

UNION BUDGET – 2023
ANALYSIS OF INDIRECT TAX PROPOSALS

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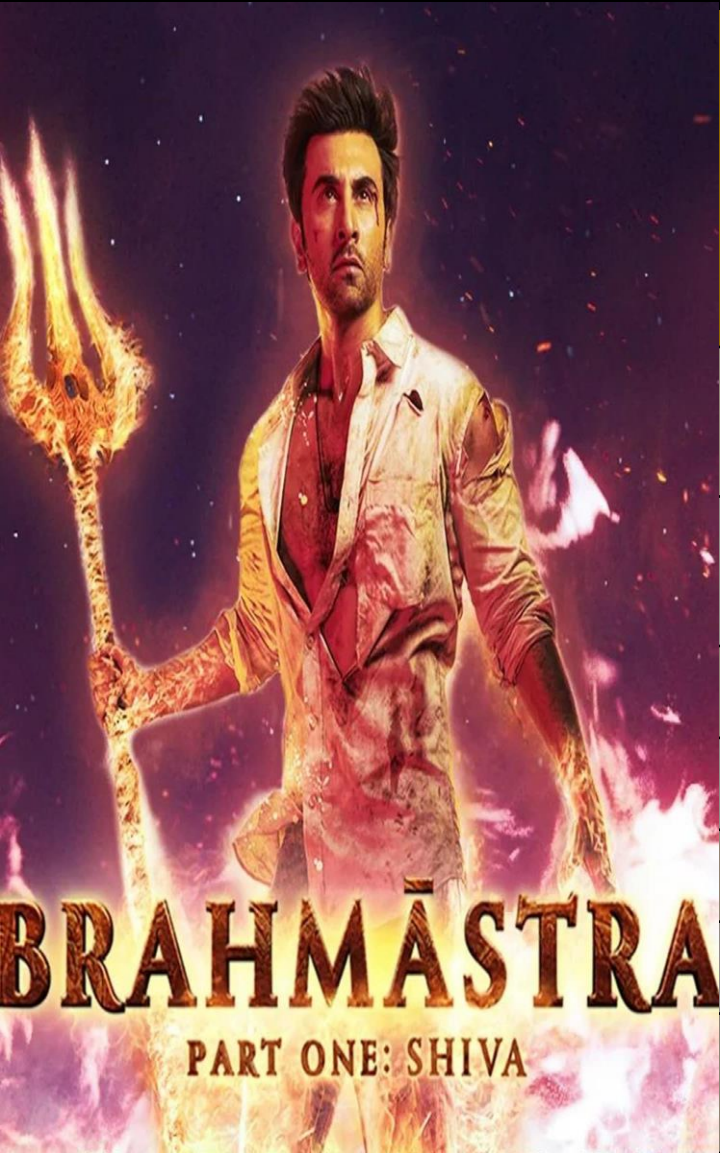
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- *All SOPs were followed while preparing this presentation and Chat GPT was not used.*
- *Understanding amendments is injurious to health and contributes to wealth.*
- *Any reference to provisions or decisions is real and not imaginary.*
- *Presentation prepared on 01.02.2023.*

THE NUMBERS



	2022-2023 Budget Estimates (Rs. in Crores)	2022-2023 Revised Budget Estimates (Rs. in Crores)	2023-2024 Budget Estimates (Rs. in Crores)
Corporation Tax	720000	835000	922675
Taxes on income	700000	815000	900575
Customs	213000	210000	233100
Excise	335000	320000	339000
Service Tax	2000	1000	500
CGST	660000	724000	811600
Compensation Cess	120000	130000	145000

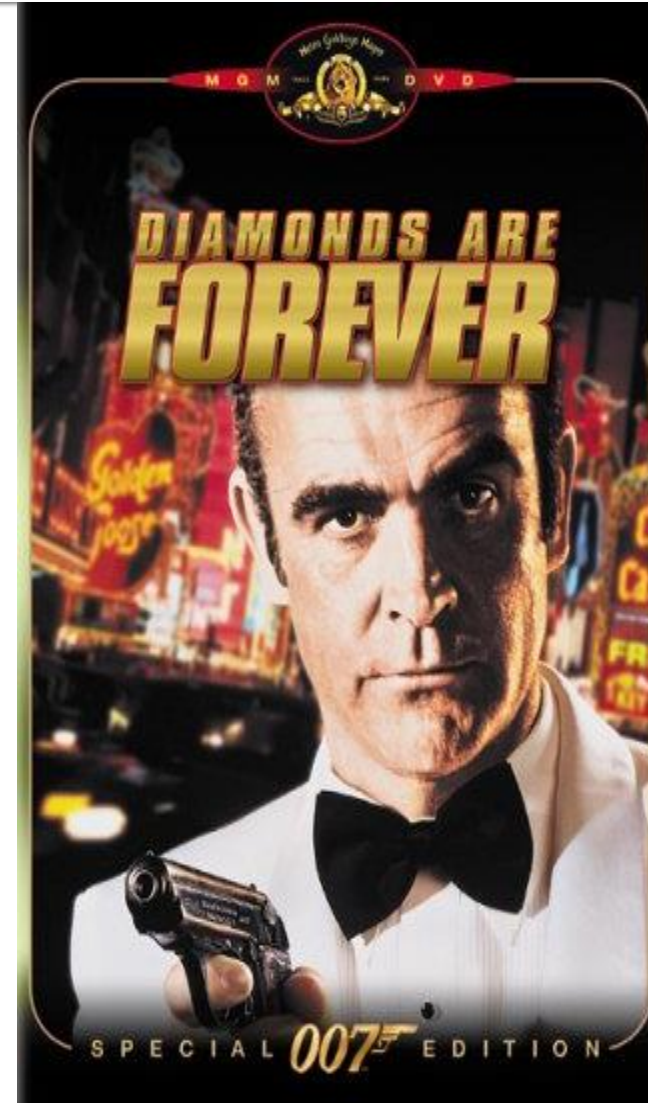
FM SPEECH

- *155 Paras in less than 2 hours*
 - *Nothing from the Mahabharata*
 - *No quotes from Thiruvalluvar*
 - *Simple and precise*
 - *Repetition for clarity*
- *No reference to the amendments in CGST Act or IGST Act*



