BCC&I
THE BENGAL CHAMBER

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INDUSTRY WISE RECOMMENDATIONS RELATED TO CENTRAL SALES TAX

A. APPAREL INDUSTRY

1. Loss of Tax Cost in cases of Sales Returns

As per Section 8A of the Central Sales Tax Act, 1956, the sale price of goods returned to the dealer by the purchaser of goods shall be deducted from the aggregate of the sale prices, provided following conditions are satisfied : (a) the goods are returned within a period of six months from the date of delivery of goods (b) satisfactory evidence of such return of goods is furnished before the assessing authority and (c) refund or adjustment on account of the sale price is made and evidence to that effect is produced before the assessing authority.

Additionally, as per the same Section 8A, deduction can be made from the turnover of dealer the value of sales returns within a period of six months only from date of delivery.

Unlike the practice of four seasonal collections (Spring, Summer, Autumn and Winter) in vogue in the Western countries, in India the apparel industry operates on a "two seasons" basis – Winter and Summer. The summer season is, in fact, a long season and closure of the season within six months is not feasible. As per industry practice, about 60% of the estimated demand for a season is placed in stores at the pre-season launch phase. At the end of the season, unsold garments (typically about 30% of the total goods placed) are returned to brand-owner by way of sales returns

In most of the cases, sales returns are received after a period of six months from date of delivery, resulting in non-adjustment of CST paid on earlier sale. The problem is compounded by the fact that Assessing Authority issue Form C for the value of net purchases (which is net of returns) as disclosed in the VAT / CST return. Hence, Form C is not issued by the buyer for returns, which results in additional liability of differential tax for the dealer for returns received beyond six months.

Recommendation

It is recommended that in case of readymade garments:

i. **period for acceptance of sales return may be extended to one year from date of delivery of goods, and,**

ii. **suitable clarifications be provided for issuance of Form – C on gross value of goods purchased. Alternately, the deduction for sales returns be allowed only for value of sales returns within a period of six months.**

B. AGRI BUSINESS SECTOR

1. Restriction on Free Trade in Agri-Commodities

Certain statutory provisions in the Central / State Sales Tax legislation which restrict the applicability of exemption from sales tax for sale/purchase in the course of Export need to be amended appropriately as these provisions hinder free trade in agri-commodities.

Section-5 of the Central Sales Tax Act, 1956 covers, inter alia, some aspects of taxes/exemptions applicable to the trade conducted in the course of export. Three of the provisions therein affect the free trade in the course of exports.

Firstly, it is mandatory that the purchases must take place after procuring the Export Order to qualify the transaction for exemption from Sales Tax.

In items like agri commodities, where supplies are seasonal and the demand is spread over the year, it is important that an exporter procures the exportable commodities in advance (during the season) even if the demand does not exist in the international market at that point; even if it does, prices may not be right. Exporters either sell in distress or lose the business opportunity to remain within the scope of this provision.

Sec 5(3) of CST Act to be amended to such that any sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of India is also deemed to be in course of such export not withstanding whether such sale or purchase took place against an existing Export Order

Secondly, the exemption is applicable to the penultimate sale prior to the actual export sale alone.

Traditionally, in India the existing commodity trade channels and the highly fragmented structure of Indian farms has fostered a chain of traders and agents between a farmer and the exporter. The aforesaid provisions of CST severely restrict trading liquidity because it is not always possible that an exporter directly procures from farmers. Thus, the only alternative is to pay taxes at all points until the penultimate leg, making the price uncompetitive in the process.
Lastly, the procedure to avail exemption from CST necessitates a one-to-one linkage of various purchases and sales.

This would mean complication in blending of goods of various qualities to produce the exportable product of a desired specification, when multiple purchases (made at different points of time) are used to deliver multiple sales (compounded by the first provision explained above). An exporter has to issue Form H under the CST Act in support of his claim of tax exemption.

<u>Recommendation</u>

It is recommended that Form H may be permitted to be issued and the exemption be availed by the buyers at all transaction points as long as the goods are eventually exported (evidenced by the Bills of Lading as required under the current regulations) irrespective of the timing of buying (meaning that an exporter can also buy goods before entering into a sales contract) without necessarily linking purchases and sales one-to-one (only the aggregate volumes may be considered at the time of assessment).

<u>Recommendations for Procedural Aspects</u>

1. **Central Sales Tax laws be amended so as to permit the dealers to submit the Statutory Declarations or Certificates at any time before the Assessment Order for the relevant period is passed.**

2. **Central Sales Tax laws be amended to allow purchase of all goods by a dealer in the course of inter-state trade, at a concessional rate, so long as such goods are used in the factory by the manufacturer of final products / place of business of the service provider.**

3. **Central Sales Tax Law be amended to allow purchase of all goods by a dealer in the course of inter-state trade, at a concessional rate, so long as the same is used in connection with marketing and distribution related activities**

Other Recommendations

1. **Dichotomy and conflict between the provisions of the Special Economic Zone Act, 2005 ('the SEZ Act') and CST Act, 1956 on supply of goods by a sub-contractor to SEZ Developer/Unit**

Section 26 of the SEZ Act provides exemption from the levy of Central Sales Tax in respect of inter-state sale of goods which are meant to be used for the authorized operations of SEZ unit or developer.

Further in terms of Section 51 of SEZ Act, provisions of the SEZ Act shall have over-riding effect notwithstanding anything inconsistent contained in any other law for the time being in force.

However, collective reading of Sub-section (6), Sub-section (7) and Sub-section (8) of Section 8 of the CST Act restricts the exemption from levy of CST only to the last inter-state sale effected to the SEZ unit or developer where as all prior inter-state sales are made subject to CST.

In light of above, sales tax authorities in many states are denying exemption from the levy of CST to the value chain even when it is not in dispute that ultimate consumer for the goods sold in an SEZ unit or developer.

Recommendation

Making suitable retrospective amendments under the CST Act, 1956 to specifically exempt the entire value chain right from the first dealer (who originated the movement of goods to the SEZ area) up to the dealer effecting the last sales to the SEZ Unit or developer.

2. **Cumbersome process required to be followed under CST Act, which mandates collection of statutory forms once every Quarter**

Rule 12 of the CST Act makes it mandatory to issue/collect single declaration form for all transactions of sale for each quarter of the year. Due to the amendment, the dealer has to collect four forms for each year, as against single form, which was in vogue prior to 01.10.05.
This has created a lot of hardship and increased the non value added work of dealers, who are also harassed for non-submission of forms. Also, many State Governments do not have sufficient stock of the forms viz., F forms/C forms, E1/EII forms etc.

Recommendation

The quarterly requirement of collection of statutory forms should be dispensed with and the same may be made on annual basis.

3. **Disparity between VAT and CST procurements for Raw Material bought for Export**

There is an exemption from CST for items meant to be exported "AS SUCH". The intermediate buyer can provide form H to the supplier if the product is meant for export.

However, if products are procured inter-state for use in the manufacture of finished goods which are to be exported, there is no exemption from CST. The same Raw material if procured locally by paying VAT, the input credit of such VAT is allowed under state laws.

Recommendation

Exemption from CST to be granted for all Raw materials procured for manufacturing finished goods to be exported under SION. This will eliminate cascading for export purpose.

4. **Central Sales Tax exemption - Sale in Course of Import and Sale in Transit (Sec 5[2] & 6[2] in case of Operating Lease transaction under Central Sales Tax Act)**

Request detailed clarification over whether the exemption provision under section 5(2) and 6(2) of the CST Act, is equally applicable to all categories of sale as per section 2(g) of the CST Act. As per the present CST provisions, the definition of ''Sales'' encompasses the activity of 'Transfer of Right to use', however the consequent effect of this addition/expansion in the scope and ambit of SALES is not given proper effect in the exemption provision u/s 5(2) and 6(2) of the CST Act.
With the advent of the proposed Indirect Tax reform ie GST – such exemption provision should continue in view of the existing business contracts which are presently under the purview of Section 5(2) and 6(2) of the CST Act.

Recommendation

Tax Exemption Benefit under – Sec 5[2] and Sec 6 [2] should be applicable in case of Operating Lease transaction also through amendment of CST Act.

INDUSTRY WISE RECOMMENDATIONS FOR CUSTOMS

A. FMCG INDUSTRY - CIGARETTES & OTHER TOBACCO PRODUCTS

1. Counter the spiralling contraband trade in cigarettes by:

a. Increasing the Basic Customs Duty on cigarettes from the extant 30% to the WTO bound rate of 150% subject to a minimum duty equivalent to 50% of the prevailing countervailing duty, i.e., length based, specific central excise duty applicable on cigarettes manufactured within the country. This will go a long way in resolving the problem of tax evasion by some unscrupulous importers by under invoicing the value of imported cigarettes.

b. Institution of an appropriate reward mechanism to informers about illegal cigarettes.

c. Ban sale of cigarettes through Duty Free Stores and duty free personal baggage allowance for cigarettes.

B. APPAREL INDUSTRY

1. Fabric &Garments under Customs Tariff Chapters 51, 52, 54 55 61 & 62

Fabric and garments covered in above stated chapters attract different specific duties of Customs at 8 digit HS code level depending on the fibre content, gram per sq. meter (GSM) of fabric, weave type etc. The difference in the product description under various sub–classifications cannot be determined or identified by physical inspection and requires submission of samples for chemical tests by Textile Committee. This results in inordinate delays in clearance of goods.

Recommendation

The structure of specific duties applicable to goods covered under the aforesaid Chapters should be harmonized and rationalized to obviate the necessity of testing.
In the event some testing is found to be essential, test reports from any accredited testing laboratory should be accepted. If necessary, the sample fabric affixed on the test report can be matched with the import consignment.

C. PULP, PAPER AND PAPERBOARDS

1. Customs Duty on Paper/Paperboards

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, which is a raw material, 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 output of this industry which is predominantly used by the educational, printing and packaging sectors is aligned to the Government's initiatives such as "*SarvaShikshaAbhiyan*". It is therefore strategically important and also necessary to keep Paper/Paperboard industry, outside the ambit of FTAs (ASEAN etc.) and recognize this Industry as "sensitive" deserving special treatment.

The economic slowdown in developed economies and export dependant economies has led to severe excess capacity in 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.

Increased imports from foreign countries is severely impacting the economic viability of paper mills in India with consequential adverse impact on the local farming community and the society around the mills since their livelihood is intrinsically dependant on the viability of the industry.

Recommendations

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

i. **The Customs duty for import of Paper and Paperboards be increased to 25% and brought in line with agricultural products which are ranging 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.**

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

2. Customs Duty on Import Of Pulp

In May 2012 the Government reduced the import duty on pulp from 5% to “Nil”. More than 1.25 million MT of pulp, valued at approximately USD 820 million (about Rs. 4,600 crore) is imported in to the country every year. The customs duty for these imports is estimated to be about Rs. 245 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	900	3,420
Soft Wood Chemical Pulp	200	900
Bleached ChemiThermo Mechanical Pulp (BCTM Pulp)	160	580
Total	**1,260**	**4,580**

Consequent to the customs duty exemption, pulp imports are expected to increase significantly in the near future to levels of about USD 2 billion p.a.

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.

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.

Already, about 10 lakh hectares of waste / degraded land has been developed in to eucalyptus/ subabul plantations wherein more than 5 lakh farmers are engaged. Coupled with this agro-forestry initiatives like inter-cropping – whereby both cash and commercial crops are grown on the same plot of land – has created significant employment and livelihood opportunities for local communities whilst, at the same

time, further strengthening wood and food security. This is also in line with the Planning Commission's objectives of bringing 33% of land mass in India under tree cover through afforestation of nearly 43 million ha of land, including re-development of degraded forest land comprising approximately 15 million ha.

The paper/paperboards industry in the country is expected to grow by @ 8% p.a. and initiatives of the Government like the *Sarva Shiksha Abhiyan* are expected to push up the rate of growth further. Consequently, over and above the existing capacity of about 10 million tons, capacities of about 1 million tons will have to be added every year of which about 50% is likely to be through the pulp route. This offers an excellent opportunity for the farming community to increase areas under pulpwood plantations, creating livelihoods in hinterlands and attendant environmental benefits. Cheaper imports of duty free hardwood pulp would not be in the interest of Indian farmers as the benefit will flow to farmers in exporting countries like Indonesia and Brazil.

In so far as Bleached ChemiThermo 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, for the first time, the industry is setting up a state of art BCTMP manufacturing facility in India, which is expected to be operational by June 2016. The project involves huge capital investments and will continuously save forex outflows that would otherwise be spent for import of BCTM pulp. This will have positive multiplier effect on the farming community in India, who supply the key raw material – wood for manufacturing of pulp.

Recommendation

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:

i. **policy measures be put in place to facilitate private sector participation in plantation development programmes, and,**

ii. **10% customs duty on pulp be imposed only for Hard Wood Chemical Pulp and Bleached ChemiThermo Mechanical Pulp (BCTMP)**

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

Today technology stands out as the most critical factor in achieving sustained competitiveness and industry performance. Indian Pulp, paper and paperboard Industry is a signatory to the Government of India's Charter on Corporate Responsibility for Environmental Protection (CREP). This calls for substantial investments in green technologies such as introduction of ECF (Elemental Chlorine Free) pulp manufacture, Ozone bleaching etc. to ensure a positive environmental footprint. The domestic manufacturers are consciously focusing on clean technologies which involves significant capital investment, to ensure compliance & improve performance in the area of environment, without much return from such investments. Hence such investments affect 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. **Import of capital goods required by the Paper & Paperboard industry for technological up-gradation - specially aimed at environmental protection (e.g. Elemental Chlorine Free Technologies) and for compliance with CREP - be permitted at 'Nil' rate of Customs Duty.**

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

iii. **Following additional benefits are provided for paper board industry for investing in clean technology (Clean technology parameters/norms to be defined by Ministry of Environment, Forest and Climate Change):**

   a. **Entitlement for import of all raw materials at a 50% concessional rate of duty**

   b. **Full exemption from excise and VAT taxes for paper and paperboard produced using clean technology**

   c. **Accelerated tax depreciation @ 150% of the normal depreciation rates under income tax laws for investments on environment friendly technology**

These measures will not only promote preservation of ecology, it will also incentivise all players in the Indian Paper Industry to adopt 'green' technologies, thus aligning domestic industry to international eco-friendly norms.

4. **End Use Certificate for Import of Waste Paper**

As per Customs Notification no.21/2002 as amended from time to time, provides for import of waste paper at nil rate of customs duty, provided the importer furnishes an End Use Certificate (EUC) from the jurisdictional excise authorities.

Recommendation

It is recommended that furnishing of end-use certificates should be dispensed with for manufacturer importers as the process of obtaining EUCs is highly time consuming and results in higher transaction costs. The private records maintained by manufacturers – which are relied upon by Central Excise Audit also – should be prescribed as appropriate documentation for verification of end use of imported waste paper.

5. **Simplification of procedure for Import of Pulp for manufacture of Paper and Paperboard**

In terms of Notification 12/2012–Cus. dated 17.03.2012 (as amended up to date) pulp of wood / wood chips or of other fibrous cellulosic material (excluding rayon grade wood pulp) can be imported at nil rate of customs duty when used for the manufacture, inter alia, of paper and paperboard, subject to fulfilment of certain conditions.

