BOMBAY CHAMBER

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PRE–BUDGET MEMORANDUM 2022-2023 - INDIRECT TAXES

INDEX

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PRE–BUDGET MEMORANDUM 2022-2023: INDIRECT TAXES

Sl. No.	Subject	Rationale	Recommendation
	Goods and Services Tax		
1.	**Rationalization of GST rates to reduce dispute on classification**	Currently there are seven (7) rates of GST for goods viz. 0%, 0.25% 3%, 5%, 12%, 18% and 28%; for services there are five (5) rates viz. 0%, 5%, 12%, 18% and 28%. Besides, there is a Compensation Cess on some select supplies. Under GST, due to multiple tax rates, taxpayers are finding it difficult to pay the proper taxes. If tax is paid at lesser rate, there will be an upside differential tax along with interest and penalty. On the other hand, if tax is paid at higher rate, the business may become uncompetitive as compared to its peers who classify the supply at lower rates. Industry is approaching AARs for addressing the ambiguity which involves cost and at times, time consuming. Also, there are instances where AAR of different states have pronounced different rulings with respect to the same supply. This increases confusion amongst the trade and industry.	The Chamber recommends shifting to three-tier rate structure of 5 percent (merit rate) – 16 percent (standard rate) – 30 percent (demerit rate) by merging 12 percent and 18 percent into 16 percent slab and increasing demerit rate from current 28 percent to 30 percent.

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2.	**Common valuation provisions under various laws for related party transactions**	Under GST, there are separate provisions for determining value of supply between related persons. Similarly, under Income Tax law, there are transfer pricing provisions for determining 'arm's length principle' where the supplies are made between associated enterprises. Also, under Customs, valuation provisions are different for transactions between related parties. Existence of different sets of rules with different administrative bodies, has made cross border trade complicated, contrary to the objective of Government and international organisations. Conflict also arises in determining the value of transaction under different statutes particularly in cases where the taxpayer seeks advance pricing agreement.	The Chamber recommends aligning the rules covering the methods of valuation and other relevant provisions under GST, Customs and Income tax (transfer pricing). The advance pricing agreement provisions should be included under both GST and Customs and then a common authority can be formed to deal with such arrangement under all the three laws viz. Customs, GST and Income Tax.
3.	**ITC matching and reconciliation**	Under Rule 36(4), recipient can avail ITC of invoices or debit notes only if the corresponding supplies have been reported in the GSTR-1 under section 37(1), subject to differences of 5% of GSTR-2B. To help small taxpayers having turnover less than Rs. 5 Crores in the previous financial year can opt for quarterly return and monthly payment of tax scheme (QRMP).	The Chamber recommends that the taxpayer should be allowed to claim credit basis the invoices available and matching should be done only at the time of filing GSTR-3B for the month of September following the end of relevant financial year. Additional benefit of 5% [as currently prescribed in rule 36(4)]

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		This has resulted in blocking ITC and increasing the challenges of monthly reconciliation for large taxpayers. They are required to wait till quarter end to match and avail ITC, although there is provision of uploading invoice furnishing facility (IFF) under QRMP scheme, however, no taxpayers upload the invoices on monthly basis.	should also be allowed while filing such return. Alternatively, even if the ITC matching on monthly basis is continued, the 5% benefit should still be available after section 16(2)(aa) becomes operational.
4.	**ITC eligibility where place of supply is in another state**	Tax collected by the state where the goods or services are consumed, is retained by that state only and therefore, an entity registered in other state cannot claim the credit of the same. This applies for all those transactions where the place of supply is in a different state than the location of recipient. Example: The employees of a company travel across India and it is not possible to obtain GST registration in each state. Thus, the tax paid on hotel accommodation service becomes cost to the company.	The Chamber recommends that suitable mechanism should be introduced to allow ITC in such cases to the businesses.
5.	**Transfer of IGST/ CGST/ cess credit balance between registration having same PAN**	There are many instances where the taxpayer has enough credit balance in one state but needs to discharge tax liability in cash in other states. This negatively impacts the working capital of the business. Recently in the 45th meeting of GST Council, it was recommended that unutilized balance in CGST and	The Chamber recommends that the taxpayers should be allowed to transfer the credit balance of IGST, CGST and compensation cess from one registration to another (i.e. between registrations with same PAN).

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		IGST cash ledger may be allowed to be transferred between distinct persons.	Also, cash balance of compensation cess should be allowed to be transferred between distinct persons.
6.	**Interest payment for non-payment to the vendor beyond 180 days**	In cases where vendor invoices not paid within 180 days from the date of invoice, input tax credit availed on such invoices required to be reversed with interest. Re-credit of GST allowed as and when payment made to the vendor. However, interest paid is not allowed as re-credit. Genuine cases such as where payment is kept on hold as retention money for long term contracts or due to disputes in quality/quantity of supply should be excluded from above provision since interest paid is an additional cost to business.	It is recommended that law should be amended to reverse GST credit post 180 days without interest or alternatively as and when payment is made to vendor, interest paid earlier should allowed to be credited to credit ledger.
7.	**Correcting inverted rate structure for EPC sector, mainly involving Government contracts**	The Government has earlier resolved the inverted tax structure issue for various sectors. In the recent 45th GST Council meeting, it was corrected for renewable energy devices, railway parts and locomotive sector. During the meeting, Council also discussed and agreed to correct inverted tax structure through GST rate change for Footwear and Textile industry with effect from 1 January 2022. However, the proposed rates	The Chamber recommends that the rate structure of EPC sector should be rationalised to eliminate inverted tax.

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		have not yet been notified. Even in case of EPC sector, there is inverted tax structure, which has not been addressed.	
8.	**Allowing refund of GST on input services in case of inverted tax structure**	Section 54(3) of the CGST Act states that a registered person may claim refund of any unutilized ITC only in cases of zero-rated supplies made without payment of tax and supplies involving inverted rate structure. Section 54(3) allows refund in case of inverted duty structure where rate of tax on inputs is higher than the rate of tax on outward supplies. Rule 89(5) of the Rules provides that in case of refund on account of inverted duty structure, Net ITC in respect of which refund can be availed shall be restricted to inputs only. Non-availability of refunds on input services results into huge credit accumulations mainly for the EPC contractors engaged in construction of Railways/ Metro etc. as the output works contract rate is 12% while most of the inputs and services suffers taxes @18%/ 28%. The problem is far more severe when the project is executed under the JV/SPV which is formed specifically for execution of the projects, as on closure of the projects where any credit remains unutilized, the same become sunk cost with no provision for refunds.	Chamber thereby suggests that Section 54(3) and Rule 89(5) of the Rules be amended to allow seamless refunds in case of inverted duty structure for both inputs and input services. Alternatively, as suggested by SC in case of VKC Footsteps, the formula under rule 89(5) should be modified so as to partly address the relief on account of refund.

