PRE-BUDGET MEMORANDUM 2016

Indirect Taxes

THE INSTITUTE OF CHARTERED ACCOUNTANT OF INDIA

NEW DELHI

CONTENTS

I. INTRODUCTION

The Institute of Chartered Accountants of India (ICAI) considers it a privilege to submit the Pre-Budget Memorandum, 2016 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 2016-17. 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.

The contact details are:

Name and Designation	Contact Details	
	Ph. No.	Email Id
Chairman, Indirect Taxes Committee	9810103611	atul@servicetax.net; atulservicetax@gmail.com
CA. Sharad Singhal, Secretary, Indirect Taxes Committee	09310542608 0120-3045954	idtc@icai.in

II. EXECUTIVE SUMMARY

A. SERVICE TAX

S. No.	Topic(s)	Suggestion(s)
	Substantive Law	
1.	Tax Audit Report in service tax	➢ 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)	Government	➢ It is suggested suitable clarification be issued as to whether the Central Government would form part of the 'Government' or not while interpreting definition of the term 'Government' in order to determine taxability of a service under the Finance Act.
(b)	Service	➢ 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

S. No.	Topic(s)	Suggestion(s)
		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.
(c)	Intellectual Property Right	➢ 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.
(d)	Definition of Works Contract	➢ 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 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

S. No.	Topic(s)	Suggestion(s)
		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	➢ 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. Consequently, reversal of 7% amount as per Rule 6(3A) of CENVAT Credit Rules, 2004 may not be required.
5.	Trading of goods - Not a service still it is in Negative list of Services	➢ 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.
6.	Applicability of service tax on employee secondment	➢ It is suggested that appropriate clarifications be issued with regards to such reimbursements relating to employee secondment purely based on employee-employer relationships.
7.	Exemption to Entry to entertainment events or access to amusement facilities	➢ It is suggested that constitutional validity for levying tax on admission to entertainment events or access to amusement facilities needs to be checked as it is covered under Entry 62 of List II- State List of Article 246 of Constitution of India.

S. No.	Topic(s)	Suggestion(s)
8.	Exemption of Production of alcoholic liquor for human consumption	➢ It is suggested that constitutional validity for levying tax on manufacture or production of alcoholic liquor for human consumption needs to be checked as it is covered under Entry 51 of List II-State List of Article 246 of Constitution of India.
9.	Service tax on recoveries towards electricity supplies	➢ 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. ➢ Alternatively, if the electricity supply needs to be taxed, it be suitably clarified and the valuation mechanism for the same be suggested accordingly
10.	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.
11.	Service Tax on Take Away Orders & Free Home Deliveries	➢ It is suggested that appropriate explanation be provided in the law itself in respect of leviability of service tax on take away orders/ free home deliveries.
12.	Service provided in Jammu and Kashmir Considered as Exempt Services	➢ It is suggested that appropriate clarification be issued as to service provided in Jammu and Kashmir are not exempted services, since it is outside the ambit of SERVICE Tax.

S. No.	Topic(s)	Suggestion(s)
13.	Levy of Service Tax on amount recovered towards penalty, fines, liquidated damages or any other recoveries from other person.	➢ It is suggested that suitable amendment be made to provide that penal rates, charges, fines, liquidated damages etc. are not liable to Service tax.
14.	Order passed by Commissioner u/s 73A be made applicable in Tribunal by rectifying Section 86	➢ It is suggested that the anomaly be rectified by amending section 86, as the order passed by the Commissioner under section 73A of the Finance Act is not covered by the section 86.
Valuation of Taxable Service		
15.	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.
16.	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.
17.	Value of service portion in respect of certain works contracts be reduced	➢ It is suggested that taxability of Service Portion of Works Contracts related to maintenance, repair, completion and finishing services

S. No.	Topic(s)	Suggestion(s)
		such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property be restored to 60%.
Reverse Charge		
18.	Aligning services of business entities registered as a Body Corporate	➢ It is suggested that this discrepancy be removed and clause (iv) be amended to provide for services provided to 'business entity' registered as a body corporate'
19.	Single Rate for Service Tax Paid on Reverse Charge Basis by Service Receiver on Renting or Hiring of Motor Vehicle Designed to Carry Passenger.	➢ It is suggested that there be a single rate either 40% or 50% of value of invoice on which service receiver is required to pay SERVICE Tax in case of renting of a motor vehicle designed to carry passengers.
20.	Error in explanation of Reverse Charge Notification be rectified - NN 30/2012-Service Tax dated June 20, 2012	➢ It is suggested The Explanation-I in Notification No. 30/2012 – ST dated 20.06.2012 be suitably amended to provide the effect of the words "any person liable for paying service tax other than the service provider".
Exemptions/Abatements/Rebates		
21.	Basic exemption limit for small service providers	➢ Small service providers exemption limit be raised to Rs.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.

S. No.	Topic(s)	Suggestion(s)
22.	Nominal Tax Rate Scheme under Service Tax	It is suggested that Compounding 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 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; ➢ 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 asseessee'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.
23.	Exemption for transportation of Food Stuffs limited to Food grains	➢ It is suggested that exemption on transportation of tea, coffee, jaggery, sugar, milk products and edible oil be reinstated.

S. No.	Topic(s)	Suggestion(s)
24.	Exemption for Goods Transport Agency (GTA)	➢ 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.
25.	Exemption of renting of warehouse / storage facility for agriculture produce	➢ It is suggested that an exemption be provided to the service of renting of space for used for storage or warehousing of goods.
26.	Exemption for Parking Services	➢ It is suggested that the exemption provided to services by way of vehicle parking to general public be restored.
27.	Exemption to Charitable Activities provided by an entity registered under section 12AA of Income Tax Act	
	Re-instatement of sub-clause (v) of clause (k) of mega exemption notification	➢ It is suggested that the exemption to charitable activities relating to "advancement of any other activity of general public utility" be restored. ➢ Further, the definition of Charitable Activities be amended to bring it in line with the one provided under the Income Tax Act, 1961.
28.	Services received by Educational Institutes	➢ It is suggested that Renting of Immovable property service provided to Education Institutions continue to be exempted. ➢ 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)

S. No.	Topic(s)	Suggestion(s)
29.	Exemption to Education Services	➢ Keeping in view the Prime Ministers idea of Skilled India it is suggested that all the Education Services directly relating to the delivery of education or training to students be kept outside the purview of Service Tax.
30.	Clause 25 of Mega Exemption Notification - Services provided to Government, a local authority or a governmental authority	➢ 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.
31.	Service Tax levy - Level play between Professions	➢ 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.
32.	Manpower Supply Service- appropriate exemption/ abatement be provided	➢ It is suggested that in respect of Manpower Supply Services, appropriate abatement be allowed in respect of Salary payable, ESI/EPF or 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. ➢ Alternatively, it is suggested that only the Agency Charges be made liable to Service Tax. Where such charges cannot be disclosed separately, a Chartered Accountants certificate be obtained for such a purpose.

S. No.	Topic(s)	Suggestion(s)
33.	Abatement on Construction Services & Inclusion of Land Value in case of Construction of a complex, building, civil structure	➢ 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). ➢ Further, it is suggested that appropriate mechanism be provided to exclude or reduce the value of Land in case of Construction of Complex, Building, Civil Structure etc. where the Circle rate value of land is more than 75% of the Total value of construction service including of land. ➢ Alternatively, Rule 2(a) of Service Tax (Determination of Value) Rules, 2006 be suitable amended to provide an option to reduce the value of land where the Circle rate value of land is more than 75% of the Total value of construction service including of land.
34.	Enhanced limit to pay service tax on Receipt Basis	➢ It is suggested that proviso to Rule 6 of Service Tax Rules be amended to provide an option to Individuals and partnership firms to pay service tax on receipt basis up to ₹ 100 lac of earnings as against the existing limit of ₹ 50 lakhs.
35.	Abatement of service tax on rental of immovable properties	➢ It is suggested that renting of immoveable property be exempt from service tax as the same is compensation in the nature of

S. No.	Topic(s)	Suggestion(s)
		investment of capital, which is exempt under service tax. Alternatively, the Government may provide for an abatement of 40% on the value of the said activity in lines with Section 24(a) of Income Tax Act, 1961 and provide the taxable value to be 60%, to compensate the cost of construction and material element involved in letting out of immoveable property.
36.	Service Tax on Advertisement Agency Commission	➢ 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 cost plus 10% or actual margin, whichever is lower be introduced to help in determining the value of such intermediary services.
Procedural Law		
37.	Date of Service Tax liability be mentioned on Service Tax Registration Certificate	➢ It is suggested that the application form as well as registration certificate be amended to bear date from which the assessee is liable to pay service tax which be as per the date specified by the assessee in application form.

S. No.	Topic(s)	Suggestion(s)
		➢ Simultaneously, the CENVAT Credit Rules, 2004 be amended suitably to expressly provide for eligibility of CENVAT Credit for the period prior to registration to avoid unnecessary litigations.
38.	E-filing of document for registration under service tax- will improve ITES	➢ 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.
39.	Payment of service tax- Need changes in system and formats	
(i)	Amendment in GAR-7 Challan acknowledgement	➢ It is suggested that period for tax payment be mentioned in the acknowledgment of tax payment.
(ii)	Due Date of payment of Service Tax	➢ It is suggested that the due date for payment of service tax (including service tax payable on 31st March) be changed to 10th day of next month/quarter in line with proposed GST structure. ➢ Further, a clarification be provided that in case the due date of payment falls on a Sunday the same would be calculated as one day prior to the due date.
(iii)	Payment of Service Tax on provisional Basis: Anomaly in Rule-6 of Service Tax Rules, 1994 be rectified.	➢ It is suggested that the Central Excise (No.2) Rules, 2001 be replaced with Central Excise Rules, 2002 as the same has been redundant.

