

**UNION BUDGET – 2021**  
**ANALYSIS OF INDIRECT TAX PROPOSALS**

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# DISCLAIMER



- *This will not be a very long presentation. Or just might be, depends on your interest, really*
- *During Lockdown, people have been totally busy watching web-series and multi-lingual films at home*
- *This presentation seeks to use Web Content Titles only for the purpose of adding humour and grouping the various aspects of the Budget and the changes in relevant baskets and does not constitute an endorsement or an advertisement or use for any purpose*
- *All SOPs were followed while preparing this presentation.*
- *There is no guarantee that this will be the only season (Budget) and multiple seasons are possible*
- *Understanding amendments is injurious to health and contributes to wealth*

# BUDGET 2021



- COVID 19 calamity.
- Unprecedented contraction of the economy.
- Global impact
- Lockdown
- Atma Nirbar 1.0, 2.0 and 3.0
- Increase in capital expenditure
- Emphasis on Infrastructure
- Asset monetization
- Disinvestment strategy
- Balancing act
- Fiscal deficit in RE 2020-2021 is pegged at 9.5% of GDP.
- Fiscal deficit in BE 2021-2022 estimated at 6.8% of GDP.

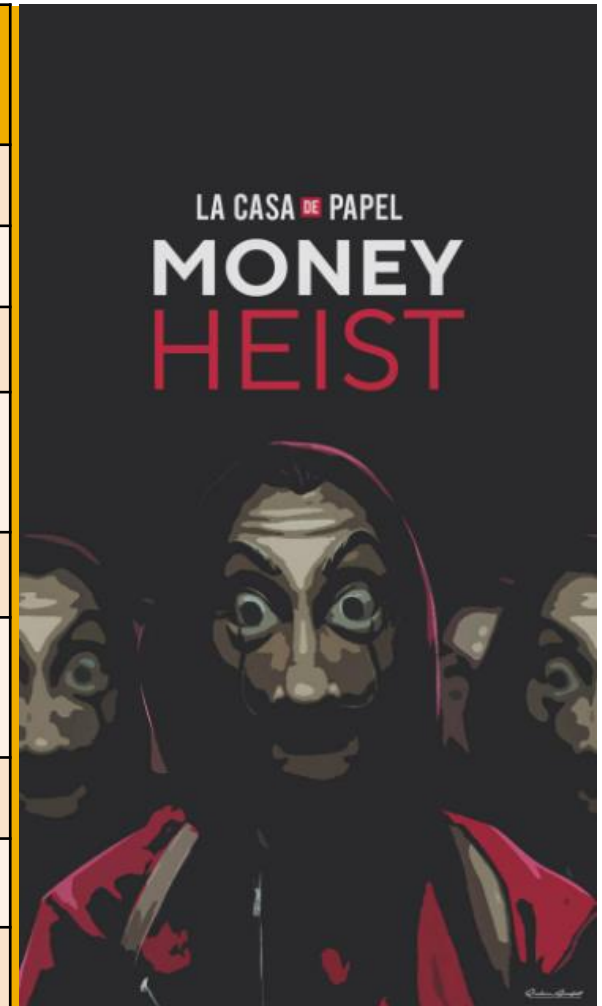
# MILLIONAIRE



	2020-2021 Budget Estimates (Rs. in Crores)	2020-2021 Revised Budget Estimates (Rs. in Crores)	2021-2022 Budget Estimates (Rs. in Crores)
Corporation Tax	681000	446000	547000
Taxes on income	638000	459000	561000
Customs	138000	112000	136000
Excise & Cess	267000	361000	335000
Service Tax	1020	1400	1000
CGST	580000	431000	530000
Compensation Cess	110500	84100	100000

# INCREASE IN CUSTOMS DUTY (MAJOR ITEMS)

GOODS	OLD RATE	NEW RATE
Carbon black	5%	7.5%
Builders' plastic ware	10%	15%
Cut and polished synthetic stones	10%	15%
Compressors used in AC / refrigerating equipments	12.5%	15%
Certain parts of automobiles	10%	15%
Ethanol for use in manufacture of excisable goods	2.5%	5%
Tunnel boring machines	Nil	7.5%
Solar lanterns	5%	15%
Parts of electronic toys	5%	15%