The said condition prescribe that the importer has to follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 ("new rule" inserted substituting old rule in Union Budget 2016) read with Circular No.46/96-Cus., dated 30.8.1996.

The Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 ("old rule") did not provide any procedure for sale or transfer of goods imported by one unit of the manufacturer to another unit of the same manufacturer (with same IEC). Consequently, different Commissionerates had varying views on the subject, ranging from disallowing transfers to prescribing different procedures for the same.

The New Rule provides that, "7(2) The manufacturer who has availed benefit of an exemption notification, obtaining the benefit under these rules may also clear the unutilised or defective imported goods, with the permission of the jurisdictional Deputy Commissioner of Central Excise or, as the case may be, Assistant Commissioner of Central Excise within a period of three months from the date of import on payment of import duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest".

Though, the new rule has prescribed procedures for clearance of unutilised goods, there is no specific mention of procedure to be followed in case of transfer of goods imported by one unit to another unit of the same manufacturer. This may lead to department taking a conservative approach and may disallow the permission for transfer of goods imported by one unit to another unit of the same manufacturer, as being allowed today. This state of affairs will result in putting the manufacturers through undue hardship of payment of customs duty along with interest in the event of transfer of material from one unit to another.

Also, the myriad procedures prescribed in the rule are highly time consuming and increases considerably the transaction cost for the paper and paperboards industry - which is highly capital intensive with long gestation periods.

Recommendation

i. **With a view to reduce transaction cost, the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 (the new rule) be not made applicable for import of pulp by the paper/paperboard industry. The private records maintained by manufacturers – which are relied upon by Central Excise Audit also – should be prescribed as appropriate documentation for verification of end use of imported pulp.**

ii. **Manufacturer importer should also be given the flexibility to use the imported pulp for manufacture of paper and paperboard either within the same factory (for which pulp was originally intended for use) or in any other factory of the same manufacturer with a simple intimation to the AC-Excise or DC-Excise having jurisdiction over the factory.**

Recommendations for Procedural Aspects

1. **Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 be amended to provide mechanism for transfer of goods received under the said rules in the following situations:**

a. Removal of goods received under the said rules to another unit of the manufacturer or

b. Removal of goods received under the said rules to another eligible manufacturer so long as the conditions imposed in connection with import are compiled by the recipient unit / manufacturer. Similar amendment should be made in Central Excise (Removal of Goods under Concessional Rate of Duty) Rules, 2016.

This will avoid wastages and economic efficiency in operations.

2. In order to reduce avoidable paperwork and delays in cancellation of Bonds / LUT it is recommended that while issuing the EODC the DGFT should can declare in the Certificate that export obligation is fulfilled and all bonds/LUT executed in respect of the specific Authorisation (with Ministry of Finance / Ministry of Commerce) stand cancelled with immediate effect. This information can be updated in the on-line system to ensure updation of records maintained by Customs Department as well.

3. Whether an import consignment must be subjected to routine import clearance by Customs or allowed under self-assessment by the importer is determined by the Customs Risk Management System. Routine assessments go through the process of assessment and physical inspection which is time consuming. Under the self-assessment mode, importer provides the requisite data through the "Electronic Data Interchange (EDI)" facility whereupon inspection carried out by Customs officials is limited to checking the container details or no of packages. This saves time and under this mode goods can be cleared faster. Recognised Trading Houses may be allowed green channel facility for import without being routed through Risk Management system (RMS) up to a thresh hold limit of USD 100,000/-. Mandatory assessment / examination would of course continue in specific cases of revenue intelligence information.

4. Imported equipment sometimes need to be exported for repairs and then re-imported. The current procedure requires an SDF (Statutory Declaration Form) waiver to be obtained from the Authorised Dealer (Bank) and then, upon receipt of repaired goods, requisite information and documentation of re-import needs to be provided to the Authorised dealer for the SDF waiver to be cancelled. This procedure is cumbersome and often specific identification marks may not be available for identifying the reimported goods with the exported goods. Recommended that procedure may be simplified by accepting connected import information given by the importer at face value for re-exports up a thresh hold limit of, say US$ 10000/-, without insisting for SDF (Statutory Declaration Form) waiver.

5. Customs circular no No837/14/2006 –CX dated 03/1 1/2006 stipulates the procedure for utilising duty credit scrip for domestic procurement. The procedure is cumbersome and requires Excise Range Office to validate the genuineness and the balance available in the scrip from the Customs where the scrip is registered, for every transaction. It is recommended that Registration of duty credit scrip with Excise Range Office may be permitted for procurement of domestic goods under duty free scrip instead of the present system of verification of the scrip by Customs for every transaction.

6. In addition to filing the bill of entry for imports, separate declaration under Customs Valuation Rules (GATT declaration) and importer's declaration confirming the genuineness of the invoice, nature of purchase and relationship between the exporter and the importer are required to be

submitted for every import. This is procedurally cumbersome and administratively time consuming. It is recommended that this requirement may be dispensed with by including appropriate mandatory declarations as part of the Bill of Entry.

7. **Duty Credit Scrips are issued in specific denominations which often results in only partial utilisation. Similarly, the denomination or the balance available in a duty credit scrip may not be adequate for discharging the duty against any particular line item in the bill of entry. In such cases, the importer is prevented from utilising the available duty credit scrip and remitting the balance amount in cash since the EDI system presently does not allow payment of duty partly through duty credit scrip and partly by cash. This results in underutilisation of duty credit scrips which represent the hard earned business incentives. There is no other mechanism at present for full realisation of such partially utilised scrips. It is recommended that the EDI system be modified to permit part discharge of duty by cash and part discharge through duty credit scrip for the same line in a bill of entry.**

8. **Customs notification no 91/2009 dated 11/09/2009 requires submission of undertaking confirming compliance with conditions of the notification, only for import of capital goods by the manufacturing sector business of the service provider under SFIS (Served From India Scheme) duty credit scrip. However, Customs field formations at various ports insist on submission of the undertaking even for imports by service providers.It is recommended that a clarification confirming that bond undertaking is not required for imports by service sector business be issued in this regard.**

9. **Para 2.6 of Board Circular 25 dated 01/04/2003 clarifies that bonds executed by importers under EPCG (Export Promotion Capital Goods) Scheme, should be redeemed based on the EODC (Export Obligation Discharge Certificate) issued by DGFT without insisting on the related export documents. It may be noted that all import documents and export documents/FIRCs (Foreign Inward Remittance Certificates) are submitted to DGFT for issuance of EODC. Field formations however insist on submission of copies of import and export documents/FIRCs.It is recommended that clarification be issued to facilitate redemption ofbondsbased on EODC without calling for additional documents.**

<u>Other Recommendations</u>

i. <u>Delay in disposal of appellate proceeding at Commissioner Appeals/CESTAT</u>

At present there are undue delays in disposing-off proceedings pending before various Appellate Authorities like Commissioner Appeals/ CESTAT on account of various reasons such as:

- Inadequate bench strength or

- More importantly irrational and conservative approach of departmental officers in mechanically dragging matters to litigation (for decision) instead of disposing of the matter rationally at the adjudication stage taking cognizance of factual matrix, judicial precedence and CBEC circulars/ instruction.

The above leads to huge piling of matters at various appellate forums leading to prolonged uncertainty and ambiguity on the topic under dispute.

Recommendation

There is a serious need of robust Appellate mechanism in the country to ensure speedy disposal of proceedings. This could be achieved either by increasing the bench strength of CESTAT or by introducing the concept of fast track Courts for disposing off high value litigation.

In addition, departmental officers should be sensitized about the serious repercussions, on the trade in general, of their irrational conduct by not undertaking appropriate due diligence at the adjudication stage and thereby putting pressure on the entire appellate system (which results in either denying or significantly prolonging justice).

ii. Mandatory Pre-deposit of Tax and Duty demanded

After enactment of the Finance Act (No.2), 2014 with effect from 06.08.2014, Section 35F of the Central Excise Act, 1944 (and Section 83 of Finance Act) and Section 129E of the Customs Act, 1962 have been substituted with new sections to provide for mandatory pre-deposit as a percentage of the duty demanded where duty demanded is in dispute or where duty demanded and penalty levied are in dispute.

At present there are undue delays in disposing-off proceedings pending before various Appellate Authorities like Commissioner Appeals/ CESTAT on account of various reasons. Delay in disposing of the matter is therefore leading to blockage of funds for substantial period of time.

Recommendation

An alternative in terms of offering Bank Guarantee in lieu of pre-deposit in cash should be allowed.

iii. Doubts have been expressed with regard to the amount to be deposited by CESTAT :

In terms of the amended provisions while filing appeal against the order of Commissioner (Appeals) before the CESTAT. Sub-section (iii) of Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 stipulate payment of 10% of the duty or penalty payable in pursuance of the decision or order being appealed against i.e. the order of Commissioner (Appeal). It is, therefore, clarified vide Circular No 984/08/2014-CX, dated 16.09.2014 that in the event of appeal against the order of Commissioner (Appeal) before the Tribunal, 10% is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeal).
While the circular takes cognizance of payment made under investigation for considering the same as made for pre-deposit for filing appeal before CESTAT, pre-deposit made at the time of filing appeal before commissioner appeals has not been expressly considered.

Recommendation

Tribunals has seldom taken a view that payment of pre-deposit of 10% is in addition to the amount paid as pre-deposit while filing the first appeal before Commissioner Appeals. The requirement of pre-deposit is required be spelt out clearly.

iv. Differing views on critical technical aspects across Commissionerate

It is very common phenomenon to see that provisions under various revenue laws and the rules, notification or circulars issued there under are interpreted differently across Commissionerates.

For instance, aspect of eligibility of service procurement towards CENVAT Credit differs from officer to officer.

This results not only in avoidable litigation but also in unproductive utilization of time and effort for both trade fraternities as well as of the Revenue officials.

Recommendation

CBEC being a uniform body responsible for administering Central Excise, Customs and Service Tax Laws across India, it should ensure that there remains consistency in the application or implementation of these laws.

CBEC should set up a process to encourage constructive debate on contentious/ litigious topics involving trade fraternity to understand nitty-gritty across business segments. Selection of contentions topic could be based on specific feedback received from trade in this regard.

CBEC should then frame their views and policy thru consultative approach to be implemented in a standardized and consistent manner across the Country.

CBEC should also consider making its current training programs for field officials more effective. This could be done by having sector specific trainings since every business sector has its own peculiarities and business models therefore it is very important to understand and appreciate these complexities to be able to be more judicious in performing and discharging their duties while dealing with assessees representing varied businesses.

v. Initiation of Anti-Dumping Investigation on Import of Met. Coke from China and Australia

Indigenous Met Coke Industry is not capable of producing Low Ash Metallurgical Coke with ash content less than 12.5% and Phosphorous content less than 0.18% with close tolerances, which is an absolute pre-requisite for use in Ferro Alloy production.

Any high ash met coke will technically damage the furnaces and the consumption of coke and fluxes will be very high leading to high operating cost.

High phosphorus content in the domestically produced met coke when used leads to high phosphorous in the alloy which renders the alloy non-marketable to our major customers. Domestic producers failed to meet this requirement.

Imposing any duty on import of Met coke of Phosphorous content below 0.18% and Ash content less than 12.5% would deny the Indian Ferro alloy industry the level playing field

Ferro Alloys industries are manpower intensive and mostly located in the interior and tribal areas of Odisha.

Imposition of anti dumping duty will lead to closure of Ferro Alloys industries and will create socio-economic problems in the state.

Met coke price has doubled in last three months.

Recommendations

The proposal of imposition Anti Dumping Duty on low Phosphorous, low Ash Met coke should be withdrawn immediately.

Any import of coke from China and Australia at CIF value US$150/MT and above should be kept out of Anti Dumping Duty.

The 5% import duty being charged on Met coke shall be withdrawn to give a level playing field to the Indian Ferro alloy industry.

vi. Restriction of Export of Raw Materials required by Ferro Alloys Industry

- Chrome ore is a scarce mineral and India posses only 1% of the total reserve of the world.

- Exporting scarce natural resource without value addition is short sighted and is going to expose the country to import of value added products.

- Value addition to mineral is valid more than ever now with the "Make in India" Policy declared by Honorable Prime Minister.

- Rampant export of chrome ore helps only a few merchant miners. This will be in contradiction to MMDR Act, which has restricted renewal of merchant mines up to 31st March 2020 to restrict windfall profits through unscrupulous trading.

- China is the largest importer of Chrome ore and Ferro Chrome. China has built up substantial Ferro Chrome facilities. Export of chrome ore from India to China will lead to more production of Ferro Chrome in China which in turn will lead to lower export of Ferro Chrome from India and fall in prices. This will lead to closure of Ferro Alloy Industry in India.

Recommendation

- Export of such scarce mineral, Chrome Ore should be restricted totally.

- The 30% Export Duty applicable to Chrome Ore to be continued.

vii. Increase in Import Duty on Ferro Alloys

- At present import of Ferro Alloys attract a very nominal duty of 10% and 0% in case of FTA countries.

- Countries such as South Africa, Kazakhstan, Malaysia etc have advantage of lower power tariff, currency depreciation and captive resources.

Recommendation

- Import duty on Ferro Alloys be increased to 15% to allow the domestic Ferro alloy industry a level playing field.

viii. FTA WITH MALAYSIA

- FTA with Malaysia provides zero duty on entire Chapter 7202.

- Malaysia enjoys a power tariff of Rs.2.3/kwh as against the average tariff of Rs.5.00-6.00 per kwh in India. Malaysia has also started exporting Ferro alloys to India which is in a bid way becoming a major threat to the domestic industry.

Recommendations

- Chapter 7202 is removed from FTA with Malaysia.

- Increasing the incentive on export of products under Chapter 7202.

ix. MERCHANDISE EXPORT FROM INDIA SCHEME (MEIS)

a) India used to be one of the major exporters of Ferro Alloys in the world. But during last one year it has lost the major market.

b) Exports from countries like Ukraine, South Africa, Malaysia, and China have picked up and have given a tough time to the Indian exports resulting in the major fall and also lowering the production in the country.

c) Indian Ferro Alloys industry is competing with South Africa, Kazakhstan and Malaysian Producers.

d) Power tariff of all the producing countries are much lower compared to average Industrial tariff of India (India: Rs 5-6/Kwh, South Africa: Rs 2.50/Kwh and Kazakhstan: Rs 1.5-2/Kwh)

e) Currencies of the major producing nations (South Africa and Kazakhstan) have depreciated substantially.

Recommendations

- To compete with the major producing countries, Focus Product incentive may be restored to 4% from present level of 2% and extended to all countries.

x. RAW MATERIAL REQUIREMENTS FOR FERRO ALLOYS

- Manganese Ore and Chrome Ore lumps falls under Chapter 26 and Tariff heads 26020020 and 26100090 respectively. Such ores are completely exempted from payment of CV duty.

- The ores imported by the Ferro alloy industry are raw and cannot be construed as concentrates:

And are being charged CV duty by the Customs department.

