The Bengal Chamber

Budget Memorandum Service Tax, Central Excise and Central Sales Tax

SERVICE TAX

1. Input Tax Credit of Service Tax paid on reimbursements to Input Service Provider

Under the Service Tax (Determination of Value) Rules, 2006 the taxable value of a service is to be computed inclusive of cost of any reimbursements made to the service provider. The only exception is in respect of reimbursements made to a pure agent of the service recipient.

The Department often takes a view that the service tax paid on the value of reimbursements is not eligible for input tax credit. This view of the Department causes considerable avoidable disputes and litigation.

It is recommended that appropriate clarifications are issued to the effect that the Service Tax paid on the value of reimbursements made to an input service provider is also eligible for input tax credit.

2. Credit for Input in case of composition scheme followed by the works contractor

Rule 3(2) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 provides that the provider of taxable service opting to pay service tax under the composition scheme is not entitled to take cenvat credit of duty on inputs, used in or in relation to the said works contract, under the provisions of the Cenvat Credit Rules, 2004.

There is no restriction under notification No.32/2007-Service Tax dated 22.05.07 to take cenvat credit of duty paid on capital goods and/or service tax paid on input services.

It is recommended that the laws be amended appropriately to allow cenvat credit in respect of inputs to works contractors who have opted for the composition scheme.

3. Applicability of Service tax on occasional activities:

Occasionally, an industry that is engaged in manufacture also does some activity or provides a service which is taxable under the ambit of service tax.

Such activities are performed by the company not in the nature of the **continuous activity** but are done only as **an isolated or occasional activity.** For example, providing training to some group company or to some external parties where a nominal amount is charged only towards the actual cost and no amount is realized towards the profit. These companies are not engaged in the business of providing training.

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Suggestion: We submit that such activities are done only with an objective to help/assist the group companies/external parties and there is no **profit motive** involved behind doing so and hence service tax should not be applicable on **such isolated or occasional activity.**

It is suggested that CBEC in such cases should simplify the procedure by fixing a separate thresh hold limit for payment of tax and registration.

4. Amendment of the Provision relating to Offences and Penalties

Rule 4A(1) of the Service Tax Rules, 1994 provides that every person providing taxable service shall , not later than fourteen days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of such taxable service provided or to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-

(i) the name, address and the registration number of such person;
(ii) the name and address of the person receiving taxable service;
(iii) description, classification and value of taxable service provided or to be provided; and
(iv) the service tax payable thereon

Section 89(1)(a) of the Finance Act provides that person receiving any taxable service chargeable to tax under sub section (2) of Section 68, without an invoice issued in accordance with the provisions and rules made under Service Tax Law shall be punishable.

As a result of the above, in the case of services where the recipient is liable to pay tax on reverse charge basis, obligation to receive the invoice in accordance with the Service Tax laws has been cast on the service recipient, though the invoices are issued by the service provider. For any non compliance on the part of the service provider to raise invoice in accordance with the Service Tax law, (for example the invoice not being issued by the service provider within the stipulated period of 14 days from the completion of service) recipient is made punishable as per the current provision in law for an offence not committed by the service recipient.

Suggestion: It is recommended that Section 89(1) (a) be amended so as to remove obligation casted on service recipient, liable to pay tax under reverse charge mechanism, to receive the invoice from the service provider in accordance with provisions and rules made under Service Tax Law.

5. Cascading of Service Tax for Brand Owners when Manufacture is by Job-Workers

As per the provisions of Cenvat Credit Rules, 2004 cenvat credit on inputs and capital goods may be availed by a manufacturer as long as such inputs / capital goods are physically received in his factory premises under cover of a valid Central Excise Invoice and are used by him in or in relation to manufacture.

However, under the same Rules, credit of service tax may be availed by an assessee on payment of the same to any input service provider, as long as the input service is received in or in relation to manufacture. The credit is, thus, only available on the basis of Invoice payments.

In the case of Brand Owners (Principal Manufacturers) who employ job-workers exclusively for manufacture of goods, the benefit of cenvat credit on inputs is available since the job-worker can claim the cenvat credit and offset his central excise liabilities against the said credit. However, as far as service tax is concerned, since the payments for taxable input services are generally effected by the Principal Manufacturer instead of the job-worker, the benefit of service tax credit is not available. This is due to the fact that the Principal Manufacturer cannot avail the credit since he is not the manufacturer and the manufacturer, i.e., the job-worker, cannot avail the credit since he does not pay for the taxable input service. Consequently, under the Rules the Principal Manufacturer employing job-workers exclusively is discriminated against in relation to Principal Manufacturers having their own manufacturing facilities, in so far as credit of service tax is concerned.

The Cenvat Credit Rules also provide for an Input Service Distributor (ISD) mechanism whereby the credit of service tax can be distributed by an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under Rule 4A of the Service Tax Rules 1994 towards purchase of input services. Hence, by definition, the ISD cannot distribute credit of service tax to job-workers in case the input services are paid for by the Principal Manufacturer.

Accordingly, the provisions of the Cenvat Credit Rules, 2004 create an inequitable situation, in that, the benefit of cenvat credit pertaining to inputs and capital goods is available to the assessee irrespective of whether manufacture is in-house or at job worker premises whereas the benefit of service tax credit is available only if the manufacture is at the assessees own unit. This inequity dilutes the cost competitiveness of assessees who own brands and use job-workers exclusively for manufacture of goods – more so since, over the long term an increasing number of services are proposed to be brought under the service tax net.

Suggestion: It is recommended that the Cenvat Credit Rules be amended to provide a mechanism that enables availment and distribution of credit of service tax by brand owners to job-workers. This will ensure cost competitiveness of the brand owners and protect the long-term interests of job-workers.

In the alternative, the Principal Manufacturer should be permitted to use the credit of service tax to off-set any Central Excise or Service Tax liability in respect of his own manufacture or services provided.

6. 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 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.

Suggestion: 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.

7. Service Tax – Agricultural Produce

As per extant Service Tax laws the agro-sector has been supported by excluding a host of services like Business Auxiliary Service, Warehousing & Storage Services, Site Formation Services, Cleaning Services, GTA and other Transportation Services and so on from the ambit of taxable services as long as the service is provided in respect of agricultural produce/agricultural land. However, there are some services like Laboratory Testing Services, Security Services and so on – which are essential to determine quality as well as to ensure secure storage of agri-produce – are subjected to Service Tax.

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

8. <u>Refund of Service Tax in case of exports</u>

Exporters are eligible for refund of service tax paid on specified input services used in the course of export of goods / services from India. However, in many instances the empty containers from ports /ICDs are moved to the place of removal for stuffing. Whilst the exporter has to bear the freight for the to and fro movement of containers, tax paid on service provided for moving the containers in from the port/ICDs is not eligible for refund.