# GOLD AND THE BUDGET

- Reduction of import duty on gold and silver from 12.5% to 7.5%.
- Imposition of Agricultural Infrastructural Development Cess of 2.5%
- Customs duty on gold coins reduced from 12.5% to 10%.
  - Reduction in duty would reduce smuggling
  - Jewellery could become cheaper
- Section 110 of the Customs Act deals with seizure of goods, documents and things and disposal is also permitted after following the procedure specified.
- Preparation of inventory required for certain notified goods including gold by application to a Magistrate.
- Delhi High Court in the case of **Ram Mohan Gulati** had held that inventory is only a exercise to reduce the burden of the investigating agency of the responsibility of retaining entire seized goods and instead preserve only photographs and samples. *Magistrate must be interpreted to mean an Executive Magistrate and not a Judicial or Metropolitan Magistrate.*
- **Application can be made to Commissioner (Appeals) having jurisdiction to exercise similar powers and the proper officer shall dispose of such goods in the made as the Central Government may determine.**



# HOMELAND

- Duty on iron and steel scrap including SS scrap reduced from 2.5% to nil upto 31.03.2022.
- Duty on primary / semi-finished products of non-alloy steels reduced from 10% to 7.5%.
- Flat products of non-alloy and alloy steels reduced to 7.5%.
- Long products of non-alloy, stainless and alloy steel reduced to 7.5%.
- Copper scrap reduced to 2.5%.
- Raw materials for CRGO steels exempted upto 31.03.2023.
- Temporary revocation of ADD and CVD on import of SS flat products from China and Indonesia.



# EXEMPTIONS

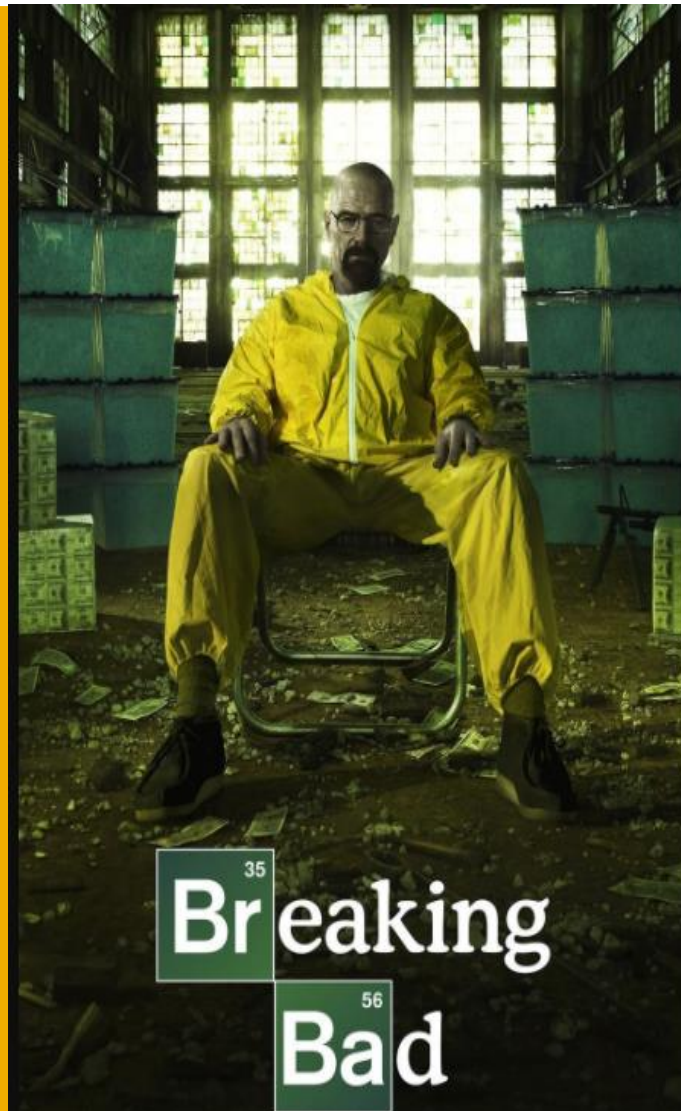
- Section 25 of the Customs Act provides for exemption through Notification.
- BCD exemption on certain goods **withdrawn** by omitting a few entries in Notification No.50/2017-Cus.
- Some **omissions** are effective from 01.04.2021.
- Some **dated exemptions** have been reviewed and **rescinded**.
- Proposal to review more than 400 old exemptions and revised customs duty structure free of distortion would be put in place from 01.10.2021. (para 178 of FM speech)
- **Amendment to Section 25 to provide that conditional exemptions would be valid upto 31<sup>st</sup> March falling immediately after two years from the date of grant or variation.**
  - Exemptions as on date of FB 2021 receiving the assent of the President shall be valid for a period of two years from 01.02.2021.
  - *Continuous review of exemption policy*
  - *Long term contracts and tax variation clauses*





