BCC&I
THE BENGAL CHAMBER

PRE-BUDGET MEMORANDUM 2021-22 ON INDIRECT TAXES

Sr. No	Section/ Subject	Issue	Suggestion / Recommendation
1	**Allowing export incentive on Service Exports (SEIS) on a monthly basis (like MEIS) instead of yearly basis presently in force**		
		Export incentive on services (SEIS), is available on a yearly basis today unlike MEIS instead of yearly basis presently in force. This leads to liquidity crunch and financial hardship.	Export incentive on Service Exports (SEIS) should also be allowed on a monthly basis (like MEIS) instead of yearly basis presently in force
2.	**Non-availability of ITC in respect of immovable property for setting up factory building, hotels etc**		
		Section 17(5) of The CGST Act 2017 Blocks the ITC in respect of Works contract and Construction. This is a huge burden for all new constructions including Factory Buildings, Hotels, etc. The amount spent for Works contract and Construction Factory Buildings, Hotels and all other construction is for furtherance of business and should in no way be blocked from availing ITC of. This results in "**cascading effect of GST**" which is against the very foundation of the GST Law.	The amount spent for Works contract and Construction Factory Buildings, Hotels and all other construction is for furtherance of business and should in no way be blocked from availing ITC of. The CGST Act must be amended for allowance of these ITC
3.	**Non-availability of ITC in respect of medi-claim expenditure done for the employees**		
		Section 17(5) of The CGST Act 2017 Blocks the ITC in respect of medi-claim expenditure for employees. In this era where medical expenses are unimaginable and where there is not much social benefits from the Government for medical contingencies, it is but unjust to disallow ITC on the same. This also results in "cascading effect of GST" which is against the very foundation of the GST Law.	The CGST Act must be amended for allowance of ITC on medical expenditure done for employees.

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<table>
<tr><th>Sr. No</th><th>Section/ Subject</th><th>Issue</th><th>Suggestion / Recommendation</th></tr>
<tr><td>4.</td><td colspan="3">Allowing IGST credit available to be adjusted against IGST payment towards import consignment</td></tr>
<tr><td></td><td colspan="2">At present IGST on Imports are paid in Cash at the time of clearing The Bill of Entry even though the Importer may have an IGST credit in his ITC Register on the GST Portal. This is causing a huge financial hardship on importers.</td><td>A procedure must be developed for allowing the IGST credit available to be adjusted against IGST payment towards import consignment.</td></tr>
<tr><td>5.</td><td colspan="3">CSR Expenses – application of RCM</td></tr>
<tr><td></td><td colspan="2">The Companies are required to spend annually about 2% of its average profits on account of CSR. Normally such expenses are made through authorised NGOs and sometimes directly by the Company.</td><td>A clarification is needed about the applicability of GST and RCM on such expenses for the benefits of the taxpayers.</td></tr>
<tr><td>6.</td><td colspan="3">Inter-state movement of construction equipment and spares from one branch to another: - Valuation under GST (Rule 32 (7) of GST Valuation Rules)</td></tr>
<tr><td></td><td colspan="2">In EPC contracts, movement of construction equipment from one project to another is imperative to maintain continuous and uninterrupted flow of work process.
These equipments are practically old and used and its movement are on principal to principal basis and there is no consideration or value addition.
They were not qualifying as “Stock Transfer” even under Pre-GST regime.

Spares are mostly charged off to expenses account at the point of purchase itself. Therefore at the time of transfer there will not be any value.

Even if such movements constitute as supply and liable to levy of GST wherein the recipient is entitled to a full ITC which means it is Revenue Neutral transaction for the exchequer but the same leads to the following issues in every movement:

• Valuation to be done for such movement
• Additional compliance requirement
• Unwarranted delay</td><td>To avoid hurdles and disputes over valuation of movement of equipments between distinct persons, it is requested to clarify that as provided under Rule 32 (7) value of inter-state movement of construction equipments and spares from one site to another is treated as NIL.</td></tr>
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7.	**Exclusion of Interest, Late Fee and Penalty from Transaction Value - Section 15 (1) (d) of GST Act, 2017**	
	As per the above proviso, interest, or late free or penalty for delayed payment of any consideration for any supply etc. is to be included in the Transaction Value.	Transaction value is the price actually paid or payable for supply of goods and or services. Interest, late free or penalty may arise due to contractual provisions or due to an issue between seller and buyer. Hence it is incorrect to add interest, or late fee or penalty for delayed payment of any consideration for any supply etc. in the Transaction Value. It is requested to delete the entry in Section 15 (1) of GST Act, 2017.
8.	**Clarity on ITC credit of GST paid on Cranes, Dumpers. Grader, Tipper, Excavator etc - Section 17 (5) of CGST Act, 2017**	
	Equipments like, Grader, Cranes, Dumpers, Tippers etc. are construction equipments but require registration under the Motor Vehicles Act. because they are motor driven and capable of traveling on the road. However, these equipments are solely used for construction work such as earthwork, leveling, movement of goods from one place to another, excavation, etc As per Section 17 (5) of GST Act, Notwithstanding anything contained in sub section (1) of section 16 and sub section (1) of section 18, input tax credit shall not be available in respect of the following, namely: (a) motor vehicles and other conveyances except they are used: (i) for making the following taxable supplies, namely (A) for supply of such vehicles or conveyances; or (b)........ (C)..... (ii) for transportation of goods	To remove unnecessary doubt and unwarranted disputes by the Revenue over availment of ITC on these equipments, it is suggested that after the entry of (ii) for Transportation of goods" the following entry be incorporated: (iii) Construction equipment falling under any Chapter of HSN. For your information, in the questions and answers published by CBEC relating to Mining Sector, for Question 21: (Will GST charged on purchase of all earth moving machinery including JCB, tippers, dumpers by a mining company be allowed as input credit)? CBE&C answer is as under: Answer: The provision of Sec. 17(5) (a) of the CGST Act, 2017 restricts credit on motor vehicle for specified purposes listed therein. Further, in terms of the provision of Section 2(76) of the CGST Act, 2017 the expression 'motor vehicle' shall have the same meaning as assigned to it in Clause (28) of Section 2 of the Motor Vehicle Act, 1988, which does not include the mining equipment, viz., tippers,

	These equipments are solely used for construction work such as earthwork, leveling, excavation etc though they are required to be registered under Motor Vehicles Act because they are motor driven for traveling on the road.	dumpers. Thus, as per present provisions, the GST charged on purchase of earth moving machinery including tippers, dumpers used for transportation of goods by a mining company will be allowed as input credit. Applying the same analogy, please clarify that ITC is allowed on Construction equipments used by the Companies in Construction Sector for construction work.
9.	**Sharing of Expenses/Allocation of cost between Group Companies/ Divisions/Sites etc. etc:**	
	Allocation of cost/sharing of expenses or sharing of cost incurred on common utilities between Group Companies/ JV/ Divisions/ sites/ etc. are common business practice and involved in mere accounting entries. Journal Vouchers/debit notes representing such sharing of expenses/allocation of cost on principal to principal basis without any consideration or value addition do not satisfy the definition of supply and hence would be attract GST.	Since the provisions in GST are silent and allocation of cost/sharing of expenses or sharing of cost of common utilities between Group Companies/ Divisions/Sites etc. are common business practice and involved in mere accounting entries. And hence it is requested to clarify that in the absence of any consideration or value addition such journal vouchers/debit notes would not attract GST.
10.	**Sale of old cars to employee**	
	Section 7(1) of the CGST Act defines the term "Supply" which includes: a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; b) import of services for a consideration whether or not in the course or furtherance of business; c) the activities specified in Schedule I, made or agreed to be made without a consideration; and d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II. Supply also include supply of goods or services	It is suggested that necessary amendment should be made in the valuation rule so that sale of used car to employee can be made on written down value.

	or both in all the forms, made by a person in course and furtherance of business for consideration; activities mentioned under Schedule - I without consideration; and activities mentioned under Schedule – II. Further, as per section 7(2) of the CGST Act, activities and transaction specified in Schedule III shall be treated as neither as a supply of goods nor a supply of service. In terms of Entry 1 of Schedule III, "Services by an employee to the employer in the course of or in relation to his employment" shall be treated neither as a supply of goods nor a supply of service. From the above it is clear that GST will not be leviable on supply of services by an employee to the employer in the course of or in relation to his employment. But, it does not cover within its ambit the supply of goods or services by an employer to the employee. As per explanation to section 15 of the CGST Act, employer and employee are considered as related person. Entry 2 of Schedule I provides that supply will include "Supply of goods or services or both between related persons or distinct persons as specified in section 25, when made in the course or furtherance of business" even if made without consideration. As per the above provisions, even if a supply is made without consideration by an employer to the employee, such transaction will be covered within the ambit of section 7(1) of the CGST Act and will be leviable to GST. As per section 15(1) of the CGST Act, the value of supply shall be the transaction value (price actually paid or payable) where the supplier and recipient are not related and the price is the	

	sole consideration for the supply. Rule 28 of CGST Rules provides for determination of ‘Value of supply of goods or services or both between distinct or related persons, other than through an agent which is as under: a) be the open market value of such supply; b) if open market value is not available, be the value of supply of goods or services of like kind and quality; c) if value is not determinable under clause (a) or (b), be the value as determined by application of rule 30 or rule 31, in that order. So from the above it is clear that in case of related parties, GST is payable on open market value of the goods and services. In a large manufacturing organisation, company owned used car is provided to the employee after certain specified period (say 5 years). Car is sold at written down value (WDV). As per above provision, employer and employee are related party and accordingly as per Rule 28 of the valuation rule, GST will be applicable on open market value. Open market value of the used cars is much more than the WDV. Although, in case of sales of such goods to unrelated parties, GST is applicable on the sales price, if no input tax credit has been availed. In case of sale of second hand goods by an individual, CBEC has already notified that transaction will be exempted from payment of GST. Payment of GST at “open market value” will be difficult to determine and will also result in huge increase in the cost in the hands of the employee.	

