

# Pre budget presentation - Indirect Taxes

# Issues from a Customs/ VAT/ CST perspective

## Reinstatement of 'declared goods'

In some states, natural gas, petrol, petroleum crude, diesel and ATF could be chargeable to a higher rate of VAT. In such a scenario, as credit of VAT paid is not available for businesses dealing in supplies covered under the GST regime, the same may entail a higher tax cost

It is recommended that the concept of 'declared goods' be reinstated to include natural gas, petrol, petroleum crude, diesel and ATF, so that the VAT rate on such goods is capped to 5%

## Issuance of Form C's for purchase of excluded products

Currently, Form C's are allowed to be issued only by limited businesses like those engaged in the sale of GST excluded products, generation of electricity, etc. However, businesses other than those prescribed are not permitted to issue Form C's; the same entailing a higher rate of tax being payable on excluded products vis-à-vis the earlier tax of only 2%.

It is recommended that the concessional duty rate of 2% be prescribed for inter-state purchase of GST excluded products against Form C for businesses other than those dealing in it

Issue

Recommendation

# Issues from a Customs/ VAT/ CST perspective

## Alignment of the Customs and GST law to avoid any dual levy

There are various scenarios on which a dual levy of GST seems to apply- levy of IGST under the Customs law as well as the GST law; one of such examples being, dual levy on foreign shipping line freight

It is recommended that the Customs/ GST law be amended to avoid any dual levy on the same supply

Issue

## Reduction in customs duty on medical devices

There was a significant increase ranging 50-60% on medical devices (items under HSN codes 9018 and 9021). This has adversely impacted costs for these products in India whereas the Govt.'s agenda is to provide low cost healthcare available to masses. This is especially important in view of the fact that a significant 67-70% of healthcare spends is through private spending and there exists a wide gap in local manufacturing of high quality medical devices

Recommendation

It is recommended that the import duty rates on medical devices be restored to the earlier rate of 5% import duty (BCD) where the overall import duty costs were within range of 5% -10% and commensurate with import duty rates in other competing economies like Singapore, Malaysia, Hong Kong, Indonesia etc

# Issues from a GST perspective

## Inclusion of Oil and Gas in GST

- Petroleum products viz. crude oil, natural gas, motor spirit, high-speed diesel and aviation turbine fuel are currently outside GST
- Inputs used by Oil and Gas companies are non-creditable to them since the output supply is not subject to GST but VAT / State Excise
- Inputs of GST on procurements becomes a cost for such companies
- Similarly, VAT paid on such products as well becomes a cost for businesses dealing in supplies covered under the GST regime

- Necessary amendments should be made for subsuming fuels under GST to pass on the benefit of GST to Oil & Gas Sector and provide hassle free flow of input credit
- In the meanwhile, Government should provide a mechanism of cross credit utilization of VAT and GST

### Issue

## Transitional Provisions – Area based tax incentive schemes under Excise

- Under the pre-GST regime, various indirect tax concessions were granted to industries for setting up manufacturing facilities in special category States such as J & K, Uttarakhand, Himachal Pradesh etc.
- Similar indirect tax concessions were not included in the GST law. While the DIPP has released a notification on budgetary support for specific area based exemptions like Uttarakhand, Himachal Pradesh, J&K, North East, etc., the Scheme only manifests a refund of 58% of the central tax (except in the state of J&K, where J&K has announced the scheme of 100% refund) paid in cash vis-à-vis the earlier 100% refund of the central duties – the reduced benefits negating the earlier promise made by the Government

### Recommendation

- It is recommended that the Scheme be revisited to provide similar benefits as were promised under the pre-GST regime (except for the state of J&K, where similar benefits as under the current regime have been proposed to be continued)

# Issues from a GST perspective

## Place of supply for intermediary services

- As per GST law, the place of supply for 'intermediary services' is prescribed to be the location of supplier of service
- This effectively creates a situation where intermediary services provided to an overseas recipient will not qualify as "export of service"; entailing a levy of GST on foreign exchange earners
- The IGST Act on this subject is inconsistent with the fundamental VAT principles practiced and prevalent in VAT regimes of European Union, Canada, Australia, New Zealand, Singapore, South Africa and Malaysia