# BREAKING BAD

- Agricultural Infrastructure and Development Cess as a duty of customs w.e.f. 02.02.2021.
- Section 115, Section 116 of Finance Bill 2021.
- For the purpose of financing agriculture infrastructure and other development activities.
- AIDC in addition to other customs duties.
- AIDC on exercisable goods at the rate specified.
  - *AIDC need not be shared with the States through the devolution formula while customs duty will have to be shared.*
  - *Revenue Secretary press conference indicates 30,000 crores collection from AIDC*



# MASTERCHEF – AIDC

GOODS	AIDC
Apple	35%
Crude palm oil	17.5%
Crude soya bean oil	20%
Crude sunflower seed oil	20%
Peas	40%
Kabuli Chana	30%
Bengal gram	50%
Chick peas	50%
Lentils	20%
Wine	100%
Vermouth and other wine of fresh grapes, flavoured	100%
Cider, perry, mead, sake, etc.	100%
All goods of 2208 (brandy, bourbon, whisky, etc.)	100%



# MAD MEN - AIDC



- Prices of petrol and diesel at an all time high.
- Huge debate on the taxes component in the price of petroleum products.
- Central taxes Vs. State taxes discussions on social media.
- AIDC of Rs.2.5 per litre on petrol.
- AIDC of Rs.4 per litre on high speed diesel.
- *BED and SAED on these items reduced so that consumer does not have to bear any additional burden.*
- Customs duty on alcohol reduced but AIDC imposed.

# PAAVA KADHAIGAL

- GSTIN experience
- MCA portal experience
- **Common customs electronic portal**
  - Board to notify a common portal for registration, filing of bill of entry, shipping bills, other documents and forms under the Customs Act or any other law for the time being in force or Rules and Regulations made there under, payment of duty and other purposes.
  - Amendment to Section 153 whereby notice, order, etc. can be made available in the common portal which shall be treated as effective service of notice, order, etc.



# TIME LIMITS

- **Section 28BB**
- Inquiry or investigation should culminate in issue of SCN within 2 years from the date of initiation of audit, search, seizure or summons.
- Principal Commissioner or Commissioner may on sufficient cause extend the said period to a further period of one year.
- Amendment not applicable to proceedings initiated before the date on which FB 2021 receives the assent of the President.
  - Welcome amendment



# BILL OF ENTRY

- Currently bill of entry can be filed before the end of the next day following the day (excluding holidays) on which aircraft or vessel arrives at customs station.
- **Section 46(3) amended to reflect as *including holidays*.**
- Prior filing of bill of entry was permitted any time before 30 days prior to the expected arrival.
- ***Proviso substituted to provide that Board may in such cases prescribe different time limits for presentation of bill of entry which shall not be later than the end of the day of such arrival.***
- Section 149 amended to provide that authorization or amendment of bill of entry of shipping bill to be done electronically through customs automated system on the basis of risk evaluation through appropriate selection criteria.
- Amendments as may be specified by the Board can also be done on the common portal.

# EXPORT – WRONGFUL CLAIM



- Confiscation where goods are entered for exportation under a claim of remission or refund of any duty or tax to make a wrongful claim in contravention of this Act or *any other law for the time being in force* – Section 113
- **If invoice obtained by fraud, etc. to utilize ITC for discharging duty or tax on export under claim for refund, *penalty not exceeding 5 times the refund claimed* – Section 114AC.**
  - IGST on imports levied under Customs Tariff Act
  - IGST on exports is levied under IGST Act.
  - Refund claimed under IGST Act.
  - *How can Customs Act apply to such transactions when there is no benefit obtained under the Customs Act?*

