

PRE-BUDGET MEMORANDUM 2015

Indirect Taxes



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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THE INSTITUTE OF CHARTERED ACCOUNTANT OF INDIA
NEW DELHI

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I. INTRODUCTION

The Institute of Chartered Accountants of India (ICAI) considers it a privilege to submit the Pre-Budget Memorandum, 2015 on Indirect Taxes to the Government of India.

The Memorandum contains suggestions on issues relating to Service Tax, CENVAT Credit Rules, 2004, Excise Duty, Customs Duty and Central Sales Tax for the consideration of the Government while formulating the tax proposals for the year 2015-16. We believe that addressing the said issues would make tax laws simple, fair and transparent and avoid litigation.

In case any further clarifications or data is considered necessary, we shall be pleased to furnish the same.

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II. EXECUTIVE SUMMARY

A. SERVICE TAX

S. No.	Topic(s)	Suggestion(s)
<i>Substantive Law</i>		
1.	Tax Audit Report in service tax	<ul style="list-style-type: none">➤ <i>It is suggested that the provision of service tax audit by Chartered Accountant be introduced, similar to the Tax Audit under Income Tax Act 1961 and VAT Audit under various States. The Preliminary draft of audit report under service tax is enclosed as Annexure-I.</i>➤ <i>Further, a provision be introduced for a Certificate from Chartered Accountant showing the reconciliation between the information sought in the information return u/s15A and the financial report.</i>
2.	Definitions and coverage - Suggestions to harmonize definition	
(a)	Service	<ul style="list-style-type: none">➤ <i>The scope of service be restricted to a transaction of supply of service in the course of business, trade, commerce or profession or industry or furtherance of business, trade, commerce or profession or industry in line with international practice.</i>➤ <i>The word 'activity' used in the definition of service be defined in the Finance Act, 1994 as common understanding of the term activity may</i>



S. No.	Topic(s)	Suggestion(s)
		<p><i>differ from the legislative view. It is a term with very wide connotation, which may create unnecessary litigation or demand.</i></p> <p>➤ <i>The exclusion for services rendered by employee to employer be extended to services provided by employer to employee as well. This would reduce the hardship caused in determining the taxable value and reduce the administrative hassle in collecting the same. Further, the amount of tax sought to be collected on such transactions may not be substantial.</i></p>
(b)	Agricultural Produce	<p>➤ <i>The old definition of agriculture as provided in Notification No. 13/2003 ST dated 20.06.2003 be incorporated in the Finance Act, 1994 in place of new definition of agriculture to enlarge the scope of agriculture produce.</i></p>
(c)	Scope of support services rendered by Government	<p>➤ <i>It is suggested that the words "or any other support" be deleted from the definition of Support Services to make it exhaustive and unambiguous.</i></p>
(d)	Intellectual Property Right	<p>➤ <i>It is suggested that the term "Intellectual Property Right" be defined by borrowing the meaning assigned to in erstwhile Section 65(55a) of the Finance Act, 1994.</i></p>



S. No.	Topic(s)	Suggestion(s)
(e)	Definition of Works Contract	➤ <i>It is suggested that the definition of works contract under Finance Act, 1994 be amended in line with the definition of works contract under CST Act, 1956 to bring in parity between the two.</i>
3.	Job work by SEZ units for exports- <i>Need Review</i>	➤ <i>The definition of 'process amounting to manufacture or production of goods', as presently given in Section 65B (40) of the Act, be modified to cover all processes that amount to manufacture as defined in Section 2(f) of the CE Act.</i>
4.	Outbound transaction provided by Branch to overseas Head Office and vice-versa- Mismatch in Export and Import of Services Provisions	➤ <i>No service tax be levied on outbound transaction provided by an office located in taxable territory to another office located in non-taxable territory of the same legal entity.</i> <i>Alternatively, export status be accorded to services rendered by Head Office/Branch to overseas Branch /Head Office so as to treat them at par with import of service.</i>
5.	Trading of goods - <i>Not a service still it is in Negative list of Services</i>	➤ <i>Appropriate amendment be made to rectify the anomaly which has crept in by placing trading of goods in negative list when the same has been specifically excluded from the definition of service.</i>
6.	Service tax on recoveries towards electricity supplies	➤ <i>It is suggested to clarify that charges/ recoveries for supply of electricity by developers is not covered under the purview of service tax.</i>



S. No.	Topic(s)	Suggestion(s)
7.	Declared service - Need to clarify clause (e)	➤ Clause (e) of section 66E viz., "Agreeing to the obligation to refrain from an Act or tolerate an Act or a situation to do an Act" be suitably modified to exclude personal, social and religious activities.
Valuation of Taxable Service		
8.	Sharing of expenses between two companies/ sister concerns - Clarification Required to adhere with Legal aspect	➤ It is suggested that an appropriate clarification be issued with a view to provide clarity on service tax for 'sharing of expenses' between two associated companies/ sister concerns where there is no margin.
9.	Manner of determination of Value in case of where the whole consideration is not in money	➤ It is suggested that provision be amended to provide that in cases where the whole of the consideration is not in money, the value would be taken cost plus some deemed margin (may be 10%) as value of Services on the similar line provided under Rule 8 of Excise Valuation Rules, wherein the Value of the Goods is taken as 110% of cost of the Goods.
10.	Amendment to definition of Original works	➤ It is suggested that clause (iii) of explanation 1 of Rule 2A to Service Tax Valuation Rules, 2006 be replaced with following clause: "(iii) All newly commissioned, erected or installed plant, machinery or equipment or structures, whether pre-fabricated or otherwise;"



S. No.	Topic(s)	Suggestion(s)
11.	Increase in value of service portion in respect of certain works contracts	➤ <i>It is suggested that the entry given in sub-clause B & C of Rule 2A (ii) be merged to 60% instead of 70%.</i>
<i>Exemptions/Abatements/Rebates</i>		
12.	Basic exemption limit for small service providers	<ul style="list-style-type: none"> ➤ <i>Small service providers exemption limit be raised to Rs.25,00,000.</i> ➤ <i>It is suggested to clarify that for calculation of applicability of SSP exemption limit, the value of service provided would be taken after the abatement, if any applicable to the service.</i>
13.	Nominal Tax Rate Scheme under Service Tax	<p><i>It is suggested that Compound tax rate be introduced in line with Central Excise mechanism (Notification No CE 1/2011); nominal tax rate of 2% can be levied on Small Scale Service Providers. The following can be the highlights –</i></p> <ul style="list-style-type: none"> ➤ <i>with Turnover upto Rs 100 Lakh per annum; if not at least the present level (referred for reduction of interest rate, in different context) of Rs. 60 lakh per annum;</i> ➤ <i>SSPs need not be allowed to take CENVAT credit; however their services should be eligible input services for recipients so that recipients will not hesitate to deal with SSP;</i>



S. No.	Topic(s)	Suggestion(s)
		<ul style="list-style-type: none"> ➤ <i>Simplified option should be enabled in service tax return filing system; annual returns should be introduced instead of bi annual returns;</i> ➤ <i>Audit or Visits of the Revenue, on these assessee's premise should be on specific intelligence only; otherwise once in 3 – 5 years verifications can be mandatory;</i> ➤ <i>Specific instruction should be given to the field formation to courteously deal with this kind of small players when they approach for Registration / clarification etc.</i>
14.	Service tax on independent director remuneration	<ul style="list-style-type: none"> ➤ <i>It is suggested that remuneration of a director be exempted from Service Tax. The independent director is discharging a statutory duty and it is not a recurring income. Therefore, it ought to be covered under Negative list or under Mega Exemption Notification No. 25/2012.</i>
15.	Exemption for Goods Transport Agency (GTA)	<ul style="list-style-type: none"> ➤ <i>Considering the increase in cost of transportation since 2004, it is suggested that the exemption limit be enhanced to Rs. 4,000/- for single carriage and Rs. 2,000/- for a single consignee.</i>
16.	Exemption of renting of warehouse / storage facility for	<ul style="list-style-type: none"> ➤ <i>It is suggested that an exemption be provided to the service of renting of space for used for storage or warehousing of</i>



S. No.	Topic(s)	Suggestion(s)
	agriculture produce	goods as the auxiliary services related to this are already exempted resulting in breaking of the CENVAT Credit Chain.
17.	Exemption for Parking Services	➤ <i>It is suggested that the exemption provided to services by way of vehicle parking to general public be restored.</i>
18.	Exemption to Charitable Activities provided by an entity registered under section 12AA of Income Tax Act	
(a)	Re-instatement of sub-clause (v) of clause (k) of mega exemption notification	➤ <i>It is suggested that the exemption to charitable activities relating to "advancement of any other activity of general public utility" be restored.</i>
(b)	Exemption be expanded to cover input services received for charitable activities	➤ <i>Exemption Notification be expanded to grant service tax exemption on services received by not for profit entities in the social sectors by way of Auxiliary Charitable Activities which may be defined as under:</i> <i>Services provided to a not for profit entity by way of:</i> <ul style="list-style-type: none"> - <i>transportation of its staff, or for charitable activities;</i> - <i>services by individuals when such services forms an integral part of charitable activity;</i> - <i>catering, security or cleaning or house-keeping services performed for such entity and;</i> - <i>activities of an entity whose activities</i>



S. No.	Topic(s)	Suggestion(s)
		<i>does not exceed the value of 25 Lakhs during a year.</i>
19.	Mega Exemption Notification – 25/2012	➤ <i>It is suggested that the exemption be granted to all sorts of Trade Associations, Social and Religious Associations.</i>
20.	Ambulance and Medical Insurances Services be covered under Mega exemption Notification 25/2012 dates 20.06.2012	<ul style="list-style-type: none"> ➤ <i>It is suggested that Ambulance service provided by any person be exempt from Service Tax.</i> ➤ <i>It is suggested that service tax on Term Plan, Medical Insurance, Personal Accident Insurance and third Party Insurance be covered under Mega Exemption, so that it becomes cheaper and helps to secure people life.</i>
21.	Services received by Educational Institutes	<ul style="list-style-type: none"> ➤ <i>It is suggested that Renting of Immovable property service provided to Education Institutions continue to be exempted.</i> ➤ <i>It is also suggested that scope of exempted services to be enhanced by covering guest faculty / teachers, and computer / IT lab / software services. (Or All services directly relating to the delivery of education or training to students)</i>
22.	Clause 25 of Mega Exemption Notification - Services provided to Government, a local authority or a	➤ <i>It is suggested that all functions entrusted to a municipality under Article 243W of the Constitution be covered in clause 25 of the mega exemption notification.</i>



S. No.	Topic(s)	Suggestion(s)
	governmental authority	
23.	Service Tax levy - Level play between Professions	<p>➤ <i>In the interest of equity, justice and level play between professions, exemption granted to legal/representation services rendered by advocates/firm of advocates as per Notification No. 25/2012 ST dated 20.06.2012, be made applicable to the same services rendered by CA / Firm of CAs also.</i></p>
24.	Manpower Supply Service- appropriate exemption/ abatement be provided	<p>➤ <i>It is suggested that in respect of Manpower Supply Services, appropriate abatement be allowed in respect of Salary payable, ESI/EPF.</i></p> <p><i>Alternatively, the cost of Salary payable to its deputed employee by manpower or recruitment supply agency is allowed as deductions from the Gross Value Charged on the concept of pure agent.</i></p>
25.	Abatement on Construction Services	<p>➤ <i>It is suggested that a uniform percentage of taxable value (25%) given as the abatement. Alternatively, notification be changed according to the value of land in the City/area (as per guideline value).</i></p>
26.	Abatement of service tax on rental of immovable properties	<p>➤ <i>It is suggested that renting of immovable property be exempt from service tax as the same is compensation in the nature of investment of capital, which is exempt under service tax.</i></p>



S. No.	Topic(s)	Suggestion(s)
		<p><i>Alternatively, the Government may provide for an abatement of 70% on the value of the said activity and provide the taxable value to be 30%, to compensate the cost of construction and material element involved in letting out of immovable property.</i></p>
27.	Service Tax on Advertisement Agency Commission	<ul style="list-style-type: none"> ➤ <i>It is suggested that existing practice be amended to compulsorily declare a proportion as service charge for advertisement agencies service agent or authorized money changes in order to curb the existing practice of hiding the commission portion of the bills. Additionally a slab system can be introduced for assessee providing such commission based services.</i> ➤ <i>Alternatively, It is suggested that a mechanism on the basis of slab rate system be provided on the line of Money Exchanger, Ticket agent etc.</i>
28.	Served From India Scheme (SFIS)- May be applied on Services Export	<ul style="list-style-type: none"> ➤ <i>It is suggested that Scrip obtained through SFIS be made freely tradable in line with FMS, MLFPS etc., so that Service Exporter who cannot use the Scrip for imports, can be benefitted by selling the Scrip in the market to the potential Importers.</i> ➤ <i>It is also suggested that Scrip be allowed to be used for payment of service tax towards locally procured services,</i>



S. No.	Topic(s)	Suggestion(s)
		<i>including Reverse Charge payment for Import of Services as it is allowed to be used for payment of Excise duty on domestic procurements.</i>
Procedural Law		
29.	E-filing of document for registration under service tax-will improve ITES	<ul style="list-style-type: none"> ➤ <i>It is suggested that a facility of sending the documents as scanned copy be introduced instead of the present requirement to submit the documents manually. A Chartered Accountant may be allowed to certify the form with his digital signature, if required.</i> ➤ <i>It is suggested that the Registration no. in ST-2 so allotted be made available online with digitally certified by the appropriate authority.</i>
30.	Payment of service tax- Need changes in system and formats	
(i)	Service tax collection based on accounting codes notification	➤ <i>The Circular be withdrawn and different methodologies be explored to determine the service tax collections in the respective sectors rather than requiring individual assessee to provide this information.</i>
(ii)	Amendment in GAR-7 Challan acknowledgement	➤ <i>It is suggested that period for tax payment be mentioned in the acknowledgment of tax payment.</i>
(iii)	E-Payment of Service	➤ <i>It is suggested that appropriate limit for the e-payment be prescribed according to</i>



S. No.	Topic(s)	Suggestion(s)
	Tax	<i>the data available with the ministry in order to support the small service providers.</i>
(iv)	Due Date of payment of Service Tax	➤ <i>It is suggested that the due date for payment of service tax be change from 6th day of next month/quarter to 15th day of next month/quarter.</i>
(v)	Verification mechanism for Service Tax payment and credit thereof - assessee code wise	➤ <i>It is suggested that verification mechanism be made available to check service tax paid by the service recipient to the service provider on the line of TDS deducted and deposited by the deductor under Income Tax as well as with VAT authority, in format of J1 & J2.</i>
(vi)	Payment of Service Tax on provisional Basis: Amendment required in Rule-6 of Service Tax Rules, 1994	➤ <i>It is suggested that the Central Excise (No.2) Rules, 2001 be replaced with Central Excise Rules, 2002 as the same has been redundant.</i>
31.	Provision for Bad Debts	➤ <i>Rule 6(3) of the Service Tax Rules, 1994 be suitably amended to allow excess payment of service tax in the event of bad debts with a view to mitigate the genuine financial hardships of the service provider as the assessee is required to deposit service tax from his own pocket even though he is unable to recover the value of his taxable services and also forego the</i>



S. No.	Topic(s)	Suggestion(s)
		<i>CENVAT credit of the service tax paid on such amount.</i>
32.	Filing of Return- need procedural and format changes	
(i)	Confirmation / Acknowledgment of E-Return filing at ACES	<ul style="list-style-type: none"> ➤ <i>It is suggested that acknowledgement of return/ confirmation be provided instantly as it is provided in the case of Income Tax Returns.</i> ➤ <i>It is also suggested that in these cases the late fee should not be levied.</i> ➤ <i>It is further suggested that late fee in case of NIL return be removed.</i>
(ii)	Additional information, if any in the return	<ul style="list-style-type: none"> ➤ <i>It is suggested that appropriate space be made available in the return form so that assessee may give additional information to the department in relation to the return, if any.</i> ➤ <i>It is suggested that appropriate space be made available to claim the 50% credit by banking industry.</i>
(iii)	Revision of Return of Service Tax	<ul style="list-style-type: none"> ➤ <i>It is suggested to clarify that whether revised return may again be revised.</i> ➤ <i>It is also suggested that time limit for revision of return be increased to 180 days considering the closing of financial accounts of the assessee and audit of the same by 30th September of the next financial year.</i>



S. No.	Topic(s)	Suggestion(s)
(iv)	Return of Service Tax for prior periods	<ul style="list-style-type: none"> ➤ <i>It is suggested that the facility to file an online return for prior periods be made available.</i>
33.	Interest on delayed payment of service tax	<ul style="list-style-type: none"> ➤ <i>It is suggested that this amendment should be applicable for those assesses who have collected the tax but not remitted to the government. The assessee making delay in payment of tax due to other reasons be not penalized in parity with the evaders.</i> ➤ <i>It is suggested that the rates of interest be restored to the original rate at 18% irrespective of the period of delay as from the aforesaid calculation effective rate of interest comes to 36% per annum or 3% per month which is very huge. It may be noted that under the Income-tax Act, delay in payment of tax only attract interest that too at the much lower rate of 12% per annum (after return date 18% P.A) and there is no penalty provisions for delay in payment of income tax.</i> ➤ <i>Without prejudice to above, it is suggested that a higher rate of interest rate may be charged according to slab rate of the tax demanded to protect the small service providers.</i> ➤ <i>The interest rates for both the demand of the duty/tax and the refund of the duty/tax be made uniform. There is need for fairness and equity in the rates at which interest is</i>



S. No.	Topic(s)	Suggestion(s)
		<p><i>paid by the department and that is charged from tax payer.</i></p> <p>➤ <i>Further, uniformity be also ensured in respect of date of charging interest on duty/tax demands vis-à-vis date of paying interest on refund of duty/tax. Interest on delayed refunds be also paid by the Department from the date on which duty/ tax was actually paid.</i></p>
34.	Time limit for issuing Show Cause Notice under Service Tax	<p>➤ <i>It is suggested that time limit for issuing show cause notice be reduced to 12 months from 18 months in parity with the Central Excise Act, 1944.</i></p>
35.	Penalty for late filing of Return	<p>➤ <i>It is suggested that late fees of filing service tax return be subjected to the maximum amount of tax payable by the assessee.</i></p> <p>➤ <i>Additionally, it is also suggested that the assessee having nil returns be not imposed with the late fees for filing delayed returns.</i></p>
36.	Penalty for offences by director etc. of company	<p>➤ <i>It is suggested that the penal provisions be amended in lines with Section 80 wherein penalty leviable thereon may be waived if the concerned person is able to prove reasonable cause of such failure.</i></p>
37.	No waiver of penalty even when complete details of the	<p>➤ <i>It is suggested to restore Section 80(1)</i></p>



S. No.	Topic(s)	Suggestion(s)
	transactions are available in the specified record – Restoration of Section 80(1)	
38.	Search of premises - need change to incorporate reasons	<p>➤ <i>It is suggested that in order to avoid vexatious searches, the reasons for conducting the search may be recorded in writing. This will also be in line with income-tax provisions.</i></p>
39.	Amendment in Section 83 - Application of Section 5A (2A) of the Central Excise Act, 1944	<p>➤ <i>It is suggested not to apply Section 5A(2A) of the Central Excise Act, 1944 in Section 83 of the Finance Act, 1994.</i></p>
40.	Recording of statement – Alternative options	<p>➤ <i>As far as possible, recording of statements be avoided and assesses be asked to submit specific responses to the specific questions of the Department.</i></p> <p>➤ <i>In case, the statement is required to be recorded, a copy of the same, duly signed by both the tax payer and the Officer recording the statement be provided to the tax payer immediately after recording the statement.</i></p> <p>➤ <i>Very often, the statements are written in hand and then typed. The use of computer systems can speed up the process. The statement recorded can be</i></p>



S. No.	Topic(s)	Suggestion(s)
		<i>immediately printed, signed and handed over to the assessee.</i>
41.	Prosecution - <i>Need to incorporate mens rea</i>	➤ <i>Prosecution provisions ought to apply only in exceptional cases and must include mens rea. Further, in the cases of interpretational issues such provisions should not be applied.</i>
42.	Power to Arrest – Not be delegated to Officer below Joint Commissioner	➤ <i>It is suggested that power to arrest be not delegated to officer below the rank of Joint Commissioner or Additional Commissioner.</i>
43.	Applicability of Advance Rulings- Problem of non-availability of clarification on interpretational issues by large number of assessee	
(a)	Meaning of term 'substantial interest'	➤ <i>It is suggested to define the term "Substantial Interest".</i>
(b)	Advance Rulings for all assessee	<p>➤ <i>It is suggested that either a separate mechanism for individual and partnership assessee be in-placed, else advance ruling may be permitted for all assessee.</i></p> <p><i>Alternatively, It is suggested that in the line of international practices, Advance Ruling may be allowed to all assessee for the law incorporated / amended in the last 3 years.</i></p>
44.	Multiple inquiries /	➤ <i>It is suggested that a Certificate be</i>



S. No.	Topic(s)	Suggestion(s)
	Audits / investigations- Need to streamline the system	<i>issued by the wing who has conducted investigation/audit to the assessee and/ or necessary provision be made to avoid duplication of audit so that assessee can be saved from unnecessarily harassment.</i>
45.	Reverse charge and Joint charge mechanism	➤ <i>Appropriate mechanism be developed whereby the benefit of basic exemption limit of Rs.10 Lacs available to the small service providers is also available to the service recipient paying service tax under reverse charge/joint charge.</i>
46.	Non-removal of condition of payment in case of partial reverse charge Credit Mechanism	➤ <i>It is suggested that appropriate amendment be made so that service recipient of partial reverse charge be made at par with service recipient of 100% reverse charge cases.</i>
<i>Place of Provision of Services Rules, 2012</i>		
47.	Amendment in Rule 9 in case of intermediary services	➤ <i>For intermediaries and other specified services given under rule 9, the place of provision of service should be location of service recipient.</i>
48.	Amendment to Rule 7 in case of export and domestic services	➤ <i>Appropriate amendment be made for deeming transaction as export where majority of the services are performed outside India.</i>
49.	Amendment in Rule 4(a) in case of Software services	➤ <i>Following the best practices, the place of provision of goods related services [rule 4(a)] should be the location of goods only</i>



S. No.	Topic(s)	Suggestion(s)
		<i>for tangible goods.</i>
50.	Certification under Place of Provision Rules, 2012 in line with income tax – overseas payments	<p>➤ <i>It is suggested that a declaration and certification by a Chartered Accountant with respect to liability of service tax on payment made outside India be prescribed in service tax law in line with income-tax provisions. This could be verified by the bankers while effecting payment to overseas service provider.</i></p> <p><i>The introduction of such a mechanism will safeguard the interest of revenue as also would simplify the procedural compliance for the assessee with regard to Place of Provision Rules, 2012 which is generally quite complex and may be missed out of ignorance or oversight.</i></p>
<i>Point of Taxation Rules</i>		
51.	Time limit for raising invoice by provider of newly taxable service	<p>➤ <i>It is suggested that time limit for raising invoice by provider of newly taxable service be increased to 30 days from 14 days so that it is treated at par existing service provider.</i></p>
52.	Conflict between section 67A and Rule 4 & 5 of Point of Taxation Rules	<p>➤ <i>It is suggested that Rule 4 & 5 of Point of Taxation Rule be suitably amended to bring them in line with the provisions of section 67A and this conflict be removed.</i></p>



B. CENVAT CREDIT RULES, 2004

S. No.	Topic(s)	Suggestion(s)
53.	Definition of input service - Need overview to remove anomalies	<ul style="list-style-type: none">➤ <i>With the introduction of the new service tax regime based on the concept of a negative list, service tax is leviable on the broad spectrum of all the services except those specified in the negative list. When the taxation of services has become universal, the credit for input services should also follow the same principle and be made available across the board.</i>➤ <i>It is suggested that definition of 'input services' be redrafted as "all services procured by assessee which is obtained and used wholly and exclusively for the purposes of the business of such provider of taxable services or manufacturer of excisable goods" including the Credit on Input Services used for capital structures.</i>➤ <i>It is also suggested that Input Services & Capital Goods used in in-house Research and Development be made eligible for CENVAT Credit.</i>
54.	Definition of input - CENVAT credit on capital structures	<ul style="list-style-type: none">➤ <i>It is suggested that definition of input be amended to provide CENVAT credit on capital structures etc.</i>



S. No.	Topic(s)	Suggestion(s)
55.	Definition of capital goods	
(a)	CENVAT credit on motor vehicles	➤ <i>It is suggested that the definition of "capital goods" may include all kinds of motor vehicles, railway coaches/ wagons which are essential for providing services with certain negative list of services to which motor vehicles can be ineligible.</i>
(b)	CENVAT credit on the pipes and fittings installed outside the factory premises	➤ <i>The pipes and fittings which are inter connected with the factory premises & used for the procurement & transport of the utilities from outside sources like pumping station, scaffolding etc. be also classified as capital goods in line with the pipes & fittings installed within the factory.</i>
56.	Definition of exempted service	➤ <i>Definition of exempted service under Rule 2(e) unintentionally includes manufacturing activities, interest on deposit, loans or advances, which result in reversal of CENVAT credit as per Rule 6. It is suggested that this anomaly be corrected beforehand by making an appropriate amendment to avoid litigation.</i>
57.	Definition of exempted goods	➤ <i>The definition of "exempted goods" in rule 2(d) be amended to clarify that goods produced or manufactured on job work basis where the principal</i>



