



भारतीय सनदी लेखाकार संस्थान  
(संसदीय अधिनियम द्वारा स्थापित)  
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
(Set up by an Act of Parliament)

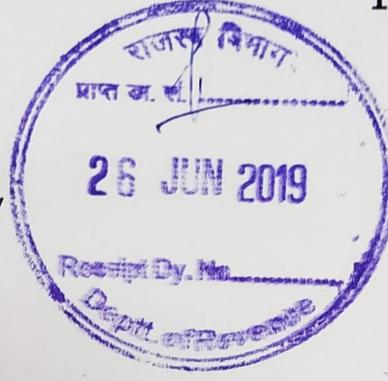


CA. Prafulla P. Chhajed  
President

ICAI/IDTC/2019-20/Letter/Cir 9

17<sup>th</sup> June, 2019

**Shri Pranab Kumar Das**  
Chairman  
Central Board of Indirect Taxes & Customs,  
Department of Revenue,  
Government of India,  
North Block,  
New Delhi - 110001



Dear Sir,

**PRE-BUDGET MEMORANDUM, 2019**

We have the privilege to submit herewith the Institute's Pre-Budget Memorandum, 2019 containing our suggestions on Indirect Taxes (Central Excise Duty and Customs Duty).

We would be grateful if these are taken into account before finalizing the Finance Bill, 2019.

We would be submitting detail suggestions on GST Laws separately.

*With regards,*

Yours sincerely,

*Prafulla P. Chhajed*  
(CA. Prafulla P. Chhajed)

Encl.: As above.

# **PRE-BUDGET MEMORANDUM 2019**

## **Indirect Taxes**



**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF  
INDIA  
NEW DELHI**





## I. INTRODUCTION

The Institute of Chartered Accountants of India (ICAI) considers it a privilege to submit the Pre-Budget Memorandum, 2018 on Indirect Taxes other than GST to the Government of India.

The Memorandum contains suggestions on issues relating to Customs Duty and Excise Duty for the consideration of the Government while formulating the tax proposals for the year 2019-20. We believe that addressing the said issues would make tax laws simple, fair and transparent and avoid litigation.

In case any further clarifications or data is considered necessary, we shall be pleased to furnish the same.

The contact details are:

Name and Designation	Contact Details	
	Ph. No.	Email Id
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CA. Rajendra Kumar P. Vice-Chairman, GST & Indirect Taxes Committee	9444017087	<a href="mailto:rk@icai.in">rk@icai.in</a>
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## II. EXECUTIVE SUMMARY

S. No.	Topics	Suggestions
<b>A. CUSTOMS DUTY</b>		
1.	Increase in Baggage Limits	It is suggested that the baggage provisions be amended to enhance the baggage limit from Rs. 50,000/- to Rs.1,00,000/- for duty free allowance considering the effect of inflation on exchange rate
2.	EOUs deemed to be delicensed from bonded warehouse	<ul style="list-style-type: none"> <li>• It is suggested to amend 44/2016 to substitute ‘deemed to be delicensed’ with ‘deemed to be bonded’.</li> <li>• It is suggested to allow automatic renewal of bonding period subject to good and usable condition of all goods coterminous with EOU license validity</li> </ul>
3.	Levy of Integrated Tax on goods remaining in Bonded warehouse	It is suggested that Sub-section (8A) and (10A) of Section 3 of Customs Tariff Act, 1975 be omitted since integrated tax and Cess leviable under section 3(7) and 3(9) of Custom Tariff Act, 1975 are in the nature of ‘Customs Duty’.
4.	Audit of assessment of imported or exported goods	It is suggested to remove Chapter XII A as subjecting an assessee who has already been assessed (whether final or provisional BE) by customs authorities, to an audit will cause undue hardship to the assessee.
5.	Power to issue supplementary notice	It is suggested that proviso to section 124 of Customs Act, 1962 be deleted as the concept of Supplementary Notice appears to be inferior to the requirements of a regular SCN under section 124.
6.	Communication of an order, decision, summon, notice etc. under Customs Act, 1962 through electronic mails	It is suggested that clause (c) of section 153 be deleted as ‘service’ is a very significant legal step and if email is accepted as a valid mode of ‘service’, then it may adversely affect the taxpayer’s rights to remedy in law.
7.	Requirements for being an applicant of Advance ruling	It is suggested to expand clause (c) of section 28E of the Customs Act, 1962 to cover IEC, PAN or GSTIN as primary requirements for being an applicant because an expansive sub-clause (i) will fulfil the Government’s objective of making the advance ruling facility available to large stakeholders.
8.	Sections 25A and 25B	It is suggested to delete section 25A and 25B as these sections are merely a duplication of power already given under section 25.
9.	Purpose code	It is suggested that purpose code of Reserve Bank of India (RBI) and Centre Product Classification (CPC) of services notified under <b>Appendix-3D</b> under FTP be merged with the Service Accounting Code (SAC) and Harmonized System of Nomenclature (HSN) of services under GST to ease the business and to ease realization of export benefits.