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<tr><td>11.</td><td colspan="2">Reverse charge on Goods and Services</td></tr>
<tr><td></td><td>Section 12 (3) of the CGST Act provides the in case of supplies of Goods in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:—
a) <u>the date of the receipt of goods</u>; or
b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:
Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.
Further 13(3) of the CGST Act provides that in case of supplies 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:—
a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:
Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:
Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.</td><td>It is suggested that liability under RCM for goods and services both should arise at the time of payment only.</td></tr>
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	In a large manufacturing company, following different process for RCM for Goods and services will create difficulty in implementing the process. In case of Goods, RCM arises at the time of receipt of goods whereas in case of services it is at the time of payment. Liability of Tax should arise in both case at the time of payment only which is currently mentioned in the existing law.	
12.	**Provision for Revised Return:**	
	Rectification of Return is needed for earlier periods	There should be a provision for rectification of return by way of filing Revised Return
13.	**Tax Treatment of "Made in India" goods sold through Duty Free Shops (DFS)**	
	<u>Tax Exemption provided to "domestically manufactured goods" in the pre GST Scenario</u> • Sale by domestic manufacturer to DFS were exempt from Basic Excise Duty **<u>Tax Exemption post GST:</u>** • Upon introduction of GST the Central Excise Duty and VAT payable was subsumed to GST and GST Compensation Cess. However, no such exemption was extended for sale to / from Duty free shops • **Since IGST and GST Compensation Cess are payable on sales to Duty Free Shops, the sale from Duty Free Shops of "Made in India" goods had the tax cost embedded in the price** The above practice was prevalent till introduction of notification no. 11/2019-Central Tax (Rate), 10/2019-Integrated Tax (Rate) and 11/2019-Union territory Tax (Rate) all dated 29.06.2019 read with Circular No. 106/25/2019-GST dated 29th June 2019. The Circular by the CBIC provides for refund of input taxes to the DFS in respect of sales made from the Duty Free Outlets located in the Departure area of international airports to outgoing "eligible passengers", i.e., international passengers, provided such passengers have not stayed in	**Recommendation** • Appropriate change in the GST laws to enable full refund of Input Tax Credit to Duty Free Operators (DFO) in respect of tax paid made in India goods sold through Duty Free Shops (DFS), in line with the judgement of Bombay High Court dated 07.10.2019; or • Alternatively, in case the above is not possible due to any reason, suitable amendments in the GST laws in order to extend identical tax treatment in procedural norms for both Made in India as well as imported goods sold through Duty Free Shops(DFS).

	India for more than 6 months. The refund of input taxes that would be available to a DFS will be much lesser under the GST regime since it will be limited to input tax paid only on goods sold to eligible passengers. The procedural requirements specified in the Circular are complex and onerous and Duty Free Operators (DFO) have not opted for this due to complexities of compliance being disproportionately higher than the anticipated refund benefits. **Thus, after introduction of GST, the sale of "Made in India" goods which are highly taxed have come to halt. This is only helping the growth in sales of international goods in Indian DFS. In the case of highly taxed goods like cigarettes, the absence of Indian cigarettes in DFS and consequently higher saliance of International brands of cigarettes is also helping promote contra band sales of these international brands of cigarettes in the domestic market.** Recently, the Mumbai High Court vide an Order dated 07.10.2019 has laid down the legal principles w.r.t supply made by DFS. In the said order, Hon'ble High Court has allowed refund of entire ITC pertaining to supplies by the DFS from departure and arrival Hall.	
14.	**Input Tax Credit on Common Capital Goods**	
	As per Rule 43 of the CGST Rules, 2017, the useful life of capital goods intended to be used for effecting both taxable and exempt / non-business supplies is to be considered as 5 years from the date of invoice. Further, 1/60th of input tax credit attributable to such common capital goods is required to be reversed in every tax period in the proportion of aggregate value of exempt supplies and the total turnover during for such tax period over the useful life of 5 years. Rule 43(1)(h) provides that the reversal amount so calculated is to be added to the output liability for each tax period <u>along with</u>	**It is recommended that suitable amendment in law be made to provide for reversal of input tax credit ab initio based on a reasonable abated rate, viz., proportion of aggregate value of exempt supplies and the total turnover during previous 12 months, or, to allow the reversal of proportionate input tax credit over the useful life of such capital goods without levy of any interest.** Further, Rule 43 of the CGST Rules, 2017, prescribes manner of determination of input tax credit in respect of capital goods and

	interest. By the provision of law, there is no alternative but to effect reversal of input tax credit over 60 tax periods for such capital goods. In the absence of any option to reverse the proportionate input tax credit ab initio for such capital goods, the levy of interest in every tax period is inequitable and is imposed on the assessee by law whereas, in the ordinary course interest becomes due on account of any delay, normally willful.	reversal thereof in certain cases. Proviso to Rule 43(1)(c) provides the methodology for availing common credit on capital goods which was initially used or intended to be used exclusively for non-business purposes or for effecting exempt supplies. Similarly, proviso to Rule 43(1)(d) provides the methodology for availing common credit on capital goods which was used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies. Unfortunately, Rule 43 or any other provisions do not prescribe the methodology for availing credit for the reverse cycle, i.e., when capital goods, which are used for effecting common supplies (i.e., for both, non-business purpose/exempt supply and taxable/zero rated supply supply), but are later used or intended to used exclusively for non-business purposes or for effecting exempt supplies. Similarly, there is no prescribed methodology in the GST Rules for cases where capital goods, which are used for effecting common purpose (i.e., for both non-business purpose/exempt supply and taxable/zero rated supply supply), but are later used or intended to used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies. **In absence of the adequate clarity, manner of determination of input tax credit in respect of capital goods being used for effecting common supplies and subsequently used or intended to used exclusively for non-business purposes or for effecting exempt supplies or for exclusively effecting supplies other than exempted supplies but including zero-rated supplies, has been left open for interpretation and can thus can become a highly litigious subject. To preclude pointless litigations, it is recommended that necessary clarification/s**

		be incorporated in Rule 43, prescribing the treatment of input tax credit to address the gaps cited above.
15.	**Eligibility of Duty Credit Scrips issued under FTP for discharging GST Liability**	
	Duty Credit Scrips against the Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS) are provided to exporters under the Foreign Trade Policy. In the pre-GST regime these Scrips could be utilised for discharging Basic Customs Duty and Countervailing Duties in case of import of specified goods as well as Central Excise Duties in case of domestic procurement of the specified goods. Under the GST laws MEIS and SEIS Scrips can be used only for payment of Basic Customs Duty (BCD) and are ineligible for discharge of any liability under IGST, CGST, SGST and GST Compensation Cess in respect of imports or domestic procurements. Notwithstanding the fact that any tax paid under the GST laws is available as input tax credit, the ineligibility of utilizing Duty Credit Scrips for discharge of these tax liabilities have impacted adversely on the utilisation and tradability of the said Scrips, thereby resulting in avoidable tie-up of working capital.	It is recommended that GST laws be amended to permit utilisation of Duty Credit Scrips received under the FTP for discharge of Basic Customs Duty as well as IGST / CGST / SGST / GST Compensation Cess, as the case may be.
16.	**Time limit for taking Input Tax Credit in respect of any invoice or debit note pertaining to a particular financial year**	
	As per Section 16(4) of the CGST Act, 2017, 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 The Government has adopted a refreshed and expeditious approach in addressing challenges faced by industry and allowed availment of	It is recommended that suitable enablement / amendment/s be made for: (i) Extending the time-limit for taking credit for invoices / debit notes pertaining to Financial Year 2019 – 20, till the date of filing of annual return; AND (ii) Allowing input tax credit in respect of any invoice or debit note for supply of goods or services or both following the end of financial year to which such invoice or invoice relating to such debit note pertains, till furnishing of the

	input tax credit upto 31st March 2019 for Invoices pertaining to FY 2017-18. However, this provision will be an ongoing problem unless addressed at the earliest. Till such time all dealers in their capacity as Suppliers have filed Form GSTR-1, the recipient dealers will not receive the corresponding supply details in their Form GSTR-2A and will be unable to determine if eligible input tax credit has been taken for all supplies made to them. Further, in the absence of Form GSTR-2A complete in all respect for all inward supplies, the recipient dealers cannot be assured that the supplying dealers have duly cognized for the outward supplies made to them for discharge of GST tax liability in such Suppliers' Form GSTR-3B (monthly return).	relevant annual return.
17.	**Clarification on input tax credit on Canteen Sale**	
	The proviso to Section 17(5)(b) of the Central GST Act, 2017 introduced vide the Central GST (Amendment) Act, 2018 specifies that input tax credit in respect of such goods or services or both [as specified under Section 17(5)(b)(i) to 17(5)(b)(iii)] shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. This provision will enable inter alia, availment of input tax credit for goods and services procured for providing canteen facility to employees, where the employer is obligated to provide such canteen facility under any law for the time being in force. However, Entry No. 7(i) (read with Explanation 1 thereto) of Notification No. 11/2017- Central Tax (Rate) dated the 28.06.2017 (as amended upto date) inter alia specifies that supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by an industrial unit, will be subject to GST @ 5%,	In view of the above and in the interest of clarity for avoiding disputes, it is recommended that Notification No. 11/2017-Central Tax (Rate) dated the 28.06.2017 be amended or a corrigendum issued to the effect that: (i) The proviso in Column 5 in the Table against serial number 7(i), in column (3) of the said Notification (as amended upto date) is not applicable for supply of food / drink at an industrial canteen for employees, where the employer is obligated to provide such canteen facility under any law for the time being in force; OR (ii) GST at a rate higher than 5% may be levied for supply of food / drink at an industrial canteen for employees, where the employer is obligated to provide such canteen facility under any law for the time being in force and where the employer wants to avail the credit of input tax charged on goods and

