

UNION BUDGET – 2020

ANALYSIS OF INDIRECT TAX PROPOSALS

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DISCLAIMER

- *This will not be a very long presentation.*
- *This presentation seeks to use Film Titles only for the purpose of adding humour and grouping the various aspects of the Budget and the changes in relevant baskets and does not constitute an endorsement or an advertisement or use for any purpose.*
- *No animals were harmed while preparing this presentation*
- *Understanding amendments is injurious to health and contributes to wealth.*



CHALLENGES FOR FM



- 2018 Budget presented by Late Shri Arun Jaitley
- 2019 Interim Budget presented by Shri Piyush Goyal
- 2019 Budget presented by Smt Nirmala Sitharaman
- Budget was looked at for economy turn around
- Budget had to indicate growth areas
- Revenue collection was poor
- Inflation was entering into the arena
- GST collections were not upto the mark
- Global head winds
- China virus
- Economic survey and Talianomics
- Magic was expected

UNDERWATER



	2019-2020 (Budget Estimates (Rs. in Crores)	2019-2020 (Revised Budget Estimates (Rs. in Crores)	2020-2021 (Budget Estimates (Rs. in Crores)
Corporation Tax	766000	610500	681000
Taxes on income	569000	559500	638000
Customs	155904	125000	138000
Excise & Cess	300000	248012	267000
CGST	526000	514000	580000
IGST	28000	-	-
Compensation Cess	109343	98327	110500

DIFFERENT SPEECHES

In my scheme of things, no issue enjoys a higher priority than providing basic education to all children. The NCMP mandates Government to levy an education cess. I propose to levy a cess of 2 per cent. The new cess will yield about Rs.4000 - 5000 crore in a full year. The whole of the amount collected as cess will be earmarked for education, which will naturally include providing a nutritious cooked midday meal. If primary education and the nutritious cooked meal scheme can work hand in hand, I believe there will be a new dawn for the poor children of India. – **Para 22, FM Sri. P. Chidambaram (08.07.2004)**

I have a proposal regarding the cess for education. While the cess of 2 per cent on all taxes to fund basic education will remain, I propose to levy an additional cess of 1 per cent on all taxes to fund secondary education and higher education and the expansion of capacity by 54 per cent for reservation for socially and educationally backward classes - **Para 181, FM Sri. P. Chidambaram (28.02.2007)**

Government has also been committed to provide health services to all. Ayushman Bharat has made it possible. To achieve the twin objectives of giving impetus to the domestic industry and also to generate resource for health services, I propose to impose a nominal health cess, by way of a duty of customs, on the imports of medical equipment keeping in view that these goods are now being made significantly in India. The proceed from this cess shall be used for creating infrastructure for health services in the aspirational districts. - **Para 140, FM Smt. Nirmala Sitharaman (01.02.2020)**