Recommendation

- The Customs department may please be advised not to charge CV duty on import of these Ores by the Ferro alloy Industry.

- In addition, the 2.5% customs duty being charged on Manganese Ore and Chrome Ore Lumps be reduced to 0% as India do not posses sufficient quantity of these ores required by the Ferro alloy industry.

INDUSTRY WISE RECOMMENDATIONS RELATED TO CENTRAL EXCISE

A) FMCG INDUSTRY – CIGARETTES & OTHER TOBACCO PRODUCTS

1. Sharp Decline in Volume of Duty-Paid Cigarettes

Factory clearances of duty-paid cigarettes between March 2016 and August 2016 have declined by 4.5% compared to same period last year. The clearance of duty-paid cigarettes have declined from 110 billion sticks in 2011-12 to 84.51 billion sticks in 2015-16 and are further expected to decline to about 83 billion sticks in 2016-17 – a decrease of 24%. The decline of duty-paid cigarette volumes has also impacted adversely on demand for high quality Flue Cured Virginia (FCV) tobaccos.

2. Increase in Excise Revenue not Commensurate with increase in Excise Duty Rates

- On one hand the steep increase in rates of excise duty on cigarettes in successive budgets has not translated to commensurate growth in revenue. Duty collection from cigarettes has grown by only about 0.6%[1] in the current fiscal despite a rate increase of 10%. Considering the current rate of inflation, the hike in rates of duty has actually resulted in de-growth of revenue from cigarettes.

- On the other hand, however, the increase in duty excise rates has driven unabated growth of the illegal, tax-evaded cigarette segment. The estimated revenue loss to the Central and State exchequers on this account is estimated at over Rs. 9,000 crore per annum.

3. Huge Growth in Illegal Cigarette Segment and other Forms of Tobacco Consumption

- The illegal cigarette segment (comprising domestic duty evaded & contraband international brands) continues to grow. According to Euromonitor International illegal cigarettes account for 21% of Industry volume. The illegal volume has grown by more than 3 billion sticks in just three years (2012 to 2015) and nearly doubled in last 10 years[2]. India is now the 4th largest illegal cigarette market in the world.

- In 1981-82, tobacco consumed in the form of duty-paid cigarettes was 86 million kg – in 2014-15 this has dropped to 62 million kg (28% decline). In the same period tobacco consumed in other forms (including illegal, duty-evaded cigarettes) has increased from 320 million kg to 500 million kg (56% increase). It may be noted that overall tobacco consumption increased by 38% during this period.

4. Growing Consumption of Illegal Cigarettes and Other Forms of Tobacco Have Vitiated Health Objectives of the Government

- Illegal cigarette packs do not carry GHW required per Indian laws. In the absence of such warnings the consumers perceive the illegal cigarettes to be "safer".
- The high tax cost of duty-paid cigarettes also drives consumption of tobacco to other tobacco products like biris, chewing tobacco, khaini, guthka and duty evaded cigarettes that are not

[1] Based on monthly shipment volumes for the period Mar–Aug 2016 vis-à-vis same period in 2015

[2] 2005 – 12.5 BNC, 2012 – 20.8 BNC, 2015 – 23.9 BNC

only more harmful to health but are also significantly cheaper due to lower tax incidence / tax evasion. Consequently, while consumption of tobacco in the form of duty-paid cigarettes is declining steadily, overall tobacco consumption in the country continues to grow.

FACTORS RESPONSIBLE FOR CURRENT SCENARIO

1. Increase in Excise Duty Rates way ahead of Inflation and Growth in Per Capita GDP

During the period 2011/12 and 2016/17, whilst inflation (CPI) has increased by 41%, and Per Capita GDP has gone up by 62%, the excise duty rates have gone up by 118%. Due to continuous tax increases over past several years duty-paid cigarettes have, in fact, very clearly become less affordable in the country.

2. Cigarette Taxes in India Are Amongst the Highest in the World Making Cigarettes in India amongst the most Expensive in the World

An analysis of the WHO Report on Tobacco Taxation, 2015 reveals that at 6.5% cigarette taxes (Excise Duty & State Taxes on 2,000 cigarettes as a percentage of per capita GDP) in India are amongst the highest in the world. They are 13 times higher than USA, 9 times higher than Japan, 7 times higher than China, 5 times higher than Australia and 3 times higher than Malaysia and Pakistan.
As per the WHO Report on the Global Tobacco Epidemic, 2015, cigarettes are least affordable in India (on the basis of ratio between price of 2000 cigarettes and per capita GDP) in comparison with most developed and developing countries including USA, Russia, Germany, Canada, China, Australia, UK and Pakistan.

3. India's Unique Pattern of Tobacco Consumption Not Recognised

- The tobacco control and taxation policies in the country – which are based on models adopted in the Western Countries - have been cigarette-centric without considering the unique tobacco consumption pattern in the country. This is evident from the fact that despite accounting for only 11% of the total tobacco consumption, duty-paid cigarettes contribute more than 87% of the total revenue from tobacco. On a per kg basis, the excise tax on cigarettes is 53 times higher than other tobacco products.

- 89% of tobacco consumption is in other tobacco forms such as chewing tobacco, biris, illegal cigarettes, etc., which are either lightly taxed or escape taxation by virtue of being manufactured in the unorganised sector. No increases in excise duty have been effected on Biris since 2012-13. Although the machine capacity based excise duties on smokeless tobacco products (SLT) like chewing tobacco and guthkahave been increased, the overall tax incidence on SLT continues to be significantly lower than cigarettes.

Thus, neither the revenue maximisation nor tobacco control objectives are being fulfilled. There is an urgent need to mitigate the crisis of tobacco farmers, reinforce tobacco control and revenue maximisation. The need of the hour is to have a balanced and non-discriminatory taxation policy combined with strict measures to curb tax evasion by contraband operators, illegal cigarette and other tobacco product manufacturers.

Recommendation

The following measures are, accordingly, recommended for consideration of the Government:

1. **No increase in excise duty rates for cigarettes to enable recovery of the legal cigarette industry leading to optimisation of Government revenue.**

2. **Continue with the existing multiple length-based Specific Excise Duty Structure to aid the legitimate domestic industry in offering its products across socio economic strata of the society.**

3. **Arrest the unbridled growth of domestic illegal cigarettes by:**

   a. Introducing a new length segment of 'less than 60mm length' with an excise duty of Rs. 500 per thousand cigarettes, and

   b. Reducing the rate of Central Excise duty on the 65 mm filter cigarette slab from the existing level of Rs.1,585 per thousand cigarettes to the earlier level of Rs.689 per thousand cigarettes.

   c. Continuance of cigarette manufacturing under physical control regime.

4. **Counter the spiralling contraband trade in cigarettes by:**

a. Increasing the Basic Customs Duty on cigarettes from the extant 30% to the WTO bound rate of 150% subject to a minimum duty equivalent to 50% of the prevailing countervailing duty, i.e., length based, specific central excise duty applicable on cigarettes manufactured within the country. This will go a long way in resolving the problem of tax evasion by some unscrupulous importers by under invoicing the value of imported cigarettes.

b. Institution of an appropriate reward mechanism to informers about illegal cigarettes.

c. Ban sale of cigarettes through Duty Free Stores and duty free personal baggage allowance for cigarettes.

5. **As recommended by WHO, tax all tobacco products in a comparable way**

In order to ensure sustainable tax buoyancy from tobacco it is recommended that the tax base is widened by bringing in the large unorganised segment of the tobacco sector into the tax net, and the large differential in central excise rates between cigarettes and other tobacco products reduced gradually. Registration of all manufacturers of tobacco products must be made compulsory.

6. **Exempt excise duty on cigarettes used captively for Quality testing**

Currently excise duty is applicable on all cigarettes which are used in non-destructive quality testing. Innumerable disputes have arisen with the Department on what machine tests are destructive. Further, costs have also increased by way of duty paid on cigarettes used in non-destructive quality tests. Since these tests are necessary to ensure quality standards of the finished goods, full duty exemption to cigarettes used for quality testing purposes should be provided.

7. Tax Paper Rolled Biris on par with Cigarettes

In order to evade high excise duty that is payable on cigarettes, certain smoking products masquerading as "Paper Rolled Biri" have mushroomed in the market. These products are claimed to be hand-made and are sold at about Rs 0.25 paise per stick. They look and smoke like regular cigarettes and are sold in packages which are also very similar to cigarette packages and yet they are claimed to be Biris and therefore escape all taxes that are payable on Cigarettes. Currently Paper Rolled Biris are classified under 2403 19 29 as "Biris – Others".

A Chapter Note in Chapter 24 of the Central Excise Tariff should be inserted to clarify what constitutes a Biri and how the so called "Paper Rolled Biri" is to be classified. It is suggested that for this purpose reliance is placed on the definition of biri as stated in the Indian Standards (IS) 1925:1992. The Chapter Note must also clarify that a product comprising of tobacco wrapped in paper must be classified as cigarettes. A suggested draft of the Chapter Note is given below.

"Biris shall be either conical or cylindrical in shape and only consist of biri tobacco mixture and the wrapper leaves to hold the contents. Any smoking product comprising of tobacco wrapped in paper, with or without filter, will be classifiable as cigarette."

It is recommended that paper rolled biris be classified as cigarettes and appropriate excise duty based on length be imposed.

B) PERSONAL CARE PRODUCTS INDUSTRY

1. Registration of Units under the North East Industrial & Investment Promotion Policy, 2007

Under the North East Industrial & Investment Promotion Policy, 20017 (NEIIPP 2007), Units set-up in the North Eastern Region are entitled to Capital Investment Subsidy, Interest Subsidy and Insurance Subsidy under the Capital Investment Subsidy Scheme 2007, Central Interest Subsidy Scheme 2007 and Comprehensive Insurance Scheme 2007.To be eligible for subsidies, the Units are inter-alia, required to get registered with the District Industries Centre (DIC) – the body designated by the Department of Industrial Policy & Promotion (DIPP) for this purpose.

The DIPP has suspended registration for the aforesaid schemes under the NEIIP since December 2014 and hence, the DIC has not registered any of the Units being set up in the region since that date. Consequently, these Units are unable to avail the benefit of the subsidy schemes offered under NEIIP. This is undermining the economic viability of these Units, more so as quite a few of them are situated in remote areas and have to manage complex logistical issues in the supply chain due to lack of adequate infrastructure.

In order to provide relief to the Units in the region that are yet to be registered it is recommended that DIPP re-commences the registration process at the earliest. This will also help in the economic development of the region – one of the principle objectives of the NEIIP.

2. **Extension of the Sunset Clause under NEIIPP, 2007 by One Year to 31st March 2018**

Due to the cessation of registration of Units by the DIC in the North East from December 2014 there was a lack of clarity during the period December 2014 to December 2015 on whether the Units would be eligible for the Central Excise benefits that have been notified for Units being set

up in the North East under the aegis of the NEIIPP. The issue has since been resolved with the Department clarifying that the benefits under the Central Excise notification would only be contingent upon compliance with the conditions specified in the Notification. However, due to the then prevailing uncertainty in the matter many industries had kept their North East investment plans in abeyance. These industries are now facing extreme difficulty in meeting the target deadline of setting up of Units by 31st March 2017.

Under the circumstances it is recommended that the sunset clause under the Policy be extended by one year, from 31st March 2017 to 31st March 2018. Simultaneously, similar extension be provided for the benefits of Central Excise also.

3. **Benefit of Cenvat Credit to Finished Goods Classified under the Medicinal & Toilet Preparations (Excise Duties) Act, 1955 {M&TP (ED)} Act**

Deodorants suffer Excise Duty (ED) under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (M&TP-ED Act). However, several inputs used for manufacture of deodorants are taxable under the Central Excise Act (in case of domestic supplies) and Countervailing Duty (CVD) and Special Additional Duty (SAD) (in case of imported supplies).

The Cenvat Credit Rules 2004 and the M&TP-ED Act do not have any provisions by virtue of which ED / CVD / SAD paid under the Central Excise Act / Customs Act can be availed as input tax credit for the purposes of setoff against duty liability under M&TP-ED Act. Consequently, deodorants and other toilet preparations classifiable under M&TP-ED Act suffer a cost disadvantage as compared to similar products imported in to the country.

In order to provide a level playing field to domestic manufacture it is recommended that M&TP-ED Act and Cenvat Credit Rules be amended appropriately to enable input tax credit of the duties paid on the inputs, as aforesaid, even in cases where the finished goods are classifiable and chargeable to duty under the M&TP-ED Act.

C. PULP, PAPER AND PAPERBOARDS

1. Reduction Of Excise Duty On Poly-Coated Paper And Paperboards – Central Excise Tariff No. 4811 51 90 And 4811 59 90

Background

i. The market size in India for disposable cups is close to 40 billion cups per year out of which 10 billion cups are paper cups. The balance 30 billion is plastic cups - here too there are two varieties viz., HIP (High Impact Polystyrene) and PP (Polypropylene). Among plastic cups, 60% of the market is for PP, 30% is for Recycled HIPS and 10% is for Virgin HIPS.

ii. Poly coated paperboard is used for manufacture of paper cups, which contains more than 90% by weight of bio-degradable food grade paperboard and is an eco-friendly substitute for plastics. The global trend is to actively discourage the use of plastics (which do not conform to requisite hygiene and environmental standards) and to replace it with poly coated paper / paperboard.

Paper Cups – Green Credentials

i. 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.

ii. Pioneering work has been carried out by many Corporations over the last 3 decades in India in producing saplings which are disease and drought resistant and can be grown in a variety of agro climatic conditions. This work needs to be protected, incentivised and encouraged.

iii. The above species of wood are largely grown in marginal/sub-marginal lands, which are potentially unfit for other uses. An estimated 5 lakh farmers are engaged in growing plantations of Eucalyptus/Subabul / Casuarina/ Acacia/ Bamboo, over an estimated 10 lakh hectares. This has generated significant employment opportunities for the local communities. In view of the green cover that these plantations create, carbon sequestering also take place from the atmosphere.

iv. Planning Commission intends to bring 33% of land mass in India under tree cover. To achieve this objective nearly 43 million ha of land is to be afforested which inter alia would also include development of degraded forest lands to the extent of 15 million ha.

v. Many of the Paper Mills in India also employ green processes like Elemental Chlorine Free bleaching. Some Paper Mills also are certified with internationally environmentally acclaimed certifications such as the Forest Stewardship Council, membership of bodies like Worldwide Fund for Nature – Global Forest & Trade Network and such paperboards are converted in systems that are certified by the British Retail Consortium – Institute of Packaging etc. The entire paper cup chain is thus environmentally friendlier in manufacture, usage and disposal.