Moreover, the documentation prescribed for refund, per Notification 17/2009 dated 7th July 2009, is voluminous and complicated. Consequently, considerable time and effort is required on part of the exporter as well as the input service provider to ensure correct supporting documentation for refund applications. Due to the complexity of documentation involved in the process, in a large number of cases the refund applications claims are rejected by the Department on technical grounds due to minor discrepancies on the documents. This causes avoidable financial hardship for the exporters.

In order to ensure that the service tax cost does not get embedded to exports (due to non availability of refunds) and to cover all services received in connection with exports under the refund scheme, it is recommended that:

a. Service tax paid on the service of moving in containers from ports/ICDs for the purposes of stuffing is also made eligible for refund.

b. Simplification is brought about in prescribed documentation for refund applications. Toward this the suggested changes required in Notification 17/2009-S.T. dated 7th July 2009 is reproduced below in the relevant portions of the said Notification:

Classification of sub-clauses of clause 105 of section 65 of Finance Act 1994	Taxable Services	Documentation requirements / conditions
(j)	Service provided by a clearing and forwarding agent in relation to export goods exported by the exporter	Exporter shall produce (i) invoice issued by clearing and forwarding agent for providing services specified in column (3) specifying ***any one*** of the following a. number and date of shipping bill ***b. container number***

		c. Bill of Lading Number d. number and date of the invoice issued by the exporter relating to export of goods
(h)	Service provided by a custom house agent in relation to export goods exported by the exporter	Exporter shall produce (i) invoice issued by clearing and forwarding agent for providing services specified in column (3) specifying ***any one*** of the following a. number and date of shipping bill ***b. container number*** c. number and date of the invoice issued b the exporter relating to export of goods ***d. Bill of lading number***
(zzp) & (zzzp)	i. Service provided for transport of said goods from inland container depot to the port of export ii. Services provided to an exporter in relation to transport of export good directly from the place of removal, to inland container depot or port or airport, as the case may be, where the goods are exported. ***iv. Services provided to an exporter in relation to transport of containers from port or airport or inland container depot to the place of removal in connection with export of goods***	i. Exporter shall certify that the benefit of exemption provided vide notification number 18/2009-ST, has not been claimed; and ii. Details, those are specified in the invoice of exporter relating export goods, are mentioned specifically mentioned in the lorry receipt ***or consignment note or Transporters' invoice*** and the corresponding shipping bill Invoice issued by the exporter in relation to export goods shall indicate the inland container depot or port or airport from where the goods are exporter

9. Windmills are a renewable energy source. Installation of windmills is in line with the renewable energy policies of the Government. Windmills are exempt from most indirect taxes except Service Tax. On erection, commissioning and maintenance of windmills in wind-farms Service Tax is payable. **However, since the wind-farm is normally situated**

outside the factory premises, the Department refuses to allow availment of input tax credit of service tax – notwithstanding the fact that the electricity generated from the wind-farm is used in the manufacturing process. Government should issue clarifications in this regard such that such input tax credit can be availed by assesses.

10. Finance Act, 1994- Service Tax- Abatement for "Management, Maintenance or Repair"

Abatement may be exteneded for "Management, Maintenance or Repair" of services in line of allowing abetment in case of " Erection, Commissioning and Installation" u/s 65(105)(zzd) of the Finance Act, 1994 since the former is also taxable under VAT/CST

11. Time limit for submitting Service Tax Return

At present Service Tax Return is required to be filed half yearly by 25th April and 25th October in respect of half year ending on 31st March and 30th September respectively. Please note that most of Corporates are kept busy during April for closing its books of accounts and tax accounts. During October, employees are busy for closing half yearly accounts. **In the background of the due date for submitting the above return may be fixed by giving 45 days time**

12. Deputation of services to Group Companies- Reimbursement of Expenses

Sometimes employees seconded or transferred to the Group Companies and expenses for such personnel are recovered in the form of Debit Note raised on the respective group Company. No business is involved in the whole process and debit note value is basically the actual cost of the employee (salary etc)

Suitable clarification is needed to confirm that such services are outside the purview of the Service Tax since the Company is not engaged in the business of providing the manpower services.

13. Non acceptance of manual return by the Department with regard to Input Service Distributor

Rule 9(10) of the Cenvat Credit Rules, 2004 does not require submission of return by way of e-filing. However, Department is not accepting such return which is being filed manually. Suitable clarification is needed for the above.

14. Rule 6(3B) and Section 65 of the Finance Act 1994 (Service Tax)

Under the above-mentioned rule, a banking company and a financial institution including an NBFC, providing taxable service specified in sub-clause (zm) of clause (105) of section 65 of the Finance Act, shall pay for every month an amount equal to 50% of the CENVAT Credit availed on inputs and inputs services in that month. Tax research unit of Ministry of Finance explained vide D.O.F.No. 3345/3/2011-TRU dated 28th February 2011, Para 1.16 of Ann-C that substantial part of the income of a bank is by way of interest in which a number of inputs and input services are used. There have been difficulties for the department in ascertaining the amount of credit flowing into earning these amounts. Thus, a banking company or a financial institution, including NBFC providing banking and financial services, are being obligated to pay an amount equal to 50% of the credit availed.

Suggestions :

It is submitted that every loan transaction which fetches interest income is associated with various fees income viz. Management Fees, Processing Fees, etc. which are subject to Service Tax. Interest income from Loan is out of the purview for valuation of Service Tax but its associated fee based incomes are subject to Service Tax.

A circular under section 65 may be issued to the effect that **those NBFCs which deposit an amount of Service Tax in relation to fee based income which is associated with Loan transactions may be allowed to avail 100% Cenvat Credit on input services availed instead of arbitrary 50% Cenvat Credit availed as proposed in the Union Budget of 2011-12**.

15. Double Taxation - Service Tax and VAT on same or similar transaction

It is submitted that when a particular transaction is deemed to be a sale and thus exigible to Sales Tax / VAT, the said transaction cannot be treated to be a taxable service under section 65(105)(zm) of the Finance Act, 1994 (as amended from time to time). To ascertain whether the Parliament has encroached upon the legislative field of the State Legislature by imposing service tax on a deemed sale, the **doctrine of pith and substance** may be applied, and that would imply the constitutionality of section 65(12) and section 65(105)(zm) cannot be saved. When the Constitution of India has included hire purchase, finance lease and operating lease transactions as deemed sales, in such event it was not open to the Parliament to make such transaction exigible to service tax in exercise of its power conferred under Article 246(1) of the Constitution of India.In this connection reference is made to the **TRU letter No. D.O.F. No.334/1/2008-TRU dated 29-02-2008 [2008 (9) STR (C61)]** where it has been provided that supply of tangible goods for use, which are liable to VAT/Sales Tax under Article 366(29A)(d) are not covered under Service Tax. It is pertinent to mention that by Finance Act, 2007, service tax on works contract services was specifically introduced vide Sec. 65(105)(zzzza) of Finance Act, 1994 read with Rule 2A of the Service Tax (Determination of Value) Rules, 2006, as amended. The said provisions clearly envisage that value of works contract service on which service tax would be leviable, shall be the gross amount charged for the works contract less the value of transfer of property in goods included therein (which is subjected to VAT/ST as the case may be) and also the amount of VAT/ST paid, if any, included therein. The legislative intention is clear that what is covered under ST/VAT Statute cannot be taxed as Service Tax.

