

Pre-Budget Memorandum 2023 - 24

Indirect Taxes - Customs



American Chamber of Commerce in India

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**AMCHAM Pre-Budget Memorandum
Recommendations for Union Budget 2023-24**

A. Classifications and duty rates	3
A.1. Reduction of Basic Custom Duty ('BCD') rate on Lenscare solution, which is subservient to usage of contact lenses	3
A.2. Basic Customs Duty (BCD) on Telecom products	3
A.3. Continuity of end-use exemption claimed under Notification No. 50/2017 under Sr. 168, 341 & 341A for specific raw materials of Optical Fiber / Optical fiber cables	4
A.4. Ambiguities in Customs Tariff Act on telecom products that can seek exemption	5
A.5. Reduction in BCD rate of chemicals used for cleaning and disinfectant's purpose	8
A.6. Concession to Biofuel products on similar lines as that of Compressed Biogas ('CBG')	Error! Bookmark not defined.
A.7. BCD on Intra Ocular Lenses, Ophthalmic equipment & Accessories to be reduced to NIL	10
B. Special Valuation Branch (SVB).....	10
B.1. Mechanism of Special Valuation Branch ('SVB') in Customs	10
C. Policy Issues and Recommendations/ AEO accreditation	10
C.1. Amnesty Scheme for Customs	10
D. Other Miscellaneous Issues	11
D.1. Amendment of Section 28DA to remove the requirement of Bank Guarantee	11
D.2. Levy of demurrage on holidays/ weekends.....	12

Annexure A	13
Annexure B	14

SL. No.	Area of Challenge	Issues	Justifications/Recommendations
A.1	Reduction of BCD rate on Lenscare solution, which is subservient to usage of contact lenses	<ul style="list-style-type: none"> <li data-bbox="685 417 1068 722">– Contact lenses are subject to 10 percent BCD under Chapter Heading 9001 (HS code 90013000), however, Lenscare solution is subject to 20 percent BCD under Chapter Heading 3307 (HS code 33079020). <li data-bbox="685 774 1068 1199">– Lenscare solution is a lens disinfectant that is used regularly by 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. <li data-bbox="685 1251 1068 1717">– Due to this very high customs duty, a product that is technology and quality intensive, has become costlier resulting in customers moving away from the contact lens category. This has impacted contact lens consumption in India adversely and has moved customers to use spectacle lenses. 	<ul style="list-style-type: none"> <li data-bbox="1088 417 1494 722">– Lenscare products being used in conjunction with the usage of contact lenses, should be taxed at the same rates as a contact lens so that a level playing field can be provided to contact lenses with spectacle lenses. <li data-bbox="1088 774 1494 961">– 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.
A.2	Basic Customs Duty (BCD) on Telecom products	<ul style="list-style-type: none"> <li data-bbox="685 1768 1068 1871">– India applies a 20 percent customs duty on certain telecommunication products 	Authorities should consider revisiting the application of BCD on key telecommunication

		<p>including the component and final product such as Optical Transceiver with Printed Circuit Board Assembly which are falling under tariff item nos. (hereinafter referred to as HSN) 85171290 of the First Schedule to the Customs Tariff Act, 1975 (First Schedule).</p> <p>– It is important to note that India is at the cusp of a digital revolution, rolling out 4G services, auctioning 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 end-consumers.</p>	<p>networking products, including Optical Transceivers and Printed Circuit Board Assembly with Optical transceivers.</p>
A.3	<p>Continuity of end-use exemption claimed under Notification No. 50/2017 under Sr. 168, 341 & 341A for specific raw materials of Optical Fiber / Optical fiber cables</p>	<p>An exemption was there from payment of BCD on the import of certain raw materials for manufacturing of telecommunication grade optical fibers or optical fiber cables as mentioned in SN 168, 341 and 341 A under Notification No. 50/2017-Customs dated June 30, 2017 (“Exemption Notification”) <i>(Entries enclosed in Annexure-A)</i>. However, the said exemption is said to be withdrawn w.e.f. April 1, 2023, vide Notification No. 2/2022</p>	<p>It is recommended that said exemption from payment of duty shall continue from 01 April 2023 also.</p> <p>This restoration of exemption would be in line with Government’s Digital India and will act as a push to 5G Initiative and Smart City Initiative and any disruption through the increase of tariff will derail our existing initiative.</p>