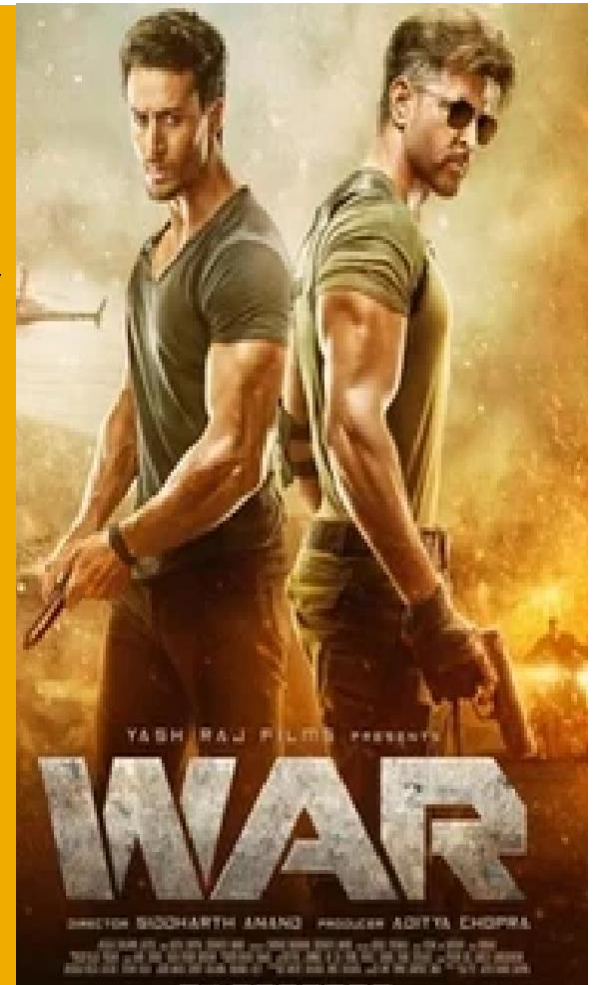
SUPER 30



- **Health cess on import of goods specified in the Fourth Schedule.**
- 5% on value of imported goods.
- In addition to other levies
- Electro-cardiographs, linear ultrasound scanner, echo cardiograph, infra-red ray apparatus, syringes, needles, catheters, dental drill engines, tonometer's, BP apparatus, stethoscopes, drills, saws, blades, knives, scissors, forceps, chisel, renal dialysis equipment, blood transfusion apparatus, ENT instruments, endoscopes, baby incubators, heart-lung machines, defibrillators, massage apparatus, artificial teeth, artificial joints, orthopaedic appliances, x-ray, radiation generation units *and many more.*

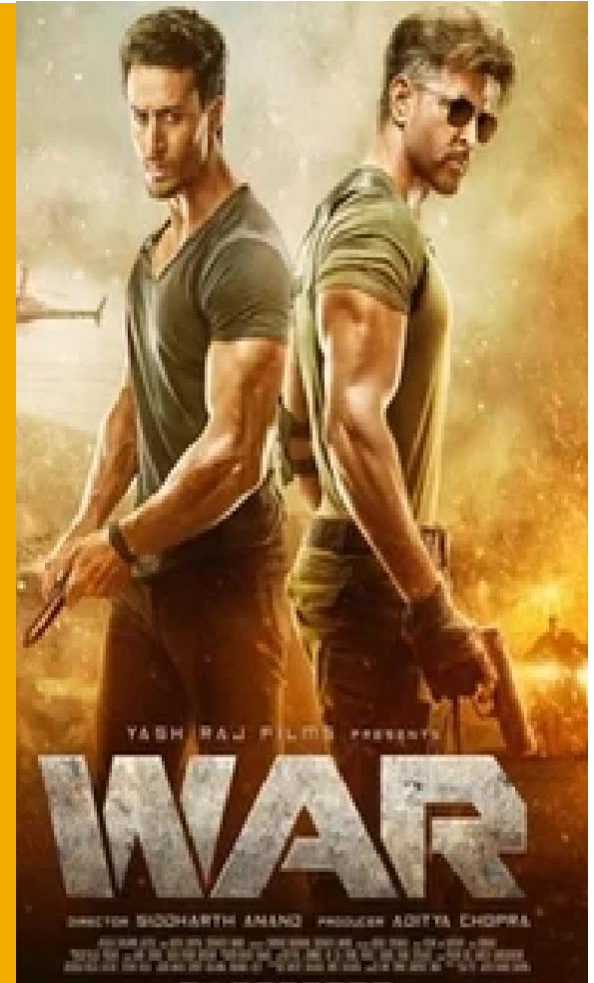
WAR

- Massive increase in customs duty.
- Rationalization of duty structure.
- Withdrawal of number of exemptions.
- Remaining exemptions to be reviewed by September 2020.
- Restraint on import of items produced by MSME's.