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9.	**Tax Credit reversal in case of Mergers and Acquisitions**	Mergers and Acquisitions (M&A) have increased over a period of years as companies look at ways to synergies in a dynamic economic environment. Under GST, since services by way of business transfer of a going concern is exempt, ITC is not available in respect of goods and services procured for such business transfer like consultation and legal service, due diligence services etc. Further, there is an ambiguity as to whether the consideration received for business transfer should form part of exempt turnover for calculating ITC attributable to exempt supplies. Such inclusion results in an absurd situation where huge amount of input tax credit will become cost for the company. This may not be the intention of the legislature.	The Chamber recommends that necessary amendment to be made for eligibility of ITC and non-reversal of common credit in case of business transfer arrangement.
10.	**Tax deduction at source**	The GST law requires certain persons like Government departments, PSU etc. to deduct tax at source @ 2% (1% CGST and 1% SGST) while making payment to the suppliers. Such provision was originally inserted with a view to expand the tax base and put a check on tax evasion. However, it led to blockage of working capital in the hands of the suppliers. GST law has now evolved and with the data analytics in place, such provision does not serve its purpose.	The Chamber recommends that since GST law has enough checks and balances to eliminate tax evasion, the provision of TDS should be omitted. For all such contracts which currently attract TDS, a condition should be inserted that only the registered suppliers can bid for the

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			contract. Once the suppliers are registered, they become tax compliant and hence, the need for tax deduction at source will not arise.
11.	**Credit notes in case of bad debts (especially in case of insolvency proceedings)**	Non-issuance of credit note for bad debts is one of the cases which is causing harm to the industry. Generally, the supplier recognises a receivable as bad debt only after a period of 2-3 years. By that time the deadline to raise credit note expires. Further, non-receipt of money is not a scenario in which credit note can be raised. In such cases, the supplier needs to pay tax to the Government and since the same is not recovered from the recipient, it becomes a cost to the supplier. Also, in case where the company is under corporate insolvency resolution process, the right to recover debt from the corporate defaulter extinguishes due to NCLT's order.	The Chamber recommends that the taxpayer should be allowed to issue credit note in case of bad debts and time limit as per section 34(2) should not apply in such cases. Alternatively, tax adjustment or refund should be provided to the suppliers who are not able to recover debt due to NCLT's order.
12.	**Allow refund of GST claimed on capital goods to exporters supplying under Letter of Undertaking ("LuT")**	While exporters can claim refund of accumulated ITC of GST paid on input & input services, GST paid on capital goods is not allowed to be claimed as refund as per Rule 89(4) of the Rules. Further, the exporter who opts for payment of IGST on zero rated supply can utilize input tax credit of GST paid on capital goods. This brings disparity between	Chamber recommends that GST paid on procurement of capital goods should also be allowed as refund for export of goods or services under LUT. Such refund of GST on capital goods can be paid over a period of two financial years.

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		the exporters opting for LUT scheme and the exporters opting to make payment of GST. Service exporters are not able to utilize the available ITC since majority of their output is zero-rated. This impacts the working capital requirements of the exporters.	
13.	**GST ITC eligibility on construction of immovable property which is used for business purposes**	As per Section 17(5)(c) and (d) of the CGST Act, ITC shall not be available on: • works contract services in respect of an immovable property except where it as an input service for further supply of works contract service or • goods or services used for construction of an immovable property on his own account including when such goods and services are used in the course of furtherance of business. Denial of ITC when used for construction of immoveable property on own account although the same is used in the course or furtherance of business is against the philosophy of the GST law which is aimed at reducing cascading effect of taxes. Allowing ITC where building is used in the course or furtherance of business (i.e., generating income liable to GST) such as renting, will keep the tax chain intact and serve the purposes of equity. Additionally, it is an indisputable fact that immoveable properties such as factory sheds, machine foundation, office premises, residential quarters etc. are an	Chamber recommends that Section 17(5)(c) and (d) of the CGST Act should be amended to allow ITC on procurements of goods, services or works contract for construction of immovable property where such immovable property is intended to be used in the course or furtherance of business.

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		integral part of business and have a direct nexus with the functioning of business. While credit may not be allowable if the immoveable properties are intended to be used for personal or non-business purposes, there appears to be no justification for disallowing credit on construction of immoveable property which is exclusively for business purposes. Also there have been advance rulings wherein it has been observed that leasing of land for construction of immovable property (such as hotels, commercial establishments, warehouses) is also regarded as services for construction and restriction under Section 17(5)(c) of the CGST Act is made applicable on GST paid on leasing of land.	
14.	**GST ITC eligibility on expenses incurred towards CSR activities**	As per Section 135 of Companies Act, 2013, a company is required to spend at least 2% of its average net profit for the immediately preceding three financial years on Corporate Social Responsibility ('CSR') activities subject to its turnover / net worth / net profit crossing prescribed limits. Some of the significant expenditure covered under Corporate Social Responsibility activities are: • Providing education • Promoting gender equality • Projects related to rural development	Chamber recommends that suitable clarification be issued to clarify that goods or services which are procured in the course of CSR activities should be considered to have been incurred in the course or furtherance of business or commerce, and that restrictions under Section 17(5) of the CGST Act should not apply for claiming Input Tax Credit. This will ensure consistency of position by the Field

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		• Contribution to PM Cares Fund • Contribution towards the protection of the environment • Promotion of healthcare, preventive healthcare and sanitation activities related to COVID-19 • Events related to disaster management including relief activities Companies incur expenses for procuring goods and services while undertaking CSR activities. Since CSR activity is a business activity and mandated by Companies Act, Input Tax Credit of GST paid on supplies procured in course of the said CSR activities should be allowed. Further, entry no. 1 of Schedule I of CGST Act treats permanent transfer or disposal of business assets where ITC has been availed on such assets as supply even if made without consideration. In this connection, the goods distributed while undertaking CSR activities should not be considered as supply attracting GST in terms of the said entry.	Formations on admissibility of input tax credit on goods and services procured for CSR activities. Also, Chamber recommends that the goods distributed as a part of CSR activities should not be treated as outward supply attracting GST in terms of Entry 1 of Schedule I of CGST Act.
15.	**GST liability on venture capital fund (VCF) set up as trust by way of contribution from investors.**	The Bangalore CESTAT in the case of ICICI Econet and Internet Technology Fund vs. Commissioner of Central Tax, has ruled for the Venture Capital Funds ("VCF") which are set-up as trusts that these trusts act as a service provider, thereby suggesting that arrangement between the contributor and the trust is that of a	The Chamber recommends bringing in suitable clarification on non-taxability of transaction between trust and its members under Service tax as well as GST regime.