LAB GROWN DIAMONDS

- *With the depletion in deposits of natural diamonds, industry is moving towards lab grown diamonds (LGD). LGD is a technology- and innovation-driven emerging sector with high employment potential*
- *These environment friendly diamonds which have optically and chemically the same properties as natural diamonds*
- *To encourage indigenous production of LGD seeds and machines and to reduce import dependency, a research and development grant will be provided to one of the IITs for 5 years*
- *BCD for Seeds for use in manufacturing of rough lab-grown diamonds reduced from 5% to nil*



RECALIBRATION

- Gold dore, gold bar, platinum
 - BCD reduced
 - Agricultural Infrastructure Development Cess (AIDC) increased
- Silver bar and silver dore
 - BCD and AIDC increased
 - Social Welfare Surcharge (SWS) exempted
- Articles of precious metals
 - Duty increased
 - SWS exempted



INCREASE IN CUSTOMS DUTIES

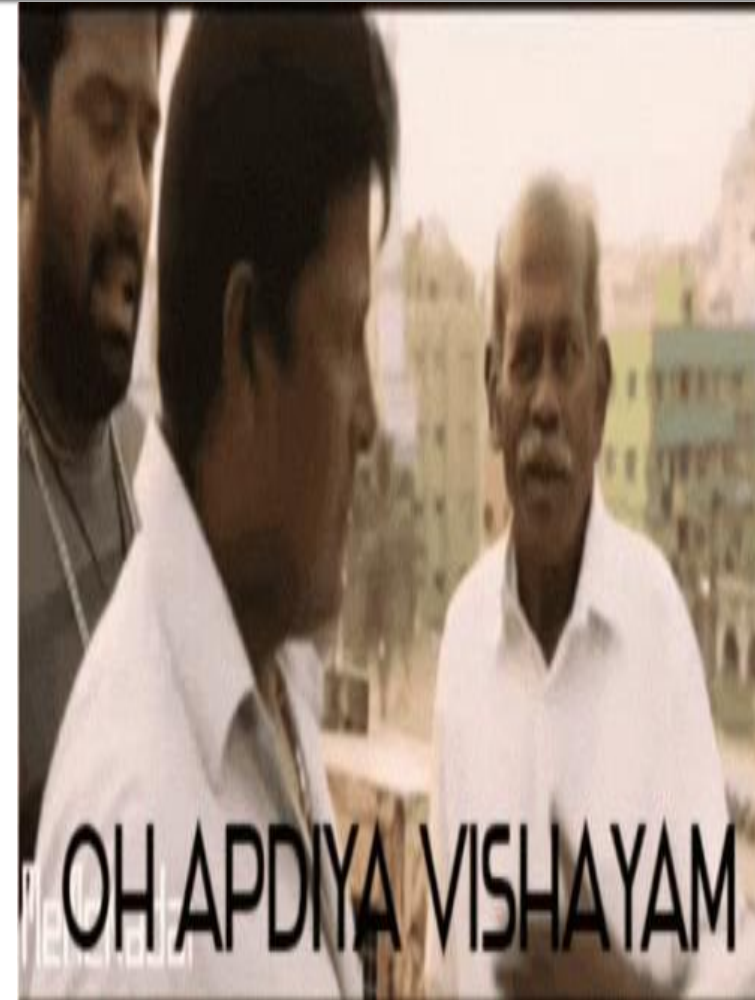
- Bicycles from 30% to 35%
- Toys and parts of toys (other than parts of electronic toys) from 60% to 70%
- Electric Kitchen Chimney from 7.5% to 15%
- Styrene, Vinyl Chloride Monomer from 2% to 2.5%
- Compound Rubber from 10% to 25% or Rs. 30 per kg, whichever is lower
- Imitation Jewellery from 20% or Rs.400 per kg., whichever is higher to 25% or Rs. 600 per kg., whichever is higher
- Naphtha from 1% to 2.5%
- Vehicle (including electric vehicles) in Semi-Knocked Down (SKD) form from 30% to 35%
- Vehicle in Completely Built Unit (CBU) form , other than with CIF more than USD 40,000 or with engine capacity more than 3000 cc for petrol run vehicle and more than 2500 cc for diesel-run vehicles, or with both from 60% to 70%
- Electrically operated Vehicle in Completely Built Unit (CBU) form, other than with CIF value more than USD 40,000 from 60% to 70%

DECREASE IN CUSTOMS DUTIES

- Denatured ethyl alcohol meant for manufacture of industrial chemicals
- Crude glycerine for manufacture of epichlorohydrin
- Inputs for aquatic feed
- Camera lens for mobile phones
- Parts for manufacture of open cells of TV panels
- Heat coils for electric kitchen chimney
- Vehicles, parts, imported by notified testing agencies
- Pecan nuts
- Warm blood horse imported by sports person for training in equestrian sports