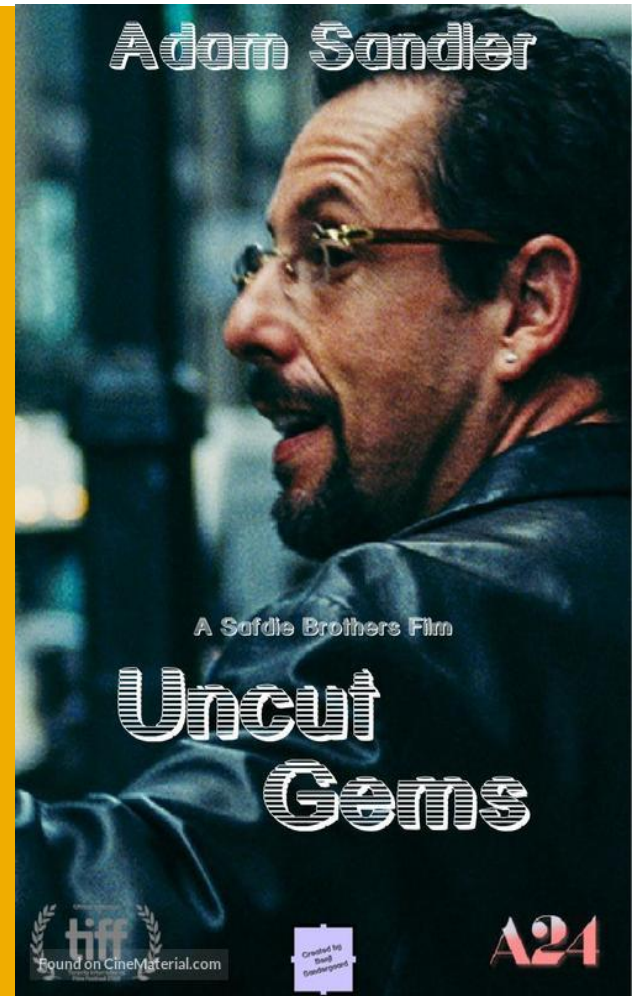
INCREASE IN DUTY – SOME EXAMPLES

- Butter, ghee, butter oil – 30% to 40%
- Cheese – 30% to 40%
- Peanut butter – 7.5% to 30%
- Shelled walnuts – 30% to 100%
- Chewing gum – 35% to 40%
- Wine for sacramental use – 30% to 150%.
- Footwear – 25% to 30%
- Kitchenware, tableware – 10% to 20%
- Compressors of AC / Refrigerator – 10% to 12%.
- Fans – 10% to 20%
- MP3, MP4 – 5% to 10%