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		receiver and supplier of services liable for payment of service tax, disregarding the principles of mutuality between trust and its members. Any start-up needs huge financial support and presently this is being done by alternative investment funds (AIFs) or venture capital fund (VCFs). These funds are pooled investment vehicles with a certain set of contributors. VCF/AIFs established as a trust with an Indenture of Trust or Trust deed. SEBI Regulations in the erstwhile 1996 VC fund regulations or the Alternative Investment Fund 2012 regulations—categorically permit the setting up or establishment of these funds in the form of a trust as per the Trust Act of 1882. In fact, most VC funds and AIFs registered with SEBI today are set up as trusts. There is no retention of any service fee or income by the trust as it merely distributes the distributable surplus among various classes of investors, as per the waterfall agreed between the investors after deducting expenses that were incurred by or on behalf of the trust. In distribution of surplus, no discretion is exercised by the VCF trust and distribution is undertaken based on the agreed terms contained in the Indenture of Trust or Trust Deed and the Private Placement	.

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		Memorandum or PPM. Thus, trusts typically follow the fund documents such as PPM, Trust Deed and Contribution Agreements. The trust model continues to be a preferred mechanism for AIFs/VCF, as by nature a trust is understood to be a pass through with no legal existence of its own. The trust appoints an Investment Manager or an Asset Management Company ("AMC") for managing its fund, this ensures trust receive relevant professional and experience advice to manage trust fund and give good return on the investment made by contributors. AMC and other service provider charges fees to trust with GST, the trust book GST as cost as there is no output supply for trust. AMC can also be a contributor in trust and eligible to earn carry income. Under that Income Tax Act, any income from the investment under these funds is being taxed in the hands of its contributor (section 115U of the Income Tax Act).	
16.	**Tax Collection at Source**	E-commerce entities are required to collect tax at source where the suppliers are making taxable supplies through the portal. Such amount is credited to the cash ledger of the supplier and can be either utilized for payment of output tax liability or claimed	The Chamber recommends that rate of TCS should be reduced. Further, the Government should make necessary amendment to

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		as refund. The current rate of TCS is 1% (IGST) or CGST and SGST (0.5% each). There is a need to ease the working capital of the industry which is adversely impacted due to pandemic. Registered suppliers exporting through e-Commerce platforms suffer TCS of 1 percent, since GST law does not exclude zero rated export supply from TCS levy. This affects their working capital and adversely impacts the competitiveness.	remove levy of TCS on zero rated supplies.
17.	**RCM on sponsorship services**	Sponsorship Services provided by any person to body corporate or partnership firm is taxable under RCM. However, the supplier cannot claim credit attributable to such sponsorship services provided, even if such services are liable to GST. This results in loss of legitimately available input tax credit. Merely changing the person responsible to deposit the GST should not break the otherwise seamless GST input tax credit chain.	Chamber recommends that the sponsorship services may be taxed under forward charge. This will enable the supplier to claim ITC. Alternatively, applicability of RCM should be restricted to such services provided only by services providers other than corporates.
18.	**Relaxation in reversal of GST ITC for transactions in securities for life insurance, general insurance, and health insurance companies**	Life Insurance Companies invest in securities as a statutory obligation towards provision of life insurance service. In the case of Shriram Life Insurance Company Limited, CESTAT Hyderabad has held that no reversal of CENVAT credit is required for statutory investments mandated under IRDA. Explanation to Chapter V of CGST Rules states that for	The Chamber recommends that the obligation of proportionate reversal of common ITC to the extent they pertain to transaction in securities in case of life insurance, general insurance and health insurance business should be done away with.

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		determining the value of exempt supply under section 17(3) of the CGST Act, the value of security shall be taken as 1 percent of the sale value of such security.	
19.	**Allowing Insurance Companies to issue credit note even after 6 months from the end of the Financial Year**	Section 34(2) of CGST Act, credit note in relation to a supply of goods or services or both to be issued within 6 months from end of the Financial Year in which invoice is issued to take reversal of tax paid on that invoice. Insurance Company issues policy for a longer period of time where GST is discharged at the time of policy issuance. The reversal / cancellation of policy may happen any time during the policy period. Insurance Companies are governed by rules and regulations issued by Insurance Regulatory Development Authority of India (IRDAI). Companies can only sale the products/ premium which are IRDAI approved. As per regulations, customers are required to make the payment first and only then get policy. Basis the issuance of policy GST Payment are made. Customer has option to cancel the policy and get the refund as per his convenience / satisfaction to the service of Company. Due to current provisions, the credit note for policy cancellation (beyond 6 months from end of Financial Year) is not allowed which results in not getting the benefit of GST paid at the time original policy issuance.	The Chamber recommends bringing in suitable exception by amending section 34(2) of CGST Act and allows specific exemption to Insurance companies to issue credit note any time during the policy period.

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20.	**Health insurance company be allowed to avail Input tax credit on cost of medicine reimbursed to its policy holders**	Cost of medicines is major component incurred by health insurance companies towards reimbursement of Mediclaim policies, however insurance company is not able to avail input tax credit (ITC) of medicines as hospitals and pharmacist issue the medicine invoices in the name of the insured person i.e., patient and not insurance company. Claim towards Health Insurance policies can be done either by cashless or reimbursement model, in both the cases invoices are generated by hospitals and pharmacist in the name of insured person/patient. All the condition to avail ITC under Section 16 of CGST Act, 2017 is fulfilled by the policy holder of the insurance company i.e., invoice is in the name of insured person, medicine is received, and payment is done by insured person. Before finalising claim, insurance company also ensures that invoices are in the name of the policy holder and expenditure is incurred based on doctor advisory and treatment. Only exception is pharmacist and hospitals will raise B2C invoices will not be reflected in GSTR-2A of insurance company thereby denying ITC claim to health insurance company. Non availability of Input Tax Credit of GST paid to Hospitals and pharmacist is adding to the cost of insurance company although the same is incurred for providing output service to the policy holders.	The Chamber recommends Health Insurance company be allowed to avail ITC claims settled towards cost of medicines for its policy holders by amending the condition laid down under section 16 of CGST Act, 2017.

