

UNION BUDGET – July 2019

ANALYSIS OF INDIRECT TAX PROPOSALS & CHANGES IN GST

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DISCLAIMER

- *Being the world cup season all discussions involve cricket. This presentation seeks to use Cricketing Terminologies and commentator jargon only for the purpose of adding humour and grouping the various aspects of the Budget and the changes in GST in relevant baskets.*
- *There was no rain during preparation of this presentation*
- *Understanding points table is injurious to health.*



POINTS TABLE

	2018-2019 (Budget Estimates (Rs. in Crores)	2018-2019 (Revised Budget Estimates (Rs. in Crores)	2019-20120 (Budget Estimates (Rs. in Crores)
Corporation Tax	621000.00	671000.00	766000.00
Taxes on income	529000.00	529000.00	569000.00
Customs	112500.00	130038.00	155904.00
Excise	259600.00	259612.20	300000.00
Service Tax	...	9283.00	...
Goods and Services Tax#	743900.00	643900.00	663343.00

includes GST compensation cess

RUN RATE

MONTH	TOTAL GST COLLECTION (IN Rs.)
January 2019	1,02,503 Crores
February 2019	97,247 Crores
March 2019	1,06,577 Crores
April 2019	1,13,865 Crores
May 2019	1,00,289 Crores
June 2019	99,939 Crores

INCREASE IN RUN RATE

- **Increase in Customs Duty / Additional Customs Duty**
 - Cashew Kernel 70%
 - Marble Slabs 40%
 - Certain end use exemptions withdrawn
 - PVC 7.5% to 10%
 - Plastic floor coverings from 10% to 15%
 - Newsprint 0 to 10%
 - Uncoated paper for printing of newspaper 0 to 10%
 - Lightweight coated paper for magazines 0 to 10%
 - Printed books 0 to 5%
 - Roofing tiles and other architectural ornaments from 10% to 15%
 - Ceramic pavings, wall tiles, mosaic cubes etc. from 10% to 15%
 - Glass mirrors including rear view mirrors from 10% to 15%
 - Silver, gold, platinum from 10% to 12.5%
 - Stainless steel and other alloys in ingots from 5% to 7.5%

INCREASE IN RUN RATE

- **Increase in Customs Duty / Additional Customs Duty**
 - Locks in motor vehicles from 10% to 15%
 - Oil and Petrol filters and intake air filters for IC engines from 7.5% to 10%
 - Lighting, automobile lamps, windscreen wipers etc. from 10% to 15%
 - Horns from 7.5% to 15%
 - Parts of the above from 7.5% to 10%
 - Chassis fitted with engines for motor vehicles of heading 8701 to 8705 from 10% to 15%
 - Bodies including cabs for motor vehicles of heading 8701 to 8705 from 10% to 15%
 - Completely built unit imports of motor vehicles falling under 8702 or 8704 from 25% to 30%



INCREASE IN RUN RATE



- Increase in Customs Duty / Additional Customs Duty (Cont...)
 - CCTV Camera and IP Camera from 15% to 20%
 - Specified Electronic items exemption withdrawn (Sr. No. 427, read with list 20, Notification No. 50/2017 – Cus)
 - Charger or adapter for digital video recorder, network video recorder from 0 to 15%
 - Loudspeakers from 10% to 15%
 - Digital Video Recorder and Network Video Recorder from 15% to 20%

INCREASE IN RUN RATE

- **Increase in Customs Duty / Additional Customs Duty (Cont...)**
 - Indoor and outdoor unit of split AC from 10% to 20%
 - Catalytic convertors from 7.5% to 10%
 - Stone crushing plants for construction of roads from 0 to 7.5%
 - LED lamps from 10% to 15%
 - Microphone receivers and SIM sockets of mobile phones now at 15%
 - Optical fibres and cables from 10% to 15%

