

# ANALYSIS OF FINANCE BILL, 2022 AMENDMENTS IN INDIRECT TAXES



## BRIEF OF AMENDMENTS MADE BY FINANCE BILL 2022.

- The Finance Bill 2022 (Bill No.18 of 2022) Presented by Hon'ble Finance Minister Smt. Nirmala Sitaraman in UPA-2 on 01/02/2022 and will be enacted after getting consent of President of India.
- In Customs Act, amendments has been made in clauses from 85 to 96 of the Finance Bill 2022. As per clause (g) of Explanatory Memorandum To The Finance Bill, 2022, clauses 85 to 96 shall come into effect on the date of its enactment, unless otherwise specified.

# AMENDMENTS IN CUSTOMS ACT, 1962



# 1. BUDGET CLAUSE 85 AMENDS SECTION 2(34) OF CUSTOMS ACT, 1962.

## **Amendment**

In section 2, in clause (34), after the words “Principal Commissioner of Customs or Commissioner of Customs”, the words and figure “under section 5” shall be inserted.

## **Analysis**

Clause (34) of section 2 contains definition of “proper officer”. This section is being modified to specifically state that assignment of functions to an officer of Customs by the Board or the Principal Commissioner of Customs or the Commissioner of Customs shall be done under the newly inserted sub-sections (1A) and (1B) of Section 5 in the Customs Act, 1962 (52 of 1962).

## **Applicable WEF**

Date of Enactment Of Finance Bill 2022.

## 2. BUDGET CLAUSE 86 AMENDS SECTION 3 OF CUSTOMS ACT, 1962.

### **Amendment**

Section 3 has been substituted.

### **Analysis**

Section 3 is being amended to specifically include the officers of DRI, Audit and Preventive formation in the class of Officers. This amendment has been made to remove any ambiguity as regards the class of officers of Customs.

### **Applicable WEF**

Date of Enactment Of Finance Bill 2022.

### 3. BUDGET CLAUSE 87 AMENDS SECTION 5 OF CUSTOMS ACT, 1962.

#### **Amendment**

In section 5 of the Customs Act, sub-section (1A) has been inserted.

#### **Analysis**

Sub-Section (1A) and 1(B) to Section 5: Sub-section (1A) and (1B) have been inserted in section 5 of the Act to explicitly provide power of assignment of function to officers of customs by the Board or as the case may be by the Principal Commissioner of Customs or Commissioner of Customs. This amendment has been necessitated to correct the infirmity observed by the Courts in recent judgments that the Act required explicit provision conferring powers for assignment of function to officers of Customs as “proper officers” for the purposes of the Act, besides the definition clause (34) in section 2 of the Customs Act

#### **Applicable WEF**

Date of Enactment Of Finance Bill 2022.

To Be Continued

# 4. BUDGET CLAUSE 87 AMENDS SECTION 5 OF CUSTOMS ACT, 1962.

## **Amendment**

In section 5 of the Customs Act, sub-section (4) has been inserted.

## **Analysis**

Sub-section (4) to Section 5 is being inserted to delineate the criteria which the Board may adopt while imposing limitations or conditions under sub-section (1) or while assigning functions under sub-section (1A) to the officer of Customs. For instance, one of the limitations/ conditions that the Board currently imposes on “officers of Customs” is that they are required to operate within a specified territorial jurisdiction. However, with the launch of faceless assessments and other trade facilitation initiatives wherein, for instance, a need is felt for the development of industry-specific expertise in assessments the Board may need to confine jurisdiction to certain goods or class of goods.

## **Applicable WEF**

Date of Enactment Of Finance Bill 2022.

To Be Continued

# 5. BUDGET CLAUSE 87 AMENDS SECTION 5 OF CUSTOMS ACT, 1962.

## **Amendment**

In section 5 of the Customs Act, sub-section (5) has been inserted.

## **Analysis**

Sub-section (5) to Section 5 is being inserted to ensure that wherever necessary, for the proper management of work, two or more officers of customs, can concurrently exercise powers and functions (for example in the case of faceless assessment).

## **Applicable WEF**

Date of Enactment Of Finance Bill 2022.

To Be Continued



## 6. BUDGET CLAUSE 88 AMENDS SECTION 14 OF CUSTOMS ACT, 1962.

### **Amendment**

In section 14 of the Customs Act, in sub-section (1), in the second proviso, after clause (iii), the following clause shall be inserted, namely:

“(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria:”.

### **Analysis**

Section 14 is being amended to include provisions for rules enabling the Board to specify the additional obligations of the importer in respect of a class of imported goods whose value is not being declared correctly, the criteria of selection of such goods, and the checks in respect of such goods. This amendment is a measure to address the issue of undervaluation in imports.

### **Applicable WEF**

Date of Enactment Of Finance Bill 2022.