REVIEW OF EXEMPTIONS

- Out of 196 exemptions, 146 are extended upto 31.03.2024 for the purpose of undertaking review
- Out of the balance,
 - Some extended by 5 years – trophies, cups, etc.;
 - Some by 2 years – raw material and parts for wind operated electricity generators / life saving drugs / specified drugs and medicines, etc.; and
 - Some by 1 year – ferrous waste and scrap, solar tampered glass for manufacture of solar cell etc.
- 146 conditional exemptions covered by Notification No. 50/2017 – Cus extended upto 31.03.2024 for undertaking review
- Some exemptions under Notification No. 50/2017 – Cus discontinued from 31.03.2023
 - Specified goods used for textile industry
 - Certain machineries
 - Other items



AMENDMENT OF SECTION 25

- Section 25(4A) was inserted by Finance Act, 2021 and provided that if there is a conditional exemption, unless otherwise specified or varied or rescinded, it would be valid upto 31st March immediately after 2 years from the date of such grant or variation.
- Amendment is now made to provide that the time limit will not apply to exemptions in relation to
 - Multi Lateral – Bi Lateral Trade Agreements
 - Obligations under International Treaties
 - Privileges of Constitutional Authorities
 - FTP Schemes
 - Central Govt Schemes of more than 2 years
 - Re-import
 - Temporary import
 - Goods imported as gifts or personal baggage
 - Any duty of customs including IGST other than Customs duty under Section 12



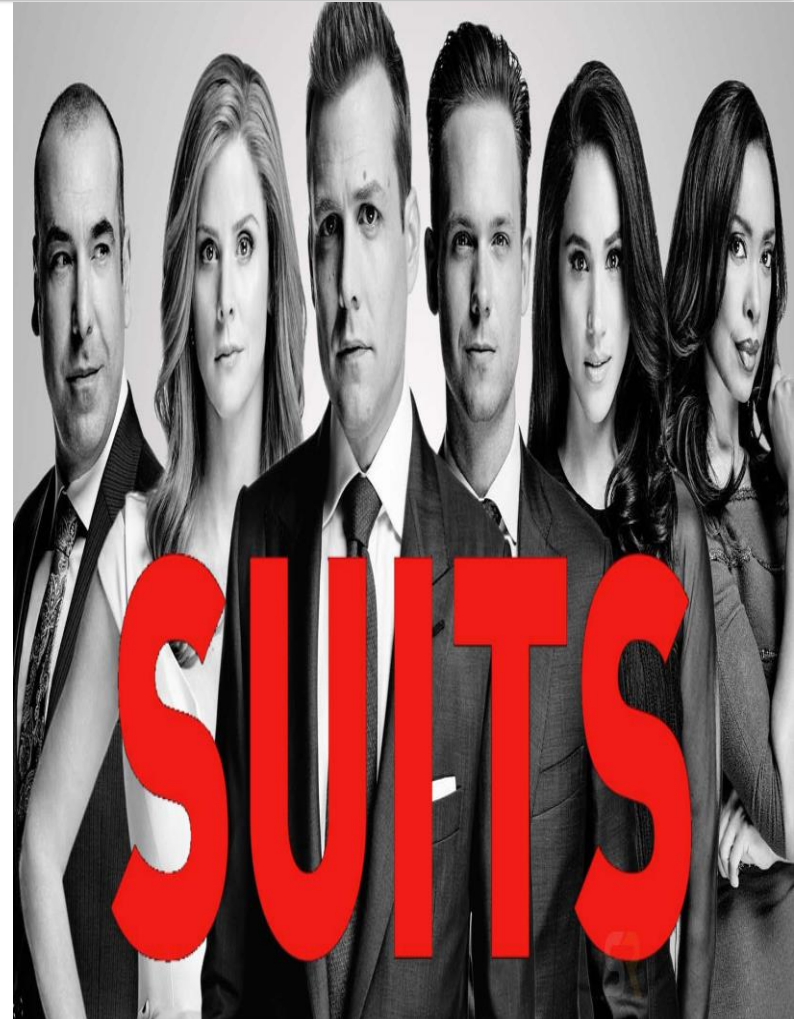
SETTLEMENT COMMISSION

- Order to be passed within 9 months from the last day of the month in which the application under section 127B is made
- If no order is made within the prescribed time, the proceedings shall abate and further proceedings would be carried out by the Adjudicating Authority *as if no application for settlement was made*
- Settlement Commission has power to extend time limit not exceeding 3 months



ANTI DUMPING DUTY

- In the case of *Jubilant Ingreya*, an appeal was filed being aggrieved by the failure of the Government to levy anti dumping duty despite the findings of the designated authority
- The Department contended that the appeal is not maintainable under Section 9C of the Customs Tariff Act as there is no 'Order of Determination'
- The Tribunal held that there is an office memorandum which states that the Central Government has decided not to impose ADD and this amounts to 'Order of Determination' and hence appealable
- Finance Bill, 2023 seeks to amend Section 9C of the CTA retrospectively w.e.f. **01.01.1995** to delete the word 'Order'
- Further, as per the explanation, for something to be determination or review, it must be done in the manner specified in the Rules made under Section 8A, 9, 9B
- Similar amendments to Section 9 and 9A



EXCISE

- Duties on cigarettes increased
- Exemption from excise duty on blended Compressed Natural Gas (CNG) from so much of the amount as is equal to GST paid on biogas /compressed bio gas contained in such blended CNG subject to the specified conditions

GST COLLECTIONS

- Economic Survey 2022-23
 - Rising average monthly gross GST collection
 - High YoY growth in cumulative Gross GST collections from April to December
 - Continued momentum in monthly Gross GST collections over the years
 - Increase in GST taxpayers, from 70 lakh in 2017 to more than 1.4 crore in 2022 indicates the expansion in formal businesses



COMPOSITION LEVY – CGST ACT

- Section 10 deals with composition levy
- Restriction on the applicability of scheme to persons supplying goods through e-commerce is being removed
- The restrictions continue for persons supplying services through e-commerce operators