Advantage Of Paper Cups Over Plastic Cups

i. Inputs for paper cups are wood, trees etc. which form the 'new carbon' on the surface of the earth. It takes less than a year to replenish the same. Even if such inputs are converted to polymers, chemicals and fuels, it takes about 5 to 10 years to get replenished by natural fixation. In contrast, plastic cups use fossil fuels as raw materials which take more than a million years to replenish and are therefore in our comparatively shorter lifespan termed – non-renewable

ii. Usage of paper cups will be the best option as compared to usage of plastic cups for reduction of carbon footprint.

iii. Although paper and plastic cups are meant for single-use, clearly paper-cup is considered superior to plastic cups - on parameters like convenience, hygiene, and visual appeal.

iv. End–of-life disposal systems already exist for recycling paper cup. It is possible to recover pulp from the disposed cup (93% by weight of the cup) which can be used to produce paper again. Similarly the poly extracted from the surface can be suitably recycled. There are many organizations working towards better disposal of paper and its recycling. It does not pose a litter problem like other materials.

v. Life Cycle Assessment Studies have been conducted on many product categories including paper cups. Even for a short life product like a paper cup the environmental benefits outweigh that of plastic cups.

vi. Further usage of poly coated paper cups will be a much greener option as opposed to using plastic cups & containers, since poly coated paperboard is manufactured using food grade paperboard with a very thin layer of coating that too using virgin plastic.

vii. Plastic cups are not bio-degradable and when left to litter can cause major environmental damage and also end up clogging drains leading to floods.

Excise Duty on Poly Coated Paper and Paperboards

Paper and paperboard that is coated / impregnated / covered with poly coating are classified under Central Excise Tariffs 4811 51 90 *(Bleached, weighing more than 150 g/m2 -* Other*)* and 4811 59 90 (*Other* - Other) with an excise levy of 12.5% ad valorem – even as a large number of paper / paperboard items covered by Central Excise Tariff 4802, 4804, 4805, 4807, 4808 and 4810 are excisable to excise duty only at 6% ad valorem.

In India major consumers of this type of paper / paperboards are SSI / SME units engaged in manufacture of paper cups that are increasingly being supplied 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.

The SSI/SME Units are not able to avail Cenvat credit for the higher excise duty paid on the base board used for manufacture of poly coated paper 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
Further , the purpose of levying higher duty on plastic goods is to reduce the use of plastic material which is not eco-friendly as compared to paper, which is more eco-friendly and bio-degradable . Generally the poly coated paper has the ratio of paper and poly at 92:8 and treating such paper on par with plastic goods will not serve the purpose of replacing plastic products with paper based products

Even under the various State VAT laws, the cups and glasses made of poly coated papers are classified as "Cups, plates and glasses made of paper" / "Cups and glasses of paper" and attract **lower rate of taxes i.e., 5%** as against the plastic products which attract tax @ 14.5%.

Recommendation

It is recommended that excise duty on poly coated paper / paperboards, classifiable under Central Excise Tariffs 4811 51 90 *(Bleached, weighing more than 150 g/m2 -* Other*)* and 4811 59 90 (*Other* - Other) is reduced to 6% from 12.5% - 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.

2. **Cenvat Credit on Capital Goods**

Setting up of projects like paperboards manufacturing facility involves on-site assembly and installation of many types of plant and machinery that are significantly large in size. Consequently, a lot of plant and machinery are brought into the plant site in a 'knocked-down' or unassembled state and, thereafter, assembled at location. Also, many of the equipment are fabricated and

installed directly at the site on procurement of basic materials like HR Plates, Plates, MS Plates, MS Channels, MS Angles, etc. classified under Chapters 72 and 73 of the Central Excise Tariff.

In case of turnkey projects, the Engineering, Procurement and Construction (EPC) would be placed on a vendor, who in turn procures sub-equipment /components from various sub-vendors. It has been the industry practice that the credit of cenvat charged by these sub vendors are availed by the manufacturer (who is a consignee) for whom the equipment is ultimately meant for.

Central Excise Department routinely issues Show Cause Notices to assessees alleging that these items cannot be treated as capital goods as per the definition under 2(a) (A) of the Cenvat Credit Rules and hence, no cenvat credit can be taken. Also Department, in some instances, alleges that credit of cenvat charged by the sub-vendor should be availed only by the buyer (i.e. EPC contractor) and not the manufacturer/consignee.

Consequently, even after making significant investments on capital goods that are required for manufacture of excisable products, a large number of assesses are denied cenvat credit / allowed to take credit only after considerable delay – on settlement of avoidable litigation. This results in blockage of significant amount of working capital over and above extensive effort in settling needless litigation.

Recommendation

To resolve the aforesaid problems,

i. **the definition of capital goods be modified such that it covers all goods used for setting up of plants/projects including all inputs required for the manufacture of capital goods.**

ii. **assessees are permitted to avail and utilise the Cenvat Credit in full in the year of receipt instead of splitting it into 50% in the year of receipt and the balance 50% in the subsequent years – in terms of extant legislation.**

iii. **Allow the consignee / manufacturers at whose premises the equipment is erected/installed and for whom the equipment is ultimately meant for, to avail credit of cenvat charged by the sub- vendors on the basis of invoices issued by such sub-vendors**

3. Clean Energy Cess

In the Union Budget 2010 the Hon'ble Finance Minister imposed levy of a Clean Energy Cess on purchase of coal and the same was increased from Rs. 50 per MT in 2010 to Rs. 200 per MT in Union Budget of February 2015. Thereafter, in the Union Budget of 2016 the Cess has been increased further to Rs. 400 per MT. No doubt, the Cess was introduced on the principle of "polluter pays". Whilst this principle may be justifiable for industries causing environmental pollution, it must be kept in mind that within the industry there are players who have invested considerable sums of money on state of the art technology like elemental chlorine free paper manufacture, ozone bleaching processes, waste water management, solid waste recycling, usage of energy from renewable sources etc. to ensure environment friendly manufacture.

The paper industry sources some of its energy requirement through utilisation of green energy i.e., lignin content in the wood, which is recovered in soda recovery boiler for producing steam

and in turn, power. But for this green fuel, the industry would have to consume more coal for meeting its energy requirement.

Recommendation

In view of the above, levy of a clean energy cess on coal should be exempted for manufacturers who adopt clean technology and make best use of the green energy at considerable investment. Alternately, these manufacturers should be allowed to avail credit of the Cess paid as a Cenvat Credit.

D. HOTEL INDUSTRY

1. Central Excise Levy On Bakery Products

Presently Central Excise is chargeable on Bakery and Confectionery items (Central Excise Tariff Headings 19051000 to 19059090, 18069010 to 18069090 and 17049010 to 17049090) sold in hotels. This forms a small portion of the hotels' Food & Beverage Revenue. No other food item is excisable. Due to this hotels are subject to the cumbersome administrative formalities of Central Excise without any significant contribution to the exchequer.

Recommendation

In case of Hotels all bakery and confectionery items should be exempted from Excise Duty. Alternately, an exemption from excise duty for a turnover limit of Rs. 3 crore – computed on the basis of the Turnover of the Excisable products of each Unit having separate Registration number, instead of the total turnover of the Hotel or the Company – be prescribed.

Recommendations for procedural aspects

1. **The Union Budget 2015 subsumed Education and Higher Secondary Cess into Central Excise Duty w.e.f 1st March 2015.Subsequently, notifications were issued permitting utilisation of such cess paid on or after 1st March 2015 against liability of Central Excise duty leviable under First Schedule of the Central Excise Tariff Act.**

   However, no clarifications have been provided regarding accumulated credit balance of Cess as on 28th February 2015. This has resulted in idling of funds and accordingly CBEC is requested to provide necessary guidelines at the earliest for utilisation and/or refund.

2. **Central Excise statutes be amended to make clearance of scrap / waste arising out of the manufacture of finished / intermediate goods not liable to excise duty.**

3. **Provisions on Unjust Enrichment (Section 11B) be amended to provide relief to assessees in cases of erroneous collection of duty and further, not be made applicable to duty paid on captive consumption, return of pre-deposits made in the course of litigation and excess duty paid under provisional assessments, as determined at the time of finalisation.**

4. **Section 5A be amended appropriately to prevent retrospective effect of changes in Notifications in case these are detrimental to the assessee.**

5. **Time limit for return of inputs and capital goods removed to job-worker premises be done away with. Alternately, jurisdictional authority be delegated the necessary powers to extend the time limit of 180 days for return of inputs from job worker for reasons beyond the control of the manufacturer, like strike / lockout at the premises of the job worker.**

6. **The facility for full cenvat credit in the year of receipt was extended to capital goods valued upto Rs. 10,000 in the Union Budget 2016. It is submitted that Rs. 10,000 is grossly inadequate and accordingly, in the event a value limit is absolutely necessary, the same should be set at Rs. 5 lakhs – ideally, credit should be allowed in the year of receipt of the capital goods irrespective of the value of the capital goods.**

7. **The CENVAT Credit Rules 2004 be amended appropriately permitting the manufacturers and service providers to avail entire CENVAT credit of service tax paid on all input services, even if such services are partly used for exempted goods and partly for dutiable final products or partly used for providing both taxable service as well as exempted service.**

8. **The additional duty of excise leviable under section 85 of Finance Act, 2005 (18 of 2005) and paid by the importer under Section 3 of the Customs Tariff Act is not eligible for CENVAT Credit. This leads to a disparity between the indigenous goods and imported goods to the extent of duty of excise leviable under section 85 of Finance Act, 2005.It is recommended that Cenvat Credit Rules 2004 be amended to provide for availment of cenvat credit on additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under section 85 of the Finance Act, 2005.**

9. **In cases where a manufacturer makes exempt intermediate goods in one manufacturing unit and thereafter transfers the same to another unit for manufacture of dutiable finished goods, the manufacturer should be allowed to take credit of input taxes paid on services used for making exempt intermediate goods and transfer the same, through the ISD mechanism to the unit where the dutiable finished goods are manufactured.**

10. **It is recommended that Rule 3(5A)(a), relating to reversal of CENVAT credit on Capital Goods removed from the factory after use be amended to provide that in the case of removal of used capital goods otherwise than by way of sale, determination of amount payable be allowed as per prescribed formula and that in such cases payment of an amount equal to the duty leviable on transaction value be done away with.**

11. **Definition of exempted service as provided under Rule 2(e) of the Cenvat Credit Rules 2004 should be amended to provide that exempted service shall not include any activity as specified under the Negative List of Services and where the place of provision of the service is outside India.**

12. **CENVAT Credit Rules, 2004 should be amended to provide that the determination of the amount attributable to input services used in or in relation to manufacture of exempted goods and their clearance up to the place of removal or provision of exempted services as provided under Rule 6(3A) of the CENVAT Credit Rules 2004 should be restricted only to the input services which are common to dutiable and exempted goods or services instead of making the same applicable to entire cenvat credit availed during the month or year.**

13. **The explanation to Rule 6 (1) of Cenvat Credit Rules,2004 states that exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include non-excisable goods cleared for a consideration from the factory. This results in taxing such items from NIL rate to 6%/7% of the value of such non-excisable items for the purposes of reversal of credit of input and input services. The above explanation and Circular 1027/15/2016-CX dated 25th April 2016is not consistent with the intention of the Legislature. In other words, charging NIL rate on non-excisable goods and taxing the same through a different mechanism defeats the levy of Indirect Taxes. It is therefore recommended to do away with this explanation and Circular issued in this regard.**

14. **The limits for sanctioning remission by Department officials were last revised in 2007 and it is recommended to increase the same in line with the limits prescribed for issuance of Show Cause Notices.**

Sr. No	Designation	Existing Limits	Proposed Limits
• 1	• Commissioner	Beyond 5 lakhs	• Beyond 50 lakhs
• 2	• Additional/Joint Commissioner	Up to Rs 5 lakhs	• Upto Rs 50 lakhs
• 3	• Assistant/Deputy Commissioner	Up to Rs 1 lakh	• Up to Rs 5 lakhs
• 4	• Superintendent	Upto Rs 10,000	• Up to Rs 1 lakh

15. **CBEC has provided for monetary limits for appeals to filed by the Department as listed below:**

Sl. No	• Appellate Forum	• Monetary Limit
• 1	• CESTAT	• Rs 10 lacs
• 2	• High Court	• Rs 15 lacs
• 3	• Supreme Court	• Rs 25 lacs

Thus any order less than these limits no appeal can be filed. Similar limits applicable to filing Appeals before CESTAT may be applied to Section 35 EE.

16. **Central Board of Excise and Customs be advised to either update the Cigarette Manual keeping in view the various changes in the extant law or repeal the same in its entirety.**

17. Manufacturers should be permitted to file a single ARE-1 for clearance of goods against a bulk export order. Further, endorsement and verification of "proof of exports" to be done on-line by the Central Excise and Customs authorities. This will reduce paper-work and reduce procedural cost and complexity of exports.

18. Since factory buildings and/or other civil infrastructure (e.g., foundation for plant & machinery) are essential for installation and housing of machinery and for carrying out manufacturing activities, cenvat credit should be extended for duties on inputs used for civil construction of factory buildings / civil infrastructure.

19. To avoid idling of funds in respect of construction phase of projects it is recommended that the cenvat credit laws be amended to enable refund of unutilized cenvat Credit balance if the same remains unutilized after a period of two years from date of availment of credit.

20. Provisional Assessment under Rule 7 of Central Excise Rules, 2002 should be dispensed with in case of movement of goods within sister units of the same Company as the duty payment and Cenvat credit are revenue neutral for department. Any way this is applicable for LTU at present and the same can be extended to the non LTU Companies.

21. The limitation of time for issue of Show Cause Notice in cases not involving fraud; or collusion; or willful mis-statement; or suppression of facts has been extended by the Finance Act 2016 to 2 years from the existing 1 year in case of Customs and Central Excise and to 30 months from 18 months in case of Service Tax. There is no justification for allowing such long periods of time for issuance of Show Cause Notices – it is submitted that these kind of provisions of law create a lot of uncertainty and vitiates the ease of doing business. Thus, it is recommended that the erstwhile time limits in this regard be reinstated.

22. Krishi Kalyan Cess (KKC)has been introduced by the Finance Act,2016 at rate of 0.5% on taxable servicesw.e.f 1st June'2016. The Central Government vide Notification No. 28/2016-CE (N.T.) dated May 28, 2016, has amended Rule 3 of the Credit Rules to provide that only a service provider will be allowed to avail credit of this Cess for payment of Krishi Kalyan Cess. Indirect Tax is a pass through tax and a restriction on credit of cess vitiates the levy of an Indirect Tax. Since Krishi Kalyan Cess is levied as Service tax, Rules applicable for credit availment should also be made applicable. Therefore, it is recommended to amend Rule 3 (1a) to enable manufacturers to avail and utilise such amounts paid against Excise duty to avoid cascading effect of taxes.

23. The rates of Duty Drawback have not been revised despite a 25% increase, over the last couple of years of service tax cost – from 12% to 15%. This has resulted in an avoidable embedding of tax cost in exports. Accordingly, it is recommended that the Duty Drawback rates be increased by 25% at the earliest. - FTP

Other Recommendations

1. Unintended additional cost on account of liability to pay interest on differential excise duty which becomes payable due to price variations or escalations based on factors beyond the control of the manufacturer

As per statutory requirement Excise Duty is to be paid on the contractual price on all clearances. However, quite often Industry requires re-determination of price on account of the variation in the cost of raw materials through a price variation formula, published by IEEMA, leading to recovery of additional price from customers through supplementary excise gate passes issued for the said purpose.