S. No.	Topic(s)	Suggestion(s)
		<p><i>manufacturer is under the obligation to pay duty on such goods will not be construed as 'exempted goods'. This would avoid multiple incidence of duty on the same goods and avoid unnecessary litigation. Recently, the Karnataka High Court in the case of CCE v. Bharat Fritz Werner Limited, 2007 (218) ELT 177 (Kar.) upheld the above contention.</i></p> <p>➤ <i>On the same lines, definition of "exempted service" be amended to provide for exclusion of job-work provided to principal manufacturer exempted vide Sl. No. 30(c) of Notification No. 25/2012 ST dated 20.6.2012 which would be in line with job-work manufactured goods supra.</i></p>
58.	Credit of Education Cess (EC) and Secondary and Higher Education Cess (SHEC) on CVD/ Customs	<p>➤ <i>It is suggested that a clarification be issued to confirm that proportionate credit of EC and SHEC to the extent charged on the CVD amount will be available.</i></p>
59.	Capital goods cleared as waste and scrap	<p>➤ <i>It is suggested to amend clause (b) sub-rule (5A) of Rule 3 CENVAT Credit Rules, so as to bring an output service provider also on par with a manufacturer, by allowing the output service provider also to pay an amount equal to the duty leviable on transaction</i></p>



S. No.	Topic(s)	Suggestion(s)
		<p><i>value on removal of capital good as waste and scrap. The amount to be paid on clearing capital goods (on which CENVAT credit has been availed) as waste and scrap may continue to be the amount equivalent to the duty liable on transaction value. This is logical as a normal commercial person would scrap any plant and machinery only after fully utilizing the asset. It means that the cost of asset has been fully built in the assessable value of the final product.</i></p>
60.	<p>Inputs/capital goods procured from EOU/EHTP/STP not paying duty in terms of SI No. 2 of the Notification No.23/2003 CE dated 31.3.2003</p>	<p>➤ <i>Rule 3(7) be amended to clarify that CENVAT credit will also be available in respect of clearances made by an EOU/EHTP/STP paying excise duty in terms of proviso to section 3(1) of the Central Excise Act, 1944. This will be in line with the overall objective of Foreign Trade Policy.</i></p>
61.	<p>Availment of CENVAT credit on capital goods</p>	<p>➤ <i>100% CENVAT credit on capital goods in the year of purchase itself be allowed.</i></p>
62.	<p>Amendment to Rule 4(5)- CCR- inclusion of tools sent for Jobwork</p>	<p>➤ <i>It is suggested that Rule 4(5)(b) of CENVAT Credit Rules be amended to allow CENVAT Credit on "tools" falling under chapter heading 820700.00 sent by a manufacturer of final product for job work / further processing of goods.</i></p>
63.	<p>Availment of Cenvat</p>	<p>➤ <i>It is suggested that the said proviso be</i></p>



S. No.	Topic(s)	Suggestion(s)
	Credit on Input and Input Service	<p>reversed as it is not in sync with principles of Value Added Tax/ CENVAT Credit. Also, this is not in line with international trade and practices. Alternatively, instead of counting the period of six months from the date of document under Rule 9(1) of CCR, 2004, it should be counted from the date of receipt of goods by manufacturer or date of receipt of invoice by the service provider.</p> <ul style="list-style-type: none">➤ In order to safeguard the assessee from the huge loss of CENVAT Credit due to non-payment for the purchase of input and avilment of services due to business policies, the amended provision must be brought prospectively i.e. on the invoice or goods received after the effective date of amendment. There exist multiple cases wherein due to business policies and payment terms and condition, assessee are taking credit only after making payment to vendors i.e. on receipt/payment basis and due to which they have neither yet availed the credit nor account for such credit in the books of account to avoid inconvenience. In such cases, assessee would lose huge amount of CENVAT credit for nothing.➤ It is suggested to clarify/notify that the amended proviso shall not apply in the following cases:<ul style="list-style-type: none">(a) In case of retention money, time limit of six months be not apply.



S. No.	Topic(s)	Suggestion(s)
		<p>(b) In case of pending cases before adjudicating authorities, wherein as a consequence of judgement assessee becomes eligible for CENVAT Credit.</p> <p>(c) In case where assessee has not availed or account for the CENVAT Credit on receipt of invoice/goods as the assessee avails and account for CENVAT credit only after making payment to vendor in accordance with provision exist prior to POT, 2011.</p>
64.	Realization of invoice within three months for availment of credit	<p>➤ <i>It is suggested that the time limit of three months for payment towards services and service tax thereon be extended to six months.</i></p> <p>➤ <i>Further, it is suggested that the period of six months be commenced from the date of CENVAT credit taken rather than from the date of invoice.</i></p>
65.	Certification of refund by statutory or any other auditor	<p>➤ <i>Refund be allowed to be certified by a practicing Chartered Accountant (not only Statutory Auditor or any other auditor).</i></p>
66.	Refund claim under Rule 5 / Export Incentives	<p>It is suggested that:</p> <p>➤ The application of refund be made on-line with certificate from chartered accountant regarding validity of the refund claimed. The refund</p>



S. No.	Topic(s)	Suggestion(s)
		<p>application can only be filed after receipt of money in convertible foreign exchange. Export Incentive schemes in line with goods to be put in place.</p> <ul style="list-style-type: none"> ➤ After filing of return, 50% of the refund be credited on-line in the bank account of the exporter within 30 days of filing the application and the balance amount be refunded within 6 months after verification of the documents submitted. ➤ Alternatively, Duty Drawback Scheme may be introduced in Service Tax in line with exports of goods. ➤ All pending refund applications as on date should be disposed of within 6 month time. Refund of 80% to be disbursed once identity and turnover confirmed. Balance within reasonable period of 6 months.
67.	<p>Insertion of Explanation in rule 18, 19 of CER, 2002 and Rule 5, 5B of CCR, 2004</p>	<ul style="list-style-type: none"> ➤ It is suggested that following explanation be inserted in rule 18, rule 19 of Central Excise Rules, 2002 and Rule 5 of Cenvat Credit Rules, 2004 read with Notification Nos. 42/2001 CE(NT), 43/2001 CE(NT), 27/2012 CE(NT), 19/2004 CE(NT), 21/2004 CE(NT): “The term export means, export out of the country and includes clearances to 100% EOU or EHTP or STP by a DTA /EOU unit”



S. No.	Topic(s)	Suggestion(s)
68.	Service Exporters - computation of time limit for filing refund claims	<p>➤ <i>Exporter of Service is required to claim refund of service tax within the time limit prescribed under the law. However, the term, 'relevant date' for exporter of service is not defined (though, it is defined for the exporter of goods). This causes difficulties to the service exporters. Further, with the introduction of 'Point of Taxation of Service Rules', disparities between dates have arisen. Hence, it is suggested that Notification 27/2012 CE (NT) dated 18.06.2012 be amended to prescribe the time limit for claiming refund:</i></p> <ul style="list-style-type: none"> • <i>For goods – as prescribed under 11B of the Central Excise Act, 1994</i> • <i>For Service - as one year from the date of receipt of export proceeds or completion of service whichever is later in alignment with the definition of 'export turnover of service' as provided under Rule 5 of the CCR</i>
69.	Exemption and reversal of CENVAT	<p>➤ <i>Instead of granting full exemption, excise duty at reduced rate (say 4%) be levied on goods for operational convenience.</i></p> <p><i>Alternatively, CENVAT credit on inputs/ services used in these supplies be allowed for utilization towards other domestic clearances.</i></p>



S. No.	Topic(s)	Suggestion(s)
70.	Scope of rule 6(6)	➤ <i>It is suggested that the provisions of rule 6(6) be amended to include clearances of goods without payment of duty to defense, public research institutions, water, power and infrastructural projects.</i>
71.	Benefit of Excise Notification Nos.29/2012 to 33/2012 relating to FMS, FPS Licences	➤ <i>An amendment be made in Rule 6(6) of the CENVAT Credit Rules to provide that Rule 6 will not apply for excisable goods cleared without payment of duty against duty credit scrips. Similar provision already exists for cases like goods cleared for export under bond without payment of duty.</i>
72.	Trade Friendly procedure during shifting of premises	➤ <i>It is suggested that an Excise Officer be bound to make and serve a speaking communication on the assessee in response to written request of the assessee for the purpose of this rule, within 30 days from the date of receipt of such request. If no such communication is made and served by the officer, the assessee's request shall be deemed to have been approved without any qualification.</i>
73.	Inter-unit transfer of CENVAT credit by Large Taxpayer Units (LTUs)	➤ <i>It is suggested that the facility of transfer of credit by a large taxpayer from one unit to another be reinstated.</i>
74.	Penalty in respect of CENVAT credit wrongly taken or utilized- Rule 15	➤ <i>It is suggested that words given "taken or utilized" in Rule 15 be replaced with "taken and utilized" as has been done in Rule 14.</i>



S. No.	Topic(s)	Suggestion(s)
75.	CENVAT Credit of an input service under partial reverse charge	<p>➤ <i>It is suggested that CENVAT Credit of services under partial reverse be allowed on the similar line as be allowed in the case of 100% Reverse charge cases.</i></p>
76.	CENVAT credit on self certified bill of entry in case of import of goods through courier agency	<p>➤ <i>As duty has been paid, an appropriate provision be inserted in the CENVAT Credit Rules to avail the CENVAT credit based on certified copies of such Bill of Entry.</i></p> <p><i>Alternatively, a mechanism of casual registration be introduced in the excise law so that the courier agent may register as first stage dealer and get entitled to pass on the credit.</i></p>
77.	Customs endorsement of bill of entry for availment of CENVAT credit	<p>➤ <i>The procedure of Customs endorsement of the Bill of Entry (EDI copy) for availment of CENVAT credit by the end user unit be restored.</i></p> <p><i>Alternatively, a provision be made in the Bill of Entry format for indicating the details of the consignee (end user receiver) of the goods in addition to the details of the importer as is being done in the case of excise invoices where the invoice is made on the buyer with the consignee indicated as the end user.</i></p>
78.	Parity between CENVAT Credit procedures and Central Sales Tax procedures	<p>➤ <i>It is suggested that appropriate amendment be made to claim the CENVAT Credit on E-I & E-II sales made under Central Sales Tax.</i></p>



C. CENTRAL EXCISE DUTY

S. No.	Topic(s)	Suggestion(s)
79.	Power under section 14 of the Central Excise Act, 1944	➤ <i>There should be a proper procedure under section 14 which need to be followed while invoking Section 14 backed with rules.</i>
80.	Revision application for matters relating to baggage, drawback, rebate of duty on export of goods etc.	➤ <i>It is suggested to allow filing of appeals before CESTAT against the orders passed by the Commissioner (Appeals) in relation to the matters covered under proviso to section 35B(1) of the Central Excise Act, 1944 and proviso to section 129A of the Customs Act, 1962 as well i.e., orders relating to loss of goods where the loss occurs in transit from a factory to a warehouse, etc. or rebate of excise duty on export of goods or goods exported without payment of duty, baggage, drawback.</i>
81.	Memorandum of Cross-objections before the Commissioner (Appeals) – No prescribed format	➤ <i>The Central Excise (Appeals) Rules, 2001 and Customs (Appeals) Rules, 1982 be amended to provide for a prescribed format of memorandum of cross-objections to be filed before the Commissioner (Appeals).</i>
82.	Revision orders passed under section 35EE of the Central Excise Act, 1944 or section 129DD of the Customs Act, 1962	➤ <i>Provisions be made for appeal against the orders passed by the Revisionary Authority under section 35EE of the CE Act or section 129DD of the Customs Act, directly to the High Court by amending the provisions of section 35G of the Central Excise Act,</i>



S. No.	Topic(s)	Suggestion(s)
		<i>1944 and section 130 of the Customs Act, 1962 respectively.</i>
83.	Pre-deposit for Appeal	<ul style="list-style-type: none">➤ <i>It is suggested that Pre-deposit of only 1% be demanded at first stage and second stage appeal or 2% be demanded at first appeal to CESTAT.</i>➤ <i>Alternatively, it is suggested that a Bank Guarantee be provided as an alternative to pre-deposit to safeguard the working capital of the assessee.</i>➤ <i>Without prejudice to the above, it is suggested that a Slab system may be introduced to safeguard the small scale industries, small service providers or BIFR industries.</i>➤ <i>It is also suggested that the relevant provisions be suitably clarified such that on payment of mandatory pre-deposit, the balance demand stands automatically stayed and no recovery proceeding thereof would be initiated by the department to meet the intention beyond the proposed provision.</i>➤ <i>It is suggested that in case pre deposit is mandated and obligated then the interest on duty/tax demanded should not be charged for the period till the appeal is disposed off.</i>➤ <i>It is suggested that said pre-deposit should only be in respect of duty/ tax demanded and not on the penalty amount as pre-deposit on penalty cannot be levied unless its cause is proved.</i>



S. No.	Topic(s)	Suggestion(s)
		<ul style="list-style-type: none"> ➤ <i>Subject to above, appropriate clarification may be inserted to avoid the interpretation of TRU Letter.</i> ➤ <i>It is suggested that appropriate clarification be provided in respect of the cases remanded back to Commissioner for re-assessment and what would happened to deposition of pre deposited against original order and whether again pre-deposit needs to be paid to appeal for re-assessed order.</i> ➤ <i>It is suggested that appropriate clarification be provided in respect of appeal to assessment order passed against duty paid under protest.</i>
84.	Appeal to the Supreme Court	<ul style="list-style-type: none"> ➤ <i>It is suggested that disposal of appeals pertaining to all cases be also routed through High Court as it is easily accessible from various parts of the Country.</i>
85.	Exemption to certain class of persons from obtaining registration under the Central Excise Rules, 2002	<ul style="list-style-type: none"> ➤ <i>Job workers paying duty under rule 4(3) of Central Excise Rules, 2002 are exempt from obtaining registration vide Notification No.36/2001-CE(NT) dated 26.6.2001.</i> <i>However, provisions of rule 4(3) have been deleted vide Notification No. 24/2003-CE(NT) dated 25.3.2003. Therefore, Notification No. 36/2001-CE(NT) dated 26.6.2001 be amended to remove the exemption granted to such job workers which has become redundant.</i>



S. No.	Topic(s)	Suggestion(s)
86.	Return under Excise Duty	<p>➤ <i>It is suggested that filing Returns in Central Excise be made half yearly at par with Service Tax Returns.</i></p> <p>➤ <i>It is suggested that provision of revision of return, in line with service tax, be also introduced in Central Excise. This will help the assessee to revise any uncorrected data or information submitted, if any.</i></p> <p>➤ <i>Further, it is suggested to provide facility of filing single Return for all the factories or premises on ACES instead of independent return for each factory or premises.</i></p>
87.	Audit Issues	<p>➤ <i>It is suggested that a copy of audit report even a clean one (having nil points) of the assessee under Excise Audit 2000 scheme be provided:</i></p> <ul style="list-style-type: none">• <i>To facilitate the assessee to take corrective actions;</i>• <i>To ensure/prove that audit is done up to a particular period.</i> <p><i>As in absence of the audit report with the assessee he is unable to prove that his accounts are audited till a particular period and is sometimes subjected to re-audit as there is no mechanism in the department to ensure the same.</i></p>



D. CUSTOMS DUTY

S. No.	Topic(s)	Suggestion(s)
88.	Relinquishment of imported/warehoused goods	➤ <i>It is suggested to amend the proviso of section 23(2) and proviso of section 68 to clarify as to when an offence appears to have been committed. Probably, the expression could read as "in respect of which a show cause notice has been issued".</i>
89.	Interest free warehousing period for imported goods	➤ <i>Warehoused goods be allowed to be kept in-bond for a period of at least 6 months without payment of interest.</i>
90.	Demurrage Free storage period	➤ <i>It is suggested that the demurrage free period available to importer for storage of goods in the premises of custodian should be increased from 3 days to 5 days.</i>
91.	Relevant date for determination of rate of duty and value of goods in case of improper removal of warehoused goods	➤ <i>Provisions of section 15 be amended to provide for relevant date in the case of improper removal of warehoused goods as envisaged in section 72 of the Act.</i>
92.	Return under Rule 7(c) of the Customs Rules, 1996	➤ <i>It is suggested that necessary amendment on the web portal of the Central Board of Excise and Customs (CBEC) be made and the facility of e-filing of quarterly return, instead of monthly return, be made available to the concerned assessee's under the Customs (Import of goods at concessional rate of duty for</i>



		<i>manufacture of excisable goods) Rules, 1996.</i>
93.	Relaxation of conditions of Customs Notification No. 102/2007	<ul style="list-style-type: none"> ➤ <i>Since production of huge volumes of document for claiming refund creates hardship, this condition may be relaxed. Such refunds may be allowed based on an independent Chartered Accountant's certificate in this regard.</i> ➤ <i>As per section 27 of the Customs Act, refund claims are to be made within one year from the date of import. The time limit of one year be not made applicable in this case.</i> ➤ <i>Provisions of unjust enrichment be not made applicable to such refunds.</i> ➤ <i>Alternatively, it is suggested that goods imported for resale, which anyway are chargeable to VAT, be exempted from ADC as the process of obtaining refunds is time-consuming (both for the department as well as the assessee)</i>
94.	Clearing House Agent	<ul style="list-style-type: none"> ➤ <i>It is suggested to add a column of freight forwarder in B/E and S/B through CHA and freight forwarders be given PAN based registration. This will help to make accountable lot of freight forwarders who are lying loose as their income can be assessed in a right manner also resulting into higher service tax (indirect tax).</i>
95.	Interest Payment on assessed Bill of Entry	<ul style="list-style-type: none"> ➤ <i>There is a need for restoring five days (excluding holidays) time for levy of interest on account of delay in duty payment sub-section (2) to Section 47.</i>



96.	Refund mechanism for Certificate of Origin received subsequent to import	➤ <i>The submission of Certificate of Origin to the Customs authorities at the time of import is a procedural requirement. It is therefore suggested that the importers may be allowed to claim the duty benefit post clearance by way of refund in case the Certificate of Origin is delayed.</i>
97.	Export by courier	➤ <i>The import or export by courier regulations may enhance the value limit of 'free gifts' and 'commercial samples' of import or export as the limits were revised in 2007 to boost exports. Since GR forms are dispensed with, the provision containing GR waiver is redundant and consequently the value limit of export by courier requires enhancement from present Rs.25,000 to Rs.5 lakh.</i>
98.	Double taxation on Services and intangible rights related payments by importers of goods, to the foreign entities	➤ <i>While Custom Authorities relates all direct or indirect payments related to Services & intangible rights like royalty, license fee etc. to supply of goods and hold them liable to Customs duty, the Service Tax Authorities treat such payments as consideration for services and hold Indian Companies liable to pay Service Tax under reverse charge mechanism. Thus, Indian Companies are exposed to the burden of double taxation of customs duty as well as service tax.</i> <i>Thus, there is an immediate need to issue appropriate clarification so that payments related to services and intangible rights</i>



		<i>are not doubly taxed to customs duty as well as service tax.</i>
99.	General Issues on Customs	➤ <i>The system of sealing by Excise officers for exports must be completely dispensed with. Further, the customs RMS need to be strengthened to prevent illegal exports.</i>



E. CENTRAL SALES TAX

S. No.	Topic(s)	Suggestion(s)
100.	Facility to submit Form C, E etc. online	<ul style="list-style-type: none"> ➤ <i>With a considerable development in technology, all the relevant forms under Central Sales Tax Act like Form C, E, F etc. be allowed to be filed online. This will not only expedite the process of submitting the forms but also will save the time and streamline the process.</i> ➤ <i>Form E-1 is issued by the seller of goods in case of first sales made. At the time of subsequent sale form E-II is required to be issued by the seller. It is suggested that Form E-I be allowed to be used as self declaration form by intermediate sellers in order to avoid exchange of various forms in the process.</i>
101.	Amendment in Form B (Certificate of Registration) and Form C (Form of Declaration)	<ul style="list-style-type: none"> ➤ <i>It is suggested clause (f) reading as under, be inserted in Form B after clause (e) appearing at Para 3 of the said Form B:</i> <i>“The class(es) of goods specified for the purpose of sub-sections (1) and (3) of section 8 of the said Act is /are as follows and the sales of these goods in the course of inter-State trade to the dealer shall be taxable at the rate specified in that sub-section subject to the provisions of sub-section (4) of the said section:-</i>



S. No.	Topic(s)	Suggestion(s)
		<ul style="list-style-type: none"> • <i>for re-sale.....</i> • <i>for use in manufacture or processing of goods for sale.....</i> • <i>for use in mining.....</i> • <i>for use in the generation or distribution of electricity or any other form of power.....</i> • <i>for use in the packing of goods for sale/resale.....</i> • <i>for use in telecommunication network</i> <p>➤ <i>Similarly, it is suggested Form C be amended by inserting the description "use in telecommunication network...." after the description "Packing of goods for sale/resale....." in the declaration provided by the dealer to the seller in Form C as below:</i></p> <p><i>"Certified that the goods</i></p> <p><i>**Ordered for in our purchase Order No.....dated..... and supplied as per Bill/ Cash Memo/Challan No..... .dated..... as stated below*</i></p> <p><i>are for</i></p> <p><i>**resale.....</i></p> <p><i>use in manufacture/processing of goods for sale.....</i></p> <p><i>use in mining</i></p>



S. No.	Topic(s)	Suggestion(s)
		<p><i>use in generation/distribution of power.....</i></p> <p><i>Packing of goods for sale/resale.....</i></p> <p><i>used in telecommunication network.....</i> and are covered by my/our registration certificate No ... dated ...issued under the Central Sales Tax Act, 1956. It is further certified that I/We am/are not registered under section 7 of the said Act in the State ofin which the goods Covered by this Form are/will be delivered."</p>



F. OTHERS

S. No.	Topic(s)	Suggestion(s)
102.	Powers of the Commissioner (Appeals) under the Central Excise Act and the Customs Act to condone the delay in filing the appeal	➤ <i>It is suggested that the power to condone appeals be vested with the Commissioner Appeals upto a period of 90 days instead of 30 days with a further appeal to CESTAT in case of delays beyond such period.</i>
103.	Personal Penalty	➤ <i>It is suggested that the provisions relating to personal penalty under Rule 26 (earlier rule 209A) be removed from the statute.</i>
104.	Exemption from payment of duty by way of refund mechanism	➤ <i>It is suggested that the present system of granting exemption through refund route be reviewed and be made simple to comply.</i>
105.	Use of Digital Signature on various Excise and Service tax related documents viz. Invoice, ARE-1, ARE-3 etc.	➤ <i>It is suggested that suitable amendment in the Central Excise Rules, Service Tax Rules and Cenvat Credit Rules be made or issue appropriate clarification prescribing the manner in which Digital Signature can be used on various Excise and Service tax related documents viz. Invoice, ARE-1, ARE-3 etc. It will facilitate the assessee to comply with the provisions.</i>
106.	Suggestions for Reduction of Litigation	
(a)	Streamlining of Circulars/Trade	➤ <i>It is suggested that a practice of issuing a Master Circular on 1st April every</i>



S. No.	Topic(s)	Suggestion(s)
	Notices	<p><i>year in Excise/Custom/Service tax compiling all related circulars issued during the year be adopted on an annual basis. This would ensure better compliance as assessee's will be aware of necessary procedural steps and exemptions as available. A comprehensive circular makes easy to review all updates in an indexed manner.</i></p> <p>➤ <i>Further, it is suggested that issue of circulars be examined and if at all they need to be issued, the Board should issue circulars by exercising utmost caution and design the circular meticulously to avoid any interpretational issues by the industry or the field formations at the lower level.</i></p>
(b)	Training of Departmental Personnel	<p>➤ <i>A comprehensive training covering all the substantive, procedural aspects of the law and understanding of financial statements be scheduled for the officers at all levels.</i></p>
(c)	Accountability of tax collectors	<p>➤ <i>In order to project a sense of even-handedness in dealing with tax payers, provisions relating to accountability be introduced and not be formulated independently. The Tribunal or Commissionerate (Appeal) may impose reasonable cost for the same.</i></p>



S. No.	Topic(s)	Suggestion(s)
		➤ <i>If there are rewards awarded to the departmental officers for anti-evasion cases then there ought to be penalty also for frivolous litigations.</i>
(d)	Timely information and guidance	➤ <i>It is suggested that all the orders passed by CESTAT and Adjudicating Authority/ Commissioner (Appeals) be made available on websites for ready reference of the industry. The CBEC may play a proactive role and issue clarifications on problems / issues of industry which are similar in nature to avoid such problems resulting in litigation at a later stage.</i>
(e)	Vacancies in Tribunal	➤ <i>The vacancies in Tribunal be filled and additional benches in metro and new benches in non-metro cities be constituted to expedite the disposal of long pending cases. A fast track system of disposal of cases be introduced to deal with high revenue cases and settled issues.</i>
(f)	E-filing	➤ <i>E-filing of appeals be introduced to encourage paperless society as an environment friendly measure.</i>
(g)	Members of CESTAT	➤ <i>Practicing Chartered Accountants be made eligible for being appointed as Members of the CESTAT as in case of ITAT.</i>



S. No.	Topic(s)	Suggestion(s)
107.	Number of benches at CESTAT level	<ul style="list-style-type: none"> ➤ <i>It is suggested that the process of Constitution more Benches of the CESTAT be made speedy.</i> ➤ <i>Fill up vacancies of Judicial and Technical Members expeditiously.</i> ➤ <i>Transfer the administration and control of CESTAT to Ministry of Law like Income Tax Appellate Tribunal. This would ensure independence of CESTAT members.</i> ➤ <i>To allow attending of the hearing or representation of matters through video conferencing.</i> ➤ <i>To introduce a system of e-filing of appeal and make the filing process, paper-less.</i> ➤ <i>To reduce the minimum age limit for being Member of CESTAT.</i>
108.	National Tax Tribunal	<ul style="list-style-type: none"> ➤ <i>It is suggested that alternative appropriate authority/body be set up having expertise in accounting and tax laws with adequate infrastructure and powers so that pending cases on tax may be transferred to it.</i>

III. SUGGESTIONS IN DETAIL

A. SERVICE TAX

Substantive Law

1. Tax Audit Report in service tax

A comprehensive and compulsory audit in service tax by Chartered Accountants is the need of the hour due to the following reasons:

Aim to reduce litigation

Since, the same will be an annual exercise where Chartered Accountants will review the entire activities of an assessee, whatever the omissions or interpretational issues were there will get resolved to great extent and lead to less pressure on litigation process.