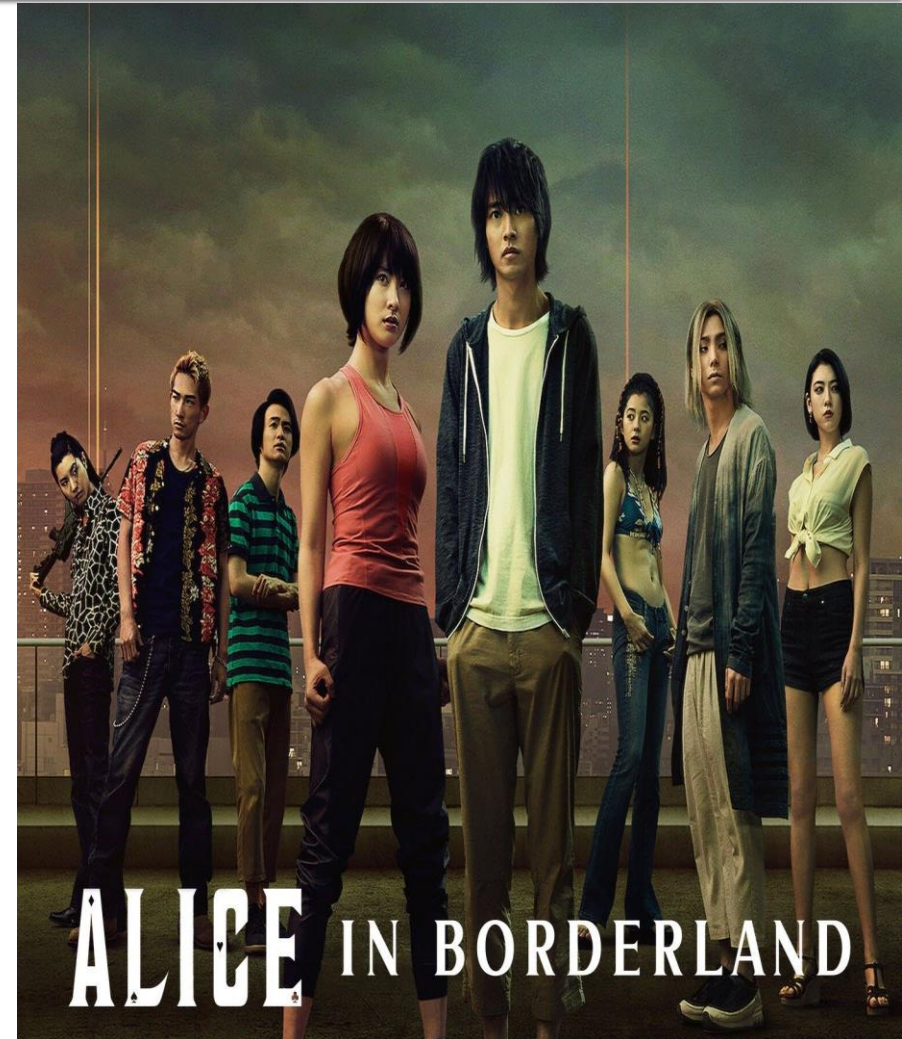
AMENDMENT TO SECTION 16(2)

- Section 16(2) deals with conditions for ITC
- Second proviso provides that payment for supply must be made to the supplier within 180 days
- Amendments made to proviso to align with Rule 37 amendment
- *Issues with ITC*
- *What is failure to pay?*
- *Retention money?*
- *Adjustments under contract relatable to breach?*



AMENDMENT TO SECTION 17(3)

- Section 17(2) deals with proportionate credit
- Section 17(3) deals with value of exempt supplies
- "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, **except** sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building
- Amendment to provide that value of such activities or transactions as may be prescribed in respect of clause (a) of Para 8 of the said Schedule would now be reckoned under value of exempt supply
 - This would mean restricted ITC
 - *If something is not even a supply, can it even be an exempt supply?*