- The provision in respect of intermediary service under the IGST Act be urgently re-examined to amend the place of supply for 'intermediary service' as well under the general rule ie, location of recipient of service
- A bare perusal, basis first principles of VAT, would make it evident that the provision defeats the construct of GST as a tax on final consumption

## Issue

## Healthcare services should be zero rated in GST

- Under the current GST dispensation, Healthcare services are exempt
- Although healthcare services are exempt, the tax on inputs continues to add to the costs as there is no refund of input taxes

## Recommendation

- It is recommended to make health care services "GST free"
- This can be achieved by "zero rating" the supply to the health care service provider; whereby the unutilized input tax credit could then be claimed as refund

# Issues from a GST perspective

## Anti-Profiteering Clause

- The anti-profiteering clause in the GST law, requires companies to pass on the benefit of lower taxes & increase in input tax credit to consumers
- The law does not clarify on the nitty-gritties and mechanism for calculation of such benefits. Also, the provisions are unclear as to whether similar benefits are required to be passed on by loss making enterprises as well or could be offset against costs currently not passed on to the customer

Elaborate provisions on the mechanics of the anti-profiteering clause should be issued so that the industry can take up necessary changes wherever required and avoid unnecessary litigation on this front

Issue

## Treatment of merchant trade transactions under GST

- Merchant exports entails shipment of goods from one foreign country to another foreign country involving an Indian entity in between.
- There is no clarity on the taxability of such transactions as on a plain reading of the law, the transaction may be subject to tax at both the purchase leg as well as the outward supply leg

Recommendation

Clarification is required on whether the transaction is taxable or are zero-rated. In case, such transactions are treated as non taxable, then would the same qualify as “exempt supply” triggering input tax credit reversals under the GST regime

# Issues from a GST perspective

## Non-reversal of ITC on Interest Income

- Services by way of interest earned on deposits, advances etc. is exempt from GST
- Further, special provisions have been prescribed in respect of ITC eligibility for banking and financial sector where interest is the major source of income
- Exempting interest income under GST also has an unintended negative impact on ITC eligibility of other businesses where interest is usually a passive income
- Under the Negative list regime, interest income earned was not required to be included while calculating the exempted turnover. No such exclusion has been provided under the GST regime

- There appears to be an omission and anomaly which needs to be rectified urgently to avoid any unnecessary litigation in future
- Appropriate amendments can be made under GST Rules to exclude interest income while calculating the exempted turnover

## Issue

## GST – Impact on FOC Supplies/ Free samples

- Companies under promotional scheme give free units to customers on purchase of goods (say on buying 8 units, the customer is eligible to get 2 units)
- The cost of free units is embedded the main supply for which consideration is charged
- Under GST law, it has been specified that if the goods are disposed of by way of gift or free samples, input tax credit on such goods is not allowed
- No clarity under GST law whether supply of free units under promotional scheme would be treated as gift or free samples requiring reversal of ITC claimed on said units

## Recommendation

Clarification should be provided in this regard to avoid future litigations; the law allowing input tax credit against goods supplied under promotional schemes

# Issues from a GST perspective

## Input tax credit (ITC) – Mismatch challenges

- GST input credit eligibility depends upon vendor's compliance
- It is a procedural nightmare for the tax payers to ensure matching of all details on the GST portal enabling them to avail input tax credit
- This also impacts working capital in case suppliers/vendors fail to do their compliance or there are some matching issues on GSTN portal

### Issue

- GST input credit eligibility should not be dependent upon vendor's compliance
- Recipient should be allowed input credit on basis of proof of GST tax invoice received and corresponding payment of consideration to the vendor

## Credit/ Debit Note – Linkage with original invoice

- Every credit note must have an invoice reference, and also one credit note can be issued only against one single invoice
- In case of monthly / quarterly discount schemes where the discount is given against purchases made under various invoices during the month/quarter, the tax payer is required to raise one credit note against each invoice
- This results in issuance of high volumes of credit/ debit notes and in case of multiple schemes for the same period, it is becoming administratively a nightmare

### Recommendation

The Government should work out a mechanism to simplify this since this is causing hardships to the entire industry



Thank you