When a transaction is deemed to be sale, then the said transaction cannot be treated also to be a taxable service and made exigible to service tax since transaction or part thereof for a particular and specific value can either be of sale or service and cannot be both. Two constitutional levies cannot simultaneously be imposed on same value of the transaction or part thereof.

Hire purchase, finance lease and operating lease transactions have been made exigible to sales tax and/or VAT and the power and competence to levy tax on such transaction is entirely vested with the State Legislature. It was beyond the competence, authority and/or jurisdiction of the Parliament to levy service tax on the same transaction. The **doctrine of occupied field** is squarely applicable as the State Legislatures are alone competent to levy tax on such transaction in the form of VAT since the said transaction is deemed to be sale under Article 366(29A)(c) and (d) of the Constitution of India. Hence, the levy of service tax in hire purchase, finance lease and operating lease transactions by Parliament is absolutely unconstitutional being opposed to sub clauses (c) and (d) of Article 366(29A) of the Constitution of India.

CENTRAL EXCISE

Excise Duty:

1. Warehousing provision for the steel Industry:

In the steel business, it is a practice that most of the materials are sold from stockyards/depots which are situated across the country and there is a time lag between dispatch of material from the manufacturing plant and sale from the stockyard/depot. As such, there is possibility of a difference in the price prevailing at the time of despatch of materials from the plant and the price prevailing at the time of final sale of material from the stockyard.

Suggestion: **As per Warehousing provisions of Rule 20 of Central Excise Rules 2002, the Central Government may by notification, extend the facility of removal of any excisable goods from the factory of production to a warehouse, or from one warehouse to another warehouse without payment of duty subject to such conditions, including penalty and interest etc. Steel materials should be included in the warehousing provisions. This will simplify the existing procedure, as, excise duty will be paid on final selling price from stockyard. This will ensure correct payment of duty and the procedure will be simpler compared to existing practice of paying duty on latest prevailing prices which may differ from final price. Such change will eliminate disputes relating to valuation at the time of dispatch from plant while, at the same time, achieving the purpose of levy of duty on final selling price.**

2. Eligibility of Cenvat Credit on reconstructed/endorsed copy of Bill of Entry:

Rule 9 of the Cenvat Rules, 2004 and notification no 13/2003 –C.E(NT) stipulate that cenvat credit under Rule 3 shall not be denied as per the documents prescribed under (1) (a) to (1) (d).

Suggestion: Cenvat Credit should also be allowed on the following documents:-

i) Reconstructed copy of the bill of entry if the original triplicate copy is lost.

ii) Endorsed copy of the bill of entry.

These documents should be included in the scope of the Rule 9 of the Cenvat Credit Rules, 2004 and it should be suitably amended.

3. Printing of Facsimile Signature Electronically Scanned on the Invoice:

Computerization and communication technology has developed manifold and many industries have implemented the best available ERP Software like SAP after making huge investments.

Suggestion: We submit, that industries should be allowed to print facsimile signature which is electronically stored in the computer system.We would also like to mention here that as per Section 36-B of Central Excise Act, micro films, facsimile copies of the documents and computer prints outs have been admitted as documents and as evidence.

4. Valuation of material for clearance to own units/sister concerns for use in civil construction purposes/repairs and maintenance etc: None of the rules of the valuation specify the method of the valuation to be followed in cases mentioned hereinabove.

Rule 8 of the Valuation Rules deals with the situation *"Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other article, the value shall be (one hundred and ten percent) of the cost of production or manufacture of such goods"*.

According to Rule 11 of the Valuation Rules, 2000 *" If the value of any excisable goods cannot be determined under the foregoing rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub section (1) of section 4 of the Act."*

It is very much clear from the perusal of both the rules of valuation mentioned above that for the clearance made to sister concern/own units for the purpose of use in civil construction and repairs & maintenance Rule 8 of the Valuation Rules can only be applied by resorting to Rule 11. We suggest that where excise duty is levied on end product, rules could be liberal and practical for valuation of intermediate transfers as the interest of the state is eventually protected. This would go a long way in avoiding disputes over valuation of materials used for further processing by the assessee or on behalf of assessee.

Suggestion: We submit that a circular, clarificatory in nature, should be issued to avoid any litigation.

5. Central Excise Tariff:

On and from 1st March, 2005 the Central Excise Tariff has been made 10 digit from earlier 8 digit. Also, while making the 10 digit tariff heading, the unit of measurement has been indicated. However this causes hardship in items where the unit in which it is normally sold is different from the unit indicated in Tariff.

Suggestion: The unit of measurement should be flexible and industries should be given free hand to adopt the appropriate and acceptable unit of measurement as was prevalent prior to March'05. Board may like to issue necessary instruction in this regard.

6. Exemption from payment of an amount under Rule 6 for despatches to SEZ developers:

Many industries are supplying their products to SEZ developers against receipt of the exemption notification supplied to them by the SEZ developer. The exemption certificate issued to the SEZ developer by the Ministry of Commerce & Industry states that they can procure materials from domestic tariff area (DTA) without payment of excise duty. It also mentions that DTA supplier will have to follow the procedure with respect to export for supplying the materials to SEZ developers.

Central Excise Department now is raising demand for payment of an amount of 10% (as applicable during the relevant period of time) on the sales value of the products to the SEZ developers under Rule 6(3)(b) of the Cenvat Credit Rules,2004. This demand is being raised for

the period prior to 31.12.2008 as w.e.f 31.122008 vide notification no 50/2008 – Central Excise – NT dated 31.12.2008 , CBEC has exempted the despatches to SEZ developers also from the payment of this amount**.**

Suggestion: In this connection, we would like to submit that **"exports**" as defined in Sec 2(m) of the SEZ Act, 2005, includes supply of goods to a SEZ units as well as a developer.

The two Acts i.e SEZ ACT & Central Excise Act are not in agreement as regards central excise exemption. The SEZ Act, provides for the tax exemptions for "**SEZ developers**" also whereas, Rule 6(3)(b) of CCR,2004, as applicable up to 30.12.08, provides for exemption from payment of 10% only to SEZ unit (not to SEZ developers). A manufacturer supplies to the SEZ developer under the cover of the **ARE-1** and also submits the proof of exports to their jurisdictional excise office. As mentioned above, the exemption certificate issued by the Directorate of Commerce & Industry states that the manufacturer has to follow the **export procedure** for dispatch to SEZ developer. As per the SEZ Act, despatches to SEZ developer is also being treated as exports which has been kept out of the purview of the payment of 10% amount during the relevant period of time as per Rule 6(6) (v) of the Cenvat Credit Rules.

CBEC also has realized this anomaly in the Cenvat Credit Rules, 2004, and has given exemption to the SEZ developers also. The only issue in this regard is that this exemption should have been with retrospective effect.