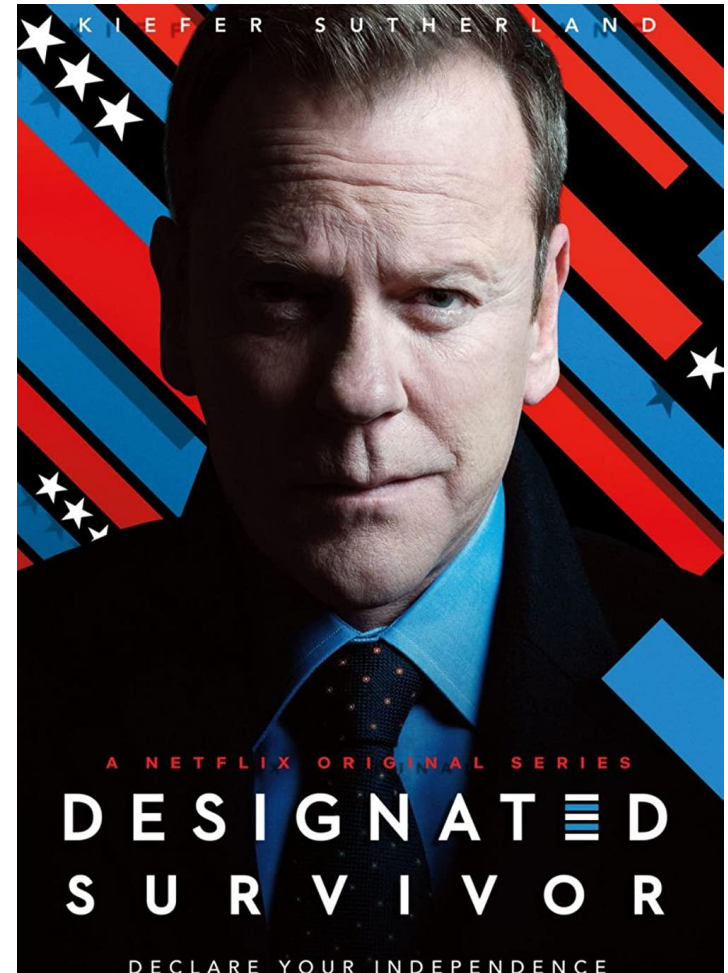
CORPORATE SOCIAL RESPONSIBILITY

- Section 17(5) covers blocked credits
- In *Essel Propack Ltd. V. Commissioner of CGST, Bhiwandi (2018) 362 ELT 833* Tribunal held that CSR can be considered as input service and observed that CSR is not only holistic approach but integrates core business strategy since same addresses well being of all stake holders and not just company's shareholders. Also, CSR not charity as it has direct bearing on manufacturing activity of company that is largely dependent on smooth supply of raw materials. CSR also augments credit rating of company as well as its standing in corporate world.
- Section 17(5)(fa) inserted
- Provides for non availability of ITC for goods or services or both used for activities relating to Corporate Social Responsibility referred to Section 135 of the Companies Act, 2013



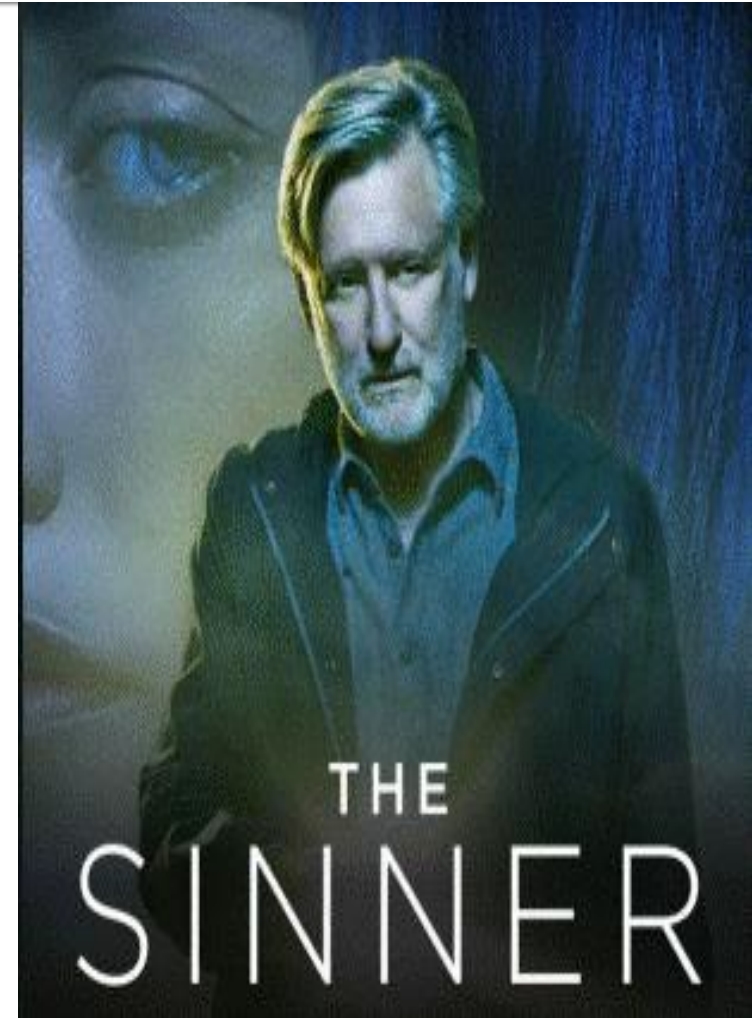
GST REGISTRATION

- Retrospective Amendment from 01.07.2017
- Section 23 is re-cast to provide that it shall be notwithstanding anything contained in Section 22 or Section 24
- No registration needed for the following persons:
 - Any person engaged exclusively in supply of goods or services not liable or wholly exempt
 - Agriculturalist to the extent of supply of produce of cultivation of land
- Compulsory registration not required if assessee falls under Section 23 categories