		Customs dated February 1, 2022.	
A.4	Ambiguities in Customs Tariff Act on telecom products that can seek exemption	<ul style="list-style-type: none"> – Notification No 57, 2017 – Customs dated June 30, 2017, prescribes an effective rate of 10% (Serial no 20 - excerpt of SN 20 is given in Annexure-B) for items falling under 85176290 and 85176990. However, specific items have been excluded from the benefit of the concessional rate and therefore would attract a higher rate of custom duty – In addition to the confusion that the exclusion list has created, it is important to note that several of these items VoIP Phones, modems, etc. which are ITA products, however, have been included in the exclusion part of Notification No 57/2017-Custom thus attracting a higher rate of BCD at 20%. 	Amend Notification 57/2017-Customs to exclude all the ITA products (including VoIP), which would attract a nil rate of BCD
		<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 (i.e., non-Carrier), and often the customs authorities impose 20 percent customs duty on 	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>the Non-Carrier Ethernet Switches as well.</p> <ul style="list-style-type: none">– 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. Consequently, Ethernet Switches (without carrier) should merit a BCD rate of 10 percent as per the said Notification.	
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		<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. 	
		<ul style="list-style-type: none"> - Products such as Routers are exempted from Customs duty vide notification no 50/2017-Customs. - However, with technological advances and convergence, routers may incorporate one or more technologies such as wireless, 4G, LE/MIMO, also additional supporting features. - Irrespective of the interface and carriage medium (Broadband/Optical Fibre/LTE/4G/5G), the primary function of a router is to guide and direct network data and the OTN/MIMO/LTE are just technologies and NOT products. Hence, it is technically wrong to categorize Routers as OTN Products or MIMO Products or LTE. - Indian customs authorities have been imposing 20 	<p>It is recommended that Routers should be excluded for payment of Customs duties irrespective of the interface, carriage medium and new embedded/emerging technology embedded in it and the notifications shall be suitably amended.</p>

		percent duties even on Routers.	
		<ul style="list-style-type: none"> - SFP cables which are basically copper cables and rightly classified under HTS Code 85444292 are being queried by the Customs officer. - Since these cables have SFP connectors, Indian Customs authorities have been imposing 20% customs duties classifying it under HS code 85176290. 	SFP Cables are nothing but copper cables irrespective of any additional attachment to them and hence the clarification under 85444292 is correct. Suitable instructions need to be issued for such cases.
A.5	Reduction in BCD rate of chemicals used for cleaning and disinfectant's purpose	<ul style="list-style-type: none"> - The Import duty on Chemicals used for cleaning, and disinfection covered under chapter 3808 should be reduced to make the product affordability high. - Further, the import duty of 10% remains unchanged even during the time when there is a high need for hygiene chemicals in the country. 	It is recommended that BCD on chemicals used for cleaning and disinfectant purpose is reduced to 5% percent so that the overall cost of procurement of the same can be considerably reduced.
A.6	Concession to Biofuel products on similar lines as that of Compressed Biogas ('CBG')	<ul style="list-style-type: none"> - Currently, the import of equipment/supplies required for setting up advanced Ethanol production units attract a Basic Custom Duty of 10%-12.5%. Similar to CBG projects, it is recommended to extend the benefit of availing concession in custom duty on the imported goods required for the initial set up of the bio-fuel projects after obtaining 	Similar to CBG projects, it is recommended to extend the benefit of availing concession in custom duty on the imported goods required for the initial setting up of the bio-fuel projects after obtaining Concessional Custom Duty Certificates from the concerned ministry.

		<p>Concessional Custom Duty Certificates from the concerned ministry.</p> <ul style="list-style-type: none">– Further, there are no concessions that have been extended to these units making investment less attractive and technology deployment an expensive affair– CBG project developers can avail concession in custom duty for the imported goods required for the initial set up of the project up to March 31, 2024, after obtaining Concessional Custom Duty Certificates from Waste to Energy Division, MNRE.– On the other hand, advanced biofuel projects which are also based on similar waste feedstocks like waste biomass, municipal waste, industrial residues, etc. are not eligible for any such consideration. Extending similar concessional custom duty on all imported items used for setting up advanced Ethanol production units harnessing waste feedstocks (such as agro-residue, municipal waste, and industrial residues and streams, etc.) on fulfilment of similar conditions as applicable to CBG projects will help accelerate advanced biofuel projects in	
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		India and advance Ethanol blending Program.	
A.7	BCD on Intra Ocular Lenses, Ophthalmic equipment & Accessories to be reduced to NIL	<p>With current CSR, India has now having a huge backlog to do cataract operations.</p> <p>Ophthalmic equipment & devices play a central role in the efficient diagnosis, treatment, and management of preventable blindness. Duties for intraocular lenses, ophthalmic accessories, and ophthalmic instruments and accessories are at higher rates.</p>	It is recommended that BCD on Intra Ocular Lenses, Ophthalmic equipment & Accessories should be reduced to Zero, and Health Cess should also be rolled back.
B.1	Mechanism of Special Valuation Branch ('SVB') in Customs	<p>Presently, the SVB mechanism is entirely a manual exercise and should be in sync with Transfer Pricing regulations.</p> <p>Both these regulations continue to examine the intent of the assessee in opposite directions which increase complexity.</p>	<p>As we know that Indian government has been taking various steps toward improving the 'ease of doing business in India. Simplifying SVB is one such initiative.</p> <p>With regard to SVB, the following are the initiatives to be made:</p> <ul style="list-style-type: none"> – SVB may be made as self-declaration followed by scrutiny selection in deserving cases only (case to be basis). – There can be a declaration from a foreign supplier added to provide a confirmation that the price is not influenced by the relationship.
C.1	Amnesty Scheme for Customs	– Previous dispute resolution schemes introduced in the Budget for FY 2019 and FY 2020 for Central Excise and Service Tax disputes (Sabka Vishwas), and Income Tax disputes (Vivad se Vishwas)	An amnesty scheme along the lines of Vivad se Vishwas or other similar schemes might be a welcome decision and help in ending long drawn litigation under Customs.

