul style="list-style-type: none"> Clarify the non-applicability of provisions related to SVB for clearances into FTWZ. |

| | | | |
|--|--|--|--|
| | | <ul style="list-style-type: none"> • 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 - <ul style="list-style-type: none"> (a) Goods imported into a FTWZ does not invoke any Custom assessment and valuation; | |
|--|--|--|--|

| | | | |
|--|--|--|--|
| | | <p>(b) Goods cleared from a FTWZ is subject to Customs assessment and valuation.</p> <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> 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. | <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> • As per Circular No. 33/2016 - Customs dated 22 July 2016: <ul style="list-style-type: none"> - 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 | <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> - 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 |

| | | | |
|--|--|---|--|
| | | <p>through ICEGATE from a date that would be communicated separately. However, the said facility is yet not provided</p> <ul style="list-style-type: none"> • 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. | <p>system on payment of nominal fee</p> <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> - 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) | <ul style="list-style-type: none"> As per Circular No. 08/2021 - Customs dated 8 March 2021, read with Circular No. 12/2017 - Customs dated 31 March 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. | <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> 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. | <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> 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). | <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> While calculating the demurrage charges, holidays and weekends are also counted. while there may not be any fault of the importer. | <ul style="list-style-type: none"> It is recommended that the demurrage/ penalty for long weekend/ holidays on which |

| | | | |
|--|--|--|--|
| | | | <p>importer is not responsible should not be charged.</p> <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> 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 assessee 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. | <ul style="list-style-type: none"> 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 | <ul style="list-style-type: none"> • 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. | <ul style="list-style-type: none"> • 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 | <ul style="list-style-type: none"> • 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 | <ul style="list-style-type: none"> • Central Board of Indirect Taxes & Customs (CBIC) should lay out the complete procedure, formats for claim of refund of duty paid, notify |

| | | | |
|--|--|--|--|
| | | <p>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.</p> <ul style="list-style-type: none"> • 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. | <p>proper officer for processing of such refund.</p> |
|--|--|--|--|

| SL No | Area of concern | Issues | Recommendation |
|-------|--|---|--|
| E.5 | Valuation under Customs and Transfer Pricing for transaction between related parties | <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> - 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. | <ul style="list-style-type: none"> • 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 | <ul style="list-style-type: none"> • 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. | <ul style="list-style-type: none"> • 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.