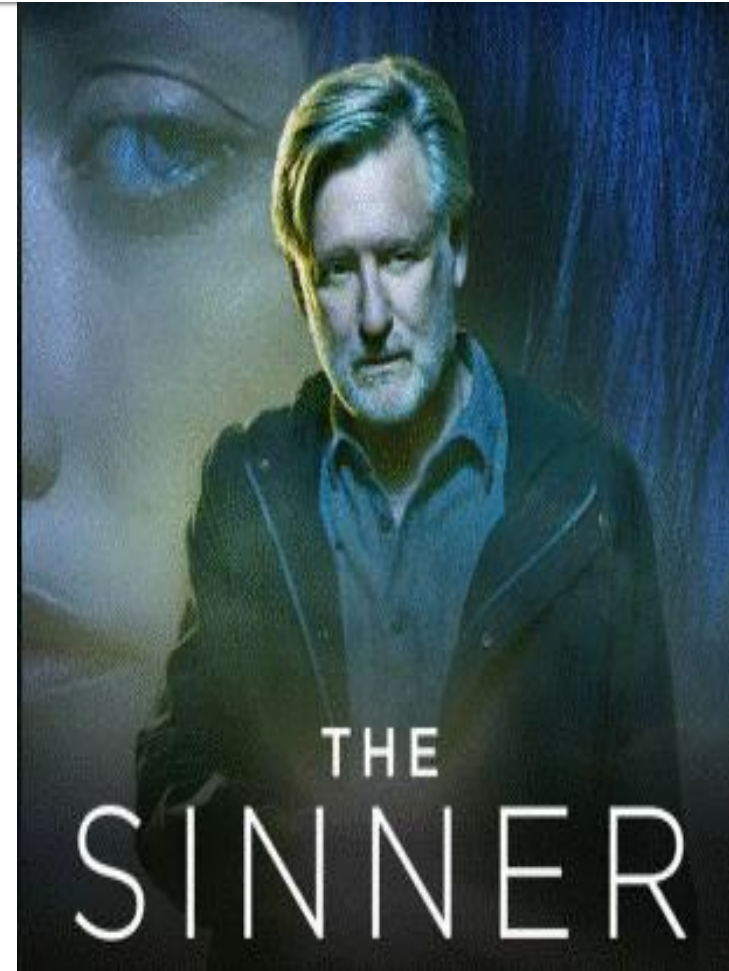
RETURNS

- Returns for outward supply - GSTR -1
 - Section 37(5) inserted to provide that a registered person shall not be allowed to furnish details of outward supplies for a tax period after a period of 3 years from the due date
 - Person may be allowed to file even after expiry of such time by notification subject to conditions and restrictions
- Monthly Returns – GSTR - 3B
 - Section 39(11) inserted to provide that a registered person shall not be allowed to furnish a return for a tax period after the expiry of a period of three years from the due date of furnishing the said return
 - Person may be allowed to file even after expiry of such time by notification subject to conditions and restrictions



RETURNS

- Annual Return – GSTR 9
 - Section 44(2) is inserted to provide that a registered person shall not be allowed to furnish an annual return for a financial year after the expiry of a period of three years from the due date of furnishing the said annual return
 - Person may be allowed to file even after expiry of such time by notification subject to conditions and restrictions
- Electronic Commerce Operator – GSTR - 8
 - Section 52(15) is inserted to provide that the electronic commerce operator shall not be allowed to furnish a statement under sub-section (4) after the expiry of a period of three years from the due date of furnishing the said statement
 - Person may be allowed to file even after expiry of such time by notification subject to conditions and restrictions



MISCELLANEOUS

- Amendment to Section 54(6) of the CGST Act so as to remove the reference to the provisionally accepted ITC to align the same with the present scheme of availment of self-assessed ITC as per Section 41(1)
- Amendment to section 56 of the CGST Act so as to provide by rules the manner of computation of period of delay for calculation of interest on delayed refunds
 - Interest on delayed refund would be only for the period of delay beyond 60 days from the date of receipt of application till date of refund to be computed in such manner and subject to conditions and restrictions as may be prescribed

E-COMMERCE OPERATOR

- Section 122(1B) inserted to CGST Act
 - Any electronic commerce operator who—
 - allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;
 - allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or
 - fails to furnish the correct details in the statement to be furnished under Section 52(4) of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,
 - shall be liable to pay a penalty of Rs. 10,000, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher



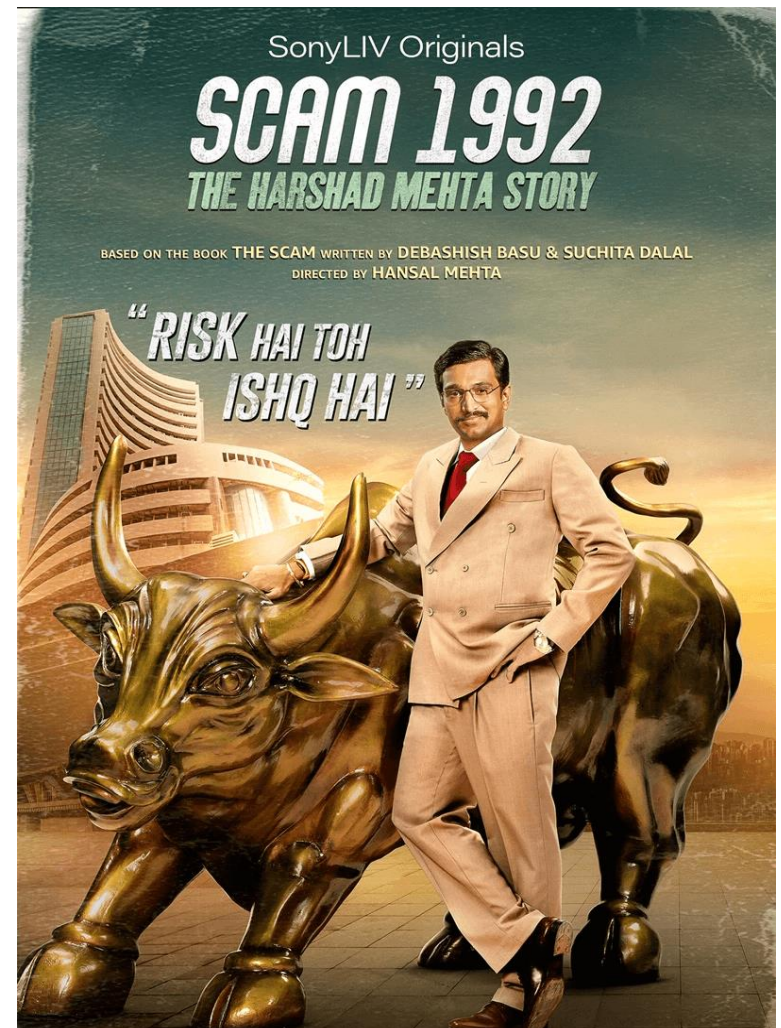
PENAL PROVISIONS

- Amendment to Section 132(1)
 - To decriminalize offences specified in clause (g), (j) and (k) and
 - To increase the monetary threshold for launching prosecution for the offences under the said Act from Rs. 100 lakhs to Rs. 200 lakhs except for the offences related to issuance of invoices without supply of goods or services or both
- Clause (g) covers obstructing or preventing officer in the discharge of his duties
- Clause (j) covers tampering or destroying any material evidence or document
- Clause (k) covers failure to supply any information he is required to supply or supplies wrong information