FALL IN RUN RATE

- Decrease in Customs Duty
 - Goods falling under Chapter 2844 20 00 for use in generation of nuclear power reduced from 7.5% to nil
 - Duty on EDC reduced from 2% to nil
 - El Tanned leather from 15% to nil
 - Hides and skins from 60% to 40%
 - Wool fibre from 5% to 2.5%
 - Wool tops from 5% to 2.5%
 - Specified military equipment – exempted
 - Specified capital goods for manufacture of PCB, mobile charger, display panel – exempted
 - Project import for specified atomic power projects – exempted

SILLY POINT

- *Tobacco products and crude attracts National Calamity Contingent Duty. In certain cases, this levy has been contested on the ground that there is no basic excise duty on these items. To address this issue, a nominal basic excise duty is being imposed. Para 139 – FM Speech on 05.07.2019*
- Imposition of Excise Duty
 - Duty imposed on filter cigarettes
 - Tobacco substitutes
 - Hookah or gudaku
 - Smoking mixtures for pipes
 - Chewing tobacco
 - Jarda scented tobacco
 - Snuff
 - Tobacco extracts

“CRUDE BUT EFFECTIVE SHOT”

	Rate upto 05.07.2019 (Rs. per lt.)				Rates from 06.07.2019 (Rs. per lt.)			
	BED	SAED	RIC	Total	BED	SAED	RIC	Total
Petrol	2.98	7	8	17.98	2.98	8	9	19.98
Branded Petrol	4.16	7	8	19.16	4.16	8	9	21.16
Diesel	4.83	1	8	13.83	4.83	2	9	15.83
Branded Diesel	7.19	1	8	16.19	7.19	2	9	18.19

CAPTAIN

- Section 41 deals with person-in-charge.
- Master, commander, conductor, driver or other person-in-charge.
- Others could file by making application in a prescribed form.
- Persons other than person-in-charge – no penalty for incorrect filing – ***Shahi Container (2003) 158 ELT 51***
- Amendment to Section 41
 - For the purpose of delivery of departure manifest, export manifest or export report the person in charge of a conveyance includes any other person as may be specified by the Central Government by a Notification.

"STRAIGHT DOWN THE FIELDER'S THROAT"

- Section 103
- The Kolkatta High Court in the case of ***Mursaleen Mohammad*** had held that procedure for intrusive search inside body of suspect requires Magistrate permission. It is required initially for x-ray of body of suspect and later for recovery of secreted contraband. Consent of suspect for x-ray not valid for waiving Magistrate permission.
- Where the proper officer has reason to belief that any person as any goods liable to confiscation secreted inside his body, he may detain such person and shall with prior approval of DC or AC scan such person using such equipment as may be available at the customs station without prejudice to the rights available to such person under any other law including his consent for screening or scanning and forward a report to the nearest Magistrate if goods appears to be secreted or Produce him without any unnecessary delay before the nearest Magistrate



“RIGHT UP IN THE BLOCK HOLE”

- Section 104 – Customs Officer has power to arrest a person in India or within Indian customs front.
- Sec. 104 being amended whereby the words '*in India or within Indian customs waters*' are being omitted.
- Cognizable offences
 - Fraudulently availing of or attempting to avail drawback or any exemption from duty provided under this Act where the amount of drawback or exemption duty exceeds Rs.50 lakhs or
 - Fraudulently obtaining an instrument for the purpose of this Act or the Foreign Trade (Development and Regulations) Act, 1992 and such instrument is utilized under this Act where duty relatable to such utilization of instrument exceeds Rs.50 lakhs.
- Section 104(6) proposed to be amended to provide that offences relating to fraudulently obtaining an instrument for the purpose of this Act or the Foreign Trade (Development and Regulations) Act, 1992 and such instrument is utilized under this Act where duty relatable to such utilization of instrument exceeds Rs.50 lakhs shall be non-bailable

HIT WICKET

- The importer had purchased DEPB from the market in the bona fide belief that is genuine; paid full price; and availed benefit. Merely because at a later stage, the DEPB has been found to be fabricated and fake on the basis of BCER the assessee-respondent could not be deprived of the benefits which were legitimately available to them. – ***Leader Valves Ltd. – P&H HC***
- Where any person obtained any instrument by fraud, collusion, willful misstatement, suppression of fact and such instrument has been utilized by such person or any other person for discharging duty, the person to whom, the instrument is issued shall be liable to penalty not exceeding value of such instrument. – Section 114AB.

