



GSC Intime

Services Private Limited

Right advice at right time...

Detailed analysis of **Customs** Proposals and Amendments



UNION
BUDGET
2022-23

KEY HIGHLIGHTS – CUSTOMS PROPOSALS



Key highlights – Customs proposals...

Advance ruling amendments

- ⌚ **Validity of advance ruling** is proposed to be introduced for **3 years or change in law or facts, whichever is earlier** as against present unlimited validity until change in law or facts
- ⌚ For advance rulings obtained till the date of enactment of Finance Bill, 2022, 3 years shall be reckoned from the date of enactment of Finance Bill, 2022
- ⌚ It is proposed that **advance ruling application may be withdrawn anytime before such ruling is pronounced** as against the present withdrawal time of 30 days from the date of application
- ⌚ Proposal is made to prescribe fees for application of advance ruling and removal of fees from Customs Act, 1962 *per se*

Administrative amendments

- ⌚ The landmark decision delivered by Hon'ble Supreme Court in the case of ***Cannon India Private Limited 2021 (3) TMI 384 (SC)*** wherein it was categorically held that Directorate of Revenue Intelligence does not have jurisdiction to issue SCN since they are not the “Proper Officer” as required U/s 28(4). In order to overcome such issue, certain amendments are made in Customs Law to assign certain functions also to the Officers of **Director General of Revenue Intelligence, Audit and Preventive Wing**

Administrative amendments

- ⌚ A new sec. is proposed to be introduced (Sec. 110A) whereby **after inquiry, investigation or audit, a report along with relevant documents would have to be transferred to the Proper Officer having jurisdiction for further actions like reassessment, adjudication etc.** In case of multiple jurisdiction, such transfer shall be made to Officer of customs to whom such matter is assigned by CBIC
- ⌚ Clause 96 of the Finance Bill, 2022 is proposed to be introduced to **validate any action taken or functions performed under certain Chapters by any Officer of Customs before the date of commencement of Finance Act, 2022.** Irrespective of any decisions of any court, tribunal or other authority, all actions or functions undertaken under certain Chapters; Not. issued for appointing or assigning functions to Officers until enactment of Finance Bill, 2022 are proposed to be validated retrospectively vide amended Sec. 2, 3 and 5

Administrative amendments

- ⌚ CBIC may adopt the following **criteria for assigning functions** to Customs Officers such as:
 - Territorial jurisdiction
 - Persons or class of persons
 - Goods or class of goods
 - Cases or class of cases
 - Computer assigned random assignment etc.

- ⌚ It is proposed that CBIC, **under certain circumstances**, may authorize **2 or more Officers of customs, to have concurrent powers**

Other amendments

- ⌚ **To detect duty evasion**, it is proposed to enable CBIC to specify **additional obligations** to be casted **on the importer and the checks in respect of a class of imported goods**, to be selected on the basis of specific criteria **where CBIC has reason to believe that their value is not being declared truthfully or accurately**
- ⌚ Proposal is made **to protect the confidential data of importers or exporters** such as details of such importers or exporters, value, classification, quantity, etc. **Publishing of any such information** unless provided by law or published by or on behalf of CG, is proposed to be made a **punishable offence with imprisonment of maximum 6 months or with fine of maximum Rs. 50,000 or both**
- ⌚ Sec. 137 is proposed to be amended to provide that **no court shall take cognizance of any offence with respect to protection of import and export data without sanction of the Principal Commissioner/ Commissioner of Customs**

...Key highlights – Customs proposals






Other amendments

- ⌚ **Applicability of social welfare surcharge on goods exempted from Basic Customs Duty is clarified**
- ⌚ **The current SEZ Act is going to be replaced** with a new piece of legislation **which will enable the States to become partners in ‘Development of Enterprise and Service Hubs’**. This will cover all large existing and new industrial enclaves to optimally utilise available infrastructure and enhance competitiveness of export

DETAILED ANALYSIS OF CUSTOMS BUDGET PROPOSALS



Officers of DRI, Audit and Preventive included in the class of Officers of customs

- Background**  Sec. 3 provides for the class of Officers of Customs
- Current Scenario**  Currently, the Officers of Customs include Principal Chief Commissioners, Chief Commissioners, Principal Commissioners, Commissioners, Commissioner (Appeals), Joint Commissioners, Deputy Commissioners, Assistant Commissioners and other class of Officers as may be appointed
- Change in Law**  Now, it is proposed to include the Officers of Director General of Revenue Intelligence (DRI), Audit and Preventive formation in the class of Officers of Customs
- WEF**  Date of enactment of Finance Bill, 2022
- Impact**  This amendment appears to be made to overcome the judgement of ***Cannon India Private Limited 2021 (3) TMI 384 (SC)*** wherein it was categorically held that Directorate of Revenue Intelligence does not have jurisdiction to issue SCN since they are not the “Proper Officer” as required U/s 28(4)