	provided that credit of input tax charged on goods and services used in supplying the service has not been taken. While the intent of the legislature clearly is to allow availment of input tax credit for goods and services procured for providing canteen facility to employees, where the employer is obligated to provide such canteen facility under any law for the time being in force, a conjoint reading of the above may lead to an interpretation that such input tax credit is not to be taken where the outward supply of food / drink provided by such industrial unit is subject to GST @ 5%. Further, there is ambiguity on whether the outward supply of food / drink provided by such industrial unit can be taxed at any rate other than 5%. This ambiguity is compounded by a recent Advanced Ruling in Karnataka (Advance Ruling No. KAR ADRG 21/ 2018 dated 21.08.2018). Such an interpretation will be completely contradictory to the objective of introducing the proviso to Section 17(5)(b) of the Central GST Act, 2017, vide the Central GST (Amendment) Act, 2018.	services used in supplying the service.
18.	**Waiver of interest on reversal of credit (by way of addition to output liability) for non-payment of dues to suppliers of goods & services**	
	The GST Council at its 28th Meeting held on 21.07.2018, while recommending certain amendments to the CGST Act, IGST Act, UTGST Act and the GST (Compensation to States) Act has, inter alia, recommended that in case the recipient fails to pay the due amount to the supplier within 180 days from the date of issue of invoice, the input tax credit availed by the recipient will be reversed, but liability to pay interest should be done away with. This is evident from the Point 10 of the Press Release of the Ministry of Finance (dated 21st July 2018) and Agenda No. 6 (i) of the proposed amendments to GST Laws - CGST Act (Amendments 15 to 18 on Page No. 81), wherefrom it is evident beyond any doubt that	It is requested that this amendment be introduced at the earliest, if so required through a Removal of Difficulty Order. This will provide much needed relief to innumerable recipient of goods and services and remove the undue hardship being faced by them.

	the phrase "along with interest thereon" has been proposed to be deleted from the second proviso to Section 16(2) of the Central GST Act, 2017. Unfortunately and very surprisingly, the said amendment did not form part of the Central GST (Amendment) Act, 2018 notified on 30.08.2018 and subsequently, made effective from 01.02.2019.	
19.	**Time limit for payment of GST under Reverse Charge Mechanism (RCM)**	
	Section 13 (3) of the CGST Act, 2017 states that "In case of supplies 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:— (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier" As per general commercial practice, credit period of 30 - 60 days is extended by most transporters to the customers. At times the payments get delayed beyond the agreed credit period due to various discrepancies.	Accordingly, it is recommended that the time limit for payment of GST under reverse charge be made based as follows: (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or (b) the date immediately following one hundred eighty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier; or (c) If for some reason it is not possible to accept the aforementioned options, at least, necessary amendment may please be carried out in the said Rule to start the count of the time limit from the date of receipt of the invoice by the recipient, instead of the date of issuance of the said invoice by the supplier
20.	**Latest amendment in Rule 36(4) of the CGST Rules**	
	The latest amendment to the Central GST Rules, 2019 vide Notification No. 49/2019	**In view of the above, it is requested to postpone the implementation of**

	Central Tax dated 09.10.2019, *inter alia*, introduces a new provision by way of Rule 36(4) which reads as below: *"Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37."* However, in view of the fact that GSTR 2 and GSTR 3 returns have been kept on hold as on date, there is lack of clarity on the mechanism of implementation of amendment of this rule. Further, GSTR – 2A at any given point of time is contingent on the contents of GSTR-1 uploaded by the suppliers and therefore, it is dynamic and keeps changing continuously. It is to be noted that, CBIC has already allowed that the said condition of Rule 36(4) of CGST Rules 2017 shall apply cumulatively for the period February, March, April, May, June, July & August 2020 and the return in Form GSTR 3B for the tax period September 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the conditions above. (Notification No. 30/2020 – Central Tax)	**Rule 36 (4) since its inception and it must be kept in abeyance as of now.**
21.	**'TDS and TCS credit received' – Option for partial acceptance**	
	The TDS and TCS provisions under GST have been implemented w.e.f 01.10.2018. Since then whatever tax is getting deducted / collected, the same is getting reflected in the GSTN of the other dealer (from whom the amount so	In view of the above, it is requested that suitable amendment in the GSTN portal be made available so as to "Accept" or "Reject" the credit as available on the GSTN portal at line item level and also enable partial

	deducted or collected) under return dashboard, under the heading "TDS and TCS credit received". As per the mechanism prescribed, once the dealer accepts the particular line item as proposed under "TDS and TCS credit received", corresponding TDS/TCS amount flows to the electronic cash ledger and the said amount is available for offsetting the GST liability. However, at present, in the GSTN portal there are only two options available "accept" and "reject". If the dealer chooses "reject" then the details will go back to the deductor / collector for necessary amendment. But there are many practical reasons for which the dealer may either want to keep any particular line item for a particular GSTIN (of the deductor / collector) on hold, or may want to partially accept the amount shown against a particular GSTIN (of the deductor / collector). Currently, there is no functionality available in the GSTN portal to accept or reject "TDS/TCS credit received" at line item level as available in the GSTN portal.	acceptance of TDS/TCS credit against a particular line item.
22.	**Transportation of Goods in case of expired e-waybill which could not be renewed for some bonafide reason**	
	As per the second and third proviso to Rule 138(10) of the CGST/SGST Rule, where validity of the e-way bill needs to be extended for exceptional situation, the same can be extended within eight hours from the time of its expiry. Since, validity of an e-waybill expires at 0000 hour midnight of the last date, effectively, the validity of the expired can be extended between 4 pm (of the last date) and 8 am (following day). But due to many practical reasons viz. remote location of the vehicle leading to delay in communication by the driver, non – availability of the resource at the transporter's end for extending the validity, lack of awareness amongst the semi-literate drivers etc. many a times the transporter / consignor / consignee fails to extend the validity of the e-waybill within the given window, as explained above. In	Under the circumstances, it is requested that appropriate provisions are incorporated in GST laws to address situations where the expiry of e-waybills are on account of bonafide intentions such that legitimate transportation of goods is not impeded.

	such cases, there is no explicit provisions in the law as to how the transportation of the goods can be completed. Consequently, such consignment in transit are exposed to detention and penalty by squads / check post officials. The only way to not invite enforcement action in such instances, is to halt the in-transit stocks at the road side itself till such time appropriate documentation can be re-issued. The consequential delays in delivery of goods causes wasteful expenditure and impact adversely on productivity.	
23.	**Refund of accumulated balance of input tax Credit as available in the electronic credit ledger on the surrendering the GSTIN**	
	With the advent of the GST, in many a cases the existing VAT/CST registration of the dealers are migrated to GSTIN. Such dealers have also inherited some transitional credit from the pre-GST tax regime besides fresh accruals during GST regime. But since GST has brought in much awaited concept of "one nation one tax", it has given enough scope to the dealers especially those with multi-state operations to restructure / rationalize their supply chain, as a result, continuing business operations in many States/UTs have become pointless (which otherwise was required in pre-GST regime primarily to optimize the CST cost). Hence, in many a cases, for optimal use of the available resources, the dealers are in process of surrendering their GST registration (GSTIN) in a particular State / UT, which can be easily serviced from any other surrounding State / UT. And, in a many cases, such dealers are left with unutilized balance lying in their electronic credit ledger. Unfortunately, the GST law is silent on the fate of such unutilized balance of electronic credit ledger at the time of surrendering the GST registration.	To safeguard the substantive right of the dealers, it is requested that an appropriate amendment may please be introduced in the law allowing refund of the accumulated balance of unutilized input tax credit as available with the dealer as on the date of surrendering their GSTIN in a particular jurisdiction. As an alternative, appropriate mechanism may please be introduced to enable such dealers to get the accumulated balance of unutilized input tax credit transferred to any of their other GSTIN (of other State/UT).
24.	**Input Tax Credit: Admissibiity**	
	Section 17(5) of CGST Act, 2017 inter alia indicates certain list of blocked credits which	**It is recommended that GST input credit must be allowed (if not permanently at least**

	can be availed only on satisfying certain conditions. Input tax credit (ITC) shall not be allowed in respect of the following: • Motor vehicles and other conveyance except when they are used for making further taxable supplies or for transportation of goods • Rent-a-cab except where person making an outward taxable supply of the same category • Supply of Goods /or Services such as Food and beverages, outdoor catering, health services etc. • Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples On account of spread of nCovid-19 and consequential nationwide loackdown as a preventive measures including various other measures taken by health and administrations by Central as well as State authorities, Ministry of Home Affairs has circulated time to time various guidelines and conditions under which business & manufacturing premises are required to conduct their business operations. Many of these guidelines are restrictive in nature in terms of people movements, restrictions in passenger occupancies in the Car as well other passenger vehicles, making health coverage mandatory for the workers and employees etc. Also, such unprecedented lockdown has thrown unique challenges to businesses in terms of products not getting sold, expiry of shelf life or distribution of such products among the needy & marginal people	**for 2 financial year starting from FY 2020-21) for motor vehicle / Rent-a-cab expenditure, rent–a-cab costs, food & beverages, outdoor catering, health services, Goods lost/stolen/destroyed/written off/ disposed of by way of gift or free samples, provided it is used for business purpose in providing a different taxable goods/ services.** Agri Business Companies, FMCG and large marketing / service organization incur significant amount of expenditure with respect to motor vehicles or rent-a-cab services in marketing or field visits which are related to business operations. Such expenditure is incurred in relation to supply of a different taxable goods/ services. It will be unjust if GST input tax credits related to such expenditure is blocked and thereby leading to increase in cost of operations. **Additionally, it is recommended that GST input credit must be allowed for motor vehicle expenditure and rent–a-cab costs, provided it is used for business purpose in providing a different taxable goods/ services.**

	to support their livelihood etc. All such activities have resulted into increase in cost of operations without any consequential increases in sales. On top of that, GST Input Tax Credit is also denied or required to be reversed in line with Section 17(5) of CGST Act 2017. Ministry of Finance has already announced various proactive measures to support industries to survive this difficult time. In the same spirit, it is requested that restriction in Input Tax Credit vide Section 17(5) of CGST Act 2017 may please be reviewed and Input Tax Credit (ITC) may please be allowed on the followings: • Motor vehicles and other conveyance • Rent-a-cab Services • Supply of Goods /or Services such as Food and beverages, outdoor catering, health services etc. • Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples	