Introduction of Taxation of services based on Negative list

The implementation of taxation of services based on negative list in the year 2012 poses various challenges as services are intangible and are provided by organized as well as unorganized sectors that are scattered across the country. Also, frequent amendments seen in service tax law are another cause of concern.

Therefore, a robust system of audit by professionals possessing strong accounting and auditing acumen would be required to tap the full potential of the new widened tax base.

Single registration with various located commissionerate vs consolidated financial statement of assessee

Service tax liability cannot be calculated readily from the final accounts of the service providers as service tax is paid in each commissionerate while Consolidated Balance Sheet is prepared by the Assessee. Therefore, adjustment and reconciliations are required to comply with the provisions of service tax law and there is need to verify the same by independent expert.



Capping of revenue leakages

Service sector, as you are well aware, contributes more than 60% to the gross domestic product of the country. However, the tax revenue from this sector - albeit increasing gradually during the past decade - has not been in commensuration with the steady growth exhibited by this sector. For bridging this gap, a comprehensive and independent audit is required which will not only plug the revenue leakages but also ensure better tax compliance and eventually lead to increase in tax revenue.

Coverage of case(s) non-covered in scrutiny

It may be considered to make the audit under Service Tax Law compulsory for those assessee whose turnover in a year exceeds a certain amount as prescribed or notified. This measure will assist the department as it is difficult for the department to take up each and every case for full scrutiny. Tax audit would ensure that the financial statements and the accounts, on the basis of which return is prepared, are prepared in accordance with the applicable accounting principles and they are duly scrutinized by a person specially trained for that purpose and who is also subjected to strict disciplinary mechanism.

Reference of Income Tax Audit under Section 44AB

The Chartered Accountant has the knowledge of accounting principles and the intricacies involved in the maintenance of books of account and preparation of Balance Sheet and Profit and Loss Account. Due to this fact, all audits and even certification under the Income-tax Act has been assigned to the Chartered Accountants only. The report provided by Chartered Accountant in the Form 3CA/ 3CB along with Form 3CD provides a bird eye view of compliances by the assessee.

Reference of VAT Audit

We may like to draw your kind attention that considering the knowledge of accounting principles, the intricacies involved in maintenance of books of account and audit function of the Chartered



Accountants, majority of the State Governments have also made provision of audit to be performed by the Chartered Accountants.

Suggestion

*It is suggested that the provision of service tax audit by Chartered Accountant be introduced, similar to the Tax Audit under Income Tax Act 1961 and VAT Audit under various States. The Preliminary draft of audit report under service tax is enclosed as **Annexure-I**.*

Further, a provision be introduced for a Certificate from Chartered Accountant showing the reconciliation between the information sought in the information return u/s15A and the financial report.

2. Definitions and coverage- *Suggestions to harmonize definition*

(a) Service

The definition of term 'service' as provided under section 65B (44) of Finance Act, 1994, is very wide in its scope because of the absence of the words 'industry', 'commerce', 'business' or 'profession'.

The term 'activity' has not been defined in the Act, which has a significant meaning in the definition of 'service'. The term may cover activities which are of personal nature. The intention of the legislature should be confined to tax activities in relation to business. This is also in consonance with international practice such as the UK VAT law.

As per the Draft Circular issued (though not finalized yet) by the Department on leviability of service tax on staff benefits and employment related transactions, services rendered by the employer to employee will be liable to service tax. It is felt that this would be too harsh a provision for salaried class employees as the employer would ultimately recover such taxes from the employee.



Suggestions

- *The scope of service be restricted to a transaction of supply of service in the course of business, trade, commerce or profession or industry or furtherance of business, trade, commerce or profession or industry in line with international practice.*
- *The word 'activity' used in the definition of service be defined in the Finance Act, 1994 as common understanding of the term activity may differ from the legislative view. It is a term with very wide connotation, which may create unnecessary litigation or demand.*
- *The exclusion for services rendered by employee to employer be extended to services provided by employer to employee as well. This would reduce the hardship caused in determining the taxable value and reduce the administrative hassle in collecting the same. Further, the amount of tax sought to be collected on such transactions may not be substantial.*

(b) Agricultural Produce

The old definition of agriculture as provided in the *Notification No. 13/2003 ST dated 20.06.2003* defined it as "any produce resulting from cultivation or plantation, on which either no further processing is done or such processing is done by the cultivator like tending, pruning, cutting, harvesting, drying which does not alter its essential characteristics but make it only marketable and includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, jute, etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food, processed tobacco."

Many items in the old definition like rice, cereals, pulses, copra, jaggery tea, cashew etc. do not fit into the new definition of agricultural produce, whereas those goods are all considered as so, in common parlance as well as under State Laws. Further, these goods are essential commodities for common public including people below



poverty line as well. With the amendment, the cost of these goods has gone up resulting in increase in cost of these essential commodities.

Suggestion

The old definition of agriculture as provided in Notification No. 13/2003 ST dated 20.06.2003 be incorporated in the Finance Act, 1994 in place of new definition of agriculture to enlarge the scope of agriculture produce.

(c) Scope of support services rendered by Government

The Finance Act 1994, provides for the liability to pay service tax under reverse charge for any support services rendered by the Government [Ref: Notification No. 30/2012-ST, dated 20-Jun-2012].

In this regard, the term 'support services' has been defined under 'Section 65B (49) of Finance Act 1994 as "support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis.

Issue

The scope of the said term 'support services' is not very well understood by the industry due to insertion of the words "or any other support". This gives ambiguity to the services that could form a part of support services.

Suggestion

It is suggested that the words "or any other support" be deleted from the definition of Support Services to make it exhaustive and unambiguous.

(d) Intellectual Property Right

Suggestion

It is suggested that the term "Intellectual Property Right" be defined by borrowing the meaning assigned to in erstwhile Section 65(55a) of the Finance Act, 1994.



(e) Definition of Works Contract

As per section 65B (54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

As per Section 2 of Central Sales Tax Act, 1956 "works contract" means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property

Issue:

There exists a disparity between the definition of works contract between Finance Act, 1994 and Central Sales Tax Act, 1956 which leads to different interpretation of the law under different statutes.

Suggestion

It is suggested that the definition of works contract under Finance Act, 1994 be amended in line with the definition of works contract under CST Act, 1956 to bring in parity between the two.

3. Job work by SEZ units for exports- Need Review

The 'Negative List of Service' in Section 66D of the Finance Act, 1994 interalia covers 'any process amounting to manufacture or production of goods'. The said expression has been defined in Section 65B (40) of the Act as to process on which duties of excise is leviable under Section 3 of the Central Excise Act, 1994 (CE Act).

Prior to introduction of Negative list, similar exclusion was contained under the taxable service category of 'Business Auxiliary Service' (BAS) which covered services relating to 'production or processing of



goods', but excluded 'any activity that amounts to manufacture of excisable goods'. The Explanation to said definition of BAS provided that the term 'manufacture' has the meaning assigned to it in Section 2(f) of the CE Act.

While prior to introduction of 'negative list', the criteria to judge whether the activity amounts to 'manufacture' or not was with reference to definition of the said term as given in Section 2(f) of the CE Act, post introduction of Negative list, the reference is to Central Excise law provision, i.e. process on which duty of excise is payable under Section 3 of CE Act. Activities carried out in SEZ are outside the scope of Section 3 of CE Act and accordingly, do not fall in the exclusion list and, thus, do not get covered under the negative list.

Thus, a SEZ unit carrying out job-work activity would be liable to service tax, even though the process carried out by it amounts to 'manufacture', if seen from common parlance or in terms of definition as given in Section 2(f) of the CE Act.

Suggestion

The definition of 'process amounting to manufacture or production of goods', as presently given in Section 65B (40) of the Act, be modified to cover all processes that amount to manufacture as defined in Section 2(f) of the CE Act.

4. Outbound transaction provided by Branch to overseas Head Office and vice-versa- Mismatch in Export and Import of Services Provisions

As per Explanation 3(b) to section 65B (44) of the Finance Act, 1944, an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

In a scenario where an offshore entity enters into a contract for setting up an infrastructure project with a customer in India but the actual work is performed through the Branch office located in taxable



territory, the transaction would lead to duplicity of taxes on the same turnover, without any credit eligibility i.e.,

- Branch office would be held liable to service tax on the money received from the Head Office for execution of the work.
- Branch office would also be held liable to service tax on the contract between Head Office and the India customer, since the Indian office (i.e. Branch Office) of the service provider (i.e. offshore entity) is directly concerned with provision of services.

Hence, on the same transaction the Branch Office would be held liable to pay service tax twice.

However, a different approach is adopted in case of services rendered by the Head Office/Branch to overseas Branch /Head Office whereby export status is denied vide rule 6A of the Service Tax Rules, 1994.

Suggestions

No service tax be levied on outbound transaction provided by an office located in taxable territory to another office located in non-taxable territory of the same legal entity.

Alternatively, export status be accorded to services rendered by Head Office/Branch to overseas Branch /Head Office so as to treat them at par with import of service.

5. Trading of goods - *Not a service still, it is in Negative list of Services*

It is interesting to note that section 66D starts with the words, namely, 'The negative list 'shall comprise of the following **services...**'. Thus, negative list pre-supposes that all activities covered therein are services. However, the same are not charged to service tax by virtue of their specific exclusion in the charging section 66B.



The definition of service as provided under clause (44) of section 65B excludes *inter alia* 'an activity which constitutes merely a transfer of title in goods or immovable property, by way of sale, gift or in any other manner'. Thus, by virtue of the said exclusion pure sale of goods and immovable property gets excluded from the very definition of service and cannot be termed as service.

However, trading of goods is covered under clause (e) of negative list of services though the same is not service at all. This could lead to interpretational issues in future.

Suggestion

Appropriate amendment be made to rectify the said anomaly.

6. Service tax on recoveries towards electricity supplies

Section 66D (k) of Finance Act, 1994 dealing with negative list of services lists transmission or distribution of electricity by an electricity transmission or distribution utility as one of the services under Negative List.

Further, Section 66B(23) defines 'electricity transmission or distribution utility' as 'the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003; or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government and the definition of services excludes 'transfer of property in goods'.

Also, Electricity constitutes "goods" under the VAT and Central Excise laws and judicial precedents have upheld this view.

Further, prior to 1.7.2012, activities relating to transmission or distribution were clearly exempt from service tax and there is no reason why State/Central Government utilities should be saddled with litigation



on this count as by the statute governing them they cannot carry out any activity except in relation to transmission or distribution. Therefore, this exemption for activities relating to transmission or distribution should be restored.

Issue:

Various developers of real estate parks supply electricity to their tenants (either generated through the DG sets or obtained from the state electricity board). However, only electricity transmitted or distributed by an electricity transmission or distribution utility is specifically exempted under service tax. No specific exemption has been provided for electricity supplied by developers to its tenants.

Suggestion

It is suggested that to remove the ambiguity, it may be clarified that charges/ recoveries for supply of electricity by developers is not covered under the purview of service tax.

7. Declared services- Need to clarify clause (e)

As per Section 66E, the following shall constitute declared services:

.....

“Agreeing to the obligation to refrain from an Act or to tolerate an Act or a situation or to do an Act.”

.....

If the clause is given its literal meaning, then it will cover very wide number of transactions [including many personal and social transactions] which may not be intention of the law-makers. The purpose of this clause is to tax non-compete fee.

Suggestion

It is suggested that this clause be suitably modified. The entry should exclude personal, social and religious activities.



Valuation of Taxable Service

8. Sharing of expenses between two companies/ sister concerns- *Clarification required to adhere with Legal aspect*

Suggestion

It is suggested that an appropriate clarification be issued with a view to provide clarity on service tax for 'sharing of expenses' between two associated companies/ sister concerns where there is no margin.

9. Manner of determination of Value in case of where the whole consideration is not in money

Rule 3 of Service Tax (Determination of Value) Rules, 2006 reads as subject to the provisions of section 67, the value of taxable service, [where such value is not ascertainable], shall be determined by the service provider in the following manner :-

- (a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration;
- (b) Where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service.

Issue

This method of valuation wherein a comparable price or price equivalent to similar service is taken as the value of the service may lead to different results under different situations. There is no fixed formula for determination of Value as in the case of Excise Valuation Rules.



Suggestion

It is suggested that the provision be amended to provide that in such cases cost plus some deemed margin (may be 10%) be taken as value of Services on the similar line provided under Rule 8 of Excise Valuation Rules, wherein the Value of the Goods is taken as 110% of cost of the Goods.

10. Amendment to definition of Original works

As per Explanation 1 of Rule 2A to Service Tax Valuation Rules, 2006 “original works” means-

- (i) all new constructions;
- (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

Further, as per *Notification No. 25/2012-ST dated 20.06.2012*, services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958;
- (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- (d) canal, dam or other irrigation works;
- (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or



- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;

Thus, activities of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration when provided to Government in relation to Original Works are exempt.

However, definition of original works already contains activity which would make it original work viz., erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise. Also, such machinery is not required to be new.

Thus, it is creating an anomaly whether activities other than erection, commissioning, installation viz., construction, completion, fitting out, repair, maintenance, renovation, or alteration would be exempt in relation to plant and machinery when provided to Government.

Suggestion

It is suggested that clause (iii) of explanation 1 of Rule 2A to Service Tax Valuation Rules, 2006 be replaced with following clause:

“(iii) All newly commissioned, erected or installed plant, machinery or equipment or structures, whether pre-fabricated or otherwise;”

11. Increase in value of service portion in respect of certain works contracts

Notification 11/2014- ST dated 11-07-2014 has amended taxability of Service Portion of Works Contracts related to maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property with effect from 1st October 2014. Taxable Value will be 70% of Total Amount Charged for the works contract other than original works.

Before Amendment, Service Portion in respect of Works Contracts related to maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an



immovable property was 60% of Total Amount Charged for the works contract

Issue

Most of the States provide standard deduction to the extent of 30% in case of works contract related to maintenance, repair, reconditioning or restoration or servicing of any goods or maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property. Rest 70% is chargeable to VAT considering the sale of material in case of works contract. In case of aforesaid services it may be noted that, cost of material used is on a higher end.

70% is already chargeable to VAT and with this amendment another 70% is chargeable to Service Tax. This leads to payment of Taxes on 140% of the value which in itself is a hardship.

Suggestion

It is suggested that the entry given in sub-clause B & C of Rule 2A (ii) be merged to 60% instead of 70%.

Exemptions/ Abatements/ Rebates

12. Basic Exemption Limit for Small Service Providers

The service tax exemption limit for small service providers in terms of *Notification No. 33/2012 ST dated 20.06.2012* is currently limited to ` 10,00,000/-. It is proposed to extend the exemption limit due to the following reasons:

- (i) Small service providers are poor, uneducated and mainly in the unorganized sector.
- (ii) Limit was not enhanced since 1st April, 2008



(iii) After 1.7.2012 post Negative list era, more services are under the ambit of service tax, which earlier was not includible in the exemption limit.

Suggestions

- *It is suggested to extend the exemption limit to ` 25,00,000/-.*
- *It is suggested to clarify that for calculation of applicability of SSP exemption limit, the value of service provided would be taken after the abatement, if any applicable to the service.*

13. Nominal Tax Rate Scheme under Service Tax

Higher tax rate does not affect the high volume service providers as they have requisite manpower to handle detailed formalities like maintaining workings, availing credit, detailed monitoring of tax liability as needed for compliance with Point of Taxation Rules, meeting the service tax audit requirements, meeting the periodic Range Office queries etc.

However, the small service Providers (SSP) cannot meet all the compliances regularly on account of being a small concerns with limited manpower and resources., Further, the cost of administering this kind of small service providers is disproportionate to the Revenue too.

Small service providers sometimes find it difficult to comply with the provisions of the law as they work as a small operation team of three or four members or without a team – as individual, a service (say, Beautician / Commission Agent / Designer / Electrical or Plumbing contractor / Automobile / Two Wheeler Repair Service Provider / Small Commercial Property Owner etc.). This adds to their inability to comply with the law.

Suggestion

It is suggested that Compound tax rate be introduced in line with Central Excise mechanism (Notification No CE 1/2011); nominal tax rate of 2% can be levied on Small Scale Service Providers. The following can be the highlights –



- *with Turnover upto ` 100 Lakh per annum; if not at least the present level (referred for reduction of interest rate, in different context) of ` 60 lakh per annum;*
- *SSPs need not be allowed to take CENVAT credit; however their services should be eligible input services for recipients so that recipients will not hesitate to deal with SSP;*
- *Simplified option should be enabled in service tax return filing system; annual returns should be introduced instead of bi annual returns;*
- *Audit or Visits of the Revenue, on these assessee's premise should be on specific intelligence only; otherwise once in 3 – 5 years verifications can be mandatory;*
- *Specific instruction should be given to the field formation to courteously deal with this kind of small players when they approach for Registration / clarification etc.*

14. Service tax on independent director remuneration

Definition of Service as per Sec 65B (44) excludes service provided by Employee to Employer in the course of employment. Thus, where the director is working in capacity of employee of company i.e. Executive Director, Managing Director then, his service shall not be liable for Service Tax. However, in case where director is working as Non-executive Director or Independent Director, his service attracts Service Tax.

Suggestion

It is suggested that remuneration of a director be exempted from Service Tax. The independent director is discharging a statutory duty and it is not a recurring income. Therefore, it ought to be covered under Negative list or under Mega Exemption Notification No. 25/2012.



15. Exemption for Goods Transport Agency (GTA)

Clause 21 (b) & (c) of *Notification No. 25/2012 dated 20.06.2012* exempts taxable services provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage, from the whole of service tax leviable thereon where:

- the gross amount charged for the transport of goods on consignments transported in a goods in a single carriage does not exceed ` 1500/- ; or
- the gross amount charged for the transportation of all such goods for a single consignee does not exceed ` 750/-.

Suggestion

Considering the increase in cost of transportation since 2004, it is suggested that the exemption limit be enhanced to ` 4,000/- for single carriage and ` 2,000/- for a single consignee.

16. Exemption of renting of warehouse / storage facility for agriculture produce :

Clause 14(d) of *Notification No. 25/2012 dated 20.06.2012* provides that Services by way of construction, erection, commissioning, or installation of original works pertaining to post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes are exempt from levy of Service Tax.

Further, services relating to agriculture or agricultural produce by way of loading, unloading, packing, storage or warehousing of agricultural produce are covered under the Negative list of Services vide sub-clause (v) of Section 66D (d) of Finance Act, 1994.

However an anomaly has been created through *the Circular No. B11/1/2002-TRU dated 1.08.2002* wherein it has been clarified that mere renting of space cannot be said to be in the nature of service provided for storage or warehousing of goods. Essential test is whether the storage keeper



provides for security of goods, stacking, loading / unloading of goods in the storage area.

Issue:

Merely renting of space for storage or warehousing of goods in case of agriculture purposes are subject to the levy of service tax.

Suggestion:

It is suggested that an exemption be provided to the service of renting of space for used for storage or warehousing of goods as the auxiliary services related to this are already exempted resulting in breaking of the CENVAT Credit Chain.

17. Exemption for Parking Services

Clause 24 of the Mega Exemption *Notification No 25/2012 dated 20.06.2012* provided exemption to services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility.

The above mentioned exemption was withdrawn vide *Notification No. 3/2013-S.T., dated 1-3-2013*.

Suggestion

It is suggested that the exemption provided to services by way of vehicle parking to general public be restored.

18. Exemption to Charitable Activities provided by an entity registered under section 12AA of Income Tax Act

(a) Re-instatement of sub-clause (v) of clause (k) of mega exemption notification

Union Budget 2012-13 amended the definition of Charitable Activities as follows:



The definition of “charitable activities” is being changed by deleting the portion listed in sub-clause (v) of clause (k). Thus the benefit to charities providing services for advancement of “any other object of general public utility” up to ₹ 25 Lakh will not be available. The threshold exemption will continue to be available up to ₹ 10 lakh.

Issue

The withdrawal of this exemption has made services for advancement of any other object of general public utility taxable subject to a threshold of ₹ 10 lakhs.

Suggestion

It is suggested that the exemption to charitable activities relating to “advancement of any other activity of general public utility” be restored.

(b) Exemption be expanded to cover input services received for charitable activities

Under the Mega Exemption, certain taxable services are exempt from levy of Service Tax; however any input service received by the exempt entities becomes costly as they are liable to service tax.

Suggestion

Exemption Notification be expanded to grant service tax exemption on services received by not for profit entities in the social sectors by way of Auxiliary Charitable Activities which may be defined as under:

Services provided to a not for profit entity by way of:

- *transportation of its staff, or for charitable activities;*
- *services by individuals when such services forms an integral part of charitable activity;*
- *catering, security or cleaning or house-keeping services performed for such entity and;*
- *activities of an entity whose activities does not exceed the value of 25 Lakhs during a year.*



19. *Mega Exemption Notification – 25/2012*

It is suggested that the exemption be granted to all sorts of Trade Associations, Social and Religious Associations.

20. *Ambulance and Medical Insurances Services be covered under Mega exemption Notification 25/2012 dates 20.06.2012*

Mega Exemption Notification No. 25/2012 exempts various services from Service Tax. Clause 2 of Mega Exemption Notification reads as “Health care services by a clinical establishment, an authorised medical practitioner or para-medics;”

Clause 26 of the Mega Exemption Notification reads as “Services of general insurance business provided under defined schemes”

Issue

Presently, the ambulance service provided by clinical establishments or authorized medical Practitioner’s is exempt from service tax. However, in practice the ambulances are outsourced by Clinical establishments. Thus the person providing ambulance service to clinical establishments is liable to service tax.

Also, currently only scheme and policies of general insurance defined in clause 26 are exempt from service tax. Thus the insurance schemes or policies falling outside the purview of pre-determined categories are liable to service tax.

Suggestions

- a. It is suggested that Ambulance service provided by any person be exempt from Service Tax.*
- b. It is suggested that service tax on Term Plan, Medical Insurance, Personal Accident Insurance and third Party Insurance be covered under Mega Exemption, so that it becomes cheaper and helps to secure people life.*



21. Services received by Educational Institutes

The exemption provided in respect of renting of immovable property services to educational institutions has been withdrawn with effect from 11th July, 2014 *vide Notification No. 06/2014-ST dated July 11, 2014*. Further, exemption available for auxiliary services provided to the educational institutional has been restricted to specified services.

Issue

The levy of service tax on renting of immovable property provided to the educational institutions has substantial increase the cost of education.

Further to remove the ambiguity, the auxiliary services has been defined where in the services provided by Guest Faculty / teachers and IT lab services has not covered.

Suggestion

- (i) *It is suggested that Renting of Immovable property service provided to Education Institutions continue to be exempted.*
- (ii) *It is also suggested that scope of exempted services to be enhanced by covering guest faculty / teachers, and computer / IT lab / software services. (Or All services directly relating to the delivery of education or training to students)*

22. Clause 25 of Mega Exemption Notification - Services provided to Government, a local authority or a governmental authority

Clause 25 of *Notification No. 25/2012 dated 20.06.2012* exempts Services provided to Government, a local authority or a governmental authority by way of –

- (a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or
- (b) repair or maintenance of a vessel;



Suggestion

It is suggested that all functions entrusted to a municipality under Article 243W of the Constitution be covered in clause 25 of the mega exemption notification.