GST

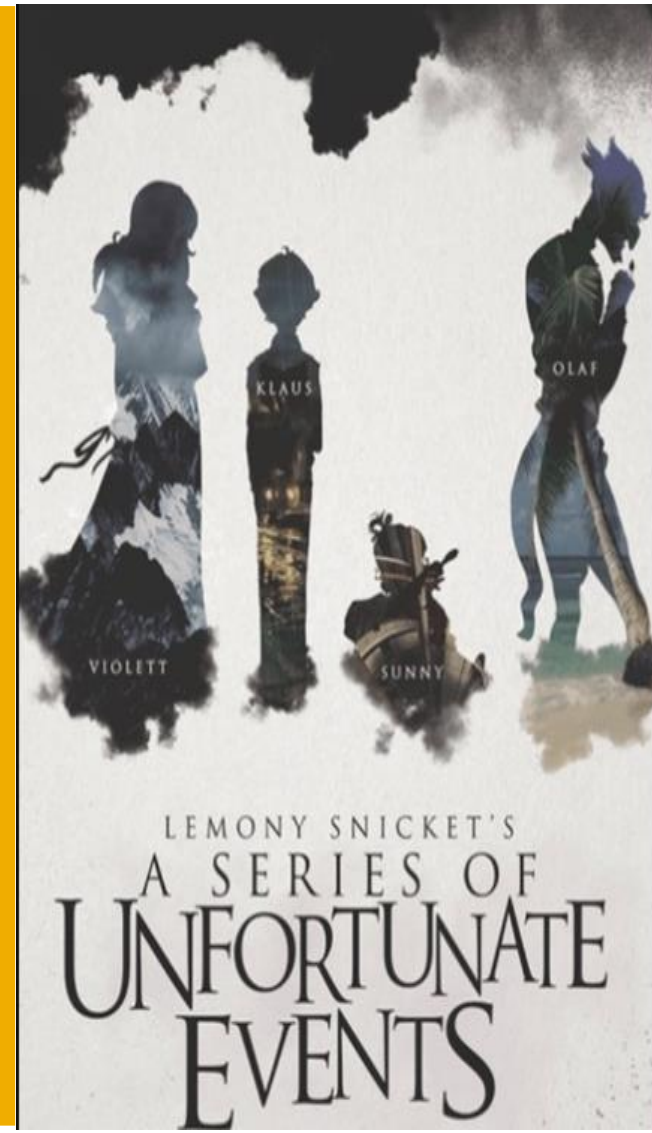
MASTER





# SERIES OF UNFORTUNATE EVENTS

- Vodafone decision in Income Tax
- Retrospective amendment
- Arbitration – Award
- Cairn Energy – Award
- Government's position
- Impact on investments
- **Calcutta Club decision**
- AAR Rulings for Rotary Club
- Amendment to Section 7 of the CGST Act with retrospective effect from 01.07.2017 to nullify the concept of mutuality??
  - *Consideration?*
  - *Deeming fiction?*
  - *Agency?*



# INPUT TAX CREDIT



- Section 16(2) has four conditions.
- One of the conditions is already under challenge
- One more condition through Section 16(2)(aa).
- *No registered person shall be entitled to credit of ITC in respect of goods or services unless the details of the invoice referred to in Section 16(2)(a) has been furnished by the supplier in the statement of outward supplies and the details have been communicated to the recipient of such invoice in the manner specified in Section 37.*

# GST – ITC – SECTION 16(2)

- Section 43A, which provided for a new procedure was never notified
- Even though GSTR -2 which contemplated details of inward supplies has been kept in abeyance and GSTR-3 was never implemented, Rule 60(1) was substituted w.e.f. 01.01.2021
- Rule 60(1) provides that details of outward supply furnished by supplier in GSTR -1 *shall be made available electronically to the recipients in Part A of Form GSTR -2A; GSTR – 4A; and GSTR – 6A, through the common portal*
- ***If Section 16(2)(aa) is a condition for availing ITC and will come into force from a date notified, the entire exercise of examining GSTR – 2A for ITC eligibility for the past period becomes an illegal exercise.***
- ***Doctrine of impossibility and Section 16(2)(aa).***

# GST – AUDIT



- Section 35(5) provides for audit by a chartered accountant or cost accountant where the turnover exceeds the prescribed limit and also furnishing of reconciliation statement in GSTR -9C
- Challenges and extensions
- Protest against provisions?
- 39<sup>th</sup> GST Council meeting minutes show discussions where tax collected on account of the audit and the fees paid to the professional are discussed
- **Section 35(5) omitted by Finance Bill, 2021**
- Section 44 which deals with annual return substituted
- Concept of self-certified reconciliation statement
- Date of coming into force?
- Past period?