CBIC to adopt specific criteria for imposing limitations and conditions in the powers of Proper Officers

Background

- ☑ Sec. 5 provides about the powers of the Officers of Customs

Current Scenario

- ☑ Currently, CBIC can impose conditions and limitations on an Officer of customs in relation to exercise of his powers. However, no criteria were specified other than territorial jurisdiction

Change in Law

- ☑ Now, it is proposed to provide certain criteria that may be adopted by CBIC while imposing conditions and limitations in relation to exercise of powers by Customs Officers. Such criteria are: territorial jurisdiction, class of persons, class of goods, class of cases, computer assigned random assignment, etc.

WEF

- ☑ The date of enactment of Finance Bill, 2022

Impact

- ☑ CBIC can now adopt various other criteria apart from territorial jurisdiction to impose conditions and limitations in relation to exercise of powers by Customs Officers

CBIC can empower 2 or more Officers to have concurrent powers to perform functions

- Background** ☑ Sec. 5 provides about the powers of the Officers of Customs
- Current Scenario** ☑ Currently, there is no provision under Customs Act, 1962 that empowers 2 or more Officers to have concurrent powers for exercising same powers and functions under Customs Act, 1962
- Change in Law** ☑ Now, it is proposed to insert a new Sec. 5(5) through which CBIC can issue Not. so as to enable 2 or more Officers of Customs to have concurrent powers and functions to be performed under Customs Act
- WEF** ☑ The date of enactment of Finance Bill, 2022
- Impact** ☑ By virtue of this amendment, more than one Officers can exercise powers against the same Assesse in respect of the same period and issue

Measure to regulate the issue of undervaluation of imported goods/duty evasions

- Background** ☑ Sec. 14 provides for the valuation of goods
- Current Scenario** ☑ Currently, CBIC has power to provide rules for the manner of acceptance or rejection of value declared by the importer or exporter where the proper Officer has reason to doubt the truth or accuracy of such value and its value determination
- Change in Law** ☑ **To detect duty evasion**, it is proposed to enable CBIC to specify **additional obligations** to be casted **on the importer and the checks in respect of a class of imported goods**, to be selected on the basis of specific criteria **where CBIC has reason to believe that their value is not being declared truthfully or accurately**
- WEF** ☑ The date of enactment of Finance Bill, 2022
- Impact** ☑ This amendment is a measure to address the issue of undervaluation of imports/duty-evasions

Applicant can withdraw advance ruling application at any time before a ruling is pronounced

- Background** ☑ Sec. 28H provides for the Application for Advance Ruling
- Current Scenario** ☑ Currently, sub-sec. (4) of Sec. 28H provides that the applicant can withdraw his application within 30 days from the date of application
- Change in Law** ☑ It is proposed that advance ruling application may be withdrawn anytime before such ruling is pronounced
- ☑ Proposal is also made to prescribe fees for application of advance ruling
- WEF** ☑ Date of enactment of Finance Bill, 2022
- Impact** ☑ This amendment gives flexibility to the applicant to withdraw his application anytime before the ruling is pronounced

Binding and change in validity period of advance ruling pronouncement...

Background

- 🕒 Sec. 28J provides for the binding effect of Advance Ruling

Current Scenario

- 🕒 Currently, Sec. 28J(2) prescribes that the advance ruling is binding unless there is a change in law or facts based on which it has been pronounced

Change in Law

- 🕒 Now, it is proposed to amend Sec. 28J(2) to revise the validity of Advance Ruling pronouncement upto 3 years or change in law or facts, whichever is earlier
- 🕒 In case of pronouncement which is in force as on date of Finance Bill, 2022, 3 years to be computed from the date of assent of President to the Finance Bill

...Binding and change in validity period of advance ruling pronouncement

WEF

- 🕒 The date of enactment of Finance Bill, 2022

Impact

- 🕒 This amendment is to revise the validity period of the Advance Ruling pronounced

Actions subsequent to Inquiry, Investigation or Audit

Background/ Current Scenario

- 🕒 Sec. 110AA is newly proposed to be inserted in Customs Act, 1962

Change in Law

- 🕒 It is proposed that after inquiry, investigation or audit, a report along with relevant documents would have to be transferred to the Proper Officer having jurisdiction for further action like reassessment, adjudication etc. In case of multiple jurisdictions, such transfer shall be made to Officer of Customs to whom such matter is assigned by CBIC

WEF

- 🕒 The date of enactment of Finance Bill, 2022

Impact

- 🕒 Now audit wings, investigation wings, intelligence wings may not be able to issue Show Cause Notice. This is in line with *Cannon India 2021 (376) E.L.T. 3 (S.C.)* wherein it was categorically held that Directorate of Revenue Intelligence does not have jurisdiction to issue SCN since they are not the “Proper Officer” as required U/s 28(4)