23. Service Tax levy - Level play between Professions

Issue

As legal/representation services are exempt vide Notification 25/ 2012 – ST to specified receivers (professional counterparts / small business enterprises / non business enterprises) with an intention to enable the receivers avail such service to ensure their right to defend themselves in any statutory proceedings effectively at low cost, there cannot be any discrimination in such exemption on the basis of professional category. However, Chartered Accountants who render the same service cannot claim this exemption.

Suggestion

In the interest of equity, justice and level play between professions, exemption granted to legal/representation services rendered by advocates/firm of advocates as per Notification No. 25/2012 ST dated 20.06.2012, be made applicable to the same services rendered by CA / Firm of CAs also.

24. Manpower Supply Service- appropriate exemption/abatement be provided

Any person engaged in providing any service, directly or indirectly in any manner for recruitment or supply of manpower, temporarily or otherwise to any other person is liable to service tax. This service is also covered under partial reverse charge mechanism.



Issue

While providing such manpower services, agency has to pay salary of its deputed employee and statutory dues such as ESI, EPF.

Further, no CENVAT credit is accrued on these services due to which cost of supply of manpower is very huge.

Suggestion

It is suggested that in respect of Manpower Supply Services, appropriate abatement be allowed in respect of Salary payable, ESI/EPF.

Alternatively, the cost of Salary payable to its deputed employee by manpower or recruitment supply agency is allowed as deductions from the Gross Value Charged on the concept of pure agent.

25. Abatement on Construction Services

Notification No. 9/2013-S.T., dated 8-5-2013 amended the Abatement Notification No. 26/2012 dated 20.06.2012 regarding abatement of Construction Services as follows:

12.	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly, except where entire consideration is received after issuance of completion certificate by the competent authority,-		(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004
	(a) for a residential unit satisfying both the following conditions, namely :- (i) the carpet area of the	25	(ii) The value of land is included in the amount charged from the service receiver."



	unit is less than 2000 square feet; and (ii) the amount charged for the unit is less than rupees one crore;		
	(b) for other than the (a) above.	30	

Issue

The abatement percentage for residential unit (satisfying a particular condition) and other units is different.

Suggestion

It is suggested that a uniform percentage of taxable value (25%) given as the abatement. Alternatively, notification be changed according to the value of land in the City/area (as per guideline value).

26. Abatement of service tax on rental of immovable properties

Section 66E of Finance Act 1994 provides a list of declared services of which first entry is "renting of immovable property". These services are liable to service tax @ 12%.

Issue

The Budget 2007 enlarged the scope of service tax to include the renting of immovable property among other services. First of all, any levy on immovable property is a subject matter of the State and not the Union Government. Further, the mechanism of taking the office premises, shed, factories buildings, on rent is inevitable as all cannot afford to own immovable property. Therefore, the property is taken either on rent, lease or other arrangement for a consideration. The consideration received as rent also suffers income tax in the hands of the recipient. Apart from this, the recipient of the rent is also subjected to property tax, municipal tax or Corporation tax, infrastructure tax, sanitary levy etc.



Consequently, a sizable portion of the rent is taken away by the Government in the form of various taxes.

While renting out the immovable property virtually no service is rendered. The rent is paid as compensation towards the usage of the property rented by the owner. Therefore, such activity should not have been included for the purpose of levying service tax. Further, there are many hospitals/ charitable institutions which render services to public as the government infrastructure is not sufficient to meet the health requirement of the increasing population in our country. While the government has exempted buildings used for the purposes of accommodation in hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities from the levy of service tax, no such exemption has been extended to hospitals or philanthropic institutes/ organisations.

Suggestion

It is suggested that renting of immovable property be exempt from service tax as the same is compensation in the nature of investment of capital, which is exempt under service tax.

Alternatively, the Government may provide for an abatement of 70% on the value of the said activity and provide the taxable value to be 30%, to compensate the cost of construction and material element involved in letting out of immovable property.

27. Service Tax on Advertisement Agency Commission

The value of taxable services in relation to service provided by an advertising agency to a client is the gross amount charged by such agency from the client for services in relation to advertisements. However, the amount paid by the advertising agency, excluding their own commission, for space in getting the advertisements published in the print media (i.e. newspapers, periodicals, etc.) are not includible in the value of taxable service.



For example a publication house charges ` 10,000/- to Advertising agency A with 15% discount i.e. ` 8,500/-. Advertising agency A charges the ultimate client a similar bill of ` 10,000/- with a lesser discount of 10% i.e. ` 9,000. As per current industry practice agencies charge service tax @ 1.854% (15% commission * 12.36% ST rate). So Agency A will charge service tax @ 1.854% * ` 9,000/- and the commission is not shown separately.

Suggestion

It is suggested that existing practice be amended to compulsorily declare a proportion as service charge for advertisement agencies service agent or authorized money changes in order to curb the existing practice of hiding the commission portion of the bills. Additionally a slab system can be introduced for assessee providing such commission based services.

Alternatively, It is suggested that a mechanism on the basis of slab rate system be provided on the line of Money Exchanger, Ticket agent etc.

28. Served From India Scheme (SFIS)- May be applied on Services Export

SFIS scheme provides for issue of Duty Credit Scrip for 10% of Net Foreign Exchange earned by a Service Exporter during the Financial Year for export of the specified services. As per Para 3.12.7 of Foreign Trade Policy (FTP) 2009-14, the said Scheme has the following restrictions for usage of Scrip:

- (i) Scrip can be used only by the Service Exporter and is not transferable, except to Group companies.
- (ii) Scrip can also be used by the Manufacturing unit of the same Service provider.
- (iii) Scrip can be used for payment of Excise Duty on domestic procurement, and not allowed for payment of Service Tax for procurement of Domestic services.



- (iv) Scrip are not freely transferrable, unlike other Scrip such as Focus Market Scrip, Market Linked Focus Product Scheme (MLFPS), etc.

Even though many of the Service providers are eligible for obtaining the Duty Credit Scrip under SFIS, they are actually not benefitted by the SFIS Scheme, mainly because of the following reasons:

- (a) Service providers normally spend substantial amount on import of Capital Goods at the time of start up of the business, and there would be comparatively lesser spending on future imports. However, Scrip under the SFIS can be obtained only after Exports are made, and Foreign Exchange is realized. Thus, there is very less scope for the existing service providers to use the Scrip, for the purpose of specified.
- (b) Even if the service providers obtain the Scrip, many of them may not be having Group companies or Manufacturing set up, to transfer the benefits.
- (c) Service exporters mainly procure services in India on a continuous basis, and Scrip is not allowed to make payment of service tax.
- (d) Scrip is not freely tradable, so that service exporter can sell and encash the Scrip and to use the money realized in their business.

Suggestion

- *It is suggested that Scrip obtained through SFIS be made freely tradable in line with FMS, MLFPS etc., so that Service Exporter who cannot use the Scrip for imports, can be benefitted by selling the Scrip in the market to the potential Importers.*
- *It is also suggested that Scrip be allowed to be used for payment of service tax towards locally procured services, including Reverse Charge payment for Import of Services as it is allowed to be used for payment of Excise duty on domestic procurements.*



Procedural Law

29. E-filing of document for registration under service tax- *will improve ITES*

Section 69 of Finance Act, 1994 states that every person liable to pay the service tax under this Chapter or the rules made there under shall, within such time and in such manner and in such form as may be prescribed, make an application for registration to the Superintendent of Central Excise. The Form ST-1 duly filled along with copy of PAN card, proof of residence and constitution of the applicant etc. are required to be submitted to the jurisdictional Central Excise office.

Suggestion

- *It is suggested that a facility of sending the documents as scanned copy be introduced instead of the present requirement to submit the documents manually. A Chartered Accountant may be allowed to certify the form with his digital signature, if required.*
- *It is suggested that the Registration no. in ST-2 so allotted be made available online with digitally certified by the appropriate authority.*

30. Payment of service tax- *Need changes in system and formats*

(i) Service tax collection based on accounting codes notification

Circular No. 165/16/2012 ST dated 20.11.2012 read with Notification No. 48/2012 ST dated 30.11.2012 providing for payment of service tax in the erstwhile accounting codes has created hardship to the assessee in determining the classification, particularly in the absence of the relevant definitions in the new regime. As per the objective of introduction of the negative list, the classification created disputes. This may also lead to avoidable litigation and cause possible confusion in the minds of the assessee/ administrator with additional burden of compliance.



Suggestion

The Circular be withdrawn and different methodologies be explored to determine the service tax collections in the respective sectors rather than requiring individual assessee to provide this information.

(ii) Amendment in GAR-7 Challan acknowledgement

Form GAR-7 is used for making service tax payments, the acknowledgement so received of challan payment do not contain the period for tax payment.

Suggestion

It is suggested that period for tax payment be mentioned in the acknowledgment of tax payment.

(iii) E-Payment of Service Tax

Rule 6(2) of Service Tax Rules, 1994 has been substituted with effect from October 1, 2014 vide Notification No. 9/2014 -ST dated 11.07.2014 with a view to make e-payment of Service Tax mandatory for every assessee.

However, proviso to aforesaid Rule 6(2) provides that jurisdictional Assistant Commissioner of Central Excise or jurisdictional Deputy Commissioner may allow the assessee to deposit the Service Tax by any mode other than internet banking. Before this amendment, e-payment of Service Tax was not mandatory if the amount of duty to be paid was less than ` 1 lac.

Issue

The above amendment has been causing undue hardship for small service providers. Small Service Providers, mainly in unorganized sectors, are uneducated and it is a possibility that they may not be able to make e-payment of Service Tax due to lack of facilities. In case of default, Interest and Penalty would also be levied.



Suggestion

It is suggested that appropriate limit for the e-payment be prescribed according to the data available with the ministry in order to support the small service providers.

(iv) Due Date of payment of Service Tax

Rule 6 (1) of Service Tax Rules, 1994 provides that service tax shall be paid to the credit of the Central Government by the 6th day of the month/quarter electronically through internet banking immediately following the calendar month/quarter in which the service is deemed to be provided. However, in the case of month of March, service tax is required to be paid by 31st day of March itself.

Issue

Many a time assessee find it difficult to pay the service tax in the requisite time due to non-receipt of invoices, credit terms etc. which in turn puts the burden of interest and penalty on them

Suggestion

It is suggested that the due date for payment of service tax be change from 6th day of next month/quarter to 15th day of next month/quarter.

(v) Verification mechanism for Service Tax payment and credit thereof -assessee code wise

Service receiver makes the payment of Service Tax alongwith value of services to the Service provider who in turn deposits the same with the Government. Currently, there is no mechanism to verify the service tax that is paid by service receiver to the service provider has actually been paid by the service provider to the Government account.



Suggestion

It is suggested that verification mechanism be made available to check service tax paid by the service recipient to the service provider on the line of TDS deducted and deposited by the deductor under Income Tax as well as with VAT authority, in format of J1 & J2.

(vi) Payment of Service Tax on provisional Basis: Amendment required in Rule-6 of Service Tax Rules, 1994

Rule 6 (4) of Service Tax Rules, 1994 allows payment of service tax on provisional basis on such value of taxable service as may be specified by him and the provisions of the Central Excise (No.2) Rules, 2001, relating to provisional assessment, except so far as they relate to execution of bond, shall, so far as may be, apply to such assessment.

Issue

The said Central Excise Rules are redundant and presently we have Central Excise Rules, 2002.

Suggestion

It is suggested that the Central Excise (No.2) Rules, 2001 be replaced with Central Excise Rules, 2002 as the same has been redundant.

31. Provision for Bad Debts

W.e.f 01.04.2011, payment of service tax has been shifted from receipt basis to accrual basis in case receipts of the service provider exceed ` 50 Lakh in the preceding financial year vide Point of Taxation Rules, 2011. In this system, there are no provisions for bad debt adjustments and the service providers are forced to pay service tax out of their own pockets if they fail to realize the consideration from the clients. For example, if the service is already provided and the invoice has also been issued, service tax would have been paid on the same, at the time when the service is



provided or at the time when the invoice is raised, whichever is earlier. But if the payment is not at all received subsequently, there is no provision to claim adjustment / refund of the service tax already paid.

Such service tax could not be covered under Rule 6(3) of the Service Tax Rules, 1994 as the service has been provided. It cannot be covered under Rules 6 (4A) / (4B), as it is not a case of any excess payment of service tax. The service has been provided and hence the taxable event has happened. As the point of taxation has also occurred, service tax has also been paid. So, it is immaterial, whether the payment is received or not.

Unlike goods, which can be taken back in the event of non-payment of the consideration thereof, services, being intangible in nature, cannot be reclaimed from the service receivers. Further, service providers do not have a lien on the service provided by them the way a seller has a lien on the goods sold by him. There are no documents of title to services which can be put through the bank to make the recoverability certain. The rights of an unpaid seller of goods [Sections 45 to 54 of Sales of Goods Act, 1930] are well guarded and recognized in law as against the rights of an unpaid service provider.

Issue

In a situation where the service provider is unable to recover the amount from the service receiver, he has to deposit the service tax from his own pocket even though he is unable to recover the value of his taxable services and also forego the CENVAT credit of the service tax paid on such amount.

Suggestion

Rule 6(3) of the Service Tax Rules, 1994 be suitably amended to allow excess payment of service tax in the event of bad debts with a view to mitigate the genuine financial hardships of the service provider as the assessee is required to deposit service tax from his own pocket even though he is unable to recover the value of his taxable services and also forego the CENVAT credit of the service tax paid on such amount.



32. Filing of Return- *need procedural and format changes*

(i) Confirmation / Acknowledgment of E-Return filing at ACES

The acknowledgement / confirmation of uploading of Return on the ACES Website are not given instantly, it is generally provided after a day or two days time. Due to this, there are number of instances where the assessee uploads the return on 25th April/ October and the return is rejected due to some technical error.

The assessee may file the return after the corrections on or after 25th April / October, which attract late fee under Rule 7C of Service Tax Rules, though the assessee wish to have bonafide compliance and it is only due to the technical error the return has been delayed.

Suggestions

- *It is suggested that acknowledgement of return/ confirmation be provided instantly as it is provided in the case of Income Tax Returns.*
- *It is also suggested that in these cases the late fee should not be levied.*
- *It is further suggested that late fee in case of NIL return be removed.*

(ii) Additional information, if any in the return

Some assessee wish to submit certain details like excess service tax paid, adjustment of service tax, change in method, old dues etc. in the Service Tax Return. However, there is no such space available in the return form.

Further in the present Service Tax Return form, provision to claim 50% Credit by banking Industry is not available.

Suggestions

- *It is suggested that appropriate space be made available in the return form so that assessee may give additional information to the department in relation to the return, if any.*



- *It is suggested that appropriate space be made available to claim the 50% credit by banking industry.*

(iii) Revision of Return of Service Tax

As per Rule 7B, an assessee may submit a revised return in Form ST-3 within a period of 90 days from the date of submission of the return under Rule 7.

Suggestions

- *It is suggested to clarify that whether revised return may again be revised.*
- *It is also suggested that time limit for revision of return be increased to 180 days considering the closing of financial accounts of the assessee and audit of the same by 30th September of the next financial year.*

(iv) Return of Service Tax for prior periods

Presently, the system do not provide option for online filing of return for prior period and it is only using the excel utility; one can upload previous returns, which also, will not be visible for future use on login of assessee.

Suggestion

It is suggested that the facility to file an online return for prior periods be made available.

33. Interest on delayed payment of service tax

The Central Government vide *Notification No. 12/2014-ST dated 11.07.2014* has fixed the following rates of simple interest per annum for delayed payment of Service Tax with effect from 01.10.2014:



S. No (1)	Period of delay (2)	Rate of Simple Interest (3)
1.	Upto Six Months	18%
2.	More than six months and upto one Year	18% for the first six months of delay and 24% for the delay beyond 6 Months
3.	More than One Year	18% for the first six months of delay; 24% for the period beyond six months upto one year and 30% for any delay beyond one year

Issue

In order to have better understanding of the aforesaid interest rates, the following illustration has been provided:

For Instance: M/s ABC Ltd discharges its Service Tax Liability amounting to ₹ 1,00,000/- for the Month of April 2014 on 6th Nov 2015. In that case, amount of interest required to be paid by M/s ABC Ltd shall be computed as under:

The due date of discharging Service Tax Liability in the aforesaid case shall be 06th May 2014. Thus, interest shall be computed as under:

Period	Days for Interest	Computation of amount of interest (As per old provision)	Computation of amount of interest (as amended)	Comparison
Interest for the period 07.05.2014 to 06.11.2014	184 Days	=100000*18%*184 / 365 = 9074	=100000*18%*184/365 = 9074	NO EFFECT
Interest for the period	181 Days	=100000*18%*181/365=	=100000*24%*181/365=	INCREASE BY 33.33%



07.11.2014 to 06.05.2015		8,926	11,901	
Interest for the period 07.05.2015 to 06.11.2015	184 Days	=100000*18%* 184/365= 9,074	=100000*30%*184/3 65= 15,123	INCREASE BY 66.67%
Total Interest payable by ABC Ltd.		27,074	36,099	

The interest rate slab is very harsh for the assessee as delay of 3 years means interest of almost 100%.

Additionally, a penalty under section 76 of the Finance Act, 1994 is imposed on non-payment of service tax at the rate of ₹ 100/- per day of default or 1% per month, whichever is higher.

Thus, another 12% for the year will be imposed for the same default i.e. if the default is beyond one year then highest slab of interest will be applicable plus the penalty under section 76 will be imposed thereby accumulating the interest and penalty together to 42%, which is very high.

Suggestions

- *It is suggested that this amendment should be applicable for those assesses who have collected the tax but not remitted to the government. The assessee making delay in payment of tax due to other reasons be not penalized in parity with the evaders.*
- *It is suggested that the rates of interest be restored to the original rate at 18% irrespective of the period of delay as from the aforesaid calculation effective rate of interest comes to 36% per annum or 3% per month which is very huge. It may be noted that under the Income-tax Act, delay in payment of tax only attract interest that too at the much lower rate of 12% per annum (after return date 18% P.A) and there is no penalty provisions for delay in payment of income tax.*



- *Without prejudice to above, it is suggested that a higher rate of interest rate may be charged according to slab rate of the tax demanded to protect the small service providers.*
- *The interest rates for both the demand of the duty/tax and the refund of the duty/tax be made uniform. There is need for fairness and equity in the rates at which interest is paid by the department and that is charged from tax payer.*
- *Further, uniformity be also ensured in respect of date of charging interest on duty/tax demands vis-à-vis date of paying interest on refund of duty/tax. Interest on delayed refunds be also paid by the Department from the date on which duty/ tax was actually paid.*

34. Time limit for issuing Show Cause Notice under Service Tax

Section 73 (1) of Finance Act, 1994 states that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, Central Excise Officer may, within eighteen months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

Issue

Section 73 provides that the assessing officer can issue Show Cause notice to an assessee within 18 months from the relevant date, if the case does not involve fraud or collusion or suppression of facts etc. But in similar situation the Central Excise Act 1944 provides that show cause notice should be issued within one year from the relevant date.

Suggestion

It is suggested that time limit for issuing show cause notice be reduced to 12 months from 18 months in parity with the Central Excise Act, 1944.



35. Penalty for late filing of Return

Where the return prescribed under rule 7 of the Service Tax Rules 1994 is furnished after the date prescribed for submission of such return, the following amount is payable by the assessee:

Delay in filing of return after due date	Late fees
First 15 days	₹ 500/-
More than 15 days but less than 30 days	₹ 1000/-
More than 30 days	₹ 1000/- + 100 per day beyond 30 days

The maximum amount of late fee is restricted to the amount specified in Section 70(1) of the Finance Act, 1994 which is ₹ 20,000/-.

Issue

The assessee is bound to file a return under service tax even if it is a nil return to prevent himself from litigation. At times the penalty imposed on the assessee exceeds the amount of tax payable by him which puts an additional burden on the assessee.

Suggestions

- *It is suggested that late fees of filing service tax return be subjected to the maximum amount of tax payable by the assessee.*
- *Additionally, it is also suggested that the assessee having nil returns be not imposed with the late fees for filing delayed returns.*

36. Penalty for offences by director etc. of company

Section 78A of Finance Act, 1994 provides that where a company has committed any of the listed contraventions, then any director, manager, secretary or other officer of such company, who at the time of such



contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may extend to one lakh rupees.

Section 80 provides that no penalty shall be imposable on the assessee for any failure referred to in section 76 or 77 said provisions if the assessee proves that there was reasonable cause for the said failure.

Issue

In case any contravention is taking place in the company, the director etc. of the company is liable to pay penalty even if the same is not proved in their name.

Suggestion

It is suggested that the penal provisions be amended in lines with Section 80 wherein penalty leviable thereon may be waived if the concerned person is able to prove reasonable cause of such failure.

37. No waiver of penalty even when complete details of the transactions are available in the specified record – Restoration of Section 80(1)

Section 80(1) has been amended vide Finance Act, 2014 to exclude reference of first proviso to Section 78(1). The aforesaid amendment has removed the power to waive 50% penalty imposed in cases where Service Tax has not been levied or paid or has been short levied or short paid or erroneously refunded by reason of fraud or collusion or wilful misstatement or suppression of facts or contravention of any of the provisions of Chapter V of the Finance Act, 1994 or the rules made there under but true and complete details of transactions are available in the specified records. Thus, penalty levied under section 78(1) cannot be dropped on the basis of reasonable cause.

Issue

The reason for the said amendment of the section is to safeguard the revenue



against loss, if any. The penalty has been provided in addition to interest. Mere fact that without mens rea, anyone can be punished or a penalty could be imposed is not a blanket power without providing for any justification. In the Indian Constitutional scheme, power of legislature is circumscribed by fundamental rights. Judicial review of legislation is permissible on the ground of excessive restriction as against reasonable restriction which is also described as proportionality test. Section 37 of Central Excise Act, which is the rule making power, is clear that penalty can be imposed only when the assessee is guilty of intending to evade the payment of duty, the penalty cannot be imposed without such intention.

For any penal proceedings, the following conditions laid down in Hindustan Steel, 83 ITR 26 (SC) should be applied :

- (i) Penalty can be levied only if assessee acted deliberately, i.e., mens rea, guilty mind is essential before penalty can be levied,*
- (ii) Power to levy penalty is discretionary and penalty cannot be levied merely because it is lawful to do so,*
- (iii) No penalty can be levied for technical or venial breach of the provisions, and*
- (iv) No penalty can be levied where breach of provisions flows from bona fide belief of the assessee.*

When the assessee acts with the bona fide belief, there cannot be any intention to evade duty and penalty cannot be levied. (i) Akbar Badruddin Jiwani v. Collector of Customs 1990 (47) ELT 161 (SC); (ii) Tamil Nadu Housing Board v. Collector 1990 (74) ELT 9 (SC)

Suggestion

It is, therefore, suggested to restore Section 80(1)

38. Search of premises- need change to incorporate reasons

Section 82 provides that the Joint Commissioner or Additional Commissioner of Central Excise may, if he has reason to believe that any documents or books or things which in his opinion shall be useful



for or relevant to any proceeding under the Act, are secreted in any place, may authorize any Central Excise Officer to search for and seize or himself search for and seize such documents or books or things.

Suggestion

It is suggested that in order to avoid vexatious searches, the reasons for conducting the search may be recorded in writing. This will also be in line with income-tax provisions. The suggestion seeks to bring about greater transparency in the processes and will enable the tax payer to effectively respond to the queries of the tax department. It will also bring about discipline within the department.

39. Amendment in Section 83 -Application of Section 5A(2A) of the Central Excise Act, 1944

Sub-section (2A) of Section 5A of the Central Excise Act, 1944 has been included under section 83 of Finance Act, 1994. As a result, Central Government would be able to add and give retrospective effect to the explanations to any notification or orders issued earlier subject to the condition that such explanation must have been added within a year from the date of issue of such notification.

Issue

The change is against the policy statement of Finance minister regarding retrospective amendment in Tax Laws.

Suggestion

It is suggested not to apply Section 5A(2A) of the Central Excise Act, 1944 in Section 83 of the Finance Act, 1994.

40. Recording of statement – Alternative options

It has been practically experienced that whenever the Officers record statements, a copy of the same is not provided to the person whose statement is recorded. Further, very often, statements are recorded in



respect of routine matters for which a declaration or even a signed statement could be provided by the concerned person.