25. GST on Personal Protective Equipment(PPE):

PPE has become essential for healthcare services, use at the workplace and public places in order to prevent spread of Covid-19. Different rates of GST are applicable to different kinds of PPE as shown in the table below in order to make such items affordable to even the poorest sections of society **it is recommended that the GST on all PPE be "zero-rated" for a period of two years at least. Alternately, the applicable rate of GST on all PE should be reduced to 5%.**

HS Code	Description	Rate of GST (Current)	Rate of GST (Suggested)
3822.00	COVID 19 Test kits	12%	5%
3926.20	Plastic gloves / Plastic face shields	18%	5%
4015.11	Surgical rubber gloves	12%	5%
6307.90	Face masks including N95 Particulate Respirators	5%	5%

4818.50	Paper or cellulose garments and clothing accessories such as disposable paper hospital gowns, etc.	18%	5%
3808.94	Hand Sanitisers and Other Disinfectant preparations	18%	5%

26. To **reduce GST in Hospitality Industry** in respect of the *room rents*. It is suggested that on room rents starting from Rs 7,500 /- onwards , the rate should be reduced to 15% from the present 18% and on room rents starting from Rs 1,000/- and up to Rs 7499/-, the rate should be reduced to 12% from the present 15%. This will help to increase the occupancy of hotels to a considerable extent as this sector has been badly hit during the pandemic.

27. To **invest more in the Primary Health Care System** with regard to *infrastructure* and *manpower*.

(a) Present *critical features* of this area are:-
- Govt. at present spends only 1.13% of GDP ;
- Around 62% is met by households ;
- Fragmented delivery of health care services ;

(b) Following *improvements* are suggested:-
- To create further 1,50,000 health and wellness centres by 2022;
- The services should be more integrated (district and sub-district hospitals);
- To improve patient : doctor ratio ;

28. **Certain digitisation expenditures** (*in the nature of capital expenditures*) to be incurred during FY : 2021-22 by industries be allowed as tax deductible expenditures.

29. In order to **reduce the cost of medicines** (*for critical diseases*) reduction in the amount of input taxes on the important inputs that go into the manufacture of these medicines may be seriously looked into.

PROCESSED AND PACKAGED FOODS

1. GST Levy on Staples based on Branding of Product

Prior to introduction of GST India had a multitude of taxes across the country. The ethos behind the introduction of GST was built on principles of one nation-one tax, avoidance of tax rate distortions, broaden the tax base, ensuring availability of seamless credits of input taxes paid at each stage across states in the subsequent stage of value addition and prevention of leakages while also bringing down the overall tax burden which will benefit consumers.

Currently, Staples like Wheat, Rice, Millets & their flours (Atta, Maida etc.) are taxed at two distinct rates of GST, i.e.,

- 5% when sold in Branded packaged form
- Nil when sold in its Unbranded form
- Nil when put in a unit container bearing a Brand name, provided the brand-owner has foregone the actionable claim or enforceable right in respect of such brand name.

The intent of such a tax structure was perhaps determined by the “ability to pay” and it was expected that the dual tax structure would provide relief to consumers in the lower socio-economic strata of society and to micro and small manufacturers as well as the local *“chakkis”*. However, such distinction and dual tax rates were not introduced for products of mass consumption such as spices.

However, ever since the introduction of this dual tax structure in September 2017, unscrupulous players have misused the provisions of law to indulge in rampant and large-scale tax evasion. These players have employed a *modus-operandi* whereby GST is evaded on fully branded products by virtue of an inconspicuous declaration on foregoing of rights over the brand.

The consequence of such tax evasion are as follows:

- Significant drop in tax collections, estimated at almost 50% from the category in comparison to tax collections in the VAT regime.
- Benefits intended for less affluent consumers and small manufacturers being misused by the manufacturers of branded products with consequential distortion in the trade.

Packaged food products bearing brand names and marketed in unit containers provides consumers with hygienic and nutritious food products that meet the requisite quality parameters stipulated under FASSI. Further, packaged branded food products ensures greater accountability on the manufacturer and provides the consumer with comprehensive product information by virtue of declarations on the labels covering Ingredients / Nutritional facts/ Best Before Date / Expiry date/ Instructions for use/ Consumer Grievance Redressal Mechanism / Batch Number / Date of Manufacture, etc. The erosion of cost competitiveness of manufacturers who comply with the laws of the land and pay taxes in full also impacts several other areas including less than remunerative prices to the farmer and dilution of opportunities to build intellectual property through building up of national brands.

In order to maintain an equitable tax structure and avoid revenue leakage, it is requested that all unbranded packaged cereals and staples including rice, wheat, millets and their flours sold in pack sizes up to 10 Kgs be taxed under GST at the rate of 5%, irrespective of whether the brand owner

forgoes rights, etc. However, Government may consider exempting GST for cereals and staples sold in packaged form in 50 Kgs packs and above. Large pack sizes are typically consumed by mass consumers in the lower socio-economic strata who purchase the same in loose form from retailers. This will provide relief to consumer segments which really need such a benefit. Such a tax levy will be in line with the ethos of introduction of GST in the country, mitigate the current revenue loss to the Government exchequer and ensure a level playing field for the entire industry.

2. **Infrastructure for setting up of Food Processing Industry**

Food Processing Industry, which is at a nascent stage today plays a pivotal role in providing access to consumption markets for agricultural produce. Further, this sector also helps in creation of employment opportunities. Government has recognized Food Processing Industry as a sun rise industry and has provided many incentives to encourage this Industry.

Under the erstwhile Service Tax regime, impetus to Food Processing Industry was provided in the form of exemption from Service Tax on services relating to setting up of storage infrastructure for agricultural produce, mechanised food grain handling system, equipment and machinery for units processing agricultural produce into food stuff.

However, under the GST Regime, the exemption has been withdrawn and GST @ 12%/18% has been specified for such infrastructure related services. Further, Input Tax credit is specifically disallowed under Section 17(5) of the CGST Act 2017 for construction of immovable property.

In order to provide a fillip to the food processing sector, it is recommended that:

a. **Exemption from GST may be granted for all infrastructure related services for setting up of new plants / factories / storage infrastructure which are in relation to processing of agricultural produce into food stuff.**

b. **Or in the alternative, Food Processing Industry may be allowed to avail Input Tax Credit on civil structures/immovable property used for setting up storage/food processing infrastructure.**

3. **Exemption on Skimmed Milk Powder used for production of milk in dairy industry**

The Government by way of a Notification, has provided an exemption from payment of GST on supply of Skimmed Milk Powder, when supplied between distinct persons as per section 25(4) (i.e. different GST Registration of the same entity) of the GST Act and such Skimmed Milk Powder is transferred for use in production of milk.

While the above exemption, provides relief for milk producers having in-house production capabilities, the producers who are buying the Skimmed Milk Powder from the market for use in production on milk, have to pay GST at 5% without being eligible for any Input Tax Credit. This is so because milk is exempt from GST and exemption for skimmed milk powder is limited only to supplies between distinct persons. This has put producers of Milk not having in-house Skimmed Milk Powder processing facilities

at a disadvantage by increased production cost due to additional burden of GST disallowance on Skimmed Milk Purchase.

In order to maintain an equitable tax structure, it is suggested that benefit of exemption from GST on Skimmed Milk Powder may be extended from Supplies between distinct persons as per section 25(4) to all Supplies where such Skimmed Milk Powder by the Recipient shall be used for production of Milk.

4. **GST Rate rationalization on Ready to Eat Mixes/ Instant Mixes, Prepared Vegetable Mixes, Condiments**

With the Covid-19 Pandemic, consumer consumption has seen a major shift from out-of-home consumption to in-house consumption. Currently, the various items like Ready to Eat Mixes/ Instant Mixes, Prepared Vegetable Mixes, Condiments are subject to various rates of GST - 5%/12%/18%. All such Ready to Eat/Ready to Cook items have primarily Agri produce as its base. These products are prepared by the Food Processing Industry after thorough cleansing of various ingredients, under the strictest hygiene conditions.

Accordingly, it is recommended that a rationalized rate of GST @ 5% is recommended on all such products.

This will help in promoting consumption of safe and hygienic food products while also enhancing the level of food processing in the country leading to enhanced value for all stakeholders in the farm to fork chain.

5. **GST Rate on Dairy based Value added products**

India is the largest producer of Milk in the world. A large section of the economy is dependent on Milk as its source of income. Accordingly, Milk, also being a mass consumption product, has been exempted from GST. However, various milk/ dairy based value added products, like Ghee and Dairy based drinks are being subject to a GST of 12%. Accordingly, there is a significant differential in the rate of GST in the Dairy segment, i.e. 0% on Milk, vis-à-vis 12% on Value added Dairy products.

This high rate of GST, acts as a dampener on the consumption/ demand for these Value added Dairy products. Milk and other dairy products are an excellent source of high quality protein and can also provide a source of Vitamins, Calcium and other nutrients essential for the human body. Studies have shown higher intake for milk and dairy based products in a balanced diet, helps to improve nutritional health, enhance immune resistance and provide important nutritional support to combat diseases. Given the COVID pandemic it is the need of the hour to promote food products that enhance immunity and provide significant health benefits by rationalizing the tax structures.

Accordingly, it is recommended to rationalize the rate of GST on Milk based products like Ghee and Dairy based drinks from 12% to 5% to promote the consumption of these products and provide remunerative rates to our Dairy Farmers who are the backbone of our economy.

6. **GST rate rationalization on Packing Materials**

Food products are liable to GST at different slabs (0%/5%/12%/18%). Packing Material which is a common and essential input for all forms of Food Products is however, taxed uniformly @ 18% under Chapter 39 leading to an inverted duty structure wherever GST rate on the output food product is less than 18%. This in turn causes significant blockage of Working Capital and leads to Refund applications. Furthermore, given the impact of COVID, liquidity is crucial for businesses to survive.