On such additional recovery, differential Excise Duty is promptly deposited to the Govt. Treasury by the assessees.

However, the law requires that interest on differential duty of Excise is paid from the date of actual clearance of goods to the date when supplementary invoice was raised, causing additional cost on the assessees, for reasons beyond their control.

Recommendations

Liability to pay interest on from the date of clearance of goods may be done away with and in such cases, duty liability should be deemed to be payable only by the prescribed time of the date when supplementary invoice is issued.

2. Unutilised CENVAT credit balance of Education Cess (EC) and Secondary & Higher Education Cess (SHEC) as at 28 February 2015 or 31 May 2015 to the account of a manufacturer of excisable goods or provider of taxable service

In terms of Rule 3 (1) of the CENVAT Credit Rules (CCR), 2004, a manufacturer or an output service provider, is inter-alia, entitled to avail CENVAT Credit of EC & SHEC paid on excisable goods or taxable services received by him, provided the same are in the nature of "input", "input service" or "capital goods"

There exist a specific restriction under sub-rule (7)(b) of Rule 3 of CCR, 2004, whereby the credit of EC and SHEC availed by any assessee is allowed to be utilized only against the liability of EC and SHEC as applicable, either on excisable goods manufactured by him or on taxable services provided by him and such credit of EC & SHEC is not allowed to be utilized for the payment of excise duty or service tax.

The aforesaid provisions largely continues even after EC and SHEC liable to be paid on the excisable goods and taxable service was withdrawn w.e.f. 01.03.2015 and 01.06.2015, respectively, and subsumed in the levy of duty of excise and service tax.

Pursuant to the aforesaid Budgetary changes, the manufacturers and service providers are left with huge pool of unutilized CENVAT Credit balances under the head of EC and SHEC as of 28.02.2015 and 31.05.2015, respectively, which because of the aforesaid restriction in CCR, 2004, is not allowed to be utilised against their Excise duty or service tax liability-

Partial relief was extended to the assesses by an amendment in the said sub-rule (7)(b) of Rule 3 of CCR, 2004, through Notification No. 12/2015-Central Excise (N.T.) dated 30 April 2015, to provide that .

Credit of EC and SHEC paid on inputs or capital goods which are received in the factory of manufacture of final product on or which are received in the factory of manufacture of final

product on or after the 1st day of March 2015 can be utilized for payment of excise duty leviable under the First Schedule to the Excise Tariff Act.

Credit of balance fifty per cent EC and SHEC paid on capital goods received in the factory of manufacture of final product in the financial year 2014-15 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act.

Credit of EC and SHEC paid on input services received by a manufacturer of final product on or after the 1st day of March 2015 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act.

Recommendation

There is an urgent need to make suitable amendments in the CCR, 2004 so as to allow:
Accumulated credit balance of EC and SHEC as 28.02.2015 in the CENVAT a/c of a manufacturer of excisable goods to be utilized towards payment of duty of excise leviable on the excisable goods removed by the manufacturer on or after 01.03.2015

Accumulated credit balance of EC and SHEC as 31.05.2015 in the CENVAT a/c of a provider of taxable services to be utilized towards payment of service tax leviable on the taxable service provided on or after 01.06.2015

Credit of EC and SHEC paid on inputs or capital goods prior to 1 March 2015 which are received by the service provider on or after the 1st day of June 2015 to be utilized for payment of service tax on output services.

Credit of balance fifty per cent EC and SHEC paid on capital goods received by the service provider in the financial year 2014-15 to be utilized for payment of the duty of service tax on output services.

Credit of EC and SHEC paid on input services prior to 1 June 2015 under an invoice, bill or challan which is received by a service provider on or after the 1st day of June 2015 to be utilized for payment of the service tax on output services.

3. Issues faced by large business houses with multiple registrations on account of blockage of funds due to underutilised Cenvat Credit balance at different locations.

In case of large business entities having several factories located pan India, separate excise registration is required to be obtained in respect of each factory location and every such unit is required to maintain separate records of Cenvat Credit entitlement and utilization thereof.

Quite often it happens that due to low operating margins and inverted duty structure of inputs vis-vis the finished goods, some of the factory location may have accumulated Cenvat credit balances which is unable to be utilized by the particular unit. On the other hand, the other factory locations would continue to discharge their duty liabilities on cash basis for want of Cenvat balance with their factory locations.

The Govt. had earlier extended the facility of allowing transfer of Cenvat credit (of central excise duty or service tax) accumulated in one manufacturing unit or service providing unit to any of its

other manufacturing or service providing units, of any entity registered as Large Taxpayer Unit with the Department. [However, this facility has been withdrawn in the Finance Act (No.2), 2014].

Besides, in the recent past, the Govt. has similarly allowed a manufacturer having a common Permanent Account Number under the Income-tax Act, 1961, and having more than one factory location to transfer unutilised CENVAT credit of additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, lying in balance with one of his registered premises at the end of a quarter, to his other registered premises.

The principle enunciated by the above said provisions is that a legal entity having sufficient Cenvat Credit balance at one of its registered premises should be allowed to transfer such credit to any other registered premises of the same legal entity.

Recommendation

The assessee should, at his option, be allowed to transfer Cenvat Credit of all eligible duties amongst the different registered premises (under both Excise and Service Tax) provided these registrations are of same legal entity. Accordingly, there an urgent need to amend Rule 10A of the Cenvat Credit Rule, 2004 to extend the facility of transferring the credit of SAD by one unit to other unit of the same legal entity to other eligible input credits as well.

4. Delay in disposal of appellate proceeding at Commissioner Appeals/CESTAT

At present there are undue delays in disposing-off proceedings pending before various Appellate Authorities like Commissioner Appeals/ CESTAT on account of various reasons such as:

- Inadequate bench strength or
- More importantly irrational and conservative approach of departmental officers in mechanically dragging matters to litigation (for decision) instead of disposing of the matter rationally at the adjudication stage taking cognizance of factual matrix, judicial precedence and CBEC circulars/ instruction.

The above leads to huge piling of matters at various appellate forums leading to prolonged uncertainty and ambiguity on the topic under dispute.

Recommendation

There is a serious need of robust Appellate mechanism in the country to ensure speedy disposal of proceedings. This could be achieved either by increasing the bench strength of CESTAT or by introducing the concept of fast track Courts for disposing off high value litigation.

In addition, departmental officers should be sensitized about the serious repercussions, on the trade in general, of their irrational conduct by not undertaking appropriate due diligence at the adjudication stage and thereby putting pressure on the entire appellate system (which results in either denying or significantly prolonging justice).

5. Mandatory Pre-deposit of Tax and Duty demanded

After enactment of the Finance Act (No.2), 2014 with effect from 06.08.2014, Section 35F of the Central Excise Act, 1944 (and Section 83 of Finance Act) and Section 129E of the Customs Act, 1962 have been substituted with new sections to provide for mandatory pre-deposit as a percentage of the duty demanded where duty demanded is in dispute or where duty demanded and penalty levied are in dispute.

At present there are undue delays in disposing-off proceedings pending before various Appellate Authorities like Commissioner Appeals/ CESTAT on account of various reasons. Delay in disposing of the matter is therefore leading to blockage of funds for substantial period of time.

Recommendation

An alternative in terms of offering Bank Guarantee in lieu of pre-deposit in cash should be allowed.

6. Doubts have been expressed with regard to the amount to be deposited by CESTAT :

In terms of the amended provisions while filing appeal against the order of Commissioner (Appeals) before the CESTAT. Sub-section (iii) of Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962 stipulate payment of 10% of the duty or penalty payable in pursuance of the decision or order being appealed against i.e. the order of Commissioner (Appeal). It is, therefore, clarified vide Circular No 984/08/2014-CX, dated 16.09.2014 that in the event of appeal against the order of Commissioner (Appeal) before the Tribunal, 10% is to be paid on the amount of duty demanded or penalty imposed by the Commissioner (Appeal).

While the circular takes cognizance of payment made under investigation for considering the same as made for pre-deposit for filing appeal before CESTAT, pre-deposit made at the time of filing appeal before commissioner appeals has not been expressly considered.

Recommendation

Tribunals has seldom taken a view that payment of pre-deposit of 10% is in addition to the amount paid as pre-deposit while filing the first appeal before Commissioner Appeals. The requirement of pre-deposit is required be spelt out clearly.

7. Differing views on critical technical aspects across Commissionerate

It is very common phenomenon to see that provisions under various revenue laws and the rules, notification or circulars issued there under are interpreted differently across Commissionerates.

For instance, aspect of eligibility of service procurement towards CENVAT Credit differs from officer to officer.

This results not only in avoidable litigation but also in unproductive utilization of time and effort for both trade fraternities as well as of the Revenue officials.

Recommendation

CBEC being a uniform body responsible for administering Central Excise, Customs and Service Tax Laws across India, it should ensure that there remains consistency in the application or implementation of these laws.

CBEC should set up a process to encourage constructive debate on contentious/ litigious topics involving trade fraternity to understand nitty-gritty across business segments. Selection of contentions topic could be based on specific feedback received from trade in this regard.

CBEC should then frame their views and policy thru consultative approach to be implemented in a standardized and consistent manner across the Country.

CBEC should also consider making its current training programs for field officials more effective. This could be done by having sector specific trainings since every business sector has its own peculiarities and business models therefore it is very important to understand and appreciate these complexities to be able to be more judicious in performing and discharging their duties while dealing with assessees representing varied businesses.

8. Availment of Cenvat credit for Banking and Finance sectors

Clarification is required from Ministry of Finance (CBEC) as to whether in terms of the provision of Rule 6(3B) of the Cenvat Credit Rules, availing of 50% of the credit at the very inception stage and charging the balance 50% to the Profit and Loss account as expense, is correct and precise and is in compliance to Rule 6(3B) of the Cenvat Credit Rules. Further clarification is required as to whether the present practice which we are following since 1-04-2011, gives due effect to the theme and spirit of the provision as laid down as per Rule 6(3B) of the Cenvat Credit Rules.

In the absence of such clarification at present the numerous assesses under Banking & Finance Sector are following different methodology towards the compliance of Rule 6(3B) of the Cenvat Credit Rules. There should be specific clarificatory circular/guiding provision governing the precise procedure thru which such Cenvat cr reversal should be made.

9. ELECTRICITY DUTY

- Ferro alloys making process is a power intensive industry; power cost accounts for about 40% of the total manufacturing cost.

- Electricity duty imposed by various states acts as a major disincentive for the power intensive Ferro alloys industries.

- Captive generation of power used specifically for the industry is also not exempted from the electricity duty.

Recommendation

- The electricity duty be either abolished or kept at a minimum level of 1% max.

- Indian Ferro alloy industry should be given an opportunity of sourcing power through open access

from IPPS and CPPs by removing cross subsidy charged at various rates across the states.

- Power Ministry may make necessary amendments in the Electricity Amendment Bill 2014 so that the power intensive industries can take power at a viable rate of less than Rs.3.00 per kwh; at the rate power is being exported out of India.

INDUSTRY WISE RECOMMENDATIONS RELATED TO FOREIGN TRADE POLICY

A. FMCG INDUSTRY - CIGARETTES & OTHER TOBACCO PRODUCTS

1. Tobacco Farmers continue to suffer Income Erosion

- Last year the tobacco farmers faced a deeply distressing situation due to surplus crops and drop in tobacco prices. The authorised crop size has been reduced by 38% this year.
- This has led to a value erosion of more than Rs. 833 crore of farmer income. Moreover, due to the reduction in crop size the economies of scale have been undermined, resulting in further increase in operating costs for the farmer.
- Declining volumes of legitimate duty-paid cigarettes in the national market has not only resulted in reduced domestic off-take of tobacco but, coupled with withdrawal of export incentives under the new Foreign Trade Policy, exposed Indian farmers to exploitation by foreign buyers.

B. AGRI BUSINESS SECTOR

1. Hedging on International Commodity Exchanges

As per RBI guidelines, corporates are allowed to hedge in the international commodity exchanges automatically through an AD (Authorised Dealer) Bank only if the position is backed by export/import contracts. Exporters of Agri commodities need to purchase raw material stocks during the season in anticipation of future export orders. Export orders, however, will be received round the year. The exporter who wishes to cover his domestic raw material purchases (for export purposes) against fluctuating prices in international market (which also drive domestic prices) does not have an option to hedge on international commodity exchanges in a manner similar to hedge price risk on export contract. RBI mandates that hedging on international commodity exchanges is permitted only against an export contract in the hands of the exporterand hedging price risk on inventory is permitted on a case to case basis depending on the merit of application to RBI through an AD bank which is time consuming and tedious process. As a result, the exporter is subjected to price risk till the time he obtains an export order for his product.

Hence it is recommended that exporters operating out of India having an open position (without back-up export/import contracts) should be allowed to hedge in international exchanges since the products are linked to international commodity markets and may provide better correlation and consequent opportunities to mitigate their price risks at better rates.

2. Strengthening of Futures Market InIndia

In recent times, exchanges, with respect to certain agri commodities have taken several actions like postponement of opening new futures contract, imposition of special margins in certain commodities, delisting of certain contracts with abrupt settlement etc. While such actions may cool down the market in the short term, in the long term they will be detrimental to the maturity of the Indian commodity exchanges and stability of the institutions.

The following recommendations are being made in order to enhance the stability of the markets:

i. **Introduce long term futures contract with 12 month price visibility.**
ii. **Introduce option trading.**
iii. **Increase the delivery centres in production States.**
iv. **Warehouse receipt financing.**
v. **Encourage participation of hedgers.**

Other recommendations

1. **Disparity in the understanding of the term "supplies against International Competitive Bidding (ICB)" under Foreign Trade Policy ('FTP') 2009-2014 and FTP 2015-2020 and Excise statute for claiming deemed export benefits**

Para 8.2(d) of the FTP 2009-2014 and Clause 7.02 (e) and (g) of FTP 2015-2020 provides for "deemed exports" status to supplies, inter-alia, made to projects funded by multilateral or bilateral Agencies / Funds as notified by Department of Economic Affairs (DEA), MoF, if such projects have followed prescribed procedure of ICB.

List of such Agencies/Funds notified by the DEA is given in Appendix 13 and 7A to the respective FTPs.

Both FTPs, inter alia, provides for refund of TED in respect of the supplies that qualify as deemed exports. However, in terms of Para 8.3(c) of the FTP 2009-2014 and Para 7.03 read with Para 7.04 of FTP 2015-2020, no TED refund is granted for supplies to projects which are awarded through ICB procedure on the presumption that excise duty is exempted ab initio.

However, in complete contradiction to above, Excise Exemption Notification No. 12/2012-CE dated 17.03.2012, vide sr. no. 336, does not provide an unconditional exemption to goods supplied to an ICB compliant Project. Exemption is available subject to the condition that such goods, if imported from outside India enjoy exemption from levy of Customs duty as well.