In view of the submission made above , it is suggested that the exemption to SEZ developer from payment of an amount of 10% granted vide notification no 50/2008 – Central Excise – NT dated 31.12.2008, should be made applicable with retrospective effect.

CBEC should issue a circular clarifying this which will settle all disputes in this regard.

7. Benefit of exemption from payment of excise duty should be made optional

Finance Act,2005 , by amending Section 5 A of the Central Excise Act had made a change in the position w.r.t exemption on payment of central excise duty on an exempted product. As per the amendment if any excisable goods are exempted from the payment of excise duty unconditionally, the manufacturer of such goods will be bound to avail the exemption. Prior to this amendment the exemption the exemption was optional to the manufacturer and the manufacturer was free to work under modvat scheme if the exemption does not suit him.

Suggestion :-

We submit that such a provision in the Central Excise Act is against the large manufacturers who intend to set up factory by making huge investment in capital goods. Under such a scheme it will not be feasible for the manufacturer to make investment in setting up industries for manufacture of exclusively exempted product as they will lose the cenvat credit. Further, if the excise duty is paid on the final product and if the same is used as input for manufacture of other excisable goods, the cenvat credit can be availed.

In view of the same, Government should restore the earlier scheme of optional exemption.

8. Cenvat accumulation by the industries prior to commencement of the production :-

Central Excise registration is granted to the assessees before the factory is actually set up and production is started. It is important that an assessee should obtain central excise registration before

the factory is set up so that companies can procure excisable goods and services during the construction period and avail the benefit of Cenvat of the excise duty / service tax paid on supplies / services during the construction.

Central Excise Department in some cases is raising objection to reporting of the same in ER -1 return by the assessees. Central Excise Department is of the view that till the time the assessee does not become the manufacturer, he is not entitled to report the cenvat in their monthly ER-1 return

Suggestion:- It is felt that such an objection raised by the Central Excise Department is not proper and there should not be any issue when the assessees are only reporting the cenvat in the excise returns for the purpose of accumulation and the cenvat is never utilized by them till the factory actually starts the clearance of the product manufactured by them.

It is suggested that CBEC should bring out a circular and give necessary instruction to the Central Excise Department to permit reporting accumulated cenvat in the ER-1 returns even if the project is not commissioned and clearance of excisable goods manufactured by the assessee does not commence.

1. Summons under section 14 of Central Excise Act,1994

Section 14(2) of the Central Excise Act,1944, states as under ;

Quote

"All persons so summoned shall be bound to attend, ***either in person*** or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required".

Unquote

The Act, empowers the Central Excise Office not below the rank of Superintendent to issue summon notices and seek information/clarification in connection with any investigation conducted by him. Many a times summons are issued to senior officers of the orgnisation who is not directly dealing with the matter but having the over all incharge of the function.

Suggestion:- In a large organisation the specific responsibilities are discharged by specific group of individuals and senior officers of the orgnisation are not always directly engaged in the discharge of obligation related to all the function. It is suggested that Section 14 should be amended in such a manner that the senior officers of the organization should always be given the option to authorize the appropriate person to attend the summon proceedings. The same provisions should also be made applicable in case of service tax matters.

09. Revision of Central Excise Return :-

As per Rule 12 of Central Excise Rules, 2002, every assessee shall submit to the superintendent of central excise a monthly, quarterly and yearly return in the form specified by notification by the Board providing the necessary details within the scheduled date. The said provision is silent regarding the filing of the revised return in case of any incorrect information filed along with return which got detected subsequent to the filing of return.

Suggestion:- It is suggested that provision for filing of revised return should be inserted to the aforesaid rule within a permissible time. Similar provisions exist in case of sales tax, this will provide the assessee an opportunity to rectify the mistake.

10. Availment of cenvat credit in case of loss of original invoices :-

As per Rule 9 of Central Credit Rules, 2002, Cenvat credit shall be taken by the manufacturer on the basis of an invoice issued by a manufacturer for clearance of input or capital goods from his factory or depot or from the premises of consignment agent of the said manufacturer. Sometimes, both the copy of the invoices get lost by the transporter carrying the invoices in transit and accordingly, the transporter also lodges a claim to the nearest police station regarding the loss of invoice. The present rule, does not deal with this situation, which is a regular phenomenon.

Suggestion:- A clarification from the department may be issued in this matter, regarding the availment of cenvat credit on the basis of a true copy of an invoice duly attested by the concerned range superintendent of the manufacturer dispatching the goods.

11. Cenvat Credit on inputs for constructing Building /Civil Structure

As per the Rule 2 (K) (iv) B of cenvat credit rules, 2004, any goods used for –

(a) Construction of a building and or a civil structure or a part thereof; or

(b) Laying of foundation or making of structure for support of capital goods,

are excluded from the definition of inputs. There are some items which are bought directly from the supplier along with the capital goods which are used in support of the capital goods as those are designed as tailor made to support the capital goods. The throughput of the capital goods sometimes depends upon these goods which are used as support to the capital goods. If the above definition is strictly examined, then these types of goods are not excluded from the definition as these are not used for making of structure of capital goods rather directly support to the capital goods and ***hence these are basically the parts of the capital goods***.This results in to the various kind interpretations and ultimately leads to the litigation.

Suggestion: - **As stated above, without the use of these items the capital goods cannot be installed and cannot start functioning and hence it is suggested that department should bring out a circular clarifying this situation.**

12.Obligation of a manufacturer in case of clearance of by product/waste/refuse

As per the Rule 6 of cenvat credit rules, 2004, the cenvat credit shall not be allowed on such quantity of inputs used in relation to the manufacture of exempted goods. Some by products/waste/refuse also generated in the course of manufacture of final product which are inherent to the production process. These materials are required to be disposed off. There is no clarity on treatment of these kinds of products in the said provision. However, there are judicial pronouncements in which it has been decided that cenvat credit is not required to be reversed for the clearance of by products/waste/refuse.

Suggestion: - It is suggested that a clarification in this regard should be issued by the department clarifying the situation as mentioned here in above.

13. Excise Duty on Matches

Safety Matches are classifiable under Central Excise Tariff Heading 360590. The rate of duty on matches is 10%. However, full exemption from excise duty is available if none of the following processes is ordinarily carried on with the aid of power during manufacturing:

i. Frame filling
ii. Dipping of splints in the composition for match heads
iii. Filling of boxes with matches
iv. Pasting of labels on match boxes, veneers or cardboards
v. Packaging

Typically, matches are manufactured with the aid of power in:

i. Units where power is used for dipping of splints in the composition of match head and the rest of the processes like box filling , tens packaging, unit packaging and bundle packaging, etc. are done manually.

ii. Units where power is used across the manufacturing processes.

Currently most of the match manufactures in the country belong to category (i) listed above.