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21.	**Zero rated supplies for Insurance policies issued to Non-Resident Indians, where the premium is paid through the Non- Resident External Bank account**	In the case of life insurance for non-resident Indians, if the premium is received through the Non-Resident External Account, the amount is taxable. This is because the payment is being made in INR and is not convertible to foreign exchange. Earlier, all three stages of policy life cycles-investment, accumulation and maturity, were free of tax. However, now, the GST is levied on the same.	To promote life insurance business for NRI clients, the Chamber recommends doing away with the condition of receiving the insurance premium in convertible foreign exchange in case premium amount/renewal amount is received from Non-resident external account.
22.	**Reduction in GST rate for Life Insurance and Health Insurance premium**	COVID-19 has brought to light the importance of precaution amidst the global pandemic. People from all backgrounds and age groups have now become sensitive about their health and life. Health and life insurance are not just a matter of benefit but a necessity in these times of emergency. It is predicted majority of individuals will be inclined to get a risk cover. India has seen a spike in investment in the insurance industry. People want to get them insurance cover of both health and life however steep GST of 18% forcing them to opt for lower cover on account economic scenario i.e. unemployment and job losses across the country. There is also an increasing concern around treatment expenditure, particularly hospital bills, in case of an unfortunate event of hospitalization given the current scenario. Consecutive lockdowns saw	This is the perfect time to set right the ecosystem in which healthcare and life insurance policies can be made affordable for the common masses and are adequately covered. The Chamber recommends reducing GST rate on life and health insurance premiums from current level of 18% to 5% to help deep penetration of insurance products amongst the general public.

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		more and more people digging into their savings to meet their everyday needs. The Insurance Regulatory and Development Authority of India (IRDAI) has directed all general and health insurance companies to offer a standard Benefit Based Covid-19 health insurance product.	
23.	**Health and fitness company must be allowed to avail ITC on expenditure incurred for further supply of health and fitness service**	Under section 17(5)(b)(ii) of CGST Act, 2017, ITC is not allowed for membership of a club, health, and fitness centre. This has impacted fitness companies as they are not eligible to avail ITC of inward supplies although engaged in further supply of similar service i.e., health and fitness services to its members. Generally, fitness industry works on membership and subscription model. Members subscribe to fitness company health and wellness schemes. Based on subscription members will have access to reputed fitness centres/gym across major cities of India with the added advantage of digital based wellness app and health experts. Fitness company tie up with health and fitness centres across major cities of India and pay them membership fees and other charges with GST.	The Chamber recommends amending section 17(5)(b)(ii) of CGST Act and allow Health and fitness Company to claim input tax credit in respect of inputs and inputs services which is used for further supply of similar services.

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		To promote fitness industry and giving importance to health and fitness services during Covid 19 Govt must allow ITC on input and input services.	
24	**ITC of premium paid by employer towards group medical and life insurance policies of their employees**	Under section 17(5)(b)(i) of CGST Act, ITC is not allowed in case of Life Insurance, Health Insurance except where it is obligatory for an employer to provide the same to it employees under any law for the time being in force. Covid 19 Pandemic has made realised the importance of insuring life and health of an individual, companies provided insurance cover to their employees were able to mitigate business risk and has given employees a sense of belongingness to the company. It is time Govt. promotes insurance coverage for employees of all the sectors by allowing employers to avail input tax credit of GST paid towards their employees under group insurance policies, considering the fact India has lowest penetration of insurance coverage. The insurance sector plays a crucial role in the development of any economy, the fund generated by insurance company is invested in infrastructure and development project thereby generating employment and better economy.	The chamber recommends bringing in amendment in section 17(5)(b)(i) of CGST Act, 2017, allowing ITC of group medical and life insurance policies taken by employer for their employees.

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		Premium paid by employer for its employees is for business purpose.	
25.	**GST ITC eligibility on life insurance premium taken by Mutual Fund for its investors and selling agents or by Banks for its customers**	Mutual Fund offers life insurance cover to its investors and selling agents as an add-on to the investments in mutual fund units, and the payment of the premium is done by the Asset Management Company [('AMC') that manages the mutual fund business] as a part of the promotional strategy. Essentially, the option to obtain life insurance is a product feature i.e. where an investor opts to invest into mutual funds of a given scheme which simultaneously offers life cover, then the Company will provide them with life insurance cover, as per the plan selected. Such policies are offered to enable promotion of the mutual fund business, i.e., this product and feature is driven by commercial considerations and offered for business development reasons. The Company pays the amount of premium to the life insurance company. Likewise, banks too offer life insurance cover while selling credit cards to its customers as a part of its promotional scheme. Under section 17(5)(b) of the CGST Act, ITC is inter alia not available in case of life insurance except where it is made obligatory by law for an employer to provide the same to its employees or it is used for	Chamber recommends that an amendment should be made to Section 17(5) of the CGST Act or sufficient clarity be provided through a circular to allow mutual fund industry / Banks to avail ITC of GST on premium paid for life insurance policies as such policies offered to customers can be said to be used in the course or furtherance of the mutual fund / bank business.

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		0making outward taxable supply of the same category of services or an element of mixed or composite supply. There is a blanket restriction on availment of ITC irrespective of whether the ITC pertains to GST paid on life insurance premium with respect to policies taken with the objective of promoting mutual fund business, i.e. for its investors and selling agents.	
26.	**GST amnesty scheme does not cover filing of GSTR-1 and to claim ITC of past period**	The GST Amnesty Scheme has been extended by the government vide notification 33/2021 dt. 29.08.2021, up to 30th November 2021. This provided relief to taxpayers who missed filing **GSTR-3B** for the previous tax periods. However, similar relief was not provided for late filing of GSTR-1 under the scheme. Since GSTR-1 return is not covered under the scheme, there is no late fee waiver or relief to file pending GSTR-1 for the same tax period as the GSTR-3B that the taxpayer intends to file. Vide Notification No. 19/2021- Central Tax, dated 01.06. 2021, provided relief to the taxpayers by reducing / waiving late fee for non-furnishing **GSTR-3B** for the tax periods from July 2017 to April 2021, if the returns for these tax periods are furnished between 01.06.2021 to 31.08.2021.	The Chamber recommends Government to expand the scheme's scope to include GSTR-1 and allow ITC of past periods where the time limit has expired.