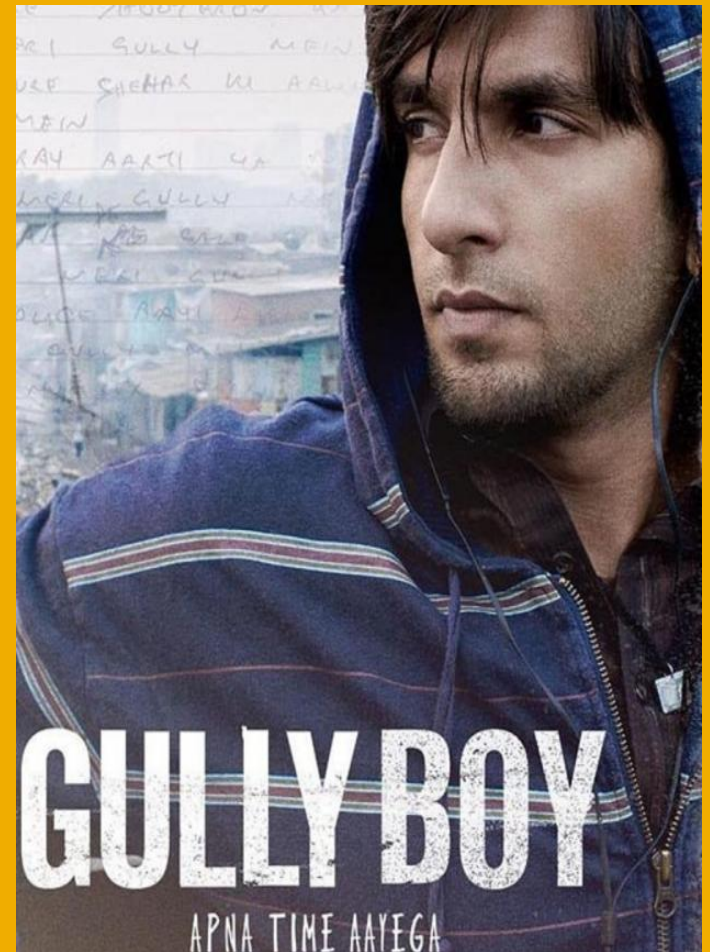
INCREASE IN DUTY – SOME EXAMPLES

- Rubies, emerald, sapphire, unset and uncut – 0% to 0.5%
- Rough coloured gem stones – 0% to 0.5%
- Rough semi-precious stones – 0% to 0.5%
- Polished cubic zirconia – 5% to 7.5%.
- Coins – 10% to 12.5%



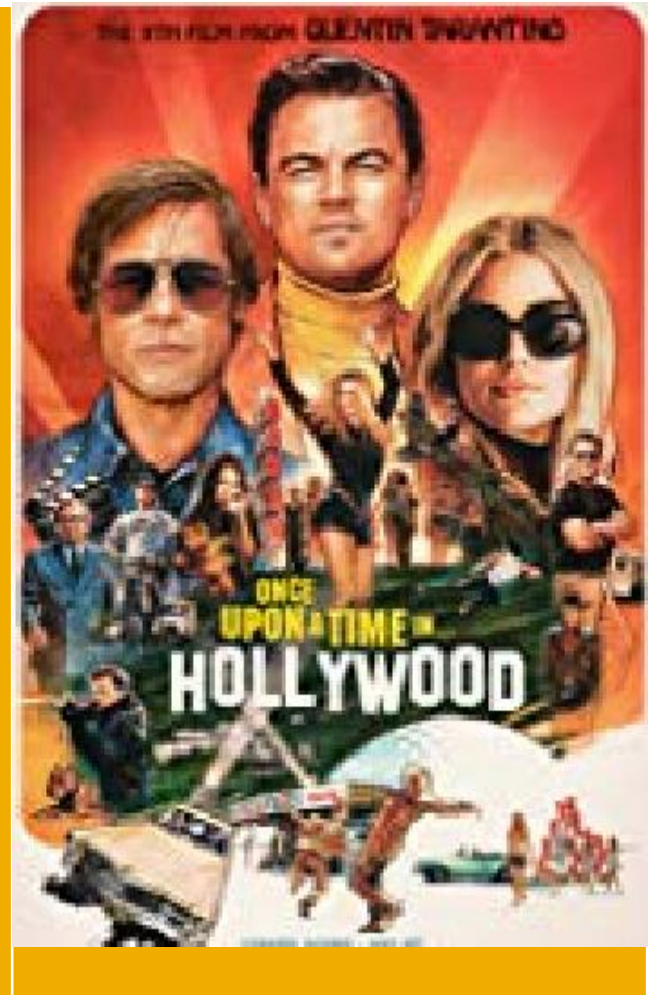
INCREASE IN DUTY – SOME EXAMPLES

- CKD units of commercial electric vehicles 25% to 40% w.e.f. 01.04.2020.
- SKD forms of electric passenger vehicles and three wheelers – 15% to 30% w.e.f. 01.04.2020.
- SKD forms of electric vehicles bus trucks and two wheelers – 15% to 25% w.e.f. 01.04.2020.
- Completely built units of commercial vehicles other than electric vehicles – 30% to 40% w.e.f. 01.04.2020.



INCREASE IN DUTY – SOME EXAMPLES

- Exemption withdrawn for cinematograph films exposed but not developed – Tariff rate 10%.
- Colour positive unexposed cinematograph films in jumbo rolls – 5% to 10%.
- Instant print film – 5% to 10%.
- Exemption withdrawn for promotional materials like trailers, making of film imported in the form of electronic promotion kits, beta cams.



KNIVES OUT

- **Section 11 of the Customs Act**
- Power to prohibit import or export of goods.
- Purposes include maintenance of security, prevention of shortage, conservation of foreign exchange, etc.
- *Prevention of injury to economy of the country by uncontrolled import or export of gold or silver – Section 11(1)(f).*
- Section 11(1)(f) expanded to cover other goods.