Suggestions

- *As far as possible, recording of statements be avoided and assessee's be asked to submit specific responses to the specific questions of the Department.*
- *In case, the statement is required to be recorded, a copy of the same, duly signed by both the tax payer and the Officer recording the statement, be provided to the tax payer immediately after recording the statement.*
- *Very often, the statements are written in hand and then typed. The use of computer systems can speed up the process. The statement recorded can be immediately printed, signed and handed over to the assessee. This will simplify the processes and will bring about greater discipline and reduce the anxiety of all concerned.*

41. Prosecution- *Need to incorporate mens rea*

Joint Commissioner and Additional Commissioner are empowered to issue search warrant under section 82 and the same is executed by the Superintendent. Provisions relating to prosecution contained in section 89 have been re-introduced by the Finance Act, 2011 and further amended by Finance Act, 2012 to apply in the following situations:

- (i) Knowingly evades the payment of service tax;
- (ii) Availment and utilization of CENVAT credit without actual receipt of inputs or input services;
- (iii) Maintaining false books of accounts or failure to supply any information or submitting false information;
- (iv) Non-payment of amount collected as service tax for a period of more than six months.



Further, section 89(1) inter alia provides that whoever avails and utilizes credit of taxes or duty without actual receipt of taxable service either fully or partially in, shall be liable for punishment as provided therein.

This implies that assessee cannot avail and utilize CENVAT credit till the time, services are actually received. However, rule 4(7) of the CENVAT Credit Rules allows "CENVAT credit in respect of input service on or after the day on which the invoice, bill or, as the case may be, Challan referred to in rule 9 is received.

Suggestion

Prosecution provisions ought to apply only in exceptional cases and must include mens rea. Further, in the cases of interpretational issues such provisions should not be applied.

42. Power to Arrest – Not be delegated to Officer below Joint Commissioner

As per section 91, if the Principal Commissioner of Central Excise or Commissioner of Central Excise has reason to believe that any person has committed an offence specified in clause (i) or clause (ii) of sub-section (1) of section 89, he may, by general or special order, authorise any officer of Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person.

Where a person is arrested for any cognizable offence, every officer authorised to arrest a person shall, inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours.

In the case of a non-cognizable and bailable offence, the Assistant Commissioner, or the Deputy Commissioner, as the case may be, shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an



officer in charge of a police station has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973 (2 of 1974).

All arrests under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to arrests.

Issue

Recently, it has been seen that few officers are misusing the power by threatening the assessee even in a small mistake / case.

Suggestion

It is suggested that power to arrest be not delegated to officer below the rank of Joint Commissioner or Additional Commissioner.

43. Applicability of Advance Rulings- Problem of non-availability of clarification on interpretational issues by large number of assessee

(a) Meaning of term 'substantial interest'

In the eligibility of applicant who can apply for advance ruling, it is mentioned that "Any joint venture with the non-resident who has got a substantial interest" may apply. However, the term substantial interest has not been defined in chapter VA.

Suggestion

It is suggested to define the term "Substantial Interest".

(b) Advance Rulings for all assessee

Indian residents unless they are limited and private limited company are not permitted to apply for advance ruling. Since provisions under service tax are of self-assessment by assessee and in most of the cases, assessee transactions are of recurring nature. Now, if the assessee wishes to get clarification, whether his particular activity is subject to service tax or not, there is no mechanism available for him. In case,



assessee filing the query before department, no clarification is being issued for number of years.

Suggestion

It is suggested that either a separate mechanism for individual and partnership assessee be in-placed, else advance ruling may be permitted for all assessee.

Alternatively, It is suggested that in the line of international practices, Advance Ruling may be allowed to all assessee for the law incorporated / amended in the last 3 years.

44. Multiple inquiries / Audits / investigations- *Need to streamline the system*

Due to lack of coordination and clarity available, there is large number of instances when the assessee financial statements are being scrutinized by different wings of departments. The present structure or authorities available for this scrutiny are:-

- Director General of Investigation
- Audit wings in Commissionerate
- Anti Evasion Wing of Commissionerate
- Range Official of Commissionerate

It is usually seen that one wing has already conducted the investigation/ audit and other wing also issue notice. Even simultaneous inquiries are being made from the assessee by different wing. All these lead to inconvenient situation to the assessee in conducting their usual business.

Suggestion

It is suggested that a Certificate be issued by the wing who has conducted investigation/audit to the assessee and/ or necessary provision be made to avoid duplication of audit so that assessee can be saved from unnecessarily harassment.



45. Reverse charge and Joint charge mechanism

There are various categories where service tax is payable by the recipient of service. However, considering the fact that many of the service providers would be below the threshold, the incidence of service tax inadvertently becomes applicable to them as the benefit of threshold is not available when service tax is computed by the recipient, which may not be the intention of the law maker.

Suggestion

Appropriate mechanism be developed whereby the benefit of basic exemption limit of ₹ 10 Lacs available to the small service providers is also available to the service recipient paying service tax under reverse charge/joint charge.

46. Non-removal of condition of payment in case of partial reverse charge Credit Mechanism

Notification No. 21/2014 –CE dated 11th July, 2014 has inserted a proviso in Rule 4(7) which state that in respect of an input service, where the service recipient is liable to pay a part of service tax and the service provider is liable to pay the remaining part, the CENVAT Credit in respect of such input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or, as the case may be, challan referred to in rule 9.

Due to above proviso, the service recipient is not able to take credit in the case of partial reverse charge unless he has made payment of input service and service tax paid or payable there on.

However, in the case of 100% reverse charge, credit is available to the service recipient once he made the payment of tax to the Government. Also in other than reverse charge cases, service recipient or manufacturer can take credit of input or input service on receipt of invoice without making any payment.



Issue

In the case of partial reverse charge, the amendment has put undue hardship to the recipient of service which mandate to make payment of input service and service tax thereon to avail the CENVAT Credit on such services. The amendment is against the industry norms, which provide credit period to the vendor for making payment of services and may cause working capital problem for the service recipient.

Suggestion

It is suggested that appropriate amendment be made so that service recipient of partial reverse charge be made at par with service recipient of 100% reverse charge cases.

Place of Provision of Services Rules, 2012

47. Amendment in Rule 9 in case of intermediary services

The rules provide clarity on where the service is deemed to be provided- whether in India or Outside India. However, majority of export of services are not treated as exports under these rules. The areas where there is ambiguity and lack of fairness are as under:

Intermediaries for goods and services earning revenues in convertible foreign exchange are liable based on the place of provider. The best practice (earlier for goods available upto September, 2014) was that it should be based on recipient. This is especially so as most developed nations (European Union) provide exemption as long as the customer is outside the nation or European Union (as a destination based tax).

Moreover as the Rule 9 provides if the services are not provided as main services i.e. rendered as broker/agent etc. in that case place of provision will be location of service provider. This phrase gives rise to lot of interpretation. To explain, whether services of a commission agent arranging order, will fall under services on his account or not? To add further there are service providers in country who not only procure order



but also offer certain ancillary services which are supposed to be performed by service receiver say testing, review of quality. Now the confusion which need clarity is which one will fall under "Main Services".

Further, rule 9 specifies that the services of telecommunication, online access and retrieval and banking are based on the location of service provider. This is leading to many such service providers shifting the business outside India.

Suggestion

For intermediaries and other specified services given under rule 9, the place of provision of service should be location of service recipient.

48. Amendment to Rule 7 in case of export and domestic services

Many Indian Companies provide global services and a part of the same may be provided in India also. Rule 7 sets out that the entire service shall be deemed to be provided in India. Example a call centre which provides services of 95% to rest of world for a large global giant clients and also has 5% of that giants clients in India. Anywhere else in the world this would be an export and not liable as the major proportion is exports. Any exporter who can read between the lines would then be forced to break up his contract into for India and others unnecessarily to avoid this unreasonable imposition.

Suggestion

Appropriate amendment be made to rectify this anomaly.

49. Amendment in Rule 4(a) in case of Software services

Software services from India have made a difference. The technical support (call centre, trouble shooting, updates, resolution) of intangibles should be based on the customer. However it could be interpreted to be "goods" and therefore based on location of the goods. Read with Rule 7 these services would also be disputed unnecessarily.



Suggestion

Following the best practices, the place of provision of goods related services [rule 4(a)] should be the location of goods only for tangible goods.

50. Certification under Place of Provision Rules, 2012 in line with income tax – overseas payments

For the purpose of Income-tax Act, 1961, every payment made outside India requires declaration and CA certification in Form 15CA and 15CB respectively. This is done to ensure that tax has been deducted at source in the applicable cases. In case of import of services, the service receiver is liable to pay service tax but the service tax law does not provide any mechanism to verify that applicable service tax has been paid on transactions when payment is made for services provided from outside India.

Suggestion

It is suggested that a declaration and certification by a Chartered Accountant with respect to liability of service tax on payment made outside India be prescribed in service tax law in line with income-tax provisions. This could be verified by the bankers while effecting payment to overseas service provider.

The introduction of such a mechanism will safeguard the interest of revenue as also would simplify the procedural compliance for the assessee with regard to Place of Provision Rules, 2012 which is generally quite complex and may be missed out of ignorance or oversight.

Point of Taxation Rules

51. Time limit for raising invoice by provider of newly taxable service

As per Rule 5(b) of Point of Taxation Rules, 2011, payment of tax in cases of new services is taxed for the first time, then no tax shall be payable if the payment has been received before the service becomes taxable and



invoice has been issued within fourteen days of the date when the service is taxed for the first time.

Issue

While existing service providers are allowed 30 days for raising invoice, provider of newly introduced service allowed 14 days only.

Suggestion

It is suggested that time limit for raising invoice by provider of newly taxable service be increased to 30 days from 14 days so that it is treated at par existing service provider.

52. Conflict between section 67A and Rule 4 &5 of Point of Taxation Rules

As per section 67A the rate of service tax, value of a taxable service and rate of exchange, if any, is the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided. Point of Taxation Rules, 2011 help in determining the “point of taxation” i.e., the point in time when a service is deemed to have been provided. Thus, section 67A has to be read along with POTR to know the rate applicable on the day when the service is provided as ultimately POTR helps in determining the point in time when the service is deemed to be provided.

It is the basic principle under any legislation that the rules cannot override statutory provisions as the rules are delegated legislations. Rules have to be in conformity with the statutory provisions. However, this principle is not followed in few cases while determining the point of taxation-that is to say that POTR override the statutory provisions as provided under section 67A of Finance Cat, 1994.

Rule 4 which determines POT in case of change in effective rate of service tax and rule 5 which is in relation to payment of tax in case if new services in certain cases are in direct conflict with section 67A.



As per rule 4, the POT is determined based on the two events namely issuance of invoice and receipt of payment depending upon the time of provision of service i.e., whether service has been provided before or after the change in effective rate of tax. There can be instances under rule 4 where the service has been provided before the change in effective rate of tax but by virtue of the said rule the point of taxation would fall in the period under new rate or vice versa. These situations are in direct conflict with section 67A as in terms of the said section, applicable rate of tax should be the rate as prevalent when the service was provided.

Rule 5 specifies the situations when no tax shall be payable in case a service is taxed for the first time. In fact this rule does not provide for the POT *per se*. Under this rule also, there are situations where rules are overriding section 67A. For instance, by virtue of this rule tax shall be payable if the service is provided before becoming taxable but the payment thereof is received after it becoming taxable or the invoice therefore has been issued after 14 days from the date the service is taxed for the first time. To this extent, rule 5 overrides section 67A as rules cannot deem something beyond the statutory provisions.

Suggestion

It is suggested that Rule 4 & 5 of Point of Taxation Rule be suitably amended to bring them in line with the provisions of section 67A and this conflict be removed.

B. CENVAT CREDIT RULES, 2004

53. Definition of input service - *Need overview to remove anomalies.*

Rule 2(l) defines input service to mean any service:

“(i)....

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to modernisation.....and inward transportation of inputs or capital goods and outward transportation upto the place of removal but excludesare used primarily for personal use or consumption of any employee.”

It will be practically very difficult to prove that each input service has been used in or in relation to manufacture of final products and clearance of final products upto place of removal more so by the Department.

In the Budget of year 2011, various important services which are necessary for any manufacturing activity or rendering of taxable service have been excluded from the definition of input service. The services which have been excluded include services like setting up of a factory, etc. The exclusion of services relating to setting up of new factory run contrary to the Government's objective of boosting manufacture in the country.

Further, the definition of input services restricts availment of CENVAT credit on certain services which *inter-alia* includes:

- Services related to civil construction
- Services related to motor vehicle i.e. cab services
- Services which are used for consumption of any employee

These restrictions cause multiple problems in practical situations. In case of composite contracts which includes mechanical, civil & other various works where majority portion is of mechanical works say 85% mechanical works & 15% civil works (which is not separable), it



becomes difficult to avail CENVAT credit as it is not clear that whether 100% credit is available or only 85% related to mechanical works would be the eligible credit.

Service tax credit on expenditure incurred for workers / staff colony and other expenditure in connection with employees including mediclaim, canteen expenditure is not eligible for input credit. As long as the facilities and perks are allowed under the Income-tax Act, service tax credit on the same may be allowed. It is practically impossible to manufacture and subsequently sell the goods without providing canteen to the employees ("common to several employees") or incurring costs for employees such as health insurance etc.

Suggestion

With the introduction of the new service tax regime based on the concept of a negative list, service tax is leviable on the broad spectrum of all the services except those specified in the negative list. When the taxation of services has become universal, the credit for input services should also follow the same principle and be made available across the board. The exclusions for rent a cab, canteen, setting up of business, Construction of factory building, outdoor catering for employees, employees insurance etc., should be done away with.

It is suggested that definition of 'input services' be redrafted as "all services procured by assessee which is obtained and used wholly and exclusively for the purposes of the business of such provider of taxable services or manufacturer of excisable goods" including the Credit on Input Services used for capital structures.

It is also suggested that Input Services & Capital Goods used in in-house Research and Development be made eligible for CENVAT Credit.

54. Definition of input - CENVAT credit on capital structures

Definition of "input" specifically excludes any goods used *inter alia* for laying of foundation or making of structures for support of capital goods, except for the provision of service portion in the execution of a



works contract or construction service as listed under clause (b) of section 66E of the Finance Act, 1994.

Companies setting up new factories are thus not permitted to avail CENVAT credit on cement, iron, steel, plates etc either as part of civil structure or supporting capital goods (machines etc). It results in increased cost of construction. This provision goes against the very spirit of CENVAT.

Suggestion

It is suggested that definition of input be amended to provide CENVAT credit on capital structures etc.

55. Definition of capital goods

(a) CENVAT credit on motor vehicles

Effective from 1.7.2012, rule 2(a)(A)(viii), motor vehicles other than those falling under 8702, 8703, 8704, 8711 and their chassis are eligible 'capital goods' for both manufacturer and output service provider. Hence, in effect only tractors, dumpers and tippers are generally eligible for credit in case of both manufacturer and output service provider though rule 2(a)(B) and rule 2(a)(C) do allow credit on certain motor vehicles designed for either transportation of goods or to carry passengers in case of certain specified output service providers. However, considering the very wide definition of "service" provided under section 65B (44), definition of "capital goods" vis-à-vis motor vehicles is quite restrictive.

Suggestion

Hence, it is suggested that the definition of "capital goods" may include all kinds of motor vehicles railway, coaches/ wagons which are essential for providing services with certain negative list of services to which motor vehicles can be ineligible.



(b) CENVAT credit on the pipes and fittings installed outside the factory premises

The CENVAT credit on pipes and fittings thereof are allowed when these are installed within the factory premises only. There are pipes and fittings laid outside the factory premises also in order to procure & transport the utilities like water, gas etc. from the pumping station / other sources to the factory premises. The Rules do not permit CENVAT credit on these capital goods since they are located outside factory. However, a similar benefit is granted for capital goods used outside the factory of the manufacturer for generation of electricity for captive use within the factory.

Suggestion

The pipes and fittings which are inter connected with the factory premises & used for the procurement & transport of the utilities from outside sources like pumping station, scaffolding etc. be also classified as capital goods in line with the pipes & fittings installed within the factory.

56. Definition of exempted service

Rule 2(e) defines exempted service to mean a

- (1) taxable service which is exempt from the whole of service tax leviable thereon; or
- (2) service, on which no service tax is leviable under section 66B of the Finance Act; or
- (3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;

but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.



By virtue of the said definition, exempted service unintentionally includes 'any process amounting to manufacture or production of goods', which results in reversal of CENVAT credit on exempted service as per Rule 6. Similarly, services by way of interest or discount on deposits, loan or advances also get covered under the definition of exempted service resulting in reversal of credit under rule 6.

Above activities inadvertently get covered under the definition of exempted service, which may not be the intention of the law maker.

Suggestion

It is suggested that this anomaly be corrected beforehand by making an appropriate amendment to avoid litigation.

57. Definition of exempted goods

Goods manufactured by a job worker are exempt from payment of whole of the duty of excise under *Notification No. 214/86 CE* subject to the condition that the Principal Manufacturer (supplier of raw materials or semi-finished goods) uses the job worked goods in or in relation to the manufacture of the final products in his factory or removes from his factory without payment of duty in specified cases. Under these circumstances, it is obvious that the appropriate duty of excise on such job worked goods gets discharged at the end of the principal manufacturer. Accordingly, the job worker should not be liable to pay any amount under Rule 6(3) of CENVAT Credit Rules, 2004. However, because such job worked can be treated as exempted goods under the definition of 'exempted goods' as given in rule 2(d) of CENVAT Credit Rules, 2004 (CCR), there are instances of department demanding payment of duty or amount under rule 6(3) of CCR which is unwarranted.

There are series of Tribunal and High Court decisions namely *CCE v. Bharat Fritz Werner 2007 (218) ELT 177 (Kar.)* and *CCE v. Sterlite Industries Ltd. 2009 (244) ELT A89 (BBY HC)* holding that such goods are not to be treated as 'exempted goods' in the hands of a job worker



as the duty liability, if any, ultimately gets discharged by the principal manufacturer including the value of job worked goods.

Suggestions

- *It is suggested that the definition of “exempted goods” in rule 2(d) be amended to clarify that goods produced or manufactured on job work basis where the principal manufacturer is under the obligation to pay duty on such goods will not be construed as ‘exempted goods’. This would avoid multiple incidence of duty on the same goods and avoid unnecessary litigation. Recently, the Karnataka High Court in the case of CCE v. Bharat Fritz Werner Limited, 2007 (218) ELT 177 (Kar.) upheld the above contention.*
- *On the same lines, definition of “exempted service” be amended to provide for exclusion of job-work provided to principal manufacturer exempted vide Sl. No. 30(c) of Notification No. 25/2012 ST dated 20.6.2012 which would be in line with job-work manufactured goods supra.*

58. Credit of Education Cess (EC) and Secondary and Higher Education Cess (SHEC) on CVD/ Customs

Prior to the 2012 budget amendment, EC and SHEC were first charged on CVD portion of customs duty and thereafter on the aggregate of customs duties (excluding SAD). This resulted in charging of EC and SHEC twice on the CVD portion. To remove this anomaly, EC and SHEC on CVD has been exempted. However, customs EC and SHEC continues to be levied on aggregate of Basic Customs Duty plus CVD.

After the amendment, EC and SHEC is being charged on total Customs Duty (aggregate of basic and CVD). However, Rule 3(1) of CENVAT Credit Rules, 2004 allows credit on CVD and related EC and SHEC.



Suggestion

It is suggested that a clarification be issued to confirm that proportionate credit of EC and SHEC to the extent charged on the CVD amount will be available.

59. Capital goods cleared as waste and scrap

Sub-rule (5A) of Rule 3 CENVAT Credit Rules was substituted vide *Notification No 12/2013-CE-(NT) dated 27.09.2013* by the following:-

"(5A) (a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely:-

(i) for computers and computer peripherals:

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @ 1%

(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter:

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

(b) If the capital goods are cleared as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value."



The said amendment provides that in case the Capital Goods are cleared as waste and scrap by a manufacturer, then the amount to be reversed by him should be equal to the duty leviable on the transaction value. However, the Rule is silent in respect of similar clearance by an output service provider.

Prior to the amendment, both the manufacturer as well as output service provider were required to reverse an amount equal to the higher of **the duty leviable on the transaction value** or credit of the duty availed, reduced by the percentage specified for each quarter i.e. 2.5%.

Suggestion

It is suggested to amend clause (b), so as to bring an output service provider also on par with a manufacturer, by allowing the output service provider also to pay an amount equal to the duty leviable on transaction value on removal of capital good as waste and scrap. The amount to be paid on clearing capital goods (on which CENVAT credit has been availed) as waste and scrap may continue to be the amount equivalent to the duty liable on transaction value. This is logical as a normal commercial person would scrap any plant and machinery only after fully utilizing the asset. It means that the cost of asset has been fully built in the assessable value of the final product.

60. Inputs/capital goods procured from EOU/EHTP/STP not paying duty in terms of SI No. 2 of the *Notification No.23/2003 CE dated 31.3.2003*

In terms of rule 3(7)(a), the manufacturer or service provider is allowed the benefit of taking CENVAT credit of duty paid on inputs or capital goods if the same are manufactured by an EOU/EHTP/STP in case the said unit pays excise duty under section 3 of the Central Excise Act, 1944 read with SI.No.2 of the *Notification No. 23/2003 CE dated 31.3.2003*. This credit is given on the basis of aggregation as specified in 2nd proviso to rule 3(7)(a) which is effective from 7.9.2009.

An EOU/EHTP/STP is liable to pay duty of excise in terms of proviso to section 3(1) of the Central Excise Act, 1944. However, the said unit



is entitled to claim concessional duty or exemption from payment of duty in terms of *Notification No. 23/2003-CE dated 31.3.2003* issued under section 5A of the Act. The said concession/exemption is conditional and is available on fulfillment of certain prescribed conditions. Therefore, if a unit does not satisfy or fulfill the conditions, it is not entitled to pay concessional duty under the above notification. Alternatively, since the above notification is conditional, there is an option to EOU units not to avail the benefit of above notification.

In both the above situations, an EOU pays duty of excise in accordance with proviso to section 3(1). In such a case, the procurer of inputs or capital goods which are in-turn manufactured by EOU/EHTP/STP, which do not pay duty as per *Notification No. 23/03* but in terms of proviso to section 3(1), face difficulties in availment of credit.

This is a serious lacuna in the CENVAT Credit Rules, 2004 and there is a possibility of the department denying the CENVAT credit since the provisions of rule 3(7)(a) of the CENVAT Credit Rules, 2004 may not be applicable in this case.

Suggestion

It is suggested that rule 3(7) be amended to clarify that CENVAT credit will also be available in respect of clearances made by an EOU/EHTP/STP paying excise duty in terms of proviso to section 3(1) of the Central Excise Act, 1944. This will be in line with the overall objective of Foreign Trade Policy.

61. Availment of CENVAT credit on capital goods

As per Rule 4(2), only 50% CENVAT credit is allowed on capital goods in year of purchase and balance 50% in subsequent years. This results in cash flow problems. Moreover, elaborate accounts need to be maintained to keep track of the credit availed. In case of manufacturing industries, investment planning is a regular feature & purchase of capital goods is made on an ongoing basis. The postponement of CENVAT beyond the first year does not give any real benefit to the Government as well.



Suggestion

CENVAT Credit Rules be amended to allow 100% CENVAT credit on capital goods in the year of purchase itself.

62. Amendment to Rule 4(5)- CCR- inclusion of tools sent for Jobwork

As per Rule 4(5)(b) of CENVAT credit Rules, 2004, CENVAT credit is allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to,-

- (i) another manufacturer for production of goods; or
- (ii) a job worker for production of goods in his behalf, according to his specification

In the list tools, those falling under chapter heading 820700.00 are not mentioned due to which CENVAT Credit is not provided for tools sent for Job work in case of assembling etc.

Suggestion

It is suggested that Rule 4(5)(b) of CENVAT Credit Rules be amended to allow CENVAT Credit on "tools" falling under chapter heading 820700.00 sent by a manufacturer of final product for job work / further processing of goods.

63. Availment of Cenvat Credit on Input and Input Service

With effect from 1st September 2014, Rule 4(1) and Rule 4(7) of CENVAT Credit Rules, 2004 have been amended vide *Notification No. 21/2014 – Central Excise (N.T.) dated 11.07.2014.*

Rule 4(1) provides that the CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service. The new proviso provides that the manufacturer or the provider of output service shall not take CENVAT credit after six months from the date of issue of any of the documents specified in Rule 9(1).



Similarly, Rule 4(7) provides that the CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received. Fifth proviso to Rule 4(7) of the CENVAT Credit Rules, 2004 provides that where the Cenvat credit has already been taken on receipt of invoice but has to be paid because of non-payment to the input service provider within 3 months then the same is available later on payment to the input service provider.

The new amended Proviso provides that the manufacturer or the provider of output service shall not take CENVAT credit after six months from the **date of issue** of any of the documents specified in Rule 9(1).

Further, clarification has been provided vide Circular No. 990/ 14/ 2014-CX-8, dated November 19, 2014 that the limitation of six months would apply when the credit is taken for the first time on an eligible document. It would not apply for taking re-credit of amount reversed, after meeting the conditions prescribed in these rules.

Prior to this amendment the availment of Cenvat credit was not barred by any time limit.