Hence, the rate of GST may be rationalised from 18% to 12% on all kinds of Packing Materials (like Laminate Rolls, Pouches, etc.) to address the issue of inversion for varied range of products and also promote usage of safe and good quality Packing Materials in the food processing value chain.

Education and Stationary Products

1. Rationalisation of GST Rate on Refill:

Pens and Refills are classified under the Chapter 9608 (HSN Code). Description of Chapter 9608 is "Ball Point Pens; Felt Tipped and Other Porous-Tipped Pens and Markers; Fountain Pens; Stylograph Pens and Other Pens; Duplicating Stylos; Propelling or Sliding Pencils; Pen Holders, Pencil Holders and Similar Holders; Parts (including Caps and Clips) of the Foregoing Articles, Other than those of Heading 9609".

In GST Tariff Entry, HSN 9608 has been mentioned thrice. Specific mention for Refill is not there in Sl. No. 232, 233 and 447. Therefore, Refill shall fall under Sl. No. 453 (Residual Category) for which CGST @9% has been defined by the Gov.

GST Rate as given on GST Website

Sl. No.	Chapter / Heading / Subheading / Tariff Item	Description of Goods	CGST Rate
232	9608	Pens [other than Fountain pens, stylograph pens]	6%
233	9608, 9609	Pencils (including propelling or sliding pencils), crayons, pastels, drawing charcoals and tailor's chalk	6%
447	9608	Fountain pens, stylograph pens	9%
453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI	9%

GST on Pens(other than Fountain pens, stylograph pens) are subject to 12% whereas refills for these Pens are subject to 18% GST (9608 - Fountain pens, stylograph pens). Some of the advance rulings have also suggested that refills to be subject to GST @18%. We believe that, such an inverted tax structure is unintentional and hence, **it is recommended that GST rate on all types of Pens, particularly Ball Pen, and its refills to be subject to GST @12% under Chapter 9608 (Sr. No. 232).**

2. Issues related to Issuance of Credit Notes

As per Section 34 (1) of the CGST Act, 2017, supplier of goods (being the registered person) **may** issue a credit note to the recipient of goods under the following scenarios:

- Where goods supplied are returned by the recipient of goods
- Where goods or services or both supplied are found to be deficient

As per Section 34(2) of the CGST Act 2017, such credit note is required to be issued by the Supplier within September following the end of the financial year in which such supply was made.Rule 53 of the CGST Rules, 2017 prescribes the particulars required to be mentioned in a Credit note issued by the supplier of goods. Rule 53(h) requires the serial number and the date of corresponding tax invoice / bill of supply to be mentioned in a credit note issued under Section 34 of the CGST Act.

3. **Time limit to issue of credit notes by the supplier of goods w.r.t goods returned by the recipient within September of the financial year following the year in which supply was made.**

Stationery Industry is seasonal in nature and coincides with the commencement of the academic session between Jan to Jul across various regions. 55%-60% of sales to wholesale dealers are recorded in the Jan-March quarter of the financial year. Sales to end consumers are made subsequently between Mar-August. Sale returns of unsold inventory, if any are identified and initiated thereafter. Considering the geographically dispersed distribution network and season extending upto August of the subsequent financial year, it is difficultto complete the entire exercise of taking returns w.r.t sales made in the preceding financial year within September of the subsequent financial year.

In view of the above it is recommended to revise the timeline for issuance of Credit Notes towards receipt of sales returns to 12 months from the end of the Financial year or till the time filing of Annual Returns for the said Financial Year.

Covid scenario: Government has given relaxations on Return filing dates considering the current pandemic. **It is requested, that the last date for issuing Credit notes for FY 2019-20 also be accordingly extended from September 2020 to March 2021.**

4. **Goods Return in a State other than the State from which supply was made**

Return for outward supplies i.e. GSTR 1 is required to be filed state-wise and the supplier of goods is required to provide the reference of the Original Tax Invoice Number in the Credit Note issued under section 34 of the CGST Act, 2017 read with Rules 53 of the CGST Rules, 2017.

The current GSTIN system does not allow upload of credit notes containing reference of original invoice issued from a State different from the State in which the return of goods was taken. This results in loss to the supplier of goods as output tax liability cannot be reversed.

Under the following business scenarios, return of goods are taken in a State other than the State from which such supply was made:

- Non availability of warehouse space in the State from which the sale was made.
- To transfer goods to a location where the demand is anticipated thereby avoiding multiple movements.

GST Law was introduced with intention to remove cascading of taxes by a system of seamless tax credits throughout the value chain and across boundaries of States.

In view of the above, it is recommended to make necessary system amendments in the GSTIN Network to enable seamless availment of credit.

PULP, PAPER AND PAPERBOARDS

1. Customs Duty on Import of Pulp

In May 2012 the Government reduced the import duty on pulp from 5% to "Nil". It is estimated that around 1.70 million MT of pulp, valued at approximately USD 1.1 billion (about Rs. 8,100 crore) is imported in to the country every year. The customs duty foregone on account of these imports is estimated to be about Rs. 445 crore p.a. The break-up of the pulp imports is as under:

Type of Pulp	Quantity ('000 MT)	Value (Rs. Crore)
Hard Wood Chemical Pulp	910	4,200
Bleached Chemi Thermo Mechanical Pulp (BCTM Pulp)	300	1,300
Sub-Total	**1210**	**5,500**
Soft Wood Chemical Pulp	450	2,600
Total	**1,660**	**8,100**

It would be relevant to note in this context that to produce the quantum of hard wood and BCTM pulp imported in to the country currently, i.e., 1.2 million tonnes, more than 2.4 lakh hectare of land will be required. Basis the standard norms, every hectare of plantation creates approximately 450 person days of employment, – this implies a potential of nearly 109 million man-days of employment for every crop rotation of 4-5 years.

One of the fetters to the growth of the country's economy is the lack of adequate opportunities for harnessing and deploying the unique demographic dividend that India enjoys vis-à-vis other economies. Development of plantation farming to produce raw materials for the paper and paperboards industry is a readily available avenue for creating substantial employment opportunities on a sustainable basis. **However, the potential in this regard has been completely undermined by a taxation framework wherein pulp is exempt from Customs Duties. Consequently, instead of generation of sizeable employment opportunities within the country, millions of jobs are being exported to the countries from where pulp is imported.**

It is submitted that if domestic production of pulp is encouraged through measures including imposition of Customs Duties on pulp imports, not only will it provide a fillip to creation of jobs, it will also have a salutary effect of overall economic development of the vast rural hinterland that houses the pulpwood plantations.

In view of the fact that Soft Wood cannot be grown in the country, requirement of Soft Wood Pulp will have to be met through the import route only, justifying the exemption from Customs Duty.

However, in so far as Hard Wood Pulp is concerned, it would be pertinent to note that the domestic industry is working closely with the farming community for creating sustainable supply of wood – a key raw material for hard wood pulp – through re-development of waste-lands.

In so far as Bleached Chemi Thermo Mechanical Pulp (BCTMP) is concerned, the technology for manufacturing BCTMP has not been available in India. **In line with the vision "Make in India" of Hon'ble Prime Minister, the paperboards industry has, for the first time in the country set up a state of art BCTMP manufacturing facility which is operational since March 2017.** This project will save in perpetuity substantial quantum of forex outflows that would otherwise be spent for import of BCTM pulp.

The domestic market / consumption of paper & paperboard is over 17.24 million tonnes per annum (TPA), with over 1.6 million TPA being imported. By 2024-25, the domestic consumption is projected to rise to 24 million TPA. About 1 million TPA of integrated pulp, paper and paperboard capacity has to be created in India on an annual basis over the current capacity to meet the growing demand. This offers an excellent opportunity for the farming community to increase areas under pulpwood plantations, creating livelihoods in hinterlands and attendant environmental benefits.

In an era of increasing global competition it is necessary for governments and industry to work in partnership to ensure creation of economic wealth for the nation. Accordingly, for creation of sustainable sources of fibre required by the pulp and paper industry it is recommended that:

a) **10% customs duty on pulp be imposed only for Hard Wood Chemical Pulp and Bleached Chemi Thermo Mechanical Pulp (BCTMP), as under:**
    - **imposition of Customs Duty @ 10% on import of Hard wood chemical pulp under Tariff ID 47032900,**
    - **sub-classification of the existing Tariff classification 47050000 (Bleached Chemi Thermo Mechanical Pulp, (BCTM Pulp)} in to Hardwood BCTMP and Softwood BCTMP, and,**
    - **imposition of 10% Customs Duty on import of Hardwood BCTMP**

b) **Policy measures be put in place to facilitate private sector participation in plantation development programmes in degraded forests and SFDC (State Forest Development Corporation) lands.**

2. <u>Customs Duty On Paper/Paperboards</u>

The Indian Paper/Paperboard industry has made significant capital investments to ramp-up capacities for meeting domestic requirements. The Industry has strong backward linkages with the farming community from whom wood (raw material for manufacture) is sourced. A large part of this wood is grown in backward marginal / sub-marginal lands, which are potentially unfit for other use. The paper industry, being mainly located in backward areas, has transformed the socio economic conditions of the population residing there.

The economic slowdown in developed economies and export dependant economies has led to severe excess capacity of Paper/Paperboard in paperboard manufacturing countries. Taking advantage of the

low Customs Duty rate of 10%, these countries find India as an attractive outlet for diverting their excess inventory.

Thus, whilst domestic industry is operating under extremely challenging conditions, substantial quantities of paper and paperboard is imported in to the country at significantly lower costs. This is bound to discourage investments towards capacity enhancement by the domestic industry, notwithstanding the fact that such investments will be necessary to cater to the expected growth in demand for paper and paperboards. The inevitable consequence of drop in investments will be a multiplier adverse impact on the Indian farmer community with whom the industry has strong linkages and a significant outflow of foreign exchange towards increased imports of paper and paperboards.