KNIVES OUT

Past history

- Import of counterfeit or fake currency notes into India – Notification No.23/99.
- Import of goods which violate IPR law.
- Import of certain books.
- Import of hazardous waste.



JUMANJI – THE NEXT LEVEL

- Explanation-4 to Section 28 substituted w.e.f. 29.03.2018.
- Notwithstanding any judgment or provision where notice has been issued prior to 29.03.2018 such notice shall continue to be governed by the provisions of Section 28 as it stood immediately before such date.
- Attempt to nullify P&H High Court decision in *Harkaran Das Vaidpal*



PANGA

- **Section 28DA**
- Importer to make a declaration that goods qualify as originating goods for preferential rate under agreement.
- Importer to possess sufficient information as regards the manner in which country of origin, criteria, regional value contend, products specific criteria, specified in the rules of origin are satisfied.
- Importer to furnish information as provided in the Rules.
- Importer to exercise reasonable care as to accuracy and truthfulness of the information furnished.
- **Section 28DA(2) provides that submission of certificate of origin issued by an issuing authority shall not absolve the importer of the responsibility to exercise reasonable care.**
- If officer has reasons to believe that criteria not met, further information can be called.
- Pending verification temporary suspension of preferential tariff treatment.
- Certificate of origin considered inapplicable in certain cases.
- Amendment to Section 111.



SAFEGUARD DUTY

- **Section 8B of the Customs Tariff Act substituted.**
- Goods are being imported in large quantities and under such conditions causing or threatening to cause serious injury to domestic industry.
- Permissible in WTO.
- Safeguard measures includes imposition of safeguard duty, *application of tariff rate quota or such other measures.*
- If tariff rate quota is used it shall not be lower than average level of imports in the last three representative years for which statistics is available unless a different level is deemed necessary.