RECALL

- Retrospective Exemptions
 - No service tax on licence fee for grant of liquor licence for the period April 2016 to June 2017.
 - No service tax on certain programmes of IIM for the period July 2003 to March 2016.
 - No service tax on salami or development charges for the period October 2013 to June 2017.

HELICOPTER SHOT

- Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.
- Specified indirect tax enactments
- Excise duty and service tax covered.
- 30.06.2019
- Disputed taxes
 - Appeal pending
 - SCN issued
 - Enquiry or audit or investigation is pending
- Also cover amounts in arrears.

HELICOPTER SHOT

- Disputed tax due is Rs.50 lakhs or less -> relief of 70% of tax dues available to the declarant.
- Disputed tax due is more than Rs.50 lakhs -> relief of 50% of tax dues available to the declarant.
- Declaration
- Verification by the designated committee.
- Issue a statement
- Amount to be paid within a period of 30 days
- Discharge certificate

ACTION REPLAY

- Composition scheme for service providers
- Section 10(2A)
- Aggregate turnover in the preceding financial year should not exceed Rs.50 lakhs.
- Option to pay tax at 6%.
- Notification No.2/2019 – CTR dated 07.03.2019

GOOGLY

- Mandatory Aadhaar authentication.
- Every registered person to undergo authentication or furnish proof of possession of Aadhaar number in such form and within such time as may be prescribed.
- After issue of Notification, every individual in order to be eligible for grant of registration, undergo authentication or proof of possession of Aadhaar number.
- After issue of Notification, every person other than individual shall undergo authentication or proof of possession of Aadhaar number of *karta, MD, whole-time director, such number of partners, members of managing committee of association, board of trustees, authorised representative, authorised signatory in the manner specified.*
- If such persons have not been assigned Aadhaar, alternate and viable means of identification may be specified.

"SHE'S BOWLING A GOOD LINE AND LENGTH"

- Facility of digital payment to the recipient
- Insertion of Section 31A
- On recommendations of GST council, Government may prescribe certain classes of persons to provide prescribed modes of electronic payment to the recipient at his option, in such manner and subject to such conditions as may be prescribed.

“RETURN TO FORM”

- Furnishing of Returns
- Amendments to Section 39
 - Regular taxable person to file monthly GST returns and pay taxes monthly
 - Notified classes of persons to file GST return quarterly and pay taxes monthly
 - Registered persons paying tax under Section 10 to file a yearly GST return and pay taxes quarterly
- Amendment to Section 44
 - On recommendations of the GST Council and for reasons to be recorded in writing, power to the Commissioner to extend the time limit for furnishing the annual return for notified classes of registered persons

PULL SHOT

- Transfer of balances in e-cash ledger
- Section 49
- Amount in electronic cash ledger in CGST can be transferred to other GST cash ledgers
- Subject to restrictions and conditions to be prescribed
- Where any amount is transferred to the electronic cash ledger under the CGST Act, it shall be deemed to be a deposit in the said ledger

RETIRED HURT

- The Telangana High Court in the case of ***Megha Engineering & Infrastructures Ltd Vs. Commissioner of Central Tax***
 - Till the returns is filed, there is no entitlement to the credit and no actual entry of credit in the electronic credit ledger takes place.
 - The tax paid on inputs is always available but it is available in the air or cloud and becomes ITC only when a claim is made in the returns.
 - Tax paid earlier is in the air or cloud.
 - Only when the payment is made the Government gets the right over the money available in the ledger.
 - Interest is leviable under Section 50 even on the Input Tax Credit utilised when there is a delay.