In many instances, although, the goods are supplied to projects funded by Notified International Organizations like Japan International Cooperation Agency (JICA) and International Bank of Reconstruction and Development (IBRD) and awarded through ICB procedure, but since there is no corresponding Customs duty exemption available for such goods, excise duty is required to be discharged on the goods so supplied against ICB.

Thus, whereas on the one hand, no exemption from excise duty is available to supplies made against ICB under excise statute (for want of corresponding Customs duty exemption), on the other, DGFT is not granting refund of excise duty paid even though the supplies qualify as 'deemed exports" as per FTP 2009-2014.

Recommendations

To amend the provisions of FTP 2009-14 and FTP 2015-2020 to provide for refund of TED for supplies to projects funded by such agencies as notified under Appendix 13 and 7A to the respective FTPs.

This would ensure that the ongoing litigations against denial of TED refunds to manufacturers and contractors are settled besides extending indented benefits to the eligible projects.

2. Non-alignment of the notified "International Organisation", under FTP 2009-2014 as well under FTP 2015-2020 and the Excise statute for claiming deemed export benefits

Notwithstanding above, in respect of the supplies as covered by Clause 8.2 (d) of FTP 2009-2014 and Clause 7.02 (e) and (g) of FTP 2015-2020 there also exist a disparity in terms of the International Organization as notified in Appendix 13 and 7A to the respective FTPs with those covered and specified under Excise Exemption Notification No 108/95 C.E, dated 28.08.95.

It is pertinent to mention that, not all agencies as notified by DEA and included in the Appendix to respective FTPs are covered by Excise Exemption Notification No 108/95.

For instance, JICA and IBRD are included in the Appendix 13 to FTP 2009-2014 but not under Excise Exemption Notification. Similarly, IBRD is included in the Appendix 7A to FTP 2015-2020 but not under Excise Exemption Notification.

As a result of above, supplies to projects funded by JICA or IBRD will not be entitled to TED refund under respective FTPs on the presumption that there is an ab-initio exemption from excise duty. However, in terms of Excise Exemption Notification, no such exemption is available and hence intended benefit will not be available to the manufacturer/ contractor.

Recommendations

There is an urgent need to make carry out suitable amendments in Exemption Notification No. 108/95-CE dated 28.08.95 so as to align the International Organizations entitled for the duty benefits under the respective FTPs so that intended benefits of ab-initio exemption of TED is extended to the eligible projects and are consequently passed on to the concerned manufacturer and contractor.

3. FTA WITH MALAYSIA

- FTA with Malaysia provides zero duty on entire Chapter 7202.

- Malaysia enjoys a power tariff of Rs.2.3/kwh as against the average tariff of Rs.5.00-6.00 per kwh in India. Malaysia has also started exporting Ferro alloys to India which is in a bid way becoming a major threat to the domestic industry.

Recommendations

- Chapter 7202 is removed from FTA with Malaysia.
- Increasing the incentive on export of products under Chapter 7202.

4. MERCHANDISE EXPORT FROM INDIA SCHEME (MEIS)

- India used to be one of the major exporters of Ferro Alloys in the world. But during last one year it has lost the major market.

- Exports from countries like Ukraine, South Africa, Malaysia, and China have picked up and have given a tough time to the Indian exports resulting in the major fall and also lowering the production in the country.

- Indian Ferro Alloys industry is competing with South Africa, Kazakhstan and Malaysian Producers. Power tariff of all the producing countries are much lower compared to average Industrial tariff of India (India: Rs 5-6/Kwh, South Africa: Rs 2.50/Kwh and Kazakhstan: Rs 1.5-2/Kwh).

- Currencies of the major producing nations (South Africa and Kazakhstan) have depreciated substantially.

Recommendations

- To compete with the major producing countries, Focus Product incentive may be restored to 4% from present level of 2% and extended to all countries.

5. TARIFF PREFERENCE UNDER GENERALISED SYSTEM OF PREFERENCETGSP

- European Commission is suspending Tariff Preference under GSP with effect from 01.01.2017 for export of certain items from India.

- The suspension applies to iron & steel items among other items including Ferro alloys.

- India will loose a major share of Ferro alloy market for export due to the suspension of approximately 4% tariff preference given to the Indian exporters to European Countries.

Recommendation

The competitiveness lost on account of the suspension of Tariff Preference under GST be off set by increasing the Incentive to 8% frm the present level of 2% MEIS for export to 11 European countries.

INDUSTRY WISE RECOMMENDATIONS RELATED TO GST

FMCG INDUSTRY - CIGARETTES & OTHER TOBACCO PRODUCTS RECOMMENDATIONS

In the GST Regime incidence of Excise Duty plus GST on Cigarettes must be Revenue Neutral

a. Under GST all Tobacco Products may ideally be taxed at the a uniform rate of GST plus Central Excise Duty

b. Cess on tobacco products, if deemed necessary, should be levied on a "Specific" basis

c. Overall incidence of GST, CED and Cess (if any) must remain revenue neutral

d. Tax credit (in line with current cenvat credit) to be allowed for CED and Cess (if any) paid on tobacco based input materials used in manufacture of final products of tobacco

OTHER RECOMMENDATIONS

1. TARIFF PREFERENCE UNDER GENERALISED SYSTEM OF PREFERENCET GSP

- European Commission is suspending Tariff Preference under GSP with effect from 01.01.2017 for export of certain items from India.
- The suspension applies to iron & steel items among other items including Ferro alloys.
- India will loose a major share of Ferro alloy market for export due to the suspension of approximately 4% tariff preference given to the Indian exporters to European Countries.

Recommendation

The competitiveness lost on account of the suspension of Tariff Preference under GST be off set by increasing the Incentive to 8% from the present level of 2% MEIS for export to 11 European countries.

INDUSTRY WISE RECOMMENDATIONS RELATED TO SERVICE TAX MATTERS

A. APPAREL INDUSTRY

1. Service Tax on Rentals Paid for Immovable Property

The rental of immovable property constitutes around 50% of total operating cost of retail store. The service tax on rentals paid for immovable property has a huge adverse cost impact on the retail sector since the tenants / lessees are not in a position to avail credit of the service tax.

Recommendation

Appropriate abatement be provided for determining the value of taxable services relating to renting of immovable property on similar lines as provided to several services vide Notification No. 26/2012-Service Tax dated 20th June 2012 amended by Notification No. 8/2014 – Service Tax dated 11th July 2014.

B. PAPER & PULP INDUSTRY

1. Availment of Credit of Service Tax Paid on Transportation of Coal by Rail – Procedural

Service Tax on transportation of goods by Rail was introduced with effect from 01.10. 2012.

As per Rule 4A of Service Tax Rules, inter alia every person providing taxable service shall issue an Invoice, a bill or as the case may be a Challan and such Invoice, bill or challan shall be serially numbered and shall contain the details such as the name, address and the registration number of such person etc.

As per Rule 9(1) of the Cenvat Credit Rules (CCR) 2004, CENVAT credit shall be taken by the manufacturer or provider of output service on the basis of an Invoice, Bill or Challan issued by a provider of Input service.

Railways, being Service Tax registrants have been bound by the Service Tax provisions and are not relaxed from issuing a formal Invoice as per Service Tax Rules. However, the Railways continued to issue only Railway Receipts for the goods transported by them.
Vide their Rate Circular No 29/2012 dated 28.09.2012 (No TCR/1078/2011/2) it has been clarified by the Deputy Director of Railway Board that customers can get credit of Service Tax based on the consolidated Certificate issued by an authorised Officer of Railway. The relevant extract of the Circular is reproduced below:

"4(xiii) On any written request from customers, CCM Office will issue a monthly consolidated certificate to be signed by an Officer authorised by CCM and duly countersigned by Dy.CAO/T or officer nominated thereto, for each customer giving details of Service Tax collected from them during the previous month, date-wise and rake-wise with breakup of (a) Service Tax, (b) Education Cess, (c) Higher Education Cess and (d) Total Service Tax. This can be used by the customers for getting credit of Service Tax from the concerned Superintendent of Central Excise as due to them"

However, no corresponding amendment was immediately made by Ministry of Finance in Rule 9 of CCR 2004, which deals with the list of eligible documents for availment of CENVAT.
Vide Notification No 26/2014-C.E. (N.T.) dated 27.08.2014, Rule 9 of CCR 2004 has been amended to insert the following clause to include the certificate issued by Railways as an eligible document for the purpose of availing CENVAT.

"(fa) a Service Tax Certificate for Transportation of goods by Rail (herein after referred to as STTG Certificate) issued by the Indian Railways, along with the photocopies of the railway receipts mentioned in the STTG certificate; or"

2. **Issue**

Paper industry transports coal through rail rakes from collieries to the railway sidings. Coal is used for producing steam and power for use in the manufacture of paper and paperboards.

Manufacturers avail credit of service tax on rail transportation based on the certificates issued by Railways along with the photo copies of Railway Receipts, on the strength of the Circular No 29/2012 dated 28.09.2012 issued by Railway Board.

CERA / Departmental Auditors, however, raise objections to this practice and contend that the certificate issued by Railways Department is a valid document for purposes of credit of service tax only w.e.f. 27.08.2014. Service tax credit is, accordingly, sought to be denied. Unnecessary disputes in this regard have arisen consequently.

It may be noted that till Rule 9 of CCR Rules was amendment w.e.f 27.08.2014, no such objection was raised by the Jurisdictional Excise Authorities or the Departmental Auditors.The audit objections raised now defeat the very purpose of Cenvat Credit scheme and the aforesaid amendment. Denial of rightful cenvat credit on the basis of certificates issued by Railway Board causes financial hardship to manufacturers and is utterly inequitable.

It may be noted that during the MODVAT regime, it was clarified by CBEC that duty payment certificates issued by Public Sector Undertakings are valid documents for availing credit of Excise Duty

Recommendation

It is recommended that a clarification is issued by Ministry of Finance to the effect that:

i. **monthly consolidated certificates (service tax certificates) issued by Railways prior to 27.08.2014 would be valid documents for the purpose of availing cenvat credit and**

ii. **the credit already availed prior to 27.08.2014, on the basis of such certificates, would be valid.**

3. **Cenvat Credit on Inputs and Input Services used in Relation to Construction of a Factory Building or Civil Structure or Laying Foundation or Making of Support Structure for Plant / Equipment**

The current definition of inputs and input services under Cenvat Credit Rules 2004, exclude the following from the respective definitions i.e., any goods or services used for:

i. construction or execution of works contract of a building or a civil structure or a part thereof; or

ii. laying of foundation or making of structures for support of capital goods,

In capital intensive industries like Paper industries construction of plant involves a huge expenditure on civil constructions to accommodate heavy machines within the premises, laying equipment foundations for wobble free operation of equipment's. Most of the structures made in support of these equipment's are imperative for operation of the equipment/ plant. All these equipment's are movable and can be relocated to any other location.

However due to above provisions of cenvat credit Rules, all the inputs and input services although used in construction factory buildings, equipment foundations or structures for equipment operations , though are in relation to manufacture, are not available for availing cenvat credit.

Due to non-availability of cenvat credit, it has greater effect on the growth of capital intensive industries and its financial viability. Further the above provisions defeat the very purpose of cenvat credit scheme which intends to allow credit of duty / tax paid on goods and services used for / in the manufacturing of final goods. Value of such final goods includes the cost incurred towards inputs and input services for construction factory buildings, equipment foundations or structures for equipment operations. There is a spate of avoidable litigation as to what constitutes the main structure or support structure of equipment.

Recommendation

To widen the definition of inputs and inputs services to include the inputs and input services used in construction of buildings or civil structures or laying foundations or making of structures for support of the equipment/ plant.

Specific exclusion of inputs and input services used should be restricted to "inputs or input services used in construction of buildings/civil structures as office premises".

C. AGRI BUSINESS SECTOR

Background

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.

We believe that 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. **Service Tax – Agricultural Produce – Drop since same as #1 of ILTD**

As per extant Service Tax laws the agro-sector has been supported by keeping a bulk of services relating to agriculture or agricultural produce in the Negative List or in the list of exempted services. However, there are some services like Warehouse Management Services, Security Services, Laboratory Testing Services and so on – which are essential to secure storage of agri-produce and to determine quality of the agri-produce – are subjected to Service Tax.

It is recommended that all services provided for agricultural produce be kept outside the ambit of taxable services.

2. **Service Tax – Reimbursements**

Finance Act 2015 has included the reimbursements sought by service providers within the definition of "Consideration" for the purpose of determining the value of taxable service. It may be pertinent to note that Clearing & Handling Agents (CHAs), during the course of providing CHA service also make payments for certain expenses, on behalf of service recipient on a Principal to Agent basis and seek reimbursements of the same from the service recipient. The imposition of service tax on such reimbursements adds to the overall cost structure of the exporter. Exporters can seek refund of service tax either on-line at a prescribed rate (as per Schedule of Rates, under Notification No. 41/2012-ST dated 29th June 2012) or seek refund manually establishing the actual service tax suffered by the exporter in the course of export. The rate prescribed for claiming refunds on-line has not been increased appropriately to cognise for the additional service tax suffered on reimbursements.

Recommendation

Reimbursements claimed by Service Providers purely on a Principal to Agent basis, as above be specifically excluded from the definition of "consideration". Alternately, the prescribed rates (as per Schedule of Rates, under Notification No. 41/2012-ST dated 29th June 2012) be increased appropriately to cover for the incremental cost on account of service tax on such reimbursements.

3. **Service Tax on Processing of Agri-Commodities (Pulses)**

Negative List of Services includes 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 makes it only marketable for the primary market. In case of processing of whole pulses to split pulses, such activity is carried out in factories. The prices of the pulses is showing an upward trend in last few years owing to lower production, impact of weather, etc. Levy of service tax on such processing activities adds to the higher prices of pulses, which is a staple diet for the common man. On a similar corollary, Finance Ministry has exempted levy of service tax on processing of paddy into rice.

It is recommended that the processing of whole pulses into split pulses should be covered under negative list of service tax.

4. **Utilisation of Input Credits**

Currently the credit for service tax on input services can be utilised only if there is a correlation between such input services received and output goods or services. In case of conglomerate Companies, there are many input services which are received in respect of businesses (especially those relating to agriculture) which are not associated with output of any taxable goods or services. Due to the requirement of correlation, service tax paid on such input services cannot be utilised and therefore adds to the cost table.

It is recommended that input service tax paid on input services be allowed to be utilised against excise / service tax payable on any other taxable outputs (goods or services) produced / rendered by other businesses of the Company.

5. Service Tax on Marketing And Brand Promotion Activities in Rural Areas

It is estimated that more than 35% of the demand for fast moving consumer goods in India is in the rural markets. However, the awareness about high quality consumer goods in rural India is relatively poor. Unscrupulous players take advantage of this by flooding rural markets with goods of sub-standard quality and, very often, counterfeit products. Apart from the hardship faced by the rural consumer, the exchequer is also deprived of rightful revenue since these unscrupulous players, more often than not, evade taxes.

One of the key challenges facing the country, therefore, is that of harnessing economic growth to consolidate the recent gains in making development more inclusive. Whilst the Government has taken several initiatives like NREGA, *Indira AwasYojana, Bharat Nirman*, etc., for development of the economically weaker sections of society in the rural areas, the weak infrastructure of rural markets make the cost of penetration prohibitive.