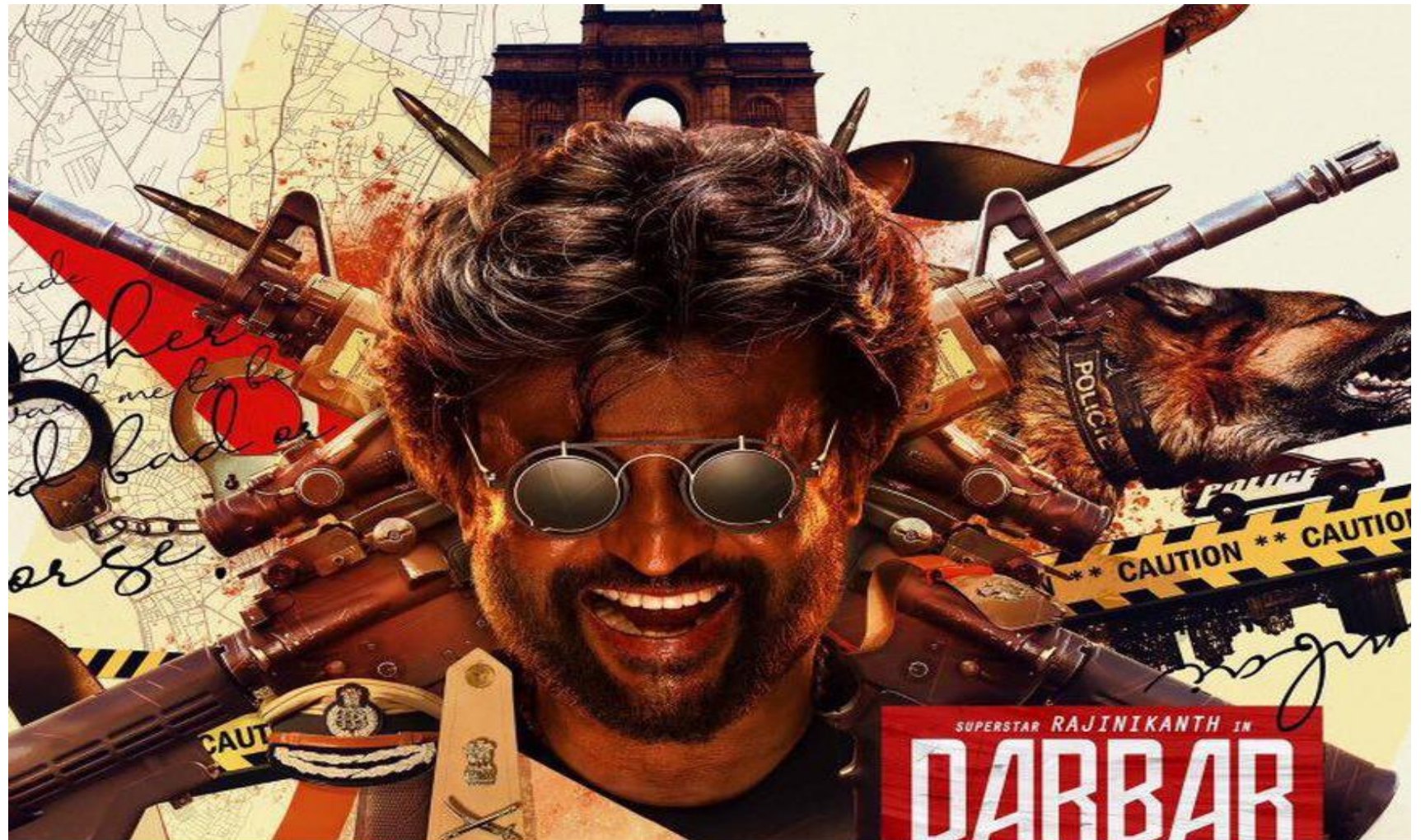


DUTY CREDIT

- Chapter VIIA
- Electronic credit ledger
- Section 51B
- Government may issue duty credit
 - In lieu of remission of duty or tax or levy on material used in manufacture or processing of goods or for carrying out operation in such goods in India *that are exported or*
 - In lieu of such other financial benefits subject to conditions.
- Duty credit maintained in customs automated systems in the form of electronic duty credit can be used for making payment of duty.



GST



GST

- CGST (Amendment) Act, 2018 – *Major provisions are yet to be notified.*
- Finance (No.2) Act, 2019 – *Most amendments are yet to be notified.*
- Few amendments notified from 01.01.2020.
- Finance Bill, 2020 – *Amendments to CGST Act & IGST Act*

AMENDMENTS TO CGST ACT

- Section 2(114) – Definition of ‘Union Territory’
 - Union Territories of Dadra and Nagar Haveli and Daman and Diu have been combined as one.
 - Ladakh added.
 - Similar amendments have been made to the UTGST Act.
- Section 10 – The eligibility conditions to opt for Composition Levy – Amended to include the phrase “ or services”

Before Amendment	After Amendment
(b) he is not engaged in making any supply of goods which are not leviable to tax under this Act; (c) he is not engaged in making any inter-State outward supplies of goods; (d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52;	(b) he is not engaged in making any supply of goods <u>or services</u> which are not leviable to tax under this Act; (c) he is not engaged in making any inter-State outward supplies of goods <u>or services</u> ; (d) he is not engaged in making any supply of goods <u>or services</u> through an electronic commerce operator who is required to collect tax at source under section 52;

AMENDMENTS TO CGST ACT

- Section 16 – Eligibility and conditions for taking ITC
 - Sub-section (4) has been amended to remove the phrase 'invoices relating to'.