There is large-scale avoidance of duty by many manufacturing Units that use power for the process of dipping of splints into the chemical composition. These Units clear the chemically dipped head splints (matchsticks) without payment of duty, since the goods are at an intermediate stage of production, to Units that pack and label the matchsticks without using power. The latter Units, in turn, clear the finished goods - safety matches - without payment of duty since, by virtue of no power being used for filling/packing/labelling the safety matches are fully exempted from Central Excise Duty.

Suggestion: To ensure a level playing field it is recommended that:

i. All matches are exempted from central excise duty – irrespective of mechanised / semi-mechanised / manual manufacturing, or,

ii. Excise duty levied on all matches that have undergone manufacturing with the aid of power (in respect of any of the specified processes) even if the matches are ultimately cleared from Units that do not use power for the process of packing. This will also ensure a reduction in avoidance of excise duty.

14. EXCISE EXEMPTION OF SSI

INCREASE IN SSI EXEMPTION LIMITS

Background

Notification No. 8/2003 dated 01/03/2003 as amended provides exemption to Small Scale Industries in respect of payment of Excise duty. An SSI unit can avail the said exemption if the turnover during the previous financial year does not exceed Rs. 400 Lakhs. The eligible SSI need not pay excise duty for their first clearance of Rs. 150 Lakhs (provided no cenvat credit is availed).

Suggestion:

It is recommended that the eligibility turnover in the Previous FY be increased from Rs. 400 Lakhs to Rs. 500 Lakhs along with an increase of the basic exemption from Rs. 150 Lakhs to 200 Lakhs / 250 Lakhs. This will encourage companies to enhance sourcing from

SSI units to avail the benefit of excise exemption which will also in turn help the SSI sector to grow. This would be in line with the recognition of the SSI sector as an engine of growth for Indian economy with a high potential for employment generation.

15. Levy of Central Excise Duty on Branded Readymade Garments

During the global recession in the recent past the industry came under severe pressure and financial hardship although the strong internal consumption in India helped mitigate the situation somewhat. Just as the industry was recovering from the effect of the global slowdown a 10% Central Excise levy was imposed in the Union Budget of 2011. The levy was justified as a transitory step to GST.

The imposition of excise duty has happened at a time when the industry is under severe margin pressure on account of account rising interest costs, raw material inflation, high freight and octroi costs, rising marketing expenses and VAT. Consequently, the industry has no option but to pass on the increased tax cost to the consumer. There has been a strong consumer resistance against increase in prices resulting in a significant drop in demand, thereby forcing the retailers to resort to extended discounting - creating further stress on margins that are already under severe pressure.

The Branded Garment Industry provides employment to lakhs of semi-skilled women in the country. The drop in demand will have an adverse impact on the employment of these workers who are, predominantly, from the economically weaker sections of society and have very limited scope of employability.

Suggestion: It is recommended that instead of the current duty levy of 10% on branded garments, excise duty at 1% may be levied - in line with the 130 items on which a similar levy was imposed in Union Budget 2011 as a precursor to GST. This will provide appropriate relief to industry, pave the way for rebuilding the growth sentiment and be in line with the rollout of GST.

16. Excise Duty on Confectionery:

Organised Confectionery Industry is the second largest category in the processed food industry with a turnover of nearly Rs. 1,600 crore, providing significant sustainable rural / semi urban employment. Confectionery is primarily targeted towards children. Confectionery is basically made out of Sugar, Milk and Milk Products, Glucose etc which are agricultural produce.

The industry plays an important role in the economy of the country - specially the small scale industry - which supplies intermediary inputs like printed wrapping materials, pet jars, and corrugated boxes. The transport sector is also immensely benefited in the transportation of the confectionery items throughout India. Since confectionery products are retailed through more than 10 million retail outlets in the country, there are large spin-off benefits to the transportation sector as well as opportunities for the self employed, the service sector and MSME.

Sugar Boiled Confectionery in India is defined by rigid price points, predominantly 50 paise and Re. 1/- per unit. The industry has been under severe inflationary pressure – both in terms of cost of inputs as well as distribution costs.

In order to provide some relief to industry, it is recommended that the central excise duty on confectionary be realigned to 1% - the rate of excise duty imposed on most other food

products like Noodles, Potato Chips, Conserves and Chutneys, Ready to Eat Packaged Food, Instant Mixes and so on.

17. Rate of Excise Duty on Naptha

Excise duty on Naptha under Excise Tariff heading 27101190 is presently 14% advalorem. The duty on finished godos of industries like Polymers under excise tariff 39011010, 39012000 and 39021000 and chemicals under excise tariff 29012400, 29021900 and 29022000 is 10% resulting accumulation of of cenvat credit.

Suggestion: The excise duty on Naptha should be reduced to 10%

18. <u>Time Limit for Disposing off Applications for Destruction of Goods post RG1 Stage</u>

Occasionally, some inherent damage or manufacturing defect, rendering the goods unfit for consumption or marketing, are detected after the recording of manufacture in the RG1. Under Rule 21 of the Central Excise Rules, 2002, destruction of such goods, on remission of excise duty, can only be done after obtaining permission from the jurisdictional Commissioner of Central Excise. The excise authorities normally give permission after getting the damaged/defective goods tested at notified laboratories to satisfy themselves on the condition of the goods. On many occasions, the authorities keep such applications pending for a long time, at times up to 5 years. Till such time the destruction is allowed by the authorities, the stocks of damaged/defective goods have to be stored by the assessee. This is not only hazardous in many cases (e.g., contaminated food products, infested tobacco products, etc.) but also economically inefficient since these goods block up valuable storage space.

As per CBEC's Excise Manual of Supplementary Instructions, in the normal course the Department should accept the assessees views that the goods are rendered unfit for consumption or marketing and accord permission within a period of 21 days or earlier, if possible. Where samples are drawn, such permission should be accorded within 45 days. These instructions are, unfortunately, not adhered to in most of the cases.

Suggestion: It is recommended that the provisions of Central Excise statutes be amended to bring in a time limit (say, 45 days) within which applications for remission of duty and destruction of goods are disposed off. Additionally, to hasten the process, assessees be allowed to get the goods tested (on the basis of samples collected and sealed by excise authorities) at any of the notified laboratories.

19. **<u>Duty on Clearance of Waste generated</u>**

Central Excise authorities insist on payment of excise duty on clearance of waste that arises during the course of manufacture in case the inputs are those on which cenvat credit has been availed by the assessee. The rationale for the duty demand seems to be that since cenvat credit has been availed on the inputs, clearance of waste arising out of usage of such inputs for manufacture are also liable to excise duty. As a result of the position taken by the Excise Authorities, mere generation of waste (e.g., paper scraps arising in the course of slitting paper bobbins, slag generated by usage of fuel oils, etc.) is being held to be 'manufacture' of a 'marketable product' and hence, dutiable.

The CBEC has already clarified that duty should not be demanded on waste packages / containers used for packaging cenvatable inputs when cleared from the factory of the assessee

availing Cenvat credit. This clarification is based on the Hon'ble Supreme Court's judgment in M/s West Coast Industrial Gases Limited v. Commissioner of Central Excise.