Given the imperatives of ensuring inclusive growth the need of the hour is for government to partner the private sector in developing the market infrastructure in rural areas. This may be done by way of providing appropriate incentives to private players who make investments in stimulating the demand creation for high quality, branded products and to promote availability of such products in the rural areas. One approach to this is by way of providing exemption from Service Tax in respect of input services that are used for strengthening the infrastructure of rural markets.

Accordingly, it would be appropriate for Government to consider exemption from Service Tax all services used in this regard. This would also be in line with the philosophy of excluding from the purview of service tax a lot of farming / agriculture related services like leasing of land and agricultural equipment, agri-extension services etc. To prevent misuse of the exemptions appropriate rules can be framed for certification of services provided in rural areas by governmental bodies like the village panchayat, the village post-master, etc.

D. AGRI BUSINESS – LEAF TOBACCO & SPICES

1. Amendment of The Definition of "Board" Under Section 65B of the Finance Act 1994

As per Section 66D of the Finance Act, 1994 the Negative List of Services includes:

"(d)(vii) Services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;"Under Section 65B (6) "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.

In this connection it would be pertinent to note that by virtue of it being expedient in public interest, 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 government.

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

It is recommended to include Boards constituted under Central laws and operating under Central ministries be included in the aforesaid definition of "Board" and thereby any services provided by such boards be covered under negative list

2. Extension To The Scope Of Negative List Of Services

A negative list of services has been provided by introduction of section 66D to the Finance act, 1994 with effect from 1st July 2012 through which any services included in the list are outside the ambit of service tax

In this regard, it is important to mention that Specified Services relating to agriculture or agricultural produce have been included in the negative list of services e.g. Agricultural operations, supply of farm labour, processing of agro produce, loading, unloading, storage, renting or leasing of vacant land or agro machinery etc. It is observed that entities engaged in the agricultural sector carry out activities that are not taxable on account of the negative list and other exemption notifications.

However, there are certain other input services received by such entities which are not included in the negative list of services such as Transportation of packing material, works contracts, manpower supply, security, import of services for installation and erection of agro related plant and machinery etc.

Non-inclusion of complete list of services availed by the service recipients/entities engaged in agricultural sector is leading to increase in cost base of these entities, as these entities do not have any output service tax liability

Recommendation

CBEC should issue an amendment notification extending the scope of Section 66D to all services, whether direct or indirect to agriculture or agricultural produce instead of limiting the exemption to the specified services

3. **Refund of Krishi Kalyan Cess and other Service Tax borne by Businesses engaged in the Agri-sector**

Finance Act, 2016 has imposed Krishi Kalyan Cess at the rate of 0.5% on all taxable services whereby the effective tax rate has gone up to 15%.

The entities engaged in agri-sector do not have any taxable goods or services as their output is exempt in most cases. Therefore, the tax paid if any on inputs and input services will be a cost to the respective entities. Also, the objective of Krishi Kalyan Cess is to provide support to the agri-sector in the country. The entities engaged in the agri-sector contribute to the development of the sector by procurement of agri-inputs. Therefore, it is important to incentivise the businesses in agri-sector with various tax exemptions and not impose additional taxes and increase the tax burden. Although, Cenvat credit can be availed of the above tax, the levy of tax shall be an additional cost as the output is exempt from tax.

Recommendation

It is recommended that a suitable amendment notification be issued whereby service tax paid on the inputs by the businesses engaged in agri sector can be claimed as a refund from the Department – at the very least, such a provision should be introduced forthwith in respect of Krishi Kalyan Cess borne by the businesses engaged in the agri-sector.

E. HOTEL INDUSTRY

1. **Service Tax Exemption To Hotels For Services Provided Against Convertible Foreign Exchange**

Hotels and other tourism related services is an integral part of the Service Export Promotion Council set up by the Ministry of Commerce. The Council is engaged in promoting exports of services from India and creating a powerful "Served from India" brand.

The Hotel industry, unlike other services that are included in the Council, is not in a position to export services. However, the industry earns significant foreign exchange for the country by offering services within the country. Since the services offered by the Hotel industry are not "exported", there is a tax cost embedded in the same by way of service tax. This is not the case in respect of services that are actually exported since such exports are at nil tax cost.

Recommendation

In order to provide a level playing field to Hotel and tourism services vis-à-vis other services included in the SEP Council the services provided by this sector, including services like banquet rentals, dry cleaning, health club and fitness centre, beauty parlour, internet, business support and auxiliary services, management consultant services, renting of immovable property and so on, be exempted from service tax to the extent such services are provided against convertible foreign exchange.

2. **Service Tax On Room Rent And On Sale Of Food And Beverages**

In Finance Act 2011 the scope of Service Tax was expanded to levy Service Tax on renting of Rooms and Food and Beverages sales by Air Conditioned Restaurants having liquor license (subsequently the coverage was extended to all restaurants) despite the fact that in hotels Luxury Tax is charged on renting of Rooms and VAT is charged by all hotels and restaurants on Sale of Food and Beverages.

Whilst the current abatement in respect of service tax has been provided @ 40% for Rooms and @ 60% for Food & Beverage, on the balance portion there is an element of double taxation – Service Tax and Luxury Tax in the case of Rooms and Service Tax and VAT in the case of Food & Beverages.

The total tax outflow for the Guest works out to more than 20% on an average. Consequently, this tax levy is a significant deterrent to the Hospitality Industry which is already impacted adversely by the general slowdown of the global economy.

Recommendation

The levy of Service Tax on renting of Rooms and sale of Food and Beverages be discontinued to provide some relief to the industry.

3. **Service Tax On License Fees**

In Finance Act 2016, any service provided by Government or a local authority to a business entity has been made taxable with effect from 1st April 2016. TRU Circular 192/02/2016 – Service Tax dated 13th April 2016 clarifies that any activity undertaken by Government against a consideration constitutes a service and the amount charged for performing such activities is liable to Service Tax, regardless of whether such activities are statutory or mandatory under law or whether the amount charged is laid down in a statute or otherwise. It further clarifies that Service Tax is leviable on any payment in lieu of any permission or license granted by the Government.

It is submitted that any permission or license granted by Government consequent to legislation is essential for a business entity and that there is no element of service provided by the Government. In addition, the income generated by the business entity is liable for VAT and Service Tax and such an interpretation will only fuel the cascading effect of taxes.

Recommendation

The levy of Service Tax on License fees and fees for permissions be discontinued to provide some relief to the industry

Recommendations for Procedural Aspects

1. **The Union Budget 2016 has extended the Input service distribution mechanism to job-workers who are liable to pay duty on the value determined under Rule 10A of the Central Excise Valuation Rules,2000 or under Section 4A of the Excise Act. It is recommended to extend the Input Service Distribution to job-workers paying duty under Section 3 of Central Excise Act,1944.**

   This will ensure cost competitiveness of the brand owners and protect the long-term interests of job-workers.

2. **Section 67 of the Finance Act,1994 and Service Tax Valuation Rules be amended to allow deduction of value of reimbursements made to a service provider while determining the value of taxable service – under both "reverse charge" as well as "forward charge".**

3. **In line with the rationale of GST most services have been brought under the tax net under the regime of Negative List of Services. However, the availability of cenvat credit on input services has been restricted in several areas. It is recommended that the definition of input service should be reinstated to what it was prior to amendments brought about by the Union Budget of 2011 such that service tax credit is also available for all input services used in connection with activities related to business and additionally, there is no restriction on availing credit of tax on certain specified input services like Construction Services, Rent a Cab.**

4. **Service Tax laws be amended appropriately to allow CENVAT credit in respect of <u>inputs</u> to works contractors who have opted to pay service tax on deemed value of service as provided under clause 2A (ii) of Service Tax (Determination of Value) Rules, 2006, in line with similar credit allowed for input services and capital goods.**

5. **Service Tax law be amended to provide that nothing in the definition of service as provided in Section 65B (44) of the Finance Act,1994 would apply with regard to any kind of a transaction whether monetary or non-monetary between an employer and an employee since such transactions arise as a consequence of the employer to employee relationship/agreement/contract and including recoveries made by the employer from the employee for any specific employment related reason.**

6. **In respect of Service Tax (Determination of Value) Rules, 2006 prescribes the portion of value of Works contract to be considered for the purpose of Service Tax payable in respect of an indivisible Works Contract. Similar provisions also exist in the Value Added Tax Acts of several States for determining the value on which VAT is payable in respect of material in the indivisible Works contract. In many cases the taxable base as determined under Service Tax rules and State VAT rules add up to more than the full value of the works contract. To prevent such anomaly, it is recommended to exclude material portion of the works contract on which VAT has been paid, whether on actual basis or on the basis of deeming provisions in the State VAT laws.**

7. **In an era of growing transparency and simplicity in tax laws the enlargement of list of services and reduction in abatements under the reverse charge mechanism is a retrograde step and has burdened the service recipient with responsibilities that are rightly those of the Department. In addition to increasing the complexity of compliance, the enlargement of the list of services under the reverse charge mechanism has also diluted the threshold levels prescribed under law since, even if a service provider is exempt from tax by virtue of being below threshold limits, under reverse charge mechanism the service recipient (body corporate in this case) will have to pay the service tax. To remove this inequity, it is recommended that the list of services under reverse charge mechanism be pruned. For the sake of administrative convenience, it is recommended that the list be restricted to services provided in India by parties outside India, services provided by non-executive directors to a company and road transportation services provided by GTA.**

   In the event the above is not feasible, at the least the ratio of tax payable by the service providers and the service recipients must be made uniform across all category of services – if need be the whole tax should be payable by the service recipient. Such a move will mitigate some of the complexities faced under "reverse charge mechanism" by the assessees today.

8. **Point of Taxation Rules be amended so as to fix date of payment as the point of taxation in respect of the persons required to pay tax as recipient under the rules in respect of services notified under sub section (2) of section 68 of the Finance Act, 1994 i.e., services on which tax is payable on Reverse charge irrespective of the time gap between date of invoice and date of payment. This**

recommendation is being made on the account of the fact that under the present position of Law, the service recipient is penalised even in the case where the delay in furnishing the invoice is on account of the service provider.

9. **Service Tax Law should be amended to do away with penal provisions in cases not involving fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of service tax. Further, the Revenue Statutes should be amended so as to bestow discretion on to the Adjudicating Authority and Appellate Authority to waive / set aside penalty provided under the respective statutes. Similar amendment should be made in Central Excise and Customs Act.**

10. **On the basis of the existing definition of service, numerous tax authorities interpret manufacturing/trading of goods as an ''exempt service'' and insist to include value of such services for calculating disallowing credit under Rule 6 of Cenvat Credit Rules. This is an unjust and inequitable position and the definition of service needs to be amended as aforesaid. Service Tax Law should be amended to provide that definition of service under Section 65A (44) of the Finance Act, 1994 to exclude any process amounting to manufacture or production of goods or trading of goods in manner similar to "the activity of transfer of title of goods" which has been excluded from the definition of services.**

11. **The CENVAT Credit Rules 2004 be amended appropriately to allow distribution of eligible input credit of service tax by the Input Service Distributors to any unit of the entity so long as the unit to which credit is getting distributed is manufacturing dutiable goods or providing output service. This will do away the complexities of accuracy of distribution of credit faced by multi-business units.**

12. **"Services by way of transportation by an aircraft or a vessel from a place outside India up to the customs station of clearance" was included in the Negative List of Services. However, vide Finance Act 2016 the "services provided by way of transportation by a vessel from outside India" has been excluded from the Negative List of Services. The service tax has, thus, become payable under the reverse charge mechanism by the importer. Not only has this increased costs for the importer, since the freight cost (inclusive of service tax) is included for determination of assessable value of imports, the importer ends up incurring tax twice on the freight – once by way of service tax and the second time as a portion of customs duty paid on the imported goods. It is recommended that this inequitable position be mitigated by reinstating the "services by way of transportation by a vessel from outside India" be reinstated under the Negative List of Services.**

13. **Definition of service under Section 65A (44) of the Finance Act, 1994 to be amended so as to exclude any service provided by a job worker to the principal manufacturer directly or indirectly in or in relation to and in connection with the manufacture and production of goods or processing of any goods by the job worker for further use in the manufacture and production of final product by principal manufacturer.**

14. **Notification No 41/2012-ST grants rebate of service tax paid on the taxable services which are received by an exporter of goods and used for export of goods. The rebate can be claimed either on the basis of rates specified in the Schedule of rates annexed to the said notification or on actuals on the basis of documents (Actual service tax paid). As per paragraph 1(c) of the notification, rebate eligible on actuals shall not be claimed wherever the difference between the amounts of rebate under the actuals is not more than rebate available under the rates specified in the said notification by at least twenty percent. However, this provision has been misinterpreted by the Department**

stating that the above condition should be complied with for each and every shipping bill contained in a rebate claim as against the requirement of complying the same at rebate claim as a whole. This view of the Department is causing undue hardship to the exporters as Department has been issuing show cause notices and not processing the rebate claims of exporters.

In order to facilitate ease of doing business, the requirement of paragraph 1(c) of the notification 41/2012-ST should be rescinded and exporters should be allowed unconditionally to claim rebate of the actual service tax paid in relation to the export of goods. Alternately, a clarification may be issued in this regard, instructing the field to process the pending rebate claims as long as the requirements of paragraph 1(c) of the notification have been complied with at a total rebate claim level.

15. A remarks column to be inserted in the Service Tax Return (ST-3) in line with the Excise Return (ER-1) to enable assessees to provide clarifications/explanations wherever required.

Other Recommendations

10. Unutilised CENVAT credit balance of Education Cess (EC) and Secondary & Higher Education Cess (SHEC) as at 28 February 2015 or 31 May 2015 to the account of a manufacturer of excisable goods or provider of taxable service

In terms of Rule 3 (1) of the CENVAT Credit Rules (CCR), 2004, a manufacturer or an output service provider, is inter-alia, entitled to avail CENVAT Credit of EC & SHEC paid on excisable goods or taxable services received by him, provided the same are in the nature of "input", "input service" or "capital goods"

There exist a specific restriction under sub-rule (7)(b) of Rule 3 of CCR, 2004, whereby the credit of EC and SHEC availed by any assessee is allowed to be utilized only against the liability of EC and SHEC as applicable, either on excisable goods manufactured by him or on taxable services provided by him and such credit of EC & SHEC is not allowed to be utilized for the payment of excise duty or service tax.
The aforesaid provisions largely continues even after EC and SHEC liable to be paid on the excisable goods and taxable service was withdrawn w.e.f. 01.03.2015 and 01.06.2015, respectively, and subsumed in the levy of duty of excise and service tax.

Pursuant to the aforesaid Budgetary changes, the manufacturers and service providers are left with huge pool of unutilized CENVAT Credit balances under the head of EC and SHEC as of 28.02.2015 and 31.05.2015, respectively, which because of the aforesaid restriction in CCR, 2004, is not allowed to be utilised against their Excise duty or service tax liability-

Partial relief was extended to the assesses by an amendment in the said sub-rule (7)(b) of Rule 3 of CCR, 2004, through Notification No. 12/2015-Central Excise (N.T.) dated 30 April 2015, to provide that .