RETIRED HURT

- Portal Vs. Statute
 - In terms of the technical configuration, unless the tax due is completely paid / set off the return cannot be filed.
 - Gujarat High Court in the case of ***Octagon Communications P. Ltd. Vs. Union of India (2019) 105 taxmann.com 262*** vide interim order, permitted the petitioner to file returns in Form-GSTR-3B manually in a petition where it was contended that the law did not provide for making payment of tax as a pre-condition for filing return whereas the online system did not allow filing of the return without payment of tax liability admitted in the return

RETIRED HURT

- Concept of Input Tax Credit
- No Loss to the Government
- ITC is tax paid as per Supreme Court in ***Eicher Motors Ltd.***

RECOVERED FROM INJURY?

- Interest on delayed payment of tax
- Proviso inserted to Section 50
 - Interest on tax payable in respect of supplies made during a tax period and declared in the return furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.
- Effective date?

STRAIGHT DRIVE

- Section 54 – Export refunds
- Refund of State tax
- Insertion of sub-section 8A to Section 54
 - The Government may disburse the refund of the state tax in such manner as may be prescribed.

DUCKWORTH–LEWIS–STERN METHOD

- Authority for Advance Ruling
- Appellate Authority for Advance Ruling
- National Appellate Authority for Advance Ruling
- To hear appeals arising out of conflicting advance ruling by Appellate authorities of two or more States or Union Territories or both.
- Constitution of National Appellate Authority.
- One Judicial & two Technical members.
- Opportunity of being heard to the applicant, officer authorised by Commissioner, all Principal Chief Commissioners, Chief Commissioners of Central Tax and Chief Commissioners and Commissioner of State Tax of all States, Chief Commissioners and Commissioner of Union Territory Tax of all Union Territories.
- If member differs in opinion, it shall be decided according to the opinion of the majority.



The DLS method is an attempt to set a statistically fair target for the second team's innings, which is the same difficulty as the original target. The basic principle is that each team in a limited-overs match has two resources available with which to score runs (overs to play and wickets remaining), and the target is adjusted proportionally to the change in the combination of these two resources.

OVER THROW

- National Anti Profiteering Authority
- What is 'commensurate reduction in prices'?
- Two year extension.
- Orders passed by NAPA.
- Whether anti-profiteering provisions are valid in the absence of proper mechanism of measurement of benefit?
– Delhi, Bombay HC
- Penalty
- If NAPA after holding examination as required under 171(2), comes to the conclusion that any registered person has profiteered, such person shall be liable to pay penalty equivalent to ten percent of the amount so profiteered;
- No penalty, if the profiteered amount is deposited within 30 days from the date of passing the order.

REVERSE SWING

- Rule 138E
 - Consignor, consignee, transporter, e-commerce operator or a courier agency cannot furnish Part – A of e-way bill in respect of a registered person whether as supplier or recipient has not furnished returns for two consecutive tax periods.
 - Provision to be implemented from 21.08.2019.
 - *Non – filing of returns could result in cessation of business since e-way bill is critical for movement.*
 - *Non filing could be for technical reasons*

LATE CUT

- Section 49A and 49B was inserted by the CGST (Amendment) Act, 2018 w.e.f. 01.02.2019.
 - Utilisation towards IGST, CGST, SGST only after ITC of IGST is fully utilised.
 - Resulted in accumulation of SGST credit and cash payment of CGST.
- Amendment related impact.
 - Dealers insisting on local supply as against inter-State supply
 - Cashflow pressure
- Rule 88A inserted
 - Allows utilisation of IGST towards payment of CGST and SGST in any order.
 - ITC on account of IGST should be completely exhausted before CGST and SGST can be utilised.
- Issue still not fully sorted since companies may have significant balances of unutilised CGST & SGST through TRAN

NO BALL

- Circular No. 105 dated 28.06.2019
 - Post sale discount without any action or obligation at dealers end will not form part of value subject to Section 15(3).
 - If additional discount is a post sale incentive requiring the dealer to undertake a special sales stride or advertisement campaign or exhibition, then, it is a supply of service by dealer to supplier.
 - If additional discount is offered to dealer, in order to offer a special reduced price to customer to augment sale value, additional discount to be treated as consideration in the hands of the dealer.