There are instances where the Commissioner (Appeals) has set aside Orders of the Department demanding duty on clearances of waste generated during manufacture in respect of one particular Unit of an assessee, while, on an identical issue Show Cause Notices have been issued to sister Units of the same assessee. It is submitted that clearance of scrap/waste generated by the use of cenvatable inputs in the manufacturing process is, conceptually, the same as clearance of waste packages and containers and should, therefore, be outside the scope of central excise levy.

Suggestion: It is recommended that the provisions of the Central Excise statutes be amended to make clearance of scrap/waste arising out of the manufacture of finished / intermediate goods duty free.

20. **Amendment of the provisions related to Unjust Enrichment**
    Section 11B of the Central Excise Act, 1944 provides for diversion of refund of excess excise duty paid by an assessee to the Consumer Welfare Fund in order to avoid unjust enrichment. This holds true even in cases where the excess duty has been paid erroneously or has been appropriated by the Department through coercive demands.

No doubt, the Hon'ble Supreme Court of India, in the case of Mafatlal Industries, has upheld the constitutional validity of the principle of unjust enrichment. However, the law as it stands today is draconian because the assessees right to appeal has been rendered illusory since the Department invariably denies the return of pre-deposit / refund of duty on grounds of unjust enrichment – even in cases where the excess duty has been paid by mistake or under coercion. In view of the inequitable consequences of Section 11B, there is a strong case for its modification.

Suggestion: It is recommended that 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.

21. **Power to Grant or Take away Exemption Retrospectively**
    Sub-Section 2A of Section 5A of the Central Excise Act, empowers the Executive to clarify the applicability of a Notification by inserting an 'Explanation' in the Notification within one year of its issue and provides that such explanation shall have effect from the date of the original Notification.

The power to issue explanations beneficial to the assessee, with prospective effect, already exists per sub-section 1 of Sec. 5A. **However, sub-section 2A provides for retrospective effect of a Notification, merely by insertion of an 'Explanation' subsequently.** To the extent such 'Explanations' are to the detriment of assessees, such a provision is unjustified and inequitable since it causes undue hardship.

Suggestion :It is recommended that Section 5A be amended appropriately to prevent retrospective effect of changes in Notifications in case these are detrimental to the assessee.

22. **Pre-Deposit Requirement for Appeals**
    Currently, the quasi-judicial process under the Central Excise law empowers Departmental officers to adjudicate assessments and appeals. Section 35F empowers Commissioner (Appeals) or the Appellate Tribunal to deal with the applications filed for dispensing with

the deposit of duty demanded or penalty levied. The appellate authority uses this power with discretion, resulting often in undue hardship to the assessees.

Considering the Department's stated commitment to increase tax compliance voluntarily through objectivity, transparency and judiciousness, at least the first Appellate Authority should be free from constraints of the Department and, therefore, be from a Department other than Finance, ideally, belonging to the Ministry of Law and Justice. Since this may not be possible in the immediate future, at least the requirement for pre-deposit of duty and penalty arising out of Order-in-Original and the first Order-in-Appeal should be done away with or, at the very least, be restricted to a reasonable quantum, say, 5% of the disputed tax.

Suggestion: It is recommended that the Central Excise statutes be amended to remove the requirement of pre-deposit of disputed duties, or, restrict it to not more than 5% of disputed taxes only. Further, the statutes are amended such that appellate authorities are not drawn from the Department.

23. **Time limit for return of inputs or capital goods sent to job-workers**

As per Rule 4(5)(a) of Cenvat Credit Rules, 2004, if the inputs or the capital goods (on which cenvat credit has been availed) are sent out of the factory premises for further processing, manufacture of intermediate goods necessary for manufacture of final products, etc., to a job-worker and are not returned within 180 days, the manufacturer has to pay an amount equal to cenvat claimed on such inputs. The re-credit of such amount is allowed as and when the inputs / capital goods are returned.

Return of capital goods from a job worker location with consequential disruption of manufacture at such location, merely to avail cenvat credit, is economically inefficient. Additionally, in the event of return of inputs / capital goods beyond 180 days due to reasons like strike / lockout / other disruptions at the job-workers premises also disentitles an assessee from availing the cenvat credit for reasons beyond his control.

Suggestion: It is recommended that the 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. In respect of capital goods the time limit be extended for the duration of the contract with the job-worker based on which such capital goods are sent out.

24. **Inputs cleared 'As Such'**

Rule 3(5) of Cenvat Credit Rules, 2004 provides for payment of excise duty on inputs / capital goods equal to the credit availed on them in case they are cleared from the factory 'as such'. In order to comply with this provision, the manufacturer has to keep track of inputs, the rate of duty at the time of their entry into the factory and the value at which they were purchased – until such time that the inputs are in stock. Since maintenance of such voluminous data over long periods is prone to human error, very often there are objections by Departmental officers, particularly Audit, and consequent litigation.

Suggestion: It is recommended that Central Excise statutes be amended to allow removal of inputs 'as such' on payment of excise duty at the rate prevailing on the date of removal and the value for purpose of duty determination be the Weighted Average Cost of the inputs as on that date (as per the assessees books of accounts).

25. Cenvat credit on Capital Goods

In terms of Rule 4(2) of the Cenvat Credit Rules, 2004 the credit of cenvat in respect of capital goods has to be distributed over two years. In the year in which the capital goods are received in the factory credit equivalent to 50% of Cenvat can be availed. The balance 50% can be availed only during the next financial year. As a result of this a lot of time and effort is expended in tracking each capital goods in terms of year of entry, amount of credit available in each year, etc. Apart from the cost involved in such tracking, this also leads to errors and, consequently, long-drawn disputes/litigation with the Department.

Suggestion: It is recommended that the Cenvat Credit Rules, 2004 be amended appropriately to enable credit of full Cenvat in respect of capital goods in the year of receipt in to the factory. This would be in line with the provisions on cenvat credit in respect of inputs.

26. Storage of Capital goods outside the factory of the manufacturer.

Having regard to the nature of the goods and shortage of space in the factory premises, manufacturers are permitted under Rule 8 of the Cenvat Credit Rules 2004 to store inputs, in respect of which Cenvat credit has been taken, outside the factory premises after obtaining necessary permission from the jurisdictional excise authorities.

At times the manufacturers are also constrained to store capital goods outside their factory premises on account of shortage of space which could be caused due to reasons such as major infrastructural upgradation, modernisation, renovation, etc of the factory premises.

Suggestion: **It is recommended that the Cenvat Credit Rules 2004 be amended appropriately permitting the manufacturers to store the capital goods outside the factory premises without reversal of Cenvat Credit in the same manner as is currently permitted for storage of inputs outside the factory premises.**

27. CENVAT credit on capital goods removed after subsequent use

Rule 4(2)(a) of Cenvat Credit Rules 2004 provides that Cenvat credit in respect of capital goods received in a factory at any point of time in a given financial year shall be taken only for an amount not exceeding 50% of the duty paid on such capital goods in the same financial year. As per Rule 4(2)(b) the balance of Cenvat credit may be taken in any financial year subsequent to the financial year in which the capital goods were received.