Credit of EC and SHEC paid on inputs or capital goods which are received in the factory of manufacture of final product on or which are received in the factory of manufacture of final product on or after the 1st day of March 2015 can be utilized for payment of excise duty leviable under the First Schedule to the Excise Tariff Act.

Credit of balance fifty per cent EC and SHEC paid on capital goods received in the factory of manufacture of final product in the financial year 2014-15 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act.

Credit of EC and SHEC paid on input services received by a manufacturer of final product on or after the 1st day of March 2015 can be utilized for payment of the duty of excise specified in the First Schedule to the Excise Tariff Act.

Recommendation

There is an urgent need to make suitable amendments in the CCR, 2004 so as to allow:
Accumulated credit balance of EC and SHEC as 28.02.2015 in the CENVAT a/c of a manufacturer of excisable goods to be utilized towards payment of duty of excise leviable on the excisable goods removed by the manufacturer on or after 01.03.2015

Accumulated credit balance of EC and SHEC as 31.05.2015 in the CENVAT a/c of a provider of taxable services to be utilized towards payment of service tax leviable on the taxable service provided on or after 01.06.2015

Credit of EC and SHEC paid on inputs or capital goods prior to 1 March 2015 which are received by the service provider on or after the 1st day of June 2015 to be utilized for payment of service tax on output services.
Credit of balance fifty per cent EC and SHEC paid on capital goods received by the service provider in the financial year 2014-15 to be utilized for payment of the duty of service tax on output services.
Credit of EC and SHEC paid on input services prior to 1 June 2015 under an invoice, bill or challan which is received by a service provider on or after the 1st day of June 2015 to be utilized for payment of the service tax on output services.

11. Unjust levy of Service Tax on advances received where the taxable event of "Provision of Service" have not been completed

Presently, the law prescribes that Service Tax is to be discharged on advances received by an assessee against taxable services to be provided at a future date.

Under fiscal laws, Central Government is permitted to collect taxes/duties on the basis of "taxable event" that must have been occurred for triggering the tax/duty liability. It is well settled by several Supreme Court judgments that the "act of manufacture" is the taxable event in excise, the "act of import" is the taxable event in the case of import duty, the "act of exportation" is the taxable event in the case of export duty, and the "act of sale" is the taxable event in the case of sales tax. In the same vein, in the case of service tax the taxable event is the "act of rendering service.

Since the enactment of Point of Taxation Rules, 2011, the earlier practice of payment of Service Tax on receipt basis has been dispensed with and Service Tax is now prescribed to be paid on the basis of issuance of invoices (upon actual provision of service), whether or not consideration against such bills are received

The above principle stands on an equal footing with similar provisions under statutes dealing with Customs duty/Excise duty/ VAT/CST law, where duty liability is triggered only on filing of B/E or

issuance of bills for clearance of goods and not at the time of receipt of advances against future clearances, particularly given that taxable event in such cases has not happened

It is a legally sound proposition that in the case of service tax, the taxable event is the act of rendering service and the taxable event cannot be construed to mean that tax liability shall be triggered on realisation of advances even when no service have, in fact, been rendered

Under the present law, Service Tax liability is triggered even before initiation of the taxable event and this go against the principles of tax neutrality and fundamental of tax administration put to practice internationally.

Recommendation

Provisions under Rule 3 of the Point of Taxation Rules, 2011 should be suitably amended to exclude payment of Service Tax on advances received where no services have actually been provided.

12. Inordinate delays in processing of refund applications filed before various Service Tax Commissionerates across India.

Service providers and manufacturers file applications for seeking refund on multiple counts like refund of CENVAT Credit of inputs and input services that have gone into exporting goods and services. The legislative intent behind these provisions is to make Indian Inc. competitive in Global markets by ensuring that burden of taxes paid on procurements are not loaded onto the prices quoted.

Processing of such refund applications takes significantly longer period of time.

Quite often such applications are rejected (more so in year end to meet revenue targets) on procedural and flimsy grounds mandating the need to appeal before higher forums against to actually realize the refund.

These delays adversely impact the cash flows and increase the borrowing, litigation and other costs which diminishes the competitiveness of the Indian Manufacturers and Service Providers in global arena

Recommendation

Effective implementation of the existing instructions for time bound disposal of the refund applications.

Secondly, CBEC needs to release a Standard Operating Procedure to be followed by all officers pan-India, while undertaking investigations and audits relating to refunds claims so filed by the manufacturers and service providers.

In addition, a robust and transparent framework should be introduced to track the progress and status of all the refund applications so made.

13. Delay in disposal of appellate proceeding at Commissioner Appeals/CESTAT

At present there are undue delays in disposing-off proceedings pending before various Appellate Authorities like Commissioner Appeals/ CESTAT on account of various reasons such as:

- Inadequate bench strength or
- More importantly irrational and conservative approach of departmental officers in mechanically dragging matters to litigation (for decision) instead of disposing of the matter rationally at the adjudication stage taking cognizance of factual matrix, judicial precedence and CBEC circulars/ instruction.

The above leads to huge piling of matters at various appellate forums leading to prolonged uncertainty and ambiguity on the topic under dispute.

Recommendation

There is a serious need of robust Appellate mechanism in the country to ensure speedy disposal of proceedings. This could be achieved either by increasing the bench strength of CESTAT or by introducing the concept of fast track Courts for disposing off high value litigation.

In addition, departmental officers should be sensitized about the serious repercussions, on the trade in general, of their irrational conduct by not undertaking appropriate due diligence at the adjudication stage and thereby putting pressure on the entire appellate system (which results in either denying or significantly prolonging justice).

14. Mandatory Pre-deposit of Tax and Duty demanded

After enactment of the Finance Act (No.2), 2014 with effect from 06.08.2014, Section 35F of the Central Excise Act, 1944 (and Section 83 of Finance Act) and Section 129E of the Customs Act, 1962 have been substituted with new sections to provide for mandatory pre-deposit as a percentage of the duty demanded where duty demanded is in dispute or where duty demanded and penalty levied are in dispute.

At present there are undue delays in disposing-off proceedings pending before various Appellate Authorities like Commissioner Appeals/ CESTAT on account of various reasons. Delay in disposing of the matter is therefore leading to blockage of funds for substantial period of time.

Recommendation

An alternative in terms of offering Bank Guarantee in lieu of pre-deposit in cash should be allowed.

15. Differing views on critical technical aspects across Commissionerate

It is very common phenomenon to see that provisions under various revenue laws and the rules, notification or circulars issued there under are interpreted differently across Commissionerates.

For instance, aspect of eligibility of service procurement towards CENVAT Credit differs from officer to officer.

This results not only in avoidable litigation but also in unproductive utilization of time and effort for both trade fraternities as well as of the Revenue officials.

Recommendation

CBEC being a uniform body responsible for administering Central Excise, Customs and Service Tax Laws across India, it should ensure that there remains consistency in the application or implementation of these laws.

CBEC should set up a process to encourage constructive debate on contentious/ litigious topics involving trade fraternity to understand nitty-gritty across business segments. Selection of contentions topic could be based on specific feedback received from trade in this regard.

CBEC should then frame their views and policy thru consultative approach to be implemented in a standardized and consistent manner across the Country.

CBEC should also consider making its current training programs for field officials more effective. This could be done by having sector specific trainings since every business sector has its own peculiarities and business models therefore it is very important to understand and appreciate these complexities to be able to be more judicious in performing and discharging their duties while dealing with assessees representing varied businesses.

16. Service Tax burden to Power Sector - Expansion of Negative List to zero rate service provided to Power Facilities

Energy security, conservation and efficiency, are recognized by the Government of India as "areas of key concerns" in sustaining India's overall economic development. However, efforts at addressing these key concerns are facing various challenges such as acute shortages of domestic coal and gas, the sudden increase in prices of imported coal for power projects, delay in environment and forest clearances and difficulties relating to project finances. These, in turn, are delaying the implementation of large power projects in the private sector

The Honorable Prime Minister in his commitment to the country's leaders of Power Sector, for taking steps to explore and implement all "pragmatic and viable solutions" has emphasized on fiscal and regulator measures for this sector.
Government's tax philosophy has been to provide electricity to the Nation at affordable price, without loading any tax cost. Accordingly, levy of central indirect taxes are exempted on generation, transmission and distribution of electricity. However, there is no exemption from service tax on services procured in relation to setting-up, operation and maintenance of the power plant.

Currently, service tax exemption is applicable on construction, operation and maintenance to four out of five critical infrastructure sector namely Roads, Ports; Airports; and Railways. Power sector is the only critical infrastructure sector to which service tax exemption on construction, operation and maintenance is not exempted for any just reasons.

Non-availability of CENVAT credit of service tax has been the factor resulting in cascading effect on the electricity tariff, which due to various external factors is reportedly set to increase by approximately 35% to 40%.

In this regard, the Planning Commission has also observed that non-price incentives are extremely important to built up Energy efficiencies which includes providing appropriate tax incentives as well as neutralizing the tax cost across energy sector.

Recommendation

It is imperative effect of service tax be neutralised by levy zero rate of services tax on taxable services in relation to construction, setting-up, operation and maintenance of Power Facilities or include the same in the "negative list" along with implementation of an appropriate mechanism to ensure expeditious grant of refund of duties and taxes paid on inputs and input services used by the service provider in course of providing such 'zero-rated' services

17. Complexity towards multiplicity of taxes – levy of service tax and VAT on the same transaction

Recommendation

Two constitutional levies cannot simultaneously be imposed on the same value of the transaction –

There are instances of lease rental transactions where the service tax authorities are of the opinion that the said transaction would come under the ambit of supply of tangible assets and thereby leviable to Service Tax. On the other hand the State VAT Authorities have distinguished the above observation and have held that providing goods on rental basis is an activity of 'Transfer of Right to use' and hence would fall within the definition of sales and would be liable to sales tax/VAT.

The above situation has created an anomaly to the extent as to whether a lease rental transaction would be liable to Sales tax or Service tax or both. In most of the cases the assesses in order to avoid long drawn process of litigation wish to pay both the taxes thereby leading to cascading effect of tax.

JUSTIFICATION/REMARKS:

The respective legislative authority should endeavor in laying down conditions precedent involved in both the transactions i.e. that of deemed service and deemed sales more explicitly. This would avoid the incidence of double taxation on the same lease rental transaction and also reduce unnecessary litigation.

18. Availment of Cenvat credit for Banking and Finance sectors

Recommendation

Clarification is required from Ministry of Finance (CBEC) as to whether in terms of the provision of Rule 6(3B) of the Cenvat Credit Rules, availing of 50% of the credit at the very inception stage and charging the balance 50% to the Profit and Loss account as expense, is correct and precise and is in compliance to Rule 6(3B) of the Cenvat Credit Rules. Further clarification is required as to whether the present practice which we are following since 1-04-2011, gives due effect to the theme and spirit of the provision as laid down as per Rule 6(3B) of the Cenvat Credit Rules.

JUSTIFICATION/REMARKS

In the absence of such clarification at present the numerous assesses under Banking & Finance Sector are following different methodology towards the compliance of Rule 6(3B) of the Cenvat Credit Rules. There should be specific clarificatory circular/guiding provision governing the precise procedure thru which such Cenvat cr reversal should be made.

19. **Service tax in Securitization transactions – (ie income from interest gain)**

Recommendation:

Suitable clarification should be issued by CBEC clarifying that no Service Tax would be levied on any financial gain arising to the Originator (i.e. NBFCs) on account of Securitization of any financial assets such as loan, receivables as well as on the assumption/presumption that the NBFCs provide any services on account of Securitization of financial asset or receive any consideration for such transactions.

JUSTIFICATION/REMARKS:

Service Tax officers across the country have the predetermined notion that some elements of services are embedded in Securitization process, but Securitization does not involve any service rendition other than the gain of interest. The income which is actually earned from the process of securitization is the ''Gain of Interest''. Interest is not liable to service tax.

20. **Time limitation for issuance of SCN for non fraud cases should be reduced from 30 months to 18 months**

Recommendation:

A suitable notification/clarification in respect of the above issue to the extent of rationalizing the time frame for issuance of SCNs for non fraud cases should be kept at 18 months. This would be beneficial for not only reduce the litigation in service tax area but also would ease of doing the business.

JUSTIFICATION/REMARKS:

With effect from Budget 2016 the Central Govt. has increased normal period for issuing SCN in non-fraud cases from 18 months to 30 months in Service tax, which can have wide and far reaching negative impacts for the major business houses (who contribute a considerable share towards the annual GDP and growth of the country) and diligent tax payers taxpayers like SREI group.

In pursuant to the change in era of automation and technology, when there is a provision for compulsory e-filing of service tax returns and mandatory e-payment of service tax, the extension of time period for issuing SCN does not seem to be prudent. Non fraud cases mainly occur due to errors while filling in statutory e-returns or making e-payment of service tax or due to pure interpretation issue of the provisions of law. The sole reason behind the introduction of e-filing of service tax returns and e-payment of taxes is that, the Department can immediately scrutinize the same and seek all necessary clarifications if required from tax payers. Therefore there is no necessity for the postponement of such scrutiny of the returns till 30 months.

21. <u>Service tax should be waived on funds received from Central Govt. as aid</u>

<u>Recommendation:</u>

Many a times Private Entrepreneurs partner with Government Authorities TIE-UP for developing infrastructure facilities across the country and specially in the Rural areas for masses to achieve the overall socio-economic objectives of the Government of India by forming Public – Private Partnership (PPP Model). Service tax Exemption on Govt aid/grant received for Socio – economic development for rural masses should be allowed. Further, the receipt of Government Grant should specifically be covered by the Negative List of Services specified in the Act.

<u>JUSTIFICATION/REMARKS:</u>

Service Tax Authorities have been issuing show-cause notices and also raising demands for Service Tax on the aforesaid Government grants-in-aid. This is creating immense hindrance in carrying out mass socio-economic reform activities for the Below – poverty- line masses in India.

22. <u>Service tax on sale of Software and Hardware</u>

<u>Recommendation</u>

Clarification towards the levy of service tax upon either Sale of software or hardware should be released

<u>JUSTIFICATION/REMARKS:</u>

Since as per the present field formations the service tax authorities are in the practice of charging service tax on both sale of software as well as hardware. While it is evident that the supply of hardware by way of direct sale by way of transfer of ownership/transfer of right to use, has nothing to do with provision of service. There is no essence of supply of service in the instant situation of supply of IT hardware.

23. <u>Service tax and Sales tax on same transaction- sale of Software</u>

<u>Recommendation</u>

Clarification towards the levy of service tax and sales tax upon sale of software lisences should be released. Either Sales tax or service tax should be levied on the sale of software. Both taxes should not be levied on the same transaction value.

<u>JUSTIFICATION/REMARKS:</u>

At present the software development industry is facing huge tax burden wherein both the state levy – VAT and Central Levy – Service tax is imposed on the same value of sale of software lisences, thus leading to unnecessary cascading effect of tax.