		<p>respectively, giving a chance to resolve past disputes have been highly successful. They helped people, especially small businesses, immensely in getting rid of their past baggage of disputes and move ahead with a clean slate.</p> <ul style="list-style-type: none"> - In order to resolve longstanding disputes to clear up the burdened judicial pipeline, as also to upgrade the law to keep up with the times, technology and international best practices Government should take steps to end long drawn disputes. 	
D.1	Amendment of Section 28DA to remove the requirement of Bank Guarantee	<ul style="list-style-type: none"> - It was observed that imports under Free Trade Agreements (FTAs) are on the rise. Undue claims of FTA benefits have posed threat to domestic industry. Such imports require stringent checks. In this context, suitable provisions were incorporated in the Customs Act. - Section 28DA of Customs Act 1962 inter alia provides for a basic level of due diligence on the part of an importer to satisfy himself that the claimed originating criteria have been met, and that mere submission of a Certificate of Origin may not be sufficient. Further, in case where an officer has doubt, he may seek additional information or initiate 	<p>Section 28DA of Customs Act 1962 should be suitably amended considering the hardships being caused to the importers for the ease of doing business. Currently, hundreds of crores of BGs are submitted with the Customs authorities by Industry. While, the CARTOAR regulations has stipulated a timeline of 60 days for completion of verification process but the same is not being followed leading to financial hardships to importer in the nature of cost of BGs.</p> <ul style="list-style-type: none"> -

		<p>verification proceedings. Pending verification, an importer can get the goods released on submission of security/bank guarantee amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed</p> <ul style="list-style-type: none"> - The requirement of furnishing bank guarantee under CAROTAR 2020 is causing undue hardship and financial burden to the importers. 	
D.2	Levy of demurrage on holidays/ weekends	<p>While calculating the demurrage charges, holidays and weekends are also counted. while there may not be any fault of the importer.</p>	<ul style="list-style-type: none"> - It is recommended that the demurrage/ penalty for long weekends/ holidays on which the 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 the customs port.

Annexure-A

The relevant Entries are reproduced below for easy reference:

Sr. No	Chapter heading	Description	Standard rate	IGST	Condition No
168	28, 29, 32, 39, 54, 56, 70, 72 or 90	<i>The following goods, namely:</i> A. <i>Goods specified in List 5, for the manufacture of telecommunication grade -optical fibres or optical fibre cables.</i> B. C.	<i>Nil</i> <i>Nil</i> <i>Nil</i>	- - -	9 9 9
341	70	<i>Preform of silica for use in the manufacture of telecommunication grade optical fibres or optical fibre cables.</i>	5%	-	9
341A	Any Chapter	<i>The following goods for the manufacture of Preform of Silica, namely:</i> i. <i>Refrigerated Helium Liquid (2804);</i> ii. <i>Germanium Tetra Chloride (2812);</i> iii. <i>Silica tetra chloride (2812);</i> iv. <i>Silica tube (7002);</i> v. <i>Silica Rods (7002)</i>	<i>Nil</i>	-	9

Annexure-B

Excerpt of Sno 20 of Notification No. 57/2017 – Customs dated June 30, 2017

S.No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Condition No. S.No.
20	8517 62 90 or 8517 69 90	<i>All goods other than the following goods, namely: - (a) Wrist wearable devices (commonly known as smart watches); (b) Optical transport equipment; (c) Combination of one or more</i>	10%	-]

		<p><i>of Packet Optical Transport Product or Switch (POTP or POTS); (d) Optical Transport Network (OTN) products; (e) IP Radios; (f) Soft switches and Voice over Internet Protocol (VoIP) equipment, namely, VoIP phones, media gateways, gateway controllers and session border controllers; (g) Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching Transport Profile (MPLS-TP) products; 46 [(h) Multiple Input/Multiple Output (MIMO) products; (i) Long Term Evolution (LTE) products]</i></p>		
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