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		It means, even if supplier files GSTR-3B under amnesty scheme, ITC is time-barred. The amnesty scheme doesn't provide for the eligibility of ITC.	
27.	**Option to rectify or revise GSTR 3B Return**	Government vide circular clarified the procedure for rectification in transactions reported in the monthly GSTR-3B. As per the circular, any rectification of errors can be done concurrently in the month in which the errors are discovered, and not in the month to which the transaction relates. It is possible that taxpayer may inadvertently omit to report the transactions and corresponding output GST liability in the returns for a month. Additionally, currently, offsetting GST liability or ITC reversal can be done only at the time of filing GSTR-3B on GST portal. Given this, in spite of having balance in electronic cash ledger, taxpayers are warranted to the discharge interest till the date of filing of GSTR-3B thereby leading to unnecessary interest cost burden. GST law nowhere restricts the revision of returns GSTR-3B, GSTR-1 and other returns filed by the taxpayers. However, GSTN Common Portal hasn't provided any facility to revise the already filed returns	It is recommended that the option for modification of the information in the return period to which the transaction relates should be made available. The circular (which clarifies that rectification of errors can be done concurrently in the month in which the errors are known, and not in the month to which the transaction relates) is arbitrary and contrary to the provisions of the CGST Act. Further, interest shall not be attracted where there lies balance in electronic cash ledger of the taxpayer.

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		to correct the inadvertent / clerical errors. The assessee has a substantive right to rectify/adjust the input tax credit in the period to which it relates, failing which there would be undue hardship & interest burden on the assessee.	
28.	**System generated notices from GST department in case of difference between ITC as per GSTR-3B and GSTR-2A on a month-on-month basis**	GST authorities are issuing notices on account of monthly difference between ITC availed as per GSTR-3B is higher than ITC reflecting in GSTR-2A for a particular month. ITC is claimed by the assessee in the month when tax invoice is booked, matched with GSTR2A. There is time lag between supplier raising invoice, uploading the same in GSTN portal and recipient booking invoice in his/her books of accounts. It is observed, reconciliation difference is reduced at the end of the year and is negligible in case of reconciliation done up to September of subsequent financial year.	The Chamber recommends notices can be send to assessee only in case abnormal difference on a consistent basis over a period.
29.	**Allow GST ITC on office interiors work**	As per section 17(5) (c) of the CGST Act, 2017, input tax credit shall not be available in respect of the works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply	The Chamber recommends that the provisions of section 17(5)(c) should be appropriately amended to allow ITC on expenditure incurred for office interiors work.

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		of works contract service. ITC is restricted in case of works contract services only to the extent expenses are capitalized, as per accounting standard office interior works are capitalised and therefore credit is disallowed. Office premises is used in the course or furtherance of business (generating income liable to GST). Disallowing ITC on office interiors breaks the chain of ITC on civil, electrical, and plumbing items procured for office premises by the contractors thereby promoting purchasing from unregistered suppliers by the contractors.	
30.	**Bringing down the threshold limit of E-invoicing or option to adopt e-invoicing voluntarily for ease of doing business**	The government had earlier planned to extend e-invoicing to all entities from April 1, 2021, but has refrained, taking care of interest of small entities. Currently E-invoicing' is mandatory for business-to-business transaction with turnover of Rs. 50 Crores or more effective 01.04.2021. The system is aimed at bringing in more transparency in sales reporting, minimising errors, and mismatches,	The Chamber recommends that an option must be given to assessee having turnover less than Rs.50 crores to opt for e-invoicing on voluntary basis as large organisation having multiple businesses is working on one single ERP finds it difficult to have two system of invoicing based on

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		automating data entry work, and improving compliance. It is possible that subsidiary company is not covered under electronic invoicing however holding company is covered because of turnover limit, in such cases although required infrastructure is available to subsidiary company but could not issue e-invoices. Voluntary option will help to migrate these subsidiary company to e-invoice system. Further there are many small companies who are using ERP systems to bring in more transparency and control even they would like to generate e-invoices as e-invoicing help them in faster processing of invoices by the recipient company and release of payment.	turnover criteria.
31.	**Attachment of Bank accounts**	Section 67 read with 83 empowers Revenue to provisionally attach property including Bank Accounts. Section 83 of Central Goods and Services Tax (CGST) Act 2017 deals with provisional attachment, which is a stringent provision as attachment of bank account means all the financial affairs of the business entity come to halt. Such a situation even threatens very existence of business.	The Chamber recommends issuing guidelines on attachment of bank account under GST law.

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		The Board also issued a Circular (protective Circular 874/12/2008-CX) reiterated in Letter F. No. 224/37/2005-CX-6 issued on 24 December 2008, to protect assesses and circumstances when 11DDA would be resorted to. In the GST Law there is no such protection Circular. Vide Circular 129/48/2019-GST dated 24 December 2019, the GST Policy Wing has permitted this route of attachment under the SOP for non-filers of returns. However, it is believed that the Anti Evasion authorities are using this provision without any safeguards against the Trade and Industry. On 20 April 2021 in the matter of **M/s. Radha Krishan Industries v. the State of HP in Civil Appeal No 1155 of 2021**, the Hon'ble Supreme Court of India while dealing with provisions related provisional attachment held that, the power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and it was further held that the conditions in the statute for a valid exercise of the power must be strictly fulfilled. Attachment of Bank accounts must be the last option to protect the interest of revenue and must be	

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		sparingly used by authorities therefore it is important that to enhance taxpayer trust the provision of law in section 83 be adequately ring fenced and a fresh.	
32	**Allow payment of IGST on import of services through input tax credit**	As per Sec 9(3) of IGST Act read with notification issued thereon, importer of service is required to pay IGST under reverse charge. Further as per Section 49(4) of CGST Act read with Section 20 of IGST Act, the amount available in electronic credit ledger is allowed only for payment of output tax and output tax has been defined u/s. 2(82) specifically to exclude payment under reverse charge. Thus, the service recipient is required to discharge GST liability under reverse charge only though cash. Service exporters are not able to utilize the available input tax credit since majority of their output is zero rated. Moreover, the requirement of payment of cash to discharge such tax liability under "reverse charge" basis inflates the pool of unutilized input tax credit already available with the exporter. Such payment of tax in cash impacts the working capital requirements of the exporters which eventually increases cost of export.	The Chamber recommends amending Section 49(4) of CGST to include payment under reverse charge and the benefit may be restricted to taxpayers having substantial export turnover

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33.	**Standardisation of reporting by airline in GSTR-1**	When air tickets are booked for business travel, airlines charge applicable GST on tickets issued for provision of air travel services and air travel agent charges GST on his services charges. The service recipient is eligible to claim credit of GST charged by Airlines and air travel agent. Due to peculiar nature airline business, tickets are booked only through air travel agent and service recipient is not allowed to deal or make payment directly to airline. For the air travel agent's services charges service recipient receives tax invoice directly and the same can be matched with GSTR-2A made available by GSTN portal. However, many times airlines do not report ticket issued to service recipient as tax invoice in their GSTR-1. Some airlines issue every ticket separate invoice and some of the airline's issue monthly consolidated invoice per GST number. Further, it is not possible for service recipient to reach out to the airlines to get tax invoices reported in the GSTR-1 since there is no direct connect between airlines and services recipient. In cases where tax invoices not received from airlines, it is not possible for service recipient to match air tickets with invoices reported in GSTR-1 and claim	It is recommended that rule 54 of CGST Rules should be amended to consider air ticket as valid tax invoice for claiming input tax credit of GST. Further, airlines should be required to mandatorily report each PNR of air ticket as an invoice in GSTR-1 with all other required details. Alternatively, airlines should be required to upload tax invoices with ticket numbers/PNR numbers on a common portal so that service recipients can match the same on real-time basis.