# 7. BUDGET CLAUSE 89 AMENDS SECTION 28E OF CUSTOMS ACT, 1962.

## **Amendment**

In section 28E of the Customs Act,—

- (a) in clause (c), the Explanation shall be omitted;
- (b) clause (h) shall be omitted.

## **Analysis**

Section 28E is being amended to omit the Explanation under clause (c) and omit clause (h).

## **Applicable WEF**

Date of Enactment Of Finance Bill 2022.

## 8. BUDGET CLAUSE 90 AMENDS SECTION 28H OF CUSTOMS ACT, 1962.

### **Amendment**

In section 28H of the Customs Act, —(a) in sub-section (1), after the words “an application in such form and in such manner”, the words “and accompanied by such fee” shall be inserted;

(b) sub-section (3) shall be omitted;

(c) in sub-section (4), for the words “within thirty days from the date of the application”, the words “at any time before an advance ruling is pronounced” shall be substituted.

### **Analysis**

Section 28H is being amended to make provisions for prescribing appropriate fees by Board relating to application for advance Ruling and also give flexibility to the applicant to withdraw his application at any time before a ruling is pronounced from the current 30 days’ time period. Consequently, the sub-section (3) is being omitted.

### **Applicable WEF**

Date of Enactment Of Finance Bill 2022.

# 9. BUDGET CLAUSE 91 AMENDS SECTION 28I OF CUSTOMS ACT, 1962.

## **Amendment**

In section 28-I of the Customs Act, in sub-section (7), the words “by the Members” shall be omitted

## **Analysis**

Sub-section (7) under section 28I is being substituted so as to remove the word “Members” and also make changes accordingly.

## **Applicable WEF**

Date of Enactment Of Finance Bill 2022.

# 10. BUDGET CLAUSE 92 AMENDS SECTION 28J OF CUSTOMS ACT, 1962.

## **Amendment**

In section 28J of the Customs Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The advance ruling referred to in sub-section (1) shall remain valid for three years or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier:

Provided that in respect of any advance ruling in force on the date on which the Finance Bill, 2022 receives the assent of the President, the said period of 3 years shall be reckoned from the date on which the said Finance Bill receives the assent of the President.”.

## **Analysis**

Section 28J (2) is being substituted so that advance ruling under Section 28J(1) is now valid for a period of 3 years or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier. A proviso is also being inserted to provide that the advance rulings in force on the date on which the Finance Bill, 2022 receives assent of the President, the said period of three years shall be reckoned from the date on which the Finance Bill receives assent of the President.

## **Applicable WEF**

Date of Enactment Of Finance Bill 2022.

# 11. BUDGET CLAUSE 93 INSERTED SECTION 110AA OF CUSTOMS ACT, 1962.

## **Amendment**

New section 110AA has been inserted. Action subsequent to inquiry, investigation or audit or any other specified purpose.

## **Analysis**

Section 110AA is being inserted with a view to affirm the principle that, wherever, an original function duly exercised by an officer of competent jurisdiction, is the subject matter of a subsequent inquiry, investigation , audit or any other specified purpose by any other officer of customs, then, notwithstanding, such inquiry, investigation, audit or any other purpose, the officer, who originally exercised such jurisdiction shall have the sole authority to exercise jurisdiction for further action like reassessment, adjudications, etc. consequent to the completion of such inquiry, investigation, audit or any other purpose.

## **Applicable WEF**

Date of Enactment Of Finance Bill 2022.

## 12. BUDGET CLAUSE 94 INSERTED SECTION 135AA OF CUSTOMS ACT, 1962.

### **Amendment**

New section 135AA has been inserted. Protection of data.

### **Analysis**

Section 135AA is being inserted to protect the import and export data submitted to Customs by importers or exporters in their declarations by making the publishing of such information unless provided by the law, as an offence under Customs Act.

### **Applicable WEF**

Date of Enactment Of Finance Bill 2022.

## **13. BUDGET CLAUSE 95 AMENDS SECTION 137 OF CUSTOMS ACT, 1962.**

### **Amendment**

In section 137 of the Customs Act, in sub-section (1), after the words, figures and letter “or section 135A”, the words, figures and letters “or section 135AA” shall be inserted.

### **Analysis**

### **Applicable WEF**

Date of Enactment Of Finance Bill 2022.



# 14. NEW CLAUSE 96 INSERTED IN THE FINANCE BILL, 2022.

## **Amendment**

New Clause 96 Inserted in the Finance Bill, 2022.

## **Analysis**

A clause 96 has been inserted in the Finance Bill, 2022. This clause seeks to give validation to any action taken or functions performed before the date of commencement of the Finance Act, 2022, under certain Chapters of the Customs Act by any officer of Customs, as specified in Section 3 of the Customs Act, as amended, where such action was in pursuance of their appointment and assigning of functions by the Central government or the Board under the Customs Act.

## **Applicable WEF**

Date of Enactment Of Finance Bill 2022.