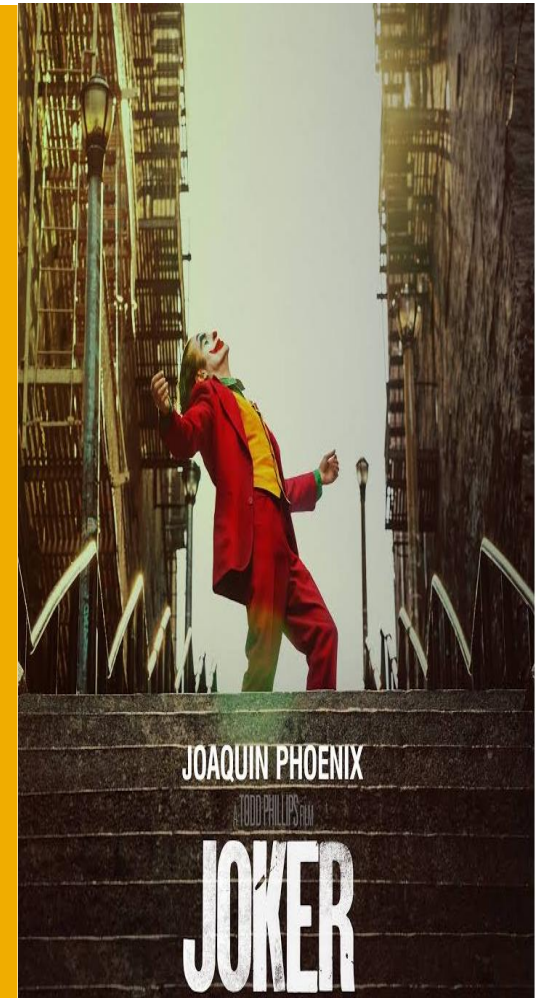
(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or ~~invoice relating to such~~ debit note pertains or furnishing of the relevant annual return, whichever is earlier.
- Effect of amendment?
- *No change in Section 16(4) in the context of reference to Section 39.*

AMENDMENTS TO CGST ACT

- **Section 29 – Cancellation**
- Persons taking voluntary registration now have the option to apply for cancellation.
 - *Many persons obtained registration even though they were not liable.*
 - *Registration obtained on account of compulsion by buyer.*
- **Section 30 – Revocation of cancellation of registration**
 - A person whose registration was cancelled by officer on his own motion can apply for revocation within a period of 30 days from the date of service of the order.
 - period of 30 days maybe extended on sufficient cause being shown and reasons to be recorded in writing, by the Additional Commissioner or Joint Commissioner for a further period not exceeding 30 days; and by the Commissioner for a further period not exceeding 30 days

TAX INVOICE

- **Section 31(2)** deals with tax invoices for a registered person supplying taxable services.
- Proviso introduced to provide that the Government on the recommendations of the Council, by notification,
 - specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and manner as may be prescribed.
 - Subject to conditions specify categories of services in respect of which any other document shall be deemed to be a tax invoice or
 - Specify categories in respect of which tax invoice may not be issued.
- The earlier proviso did not prescribe any time limit and was restricted to services only.
- Section 31(1) deals with tax invoices for goods.
- *What is the meaning of 'supplies' in the proviso?*