S. No.	Topic(s)	Suggestion(s)
40.	Provision for Bad Debts	➢ 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.
41.	Challan Correction Mechanism	➢ It is suggested that a Challan correction module be introduced for taking care of genuine errors which otherwise may result into harassment of assessee where just for making excess tax payment for one type of tax and short payment for other type of tax, he would be seeking refund in one case and paying interest and penalty in the other.
42.	Filing of Return- need procedural and format changes	
(a)	Introduction of Annual Return in Service Tax	➢ It is suggested to introduce filing of Annual Return of Service Tax along with reconciliation statement certified by Chartered Accountant**.**
(b)	Confirmation / Acknowledgment of E-Return filing at ACES	➢ 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.

S. No.	Topic(s)	Suggestion(s)
		➢ It is also suggested that no penalty be levied in case of rejection of Return.
(c)	Additional information, if any in the return	➢ 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.
(d)	Revision of Return of Service Tax	➢ 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.
(e)	Return of Service Tax for prior periods	➢ It is suggested that the facility to file an online return for prior periods be made available.
43.	Interest on delayed payment of service tax	➢ It is suggested that this amendment be made 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

S. No.	Topic(s)	Suggestion(s)
		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 assessee. ➢ 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. For example: In case of pre-deposits required an interest @ 6% is payable by the Government to compensate the loss of locking of funds which is too low as compared to interest charged by the Department.
44.	Penalty for late filing of Return	➢ It is suggested that late fees of filing service tax return be subjected to the

S. No.	Topic(s)	Suggestion(s)
		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.
45.	Penalty for offences by director etc. of company	➢ It is suggested that the penal provisions be amended wherein penalty leviable thereon may be waived if the concerned person is able to prove reasonable cause of such failure. ➢ Further, as the prosecution provisions are taken care of by Section 89, the provisions of section 78A be subsumed accordingly.
46.	Search of premises - need change to incorporate reasons	➢ 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. ➢ Further, detailed & specific provisions for search be issued in lines with Section 153C on Income Tax Act, 1961. This would help in clarifying the issues like what would be the period for which search could

S. No.	Topic(s)	Suggestion(s)
		extend, whether search may extend to sister concerns/ group of companies if the search is warranted for one company or what would amount to raid or survey in a given situation etc.
47.	Amendment in Section 83 - Application of Section 5A (2A) of the Central Excise Act, 1944	➢ It is suggested that provisions of Section 5A (2A) of the Central Excise Act, 1944 not to apply to Section 83 of the Finance Act, 1994.
48.	Recording of statement – Alternative options	➢ As far as possible, recording of statements be avoided and assesses 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.
49.	Prosecution - Need to incorporate mens rea	➢ 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.
50.	Power to Arrest – Not be delegated to Officer below	➢ It is suggested that power to arrest be not delegated to officer below the rank

S. No.	Topic(s)	Suggestion(s)
	Joint Commissioner	of Joint Commissioner or Additional Commissioner.
51.	Applicability of Advance Rulings- Problem of non-availability of clarification on interpretational issues by large number of assessee	
(a)	Meaning of term 'substantial interest'	➢ It is suggested to define the term "Substantial Interest".
(b)	Multiple inquiries / Audits / investigations- Need to streamline the system	➢ 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. ➢ Further, a common database be maintained by the department to record the investigations/ audits conducted for an assessee so that the information is readily available and duplication of audits be avoided
52.	Facility of filing online Appeals before CESTAT and Commissioner **(Appeals).**	➢ Facility of online filing of appeal with CESTAT as well as various authorities like Commissioner (Appeals) may be brought in to facilitate the assesses.
53.	Facility of online filing of Form A-1 and A-3 for claiming service tax exemption on the inputs/input services	➢ It is suggested that facility for online filing of Form A-1 & A-3 be made available on ACES. ➢ Further, facility of downloading authorization in Form A-2 from ACES be made available like ST-2 can be downloaded from ACES.
54.	Automatic payment of Interest on Refunds	➢ It is suggested that appropriate Circular/Notification be issued to clarify that the interest on refund/any

S. No.	Topic(s)	Suggestion(s)
		other amount be paid automatically beyond a prescribed period of delay. ➢ Further, the concept of adjustment of Refund amount with future tax liabilities be introduced at the option of the assessee.
Place of Provision of Services Rules, 2012		
55.	Amendment in Rule 9 in case of intermediary services	➢ For intermediaries and other specified services given under rule 9, the place of provision of service should be location of service recipient.
56.	Amendment to Rule 7 in case of export and domestic services	➢ Appropriate amendment be made for deeming transaction as export where majority of the services are performed outside India.
57.	Amendment in Rule 4(a) in case of Software services	➢ 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.
Point of Taxation Rules		
58.	Swachh Bharat Cess to be taxed as a case of change in effective rate of tax	➢ It is suggested that suitable clarification/ amendment be made to provide that the point of taxation for Swachh Bharat Cess be determined as per Rule 4 of Point of Taxation rules, 2011 dealing with change in effective rate of tax.
59.	Time limit for raising invoice by provider of newly taxable service	➢ 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.

S. No.	Topic(s)	Suggestion(s)
60.	Conflict between section 67A and Rule 4 &5 of Point of Taxation Rules	➢ 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. ➢ It is suggested that Rule 5 be suitable amended to provide that it applies only from the date of coming into force of tax on a new service
61.	Securitization / Assignment transaction of NBFCs	➢ It is suggested that suitable clarification be issued to clarify that the excess interest spread / gain arising in case of securitization transactions are not liable to Service Tax.
62.	Share of loss recovered from manufacturers to not be subjected to Service tax	➢ It is suggested that suitable clarification be issued regarding non-applicability of Service tax on recovery of share of loss by NBFC from manufacturers.

B. CENVAT CREDIT RULES, 2004

S. No.	Topic(s)	Suggestion(s)
63.	Definition of input service - Need overview to remove anomalies	➢ 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. ➢ 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 suggested that credit on all inputs, input services and capital goods except when they are used for personal or employee use be allowed to sizably bring down the litigations and promote ease of doing business. ➢ It is suggested that cross utilization of Credit be allowed on all inputs, input services and capital goods without restriction

S. No.	Topic(s)	Suggestion(s)
		on utilization of any type of duties and taxes which would help the assessees as the funds would not be blocked and there would be a reduction in transaction/ litigation costs.
64.	Service tax on outward freight	➢ It is suggested to allow the credit on service tax paid on outward freight when goods are sold ex-factory.
65.	Definition of input - CENVAT credit on capital structures	➢ It is suggested that definition of input be amended to provide CENVAT credit on capital structures etc.
66.	Definition of capital goods	
(a)	CENVAT credit on motor vehicles	➢ 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 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.

S. No.	Topic(s)	Suggestion(s)
67.	Definition of exempted service	➢ 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.
68.	Definition of exempted goods	➢ 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

S. No.	Topic(s)	Suggestion(s)
		would be in line with job-work manufactured goods supra.
69.	Utilization of old unutilized/ accumulated credit of E Cess and SHE Cess	➢ It is suggested that appropriate amendment be made to enable utilization of old unutilized/ accumulated credit of EC & SHEC of Excise duty/ Service tax.
70.	Swachh Bharat Cess not integrated with CENVAT Credit Scheme	➢ It is suggested that SBC be integrated in the CENVAT Credit chain as Legislative intent provided in CBEC FAQs contrary to provisions of CCR.
71.	Cross Utilization of CENVAT Credit	➢ It is suggested that cross utilization of Credit be allowed on all inputs, input services and capital goods without restriction on utilization of any type of duties and taxes which would help the assessees as the funds would not be blocked and there would be a reduction in transaction/ litigation costs.
72.	Capital goods cleared as waste and scrap	➢ 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 value on removal of capital good as waste and scrap. The amount to be paid on clearing capital goods (on which

S. No.	Topic(s)	Suggestion(s)
		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.
73.	Inputs/capital goods procured from EOU/EHTP/STP not paying duty in terms of Sl No. 2 of the Notification No.23/2003 CE dated 31.3.2003	➢ 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.
74.	Clarification provided by Circular No. 962/05/2012 – CX with regards to payment of arrears from CENVAT Credit Rule 3(4) be amended	➢ It is suggested that first proviso to Rule 3(4) of CENVAT Credit Rules, 2004 be amended to provide that proviso is applicable only in the case of payment of tax under self-assessment and not pursuant to a demand u/s 11A/73 as it would provide a statutory force with inclusion in the Rules as against clarification through the Circular.
75.	Availment of CENVAT credit on capital goods	➢ 100% CENVAT credit on capital goods in the year of purchase itself be allowed.

S. No.	Topic(s)	Suggestion(s)
76.	Amendment to Rule 4(5)- CCR- inclusion of tools sent for Jobwork	➢ 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.
77.	Availment of CENVAT Credit on Input and Input Service	➢ 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. ➢ 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.

S. No.	Topic(s)	Suggestion(s)
		(b) In case of pending cases before adjudicating authorities, wherein as a consequence of judgement assessee becomes eligible for CENVAT Credit. (c) In case of cases with pending litigation/ under litigation, Credit be allowed for the period till the dispute under point of law is settled.
78.	Realization of invoice within three months for availment of credit	➢ 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 one year be commenced from the date of CENVAT credit taken rather than from the date of invoice.
79.	Certification of refund by statutory or any other auditor.	➢ Refund be allowed to be certified by a practicing Chartered Accountant (not only Statutory Auditor or any other auditor).
80.	Refund of CENVAT Credit of Capital Goods.	➢ The formula for calculating refund be modified to include refund of CENVAT credit on capital goods also.
81.	Refund of CENVAT Credit for Sales made to 100%EOU	➢ It is suggested that appropriate modification be made to provide the benefit for sales made to 100% EOU by local manufacturer.

S. No.	Topic(s)	Suggestion(s)
82.	Refund of CENVAT Credit – Rule 5 of CENVAT Credit Rules	➢ It is suggested that facility of maintaining separate records as provided in Rule 6(2) of CENVAT Credit Rules, 2004 be extended to Rule 5 so that separate records be maintained for domestic & export transactions on the basis of which refund claim may be filed. In cases where such records cannot be maintained, formula may be applied. ➢ It is further suggested that no time limit be prescribed for filing the refund claim and refund be allowed based on available credit balance.
83.	Refund claim under Rule 5 / Export Incentives	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.