# GST – INTEREST

- Section 50(1)
- Belated filing of returns and interest
- GST Council meetings
- Madras HC in *Refex*
- Proviso introduced by Finance (No. 2) Act, 2019
- Notification dated 25.08.2020 stating that it is effective from 01.09.2020 but no action for the past
- Madras HC in *Manasarovar*
- Writs in other High Courts
- Substitution of proviso w.r.e.f. 01.07.2017

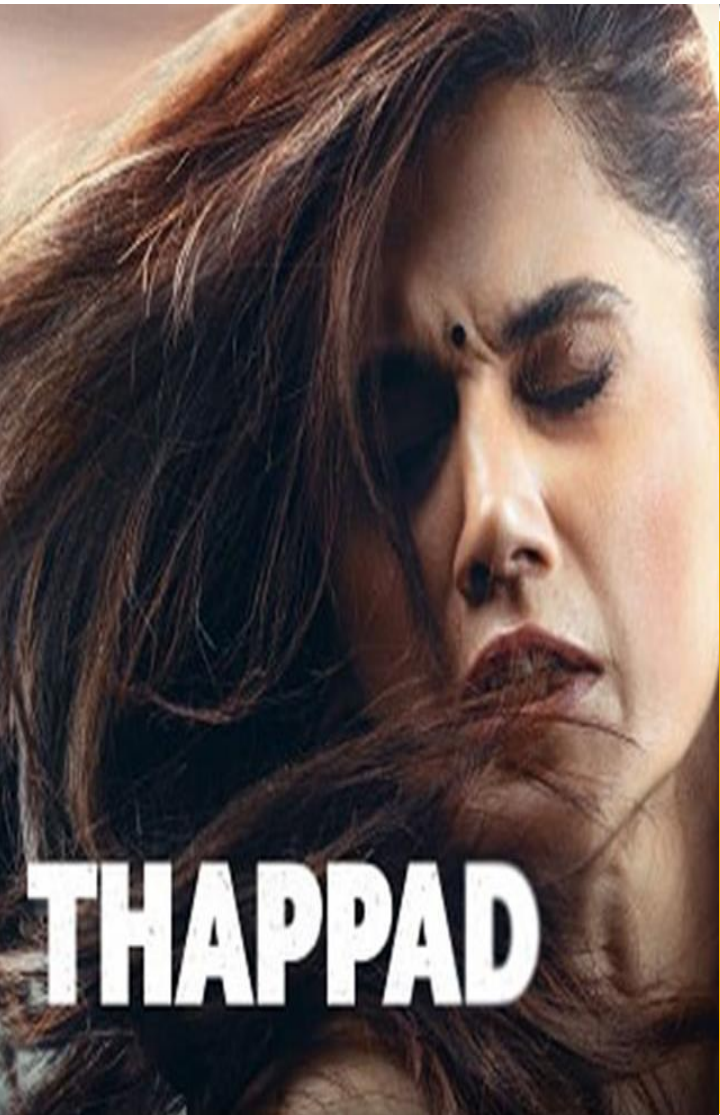


# SECTION 75

- Where self assessed tax in accordance with the return u/s 39 remains unpaid, the tax and interest shall be recovered u/s 79
- Explanation inserted to provide that self-assessed tax shall include tax payable in respect of *details furnished in GSTR -1 but not included in GSTR -3B*



# PENALTY



- Notice can be issued to transporter for penalty under certain circumstances
- If the tax proceedings under Section 73 or 74 are concluded against the main person, other proceedings were deemed to be concluded
- *Amendment to remove Section 129 and 130 from the scope of the explanation*
- *When main issue itself is concluded, insisting on a penalty on the transporter is not warranted*

# PROVISIONAL ATTACHMENT

- Section 83 is proposed to be amended whereby the Commissioner to protect the interest of the Revenue by order, can attach provisionally, any property including the bank account of the taxable person or any person specified in Section 122(1A)
- This can be done after *initiation of any proceeding under Chapter XII (Assessment), Chapter XIV (inspection, search, seizure and arrest) and Chapter XV (demands and recovery)*
- Earlier provision referred to *pendency of any proceedings under Section 62; Section 63; Section 67; Section 73; or Section 74 and covered only taxable persons*
- **Section 122(1A) refers to the person who retains the benefit of certain transactions and at whose instance such transaction is conducted**