COMPOUNDING OF OFFENCES

- Amendment to first proviso to Section 138(1) of the CGST Act so as to exclude the persons involved in offences relating to issuance of invoices without supply of goods or services or both from the option of compounding of the offences under the said Act
- It further seeks to amend Section 138(2) so as to rationalise the amount for compounding of various offences by reducing the minimum as well as maximum amount for compounding



FURNISHING OF INFORMATION

- Insertion of Section 158A so as to provide for prescribing manner and conditions for sharing of the information furnished by the registered person
 - In his application for registration
 - In his GST returns
 - In particulars uploaded in the portal for preparation of invoice
 - In particulars uploaded for generating e-way bill
 - Such other particulars as may be prescribed.
- Consent from the supplier and the recipient in the manner prescribed
- Insertion of Section 158A(3) to provide that notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.
- *Data privacy ?*
- *Safety of business data and secrets ?*
- *Each law is different and there cannot be any meaningful comparison or reconciliation.*



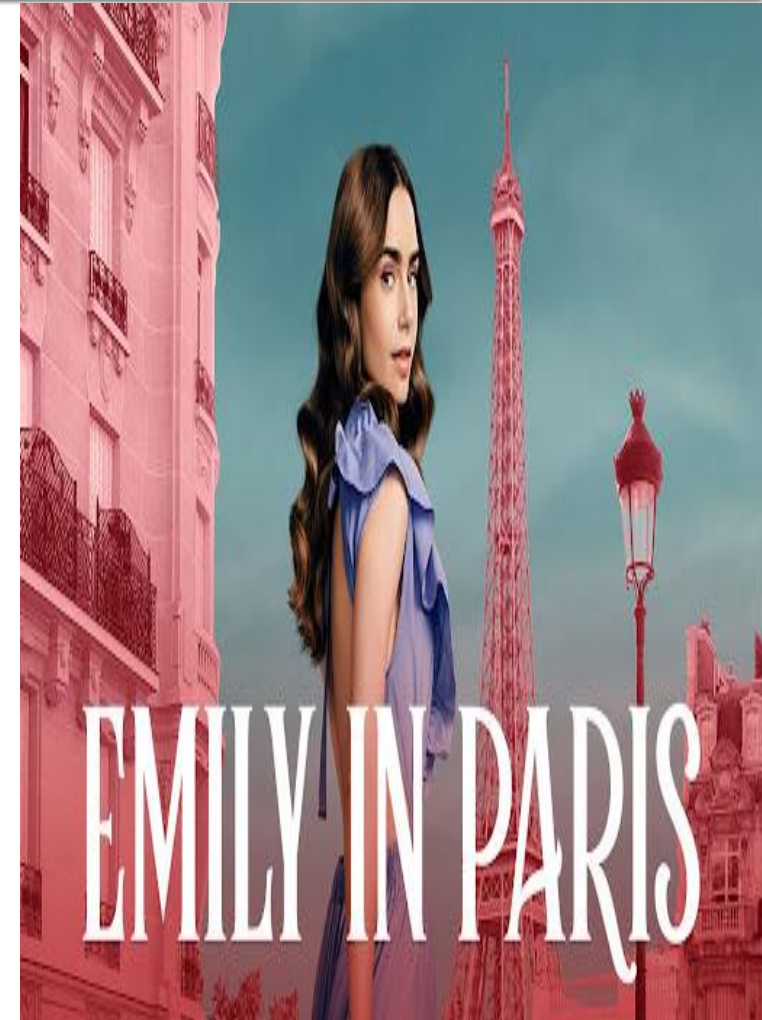
SCHEDULE III

- Schedule III of the CGST Act covers activities or transactions which shall be treated neither as supply of goods nor a supply of services
- Deemed to be inserted **w.r.e.f. 01.07.2017**
 - Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India – Para 7
 - Supply of warehoused goods to any person before clearance for home consumption – Para 8(a)
 - Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption – Para 8(b)