S. No.	Topic(s)	Suggestion(s)
		➢ Alternatively, Duty Drawback Scheme may be introduced in case of Export of Services too in lines 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.
84.	Service Exporters - computation of time limit for filing refund claims	➢ 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

S. No.	Topic(s)	Suggestion(s)
		alignment with the definition of 'export turnover of service' as provided under Rule 5 of the CCR.
85.	Obligation of a manufacturer in case of clearance of by-product/waste/refuse	➢ It is suggested that a suitable clarification be issued to provide that Rule 6 is not applicable for the manufacture of by-products which would also help to avoid unnecessary dispute.
86.	Amendment in Rule 6(3) of CCR.	➢ It is suggested that appropriate clarification be issued regarding the Investment in Securities. If the same is kept outside the purview of services the requirement of credit reversal would be done away with.
87.	Scope of rule 6(6)	➢ 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.
88.	Distribution of input service credit by Input Service Distributor to the Units to which it relates	➢ It is suggested that Rule 7(d) be amended to allow distribution of all credit by taking turnover of the last financial year of only those Units to which the Input service relates instead of taking turnover of last financial year of all the Units. ➢ Alternatively, it is suggested that the manner of distribution of

S. No.	Topic(s)	Suggestion(s)
		Credit as per Rule 7 be simplified and manner of pro-rata distribution be done away with so as to prevent loss of Credit which can be utilized
89.	Delay in issuance of Certificate in case of transportation of goods by Railway	➢ It is suggested that railways issue certificate(s) in a timely manner so that assessee may avail timely credit accordingly. ➢ Alternatively, Credit be allowed on the basis of Challan(s) or any other document otherwise the same be brought under ambit of Reverse Charge.
90	Trade Friendly procedure during shifting of premises	➢ 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. ➢ Further, it is suggested that a clarification be issued that one-to-one correlation is not relevant when the transfer of Credit is under question. Since much inventory is being transferred during merger, acquisition etc., the duty paid on the same be allowed as CENVAT Credit.

S. No.	Topic(s)	Suggestion(s)
91	Inter-unit transfer of CENVAT credit by Large Taxpayer Units (LTUs)	➢ It is suggested that the facility of transfer of credit by a large taxpayer from one unit to another be reinstated.
92.	Recovery of CENVAT credit wrongly taken or erroneously refunded	➢ It is suggested that no interest or penalty be levied for merely taking the credit erroneously as that will only add to assessee's hardships rather than increasing compliance. ➢ It is suggested that the changes brought in Rule 14 be rolled back to make it beneficial for the assessees. ➢ It is suggested that suitable clarification be issued to the effect that in cases where the assessee is able to prove non -utilization of wrongly availed CENVAT Credit by showing sufficient balance in credit, no interest would be payable
93	Penalty in respect of CENVAT credit wrongly taken or utilized- Rule 15	➢ It is suggested that words given "taken or utilized" in Rule 15 be replaced with "taken and utilized".
94	CENVAT credit on self-certified bill of entry in case of import of goods through courier agency	➢ 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

S. No.	Topic(s)	Suggestion(s)
		courier agent may register as first stage dealer and get entitled to pass on the credit.
95.	Customs endorsement of bill of entry for availment of CENVAT credit	➢ 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.
96	Parity between CENVAT Credit procedures and Central Sales Tax procedures	➢ 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

S. No.	Topic(s)	Suggestion(s)
97	Old Definition of Term ''Relative''	➢ It is suggested that Section 4 of Central Excise Act, 1944 be suitably amended to give effect to the new definition of the term "Relative".
98	Benefit of exemption from payment of excise duty be made optional	➢ It is suggested that the earlier scheme of optional exemption be restored for the benefit of assesses.
99	Presumption That The Incidence Of Duty Has Been Passed On To The Buyer – 12B	➢ It is suggested to suitably amend Section 12B of Central Excise Act, 1944 to allow refund where credit notes are issued to dealers.
100	Power under section 14 of the Central Excise Act, 1944	➢ There should be a proper procedure under section 14 which need to be followed while invoking Section 14 backed with rules.
101	Section 23C. Application for advance ruling.	➢ It is suggested that Section 23C be suitably amended to enable making an application on admissibility of CENVAT credit on Capital goods used in a factory or by a service provider.
102	Revision application for matters relating to baggage, drawback, rebate of duty on export of goods etc.	➢ 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

S. No.	Topic(s)	Suggestion(s)
		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.
103	Reduction of Limit for Application for settlement of cases	➢ It is suggested that the provisions may have separate limit for acceptance of additional duty / tax liability for Manufacturers/Importers/Exporters and service providers so as to promote ease of doing business. ➢ It is suggested that Section 32E may be amended to delete the condition that "the applicant has filed returns showing production, clearance and Central excise duty paid in the prescribed manner", since the condition that a manufacturer should have maintained records relating to production and clearance was deleted. This will enable the government to improve the revenue collection through settlement of more number of cases.
104	Memorandum of Cross-objections before the Commissioner (Appeals) – No prescribed format	➢ The Central Excise (Appeals) Rules, 2001 and Customs (Appeals) Rules, 1982 be amended to provide for a prescribed format of

S. No.	Topic(s)	Suggestion(s)
		memorandum of cross-objections to be filed before the Commissioner (Appeals).
105	Revision orders passed under section 35EE of the Central Excise Act, 1944 or section 129DD of the Customs Act, 1962	➢ 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, 1944 and section 130 of the Customs Act, 1962 respectively.
106.	Pre-deposit for Appeal	➢ 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. ➢ It is suggested that in order to prevent the frivolous demands, Tribunal be allowed to waive the pre deposit in deserving cases. ➢ 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

S. No.	Topic(s)	Suggestion(s)
		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

S. No.	Topic(s)	Suggestion(s)
		respect of appeal to assessment order passed against duty paid under protest.
107	Appeal to the Supreme Court	➢ 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.
108	Exemption to certain class of persons from obtaining registration under the Central Excise Rules, 2002	➢ 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. 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.
109.	Return under Excise Duty	➢ It is suggested that the system of filing monthly excise returns be made quarterly/ half-yearly i.e. at par with filing of VAT returns/ 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.

S. No.	Topic(s)	Suggestion(s)
		➢ 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.
110	Credit of duty on goods brought to the Manufacturer's Depot/Stockyard.	➢ It is suggested that the existing rule be suitably amended to provide that goods can also be brought back to the depot/stockyard of the manufacturer.
111	Purchase of input without payment of duty	➢ It is suggested that input output ratio for every industries may be notified and if assessee has fulfilled the notified ratio within a given period then it may be deemed that assessee has followed export procedure. For example, in case of steel industries where notified ratio is 100:82. Its means if a company purchase raw material of 100 kg without excise duty under advance license and in a given period, the company export 82 kg of its steel finished goods products, then it is considered that company has followed export procedure.
112	Penalty under Central Excise for Offences.	➢ It is suggested that the words "likely to take" be deleted from the said rule to avoid unnecessary penalization of dealers.

S. No.	Topic(s)	Suggestion(s)
113	SSI exemption for clearance of goods to Nepal or Bhutan.	➢ It is suggested that Explanation no. G of Notification No. 8/2003 - CX dated 01 March, 2003 be amended to exclude exports to Nepal from the said explanation retrospectively from 01 March 2012.
114	Recovery proceedings pending disposal of stay petition.	➢ It is suggested that on grounds of natural justice, Circular No. 967/01/2013-CX dated 01.01.2013 be amended/ withdrawn. ➢ Departmental officers may be instructed not to resort to coercive action during pendency of applications for Stay and in cases where Stay Order has been granted but the matter is pending for disposal.
115	Disparity between interest payable by assessee and Department under central excise and customs	➢ 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 was actually paid.

S. No.	Topic(s)	Suggestion(s)
116	Different forms under Central Excise for procurement of goods without payment of duty.	➢ It is suggested that a single form for procurement of goods without payment of duty and another form for claiming refund be introduced to save the time & cost to the assessee
117	Sealing of Goods & Consolidation of Cargo by same group of companies manufacturing goods or providing services.	➢ It is suggested that Central Excise Rules 2002 be modified or a new rule be inserted for sealing of dutiable goods in a factory by proper officer of excise and consolidations of cargo in another factory of an organization belong to the same group
118	Audit Issues	➢ 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

S. No.	Topic(s)	Suggestion(s)
119.	Determination of Bond / Bank Guarantee value for Provisional Assessment of Customs Goods. (Section 18 of Customs Act, 1962)	➢ It is suggested that appropriate amendment be made limiting amount of security / Bond amount up to value of Custom Duty only.
120.	On-line facility for filing of Shipping Bills, Amendment & Cancellations and refunds thereon	➢ It is suggested that on-line facility for filing of shipping bills, amendments in shipping bills filed provisionally (u/s 18 of Custom Act) or otherwise filed u/s Section 17 of Custom Act and cancellation of shipping bills may be implemented unless goods actually been exported. ➢ It is suggested that E-payment of Export duty payment against shipping bill be implemented. ➢ Further, it is suggested that refund claims pertaining to Short Shipment, Cancellation of shipping bills and decrease in realization may also be made online.
121.	Payment of interest in case differential duty arisen for Shipping Bills filed provisionally	➢ It is suggested that the date for payment of interest on differential duty should be from the date of Final Assessment rather that the 1st day of the month in which Shipping Bill has been filed. ➢ It is also suggested that the Interest rate should be equated with interest rate as prescribed for delayed refunds.

122.	Relinquishment of imported/warehoused goods	➢ 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".
123.	Refund of Customs duty - Section 27 of Custom Act 1962	➢ It is suggested that suitable amendment be made prescribing proper time limit for granting of refund which should be obligatory in nature. Further, it is suggested to give mandatory interest on delayed refunds. ➢ Concept of running account for payment of export duty and import duties and suo-moto adjusting the due refunds and collecting refunds may be implemented. ➢ It is suggested that in case provisionally filed Shipping Bill is not finalized within a prescribed period, refund claim of excess duty paid be allowed and granted.
124.	Interest on delayed refunds.	➢ It is suggested that interest on refund be automatically computed from the end of 3 months from date of refund claim. If refund application is admitted and processed, applicant has no basis to issue waiver of claim of interest.
125.	Duties collected from the buyer to be deposited with the Central Government	➢ It is suggested that provisions of charging interest be applied in these cases also as in the case of Excise/ Service Tax Law.