10.	Recommendation for online payment	There are certain payments which is still manual in Customs such as surrender of Drawback/Composition Fee/ Pre-Deposit for appeal/ Payment for regularization of authorization etc. E-Payment on ICEGATE for such types of payment should be allowed in manner like electronic Miscellaneous Payment System (e-MPS) launched by DGFT, which will obviate the need of cross verification.
11.	Summary return of import and export	A simple and summary return financial year wise must be asked from importer and exporter for import and payment towards import and export and realization thereof: <ul style="list-style-type: none"> <li>- To calculate the amount of duty to be paid or</li> <li>- To calculate amount of benefits to be surrendered,</li> <li>- To ascertain that the realization and payment is within time line prescribed under FEMA</li> <li>- To comply with the requirement of write off.</li> </ul>
12.	Import Export Code for services	It is suggested that IEC be made mandatory for exporter of services to familiarize them with the office of the DGFT, currently it is mandatory only for export of goods.
13.	IEC number made equal to PAN/ GSTIN	In GST regime, IEC number made equal to PAN number, it can be further improved if the IEC is equal to GSTIN number (For GST registered person) and for unregistered person under GST, IEC equal to PAN. It will minimize problem of availment of Input Tax Credit. Further, consumption, accounting, storage of goods and compliance of obligation under Letter of undertaking furnished under GST can easily be ascertained.
<b>B. OTHERS</b>		
14.	Powers of the Commissioner (Appeals) under the Central Excise Act and the Customs Act to condone the delay in filing the appeal	<ul style="list-style-type: none"> <li>• It is suggested that the power to condone appeals be vested with the Commissioner Appeals upto a period of 90 days instead of 30 days with a further appeal to CESTAT in case of delays beyond such period.</li> <li>• Further, in genuine cases Commissioner Appeals be vested with condonation powers for unlimited period.</li> </ul>
15.	Members of CESTAT	It is suggested that Practicing Chartered Accountants be made eligible for being appointed as Members of the CESTAT as in case of ITAT.

## II. DETAILED SUGGESTIONS 2018

### A. CUSTOMS DUTY

#### 1. Increase in Baggage Limits

Rule 3 of Baggage Rules provides that an Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant, arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage used personal effects, travel souvenirs and articles other than those specified, upto the value of **50 thousand rupees** if these are carried on the person or in the accompanied baggage of the passenger.

#### *Suggestion*

*It is suggested that the baggage provisions be amended to enhance the baggage limit from Rs. 50,000/- to Rs.1,00,000/- for duty free allowance considering the effect of inflation on exchange rate.*

#### 2. EOUs deemed to be delicensed from bonded warehouse

With the introduction of 44/2016 dated 29 July, 2016, EOUs have been deemed to be delicensed of the bonded warehouse established by them. This was introduced as a measure of ease-of-doing-business.

#### **Issue**

- With bonded warehouse being delicensed, goods brought into bonded warehouse already attracts the relevant date under section 15 of Customs Act
- Duties as applicable on the date of actual import into EOU will only be applicable
- Duties (including IGST) cannot be imposed on debonding of goods from EOU after some interval of time

#### **Suggestions**

- *It is suggested to amend 44/2016 to substitute 'deemed to be delicensed' with 'deemed to be bonded' to restore bonded warehouse facility which defers IGST payment*
- *It is suggested to allow automatic renewal of bonding period subject to good and usable condition of all goods coterminous with EOU license validity*

#### 3. Levy of Integrated Tax on goods remaining in Bonded warehouse

Sub-section (8A) and (10A) of Section 3 of Customs Tariff Act, 1975 provides the method of valuation of goods deposited in custom bonded warehouse which are sold to any person before clearance for home consumption or exported, for the purpose of calculating the Integrated Tax and compensation cess under GST Act.