Protection of data

Background/ Current Scenario

- 🕒 Sec. 135AA is newly proposed to be inserted in Customs Act, 1962

Change in Law

- 🕒 To protect the confidential data of importers or exporters such as value, classification, quantity, etc. Publishing of any such information unless provided by law or published by or on behalf of CG, is proposed to be made a punishable offence with imprisonment of maximum 6 months or with fine of maximum Rs. 50,000 or both

WEF

- 🕒 The date of enactment of Finance Bill, 2022

Impact

- 🕒 This will provide additional protection to confidential data of importers and exporters

No SWS on goods exempted from Customs Duty

Background

- ⌚ Sec. 110 of Finance Act, 2018 provides for levy and collection of Social Welfare Surcharge (SWS)

Current Scenario

- ⌚ SWS is calculated @ 10% on aggregate of duties, taxes and cesses which are levied and collected by CG as a duty of customs on goods imported in India

Clarification

- ⌚ It is clarified that in case of exempted goods, the aggregate of Customs duty payable is 'NIL' and therefore, even SWS will be 'NIL' (Circular No. 3/2022-Customs dated 01.02.2022)

Background/ Current Scenario

- 🕒 Clause 96 is newly proposed in Finance Bill, 2022 for validating certain actions taken under Customs Act 1962

Change in Law

- 🕒 It is proposed to validate any action taken or functions performed under Chapters V, VAA, VI, IX, X, XI, XII, XIIA, XIII, XIV, XVI and XVII by any Officer of Customs before the date of commencement of Finance Act, 2022. Irrespective of any decisions of any court, tribunal or other authority, all actions or functions undertaken under certain Chapters, Notifications issued for appointment or assigning functions to officers until enactment of Finance Bill, 2022 are proposed to be validated retrospectively vide amended Sec. 2, 3 and 5