In the event capital goods are cleared as such (without putting to use) in the financial year in which it was received, the first proviso to Rule 4(2)(a) provides that Cenvat credit in respect of Capital goods shall be allowed for the whole amount of duty paid on such capital goods in the same financial year and concurrently, duty equivalent to the Cenvat credit taken will have to be paid on clearance of capital goods.

For Capital Goods which are used in the factory and thereafter cleared in financial year subsequent to the financial year in which it was received, the third proviso to Rule 3(5) provides that the manufacturer or provider of output service shall pay duty equal to the Cenvat credit taken on the said capital goods reduced by a specified quantum for each quarter of a year or part thereof from the date of taking the Cenvat credit. Consequently, whilst a part of the Cenvat credit is to be reversed on removal of capital goods from the factory, proportionate Cenvat credit

is available to the manufacturer or provider of output service in respect of the period for which the capital goods were used.

However the Rules do not cognize for a scenario wherein the Capital goods are received into the factory, put to use and thereafter removed during the same financial year. There is lack of clarity on the treatment of the 50% cenvat credit kept on hold at the time of receipt of the capital goods, proportionate cenvat credit (if any) that is available to the manufacturer or provider of output service and the amount of cenvat credit to be reversed /duty to be paid on capital goods.

Suggestion: It is recommended that the CENVAT Credit Rules 2004 be amended appropriately such that identical provisions are applicable to capital goods that are cleared from the factory after having been put to use, whether during the same financial year or any subsequent financial year.

28. Stay granted by CESTAT

Section 35C (2A) of Central Excise Act and section 129B (2A) of Customs Act provides that where an order of stay is made in any proceeding relating to any appeal, the Appellate Tribunal shall dispose of the appeal within a period of 180 days from the date of such order. The Proviso to the said section states that if such appeal is not disposed of by the Appellate Tribunal within a period of 180 days from the order of stay, the said stay order shall stand vacated on the expiry of that period.

In numerous instances, due to exigencies of work, it is not possible for the Appellate Tribunal to dispose an appeal within the stipulated period of 180 days. In such cases the Department seeks recovery of the amount demanded after the expiry of 180 days.

Considering the fact that the stay against recovery of alleged dues is granted by the Appellate Tribunal after due prima-facie consideration of the merits of the case, mere delay by the Appellate Tribunal in disposing of the appeal within the stipulated time frame should put an assessee in hardship. More so since the assessee is not in a position to expedite disposal of the appeal by the Appellate Tribunal. Accordingly, once stay has been granted by the Tribunal, the stay should continue till such time the appeal is heard and disposed off.

Suggestion:It is recommended that Central Excise Act and Customs Act be amended to provide that once the stay has been granted by the Tribunal, the same should continue till such time the appeal is disposed by it.

29. **Procedural simplification for exporting excisable goods**

For removal of goods from the factory for exports the manufacturer exporters are required to file one “application for removal form” (ARE-1) each day. When there are bulk orders and the cargo is moved from the factory to the premises of the Container Freight Station (CFS) over a period of time (i.e., rather than on a single day) multiple ARE-1 are required to be filed for export to be made to a single customer.

Suggestion:
It is recommended that:

- **Large manufacturer exporters be permitted to raise one single ARE-1 for all the clearances made (i.e., for the aggregate quantity of clearances made over say a week) for export of cargo to a single customer. This would reduce the number of ARE-1s being raised for clearances from the factory for a single customer order.**

- **The process of submission of proof of exports should get simplified in view of the fact that the process of obtaining endorsements on the ARE-1s post the exports is a highly time consuming process. The data relating to proof of exports should automatically flow between the customs and central excise department without the need for the exporters to get involved in the process.**

30. Cenvat Credit on Building, civil jobs

Duty / taxes on civil construction related items are not eligible for cenvat credit. Given the fact that buildings and/or other civil infrastructure is necessary for installation and housing of machinery and for carrying out manufacturing activities, cenvat credit should be extended or duties on inputs used for civil construction of factory buildings. Alternately, the duty on such inputs should be reduced when the end use is construction of factory buildings.

31. Cenvat Credit on Capital projects

In case of investments in capital goods for projects the cenvat credit accumulation and utilisation is delayed since the cenvat credit is taken at the project stage but the utilisation of the same has to await completion of the project and commencement of commercial manufacture. In large projects the gestation period between accumulation of cenvat credit and utilisation thereof can be as much as 3 to 4 years. Consequently, significant quantum of funds get blocked by way of cenvat credit pending utilisation. Also, there are several instances wherein a large portion of the cenvat credit on capital goods accumulated at the time of setting up the project/upgrading existing manufacturing capability remains unutilised since the assessee does not have enough duty liability to set-off the duty credit.

Suggestion: **To avoid idling of funds in such situations it is recommended that the cenvat credit laws be amended to enable refund of unutilised cenvat Credit balance if the same remains unutilised after a period of two years from date of availment of credit.**

32. <u>Payment of interest through Cenvat Credit account</u>

Presently cenvat credit can be utlized for payment of excise duty and service tax only and interest and penaltyt for delayed payment of excise duty or service tax has to be paid by cash.

Suggestion: Rule 3(4) of the cenvat Credit rule 2004 may be amdned so as to enable an assessee to pay inerest and peantly leviable under the Central Exciswe and Service tax laws through Cenvat credit.

<u>33. Inclusion of FIRST STAGE DEALER & SECOND STAGE DEALER in the nomenclature of Rule 9(1) (b) of the Central Excise Credit Rules, 2004.</u>

Availment of Central Excise Credit passed on to manufacturers through supplementary invoices raised by a First stage / Second stage dealer registered under Central Excise Rules (RG 23D) .

Under present Rule 9(1) (b) of the Central Excise Credit Rules, 2004 , Manufacturers can raise supplementary invoices and charge excise duty on them. The buyer, if manufacturer can presently avail cenvat credit on the same. However in case the manufacturer raised a supplementary invoice on a Dealer , then Rule 9(1)(b) does not state specifically whether , such Dealer can pass on such cenvat

credit through a supplementary invoice to the ultimate customer . On account of price increase of HR & CR Coils, this practice is quite common in Stel Industry and Dealers often are charged with supplementary invoices from the original manufacturers. However , Excise authorities presently raise a lot of reservations on availing of cenvat credit passed by dealers. They even ask the final customers – who buy materials from Dealers to reverse the cenvat credit aviled through the supplementary invoice route raised by Dealers .

Suggestion: We firmly believe that supplementary invoice is part & parcel of the main invoice and there is no legal infirmity in the availment of such credit . The same has also been accepted by Courts in various decisions of the Courts.viz.

1) Commissioner of Central Excise V/S Navkar Wires (P) Ltd. 2006(205) ELT 308(T).
2) Commissioner of Central Excise V/S Amar Bitumen & Allied Products Ltd. 2006(202) ELT 213(SC).