126.	Calling for information or scrutiny by the officers is largely unregulated.	➢ It is suggested that suitable modification be made in the provisions of the law to avoid the issue. Any electronic communication from the Department to the assessee be made only through system generated mails and sent through official IDs. Such mail generating system will keep a track of the case proceedings till its closure.
127.	Interest free warehousing period for imported goods	➢ Warehoused goods be allowed to be kept in-bond for a period of at least 6 months without payment of interest.
128.	Valuation of goods imported from related overseas entities	➢ Suitable amendment should be made in law to provide for time bound SVB proceedings rather than outlining it under a Circular. ➢ Similarly, amendment be made to provide that if proceedings are not closed within a period of four months, Extra Duty Deposit should be discontinued. ➢ Alternatively, since Customs have moved to a Self-Assessment Post Import Audit Regime, the valuation proceedings can form part of post import audit rather than a pre-audit proceeding.
129.	Dispensing 1% EDD in case of Related Parties imports	➢ It is suggested that the requirement of executing PD Bond with 1% Extra Duty Deposit on the assessable value of the goods be dispensed with.

130.	Suspension or revocation of licence of Custom House Agent	➢ It is suggested that operation of regulation 20 be restricted only to cases where stay from the operation is not granted by a Court or Tribunal.
131.	Determination of Assessable Value for levy of Export Duty for Final Assessment of Provisionally filed Shipping Bill	➢ It is suggested that suitable rules may be prescribed for the purpose of determination of assessable value, specifying the adjustment to be made with components like changes in the value of goods, freight components etc.
132.	Demurrage Free storage period	➢ 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.
133.	Relevant date for determination of rate of duty and value of goods in case of improper removal of warehoused goods	➢ 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.
134.	Amendment in Shipping Bill filed or cancellation of Shipping Bills filed	➢ It is suggested that suitable amendments be made in section 149 specifying the changes to be allowed in Shipping Bill and documents submitted. ➢ Further, it is suggested that suitable amendments be inserted for allowing adjustment of export duty paid on cancelled Shipping Bill and Short Shipments. ➢ It is also suggested that a set of rules may be prescribed providing methodology to be adopted for

		amendment or cancellation of shipping bill at different stages like prior to LET Export Date, after issuance of Let Export Order.
135.	Rectification on genuine mistake made by Assessing Officer	➢ It is suggested to incorporate the scope of rectification of mistake in the assessment made by assessing officer.
136.	Return under Rule 7(c) of the Customs Rules, 1996	➢ 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.
137.	Relaxation of conditions of Customs Notification No. 102/2007	➢ 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. ➢ 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)
138.	Clearing House Agent	➢ 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).
139.	Interest Payment on assessed Bill of Entry	➢ 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.
140.	Refund mechanism for Certificate of Origin received subsequent to import	➢ 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.
141.	Export by courier	➢ 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.
142.	Double taxation on Services and intangible rights related payments by importers of goods, to the foreign entities	➢ 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. 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.
143.	Increase in limit of Duty Free Allowance	➢ It is suggested that the limit of Duty Free Allowance be enhanced from ₹ 45000 to ₹ 75000.
144.	General Issues on Customs	➢ 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

S. No.	Topic(s)	Suggestion(s)
145.	Reduction in CST Rate and rate of declared goods	➢ It is suggested to reduce CST rate to 1% and bring down maximum CST rate of declared goods to 4%.
146.	Facility to submit Form C, E etc. online	➢ 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.
147.	Amendment in Form B (Certificate of Registration) and Form C (Form of Declaration)	➢ 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

S. No.	Topic(s)	Suggestion(s)
		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:- • for re-sale..... • for use in manufacture or processing of goods for sale..... • for use in mining..... • for use in the generation or distribution of electricity or any other form of power..... • for use in the packing of goods for sale/resale..... • for use in telecommunication network …….” ➢ 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

S. No.	Topic(s)	Suggestion(s)
		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 of .....in which the goods Covered by this Form are/will be delivered."

F. OTHERS

S. No.	Topic(s)	Suggestion(s)
148.	Concessions to Special Economic Zones (SEZ)	➢ It is suggested that the above provisions be made mandatory by amending Section: 51 of the SEZ Act to provide that the provisions of this Act shall have effect notwithstanding anything contained in any state tax laws.
149.	Introduction of annexures in Central Excise & Service Tax returns for capturing Sales & Purchase details to align with the proposed GST regime	➢ It is suggested that under present scenario also for Service Tax & Central Excise summarized details of invoices be required to be submitted through the ACES website along with the Service Tax/ Excise returns. This will provide better transparency, reduce litigation and would also be in line with the proposed GST regime. ➢ ACES to have facility of filing Single Return for all the factories or premises of an assessee instead of independent return for each factory or premises. This will also enable ease of doing business & will be in line with consolidated returns under proposed GST regime.
150.	Powers of the Commissioner (Appeals) under the Central Excise Act and the Customs Act to condone the delay in filing the appeal	➢ 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.

S. No.	Topic(s)	Suggestion(s)
151.	Jurisdiction of new CESTAT Benches be modified	➢ Jurisdiction of new CESTAT Benches at Allahabad & Chandigarh be modified to exclude Delhi – NCR region i.e. Gurgaon, Faridabad, Noida, Ghaziabad etc. This will be reasonable as well as practical as trade and industry people from Noida, Ghaziabad, Faridabad and Gurgaon will not be made to travel to Allahabad or Chandigarh for getting their appeals decided by Tax Tribunals.
152.	Waiver from penalty if duty and interest paid before service / issue/ receipt of Show cause notice under different statue	➢ The provisions under the three statue be harmonized so as to provide complete waiver from penal provisions where tax/ duty and interest is paid within 30 days of the **'receipt'** of the notice rather than 'issue' of notice.
153.	Personal Penalty	➢ It is suggested that the provisions relating to personal penalty under Rule 26 (earlier rule 209A) be removed from the statute.
154.	Exemption from payment of duty by way of refund mechanism	➢ It is suggested that the present system of granting exemption through refund route be reviewed and be made simple to comply.
155.	Suggestions for Reduction of Litigation	
(a)	Streamlining of Circulars/ Trade Notices	➢ It is suggested that a practice of issuing a Master Circular on 1st April every year in

S. No.	Topic(s)	Suggestion(s)
		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	➢ 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 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.

S. No.	Topic(s)	Suggestion(s)
		➢ 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 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	➢ 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	➢ E-filing of appeals be introduced to encourage paperless society as an environment friendly measure.
(g)	Members of CESTAT	➢ Practicing Chartered Accountants be made eligible for being appointed as Members of the CESTAT as in case of ITAT.

S. No.	Topic(s)	Suggestion(s)
156.	Number of benches at CESTAT level	➢ It is suggested that the process of Constitution more Benches of the CESTAT be made speedy. ➢ Fill up vacancies of Judicial and Technical Members expeditiously. ➢ Transfer the administration and control of CESTAT to Ministry of Law like Income Tax Appellate Tribunal. This would ensure independence of CESTAT members. ➢ To allow attending of the hearing or representation of matters through video conferencing. ➢ To introduce a system of e-filing of appeal and make the filing process, paper-less. ➢ To reduce the minimum age limit for being Member of CESTAT.
157.	National Tax Tribunal	➢ 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.

III. PRE-BUDGET SUGGESTIONS 2016

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, the omissions or interpretational issues 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) not-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) Clarification regarding definition of Government

Finance Act 2015 introduced the definition of the term 'Government' by insertion of Clause 26A under Section 65B of the which reads as "Government" means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder.

Issue

The definition specifically provides State Governments and Union Territories to include their departments. However, in respect of Central Government, only Departments of the Central Government are covered under the ambit of the term 'Government' and not the term CENTRAL Government.

Suggestion

It is suggested that a suitable clarification be issued as to whether the Central Government would form part of the 'Government' or not while interpreting definition of the term 'Government' in order to determine taxability of a service under the Finance Act.

(b) 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.

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.*

(c) 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.

(d) 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, 1994, 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. Consequently, reversal of 7% amount as per Rule 6(3A) of CENVAT Credit Rules, 2004 may not be required.

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. Applicability of service tax on employee secondment

Under employee secondment an employee is temporarily transferred to another job for a defined period of time for a specific purpose. A secondment job can be full-time, part-time or job share. Under Employee Secondment an Organisation may place its staff at the disposal of its associate/ subsidiary company.

It is important to note that definition of service as per Section 65(B) 44 of the Finance Act 1994 specifically excludes the provision of service by an employee to the employer in the course of or in relation to his employment.

Finance Act 2015 amended the definition of term "Consideration" to provide that

"(a) 'consideration' *inter alia* includes–

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed."

Issue

Under employee secondment there may arise a situation wherein an Indian company may be reimbursed by a Foreign Company with the salary entitled to an employee, temporarily working with the Foreign Company. Treatment of such reimbursements has created a confusion amongst the industries.

Suggestion

It is suggested that appropriate clarifications be issued with regards to such reimbursements relating to employee secondment purely based on employee-employer relationships.

7. Exemption to Entry to entertainment events or access to amusement facilities

Finance Act, 2015 amended Section 66D "Negative List" to make admission to entertainment events or access to amusement facilities taxable. Service Tax shall be levied on the service provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and theme parks. Also Service Tax is payable on services by way of admission to entertainment event of concerts, pageants, musical performances concerts, award functions and sporting events other than the recognized sporting event, if the amount charged is more than ₹ 500 for right to admission to such an event. Certain lists of activities are exempted under Mega Exemption *Notification 25/2012*.