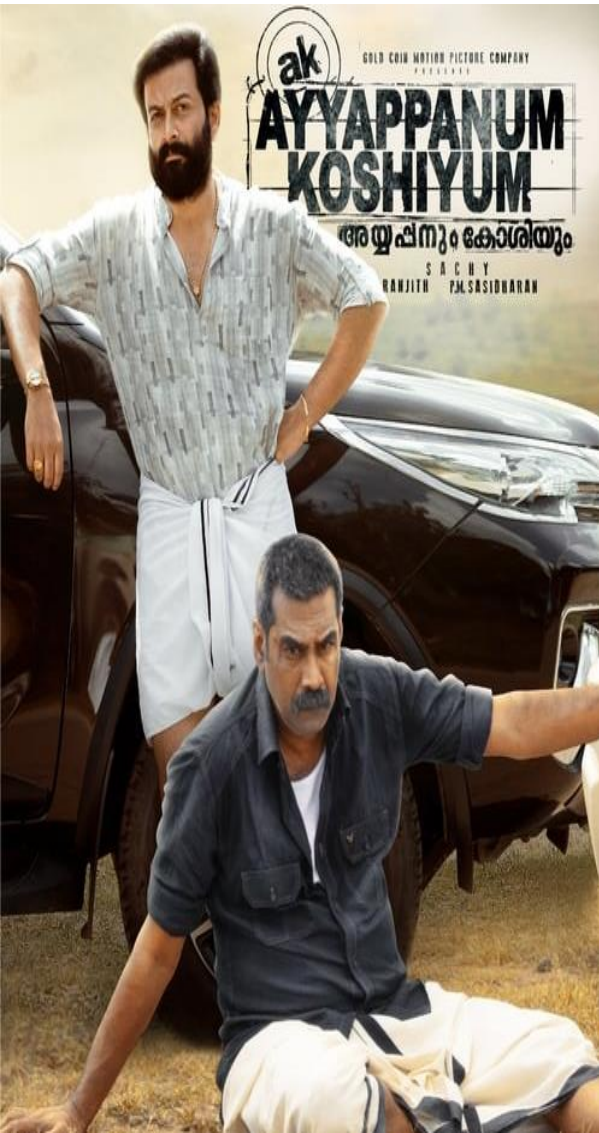


# DETENTION, SEIZURE & RELEASE OF GOODS & CONVEYANCE, IN-TRANSIT



EXISTING	PROPOSED
<p>Transportation of goods or storing goods while they are in transit in contravention of the Act or the Rules.</p>	<p>No change</p>
<p>Goods and conveyance liable to detention and seizure</p>	<p>No change</p>
<p>Where the owner comes forward to pay the tax and penalty; tax and penalty equal to 100% of the tax will have to be paid for release of goods.</p>	<p><b>Where the owner comes forward for payment of penalty, penalty equal to 200% of the tax payable.</b></p>
<p>Where the owner does not come forward for payment of tax and penalty, tax and penalty equal to 50% of the value of the goods reduced by the tax paid will have to be paid for release of goods.</p>	<p><b>Where the owner does not come forward for payment of penalty, penalty equal to 50% of the value of goods or 200% of the tax whichever is higher will have to be paid for release of goods.</b></p>

# DETENTION, SEIZURE & RELEASE OF GOODS & CONVEYANCE, IN-TRANSIT



EXISTING	PROPOSED
<p>Goods can be released on provisional basis on execution of bond and furnishing of security for tax, interest and penalty.</p>	<p><b>Provision omitted.</b></p>
<p>Notice; order – No time lines</p>	<p>Notice within 7 days of detention and Order within 15 days of service of notice.</p>
	<p><b>Non-payment within 15 days from the receipt of the order, goods or conveyance seized shall be liable to be sold to recover penalty.</b></p>
	<p><b>Conveyance shall be released on payment by the transporter of penalty or Rs.1 lakh whichever is less.</b></p>