Issue

The circular has not clarified in the respect of following circumstances:

1. Wherein the date of CENVAT invoice is dated much earlier than the date of actual receipt of goods or receipt of invoice by the manufacturer or service provider. In this scenario, the assessee loses substantial time.
2. Whether the amended proviso is applicable on the invoices issued prior or post to the effective date of amendment.
3. The case of retention money wherein the payment by the service receiver is retained till the completion of project. In that case, it will result in loss of credit due to time limitation of six month.
4. The case of interpretational issues and consequently extended period is invoked, then there will be demand of 5 years whereas credit of the



same period will not be allowed which is against the spirit of law and will cause hardship to assessee. To illustrate, an assessee is rendering services for Rs. 100 and outsourcing the same for Rs. 80. Now, in case of old period investigation on some interpretational issue or based on some judgment from apex court, he is obliged to pay tax on Rs. 100 but will not be allowed to claim credit on Rs. 80. We may have live example where different judgment suggests to pay tax after a substantial period pass over.

Suggestions

- (i) *It is suggested that the said proviso be reversed as it is not in sync with principles of Value Added Tax/ CENVAT Credit. Also, this is not in line with international trade and practices. Alternatively, instead of counting the period of six months from the date of document under Rule 9(1) of CCR, 2004, it should be counted from the date of receipt of goods by manufacturer or date of receipt of invoice by the service provider.*
- (ii) *In order to safeguard the assessee from the huge loss of CENVAT Credit due to non-payment for the purchase of input and availment of services due to business policies, the amended provision must be brought prospectively i.e. on the invoice or goods received after the effective date of amendment. There exist multiple cases wherein due to business policies and payment terms and condition, assessee are taking credit only after making payment to vendors i.e. on receipt/payment basis and due to which they have neither yet availed the credit nor account for such credit in the books of account to avoid inconvenience. In such cases, assessee would lose huge amount of CENVAT credit for nothing.*
- (iii) *It is suggested to clarify/notify that the amended proviso shall not apply in the following cases:*
 - (a) *In case of retention money, time limit of six months be not apply.*
 - (b) *In case of pending cases before adjudicating authorities, wherein as a consequence of judgement assessee becomes eligible for CENVAT Credit.*



- (c) *In case where assessee has not availed or account for the CENVAT Credit on receipt of invoice/goods as the assessee avails and account for CENVAT credit only after making payment to vendor in accordance with provision exist prior to POT, 2011.*

64. Realization of invoice within three months for availment of credit

As per 3rd proviso to rule 4(7), in order to avail the credit of service tax, the payment for the services and service tax thereon has to be made within three months from the date of invoice. However, it is a very difficult position as in normal trade practice the invoices for services provided are received / passed.

Suggestion

- *Therefore, it is suggested that the time limit of three months for payment towards services and service tax thereon be extended to six months.*
- *Further, it is suggested that the period of six months be commenced from the date of CENVAT credit taken rather than from the date of invoice.*

65. Certification of refund by statutory auditor or any other auditor

Notification No. 27/ 2012 CE (NT) provides that refund of CENVAT credit will be allowed subject to the procedure, safeguards, conditions and limitations as provided in the said notification. As per Para 3(e) of the said Notification, the refund claim has to be accompanied by a certificate in Annexure A-I, duly signed by the auditor (statutory or any other) certifying the correctness of refund claimed in respect of export of services.

Suggestion

It is suggested that the refund be allowed to be certified by a practicing Chartered Accountant (not only Statutory Auditor or any other auditor).



66. Refund claim under Rule 5 / Export Incentives

The major trouble brewing up for the IT sector is 'service tax refunds'. The Government of India needs to refund large amount to the Information Technology/Business Process Outsourcing (IT/BPO) sector. The amount is attributed to the service tax refunds for the past several years. To make matters worse, there are no specific guidelines for service tax refunds provided by the department with regards to exports of services. There is vast distinction between benefits available to exporter of Goods and exporter of services in respect of refund of CENVAT credit. Even in foreign trade policy there is only served from India scheme which is available, however in the case of Goods various schemes such as country / product wise etc. export benefits are available.

The Rule 5 of CENVAT Credit Rules, 2004 for refund for export of services is not very effective as compare to refund in the case of export of Goods.

Suggestions

It is suggested that:

- *The application of refund be made on-line with certificate from chartered accountant regarding validity of the refund claimed. The refund application can only be filed after receipt of money in convertible foreign exchange. Export Incentive schemes in line with goods to be put in place.*
- *After filing of return, 50% of the refund be credited on-line in the bank account of the exporter within 30 days of filing the application and the balance amount be refunded within 6 months after verification of the documents submitted.*
- *Alternatively, Duty Drawback Scheme may be introduced in Service Tax in line with exports of goods.*
- *All pending refund applications as on date should be disposed of within 6 month time. Refund of 80% to be disbursed once identity and turnover confirmed. Balance within reasonable period of 6 months.*



67. Insertion of Explanation in rule 18, 19 of CER, 2002 and Rule 5, 5B of CCR, 2004

Sale to 100% EOU by a DTA unit or another EOU is deemed export as per the FTP. There is no corresponding definition in Central Excise. The assessee is deprived of the Export benefits provided by FTP by the Central Excise Department like duty free procurement for deemed exports, refund of accumulated Cenvat Credit in case of clearances to 100% EOU etc. inspite of Several Apex Court, High Court and Tribunal judgments.

Suggestion

It is suggested that following explanation be inserted in rule 18, rule 19 of Central Excise Rules, 2002 and Rule 5 of Cenvat Credit Rules, 2004 read with Notification Nos. 42/2001 CE(NT), 43/2001 CE(NT), 27/2012 CE(NT), 19/2004 CE(NT), 21/2004 CE(NT):

“The term export means, export out of the country and includes clearances to 100% EOU or EHTP or STP by a DTA /EOU unit”.

68. Service Exporters - computation of time limit for filing refund claims

Rule 5 of the CCR provides for refund of CENVAT Credit. *Notification No 27/2012 CE (NT) dated 18.06.2012* has been issued to give effect to provisions of Rule 5 of CCR. The said notification provides for time limit for filing refund claim as provided under Section 11B of the Central Excise Act, 1944.

Section 11B of Central Excise Act considers ‘relevant date’ for the purpose of determining the time limit for filing of refund claim. ‘Relevant date’ in case of export of goods has been defined under Section 11B of the Central Excise Act, 1944. However relevant date in case of export of services is not specifically defined and the same is generally construed as date of export of service. There is no clear



provision for defining relevant date for export of service under Section 11B of the Central Excise Act, 1944.

In terms of Rule 3 of Point of Taxation of Service Rules, 2011, the date of invoice is the 'point of taxation' for services rendered provided the invoice is raised within 30 days from the date of completion of provision of service. However, if any advance is received prior to completion of service then the 'point of taxation' for such service would be the date of receipt of advance. Further, in terms of second proviso to Rule 3 of Point of Taxation Rules, 2011 for continuous supply of service the point of taxation is on completion of an event as per terms of contract. Accordingly, in cases of continuous supply of service, the service provider generally raises a periodic invoice which becomes the point of taxation.

However, in terms of Rule 5 (1)(D) of the CENVAT Credit Rules, 2004, export turnover is determined as an aggregate of export realization for the services completed either during the same quarter or in the preceding quarters and any proceed towards a service which is yet to be completed i.e. proceed received in advance is excluded from the export turnover.

From the above, it can be seen that there is disparity in the 'date of export' as considered under Rule 3 of Point of Taxation Rules, 2011 viz -a - viz in Rule 5 of the CCR. While Rule 3 of Point of Taxation Rules, 2011 considers invoice date or receipt date whichever is earlier as date of export, whereas the, Rule 5 of CCR considers export realization of completed services as 'date of export'.

Suggestion

Exporter of Service is required to claim refund of service tax within the time limit prescribed under the law. However, the term, 'relevant date' for exporter of service is not defined (though, it is defined for the exporter of goods). This causes difficulties to the service exporters. Further, with the introduction of 'Point of Taxation of Service Rules', disparities between dates



have arisen. Hence, it is suggested that Notification 27/2012 CE (NT) dated 18.06.2012 be amended to prescribe the time limit for claiming refund:

- For goods – as prescribed under 11B of the Central Excise Act, 1994
- For Service - as one year from the date of receipt of export proceeds or completion of service whichever is later in alignment with the definition of 'export turnover of service' as provided under Rule 5 of the CCR.

69. Exemption and reversal of CENVAT

A number of exemption notifications mandate that the manufacturer supplying goods without payment of duty have to reverse actual CENVAT or pay an amount of 6% of price in lieu of CENVAT claimed in terms of CENVAT Credit Rule 6. The procedure for reversal of actual CENVAT is cumbersome. Further, this amount is not recoverable from customer as duty. This results in increased cost of products and negates the objective of giving exemption.

Suggestion

Instead of granting full exemption, excise duty at reduced rate (say 4%) be levied on such goods for operational convenience.

Alternatively, CENVAT credit on inputs/ services used in these supplies be allowed for utilization towards other domestic clearances.

70. Scope of rule 6(6)

Under sub-clauses (i) to (viii) of rule 6(6) are enlisted certain clearances of excisable goods removed without payment of duty in respect of which mischief of rule 6(1) to rule 6(4) is not attracted and the manufacturer is allowed to take CENVAT credit on inputs or input services, as the case may be.

Under the Central Excise Act, 1944, by virtue of section 5A of the said Act there are exemptions given from the whole of duty to goods cleared to defense purposes, public research institutions,



infrastructural projects such as Metro railway, etc. However, the same are not covered under rule 6(6). This is creating lot of problems and the public interest is being seriously impaired enhancing the cost of goods, which is not the intention.

Suggestion

It is suggested that the provisions of rule 6(6) be amended to include clearances of goods without payment of duty to defense, public research institutions, water, power and infrastructural projects.

71. Benefit of Excise Notification Nos. 29/2012 to 33/2012 relating to FMS, FPS Licences

In the recent Annual Supplement to the Foreign Trade Policy 2009-14 released on 5th June, 2012, the duty credit scrips like Focus Market Scheme, Focus Product Scheme, etc. were allowed to be utilized for payment of excise duty on domestic procurement of permissible items.

To give effect to same, Excise Notification Nos. 29/2012 to 33/2012 dated 09.07.2012 were issued. These notifications exempted the goods from whole of the excise duty when cleared against a duty credit scrip issued to an exporter.

All these excise notifications also provide that the holder of the scrip, to whom the goods were cleared, shall be entitled to avail CENVAT credit of the excise duty against the amount debited in the said scrip.

However, no corresponding amendment has been made in Rule 6 of the CENVAT Credit Rules which require a manufacturer to pay 6% of the value of exempted goods or reverse proportionate CENVAT credit. The goods cleared against duty credit scrip are exempted goods and thus will involve a cost of 6% due to this rule.

The intention of the Government appears to treat the goods cleared against duty credit scrip as equivalent to duty paid goods in as much as the Government has allowed CENVAT credit to the receiver of goods on the basis of excise duty debited in his duty credit scrip. With



this benefit being allowed, the intention of the Government does not appear to demand 6% of value of goods or reversal of credit.

Suggestion

It is suggested that a suitable amendment be made in Rule 6(6) of the CENVAT Credit Rules to provide that Rule 6 will not apply for excisable goods cleared without payment of duty against duty credit scrips. Similar provision already exists for cases like goods cleared for export under bond without payment of duty.

72. Trade Friendly procedure during shifting of premises

As per Rule 10 of CENVAT Credit Rules, 2004 on transfer of CENVAT Credit:

- (1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.
- (2) If a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the provider of output service shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business.
- (3) The transfer of the CENVAT credit under sub-rules (1) and (2) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred along with the factory or business premises to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to



the satisfaction of the Deputy Commissioner of Central Excise or, as the case may be, the Assistant Commissioner of Central Excise.

Issue

There is no legal requirement for 'Prior Approval of Excise Officer' for transfer of CENVAT Credit when a manufacturer or service provider shifts his factory or Place of Business. The law merely empowers the Excise Officer 'to be satisfied while allowing' transfer of credit.

In practice, untold pains are taken by the assessee, as field formation denies/delays to 'allow/approve' the above mentioned transfers. Either law may explicitly provide that no prior approval is required or it may prescribe time limit for officer to dispose of the 'shift request' of manufacturer.

Suggestion

It is suggested that an Excise Officer be bound to make and serve a speaking communication on the assessee in response to written request of the assessee for the purpose of this rule, within 30 days from the date of receipt of such request. If no such communication is made and served by the officer, the assessee's request shall be deemed to have been approved without any qualification.

73. Inter-unit transfer of CENVAT credit by Large Taxpayer Units (LTUs)

Rule 12A(4) of CENVAT Credit Rules 2004 states that a large tax payer may transfer, CENVAT credit [taken, on or before the 10th July, 2014, by one of his registered manufacturing premises] or premises providing taxable service to his other such registered premises by, -

- (i) making an entry for such transfer in the record maintained under rule 9;
- (ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit as well as receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i), and such



recipient premises can take CENVAT credit on the basis of such transfer challan as mentioned in clause (ii).

Provided that such transfer or utilisation of CENVAT credit shall be subject to the limitations prescribed under rule 3(7)(b).

Notification No. 21/2014-Central Excise (N.T.) dated 11th July, 2014 amended Rule 12A so as to disallow transfer of credit by a large taxpayer from one unit to another.

Issue

The amendment brought in by the notification has reduced/ restricted compatibility of credit between units of a LTU which was one of the drivers to register under the LTU scheme.

Suggestion

It is suggested that the facility of transfer of credit by a large taxpayer from one unit to another be reinstated.

74. Penalty in respect of CENVAT credit wrongly taken or utilized- Rule 15

Rule 15 provides where the CENVAT credit in respect of input or capital goods or input services has been taken or utilised wrongly or in contravention of any provision of these rules, then all such goods shall be liable to confiscation and such person shall be liable to penalty not exceeding the duty or service tax on such goods or services, as the case may be or two thousand rupees whichever is greater.

Suggestion

It is suggested that words given "taken or utilized" in Rule 15 be replaced with "taken and utilized" as has been done in Rule 14.



75. CENVAT Credit of an input service under partial reverse charge

The CENVAT credit in respect of input service under partial reverse charge cases will be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in the invoice, bill or as the case may be, challan referred to in Rule 9.

Suggestion

It is suggested that CENVAT Credit of services under partial reverse be allowed on the similar line as be allowed in the case of 100% Reverse charge cases.

76. CENVAT credit on self certified bill of entry in case of import of goods through courier agency

At present there is no specific provision for availing CENVAT credit based on courier receipts or package receipts though countervailing duty is paid on such imports through a common Bill of Entry prepared for all imports by Courier Agency. The courier agent forwards a photocopy of such Bill of Entry to each importer. However, CENVAT is not allowed to be taken on such copy.

Suggestion

As duty has been paid, an appropriate provision be inserted in the CENVAT Credit Rules to avail the CENVAT credit based on certified copies of such Bill of Entry.

Alternatively, a mechanism of casual registration be introduced in the excise law so that the courier agent may register as first stage dealer and get entitled to pass on the credit.

This will address the difficulty of obtaining registrations and surrendering it time and again/filing Nil returns and face penal consequences even though there is no liability to tax. This will also reduce cost of doing business and



will not lead to leakage of credit due to non-availability of the appropriate procedure for the same.

77. Customs endorsement of bill of entry for availment of CENVAT credit

The erstwhile procedure of customs endorsement of Bill of Entry for availment of CENVAT credit by the end user unit has been dispensed with vide *Customs Public Notice No. 16/2006 dated 22-03-2006*. This is causing hardships to the manufacturers since they are unable to avail CENVAT credit on the imported [free issue] material received by them from their customers.

Suggestion

The procedure of Customs endorsement of the Bill of Entry (EDI copy) for availment of CENVAT credit by the end user unit be restored.

Alternatively, a provision be made in the Bill of Entry format for indicating the details of the consignee (end user receiver) of the goods in addition to the details of the importer as is being done in the case of excise invoices where the invoice is made on the buyer with the consignee indicated as the end user.

78. Parity between CENVAT Credit procedures and Central Sales Tax procedures

Section 3(b) of the Central Sales Tax Act provides for the circumstances under which a sale or purchase of goods is said to take place in the course of inter-state trade or commerce. According to Section 3(b), a sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase is effected by a transfer of documents of title to the goods during their movement from one state to another. Where the property in the goods has passed/the movement has commenced, the sale will not evidently fall within Section 3 (b) or when the property in the goods passes after the movement from one State to another, such sale will not also fall within the section. Accordingly, the



section provides for endorsement in the documents during the journey or movement of goods and not earlier to that.

Under Central Excise, where a registered person places an order on a manufacturer for supply and delivery of goods directly to customer/ assessee and the goods are also accordingly transported/ dispatched from the manufacturers' premises to the users' premises without being brought to the Registered persons' premises, the manufacturer has to issue an invoice under Central Excise Rules, 2002. The prescribed invoice under Central Excise should also contain (in addition to specified details), the consignee's name and address for the purpose of availing CENVAT credit. Thus, before the goods move from one State to another or one place to another, the consignee's name (second buyer) also should be incorporated in the documents of title of goods to make him eligible to avail CENVAT. If this condition is satisfied in order to avail the CENVAT credit, then the transaction will not qualify as an E1 sale under the Central Sales Tax Act.

A close comparison of mandatory requirement under the Central Sales Tax Act, 1956 and Central Excise Act, 1944/Rules, 2002 will lead us to find a contradiction between these two Acts as far as sale in transit is concerned. Both the Acts are Central legislations and as such there should not be any anomaly or contradiction on the same issue. When sale in transit is recognized or accepted under Central Excise Act, 1944/Rules, 2002, the same should have been allowed under Central Sales Tax Act also as per Central Excise requirement. At present, the industry faces hardship in cases of sale in transit under Central Sales Tax Act as documents of title to goods are to be endorsed during the course of transit whereas the Central Excise Act requires such endorsement for such sale in transit to be done before commencement of such movement.

Suggestion

It is suggested that appropriate amendment be made to claim the CENVAT Credit on E-I & E-II sales made under Central Sales Tax.



C. CENTRAL EXCISE DUTY

79. Powers under section 14 of the Central Excise Act, 1944

Section 14 of the Central Excise Act is applicable in case of service tax matters also. According to this section powers have been given to Central Excise Officers to issue summons to the assessee to give evidence and produce documents in enquiries conducted under the Act. These provisions are often misused as under:

- (i) Notices are issued to Managing Director/ Director/ Chairman despite the fact that they are not concerned with routine functioning of business.
- (ii) Notices are issued even for seeking that information what can be obtained by ordinary letters.
- (iii) The time mentioned in the notice is not rigidly followed. As a result, plenty of precious time of the assessee is wasted.
- (iv) Copy of the recorded statement is not provided immediately to the concerned assessee.
- (v) Summons issued even in those cases where question of law is involved.

Suggestion

There should be a proper procedure under section 14 which need to be followed while invoking Section 14 backed with rules.

80. Revision application for matters relating to baggage, drawback, rebate of duty on export of goods etc.

As per proviso to section 35B(1) of the Central Excise Act, 1944 no appeal shall lie to the Appellate Tribunal if the order passed by the Commissioner (Appeals) relates to loss of goods where the loss occurs



in transit from a factory to a warehouse, etc. or rebate of duty on export of goods or goods exported without payment of duty. In such cases, there is a provision to file revision application under section 35EE of the Central Excise Act, 1944 before the Central Government. Similarly, as per section 129A of the Customs Act, 1962 appeal shall not lie to the CESTAT if the order passed by the Commissioner (Appeals) relates to baggage etc and revision application will have to be filed. This causes undue hardship to the assessee as approaching Revisionary Authority at New Delhi results in substantial increase in the litigation cost of the assessee.

Suggestion

It is suggested to allow filing of appeals before CESTAT against the orders passed by the Commissioner (Appeals) in relation to the matters covered under proviso to section 35B(1) of the Central Excise Act, 1944 and proviso to section 129A of the Customs Act, 1962 as well i.e., orders relating to loss of goods where the loss occurs in transit from a factory to a warehouse, etc. or rebate of excise duty on export of goods or goods exported without payment of duty, baggage, drawback.

81. Memorandum of Cross-objections before the Commissioner (Appeals) – No prescribed format

In terms of section 35E(4) of the Central Excise Act, 1944 and section 129D(4) of the Customs Act, 1962, if the Department files an appeal/application pursuant to review of adjudication order before the Commissioner (Appeals), such application/appeal filed by the Department shall be heard by the Commissioner (Appeals) as if it is an appeal against the adjudication order and the provisions of filing cross-objections by the other party as envisaged in section 35B(4) of CEA, 1944 or section 129A(4) of the Customs Act, 1962 respectively shall apply. However, under the Central Excise (Appeals) Rules, 2001 and Customs (Appeals) Rules, 1982, there is no prescribed format in



which the assessee is required to file memorandum of cross-objections before the Commissioner (Appeals).

Suggestion

It is suggested that the Central Excise (Appeals) Rules, 2001 and Customs (Appeals) Rules, 1982 be amended to provide for a prescribed format of memorandum of cross-objections to be filed before the Commissioner (Appeals).

82. Revision orders passed under section 35EE of the Central Excise Act, 1944 or section 129DD of the Customs Act, 1962

Under the provisions of the Central Excise Act, 1944 or the Customs Act, 1962, certain orders passed by the Commissioner (Appeals) are appealable before the Revisionary Authority viz., the Central Government under section 35EE or section 129DD. However, against the orders passed by the Revisionary Authority under the above provisions there is no specific appellate remedy provided. Presently, the persons are required to approach the High Court for writ remedy under Article 226 or 227 or approach the Supreme Court under Article 136 of the Constitution. This creates inconvenience to the assessee as well as to the Revenue. Further the jurisdiction of the Supreme Court and/or High Courts under Articles 136 or 226 or 227 are extra-ordinary jurisdiction and is discretionary. Hence, the above remedy is not an effective remedy apart from being time consuming and expensive.

Suggestion

It is, therefore, suggested to provide for appeal against the orders passed by the Revisionary Authority under section 35EE of the CE Act or section 129DD of the Customs Act, directly to the High Court by amending the provisions of section 35G of the Central Excise Act, 1944 and section 130 of the Customs Act, 1962 respectively.



83. Pre-deposit for Appeal

Section 35F has been substituted with earlier provision by Finance Act, 2014 which prescribe a mandatory pre-deposit of 7.5% of the duty demanded or penalty imposed or both for filing the appeal before the Commissioner (Appeals) or the Tribunal at the first stage, and 10% of the duty demanded or penalty imposed or both for filing second stage appeal before the Tribunal. However, the amount of pre-deposit payable shall be subject to a ceiling of ₹ 10 Crore. It is also pertinent to add here that all pending appeals or stay applications shall be governed by the statutory provisions prevailing at the time of filing such applications or appeals.

Issue

The Revised Section 35F is highly detrimental to the interest of genuine assesses who might get wrongly implicated by the Revenue Authorities for evasion of taxes/duty. Further, such substitution has lead to empower Revenue Authorities, since initiation of any proceedings against an assessee, ultimately lead to depositing of a certain percentage of amount, by an assessee, with the treasury even if it not a legitimate due to the Government. To say it simply, amendment has adversely affected genuine assesses' Right to appeal before the higher authorities.

Furthermore, taking away the right of dispensing of Pre-deposit and making it mandatory to deposit a certain percentage of duty demanded before filing an appeal, has caused undue-hardship to small entrepreneurs/ manufacturers/service providers. It is noteworthy that a small entrepreneur, as per the revised section, first has to make a pre-deposit of 7.5% of the duty demanded or penalty imposed or both for filing an appeal before Commissioner (Appeals) and if, the assessee doesn't get a favorable order, then again he will have to make a mandatory pre-deposit of 10% of the duty demanded or penalty imposed or both, if he approaches the Hon'ble Tribunal. Therefore in totality, the assessee have to pay a total of 17.5% of pre-deposit of duty demanded and equivalent percentage of penalty [which works out to be 35% of duty demanded] which will only lead to causing undue hardship and harassment to small entrepreneurs at the hands of the Revenue.



Further, if the assessee succeeds in its appeal, then the prescribed percentage of amount deposited with the Government will have to be obtained by way of refund, which itself is a daunting task for an assessee to obtain from the Department.

On the other hand, such proposed substitution is likely to benefit tax evaders, as by depositing a prescribed percentage at the time of appeal, the matter could be prolonged till the appeal comes up for regular hearing before the Hon'ble Courts.

Additionally, in the Finance Minister's Speech he said that "to expedite the process of disposal of appeals, amendment has been proposed in Custom and Central Excise Act with a view to freeing appellate authorities from hearing Stay applications and to take up regular appeals for final disposal". It is not clear as to whether after the mandatory pre-deposit Stay application would still need to be filed by assessee to avoid the proceedings of recovery of demand / penalty raised.

In addition, TRU Letter further states that another 10% of Pre-deposit in case of second stage of appeal in addition to the 7.5% of the demand and / or Penalty totaling to 17.5%, however language of the section 35F is different.

Further, it is submitted that in most of the cases unconditional stay has been granted by the tribunal to the assessee.