#### **Issue**

Proviso to section 5(1) of IGST Act leaves the 'levy' of IGST to Customs Tariff Act on 'goods imported into India'. Thus, goods 'not yet' imported into India cannot be brought back into section 5(1) of IGST Act. If this is allowed, then goods that are directly purchased

from Country 'A' and shipped to Country 'B' by an Indian entity (called merchant Trading) will also be liable to IGST merely basis the location of the supplier being within India, even though the goods supplied do not enter taxable territory at any point of time. If this is also to be subject to IGST, then clause 100 will transform GST into a person-based tax rather than territory-based tax. This, however, does not seem to be the intention of the legislature. Goods that are 'yet' to cross the 'customs frontiers' of India are liable to duties under Customs Act (even if it is equal to IGST and cess) depending upon whether they will be cleared on ex-bond BE or re-exported outside India.

***Suggestion:***

*Levy of integrated tax on in-bond transactions, not being in the nature of Customs Duty, is a levy without statutory authority. Hence, it is suggested that Sub-section (8A) and (10A) of Section 3 of Customs Tariff Act, 1975 be omitted since integrated tax and Cess leviable under section 3(7) and 3(9) of Custom Tariff Act, 1975 are in the nature of 'Customs Duty'.*

**4. Audit of assessment of imported or exported goods**

Chapter XII A of Customs Act, 1962 provides that proper officer may carry out the audit of assessment of imported goods or export goods or an auditee under this Act either in his office or in the premises of the auditee in the prescribed manner.

**Issue**

Powers to investigate and issue SCN is available to departmental Officers. Diligent taxpayers will now be subject to harassment after having gone through the process of customs clearance. Recurring audits will make room for unwanted interference by customs authorities at the business premises. Requirement of another audit casts some doubts over the adequacy of customs clearance procedure carried out or the relaxation / streamlining provided at the port are being reversed by this customs audit.

***Suggestion:***

*It is suggested to remove Chapter XII A as subjecting an assessee who has already been assessed (whether final or provisional BE) by customs authorities, to an audit will cause undue hardship to the assessee.*

**5. Power to issue supplementary notice**

Proviso to section 124 of Customs Act, 1962 provides that proper officer may issue a supplementary notice in addition to show cause notice before confiscation of goods, explaining the grounds on which it is proposed to confiscate the goods or to impose a penalty.

**Issue**

If the Supplementary notice is intended to be a corrigendum to the SCN, this will allow loopholes in the SCN to be filled up through a Supplementary Notice which is illegal and violative of natural justice.

***Suggestion:***

*It is suggested that proviso to section 124 of Customs Act, 1962 be deleted as the concept of Supplementary Notice appears to be inferior to the requirements of a regular SCN under section 124.*

## **6. Communication of an order, decision, summon, notice etc. under Customs Act, 1962 through electronic mails**

Section 153 of the Customs Act, 1962 provides various modes of communication of an order, decision, summons, notice etc. under Customs Act, 1962 which includes serving through e-mail as one of the mode.

### **Issue**

Tax authorities themselves use publicly available 'free email' service therefore it can't be taken as reliable mode of communication. Further, it is not possible for the assessee to ensure that the correct email id is available with the tax administration. If e-mails are sent to some unknown or expired email ids, even then same will be construed as valid service of notices.

### **Suggestion:**

*It is suggested that clause (c) of section 153 be deleted as 'service' is a very significant legal step and if email is accepted as a valid mode of 'service', then it may adversely affect the taxpayer's rights to remedy in law.*

## **7. Requirements for being an applicant of Advance ruling**

Clause (c) of section 28 E of the Customs Act, 1962 provides the conditions to be fulfilled by person for being an applicant of advance ruling which includes that a person must be holding a valid importer-exporter code number granted under section 7 of the Foreign Trade (Development & Regulation) Act, 1992 as one of the condition.

### **Issue**

Requirement of holding a valid importer-exporter code for seeking an advance ruling may curtail the assessee's opportunity to file application for advance ruling. Further, item (iii) of clause (c) requires satisfaction of the authority before accepting application which is very subjective and has scope for litigation.