In order to provide a level playing field to the domestic industry it is recommended that:

a) **the Customs duty for import of Paper and Paperboards be increased to 25% and brought in line with agricultural products (which ranges up to 40%), as currently industry is sourcing majority of its raw materials from Agro-forestry – supporting millions of farmers in creating value on their marginal lands,**

b) **this category be kept in the Negative List (i.e., no preferential treatment) in bi-lateral and multi-lateral trade treaties and agreements.**

3. Reduction of GST On Poly-Coated Paper And Paperboards – 4811 51 90 And 4811 59 90

Raw material for paper cups is paperboards primarily manufactured from wood species such as eucalyptus, subabul and casurina. Environmentally responsible Paper Mills in India source these species of wood from sustainably managed social and farm plantations. From the perspective of eco-friendliness and reduction of carbon footprint the usage of paper cups is a preferred option as compared to usage of plastic cups. The Poly coating is necessary for manufacturing of paper cups /glasses as the coating acts a sealing /binding medium and makes cup/glasses moisture proof against hot / cold beverages. Even as both paper and plastic cups are meant for single-use, paper cup are superior to plastic cups - on parameters like convenience, hygiene, bio-degradability and visual appeal.

Paper and paperboard that is coated / impregnated / covered with poly coating are classified under Tariffs 4811 51 90 *(Bleached, weighing more than 150 g/m2* - Other*)* and 4811 59 90 (*Other* - Other) with GST of 18% ad valorem – even as a large number of paper / paperboard items covered by Tariff 4802, 4804, 4805, 4807, 4808 and 4810 are taxable to GST only at 12% ad valorem.

Typically, poly-coated paper contains paper and poly at a ratio of 92:8 but suffers GST at the rate 18% - the same as what is applicable to plastic used for manufacture of plastic cups. Taxing poly-coated paper at par with plastic defeats the objective of reducing usage of environmentally unfriendly products like plastic. Consequently, poly-coated paper merits levy of GST at rates lower than that applicable to plastic. Being an eco-friendly product, the green credentials of poly-coated paper merits better tax treatment than plastics.

Further, the major consumers of coated / poly-coated paper / paperboards are MSME units, who are increasingly supplying to institutional customers like the Railways, the FMCG sector and the Household sector. Paper cups are used for mass consumption items such as tea, coffee, fruit juices, soft drinks, ice cream etc. Most of these MSME units are exempt from GST by virtue of turnovers below the minimum threshold prescribed for registration under GST. Since such units are not in a position to claim input tax credit paid on procurement of poly-coated paper, the tax cost of 18% only serves to increase their cost table and dilutes the cost competitiveness of poly-coated cups vis-à-vis plastic cups.

It is, thus, recommended that GST on poly coated paper / paperboards, classifiable under Tariffs 4811 51 90 *(Bleached, weighing more than 150 g/m2 -* Other*)* and 4811 59 90 (*Other -* Other) is reduced to 12% from 18% - in line with most other paper / paperboards classifiable under Chapter 48. Such a move will also be a "green" initiative in line with global trends.

4. Incentives for Investments in Environment Friendly "Clean" Technologies by Paper Industry

The broad policy framework on environment and climate change in India is laid down by the National Environment Policy (NEP) 2006 which aims to chart the way forward to meet the Government's bold announcements in the energy domain like target of reduction of emissions intensity by 33%-35% by 2030 over 2005, share of non-fossil fuel based capacity in the electricity mix aimed at above 40% by 2030 etc.

India has a definite plan of action for clean energy, energy efficiency in various sectors of industries, a major thrust to non-fossil based electricity generation and a building sector based on energy conservation. In this context, NITI Aayog, Government of India has published the 'Draft National Energy Policy' to enable meeting the goals of renewable energy capacity, emission intensity and non-fossil fuel share in the electricity mix of India by the year 2030.

India meets its energy requirements predominantly through fossil based sources (coal). A significant portion of such energy is used to operate Industries such as Aluminium, Cement, Chlor-Alkali, Fertilizer, Iron & Steel, Pulp & Paper, Textile, Thermal Power Plants, Oil Refineries, Electricity Distribution Companies and Railways. Incidentally, Government has already identified these Industries as focus area to reduce energy consumption, under Energy Conservation Act, 2001.

Most of these Industries have installed Captive Power plants operating Boilers on Fossil fuel such as Coal, Natural gas etc., The renewable energy portion is limited to few cases even though opportunities exist to increase the footprint. It is important that Boilers operating on renewable energy sources such as bio mass are also encouraged with appropriate incentives.

Pulp and Paper Industry

Soda Recovery Boilers (SRBs) are one such kind of Bio-mass based Boilers that are in use in Pulp and Paper Industry to generate captive energy. The SRBs fire Black Liquor Dry Solids ("BLDS") which are generated in the Pulp manufacturing process itself as a by-product. In the process, SRBs generate

steam which is used in the manufacturing process and is also passed through Turbo-Generators ("TGs") which facilitate simultaneous generation of electrical energy as an event incidental thereto. The steam generated from SRBs is uniquely identified as originating from BLDS, and termed as "Renewable energy".

SRBs are well accepted in India and are operated by the Pulp Mills. The initial installations started in 1990s with an intent to recover process Chemicals but thereafter advanced to include Cogeneration also.

However, SRBs are unable to meet all the steam and energy requirements, and hence the Industry has to operate Coal Fired Boilers (CFBs) or other fossil based Boilers for producing steam to meet the energy needs beyond the energy generated through SRBs. In the endeavour to reduce dependence on fossil fuel for energy requirements, there is an increasing need to develop new technologies to enhance productivity of such Boilers, essentially to produce more electrical energy with available bio-mass.

High Pressure Recovery Boiler

The Industry has advanced the technology in this field to develop "High Pressure Recovery Boiler" (HPRB). **HPRB facilitates generation of more electrical energy for the same quantum of BLDS and reduce dependence on fossil based boilers (alternative sources). This energy is classified as "renewable energy".**

HPRBs initial installations were commissioned in Japan, in the 1980/90s and were later adopted worldwide. They have more than thirty years of successful operations across 40 locations worldwide and are now considered as a better replacement to SRBs. The Investment cost of HPRB is significantly more than SRBs (approximately 3x) and is seen as a deterrent in adoption of HPRB. Consequently, there are no HPRB installations in the Pulp and Paper Industry in India.

Today technology in the area of Energy conservation stands out as one of the critical factors in achieving sustained competitiveness. This calls for substantial investments in green and unconventional energy based technologies such as HPRB, to ensure a positive environmental footprint. The domestic manufacturers are consciously focusing on inducting unconventional energy usage and clean technologies which involve significant capital investment, to ensure:-

- Reduction of carbon foot print and save fossil fuel
- Improve performance in the area of environment

These low yielding investments however impact the profitability / viability of the business.

Hence in order to encourage manufacturers within the industry to adopt environment friendly "clean" technologies that ensure, inter-alia, reduced carbon footprints, better emission norms, better effluent

treatment norms, usage of renewable sources of raw material and energy, improved waste recycling, etc., appropriate fiscal benefits should be provided.

Recommendations:

i. **Extension of Renewable Energy Certificate Scheme should be extended for energy produced by the Turbine using HPRB steam, and such certificate should be sold at par with Renewable Energy Non-Solar certificates in the exchange. Further, the Renewable Power Purchase Obligation should not be applicable to energy produced through the turbine connected to HPRB.**

ii. **Import of capital goods required by the Paper & Paperboard industry for technological up-gradation in the area of Unconventional energy usage and adoption of clean / green technology (e.g., HPRB, Elemental Chlorine Free pulp manufacture, Ozone bleaching etc.) specially aimed at environmental protection (e.g. saving fossil fuels, reduction of carbon foot print etc.) - be permitted at 'Nil' rate of Customs Duty.**

iii. **Further, following additional benefits may be provided for paper board industry for investing in such clean technologies:**
   a. **Entitlement for import of raw materials at a 50% concessional rate of duty**
   b. **Exemption from Goods and Service Tax for paper and paperboard produced using clean technology or alternate suitable refund mechanism of taxes paid (similar to exports)**
   c. **Energy generated to be used to meet obligation under Renewable Power Purchase Obligation Regulations (RPPO)**

iv. **Exports by manufacturers who have adopted environmentally friendly technology are granted additional incentives in the form of cash incentive of 5% of FOB.**

5. Ban on import of Mixed/Unsorted Waste Paper into India

To accelerate the efforts to achieve universal sanitation coverage and to put focus on sanitation, the Hon'ble Prime Minister of India launched the Swachh Bharat Mission on 2nd October, 2014. It aims to achieve Swachh Bharat as a fitting tribute to Mahatma Gandhi. Waste management is one of the major concern under the Swachh Bharat Mission which impacts several aspects society and the economy especially health and climate change. Environmentally sound management of wastes is one of the key element in protecting health and environment against the adverse effects. Sound Waste Management involves proper segregation at source, collection and recycling ecosystem.

India recycles only 25-30% of the total paper consumed and a large chunk is not collected as compared to 80-85% in the developed world (Source: Indian Agro & Recycled Paper Mills Association website). Therefore, a large volume of India's paper consumption goes into landfill.

Ministry of Environment, Forest and Climate Change (MoEFCC) has prescribed permissible limit of contraries for different type of waste paper imported into India vide its Office Memorandum dated

11.05.2010 vide F No. 13-1/2004 HSMD under Hazardous Waste Management Rules. Plastic Waste (Management and Handling) Rules has also been amended in 2016 giving thrust on waste minimization, segregation of waste at source by generators, gainful utilization of waste through recycling and recovery.

However, due to the changes in the regulatory framework of China regarding import of waste paper, as detailed below, highly contaminated waste paper is getting imported in to India.