Issue

Article 246 of Constitution of India empowers State Government under List II- State List vide Entry 62 to levy taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

Further, Article 246 of Constitution of India which empowers Central Government under List I- Union List vide Entry 97 to levy tax on "any other matter not enumerated in List II and List III including any tax not mentioned in either of those lists".

Suggestion

It is suggested that constitutional validity for levying tax on admission to entertainment events or access to amusement facilities be checked as it is covered under Entry 62 of List II- State List of Article 246 of Constitution of India.

8. Exemption of Production of alcoholic liquor for human consumption

Finance Act, 2015 amended section 66D "Negative List" to make, services by way of carrying out any process amounting to manufacture or production of alcoholic liquor for human consumption, taxable.

Issue

Article 246 of Constitution of India empowers State Government under List II- State List vide Entry 51 to levy duties of excise on alcoholic liquor for human consumption manufactured or produced in a State.

Further, Article 246 of Constitution of India which empowers Central Government under List I- Union List vide Entry 97 to levy tax on "any other matter not enumerated in List II and List III including any tax not mentioned in either of those lists". This may be deduced to mean that Central Government can levy tax on activities not enumerated in List II and List III.

Suggestion

It is suggested that constitutional validity for levying tax on manufacture or production of alcoholic liquor for human consumption be checked as it is covered under Entry 51 of List II- State List of Article 246 of Constitution of India.

9. 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.

Excisable goods are defined under Section 2(d) of the Central Excise Act, 1944 as "goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 as being subjected to a duty of excise and includes salt". Electricity is though specified in the CETA under Tariff Item 2716 00 00 but the

same is presently not being subjected to any duty of excise and, therefore, it does not come under excisable goods.

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.

Alternatively, if the electricity supply needs to be taxed, it be suitably clarified and the valuation mechanism for the same be suggested accordingly.

10. 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 to exclude personal, social and religious activities.

11. Service Tax on Take Away Orders & Free Home Deliveries

The Service Tax Department of Chandigarh vide its letter C. No. ST-20/STD/Misc./Sevottam/62/12/4693 dated August 13, 2015 ("the Clarification") has clarified that free Home delivery/ Pick-up of food is not liable to Service tax. The Department explained the matter further by stating that the dominant intention of such transaction is that of 'Sale' as food is not served at Restaurant and no other element of service such as ambience, live entertainment (if any), air conditioning or personalized hospitality is offered. It is further stated that Service tax can be levied if there's an element of 'Service' involved which would typically be the case where food is served in Restaurant. Further, the Department has clarified that the above transaction is not liable to Service tax, being sale in nature, if no amount is charged for such free delivery of food.

Issue

Service Tax levied in case of Take Away Orders even C. No. ST-20/STD/Misc./Sevottam/62/12/4693 dated August 13, 2015 ("the Clarification") has clarified that free Home delivery/ Pick-up of food is not liable to Service tax.

Suggestion

It is suggested that appropriate explanation be provided in the law itself in respect of leviability of service tax on take away orders/ free home deliveries.

12. Service provided in Jammu and Kashmir considered as Exempt Services

Services provided in Jammu & Kashmir are not liable to service tax as the provisions of the Finance Act, 1994 do not extend to Jammu & Kashmir. As per Article 370 of the Constitution, any Act of Parliament applies to Jammu &

Kashmir only with concurrence of State Government. Since, no such concurrence has been obtained in respect of Finance Act, 1994; the provisions of service tax are not applicable in the State of Jammu and Kashmir.

Issue

Service provided in Jammu and Kashmir considered as Exempt Services. If service provided in Jammu and Kashmir is outside the ambit of service tax, then it cannot be exempted. In some cases service provider provide services in Jammu and Kashmir which is considered as exempted services and also in other states which are taxable, so proportionate CENVAT credit on input services or input goods used in providing such services has to be reversed as per Rule 6(3) of CENVAT Credit Rules, 2004. It is hardship on service provider since services provided in Jammu and Kashmir are not exempted service.

Suggestion

It is suggested that appropriate clarification be issued as to service provided in Jammu and Kashmir are not exempted services, since it is outside the ambit of SERVICE Tax.

13. Levy of Service Tax on amount recovered towards penalty, fines, liquidated damages or any other recoveries from other person.

Section 66B of the Finance Act provides that service tax is leviable at the rate of 14% on the value of services, other than those specified in the Negative List, provided or agreed to be provided in the taxable territory by one person to another.

Section 65B(44) of the Act defines the term "service " to mean any activity carried out by a person to another for a consideration, including declared services. The term "activity" has not been defined in the Act. The ministry of Finance, in the Guidance Note dated 20.06.2012 has observed that in the absence of any specific definition the term "activity" shall be given the meaning as it is understood commonly to include an act done, a work done, a deed done, an operation carried out , execution of an act , provision of a

facility etc. It is further stated that activity could be active or passive and would also include forbearance to act.

As per Sec 66E(e) of the Finance Act, 1994, "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" shall be a declared service and liable to service tax.

It is clear form above that in order to attract the levy of service tax, there should be an activity and the activity should be undertaken by one person to another person for another.

Issue

The Central Excise Department in some cases is demanding service tax on amount recovered towards penalty, fines, liquidated damages or any other recoveries from other person. It is important to note that such recoveries done by the customer is not a consideration for any service provided by the customers to its vendors as there exists no reciprocity in such cases and the amount recovered from vendor is in the nature of compensation only.

In contract, compensation is being paid by one of the contracting parties to the other for any loss or injury caused to the latter by some conduct in breach of the terms of the contract.

CBEC vide *Circular No 96/7/2007/-ST dated 23.08.2007* has clarified that an amount collected for delayed payment of telephone bill is not to be treated as consideration charged for provision of telecom service and therefore, does not form part of the value of the taxable services under section 67 read with Service Tax (Determination of Value) Rules, 2006. It has further been provided that detention charges collected to hold a marine container beyond the holding period is determined by the shipping companies/steamer agent is not chargeable to service tax, the same being in the nature of a "penal rent" not a consideration for a service.

Suggestion

It is suggested that suitable amendment be made to provide that penal rates, charges, fines, liquidated damages etc. are not liable to Service tax.

14. Order passed by Commissioner u/s 73A be made applicable in Tribunal by rectifying Section 86

As per section 73A of the Finance Act, 1994 where an amount had been collected in the name of Service Tax, which was collected in excess or was not required to be collected at all, the same has to be paid to the credit of Central Government. Under this section the Central Excise Officers had been provided power to issue Show Cause Notice and there upon determine the amount due after considering the representations made.

Section 86 of the Finance Act which deals with the appeal to the Tribunal covers only an order passed by the Commissioner under section 73 of the Finance Act or section 83A of the Finance Act and an order passed by the Commissioner (Appeals) under section 85 of the Finance Act . An order passed by the Commissioner under section 73A of the Finance Act is not covered by the section.

Normally, the order would be passed by Adjudicating Authority, who may be Commissioner or an authority below him depending upon the amount involved. In case where order is passed by a authority below Commissioner, the first appeal lies before Commissioner (Appeals) under the provision of Section 85 of the Finance Act 1994 and in case if the order is passed by the Commissioner as an Adjudicating Authority, an appeal cannot be made to CESTAT under section 86.

Issue

As per the existing provision of section 86, only order of Commissioner passed under Section 73 & 83A are appealable to Tribunal. An order passed by the Commissioner under section 73A of the Finance Act is not covered by the section meaning thereby that there is no appeal procedure if the order under section 73A is passed by the Commissioner but appeal can be filed if 73A order is passed by an authority subordinate to Commissioner. It appears the above situation is only a drafting error as the only remedy left before aggrieved party is to file a Writ Petition before High Court.

Suggestion

It is suggested that the anomaly be rectified by amending section 86.

Valuation of Taxable Service

15. 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.

16. Manner of determination of Value in case 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. For Example: in cases where Corporate Guarantee is provided it is difficult to determine the value of services.

Suggestion

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

17. Value of service portion in respect of certain works contracts be reduced

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 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 be restored to 60%.

Reverse Charge

18. Aligning services of business entities registered as a Body Corporate

Notification No. 30/2012 dated 20.06.2012 deals with payment of service tax either wholly or partly by service recipients. Part I sub clause (iv) deals with taxable services provided or agreed to be provided by arbitral tribunal, advocates, Government & Local Authorities **to any business entity located in the taxable territory.** Similarly clause (v) deals with taxable services provided or agreed to be provided by way of renting of a motor vehicle, supply of manpower for any purpose or service portion in execution of works contract by specified persons to **a business entity registered as body corporate, located in the taxable territory.**

Issue

The term 'business entity' is defined in Section:65-B of Finance Act as any person ordinarily carrying out any activity relating to industry, commerce or any other business. This means sub clause (iv) is applicable to any type of organization of service recipient whereas sub clause (v) is applicable only to body corporate service recipients.

Suggestion

It is suggested that this discrepancy be removed and clause (iv) be amended to provide for services provided to 'business entity' registered as a body corporate'

19. Single Rate for Service Tax Paid on Reverse Charge Basis by Service Receiver on Renting or Hiring of Motor Vehicle Designed to Carry Passenger.

Notification No. 30/2012 - ST dated 20.06.2012 provides that tax is payable by the receiver in case of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers.

If the service provider has not charged service tax in his invoice and has not availed any CENVAT Credit, the service receiver is liable to pay service tax on 40% of the value (abated) charged in the invoice by the service provider. (Sr.No.7a of Notification No. 30/2012-ST Dated 20/06/2012)

If the service provider has charged service tax in his invoice and has availed any CENVAT Credit, service provider should charge service tax on 50% of the value (non-abated) i.e. 7% and balance 50% i.e. 7% will be payable by the service receiver. (Sr.No.7b of Notification No. 30/2012-ST Dated 20/06/2012)

Issue

Service tax is paid at a variable rate on Reverse Charge Basis by Service Receiver on Renting or Hiring of Motor Vehicle Designed to Carry Passenger. Due to variable rates it causes practical difficulties on service receiver to check whether they have to pay SERVICE Tax on 40% or 50% of the Invoice Value. Also it becomes difficult for presentation in ST-3 Return.