NO BALL

- Section 168 does not confer any power on the Board or the Commissioner to identify taxability or direct that a particular transaction should be treated as a service liable to GST.
- The power conferred is only to issue orders or instructions or directions for the purpose of uniformity in implementation of the Act.
- The language used in Section 168 of the CGST Act is identical to the erstwhile Section 37B of the Central Excise Act.

NO BALL

- The Supreme Court in the case of ***Orient Papermills vs. Union of India AIR 1979 SC 48*** has held that the assessing authorities exercise quasi-judicial functions and they have duty cast on them to act in a judicial and independent manner. If their judgment is controlled by the directions given by the Collector it cannot be said to be their independent judgment in any sense of the word. An appeal then to the Collector becomes an empty formality.

NO BALL

- The Supreme Court in the case of ***Keshavji Ravji & Co. vs. CIT (1990) 183 ITR 1*** has held that the Board cannot pre-empt a judicial interpretation of the scope and ambit of a provision of the Act by a Circular and that the task of interpretation of laws is the exclusive domain of the Courts.
- Each of the elements identified as taxable in the Circular have already been examined by Courts in the past and have been considered as non-taxable from VAT and Service Tax perspective.

IT'S NOT CRICKET

- CGST (4th Amendment) Rules w.e.f. 28.06.2019
- Rule 10A
 - After certificate of registration is made available on the common portal, a registered person not later than 45 days from grant of registration or date on which return under Section 39 is due to be furnished, whichever is earlier furnish information with respect to details of bank account or any other information as may be required on the common portal in order to comply with any other provision.
- **Rule 21(d) provides for cancellation of registration for violation of Rule 10A**

RAIN STOPPED PLAY

- Kerala Flood Cess w.e.f. 01.08.2019
- On intra-State supply being B2C for a period of 2 years.
- Rule 32A – value of supply of goods on which KFC is levied shall be deemed to be valued for the purpose of Section 15 and shall not include the said Cess.
- Section 15 Vs. Rule 32A

RAIN STOPPED PLAY

- Is Kerala Flood Cess the beginning?
- Is GST Council empowered under Article 279A to recommend a new cess when the power is confined to special rate or rates for a specified period for raising additional resources during any natural calamity or disaster.
- Supreme Court on compensation cess.
- Power under Article 246A.

SIXER

- Odisha High Court in the case of ***Safari Retreats Vs. Chief Commissioner of GST & CE (2019) TIOL 1088*** has held that while considering the provisions of Section 17(5)(d), the narrow construction of interpretation put forward by the Department is frustrating the very objective of the Act, inasmuch as the petitioner in that case has to pay huge amount without any basis. The High Court while refusing to strike down the provision held as under:
 - The very purpose of the CGST Act is to provide a uniform law for levy and collection of tax on intra state supply of goods and services, and to prevent multi taxation.
 - Section 17(5)(d) of the CGST Act is to be read down and a narrow interpretation of Section 17(5)(d) of the CGST Act is frustrating the objective of the CGST Act, keeping in mind the language used in the ***Eicher Motors Ltd (1999) 2 SCC 361*** case, the very purpose of the credit is to give benefit to the assessee.
 - If the assessee is required to pay GST on rental income arising out of the investment on which he has paid GST, he is entitled to avail the ITC for the inputs and input services consumed by them.

DRS – DECISION PENDING

- Whether the provisions pertaining to GST Tribunal providing for majority of technical members is valid? – Madras, Delhi HC
- Whether IGST can be imposed on Ocean Freight under RCM? – Madras, Bombay, Gujarat, Himachal Pradesh HC
- Whether IGST on import of goods under Section 3(7) of the Customs Tariff Act is legal? – Bombay HC
- Whether DGCEI can issue Show Cause Notice for service tax after implementation of GST? – Madras HC

DRS – DECISION PENDING

- Whether Service Tax audit provisions are saved under Section 174 – Gujarat, Jharkhand, Delhi HC
- Whether VAT reassessment is possible in GST? – Kerala HC
- Whether a person can be arrested without the procedure of notice and adjudication? Supreme Court
- Whether 1 year limit for transitional credit is valid? – Supreme Court

THANK YOU

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