It is pertinent to note that China which accounts for about 55% of world imports of waste paper had notified the World Trade Organization (WTO) of its intention to ban imports of 27 kinds of solid waste as part of its National Sword 2018 program—a national environmental initiative. The contamination threshold had also been reduced to 0.5% for recyclable paper commodities such as old corrugated containers (OCC) and old newspapers (ONP) not covered by the ban. (Source: Executive Briefing on Trade, April 2018, Sarah Scott, Office of Industries, U.S. International Trade Commission). Several other measures such as restriction and delay in providing annual import licenses for domestic companies, imposition of 25% duty on recovered paper import from US, suspension of pre-shipment certificates has been taken by China

As a result of Chinese ban on import of mixed waste and contaminant restrictions on other grades of waste paper, exports of wastepaper to China has considerably declined and the same is now heading towards countries like India. Since the ocean freight costs are high to India, the sellers are not even attempting normal sorting and thus exporting contaminated waste paper to India for getting rid of waste so that land filling is avoided at the source.

Import of Waste Paper into India has jumped from 3.2 million MT in 2016-17 to 6.8 million MT in 2019-20 and the increase is attributed mainly to increase in import of Mixed Waste paper. It is estimated that imports of Mixed Waste Paper have increased eight-fold in last few years. Notably, India also overtook China as the main U.S. export destination for mixed paper.

This clearly indicates that that 'foreign waste' is being dumped into India which is having the following adverse effect:

i. Contaminated portion of the foreign waste imported into India finding its place to dumpsites which has adverse Environmental and Public health impact.
ii. Cheaper imports make indigenous waste paper less competitive which in turn dis-incentivizes waste segregation and recycling efforts in India and eventually the non-segregated local waste also goes to the landfill.
iii. Beside adverse environmental and health impact, this affects livelihood of poor and vulnerable rag-pickers and small entrepreneurs such as scrap vendors.

Recommendations:

i. **Impose ban on import of Mixed/Unsorted waste paper into India.**
ii. **Make the regulatory standards more stringent on the allowable contraries to a maximum of 0.5% for grades other than Mixed/unsorted waste paper.**
iii. **Increase the effective rate of duty or impose a cess on import of waste paper @10% by removing the nil duty exemption being granted on such imports under specific preferential tariff agreements (PTA) or under end use condition vide Customs Notification 50/2017.**
iv. **Government should provide necessary infrastructure support to all the NGOs and agencies having objectives of clean environment and ecology besides providing support to the industry to use greater volume of such recycled fibre.**

Benefit:

The above measure would result in several benefits, including:

i. Reduction of waste paper going into landfill (India consumes 17.24 Million MT per annum with meagre recycling of 25-30% as compared to 80-85% in developed countries such as Germany, Sweden, Japan, US.)
ii. Employment generation of 90 million man days per annum (direct employment- 10 man days/MT at 80% recovery of 17.24 million MT paper consumption p.a. in India) thus helping create circular economy.
iii. Savings of foreign exchange to the country. Overall spend on imports of Mixed waste for FY 2019-20 is estimated at ~ 140 million USD.

6. **Central Pollution Control Board (CPCB) Directions regarding Compliance of Emission Limit Notified for Thermal Power Plants by Captive Power Plants (CPPs)**

In recent years, the Pulp & Paper Industry has invested crores of rupees towards upgradation of process technology to comply with the evolving environment standards.

Pulp & Paper industry is energy intensive and has invested a huge amount of money in setting up of the captive power plants (CPPs) for sustained supply of power and steam for the process requirements. CPPs in Pulp & Paper Mills are classified as co-generation power plants as in the process, two or more forms of useful energy are produced simultaneously - steam and power, and are hence different from Thermal Power Plants (TPPs) which generate only power. Paper Mills, to meet their captive requirement of power as well as process steam for use in manufacturing process, have set up co-generation CPPs using solid fuel as well as bio-mass spent liquor generated during pulping process. Pulp & Paper Industry has also invested a huge amount in making their captive cogeneration power plants energy efficient.

The Pulp & Paper Industry generates significant quantity of waste biomass from the raw material used. Such biomass is used as fuel in boiler and bio-fuels available around the plant are sourced for maximising Green Energy generation (for process use) and significantly reduce coal consumption.

Captive co-generation power plants in the Pulp & Paper Industry are meeting the thermal and electricity requirements of industry in energy efficient and environmental friendly manner.

The key differentiators between Thermal Power Plants (TPPs) and CPPs in the Pulp & Paper Industry are as follows:

a) In Pulp & Paper Mills, CPPs are operated in co-generation mode to meet steam and power demand. Therefore, all boilers in Pulp & Paper Industries are Process Boilers and power is a by-product.

b) The size of the captive co-generation power plants depends upon the process steam to be drawn for process heating / drying application.

c) Captive co-generation power plants in Pulp & Paper Mills have very wide fluctuations in load ranging from 20% to 100% due to variation in process load and various other reasons.

d) The capacity of captive co-generation power plants in Pulp & Paper Industry mostly falls within the bandwidth of 5 MW to 55 MW (per TG Set) which is very small compared to TPPs. Also, steam from Recovery Process Boiler which is generated from black liquor (biomass generated in process) is fed to these smaller captive co-generation power plants.

e) TPPs are generally of very high capacity and the boilers used for these power plants have high and different technology where the fines are arrested and burnt in the boiler. Where as in CPPs, the technology used is totally different where it is not possible to arrest all fines in the boiler.

f) The fuel for such captive co-generation power plants is mostly biomass (ETP bio sludge, fibre waste sludge, chip dust, bark) / coal / lignite / imported coal based on availability and cost. Unlike TPPs which get quality coal, captive co-generation power plants in the Pulp & Paper Mills do not always get linkage and quality coal and have to use whatever quality is available from the market.

g) Specific cooling water consumption (make-up) of 3.5 m3/MWh mandated for TPPs is also not practical for CPPs of Pulp & Paper Mills; since specific cooling water consumption for CPPs connected to only condensing steam turbines will not be able to achieve the norms because of lower turbine inlet steam pressures as compared to TPPs. Condensate recovery is very low 50-60% due to use of steam in direct heating especially in digestors where condensate return is not possible.

Imposing the emission norms of TPPs to captive co-generation power plants of capacity between 5 MW to 55 MW units is not appropriate in terms for following reasons:

a) % investment for compliance of standards against main equipment in 5 MW to 55 MW CPP is far higher when compared with 210 MW or 500 MW capacity plant. This makes installation of CPPs for co-generation purpose unviable while heat rate of such plants is only one-third of TPPs.

b) The notification also means that the new standards proposed (w.e.f. 1st January 2017) for new TPPs are also applicable for CPPs irrespective of capacity of plant. This is completely illogical

considering the quantum of emissions from TPPs and that from captive co-generation power plants with small installed capacities in the Pulp & Paper Mills.

A period of two years from the date of notification was given to Thermal Power Plants to meet the prescribed emission limits vide notification S.O. 3305(E) dated 7th December 2015. Later applicability of emission norms extended to 16 category of industries including pulp & paper industry vide notification G.S.R. 96(E) dated 29th January 2018. While these Standards are appropriate for the Thermal Power Plants, it will be extremely onerous and economically unviable for captive co-generation power plants installed in Pulp & Paper Mills to comply with these specifications.

Therefore, we request that the limits of SO2, NOx and Hg in flue gas leaving power boiler stack, and water consumption limit, need be confined to Thermal Power Plants and not be extended to industrial captive co-generation power plants of the Pulp & Paper Industry.

AGRI-BUSINESS

Context

It is essential that an integrated holistic view of the agriculture value chain is taken towards providing the necessary fillip to the stagnating agricultural growth. This requires a joint participatory approach from all concerned stakeholders including the farmers, input vendors, traders, processors and the government. The union budget can be a very effective catalyst by laying down a comprehensive policy framework and providing a tremendous thrust through appropriate fiscal benefits and closely monitor the action plans.

An enabling policy framework with attractive fiscal incentives can be provided to attract private investments in the rural economy. Private investment in agriculture and allied activities can provide the necessary boost to the already committed government spends and can have a multiplier effect in the rural economy. The under noted suggestions and recommendations are being made in the aforesaid context.

1. **GST on Input Services used for providing Output Services related to Agricultural Produce**

   Under GST the agri-sector has been supported by keeping a bulk of services relating to agriculture or agricultural produce in the list of exempted services.

   Recently vide Notification No. 21/2019-Central Tax (Rate), services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jiggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee & tea has been exempted. However, certain input services related to providing output services to agricultural produce continue to subject to GST. Examples include:

   a) Rental paid to warehouse owners by Warehousing Service Providers
   b) Security Services used for security of stored agri-produce
   c) Laboratory Testing Services used for quality control of agri-produce

   In the agri-sector the providers of warehousing services typically rent or lease warehouses from where the services like storage, loading, unloading, etc. are provided. The rental or leasing service attracts GST @ 18%. In the event the warehouse owner is an unregistered dealer, GST @ 18% is attracted under the reverse charge mechanism. However, the bulk of services related to agricultural produce have been exempted from GST, there is no scope for providers of output services related to agricultural produce to avail credit of tax paid on the input side and setting it off against the output services. Consequently, the levy of GST on input side services like security services used in relation to storage of agri-produce and laboratory testing charges related to quality control of agri-produces defeats the very purpose of exempting most agricultural produce related services from GST. A similar issue arises in respect of services like security services used in relation to storage of agri-produce, testing services related to quality control of agri-produce and so on.

It is recommended that a specific exemption be provided to the effect that all input services used in relation to providing any output service related to agricultural produce are exempt from GST, irrespective of whether the tax on the input service is payable on a forward charge or a reverse charge basis.

2. Anomaly in GST description of goods – "Tobacco Leaves" (HS Code – 2401)

GST Tariff Schedule has classified HS Code 2401 : Unmanufactured Tobacco as
a) HS Code 2401 : Tobacco Leaves under Schedule I @ 5% IGST and
b) HS Code 2401 : Unmanufactured Tobacco & Tobacco Refuse, other than Tobacco Leaves under Schedule IV @ 28% IGST.