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		input tax credit due. Service recipient is not able to claim input tax credit of GST paid on air tickets even after payment of GST amount to the agent.	
34.	**Issue in filing refund claims**	An exporter of service could file refund application only if amount collected from overseas customer is in convertible foreign currency. The refund claim can be filed in the month/quarter in which amount collected. One of the requirements in the refund application is to update FIRC number against each export invoice. It is to be noted that FIRC is issued against a payment made by overseas customer. The payment can be against single invoice or against multiple invoices issued against the same customer. Thus, same FIRC maybe applicable to multiple invoices. However, post recent changes made to GSTN refund modules the exporter is not allowed to update FIRC number against multiple invoices. Prior to change there was no such restriction. Exporter would not be able to file refund claims. In the event any alternate solution adopted such as adding any suffix or pre-fix to FIRC number which may lead to unnecessary litigation.	The Chamber recommends allowing exporter to update same FIRC number against multiple invoices numbers wherever applicable.

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35.	**Extension of time limit under rule 96A for bringing in foreign currency against export of service to comply with Letter of Undertaking**	Rule 96A of CGST Rules requires the exporter to get letter of undertaking (LUT) for export of services without GST. One of the undertakings in the LUT is that in the event exporter of service fails to get payment within one year from the date of invoice or within such period extended by the Commissioner required to pay GST from the date of invoice with interest. There is no set process for applying extension for receipt of foreign currency. Exporter of services are facing great difficulty due to this provision. As per the FEMA Act, service exporter is required to bring money within prescribed months from the date of export. If it is not brought within said period, then exporter required to obtain extension from RBI or dealers authorized by RBI.	The Chamber recommends that the extension received from RBI should be treated as extension under rule 96A of CGST rules.
36.	**Constitution of GST Appellate Tribunal**	Constitution of GST Tribunal is still pending due to which appeals against first appeal order are pending for long time. In all such cases assesses would have deposited 10% of demand amount as pre-deposit for stay as per section 107 of CGST Act. As order passed against assessee become precedent for subsequent	The Chamber recommends that the issue needs to be taken up with GST council to constitute the GST Appellate Tribunal as early as possible.

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		periods the number of orders keep on increasing and thereby deposit of amount. Additional financial and administrative burden on taxpayers till the time appeals are pending.	
37.	**Methodology for determining whether benefit of reduction in rate of tax or input tax credit has been passed on to the recipient – Anti Profiteering Mechanism**	While it is true that the anti-profiteering law in India has been enacted with the noble intention of safeguarding the interests of consumers, it is creating challenges, uncertainty and undue hardship to the businesses due to lack of clearly laid down guidance or rules with respect to compliance with anti-profiteering measure. While the word "Commensurate Reduction" is used, its meaning and how such reduction will be done is not provided. There are many unanswered questions raised / challenges faced by business community, few examples: • At what level should the anti-profiteering computation be made – at product/segment/business vertical/company level • How to change MRPs if products are already at the retail store or with stockist	Government should consider issuing a detailed comprehensive methodology and procedure to compute the commensurate benefits - specific guidelines may be issued dealing with industry specific concerns. A definite methodology to calculate, taking into account industry practices, the profiteering is expected to avoid the ambiguity and litigation thereafter. It is requested to bring lot more clarity on various related issues including the ones highlighted to make compliance with the anti-profiteering provisions smooth, certain and hassle free. Volume benefit (grammage increase

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		• How increase in prices on account of increase in cost of raw materials or due to economic factors (such as transportation, competition pricing, warehousing cost, etc.) should be considered in arriving at anti-profiteering related calculations • Difficulty in justifying regular price increase • Conflicting with Legal Metrology laws which mandates rounding off MRP Further, absence of specific time limit with respect to operation of the anti-profiteering provisions makes it unclear for the industry as to how long the specified benefits need to be passed on, especially in situations where their overall cost may have increased due to various commercial factors. Businesses in various sectors have received notices under anti-profiteering provisions and numerous investigations are being conducted by National Anti-Profiteering Authority (NAA). Many such investigations / notices have resulted in orders where businesses have been found guilty of not passing benefits to consumers and writ petitions have been filed by the Companies against such orders. All these petitions seek to first address question on	/ increased quantity) offered at the same price, impact of discount or promotional schemes, etc should also be considered as passing on the benefit instead of only price reduction. Further, it is suggested to make relevant changes in the law / rules to effect state that till methodology is formulated to compute profiteering, cases should not be made / adjudicated by NAA. It would be prudent to have time duration specified under law/ guidelines, to take corrective actions on account of changes in rates. Companies should be allowed a fair duration over which the benefit has to be passed on rather than a specific date. One step may be to adopt a soft approach vis-à-vis the businesses

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		constitutional validity of the anti-profiteering law in absence of any methodology to calculate profiteering. International experience indicates that lawmakers laid down the guidelines and various communication strategies for proper compliance with the anti-profiteering. The guidelines were released prior to introduction of the GST, which is not the scenario in India where the industry is still waiting for a set of complete guidelines for the proper mechanism in respect of identification of the profiteer & profiteering.	where there is no prima facie mala fide intent. This would go a long way in building the confidence and trust among the businesses.
38.	**Time of supply of services under Reverse Charge Mechanism ("RCM")**	Section 13(3) of the CGST Act provides for time of supply of services in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely: – Date of payment. – Date immediately following sixty days from the date of issue of invoice. There is a possibility that settlement of service invoices where tax is required to be paid under RCM	To address the genuine hardship faced by the recipient, it is recommended that relaxation should be made by extending the time of supply in case of supply of services to a date immediately following **three months** instead of **sixty days** from the date of invoice.