### **Suggestion:**

*It is suggested to expand clause (c) of section 28E of the Customs Act, 1962 to cover IEC, PAN or GSTIN as primary requirements for being an applicant because an expansive sub-clause (i) will fulfil the Government's objective of making the advance ruling facility available to large stakeholders.*

## **8. Sections 25A and 25B**

Section 25A provides the Central Government with the power to issue notification to exempt the goods which are imported for repair or further processing from whole or any part of duty of customs with a condition of re-export within a period of 1 year.

Similarly, Section 25B empowers the Central Government to issue notification to exempt the goods which are exported for repair or further processing from whole or any part of duty of customs with a condition of re-import within a period of 1 year.

### **Issue**

The scope of section 25A and 25B is already covered by section 25 where the Central Government, by issuing notification, exempts generally goods of any specified description

from the whole or any part of duty of customs leviable thereon. These sections are surplus and unwarranted. Therefore, what is sought to be achieved is possible under section 25 and has been continually achieved since 1962. Conditions in the new sections can be amended more effectively in the notifications rather than in the sections itself.

***Suggestion:***

*It is suggested to delete section 25A and 25B as these sections are merely a duplication of power already given under section 25.*

**9. Purpose code**

Purpose code of Reserve Bank of India (RBI) and Centre Product Classification (CPC) of services notified under **Appendix-3D** under FTP should be merged with the Service Accounting Code (SAC) and Harmonized System of Nomenclature (HSN) of services under GST to ease the business and to ease realization of export benefits.

**10. Recommendation for online payment**

There are certain payments which is still manual in Customs such as surrender of Drawback/Composition Fee/ Pre-Deposit for appeal/ Payment for regularization of authorization etc. E-Payment on ICEGATE for such types of payment should be allowed in manner like electronic Miscellaneous Payment System (e-MPS) launched by DGFT, which will obviate the need of cross verification.

**11. Summary return of import and export**

A simple and summary return financial year wise must be asked from importer and exporter for import and payment towards import and export and realization thereof:

- To calculate the amount of duty to be paid or
- To calculate amount of benefits to be surrendered,
- To ascertain that the realization and payment is within time line prescribed under FEMA
- To comply with the requirement of write off.

However, this new return should not overlap with EDP data flowing to banks from EDI of customs and add to reconciliation between this return and EDP data.

**12. Import Export Code for services**

IEC must be made mandatory for exporter of services to familiarize them with the office of the DGFT, currently it is mandatory only for export of goods.

**13. IEC number made equal to PAN/ GSTIN**

In GST regime, IEC number made equal to PAN number, it can be further improved if the IEC is equal to GSTIN number (For GST registered person) and for unregistered person under GST, IEC equal to PAN. It will minimize problem of availment of Input Tax Credit. Further, consumption, accounting, storage of goods and compliance of obligation under Letter of undertaking furnished under GST can easily be ascertained.

## **B. OTHERS**

### **14. Powers of the Commissioner (Appeals) under the Central Excise Act and the Customs Act to condone the delay in filing the appeal**

Under section 35 of the Central Excise Act, 1944 or section 128 of the Customs Act, 1962, an appeal before the Commissioner (Appeals) is required to be filed within 60 days from the date of receipt of the order of the lower authorities. The Commissioner (Appeals) is empowered to condone the delay upto 30 days beyond 60 days provided sufficient cause is shown. It has been observed that the said condonable period of 30 days is very short and requires to be increased to either 60 days or 90 days. Further, there are many instances where meritorious cases cannot be pursued because of the above technicality. The Courts have held that an appeal filed beyond the condonable period cannot be admitted contrary to the statutory provisions, since the Commissioner (Appeals) has no power to condone beyond 30 days.

Further, Appellate Tribunal has unlimited condonation powers.

#### **Suggestions**

- *It is, therefore, suggested that the power to condone appeals be vested with the Commissioner Appeals upto a period of 90 days instead of 30 days with a further appeal to CESTAT in case of delays beyond such period.*
- *Further, in genuine cases Commissioner Appeals be vested with condonation powers for unlimited period.*

### **15. Members of CESTAT**

#### **Suggestion**

*Practicing Chartered Accountants be made eligible for being appointed as Members of the CESTAT as in case of ITAT.*