Suggestion

It is suggested that there be a single rate either 40% or 50% of value of invoice on which service receiver is required to pay SERVICE Tax in case of renting of a motor vehicle designed to carry passengers.

20. Error in explanation be rectified - NN 30/2012-Service Tax dated June 20, 2012

Notification No. 30/2012 – ST dated 20.06.2012 (Reverse Charge) enlists the services for which tax is payable or partially payable by persons receiving the service. Heading of the table under Reverse Charge notification was amended vide *Notification No. 07/2015-ST dated 1st March 2015* to provide that service tax would be payable by any person liable for paying service tax other than the service provider as against being payable by the person receiving the service.

Issue

Notification No. 30/2012 – ST dated 20.06.2012 contains Explanation which reads as follows:

The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Though the heading of the table has been amended to *"any person liable for paying service tax other than the service provider"* no amendment has been made in the aforesaid explanation.

Suggestion

It is suggested The Explanation-I in Notification No. 30/2012 – ST dated 20.06.2012 be suitably amended to provide the effect of the words "any person liable for paying service tax other than the service provider".

Exemptions/ Abatements/ Rebates

21. 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.*

22. 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.

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. Further, the cost of administering this kind of small service providers by the department is disproportionate to the Revenue too.

Suggestion

It is suggested that Compounding 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 asseessee'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.*

23. Exemption for transportation of Food Stuffs limited to Food grains

Central Government vide *Notification No. 6/2015-Service Tax, dated* 6th March 2015, has provided that services by way of transportation, by rail or a vessel or a goods transportation agency from one place in India to another, of only milk, salt and food grain including flours, pulses and rice; is exempt from Service Tax. Prior to this amendment transportation of tea, coffee, jaggery, sugar, milk products and edible oil, excluding alcoholic beverages were also exempt from Service Tax.

Issue

Withdrawal of exemption from tea, coffee, jaggery, sugar, milk products and edible oil will cause undue hardship to the poor and needy as the prices for procuring these items will go up.

Suggestion

It is suggested that exemption on transportation of tea, coffee, jaggery, sugar, milk products and edible oil be reinstated.

24. Exemption for Goods Transport Agency (GTA)

Tax on GTA services was introduced on 01.01.2005 vide *Notification Nos. 33/2004-S.T, 34/2004-S.T, 35/2004-S.T., dated 03.12.2004*.

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.

25. 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

Renting of space for storage or warehousing of goods in case of agriculture purposes are subject to the levy of service tax. The anomaly created by TRU Circular has defeated the purpose of providing exemption to activities related to agricultural produce vide Clause 14(d) of *Notification No. 25/2012 dated 20.06.2012.* As the auxiliary services related to renting of space for storage or warehousing of goods in case of agriculture purposes are already exempted it results in breaking of the CENVAT Credit Chain.

Suggestion

It is suggested that an exemption be provided to the service of renting of space used for storage or warehousing of goods.

26. 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.*

Issue

Withdrawal of exemption from vehicle parking to general public has contributed to small procedural hindrances like collection of tax @ 14% on small amounts of ₹ 20/30 of parking charges and depositing the same to the credit of Central Government.

Suggestion

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

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

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

The definition of "charitable activities" was amended by Finance Act 2013 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.

The expression "charitable purpose" has been defined under Section 2(15) of the Income Tax Act, 1961 to include:

(a) Relief of the poor,

(b) Education,

(c) Medical relief, and

(d) Advancement of any other object of general public utility.

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.

Further, the definition of Charitable Activities be amended to bring it in line with the one provided under the Income Tax Act, 1961

28. 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)

29. Exemption to Education Services

Keeping in view the Central Governments idea of Skilled India it is suggested that all the Education Services directly relating to the delivery of education or training to students be kept outside the purview of Service Tax.

30. 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.

31. 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.

32. 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.

Issue

While providing such manpower services, agency has to pay salary of its deputed employee and statutory dues such as ESI, EPF. Agency collects its fees for supplying manpower from the service recipients.

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 or 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. .

Alternatively, it is suggested that only the Agency Charges be made liable to Service Tax. Where such charges cannot be disclosed separately, a Chartered Accountants certificate be obtained for such a purpose.

33. Abatement on Construction Services & Inclusion of Land Value in case of Construction of a complex, building, civil structure

Abatement *Notification No. 26/2012 dated 20.06.2012* provides 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 unit is less than 2000 square feet; and (ii) he amount charged for the unit is less than rupees one crore;	25	(ii) The value of land is included in the amount charged from the service receiver."
	(b) for other than the (a) above.	30	

Issue

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

There may arise a situation where value of construction service is very less as compared to the value of land but the assessee is required to pay tax on an amount much higher than construction charge. For example: If the value of land is ₹ 20 Crores on which construction is done amounting to ₹ 2 crores, the asseee is required to pay tax on 25% of ₹ 22 crores which is much higher than ₹ 2 crores.

Suggestion

It is suggested that a uniform percentage of taxable value (75%) be given as the abatement. Also, notification be changed according to the value of land in the City/area (as per guideline value).

Further, it is suggested that appropriate mechanism be provided to exclude or reduce the value of Land in case of Construction of Complex, Building, Civil Structure etc. where the Circle rate value of land is more than 75% of the Total value of construction service including of land.

Alternatively, Rule 2(a) of Service Tax (Determination of Value) Rules, 2006 be suitable amended to provide an option to reduce the value of land where the Circle rate value of land is more than 75% of the Total value of construction service including of land.

34. Enhanced limit to pay service tax on Receipt Basis

3rd Proviso to Rule 6 of Service Tax Rules, 1994 provides that in case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is ₹ 50 lacs or less in the previous financial year, the service provider shall have the option to pay tax on taxable services provided or agreed to be provided by him up to a total of ₹ 50 lacs in the current financial year, by the dates specified in this sub-rule with respect to the month or quarter, as the case may be, in which payment is received.

Issue

Limit of ₹ 50 lacs needs a revision owing to inflation and economic growth.

Suggestion

It is suggested that proviso to Rule 6 of Service Tax Rules be amended to provide an option to Individuals and partnership firms to pay service tax on receipt basis up to ₹ 100 lac of earnings as against the existing limit of ₹50 lakhs.

35. Abatement of service tax on rental of immovable properties

Section 66E of Finance Act 1994 provides a list of declared services of which "renting of immovable property" is one such service. These services are liable to service tax @ 14%.

Issue

The Finance Act 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 their 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.

The owner of the property pays Excise Duty/ Service Tax on material/ service elements involved in the construction for which no CENVAT Credit can be claimed. 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 with a declared tariff of ₹ 1000 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 40% on the value of the said activity and provide the taxable value to be 60%, to compensate the cost of construction and material element involved in letting out of immoveable property. It would also be in lines with Section 24(a) of Income Tax Act, 1961.

36. 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.

Issue

There is no business process/ mechanism available for determining the actual value liable to Service Tax in case of Services like Advertisement, Expenses, sharing between group companies, services of sub-brokers and other intermediary services.

Suggestion

It is suggested that existing practice be amended to compulsorily declare a proportion as service charge for advertisement agencies in order to curb the existing practice of hiding the commission portion of the bills.

Alternatively, it is suggested that a mechanism on the basis cost plus 10% or actual margin, whichever is lower be introduced to help in determining the value of such intermediary services. .

Procedural Law

37. Date of Service Tax liability be mentioned on Service Tax Registration Certificate

Rule 4(1) of the Service Tax Rules, 1994 requires every person liable to pay service to make an application for registration in form ST-1 within 30 days from the date on which the Service Tax is levied or commencement of business of providing taxable service, whichever is later. The Superintendent of Central Excise shall after due verification of the application form, or an intimation under sub-rule (5A), as the case may be, grant a certificate of registration in Form ST-2 within seven days from the date of receipt of the application or the intimation.

Issue

Unlike VAT Laws, neither the application form ST-1 nor the registration certificate Form ST-2 bear such date from which the assessee is liable to pay service tax. The registration certificate Form ST-2 only bears the date of issuance of such certificate.

Although there are no express provisions under CENVAT Credit Rules, 2004, adjudicating authorities are denying CENVAT Credit for input services/inputs/capital goods procured prior to date of registration certificate, resulting into litigation. For example an assessee started his business on 1st April 2015 and applied for registration on 30th April 2015 for which Certificate was granted on 7th May 2015. During the month of April 2015 assessee might have procured inputs, capital goods & input services for providing the taxable output services. Now the credit of tax paid on such inputs, capital goods & input services during the period from 1st April to 30th April 2015 is allowed to the assessee only after applying judicial precedents leading to litigations. Assessees are already charged with penalties prescribed for delay in registration & payment of tax u/s 77 of the Act.

<u>Suggestions</u>

It is suggested that the application form as well as registration certificate be amended to bear date from which the assessee is liable to pay service tax which be as per the date specified by the assessee in application form.

Simultaneously, the CENVAT Credit Rules, 2004 be amended suitably to expressly provide for eligibility of CENVAT Credit for the period prior to registration to avoid unnecessary litigations.

38. 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.

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

(i) 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.

(ii) 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 assessees 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 (including service tax payable on 31st March) be changed to 10th day of next month/quarter in line with proposed GST structure.

Further, a clarification be provided that in case the due date of payment falls on a Sunday the same would be calculated as one day prior to the due date.

(iii) Payment of Service Tax on provisional Basis: Anomaly in Rule-6 of Service Tax Rules, 1994 be rectified

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.

40. 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

The service provider has to deposit the service tax from his own pocket even though he is unable to recover the value of his taxable services and taxes thereon.

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.

41. Challan Correction Mechanism

There may arise the situation where erroneously

— Service tax is deposited in the name of some other company

— Wrong TIN is being used

— Service tax is deposited in wrong head

— Total amount entered is wrong etc.

There could be many situations of mistakes in challan and incorrect tax payments, as listed above.

Suggestion

It is suggested that a Challan correction module be introduced for taking care of genuine errors which otherwise may result into harassment of assessee where just for making excess tax payment for one type of tax and short payment for other type of tax, he would be seeking refund in one case and paying interest and penalty in the other.