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		takes more than 60 days. Moreover, the accounting of invoice in books of accounts also takes time of around 20-30 days from the date of receipt of invoice and therefore time-period of 60 days to make the payment under RCM is quite short. It is pertinent to note that in the service tax regime, point of taxation was date of payment or expiry of 3 months of the date of invoice.	
39.	**Allowing ITC of GST paid on advances for services**	As per provisions of time of supply for supply of services under Section 13(2) of the CGST Act, the liability to pay GST is trigged on receipt of advances by the supplier. However, as per Section 16(2) of the CGST Act, one of the pre-conditions for claiming input tax credit is that services should have been received by the recipient of services. The said restriction read with time restriction placed on taking credit under section 16(4) of the CGST Act would cause operational difficulties to capital-intensive business due to projects having a long gestation period comprising advance payments. There doesn't seem to be any revenue leakage if ITC is allowed to be claimed on advances for services in the hands of recipient.	Chamber recommends that Section 16(2) of the CGST Act should be amended to allow recipient of services to claim ITC of GST paid on advances for services. It is recommended that the condition for receipt of services should be done away with where an advance has been paid for receipt of service. This change would have no revenue implications as the supplier of services who has received advance would be liable to pay GST under Section 13(2)(a) of the CGST Act.

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40.	**Removal of condition for determination of value of export goods for refunds**	Notification 16/2020-Central Tax dated 23 March 2020 amended the definition of 'turnover of zero-rated supply of goods' provided in Rule 89(4)(c) of the Rules with the intent to check the instances for over invoicing export of goods. In terms of the definition provided in Rule 89(4)(c) of the Rules, the value of zero-rated supply of goods would be lower of the following: a. value of zero-rated supply of goods without payment of tax under bond or LuT during the relevant period; or b. the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier. Section 16(3) of the IGST Act read with Section 54 of CGST Act permits the refund of unutilized ITC to a service provider when exports are made without payment of duty. Whereas Rule 89 of the Rules, only provides the procedural aspects and the computation mechanism for claiming refund of GST which cannot override or be contrary to the benefit provided in the Section 54 of the CGST Act. The said amendment is having major impact on the quantum of GST refund claim of exporters clearing	Chamber recommends that the provision of determining the export value of goods as 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, should be done away with for the purpose of claiming refund of unutilized ITC. This will ensure that there are no ambiguities at the field formation level for interpretation of value of like goods and would ensure faster disposal of refunds in such difficult times. Considering that this provision was brought in to check blatant over-valuation of goods, it is recommended to have clear objective safeguards, checks and balances which would serve the purpose of the notification and at the same time cause no loss to genuine exporters.

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		goods under bond or LuT without payment of tax, especially exporters who charge a considerable premium on export of their goods, as their refund claim would now be restricted to 1.5 times the value of similar products sold domestically. In a scenario where the supplier undertakes both domestic as well as export supplies, valuation may be relatively easy to derive. However, in the said cases too, it is advisable that due supporting / back-up documents are maintained by the supplier seeking the refund to avoid litigations/blockage of refunds. However, where the supplier undertakes only exports, he would face an issue to determine value of like goods domestically sold. In the said cases where goods are exported without payment of tax, the exporter may be able to claim less ITC that the GST he has actually paid on inward supplies. This would defeat in making GST an efficient tax system. Also, the manner of valuation of goods as specified brings in a lot of aspect of subjectivity as the value has to be determined based on the value of like goods domestically supplied by the same or, similarly placed supplier. It is apprehended that this may lead to divergent views across field formation on	

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		interpretation of value of goods and could cause delays in refund or even rejection. This would go against the intent and the spirit of ease of doing business and supporting the exporters' fraternity in such difficult times.	
41.	**Extending GST rate of 12 percent for all services in relation to services to Government/ Railways/ Metro etc.**	For works contract services pertaining to Government, Railways, Metro etc., concessional GST rate of 12 percent is applicable. However, pure services availed by contractor rendering the aforementioned works contract services are typically taxed at the rate of 18 percent. Simultaneously, refund is not available for input services on inverted tax structure resulting into substantial working capital blockage and cost inefficiencies for the contractors.	The Chamber recommends that the GST rate should be kept at 12 percent across the board for all services, including the services received by contractors. Further, the lower rate of 12 percent should be extended to all legs of sub-contracting and should not be limited to the first level sub-contractor.
	Service Tax		
42.	**Clarification regarding applicability of GST on additional / penal interest in Service Tax regime**	Most provisions of GST law are in line with the Indirect Tax Laws of pre-GST regime; however, there has been change in stand with respect to taxability of 'Penal/Additional Interest or Penal charges on delayed payment of consideration' (hereinafter referred as 'Penal Interest') which was not taxable under pre-GST regime. However, under GST, the term "Transaction Value" includes interest or late fee or penalty for	Chamber recommends similar clarification need to be issued under service tax regime also to eliminate unnecessary litigation for past period.

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		delayed payment of any consideration for any supply. This led to lot of queries and confusion regarding levy of GST on such Penal Interest. In response to numerous queries, CBIC vide Circular no. 102/21/2019- GST dated 28.06.2019 clarified on taxability of such Penal Interest charged on delayed payment for supply of goods and services will be included in the value of supply, liable for GST. Whereas Penal Interest charged on the delayed loan repayment will be exempt under GST.	
	Central Excise		
43.	**Timely disposal of pending Show Cause Notices under Central Excise and Service Tax**	Sub-section 11 of Section 11A of the Central Excise Act and sub section 4B of Section 73 of the Finance Act, 1994 prescribes the time period within which adjudicating authority is bound to complete the adjudicating process and determine the duty/ tax payable and issue the demand /adjudication order, if possible. Therefore, though there is a limitation period defined under the law within which the matter needs to be adjudicated, due to discretion available with the officer to complete the proceedings beyond the prescribed timelines on reasonable grounds, the	The Chamber recommends that an amendment should be made under the Central Excise Act & Service Tax law to provide that any show cause notice issued under the Act and pending adjudication on the date of amendment, should be adjudicated within a period of 2 years, as the case may be (*depending upon whether extended period has been invoked or not).* Any Show Cause Notice (past, present or future), which does not

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		timelines are not actually followed in practice Also, for the show cause notices, which have been issued prior to the insertion of the above time limit under the law, no reasonable period is being followed by the authorities to issue the adjudication orders. Board had issued instructions F. No. 280/45/2015-CX. 8A, dated 17th September 2015 emphasizing that all the adjudicating authorities are directed to pass adjudicating order within the time limit prescribed. However, despite above law and instructions, the timelines are not being followed by the department. This causes undue hardship for arranging age-old documents as the person in-charge may no longer be associated with the organisation.	get adjudicated within the above prescribed time limit, shall be deemed to have been vacated by the department and no future demand can be raised on assessee on the same issue
	Customs		
44.	**Classification dispute due to SC decision in case of Westinghouse Saxby**	Recently, SC in case of Westinghouse Saxby held that the relays are classifiable as part of locomotives under Heading 8607. In so holding, the Supreme Court applied the "sole or principal use" test in Note 3 to Section XVII to the exclusion of the embargo in Note 2. The ratio of this judgement may be summarised as follows:	The Chamber recommends that Note 3 to Section XVII should be suitably amended to specifically clarify that Note 3 is subject to the exclusions given in Note 2 and also incorporate the Explanation in line with the HSN Explanatory Notes.