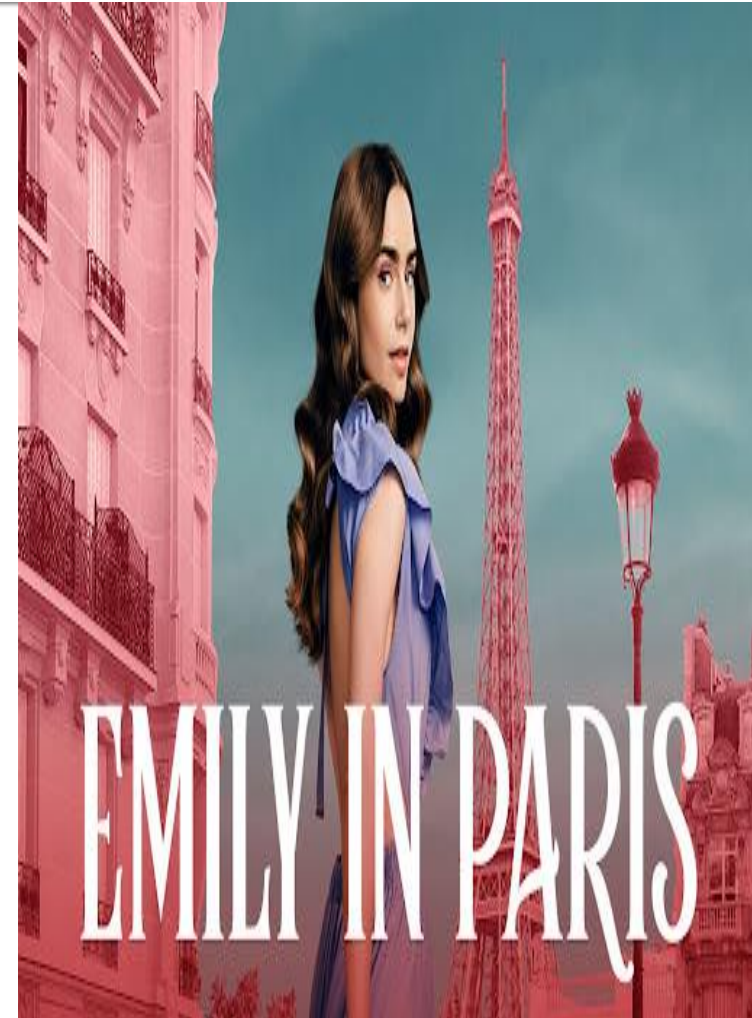
NON TAXABLE ONLINE RECIPIENT

- Amendment to Section 2(16) to restrict the meaning of non-taxable online recipient
- Non-taxable online recipient means any unregistered person receiving OIDAR services, located in the taxable territory
- Explanation provides that unregistered persons includes a persons registered solely under Section 24(vi) - persons who are required to deduct tax under section 51, whether or not separately registered under this Act
- Originally, Section 2(16) of the IGST Act defined "non-taxable online recipient" to mean any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services (OIDAR) in relation to any purpose **other than** commerce, industry or any other business or profession, located in taxable territory



OIDAR

- Section 2(17) defines "online information and database access or retrieval services" to mean services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes
- Amendment to Section 2(17)
- The conditions of "essentially automated" and "involving minimal human intervention" are now removed
 - Wide coverage include non-automated online activities such as live performance, entertainment, teaching, etc.



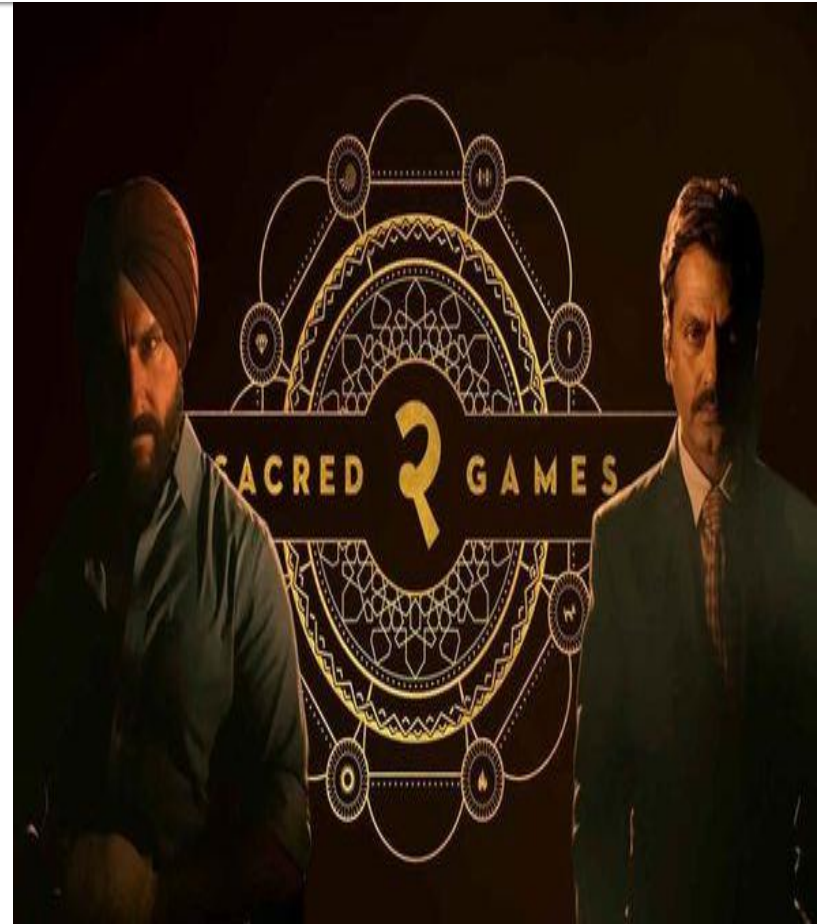
PLACE OF SUPPLY

- Proviso to Section 12(8) of the IGST Act provides that place of supply where the transportation of goods is to a place outside India, shall be the place of destination of such goods
- Therefore, if the Freight forwarder is in Maharashtra and the exporter is in Maharashtra but the destination of goods is in the non-taxable territory, the place of supply was the destination of such goods. This required charging of IGST and the CBIC had clarified on the code to be used.
- Proviso is now being omitted
- If Freight forwarder is in Maharashtra, Exporter is in Maharashtra, POS would be the location of the recipient if recipient is registered.
- CGST + SGST would apply from the date the amendment is effective.
 - *Whether taxing export freight is a correct approach?*
 - *Internationally export freight is zero rated*



CENTRAL SALES TAX ACT

- Substitution of section 19 of the CST Act so as to declare the CESTAT constituted under section 129 of the Customs Act as the Appellate Authority for settlement of inter-State disputes falling under sections 6A and 9
- AAR under Income Tax Act
- Insertion of section 25(3) to the CST Act to provide for transfer of pending proceedings before the erstwhile AAR to the Authority referred to in section 19.
 - *GST Tribunals are yet to be constituted even after more than 5 years after GST.*



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