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

(i) Introduction of Annual Return in Service Tax

As per rule 7 of Service Tax Rules, every assessee is required to file electronically a half yearly return in From 'ST-3' or 'ST-3A, as the case may be, by the 25th of the month following the particular half-year. The assessing officer, therefore, can issue show cause notice for assessment twice in a year.

If annual return is made to be filed by the assessee along with reconciliation Statement with the Financial Statement, then this will provide bird's eye view of the taxes paid by the assessee for financial year. This will facilitate easy assessment of return by the assessing officer as it would be already reconciled with financial statements for the relevant financial year and taxes paid thereon. If required, the Annual Return may be made to be certified by a Chartered Accountant.

Suggestion

It is suggested to introduce filing of Annual Return of Service Tax along with reconciliation statement certified by Chartered Accountant.

(ii) 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.

Suggestion

- *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.*
- *It is also suggested that no penalty be levied in case of rejection of Return.*

(iii) 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.*

(iv) 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.*

(v) 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.

43. 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 07.11.2014 to 06.05.2015	181 Days	=100000*18%*181/365= 8,926	=100000*24%*181/365= 11,901	INCREASE BY 33.33%

Interest for the period 07.05.2015 to 06.11.2015	184 Days	=100000*18%*184/365= 9,074	=100000*30%*184/365= 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 not exceeding 10% of the amount of such service tax. 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 40%, which is very high.

However, in case of delayed refunds to the assessees, the CG has notified rate of 6%. Thus, there is a significant gap, between the rate of interest payable by the assessee and the interest due to the assessee in case of refunds

There is another issue of difference of timing for charging the interest from assessee and paying the interest on refunds. The interest for duty/tax demands is charged from the date on which duty becomes due, whereas interest on delayed refunds is paid from the date after expiry of three months from the date of receipt of refund application. Presently, assessee has to apply for interest on delayed refund.

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 assessee.*

- *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. For example: In case of pre-deposits required an interest @ 6% is payable by the Government to compensate the loss of locking of funds which is too low as compared to interest charged by the Department.*

44. 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.*

45. 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.

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.

Also, Section 89 of the Finance Act, 1994 provides for the prosecution provisions in case of offences specified under section 78A

Suggestion

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

Further, as the prosecution provisions are taken care of by Section 89, the provisions of section 78A be subsumed accordingly.

46. 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.

Further, detailed & specific provisions for search be issued in lines with Section 153C on Income Tax Act, 1961. This would help in clarifying the issues like what would be the period for which search could extend, whether search may extend to sister concerns/ group of companies if the search is warranted for one company or what would amount to raid or survey in a given situation etc.

47. 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

This retrospective effect to add & give the explanations to any notification or orders may give rise to unnecessary litigations and bring up compliance issues.

Suggestion

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

48. 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.*

49. 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.

50. 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 threating 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.

51. 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) 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.

Further, a common database be maintained by the department to record the investigations/ audits conducted for an assessee so that the information is readily available and duplication of audits be avoided.

52. Facility of filing online Appeals before CESTAT and Commissioner (Appeals)

Now a day, e-filing of appeals is allowed with the Hon'ble High Courts as well as The Apex Court.

Suggestion

Facility of online filing of appeal with CESTAT as well as various authorities like Commissioner (Appeals) may be brought in to facilitate the assesses.

53. Facility of online filing of Form A-1 and A-3 for claiming service tax exemption on the inputs/input services

SEZ units claiming service tax exemption on the inputs/input services are required to file declaration in form A-1. On the basis of declaration, authorisation in form A-2 is issued by the department. The assessee is also required to file a return in form A-3 with the service tax authorities. Both A-1 and A-3 are presently filed manually.

Suggestions

- *It is suggested that facility for online filing of Form A-1 & A-3 be made available on ACES.*
- *Further, facility of downloading authorisation in Form A-2 from ACES be made available like ST-2 can be downloaded from ACES.*

54. Automatic payment of Interest on Refunds

Despite the fact that a no. of judgments have come from various forums regarding payment of interest to the assessee for delay in refunding the CENVAT or any other amount, it has been observed that the departmental authorities are not complying with the same.

Suggestion

It is suggested that appropriate Circular/Notification be issued to clarify that the interest on refund/any other amount be paid automatically beyond a prescribed period of delay.

Further, the concept of adjustment of Refund amount with future tax liabilities be introduced at the option of the assessee.

Place of Provision of Services Rules, 2012

55. 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.

56. 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. For Example An Indian firm provides a 'technical inspection and certification service' for a newly developed product of an overseas firm (say, for a newly launched motorbike which has to meet emission standards in different states or countries). Say, the testing is carried out in Maharashtra (20%), Kerala (25%), and an international location (say, London 55%). Notwithstanding the fact that the greatest proportion of service is outside the taxable territory, the place of provision will be the place in the taxable territory where the greatest proportion of service is provided, in this case Kerala.

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.

57. 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.

Point of Taxation Rules

58. Swachh Bharat Cess to be taxed as a case of change in effective rate of tax

As per FAQs issued on SBC by CBEC (Question 15), since this levy has come for the first time, all services (except those services which are in the Negative List or are wholly exempt from service tax) are being subjected to SBC for the first time. SBC, therefore, is a new levy, which was not in existence earlier. Hence, rule 5 of the Point of Taxation Rules would be applicable in this case. No SBC liability would arise where payment has been received and invoice has been raised before 15th November 2015. When payment is received before 15th November 2015 and invoice is raised within 14 days i.e. 29th November 2015, no SBC would be required to be paid. However, SBC would be applicable when services are provided on or after 15th November 2015 and payment for the same is received after that date and invoice is not raised within 14 days i.e. invoice is issued after 29th November 2015.

Issue

In a situation where, service is provided on 10th November 2015 and invoice is issued on 10th Nov, 2015 itself for which payment is received on 16th November 2015. As per FAQ issued, SBC would be leviable on such a transaction.

Applicability of SBC on taxable services is a case of change in rate of tax rather than being the new service taxed for the first time.

Suggestion

It is suggested that suitable clarification/ amendment be made to provide that the point of taxation for Swachh Bharat Cess be determined as per Rule 4 of Point of Taxation rules, 2011 dealing with change in effective rate of tax.

59. 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.

60. 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 Act, 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. For example, a service was provided on 31st March 2015 and became taxable from 1st April 2015 and invoice for which was raised on 16th April 2015. As per Rule 5 as the invoice is raised after 14 days of the date when the service is taxed for the first time service tax would be payable on the same. However Section 66B provides that tax should be levied when the service becomes taxable. Since service was not taxable on 31st March 2015 (when it was provided) it should not be liable to tax even if invoice is raised at a later date. 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.

It is suggested that Rule 5 be suitable amended to provide that it applies only from the date of coming into force of tax on a new service.

61. Securitization / Assignment transaction of NBFCs

NBFCs are engaged in asset based financing business. They generate financial assets in form of loans given to various customers. After retaining these assets for a minimum holding period as required by the Guidelines issued by the RBI, NBFCs create pool of such assets and offer the same for sale to various banks and financial institutions through the mechanism of securitization trusts. The said process is known as 'Securitization/ Assignment of Portfolios'. Securitization is merely a process to raise funds for NBFCs and a method to indirectly cater to a class of customers / borrowers who are often considered non-bankable. Securitization is primarily intended to re-arrange and diversify the credit risk away from the loan originators to a number of investors who can bear it, thereby giving some financial stability and an additional source of funding. The securitization transactions entered by NBFCs can be of Premium Structure or Par Structure.

Further, NBFC's are engaged in providing services like Managing, collecting and receiving payment of the receivables, depositing the receivables in the Collection and Payout account etc. in lieu of which they are entitled to Service Fees which is subject to levy of Service tax.

Issue

Due to limited awareness and inadequate understanding of the securitization transactions, the Service tax authorities are adopting different views as regards taxability of various aspects of the transaction thereby increasing number of litigations on the issue. The authorities are seeking to recover Service tax not only in relation to Servicer fees received by NBFCs but also on the excess interest spread / gain arising in case of securitization transactions.

Suggestion

It is suggested that suitable clarification be issued to clarify that the excess interest spread / gain arising in case of securitization transactions are not liable to Service Tax.

62. Share of loss recovered from manufacturers to not be subjected to Service tax

NBFCs are engaged in the business of retail financing of assets / vehicles which are manufactured by a manufacturing company (manufacturer). In order to minimize the loss from defaults in repayment of loans given for financing of the assets / vehicles and ensure risk mitigation, sometimes NBFC enter into arrangement with the manufacturer for sharing of loss by way of financial participation. The sharing of loss by the manufacturer enables the NBFCs to extend loans to the deprived sector at reasonable cost i.e., lower interest rate. In absence of the loss sharing arrangement, the NBFCs have to factor the risk (on account of defaults in repayment of loans), in the interest to be recovered from its customers which results in higher cost of funds to the underserved / deprived section of the society.

In the event of default in repayment of loan by the borrower, NBFC has to sometimes seize the collateral i.e. asset financed from the customer and dispose the same. Where the amount realized from the disposal is inadequate to meet the Loan outstanding, the same is shared between the manufacturer and NBFC as per agreed loss sharing ratio ('loss sharing principle'). For claiming the aforesaid share of loss, NBFCs raise a Memo of loss share on the manufacturer basis a pre agreed ratio.

Issue

The amount received from the manufacturer in terms of the loss sharing principle is construed as a consideration for 'tolerating an act or a situation' which is a declared service under Service tax laws. The sharing of loss would be taxable as consideration for tolerance of an act/ situation only where the manufacturer does not merely act towards some goal, but acquires or consumes goods or services or the payment provides some direct benefit to the manufacturer thereby rendering it a consumer of service. In the given case the manufacturer does not acquire or consume any service provided by NBFC.

Further, the payment of compensation does not provide any direct benefit to the manufacturer.

Suggestion

It is suggested that suitable clarification be issued regarding non-applicability of Service tax on recovery of share of loss by NBFC from manufacturers.