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		"if an item is solely or principally used with the articles of Section XVII (which includes railway locomotives, motor vehicles & aircrafts), then it is classifiable thereunder, notwithstanding specific exclusions to the contrary in Note 2." The above judgment is likely to pose following challenges before the industry as well as department: • Mismatch of HSN in case of international trade • Deviation from international practice of classification - challenge in claiming FTA benefits • License requirements for restricted products • Collection of Statistical Data by Department	Further, in order to protect the interest of the industry at large and to ensure the stability in the Indian market, it is requested to issue a Notification under Section 28A of the Customs Act waiving the demand of customs duty if the same is based on the ground that the classification of parts of vehicle has to be done merely on the basis of "sole test" given under Note 3 without giving effect to Note 2 to Section XVII.
45.	**Higher peak rate of customs duty**	The peak rate of Customs Duty has remained static at 10% since 1st March 2007. The peak rate of customs duty on raw material has increased the cost of manufacture. In certain cases, the impact of inverted duty structure has also made the matter worse for the manufacturing industry in the country. Lower rate would encourage manufacturing sector in India and would promote 'Make in India', "Aatmanirbhar Bharat Abhiyaan' policy and would help in GOI goal to make India a USD 5 Tn economy by 2025.	The Chamber recommends that the peak rate of customs duty should be brought down to 5% while levying lower rate of duty on raw material, inputs and correcting the inverted duty structure.

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46.	**CAROTAR 2020**	Degree of onus on the importers regarding correctness, genuineness information received from the exporter, without having any means to verify it especially when goods are procured through traders is big challenge. The overseas exporters may be reluctant to share information on costing, value addition, profit etc. due to confidentiality. The procedure introduced through the Notification is a long-drawn process and will make the importer to intrude into the foreign buyer's domain and ensure that the COO is issued in accordance with the existing rules of the origin and the latest notification. Since the COO issued is in accordance with their government's directives on the Trade Agreements, save and except, very few unscrupulous importers may misuse this agreement rules and indulge in non-compliance of meeting the COO requirements. Major importers [AEO Status holders] source their imports from very reputed and law compliant suppliers of high repute from overseas [who are also AEO Status holders]. Hence, due diligence with regards to the reputation and genuineness of the importer and the supplier is already established. So, there is no reason to doubt their integrity and question the COO, unless something discrepancy is noticed.	The Chamber recommends: • To make suitable changes in the said Rules for the onus of proof of COO on the Importers and trust-based approach to AEO status holders • Clearance of material on execution of either a letter of undertaking or PD Bond [without any security] pending such verification • To re-look at the stringent rules and simply so that the genuine importers are not placed in disadvantageous position and their legitimate duty benefits are not denied The guidelines may be issued to the field formations to use their powers only when they have strong reasons to believe that the shipment in question need further verification and not as a routine basis.

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		The Government has indicated that the procedures introduced will not override the processes and timelines mentioned in the FTA / Trade Agreements. However, the procedures introduced clearly ignore that such preferential rates and treaty benefits have their genesis in the economic integration between nations and form the backbone of multilateral trade across the globe. By introducing such restrictions in the Customs Law, it will deter importers from availing such benefits, Hence, in case of any lacuna or left outs or typographical mistakes, the same may be cleared on accepting either a letter of undertaking or PD Bonds [from AEO Status holders] for faster clearances. There should be timeframe fixed for the verification process from the cross-border counterparts.	
47.	**Time limit for closure of provisional assessment made u/s 18 of Custom Act, 1962**	On certain occasions including relating party imports, shipments are allowed to be cleared on provisional basis subject to final assessment at a later point of time. However, these provisional assessments are not finalized for several years due to various reasons and remain open as there is no time limit prescribed under the Customs Act to complete the final assessment.	The Chamber recommends setting a reasonable time limit to conclude the final assessments of Bill of Entries assessed provisionally

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		There is a huge pendency of Bills of Entry assessed provisionally and awaiting final assessment from the department. This creates a lot of uncertainty for the assessee and compel them to keep the records for several years coupled with spending considerable time and efforts involved in the process of closure	
		Ease of doing business - Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007	
48.	**Timelines for Adjudication and Destruction of Detained Goods and charging of costs thereof**	• Absence of defined timelines for destruction of suspended goods causing adversities to Right Holders (RHs) and deters RHs from joining proceedings. • Cost of storage of the suspended consignment for prolonged time also impacts financial obligation of the RHs. • Definite timelines will free up storage space for Customs and will induce a reduction in storage cost. • Expeditious actions will encourage more RHs to join proceedings also.	• Decision on destruction to be taken within defined timelines from suspension of consignment – maximum of 90 days from the time Right Holder joins proceedings and submits evidence in support of suspension. • On conclusion of the suspended goods as counterfeit, cost of storage and destruction to be charged to the account of the importer. On such finding as above, Importer to be blacklisted.

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49.	**Open Bank Guarantee**	• Bank Guarantees that remain open ended till destruction of the suspended goods results in substantial financial risk to the Right Holders (RH). RH is put to additional inconvenience as they are required to make adequate disclosures in the annual report about such significant financial risk. • Impractical timelines for RHs to submit Bank Guarantee (BG) - within 3 days of intimation to join proceedings. • It results in hardship to RH's on account of open-ended financial term risk. • Bank guarantee are tied to value of detention and pose significant financial burden on RHs in case of huge detentions. • BGs remain open for an indefinite period until destruction of goods	• It is suggested to follow practices followed globally by Customs authorities - preferably something similar to the EU System. • Replace BGs with any other type of guarantee, e.g.: indemnity letter from RH undertaking to pay the whole or part of costs if Importer is unable to bear the same at the stage of destruction.
50.	**Surge in imports of counterfeit goods in the guise of parallel imports - Circular No. 13/2012 dated 8 May 2012**	• Circular relies upon Section 30(3)(b) of Trademarks Act, 1999 which remains unchanged till date and provides that goods shall be placed in the market under the registered trademark by the proprietor or with his consent. • The primary objective would be to curb the influx of counterfeits imported in the guise of parallel imports.	Reasonable restrictions should be imposed on the importer requiring him to obtain consent of the RHs before placing/selling the goods in the market.

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		• RHs are not called to verify imported consignments of parallel imports thereby adversely impacting their rights.	

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