Suggestions

- *It is suggested that, Pre-deposit of only 1% be demanded at first stage and second stage appeal or 2% be demanded at first appeal to CESTAT.*
- *Alternatively, it is suggested that a Bank Guarantee be provided as an alternative to pre-deposit to safeguard the working capital of the assessee.*
- *Without prejudice to the above, it is suggested that a Slab system may be introduced to safeguard the small scale industries, small service providers or BIFR industries.*



- *It is also suggested that the relevant provisions be suitably clarified such that on payment of mandatory pre-deposit, the balance demand stands automatically stayed and no recovery proceeding thereof would be initiated by the department to meet the intention beyond the proposed provision.*
- *It is suggested that in case pre deposit is mandated and obligated then the interest on duty/tax demanded should not be charged for the period till the appeal is disposed off.*
- *It is suggested that said pre-deposit should only be in respect of duty/ tax demanded and not on the penalty amount as pre-deposit on penalty cannot be levied unless its cause is proved.*
- *Subject to above, appropriate clarification may be inserted to avoid the interpretation of TRU Letter.*
- *It is suggested that appropriate clarification be provided in respect of the cases remanded back to Commissioner for re-assessment and what would happened to deposition of pre deposited against original order and whether again pre-deposit needs to be paid to appeal for re-assessed order.*
- *It is suggested that appropriate clarification be provided in respect of appeal to assessment order passed against duty paid under protest.*

84. Appeal to the Supreme Court

Under section 35L (1) of Central Excise Act, 1994 (b) an appeal lies to the Supreme Court from -

any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

Finance Act, 2014 has inserted sub-section(2) in section 35L to provide that the determination of any question having a relation to the rate of duty shall include the determination of taxability or excisability of goods for the purpose of assessment



Issue

The above amendment has practically lead to a situation where a major chunk of the cases will be appealable to the Supreme Court by-passing the jurisdictional High Court. As is well known that Supreme Court is already flooded with pending matters, centralization of appeals to the Supreme Court will lead to delay in disposal of appeals.

Further, the cost of litigation goes up considerably for most assesseees who are located far from New Delhi.

Suggestion

It is suggested that disposal of appeals pertaining to all cases be also routed through High Court as it is easily accessible from various parts of the Country.

85. Exemption to certain class of persons from obtaining registration under the Central Excise Rules, 2002

In terms of rule 9(2) of the Central Excise Rules, 2002, (CER) the Board has exempted certain categories of persons or class of persons vide *Notification No.36/2001-CE (NT) dated 26.06.2001* from obtaining registration. In terms of paragraph-1(vi), every job worker who undertakes job work in respect of final products falling under Chapter 61 & 62 on behalf of any other person who shall pay duty on the said goods under rule 4(3) of the CER is a person exempted from obtaining registration. It may be noted that the provisions of rule 4(3) of the Central Excise Rules, 2002 have since been deleted vide *Notification No.24/2003-CE (NT) dated 25.03.2003*.

Suggestion

In the light of the above deletion, the provisions of paragraph-1(vi) of Notification No. 36/2001-CE (NT) dated 26.06.2001 have become redundant and need to be deleted/omitted.



86. Return under Excise Duty

As per Rule 12 of Central Excise Rules, 2002, every registered assessee is required to file a monthly return to the Superintendent of Central Excise by 10th of next month in prescribed forms (ER-1 / ER-3 / ER-4 / ER-5 / ER-6 / Dealer return). The Correctness of the duty is verified by the proper officer and the assessee shall make available all documents and records to the proper Officer for verification.

Suggestions:

- *It is suggested that filing Returns in Central Excise be made half yearly at par with Service Tax Returns.*
- *It is suggested that provision of revision of return, in line with service tax, be also introduced in Central Excise. This will help the assessee to revise any uncorrected data or information submitted, if any.*
- *Further, it is suggested to provide facility of filing single Return for all the factories or premises on ACES instead of independent return for each factory or premises.*

87. Audit Issues

EA 2000 is a modern, transparent and interactive method of audit wherein the auditor proceeds with audit fully conversant with the business of the assessee. At the end of the process of verification, the auditor prepares Audit Report which incorporates all the audit objections/audit paras. An audit report provides (issue or para wise) the issue in brief, the reply or the explanation of the assessee, the reason for the auditor not being satisfied with the reply, the amount of short payment (if tabulated) and the recoveries of the same.



Suggestion

It is suggested that a copy of audit report even a clean one (having nil points) of the assessee under Excise Audit 2000 scheme be provided:

- To facilitate the assessee to take corrective actions*
- To ensure/prove that audit is done up to a particular period.*

As in absence of the audit report with the assessee he is unable to prove that his accounts are audited till a particular period and is sometimes subjected to re-audit as there is no mechanism in the department to ensure the same.



D. CUSTOMS DUTY

88. Relinquishment of imported/warehoused goods

Section 23(2) provides that the imported goods can be abandoned before the proper officer has ordered clearance of goods for home consumption under section 47 or before an order for warehousing is made under section 60 of the Act. Similarly, section 68 provides that the warehoused goods can be abandoned before an order for clearance for home consumption has been made in respect of such goods. However, the provisos to both these sections lay down that the owner of any imported goods/warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force."

The expression "an offence appears to have been committed" employed in the above provisos is not clear and would lead to interpretational issues and litigation.

Suggestion

It is suggested to suitably amend the above provisos to clarify as to when an offence appears to have been committed. Probably, the expression could read as "in respect of which a show cause notice has been issued".

89. Interest free warehousing period for imported goods

The Customs Act, 1962 provides for warehoused goods to be kept in-bond for a period of one year. However, interest on customs duty is chargeable on warehoused goods if the same are not ex-bonded within 3 months.

Suggestion

It is suggested that warehoused goods be allowed to be kept in-bond for a period of at least 6 months without payment of interest.



90. Demurrage Free storage period

DEMURRAGE charges are levied by custodians to ensure faster clearance of cargo. The custodians approved by the Commissioner of Customs as per Section 45(1) of the Customs Act, 1962 for Ports, Airports, ICDs, CFSS, etc. collect these charges against the services rendered for storing the imported /export goods in their custody beyond the expiry of 'free days'. At present, the free day's period is 3 days.

It is pertinent to note that the goods cannot, in the normal course of business, be cleared within 3 days due to a plethora of procedural requirements and accordingly demurrage charges are levied leading to increase in the cost of import.

Suggestion

It is suggested that the demurrage free period available to importer for storage of goods in the premises of custodian should be increased from 3 days to 5 days.

91. Relevant date for determination of rate of duty and value of goods in case of improper removal of warehoused goods

Under section 72(1)(b), the warehoused goods which remain in the warehouse beyond the period specified in section 61(1) of the Customs Act are deemed to have been improperly removed and the proper officer is entitled to demand duty on such improperly removed warehoused goods. This section has been examined by the Supreme Court in the case of *Kesoram Rayon v. CC*, 1996 (86) ELT 464 (SC) wherein it has been held that in case of improper removal of warehoused goods in terms of section 72(1)(b), the warehoused goods are deemed to have improperly removed on the expiry of warehousing period and the relevant date for determining the rate of duty and value of such goods shall be date of expiry of warehousing period. The above decision of the Supreme Court seems to be *per incuriam* since the same is contrary to specific provisions of section 15 of the Act. Hence, the same needs immediate rectification.



Suggestion

Since, the above decision is not in accordance with the specific provisions of section 15 of the Customs Act, it is suggested to amend the provisions of section 15 to provide for relevant date in the case of improper removal of warehoused goods as envisaged in section 72 of the Act.

92. Return under Rule 7(c) of the Customs Rules, 1996

As per Notification No.22/2012- Customs (N.T.) dated 17.03.2012, the concerned assessee is required to submit the return under Rule 7(c) of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 on quarterly basis (instead of monthly basis as was prior to 17.03.2012) with the Central Excise Authorities. However, on the web portal of the Central Board of Excise and Customs (CBEC), still there is facility of e-filing of said return on monthly basis instead of quarterly basis.

Suggestion

It is suggested that necessary amendment on the web portal of the Central Board of Excise and Customs (CBEC) be made and the facility of e-filing of quarterly return, instead of monthly return, be made available to the concerned assessee's under the Customs (Import of goods at concessional rate of duty for manufacture of excisable goods) Rules, 1996.

93. Relaxation of conditions of Customs Notification No. 102/2007

Customs Notification No. 102/2007 dated 14th Sept 2007, exempts the whole of the additional duty of customs by way of refund provided the goods are imported for sale. While claiming for refund the importer has to produce large volume of VAT invoices.

Suggestion

- *Since production of such huge volumes of document creates hardship, this condition may be relaxed. Such refunds may be allowed based on an independent Chartered Accountant's certificate in this regard.*



- *As per section 27 of the Customs Act, refund claims are to be made within one year from the date of import. The time limit of one year be not made applicable in this case.*
- *Provisions of unjust enrichment be not made applicable to such refunds.*
- *Alternatively, it is suggested that goods imported for resale, which anyway are chargeable to VAT, be exempted from ADC as the process of obtaining refunds is time-consuming (both for the department as well as the assessee)*

94. Clearing House Agent

Nowadays the Importer and Exporter are not opting to clear the goods through CHA but they are clearing it through Freight Forwarders, hence CHA cannot opt to have KYC of the actual importers and exporters.

Suggestion

It is, therefore, suggested to add a column of freight forwarder in B/E and S/B through CHA and freight forwarders be given PAN based registration. This will help to make accountable lot of freight forwarders who are lying loose as their income can be assessed in a right manner also resulting into higher service tax (indirect tax).

95. Interest Payment on assessed Bill of Entry

The provision for clearance of goods for home consumption is provided in Section 47 of the Customs Act, 1962. As per the said section, where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption.

Till December, 1991, there was no provision to levy interest on duty if the duty payment on assessed Bill of Entry is delayed.



For the first time, the Government of India introduced sub-section (2) to Section 47 to levy interest if the importer fails to pay the import duty under sub-section (1) to Section 47 within **seven days** from the date on which the bill of entry is returned to him for payment of duty. This provision came into effect from 23.12.1991.

The above period of Seven days was reduced to five days by Section 105 of the Finance Act, 1999.

Now, with effect from 10.05.2013 the Government has further reduced the above period to two days vide Finance Act, 2013. Further, the Government vide *Notification No. 28/2002-Cus (NT)*, dated 13.05.2002 has fixed the rate of interest at 15% pa for the purpose of Section 47 of the Customs Act, 1962. With the above legal provisions, importer is required to pay interest @15% pa if the duty on assessed bill of entry is not paid within two days (excluding holidays).

While CBEC has taken various steps to strengthen the transaction related infrastructure & system like improvise the EDI system, introduction of self assessment, robust RMS & e-payment of customs duty, the trade in general feels that the period of two days is still very short period. There are still various bottlenecks to cause hardship in ensuring payment within two days. Consequently, many importers have to pay interest on duty without any delay or fault on their part. Some of the reasons are enumerated below:

- (a) When the assessment is done after office hours, importer loses one day straight and then he left only with one working day to arrange duty payment.
- (b) Customs server remains closed during 7 pm to 12 midnight for account reconciliation & therefore it is not possible to make payment after 7 pm & get it recognised & acknowledged by the customs on the same day.
- (c) Many a times when there is problem with bank server or customs server, either payment is delayed or it gets reflected late (next day).



- (d) Customs server is not recognising Holidays declared in the middle of the year on account of force majeure and other reasons. For example, holiday declared on Id-ul-Fitr (09.08.2013) was not recognised by Customs Server.
- (e) Bill of Entry assessed in advance is not getting reflected after IGM finalisation. In other words, though the Bill of Entry is duly assessed, importer is not intimated about the same.

Suggestion

There is therefore, a need for restoring five days (excluding holidays) time for levy of interest on account of delay in duty payment.

96. Refund mechanism for Certificate of Origin received subsequent to import

Customs duty exemption/ concessions are available on goods imported from various countries wherein India has signed an FTA/CEPA/PTA with such countries. However, in order to avail the customs duty benefits on imports from these countries, the importer has to present a Certificate of Origin (COO) to the customs at the time of import.

Issue

It is pertinent to note that the overseas suppliers may not be able to provide the Certificate of Origin as and when the goods are imported and there might be a delay of 7 to 10 days. However, importers are forced to get the shipments cleared without availing the benefit due to urgency and/ or to avoid demurrage charges etc. In such a case, importer has to forego the benefit though the shipments are eligible for duty exemption.

Suggestion

The submission of Certificate of Origin to the Customs authorities at the time of import is a procedural requirement. It is therefore suggested that the importers may be allowed to claim the duty benefit post clearance by way of refund in case the Certificate of Origin is delayed.



This practice is followed in other countries as well. If implemented in India, this will help to reduce the hardship being caused to importers.

97. Export by courier

At present, the courier clearances are allowed both under manual mode as well as electronic mode. The courier clearances under the manual mode are governed by Courier Imports and Exports (Clearance) Regulations, 1998, and courier clearance under electronic mode are governed by Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010.

The facility of imports and exports through courier mode is allowed to only to those courier companies which are registered by the Customs. These courier companies are called "Authorized Couriers". The courier parcels are normally carried by passenger/cargo aircrafts. In the case of clearance through Land Customs Stations (LCS), other mode of transport is used. Both of them are allowed to file the Courier Import Manifest.

The scheme of Customs clearance of exports by courier mode introduces certain procedural relaxation. Such imports and exports shall, however, continue to be governed by the applicable provisions of the FTP or any other law, for the time being in force.

In terms of Notification No. 87/98- Customs (N.T.), dated 9-11-1998, as in the case of exports, all goods are allowed to be exported through courier except for the following excluded categories:

- (a) Goods attracting any duty on exports;
- (b) Goods proposed to be exported with the claim for drawback
- (c) Goods exported under export promotion schemes, such as Drawback, DEPB, DEEC, EPCG etc.;
- (d) Goods where the value of the consignment is above ` 25,000/- and transaction in foreign exchange is involved (the limit of ` 25,000/- does not apply to such export consignment, where the G.R. waiver or specific permission has been obtained from the RBI).



Suggestion

The import or export by courier regulations may enhance the value limit of 'free gifts' and 'commercial samples' of import or export as the limits were revised in 2007 to boost exports. Since GR forms are dispensed with, the provision containing GR waiver is redundant and consequently the value limit of export by courier requires enhancement from present ` 25,000 to ` 5 lakh.

98. Double taxation on Services and intangible rights related payments by importers of goods, to the foreign entities

As per Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 the Value of Services and intangible rights is required to be added to the transaction value of imported goods for the purpose of levy of Customs duty at the same time such payments (consideration) for Services and intangible rights are also liable to Service Tax. Thus, there is an issue of double taxation.

As per Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the following is required to be added to the price actually paid or payable for the imported goods while determining the transaction value:

- (a)
- (c) Royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable.

.....

- (e) All other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.



Explanation:- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e) of Rule 10, such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

The issue pertains to Indian Companies entering into business arrangement with foreign entities. Such arrangements are mainly done to use brand/reputation, Intellectual Property Rights, product & business expertise etc. of foreign entities and sell products supplied/approved by them in Indian market. Such arrangements are made in different legal forms like Joint Venture, Franchise, License, Distributor etc.

Under the above arrangements, Indian Companies are obliged to maintain prescribed standards of business, pay for value of goods being imported and are also required to make payments to foreign partner for services and intangible rights which are identified by various names like Franchise/License Fee, Marketing/Advertising Fee, Agents Fee/Commission, Renewal Fee, Reimbursements of Travel etc.

While Custom Authorities relates all above direct or indirect payments related to Services & intangible rights like royalty, license fee etc. to supply of goods and hold them liable to Customs duty, Service Tax Authorities treat such payments as consideration for services and hold Indian Companies liable to pay Service Tax under reverse charge mechanism.

Thus, Indian Companies are exposed to the burden of double taxation of customs duty as well as service tax.

When Transfer of Right to use imported/locally procured packaged software or canned software is passed on to the buyer, Government has exempted CVD/Central Excise duty on consideration for such transfer of right to use, provided Service Tax is paid on the same (Ref: *Notification No. 25/2011-Cus., dated 01.03.2011 and 14/2011-CE., dated*



24.03.2011). Conversely, Service Tax was exempted when CVD/Excise duty was paid (Ref: *Notification No. 34/2012 – ST., dated 20.06.2012*).

Government had exempted IPR service providers from service tax equivalent to amount of cess payable on the transfer of technology under the provisions of the R & D Cess Act, 1986 so as to avoid double taxation of both Service Tax & R & D Cess (Ref *Notification No. 17/2004-ST., dated 10.09.2004*).

Suggestion

Thus, there is an immediate need to issue appropriate clarification so that payments related to services and intangible rights are not doubly taxed to customs duty as well as service tax.

99. General Issues on Customs

Foreign investment inflow can strengthen the Indian currency against US Dollars if the litigation mechanism is simple, transparent and does not add cost to the manufacturers/service providers/importers and exporters. Exports have become uncompetitive due to high cost of exports from India. A container to reach sea port takes 2 days in many port cities. While the system of self-sealing is not available to Exports under duty free Licenses or claiming export incentives. As a result the exporters have to get the goods sealed by Excise officials and the transaction cost is around ` 10000/- for each container load.

Suggestion

The system of sealing by Excise officers for exports must be completely dispensed with. Further, the customs RMS need to be strengthened to prevent illegal exports.



E. CENTRAL SALES TAX

100. Facility to submit Form C, E etc. online

Section 6 is charging Section. As per Section 6(2) subsequent inter-state sale transaction taking place by transfer of documents of title to goods, when the goods are in course of movement, are exempt. For this purpose the claimant dealer has to obtain Form E-1 from his vendor (if such vendor is first seller otherwise, E-II) and Form 'C' from the buyer. One 'C' form can be issued for one quarter of a financial year. Similarly E-I/E-II can also be issued on quarterly basis. Under Section 6A, branch/consignment transfer is allowed only if Form 'F' is produced, else it will be deemed to be a sale. Form 'F' is required to be obtained from transferee branch/agent. One Form 'F' can cover transfers affected in one calendar month.

Central Government has also substituted sub rule (7) to rule 12 with effect from 1st October, 2005. Form C or certificate in Form E-I or E-II will have to be submitted to sales tax department within three months from the end of the quarter in which sale is affected. In case of Form F, it is to be obtained on monthly basis and it is to be submitted to the sales tax department within three months from the end of the month in which goods are transferred to the interstate branch or agent.

Suggestion

- *With a considerable development in technology, all the relevant forms under Central Sales Tax Act like Form C, E, F etc. be allowed to be filed online. This will not only expedite the process of submitting the forms but also will save the time and streamline the process.*
- *Form E-1 is issued by the seller of goods in case of first sales made. At the time of subsequent sale form E-II is required to be issued by the seller. It is suggested that Form E-I be allowed to be used as self declaration form by intermediate sellers in order to avoid exchange of various forms in the process.*



101. Amendment in Form B (Certificate of Registration) and Form C (Form of Declaration)

Rule 13 of Central Sales Tax (Registration and Turnover) Rules, 1957 was amended vide *Notification No. 183(E) No. 01/2010-CSTF. No. S. 29012/3/2010-SO(ST) dated the 11th March, 2010*, to include goods "used in telecommunication network" to be eligible for concessional rate of purchases.

Consequently, Section 8(3)(b) of the CST Act, 1956 was amended to allow goods used in telecommunication network to be purchased at concessional rate of tax against issue of C Form.

However, the corresponding changes, giving effect to the above amendments were not made in Form B (Certificate of Registration) and Form C (Form of Declaration) prescribed under section 8(3)(b) of CST Act, 1956.

Suggestion

- *It is suggested clause (f) reading as under, be inserted in Form B after clause (e) appearing at Para 3 of the said Form B:*

"The class(es) of goods specified for the purpose of sub-sections (1) and (3) of section 8 of the said Act is /are as follows and the sales of these goods in the course of inter-State trade to the dealer shall be taxable at the rate specified in that sub-section subject to the provisions of sub-section (4) of the said section:-

(a)	<i>for re-sale.....</i>
(b)	<i>for use in manufacture or processing of goods for sale.....</i>
(c)	<i>for use in mining.....</i>
(d)	<i>for use in the generation or distribution of electricity or any other form of power.....</i>
(e)	<i>for use in the packing of goods for sale/resale.....</i>
(f)	<i>for use in telecommunication network"</i>



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- Similarly, it is suggested Form C be amended by inserting the description "use in telecommunication network...." after the description "Packing of goods for sale/resale....." in the declaration provided by the dealer to the seller in Form C as below:

"Certified that the goods

***Ordered for in our purchase Order No.....dated..... and supplied as per Bill/ Cash Memo/Challan No..... .dated..... as stated below**

are for

***resale.....*

use in manufacture/processing of goods for sale.....

use in mining

use in generation/distribution of power.....

Packing of goods for sale/resale.....

***used in telecommunication network.....** and are covered by my/our registration certificate No ... dated ...issued under the Central Sales Tax Act, 1956. It is further certified that I/We am/are not registered under section 7 of the said Act in the State ofin which the goods Covered by this Form are/will be delivered."*



F. OTHERS

102. Powers of the Commissioner (Appeals) under the Central Excise Act and the Customs Act to condone the delay in filing the appeal

Under section 35 of the Central Excise Act, 1944 or section 128 of the Customs Act, 1962, an appeal before the Commissioner (Appeals) is required to be filed within 60 days from the date of receipt of the order of the lower authorities. The Commissioner (Appeals) is empowered to condone the delay upto 30 days beyond 60 days provided sufficient cause is shown. It has been observed that the said condonable period of 30 days is very short and requires to be increased to either 60 days or 90 days. Further, there are many instances where meritorious cases cannot be pursued because of the above technicality. The Courts have held that an appeal filed beyond the condonable period cannot be admitted contrary to the statutory provisions, since the Commissioner (Appeals) has no power to condone beyond 30 days.

Suggestion

It is, therefore, suggested that the power to condone appeals be vested with the Commissioner Appeals upto a period of 90 days instead of 30 days with a further appeal to CESTAT in case of delays beyond such period.

103. Personal Penalty

It is observed that Central Excise Department sometimes issues notices for personal penalty to junior and middle level officers of the Corporates under Rule 26 (earlier rule 209A). These type of notices are mostly issued wherever allegation or suppressions are leveled. Though sales tax is also an indirect tax like excise duty, there is no practice of levying personal penalty under Sales Tax Law.

The employees in large Corporates are salaried employees and are professionals. Their jobs are transferable. However, issuance of personal penalty notices create unnecessary obstacles. The work is



done for and on behalf of Corporates (assesseees). Excise Department should deal with the Corporates and not with individual employees.

Suggestion

Therefore, it is suggested that the provisions relating to personal penalty be removed from the statute.

104. Exemption from payment of duty by way of refund mechanism

Section 5A of the Central Excise Act, 1944 or section 25 of the Customs Act, 1962 or section 93 of the Finance Act, 1994 empowers the Central Government to exempt from payment of excise duty/customs duty/service tax. However, off late, few exemption notifications have been issued under the above statutory provisions which are in effect a refund mechanism subject to fulfillment of conditions. For instance, *Notification No.102/2007 Cus dated 14.9.07* as amended which provides for refund of special additional duty of 4% leviable under section 3(5) of the Customs Tariff Act, 1975 or *Notification No. 40/2012 ST dated 20.06.12* which provides refund of service tax to SEZ developer/unit.

The above notifications have lot of conditions and procedures. Many a times the assesseees face great difficulties in claiming the said exemption. The administration of these notifications is resulting in harassment of the assessee besides breeding heavy litigations.

Suggestion

It is suggested that the present system of granting exemption through refund route be reviewed and be made simple to comply.

105. Use of Digital Signature on various Excise and Service tax related documents viz. Invoice, ARE-1, ARE-3 etc.

Rule 11 of Central Excise Rules, 2002 provides for issuance of Invoice for removal of excisable goods from factory duly signed by the owner of the factory or his authorized agent and Rule 4A of Service Tax



Rules, 1994 provides for issuance of invoice by a service provider duly signed by the service provider or his authorized person.

Although the Digital Signature is being used in various e-commerce transactions where the digitally signed documents are transmitted electronically, but the electronic transmission of digitally signed Invoices issued under rule 11 of Central Excise Rules or issued under Rule 4A of Service Tax Rules to the buyer / customer may not be allowed.

Further, sub-rule (3) of the said rule 11 provides for preparation of Invoices duly marked as under:

- ORIGINAL FOR BUYER
- DUPLICATE FOR TRANSPORTER
- TRIPLICATE FOR ASSESSEE

The DUPLICATE FOR TRANSPORTER copy duly signed by the authorized person is used as a Transport document which accompany the "carrier" carrying dutiable goods which is required to be produced for verification when demanded by authorities en-route during transit so as to prove duty paid character of goods in transit.

Under Income Tax regime, specific provisions are made in the Act/Rules and procedures have been prescribed issuing for issue of Form-16 with Digital signatures. Further, recently, the Sales Tax Department, Maharashtra has allowed some companies for use of Digital Signatures on sales invoices. Similar permission is also granted by the Gujarat State Sales Tax authorities.