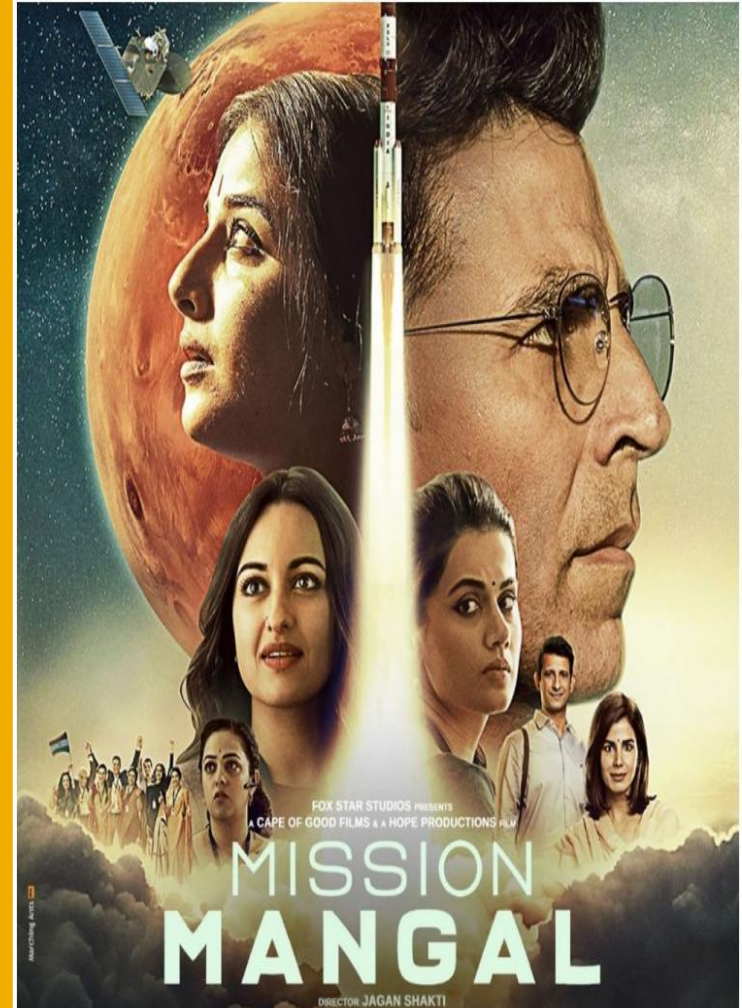


TAX DEDUCTION AT SOURCE

- **Section 51(3)**
- A certificate of tax deduction at source shall be issued in such form and in such manner as maybe prescribed.
- Prior to amendment, the responsibility was on the tax deductor to furnish the certificate.
- Provision pertaining to late fee for failure to furnish certificate deleted.

PENALTY

- **Section 122(1A)**
- Any person who retains the benefit of a transaction or at whose instance, such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or ITC availed or passed on.
- Patna High Court in the case of **Commercial Streeel Engineering Corporation** had held that *the legislative intent reflected from a purposeful reading of the provisions underlying section 140 alongside the provisions of section 73 and Rules 117 and 121 is that even a wrongly reflected transitional credit in an electronic ledger on its own is not sufficient to draw penal proceedings until the same or any portion thereof, is put to use so as to become recoverable.*



PUNISHMENT FOR OFFENCES

- **Section 132 – Punishment for certain offence.**
- The scope of the section to punish persons has been extended to those who commits or causes to commit and retain the benefits arising out of any of the offences mentioned therein.



SIDDHARTH ENTERPRISES (2019) 109

taxmann.com 62 (GUJ)

- **In case TRAN – 1 is not filed by the due date, is relief possible?**
 - Article 300A provides that no person shall be deprived of property saved by authority of law
 - While right to the property is no longer a fundamental right but it is still a constitutional right
 - CENVAT credit earned under the erstwhile Central Excise Law is the property of the writ-applicants and it cannot be appropriated for merely failing to file a declaration in the absence of Law in this respect
 - It could have been appropriated by the government by providing for the same in the CGST Act but it cannot be taken away by virtue of merely framing Rules in this regard
 - In the result, all the four writ-applications succeed and are hereby allowed
 - **The respondents are directed to permit the writ-applicants to allow filing of declaration in form GST TRAN- 1 and GST TRAN-2 so as to enable them to claim transitional credit of the eligible duties in respect of the inputs held in stock on the appointed day in terms of Section 140(3) of the Act**
 - It is further declared that the due date contemplated under Rule 117 of the CGST Rules for the purposes of claiming transitional credit is procedural in nature and thus should not be construed as a mandatory provision

TRANSITION PROVISION

- **Section 140**
- Amendment to sub-section (1), (2), (3), (5), (6), (7), (8), (9) to provide for time-limit through Rules.
- Amendment with retrospective effect from 01.07.2017.



REMOVAL OF DIFFICULTY

- If any difficulty arises in giving effect to any provisions of this Act, the Government may on the recommendations of the Council by a General or Special Order *make such provisions not inconsistent with the Act or Rules or Regulations* as necessary for removing the difficulty.
- No order shall be made after expiry of a period of 3 years from the date of commencement of the Act.
- **Extension of time to 5 years.**
- Similar amendment to IGST & UTGST.



THANK YOU

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