Thus the same HSN Code: 2401 is classified under Schedule I (5% duty) and Schedule IV (28% duty) but with different product description leading to classification disputes and taxation. Further, First Schedule of Customs Tariff Act, 1975 does not recognize the product description "Tobacco Leaves" instead it classifies 'Tobacco Leaves' as 'Unmanufactured Tobacco, not stemmed or stripped'.

It may be noted that GST Tariff Notification, inter alia, indicates that 'Tariff item, 'Sub-heading', 'Heading', 'Chapter' shall mean respectively a Tariff item, Sub-heading, Heading and Chapter as specified in the First Schedule of Customs Tariff Act, 1975. Accordingly, GST product description to be in line with Customs Tariff Act.

The department (Tax Research Unit) has provided circular (F.no. 332/2/2017 dated Dec 2017) indicating that Tobacco leaves means –'leaves of Tobacco as such' or 'broken leaves' or 'Tobacco leaves stems'. This circular has created more ambiguity in classification of tobacco leaves and various authorities are now interpreting the meaning of leaves of Tobacco 'as such' to assume that it refers to tobacco leaf harvested/ plucked by the farmers which is green in colour and not yet dried or cured.

The above anomaly has resulted in an ambiguity in classification of Tobacco leaves purchased from Tobacco Board auction or directly farmers / dealers and leading to disputes thereby impacting small and medium traders/ dealers.

It is recommended that the GST tariff product description for Tobacco leaves to be in line with Customs Tariff Act as indicated below.

Existing Classification under GST		**Proposed Classification under GST**	
HSN Code	**Description of Goods (Tax Rate)**	**HSN Code**	**Description of Goods (Tax Rate) as per Customs**
2401	**Tobacco Leaves @ 5%**	**2401 10**	**Unmanufactured Tobacco, not stemmed or stripped @ 5%**
2401	**Un-manufactured**	**2401 20**	**Unmanufactured Tobacco**

	Tobacco, Tobacco refuse (other than Tobacco leaves) @ 28%	& 2401 30	partly or wholly stemmed or stripped, Tobacco refuse @ 28%

3. **GST Exemption – Services by Central Agricultural Board – Not Exempted**

GST provides for exemption of tax on services charges levied by Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce. The definition of "Agricultural Produce Marketing Committee or Board" has been defined to mean any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce. (Ref. Notification 8/2017 dated 28th June 17)

In this connection it would be pertinent to note that the Union Government has taken under its control several agri industries and has set up Boards for such industries. The duties and objectives of such Boards include, inter-alia, regulating the relevant agri commodity and promoting its sale – both within the country as well as exports, having due regard to the interests of all the stakeholders like the farmers / growers, manufacturers, dealers and the government.

Examples of such Boards include Spices Board of India, Tobacco Board, Coffee Board of India, Coir Board and Tea Board of India.

However, Boards constituted under a Central Law for the purpose of regulating the marketing of agricultural produce has been omitted and exemption has been provided only for the Boards setup under State Law.

In line with the exemption being provided to State Boards/ APMC for services related to marketing of agricultural produce, it is recommended that the services provided by Boards set up under Central enactments for similar purposes are also included under the definition of "Board" thereby exemption will be available to such Central Boards. This will ensure that the tax cost of the services is not been bone by the farmers resulting in lower realisations.

4. **Agricultural Produce under GST**

The GST Laws through notification 12/2017 dated 28th June 2017 provides list of services which are exempted under GST and the list of exemption for services are in line with exemptions that were provided under erstwhile Service Tax regime.

Under Notification 11/2017 – Central Rate dated 28th June 2017, 'Agricultural produce means any produce out of cultivation of plants and rearing of all life forms of animals except for rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market'.

The above definition under GST is a replication of definition of agriculture and agricultural produce under Service Tax regime. However, under Service tax, Board had a circular No. 143/12/2011-S.T., dated 26-5-2011 and Service Tax (Removal of Difficulty) Order, 2002 dated 01st August 2008 providing clarification on the aspects of agricultural produce and provided indicative list of products that are considered to be agricultural produce, so as to avoid any disputes under Service tax. The principles enunciated under Service Tax law are:

- The specified processes in the definition like tending, pruning, grading, sorting etc. which may be carried out at the farm or elsewhere as long as they do not alter the essential characteristic would continue to be exempt. Hence, such processes need not be carried out only at agricultural farm to claim exemption.

- The agricultural produce namely tobacco or raw cashew, which are subject to client processing retains their essential characteristics at the output stage and therefore the processes undertaken on or behalf of client is covered by the expression 'in relation to agriculture'. Hence, continues to be exempt under Service Tax.

- The expression "agricultural produce" means ……….and includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, jute, etc., unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food, processed tobacco. (Service Tax (Removal of Difficulty) Order, 2002)

Under GST, Government has issued a clarification circular no. 16/16/2017 dated 15th Nov 2017 indicating that a) Conversion of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce, b) The dal obtained after the specified process (de-husking / splitting / cleaning) is not an agricultural produce as these processes are usually not carried out by farmers or at farm level by the farmers, c) The various processed products such as processed spices, jaggery, processed dry fruits, processed cashew are not agricultural produce. Hence, exemption under CGST notification no. 11 & 12/2017 will not be extended to such agricultural processed products.

The above clarification under GST laws is not in line with the principles enunciated under Service Tax law leading to denial of exemption for various agricultural processers and other channel partners. Further, it is leading to disputes with GST authorities on what products are to be classified under agricultural produce.

Rajasthan Advance Ruling Authority (Ruling no RAJ/AAR/2018-19/06 dated 23rd June 2018 have concluded that:

- Activity of cleaning the agricultural produce is not done at agricultural farm but carried out through a mechanized process away from agricultural field. Hence, the activity of cleaning (Cumin/ jeera seeds) are not exempted from GST.

- Agricultural processes such as tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce, should be carried out at Agricultural Farm i.e. all given processes must necessarily be undertaken at Agriculture Farm only then it would attract NIL rate under GST. Hence, exemption is not available if it is not carried out in agricultural farm.

Considering the Indian agricultural landscape, it is practically impossible to carry out such operations at agricultural farms and denial of such exemption to farmers/dealers is unjust enrichment. This is impacting the entire farming community which is leading to increase in cost of agricultural products as most of the output commodities (rice, wheat, pulses etc.) are exempted and GST paid on inputs (processing, warehousing etc.) will be an additional cost.

It is to be noted that under entry (e) of Heading 9986 in Notification no. 11/2017 – Central Tax (Rate) loading, unloading, packing, storage or warehousing of agricultural produce is exempt.

Recently vide Notification No. 21/2019-Central Tax (Rate), services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jiggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee & tea has been exempted.

All the products quoted above in the clarification are agricultural products which are processed for making them fit for primary market. As the Clarification pertains only to warehousing, it brings in further ambiguity on the taxability of other processes such as Loading, Unloading, fumigation, transportation and other processes such as tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce.

In view of the above, It is recommended that Government to issue similar order/ circular under GST laws in line with Service Tax (Removal of Difficulty) Order, 2002 dated 01st August 2002 indicating that “agricultural produce” means any produce resulting from cultivation or plantation, on which either no further processing is done or such processing at the farm or elsewhere like tending, pruning, cutting, harvesting, drying which does not alter its essential characteristics but make it only marketable and includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, jute, etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food, processed tobacco.

5. **Clarification with respect to applicability of GST on Coffee**

Presently, following are two entries in GST with respect to Coffee:

Notification Reference	HS Code	HS Description	Remarks
Notification No. 01/2017 dated 28.06.2017	0901	Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion [other than coffee beans not roasted]	Sr no. 35 under GST @5%
Notification No. 02/2017 dated 28.06.2017	0901	Coffee beans, not roasted	Sr. No. 60 – GST is Exempt

For the coffee beans (not roasted), covered under sr no. 60, primary processing is carried out at curing works to remove coffee husk and grade them to make them marketable for primary market.

In the erstwhile service tax law, there was clarification issued with respect to coverage of Agricultural produce;

"Agricultural produce includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, jute, etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food, processed tobacco. (The Service Tax (Removal of Difficulty) Order, 2002)"

Notification No. 11/2017 – Central Tax (Rate) dated 28th June 2017, prescribes that rates for Services, wherein NIL GST rate has been prescribed for entry no. 24 (i)(c) under Heading 9986, description of the same is as follows:

"……<u>(c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;</u> ……"

CBIC vide its Circular No. 16/16/2017-GST dated 15th November 2017 clarifies applicability of GST in respect to certain services in relation to agricultural produce as follows (relevant portion is being re-produced below):

Sr. No.	***Issue***	***Comment***
1	*Is GST applicable on warehousing of agricultural produce such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or*	*"…….. 3. Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling, shaping, refining, oxidation, packing etc. on green leaf and is the processed output of the same. 4. Thus, <u>green tea leaves and not tea is the "agricultural</u>*

	split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc.?	*produce" eligible for exemption available for loading, unloading, packing, storage or warehousing Circular No. 16/16/2017-GST of agricultural produce. Same is the case with coffee obtained after processing of coffee beans.* *…………….* *7. In view of the above, it is hereby clarified that processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc. fall outside the definition of agricultural produce given in notification No. 11/2017-CT(Rate) and 12/2017-CT(Rate) and corresponding notifications issued under IGST and UGST Acts and therefore the exemption from GST is not available to their loading, packing, warehousing etc. and that any clarification issued in the past to the contrary in the context of Service Tax or VAT/ Sales Tax is no more relevant.* *…………………"*

The words "processed coffee" has caused confusion as Coffee undergoes two processed – primary processing being Curing and secondary processing / manufacturing with respect to the activities of roasting and grinding to make coffee powder which is sold to consumers. This has led to different understanding of processed coffee.

Accordingly, it is recommended that an appropriate clarification be issued stating that the word "processed coffee" means roast & ground coffee and not the cured coffee in the CBIC vide its Circular No. 16/16/2017-GST dated 15th November 2017. This would help to have uniform understanding amongst tax officers of central as well as state cadres and also will help in removal of doubts for the Industry.