# APPEALS

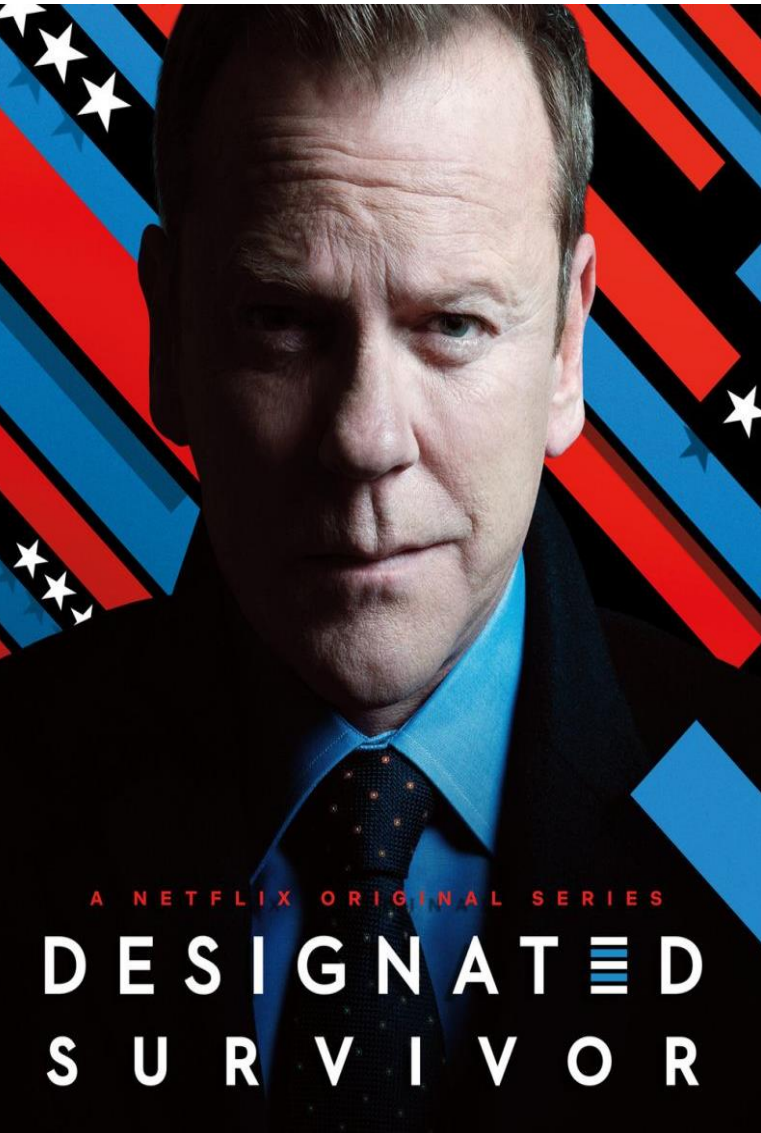
- Section 107 deals with appeal to Appellate Authority
- Pre-deposit 10% of the disputed tax subject to a maximum of Rs.25 crores
- Proviso introduced to provide that where the appeal is filed against an order under Section 129(3), 25% of the penalty is required to be paid
- *Number of instances where IGST is paid and goods are detained for PART B of e-way bill not being filled up or for hyper-technical reasons or even when the detaining authority questions classification*
- *Amendment not conducive to ease of doing business*

# INFORMATION

- Commissioner or officer authorised may by order *direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time in such form and in such manner as may be specified therein.*
- Original Section 151 dealt with power to collect statistics.
- Section 152(2) which provided that except for the purpose of prosecution under the Act or any other Act, no person who is not engaged in the collection of statistics under the Act or compilation or computerization thereof shall be permitted to see or have access to any information or individual return referred to in Section 151 *has been omitted.*



# SECTION 16 OF THE IGST ACT



- Zero rated supply without IGST under Bond or LUT and refund of unutilized ITC possible.
- In respect of zero rated supply of **goods**, if there is non-realization of proceeds, refund to be paid back with interest within 30 days of expiry of time specified in FEMA.
- Option of payment of IGST on zero rated supply and refund of the same removed.
- **Government may specify class of persons who may make zero rated supply on payment of IGST and claim refund of the IGST paid.**
- **Government may specify class of goods or services which may be exported on payment of IGST and the supplier may claim refund of tax so paid.**

# THANK YOU

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