Suggestion

It is suggested that suitable amendment in the Central Excise Rules, Service Tax Rules and Cenvat Credit Rules be made or issue appropriate clarification prescribing the manner in which Digital Signature can be used on various Excise and Service tax related documents viz. Invoice, ARE-1, ARE-3 etc . It will facilitate the assessee to comply with the provisions.



106. Suggestions for Reduction of Litigation

(a) Streamlining of Circulars/Trade Notices

CBEC, as practice regularly issues notifications and circulars to make changes in the rules and procedures and to clarify the Department's stand in relation to a particular issue or provision. However, there is no system of issuing a comprehensive circular at the end of the year which will incorporate all the circulars issued during the year. It may be noted that RBI issues master circulars every year, replacing individual circulars issued during the year.

Suggestion

It is suggested that a practice of issuing a Master Circular on 1st April every year in Excise/Custom/Service tax compiling all related circulars issued during the year be adopted on an annual basis. This would ensure better compliance as assessee's will be aware of necessary procedural steps and exemptions as available. A comprehensive circular makes easy to review all updates in an indexed manner.

Further, it is suggested that issue of circulars be examined and if at all they need to be issued, the Board should issue circulars by exercising utmost caution and design the circular meticulously to avoid any interpretational issues by the industry or the field formations at the lower level.

(b) Training of Departmental Personnel

It has been observed that the understanding of this central law across the country is not the same. Different Commissionerates have different views on variety of issues particularly in case of real estate sector. Further, it is an admitted fact that administering authorities are not trained in accounting and thus, find it difficult to interpret and analyze the financial statements. This causes difficulties for both the assessee and the Department.

Departmental officers undergo training but there is need for more comprehensive and interactive sessions where they can discuss and



debate issues with their peers duly facilitated by experienced professionals. This will go a long way in enhancing quality of services of the Department.

Suggestion

A comprehensive training covering all the substantive, procedural aspects of the law and understanding of financial statements be scheduled for the officers at all levels.

(c) Accountability of tax collectors

In the present tax laws, there is no accountability on the part of tax collectors. This leads to the misuse of powers vested in them vide the respective legislations. For proper discharge of responsibilities, accountability is a necessary counter-balance and is very essential for effective discharge of the authority vested in a person

Suggestion

In order to project a sense of even-handedness in dealing with tax payers, provisions relating to accountability be introduced and not formulated independently. The Tribunal or Commissionerate (Appeal) may impose reasonable cost for the same.

If there are rewards awarded to the departmental officers for anti-evasion cases then there ought to be penalty also for frivolous litigations.

(d) Timely information and guidance

It has been observed that the order passed by CESTAT and Adjudicating Authority/ Commissioner (Appeals) does not reach to the industry timely, resulting non compliance or non timely compliance.

Further, it is felt that the time lag for the issuance of the clarifications on common problems/ issues of pertaining to industry.



Suggestion

It is suggested that all the orders passed by CESTAT and Adjudicating Authority/ Commissioner (Appeals) be made available on websites for ready reference of the industry. The CBEC may play a proactive role and issue clarifications on problems / issues of industry which are similar in nature to avoid such problems resulting in litigation at a later stage.

(e) Vacancies in Tribunal

Suggestion

The vacancies in Tribunal be filled and additional benches in metro and new benches in non-metro cities be constituted to expedite the disposal of long pending cases. A fast track system of disposal of cases be introduced to deal with high revenue cases and settled issues.

(f) E-filing

Suggestion

E-filing of appeals be introduced to encourage paperless society as an environment friendly measure.

(g) Members of CESTAT

Suggestion

Practicing Chartered Accountants be made eligible for being appointed as Members of the CESTAT as in case of ITAT.

107. Number of benches at CESTAT level

As per recent media reports it appears that the pendency of cases in CESTAT has crossed 1 lakh cases. Further most of time is devoted to hear stay matters and due to huge pendency the Hon'ble Members despite their best efforts cannot take up regular matters. The Karnataka High Court in the case of Karnataka Industrial Areas Development Board Vs



UOI, 2014 (299) ELT 197 (Kar.), held that the Central Government should constitute more Benches of CESTAT.

Suggestions

- (a) *It is suggested that the process of Constitution more Benches of the CESTAT be made speedy.*
- (b) *Fill up vacancies of Judicial and Technical Members expeditiously.*
- (c) *Transfer the administration and control of CESTAT to Ministry of Law like Income Tax Appellate Tribunal. This would ensure independence of CESTAT members.*
- (d) *To allow attending of the hearing or representation of matters through video conferencing.*
- (e) *To introduce a system of e-filing of appeal and make the filing process, paper-less.*
- (f) *To reduce the minimum age limit for being Member of CESTAT.*

108. National Tax Tribunal

National Tax Tribunal was considered as an alternative for resolving tax disputes on questions of law and to reduce burden on High Courts. However, recently the Honb'le Supreme Court in the case of M/s Madras Bar Association vs UOI has held that the Constitution of National Tax Tribunal is Unconstitutional.

Suggestion

It is suggested that alternative appropriate authority/body be set up having expertise in accounting and tax laws with adequate infrastructure and powers so that pending cases on tax may be transferred to it.



G. MEASURES TO AUGMENT REVENUE OF CENTRAL INDIRECT TAXES

General Measures

1. Excise/Service Tax Audit in line with the Income-Tax Audit be introduced for traders/ manufacturers/ service providers having a turnover of goods/services of more than 1 crores. The Tax-audit under section 44AB of the Income-tax Act, 1961 is a very powerful tool to unearth frauds, ensuring compliance and checking revenue leakage. A similar audit in the area of indirect taxes would capture a major portion of the businesses and check significant revenue leakage.
2. Attempt must be made to reduce the litigation time as pending and frivolous litigation reduces the confidence of the tax payer and increases the costs of doing business. Steps that can be taken in this direction include increasing the number of benches of CESTAT, examining the issues litigated often and issuing the clarifications early instead of issuing the same after the court verdict and introducing the system of obtaining advance rulings by resident assessees as prevalent in many State VAT in the form of Determination of Disputed Questions (DDQs).
3. Due to Service tax a new levy, the knowledge of the law [which is fast changing] among the majority of officers is very limited. Specialised training of the Government Officials, particularly the officers posted in the Audit wing, in the indirect tax laws as also in reading and interpreting Financial Statements would lead to better results in enhancing the revenue. It will be a matter of privilege for the ICAI to offer its support in conducting such training sessions.

Considering that indirect tax laws are very dynamic and are continually exposed to frequent changes, apprising the assessees with the latest law is equally important to ensure better compliance leading to increased tax



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revenue. Board can achieve this by organising series of public awareness programmes on various aspects of indirect taxes at Tier II or III cities – in comparison to metros, assesseees of these cities are less aware- with focus on specific needs of the city. ICAI will be happy to partner this initiative of the Board.



ANNEXURE I

FORM
(See rule)

Audit Report

INDEPENDENT AUDITOR'S REPORT ON PARTICULARS CONTAINED IN PART-2, FORM NO. PURSUANT TO SECTION.... OF THE FINANCE ACT, 1994

AddresseeName and address of the Assessee

We have verified the enclosed Particulars for the period
(specify the period) as given in Section C, D, E, F and G in the enclosed
Form No. of M/s (name of the assessee) bearing
Service Tax Registration No. having registered premises
at (address) and falling under
.....Commissionerate.

Assessee's Responsibility

Assessee is responsible for the maintenance of proper books of accounts,
and such other service tax related records and preparation of financial
statements as prescribed in the applicable laws, wherefrom the particulars
for Form No. 2 have been extracted. This responsibility also includes
collecting, collating and validating data and designing, implementing and
monitoring of internal controls relevant to the preparation of these books
of account and records and the particulars given in Form No. 2, that are
free from material misstatements. The assessee is also responsible for
complying with the requirements of Service Tax Law.

Auditor's Responsibility

Our responsibility is to verify the sections C, D, E, F and G of the Form no.
2. Accordingly, the verification done by us of the related books of account
and records has been conducted for the limited purpose of reporting on
Sections C, D, E, F and G of the Form No. 2 and did not cover any other



aspect. Our examination was carried out in accordance with the Guidance Note on Audit Reports and Certificates for Special Purposes issued by the Institute of Chartered Accountants of India.

The report given by us is based on the request received from the Assessee with reference to (name of Rule, etc) dated, issued by (name of the issuing authority) and is to be used solely for the purpose of assisting the Assessee in connection therewith and is not intended to be and should not be used for any other purpose.

We report that the Particulars contained in Sections C, D, E, F & G¹ in Form No. 2 have been prepared in all material respects in accordance with the applicable service tax laws except the following²:

S. No.	Particulars	Amount as per Service tax return ()	Amount as Per Auditor ()	Difference, if any ()
1	Service tax payable			
2	CENVAT Credit			
3	Any other (Please specify)			

The details of individual differences are indicated in the enclosed Form No. 2.

Report on Other Legal or Regulatory Requirements

- (i) In my / our view the books of accounts and other service tax related records and registers as prescribed by the relevant laws have been maintained by the assessee.
- (ii) The value of taxable services on which service tax has been shown as payable is in accordance with the books of accounts,

¹ As may be applicable.

² To be given only if such difference exists.



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invoices/bills/challans raised on service receivers, and other records maintained in the normal course of the business of the Assessee

- (iii) Computation of CENVAT credit admissible in respect of inputs, input services and capital goods is supported by the invoices/ bills/ challans / bill of entries or other documents as prescribed under rule 9 of the CENVAT Credit Rules, 2004

Place:

Date :

For XYZ & Co.
Chartered Accountants
Firm Registration No.

.....

Signature
(Name of the Member signing the Report)
(Designation)
Membership No.

.....

Encl :

Form No. 2 as mentioned above.



FORM NO.

[See rule]

Particulars/information for the period.....

Note:

1. Points for information are indicative and are not exhaustive. Additional information, if any, may please be given in the comments / remarks column.
2. No column of the report is to be left blank. If the information asked for is not relevant, please state 'Not Applicable'.
3. Hard copy of the report prepared on computer would be acceptable, provided the report is in the prescribed format.

SECTION A: General Information (to be certified by the assessee)			
1	Name of the Service Provider/Service Receiver	:	
2	PAN of Assessee		
3	Service Tax Registration Number, Date of registration and Service categories specified in the registration certificate.		
4	Nature of Registration		Single/Centralised/Input Service Distributor
5	Registered Address		
6	List of Branches Registered covered under ISD	:	
	a)	:	
	b)	:	
7	Details of other registrations under Service Tax	:	



	S. No.	Registration Number	Type of Registration	Address
8	Details of branches/offices not registered under Service Tax			
	S. No.	Address	Type of Activities carried on	Reason for non-registration
SECTION B: BUSINESS RELATED INFORMATION (TO BE CERTIFIED BY THE ASSESSEE)				
1	List of principal activities (Manufacturing/ Trading/Services / Others)			
	1.1	Is there any change in the activities Stated above during the year as compared to immediately preceding year?	:	
	1.2	If answer to 1.1 above is Yes, then provide broad description of such change.	:	
2	Business Activity, in brief			
3	3.1	Nature of Services Provided		
	3.2	Nature of Services Received		
4	Whether Registered with Central Excise? If so, give		:	



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	registration no. (s) with address(es) of places registered.					
5	Whether Registered with Sales Tax Authorities? If so, give registration no.(s) with address(es) of places registered.			:		
6	Constitution of Assessee					
	6.1	Status [Individual, HUF, Partnership Firm, LLP, Company , AOP etc.]		:		
	6.2	Is there any change in the status of the Assessee during the year?				
	6.3	If yes, give particulars of such change with the effective date				
7	Detail of Associated Enterprises			:		
	7.1	Does the assessee have an Associated Enterprise as defined in Section 65B (13) of Chapter V of the Finance Act, 1994?				
	7.2	If yes, then provide details				
	S. No.	Name	PAN	Address	Type of relationshi	Nature of Transaction,



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					p	if any
8	Principal books of account/ records maintained.	:				
9	(a) Method of accounting employed during the year (Cash OR Accrual)	:				
	(b) Whether there has been any change in the method of accounting employed <i>vis-a-vis</i> the method employed in the immediately preceding year	:				
10	a) Is list of records maintained filed with the department in terms of Rule 5(2) of the Service Tax Rules 1994? If Yes, mention the date of filing.					
	b) Is there any intimation filed under Rule 6(3) of CENVAT Credit rules, 2004? If Yes, mention the date of filing..					
11	IEC Code					
12	Whether Registered with STPI? If so, give registration no.(s) with address(es) of places registered.					
13	Whether any litigation is pending between the assessee and the department?					



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	If Yes, provide the details.		
14	Status of the Pending Demand at the time of the audit.		
15	Whether any show cause was issued by department to the assessee? If yes provide the details.		
16	Particulars of Bank Account(s)		
	Name of the bank	Branch	Account No.

Date

Signed By:

Place

(Assessee)



SECTION C (1) : NON TAXABLE/EXEMPTION AVAILED / SERVICES UNDER NEGATIVE LIST AS PER FINANCE ACT 1994				
	Particulars	As per Service Tax Return (Amount in `)	As per the Auditor (Amount in `)	Difference, if any (Amount in `)
1.	Value of services provided in non taxable territory.			
2.	Value of services considered as export as per Rule 6A of Service Tax Rules, 1994			
3.	Value of exempted services provided, if any, along with Notification No. and amount involved. (Add separate row for every exemption notification claimed)			
4.	Value of services, which are covered under Negative List (including trading and manufacturing of goods) (Add separate row for every entry in Negative List)			
5.	Value of services			



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	which are not covered under definition of service and treated as income with amount involved			
6.	Value of services provided to other branch in taxable territory and amount involved			



SECTION C (2) Consolidation of Returns (Reconciliation with revenue as per Trial Balance (TB)/Profit & Loss A/c (P/L a/c) / Income & Expenditure Account					
	Particulars		As per Service Tax Return (Amount in `)	As per the Auditor (Amount in `)	Difference, if any (Amount in `)
A	Value of service provided on which service tax charged				
B	Add: Value Export of Service				
C	Add: Value of Services provided in Non Taxable Territory				
D	Add: Value of exempted services provided				
E	Add: Value of Services covered under negative list				
F	Add: Value of services which are not covered under definition of service and treated as income				
G	Add: Value of Inter Branch-HO services-claimed as non-taxable				
H	Add: Value of services on which				



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	Service tax not charged due to reverse charge mechanism			
	Total (x) (A to H)			
	Gross Revenue (y) (as per P&L/ I&E A/c)			
	Difference, if any (y-x)			
	Reasons of difference			



SECTION D (1) : COMPLIANCE RELATED TO REVERSE CHARGE MECHANISM IN RELEVANCE TO SECTION 68 READ WITH RULE 2(1)(D) OF ST RULES, 1994					
Sl. No.	Nature of Service Received	Percentage for taxable value for service tax payable by Service Receiver	As per Service Tax Return (Amount in `)	As per the Auditor (Amount in `)	Difference, if any (Amount in `)
1.	Insurance Agent	100%			
2.	Renting or hiring of Motor Vehicle (CENVAT Credit not availed by Service Provider)	40%			
2A.	Renting or hiring of Motor Vehicle (CENVAT Credit availed by Service Provider)	40%			
3.	Supply of Manpower for any Purpose	75%			
3A.	Security Services	75%			
4.	Support Services Provided by Government or Local Authority	100%			
5.	Works Contract Services (original works contract -40% value)	50%			



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5A	Works Contract Services (works contract related to moveable property - 70% value)	50%			
5B	Works Contract Services (residuary works contract -60% value)	50%			
5C	Works Contract Services (under Rule 2A(i) of Service Tax (Determination of Value) Rules, 2006)	50%			
6.	Services of Insurance Agent	100%			
7.	Services of GTA in respect of transportation of goods by road (CENVAT Credit not availed by Service Provider)	100%			
7A	Services of GTA in respect of transportation of goods by road (CENVAT Credit availed by Service Provider)	100%			
8.	Sponsorship services by way of sponsorship	100%			



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9.	Legal Services of Advocate or Firm of Advocate	100%			
10.	Services of Directors	100%			
11.	Import of Taxable service (Specify the description of Service) (add rows, if required)	100%			



SECTION D (2) : Compliance of Service Tax in case of services having Special Service Tax Rates- Services falling under Rule 6(7) of the Service Tax Rules				
Sl . No.	Particulars	As per Service Tax Return (Amount in `)	As per the Auditor (Amount in `)	Difference, if any (Amount in `)
1.	Air Travel Agent Services			
	1.1 Basic Fare for Domestic Journey			
	1.2 Basic Fare for International Journey			
	1.3 Whether the same option is being followed for whole year			
2.	Life Insurance Services			
	2.1 Premium charged from policy holder in the first year			
	2.2 Premium charged from policy holder in the subsequent years			
3.	Money Exchange Services			
	3.1 Total number of units for special rate			
	` 30			
	` 120			
	` 660			
	3.2 Value for ad valorem rate			
	Rate of tax @ .12%			
	Rate of tax @ .06%			
	Rate of tax @ .012%			



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	3.3	Whether the same option is being followed for whole year			
4.		Service of promotion, marketing, organising or in any other manner assisting in organising lottery			
	4.1	Aggregate face value of lottery tickets printed by the organising State for a draw- If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%.			
	4.2	Aggregate face value of lottery tickets printed by the organising State for a draw- If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80%.			
	4.3	Whether the same option is being followed for whole year			



SECTION E : COMPLIANCE OF SERVICE TAX (DETERMINATION OF VALUE) RULES 2006				
		Yes	No	Not applicable
1	(a) Is there any sale of goods involved in the course of providing service or otherwise?			
	(b) Is sales tax or VAT paid on value of goods so sold?			
	(c) Is the value of goods sold as mentioned in Point (a) and (b) above included in the gross amount charged as declared in ST-3?			
2	"Gross Amount Charged" includes reimbursements billed for the purpose of determining tax liability?			
	Value of reimbursements on which service tax is not charged			
3	Prescribe the nature and value of service on which tax has been paid under works contract service/restaurant service (special value as prescribed under Rule 2A of Determination of value Rules 2006)			
4	(a) If abatement is claimed under Notification No. 26/2012-S.T. dated 20.06.2012 whether CENVAT Credit is claimed			
	(b) If yes whether permissible under Notification No. 26/2012?			
	(c) if answer (b) is negative, then specify nature of default of amount involved.			



SECTION F : COMPLIANCE OF CENVAT CREDIT RULES 2004				
F1	General Information with regard to CENVAT Credit			
	Particulars	As per Service Tax Return	As per Auditor	Comments, if any
1	Whether CENVAT credit has been availed / utilized (Yes / No)			
2	Whether providing any exempted service or non-taxable service ('Yes'/'No')			
3	Whether manufacturing any exempted excisable goods ('Yes'/'No')			
4	If reply to anyone of the above is 'Yes', whether maintaining separate account for receipt or consumption of input service and input goods [refer to Rule 6(2) of CENVAT Credit Rules, 2004] ('Yes'/'No')			
5	Whether paying an amount equal to 6% of the value of exempted goods and exempted services [refer to Rule 6(3)(i) of CENVAT Credit Rules, 2004] ('Yes'/'No'); or			
7	Whether paying an amount equivalent to CENVAT Credit attributable to inputs and input services used in or			



	in relation to manufacture of exempted goods or provision of exempted services [refer to Rule 6(3)(ii) of CENVAT Credit Rules, 2004] ('Yes'/'No'); or			
8	Whether maintaining separate account for receipt or consumption of input goods, taking CENVAT credit only on inputs (used in or in relation to the manufacture of dutiable final products excluding exempted goods and for the provision of output services excluding exempted services) and paying an amount equivalent to CENVAT Credit attributable to input services used in or in relation to manufacture of exempted goods or provision of exempted services [refer to Rule 6(3)(iii) of CENVAT Credit Rules, 2004] ('Yes'/'No')			



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F2 DETAILS OF CENVAT CREDIT AVAILED								
		Type of CENVAT Credit Availed and amount of credit as per Return.					As per the Auditor (Amount in `)	Difference, if any (Amount in `)
1.		Type	Basic Excise Duty / Service Tax (`)	Additional Duty u/s 3(5) of CTA	Education Cess + S.H. E Cess	Total		
	(a)	Capital Goods						
	(b)	Inputs						
	(c)	Input Services						
		Total						
Breakup of Input Services Credit Availed During the year								
		Type	Service Tax (`)	Education Cess + S.H. E Cess	Total			
	(a)	Credit of service tax paid, directly,						



		under reverse charge method [Section 68(2)]					
	(b)	Credit of service tax paid by the provider of input services, procured directly					
	(c)	Credit of service tax as distributed under the provisions of Input service distributor					
	(d)	Credit transferred from one unit to another in LTU					
		Total					



F3 : DETAILS OF CENVAT CREDIT REVERSED/AMOUNT PAID UNDER RULE 3 & 4 OF CENVAT CREDIT RULES, 2004				
S. No.	Particulars	As per Service Tax Return (Amount in `)	As per the Auditor (Amount in `)	Difference, if any (Amount in `)
1	Removal of Inputs as such [Rule 3(5) of CENVAT Credit Rules, 2004]			
2	Removal of Capital Goods as such [Rule 3(5) of CENVAT Credit Rules, 2004]			
3	Removal of Capital Goods are use at depreciated rate [Rule 3(5A) of CENVAT			
4	Removal of Capital Goods as waste and scrap after use [Rule 3(5A) of CENVAT Credit Rules, 2004]			
5	Written off of inputs fully or partially [Rule 3(5B) of CENVAT Credit Rules, 2004]			
6	Written off of Capital goods fully or partially [Rule 3(5B) of CENVAT Credit Rules, 2004]			
7	Non return of Inputs / capital goods sent to Job Worker within 180 days [Rule 4(5) of CENVAT Credit Rules, 2004]			



F4 : DETAILS OF CENVAT CREDIT REVERSED/ AMOUNT PAID UNDER RULE 6(3) OF CENVAT CREDIT RULES, 2004				
S. No.	Particulars	As per Service Tax Return (Amount in `)	As per the Auditor (Amount in `)	Difference, if any (Amount in `)
1	Value of exempted goods cleared			
2	Value of exempted services provided			
3	Amount paid under Rule 6(3) of CENVAT Credit Rules, 2004, by debiting CENVAT Credit account			
4	Amount paid under Rule 6(3) of CENVAT Credit Rules, 2004, by cash			
5	Total amount paid under Rule 6(3) of CENVAT Credit Rules, 2004 [(c) + (d)]			



F5: DETAILS OF CENVAT CREDIT UTILIZED				
S. No.	Particulars	As per Service Tax Return (Amount in `)	As per the Auditor (Amount in `)	Difference, if any (Amount in `)
1	for payment of Service Tax			
2	for payment of Education Cess on taxable services			
3	for payment of Secondary and Higher Education Cess on taxable services			
4	towards clearance of input goods and capital goods removed as such or after use			
5	towards inter unit transfer to LTU			
6	for Payment of an amount under Rule 6(3) of the CENVAT Credit Rules, 2004			
7	for any other payments/ adjustments/ reversal (please specify)			
8	TOTAL CREDIT UTILISED [(a) + (b) + (c) + (d) + (e) + (f) + (g) + (g)]			



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SECTION G : DISTRIBUTION OF INPUT SERVICE CREDIT				
S. No.	Particulars	As per Service Tax Return (Amount in `)	As per the Auditor (Amount in `)	Difference, if any (Amount in `)
1	Amount of CENVAT Credit availed during the year			
2.	Amount of CENVAT Credit distributed (branch wise)			
	Branch1			
	Branch2 (add rows for different branches)			

Place :

Signature:

Date:

Name:

Membership No:

ABOUT ICAI AND INDIRECT TAXES COMMITTEE OF ICAI

The Institute of Chartered Accountants of India (ICAI) is a statutory body established under the Chartered Accountants Act, 1949 to regulate the profession of Chartered Accountants in India. During its more than six decades of existence, ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for its contribution in the fields of education, professional development, maintenance of high accounting, auditing and ethical standards. ICAI now is the second largest accounting body in the whole world.

The Council of ICAI functions through various Standing and Non-Standing Committees. Indirect Taxes Committee is one of the most important non-Standing Committees of ICAI. The main function of the Indirect Taxes Committee is to examine the indirect tax laws, rules, regulations, circulars, notifications, etc., which may be enacted or issued by the Government from time to time and to send suitable memoranda containing suggestions for improvements in the respective legislation. The Indirect Taxes Committee actively facilitates the process of formulation of budget by offering pre-budget and post-budget suggestions/comments to simplify tax laws and their administration for the purpose of making it more responsive to tax payers.

Another important function of the Committee is to enhance the awareness/ knowledge of the members of the ICAI relating to indirect taxes and the potential opportunities offered by this area by organising workshops, certificate courses, seminars, e-learnings and interactive programmes independently as also with trade and industry.



Indirect Taxes Committee
The Institute of Chartered Accountants of India
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