WEF

- 🕒 The date of enactment of Finance Bill, 2022

Impact

- 🕒 This will lead to validation of actions taken by Customs Authorities

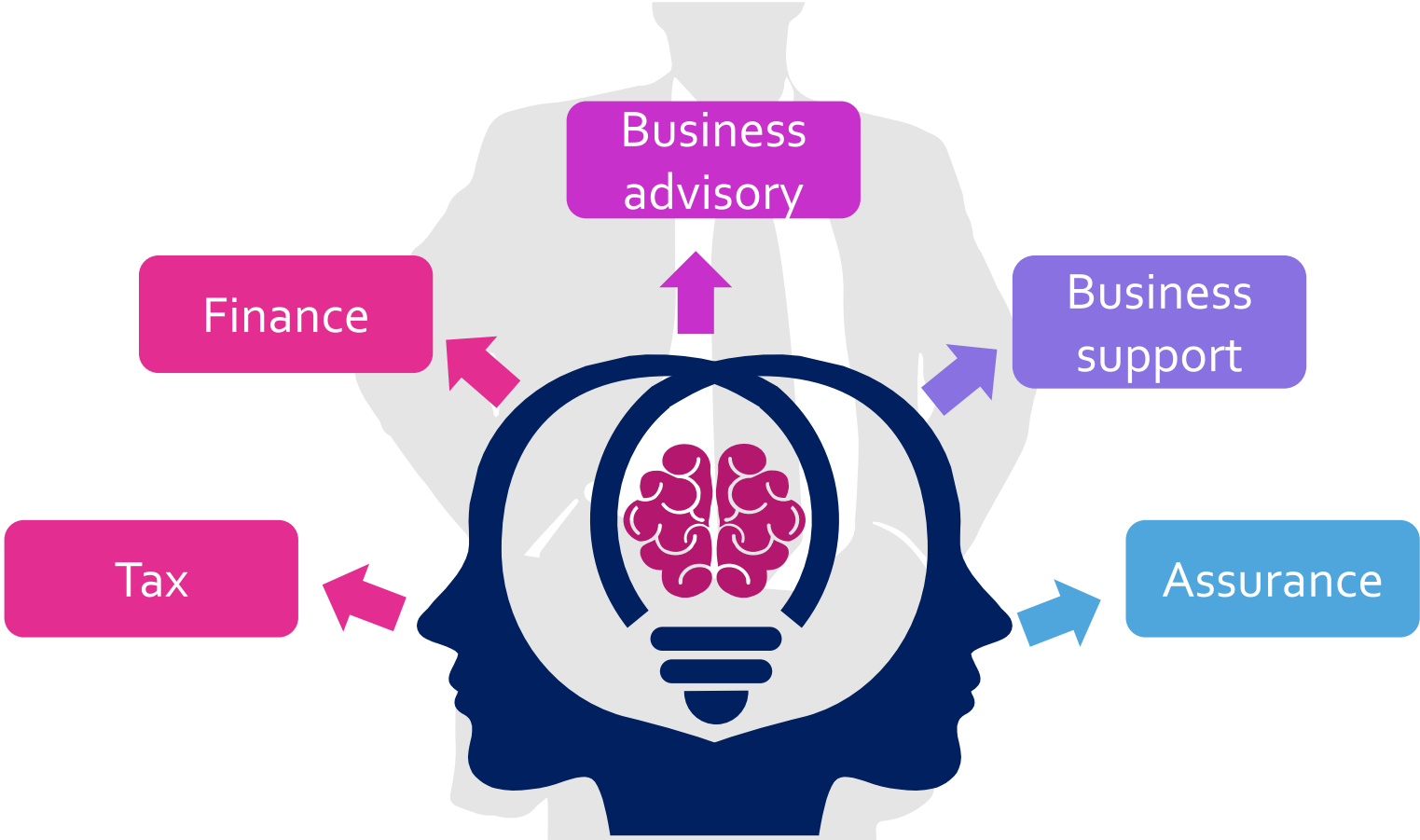
Other amendments

- ⊙ A person importing goods and availing benefit concessional rate will have to generate a IIN from common portal of Customs. Such IIN would be required to be mentioned on each Bills of Entry
- ⊙ Withdrawal of various exemptions leading to higher customs duty burden on many goods

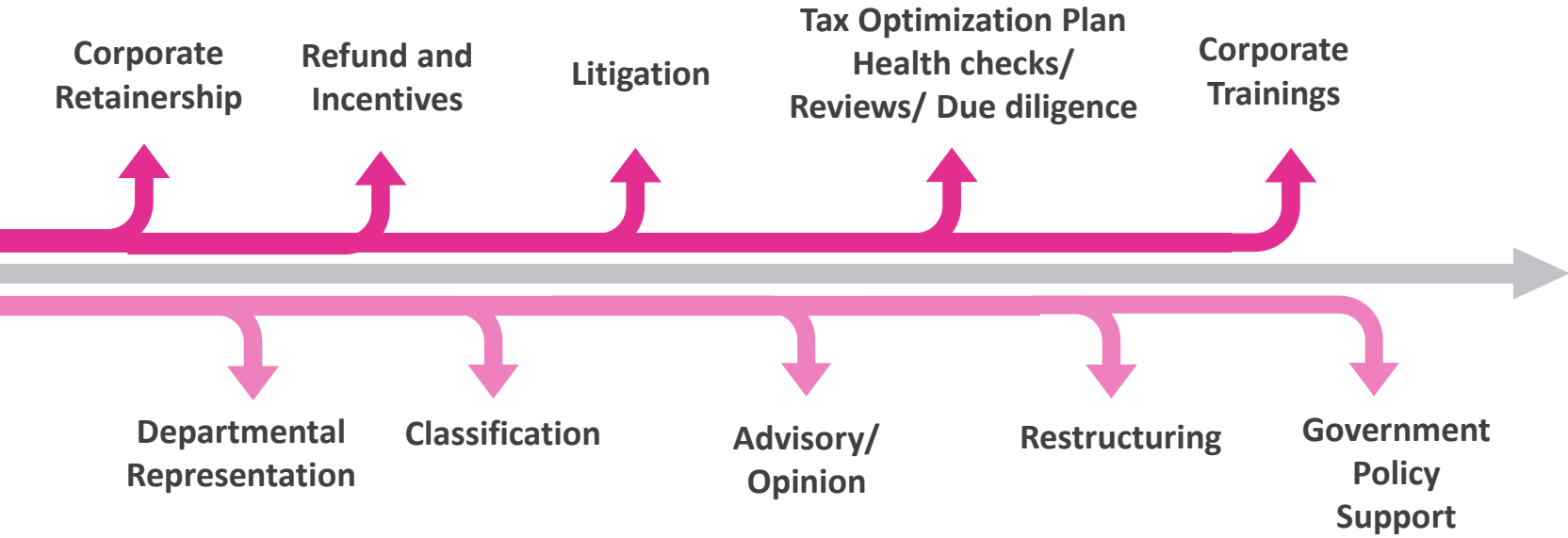
Abbreviations

WEF	With Effect From
FY	Financial Year
Sec.	Section
U/s	Under Section
Not.	Notification
Rs.	Rupees
IEC	Import Export Code
CBIC	Central Board of Indirect Taxes and Customs
BOE	Bill of entry
CG	Central Government
IIN	Import of Goods at Concessional Rate Identification Number
UNLESS OTHERWISE SPECIFIED ALL THE PROVISIONS PERTAINS TO CUSTOMS ACT, 1962	

What do we do?....



....What do we do?



Disclaimer

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