*To avoid unnecessary litigations in the Rules itself the CBEC should be requested to amend and include the nomenclature of **FIRST stage dealer/SECOND stage dealer in Rule 9(1) (b)** after the words / along with the word "Manufacturer" as specified documents for passing on the credit to the customers of first stage dealer/second stage dealer through supplementary invoices. This would clarify the situation and save large assesses in the Dealer category from litigations with the Excise Dept .*

33. Banking and Financial Institutions- Cenvat Credit based on original input documents-

It is extremely difficult for a banking institution having centralized registration to get original documents from all its branches located all over the country for availing input service tax credit. This is in view of the fact that such banking institutions are operated through few thousand branches and it is difficult to get the original documents from each branch.

It is suggested that such institution may be allowed to avail credit based on statement authenticated by the respective branch manager. However, if the Dept has any doubt, they may ask for the original by exception.

CUSTOMS

1. Customs Duty- computation of cess

Education Cess and Secondary Education Cess are computed on the base of total Customs Duty (Basic Customs Duty plus Countervailing Duty). Input Tax Credit is not available in respect of such Cess payments. To reduce cascading effect of taxes, such **Cess should be calculated only on Basic Customs Duty amount.**

2.Customs Duty- Pre packaged commodity

In terms of Notification No. 29/2010-Customs dated 27th February 2010, all pre-packaged goods intended for retail sale - in relation to which declaration of retail sale price on the package is

required under the Standards of Weights and Measures Act or such similar law – are exempted from levy of additional duty of customs that is leviable under Section 3(5) of the Customs Tariff Act. The exemption from additional duty of Customs is not available in case the goods are imported in bulk and are re-packed in the country prior to retail sale. Consequently, in case stationery products like pencils and other writing instruments are imported in bulk, the same suffers additional duty @ 4% whilst identical goods imported in pre-packaged form for retail sale do not suffer this levy.

It must be appreciated that imports in bulk form provides the importer to undertake appropriate quality checks on the goods. Further, value is added within the country through usage of domestic packaging materials (with consequential generation of local employment) for repacking the goods for sale in retail. Imposition of an additional tax, in effect, discourages value addition within the country and creates a cost disadvantage for bulk importers.

The discrimination between goods imported in bulk and in pre-packed condition, when both are intended for retail sale, is without any logic or economic rationale.

Suggestion: It is, thus, recommended that in respect of all goods intended for retail sale, the exemption from additional duty of Customs should be extended irrespective of whether they are imported in pre-packaged form or in bulk.

3. Import of Pulp

Current demand for imported pulp in India is about 1.5 million tons per annum which is likely to go up to 6 million tons per annum during the next decade or so. Many of the mills in India are dependent on imported pulp due to non-availability of pulp in India. Industry is doing its best to grow hardwood plantations and set up pulp mills to meet the demand.

However, certain grades of pulp such as softwood pulp cannot be produce.d in India since 'softwood' cannot be grown in the country. Similarly, the technology/specie of wood required for manufacture of Bleached Chemi Thermo Mechanical Pulp (BCTMP) is not available in India.

The global demand for pulp is increasing particularly by about 10% p.a. – particularly in Eastern Europe, China and other emerging economies in Asia. Internationally no major capacity additions are currently in the pipeline for meeting the increased global demand for Softwood/BCTMP pulp. The growing demand for these pulp is driving pulp prices upwards and the situation is likely to get further aggravated in the near future due to the widening demand-supply gap. This is evidenced by the fact that prices of various grades of pulp have gone up considerably over the last twelve months. Higher imported pulp prices, coupled with increasing raw materials cost is impacting adversely on the profitability of Indian Paper Industry.

Suggestion: **In view of the aforesaid and given the need to access cost effective raw materials which cannot be grown in India, it is recommended that import of softwood and BCTMP pulp may be allowed at "Nil" rate of Customs Duty.**

4. Reduction of SAD to 2%

Suggestion: The SAD rate should be brought down to the rate of CST i.e. 2%.

CENTRAL SALES TAX

1. Issuance of Form F by Job-Workers

In terms of Section 6A(1) of the Central Sales Tax Act, 1956 if an assessee sends goods on inter-State stock transfer then he has to furnish a Form F to his jurisdictional assessing authority to establish that the goods were actually sent out on stock transfer and not in the course of an inter-State sale. The Form F has to be issued by the recipient of the goods, being any other place of business of the assessee / agent of the assessee / principal. In the event of non-submission of Form F the transaction is deemed to be an inter-State sale.

Due to the provisions of Section 6A(1) in cases of despatch of goods by way of inter-State stock transfer to the assessee's job-worker, the Department does not permit issuance of Form F by the job-worker to the principal notwithstanding the fact that the principal is permitted to issue Form F to the job worker. Consequently, genuine cases of inter-State stock transfer from a principal to a job-worker situated in another State are assessed to tax as inter-State sales and taxed accordingly. This leads to avoidable disputes and litigation between the Department and the assessee.

Suggestion: It is recommended that the Central Sales Tax Act be amended such that job-workers receiving materials through inter-State stock transfer from their Principals are permitted to issue Form F to the Principals.

2. **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.

Suggestion: 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).

3. Guidelines for exclusions from "transfer otherwise than by way of sales" for facilitating the clearances of issues and receipts

This is to mitigate while exchanging F Forms in case inter office transfer of 'tools and tackles" "demo machines which travel length and breath of the country.

4. **Amendment of C form to expressly include the "use of goods in works contracts and " use in telecommunication networks"**

5. Issuance of Sales Tax Declaration Form-'F' by Indian Ordnance Factories u/s 6(A)1 of the Central Sales Tax Act, 1956

With effect from 11.05.2002, furnishing of Sales Tax Declaration Form-'F' by an assessee to his jurisdictional assessing authority is compulsory to establish the claim of inter-State Stock transfer and not by way of inter-State sale.

But, only in case of Stock Transfer by the Ordnance Factories under the Ministry of Defence, Union of India, the Ministry of Finance, Department of Revenue, Government of India has taken a policy decision regarding non-applicability of Sales Tax Declaration Form-'F' in case of Stock Transfer from One Ordnance Factory to Other Ordnance Factory or to its sister factory vide a Letter dated: 23.06.2006.

However, the said letter has not been accepted by the Commercial Tax Department, Government of West Bengal, which resulting to disallowance the Claim of Inter-State Stock Transfer and taxes accordingly without production of Sales Tax Declaration Form-'F' by the Ordnance factories situated in West Bengal.

Suggestion: It is recommended to amend the Central Sales Tax Act, 1956 *(in respect of the said letter dated: 23.06.2006 issued by the Ministry of Finance, Department of Revenue, Government*

of India) in such a way that issuance of Sales Tax Declaration Form-'F' is not compulsory or is not required at all in case of Inter-State Stock Transfer by the Indian Ordnance Factories only.