B. CENVAT CREDIT RULES, 2004

63. 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 excludes .....are 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 suggested that credit on all inputs, input services and capital goods except when they are used for personal or employee use be allowed to sizably bring down the litigations and promote ease of doing business.

Further, it is suggested that cross utilization of Credit be allowed on all inputs, input services and capital goods without restriction on utilization of any type of duties and taxes which would help the assessees as the funds would not be blocked and there would be a reduction in transaction/ litigation costs.

64. Service tax on outward freight

The seller is not entitled to take Credit on Service tax paid on outward freight when goods are sold ex-factory. This has to be absorbed by the seller of good in the cost.

Suggestion

It is suggested to allow the credit on service tax paid on outward freight when goods are sold ex-factory.

65. 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.

66. 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. A large manufacturing unit is required to undertake installation of certain Capital goods / Inputs outside the factory without which it is not possible to carry out the manufacturing process. For example, laying of railway tracks outside factory which is interconnected with railway tracks for bringing raw materials inside the factory. Similar is the case of pumping stations, water pipelines, etc. installed outside factory which helps in continuous supply of water to the plant which is required in manufacturing process.

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.

67. 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.

68. 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.*

69. Utilization of old unutilized/ accumulated credit of E Cess and SHE Cess

Finance Act 2015 has amended the basic rate of Excise Duty to 12.5% and the rate of Service Tax to 14% with effect from 1st March 2015 and 1st June 2015 respectively. Few issues in regard to utilisation of credit of EC and SHEC for payments of basic excise duty have been addressed vide *Notification No. 12/2015 Central Excise (N.T.), Dated: April 30, 2015 & Notification No. 22/2015-Central Excise (N.T.), Dated: October 29, 2015* as under:

Credit of EC & SHEC may be utilized for:

(a) Education Cess and Secondary & Higher Education Cess on inputs or capital goods received in the factory of manufacture of final product on or after the 1st March, 2015

(b) Balance 50% Education Cess and Secondary & Higher Education Cess on capital goods received in the factory of manufacture of final product or the premises of the provider of output service in the financial year 2014-15; and

(c) Education Cess and Secondary & Higher Education Cess on input services received by the manufacturer of final product on or after the 1st March, 2015.

(d) Paid on inputs or capital goods received in the premises of the provider of output service on or after the 1st day of June, 2015

(e) Paid on input service in respect of which the invoice, bill, challan etc. as referred to in rule 9, is received by the provider of output service on or after the 1st day of June, 2015

Issue:

However, the following issues still need to be addressed:

(a) Treatment of old unutilized/ accumulated credit of EC & SHEC of Excise duty with the assessee as on 28th February 2015.

(b) Treatment of old unutilized/ accumulated credit of EC & SHEC of Service Tax with the assessee as on 31st May 2015.

Suggestion

It is suggested that appropriate amendment be made to enable utilization of old unutilized/ accumulated credit of EC & SHEC of Excise duty/ Service tax.

70. Swachh Bharat Cess not integrated with CENVAT Credit Scheme

Swachh Bharat Cess has been made applicable w.e.f 15th November 2015 @ 0.5% on value of all taxable services.

Issue

As per FAQs issued by CBEC SBC is not integrated in the CENVAT Credit Chain. Therefore, credit of SBC cannot be availed Further, SBC cannot be paid by utilizing credit of any other duty or tax.

Suggestion

It is suggested that SBC be integrated in the CENVAT Credit chain as Legislative intent provided in CBEC FAQs contrary to provisions of CCR.

71. Cross Utilization of CENVAT Credit

Rule 3 of CENVAT Credit Rules, 2004 provides that a manufacturer or provider of output service shall be allowed to take CENVAT credit of the duties paid on inputs or capital goods and service tax paid on input services.

However, credit availed in respect of following duties shall be utilized only for payment of respective duties on final products and not for other duties or taxes:

- Additional duties of Excise
- National Calamity Contingent Duty

Issue

The rule does not provide that the credit of the above duties can be utilized taken interchangeably to pay other duties.

Suggestion

It is suggested that cross utilization of Credit be allowed on all inputs, input services and capital goods without restriction on utilization of any type of duties and taxes which would help the assessees as the funds would not be blocked and there would be a reduction in transaction/ litigation costs.

72. 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.

73. Inputs/capital goods procured from EOU/EHTP/STP not paying duty in terms of Sl 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 Sl.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.

74. Clarification provided by *Circular No. 962/05/2012 – CX* with regards to payment of arrears from CENVAT Credit Rule 3(4) be amended

First proviso to Rule 3(4) of CENVAT Credit Rules 2004 provides that while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be

Circular No. 962/05/2012 - CX, Dated: March 28, 2012 clarifies that the restriction with regard to the utilization of CENVAT credit is relating to the normal payment of duty in terms of rule 8 of the Central Excise Rules, 2002, where duty for a particular month or quarter is to be discharged by the 5th of the next month. Even in case of duty paid late in terms of rule 8, the credit available for utilization will remain same i.e. the credit in balance on the last date of month or quarter, as the case may be.

Duty payable under rule 8 is on a different footing from duty payable under Section 11A. Duty under Rule 8 is paid after self-determination by the assessee unlike Duty payable under Section 11A where generally the duty is determined by the Central Excise officer and the payment is mandated after such determination. Therefore, the restriction on the utilization of the CENVAT credit accruing subsequent to the last date of the month or quarter in which the arrears arise, is not applicable to the demands confirmed under Section 11A of the Central Excise Act, 1944.

Issue

The duty payable under Section 11A of Central Excise Act, 1944 i.e. recovery of tax and duty payable under Rule 8 of the Central Excise Rules, 2002 i.e. payment under self-assessment are on different footing. However, this principle is not provided for in the Rule 3(4) of the CENVAT Credit Rules, 2004.

Suggestion

It is suggested that first proviso to Rule 3(4) of CENVAT Credit Rules, 2004 be amended to provide that proviso is applicable only in the case of payment of tax under self-assessment and not pursuant to a demand u/s 11A/73 as it would provide a statutory force with inclusion in the Rules as against clarification through the Circular.

75. 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.

76. 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.

77. Availment of CENVAT Credit on Input and Input Service

With effect from 1st March 2015, Rule 4 of CENVAT Credit Rules, 2004 have been amended vide *Notification No. 6/2015-Central Excise (N.T.), Dated: March 1, 2015.*

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 or in the premises of the job worker, in case goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be. The proviso now provides that the manufacturer or the provider of output service shall not take CENVAT credit after one year 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. Amended proviso to Rule 4(7) of the CENVAT Credit Rules, 2004 provides that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed after such service tax is paid:

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

Issue

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

- Whether the amended proviso is applicable on the invoices issued prior or post to the effective date of amendment.
- 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 ₹ 100 and outsourcing the same for ₹ 80. Now, in case of old period investigation on some interpretational issue or based on some judgment form apex court, he is obliged to pay tax on ₹ 100 but will not be allowed to claim credit on ₹ 80. We may have live example where different judgment suggests to pay tax after a substantial period pass over.

Suggestions

(i) 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.

(ii) 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 one year may 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 of cases with pending litigation/ under litigation, Credit be allowed for the period till the dispute under point of law is settled.

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

As per 2nd 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 one year be commenced from the date of CENVAT credit taken rather than from the date of invoice.*

79. 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).

80. Refund of CENVAT Credit of Capital Goods

As per rule 5 of CENVAT Credit Rule, refund amount is calculated as follows:

Total CENVAT on Input and Input Services X Export Turnover/Total Turnover

In the above formula there is no mention of CENVAT on capital Goods. As a result an assessee who is having domestic sales or is having domestic sales as well as export sales is able to utilize the CENVAT credit on capital goods against output liability on domestic output. But in the case of a 100% exporter,

though he is allowed to take CENVAT Credit on Capital goods but is not allowed as per the above formula to claim refund of the same. This is resulting into the exporter being at a disadvantage as compared to a domestic player and is resulting into export of duty also.

Suggestion

The formula for calculating refund be modified to include refund of CENVAT credit on capital goods also.

81. Refund of CENVAT Credit for Sales made to 100%EOU

Finance Act, 2015 has amended Rule 5 of CENVAT Credit Rules, 2004 to provide that the 'Export goods' means any goods which are to be taken out of India to a place outside India for the purpose of claiming the refund.

Issue

The proposed amendment denies the Refund available under Rule 5 to local manufacturer for the sales made to 100% EOU. This denial of refund will increase the cost of inputs for 100% EOU as the local manufacturer/ service provider will not be able to claim the refund of CENVAT Credit for sales made to 100% EOU. This will also defy the government's initiative of "Make in India'.

Suggestion

It is suggested that appropriate modification be made to provide the benefit for sales made to 100% EOU by local manufacturer.

82. Refund of CENVAT Credit – Rule 5 of CENVAT Credit Rules

Rule 5 of CENVAT Credit Rules, 2004 provides that a manufacturer who clears a final product or an intermediate product for export without payment of duty under bond or letter of undertaking, or a service provider who provides an output service which is exported without payment of service tax, shall be allowed refund of CENVAT credit as determined by the following formula subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette :

$$\text{Refund amount} = \frac{\text{(Export turnover of goods + Export turnover of services)}}{\text{Total turnover}} \times \text{Net CENVAT credit}$$

Notification No. 05/2006 - CX (NT), Dated: March 14, 2006 provides that prescribed application for refund along with the prescribed enclosures and the relevant extracts of the records maintained are to be filed before the expiry of the period specified in section 11B of the Central Excise Act, 1944.

Issue:

(a) There is no option available to the assessee to claim refund on account of maintaining separate books of accounts for export and domestic transactions as in Rule 6(2) of CENVAT Credit Rules, 2004 for exempted & taxable services. The refund is granted only on the basis of Formula prescribed in the Rule.

(b) The Refund is to be claimed within the prescribed time limit as specified under section 11B of the Central Excise Act, 1944.

Suggestions

It is suggested that facility of maintaining separate records as provided in Rule 6(2) of CENVAT Credit Rules, 2004 be extended to Rule 5 so that separate records be maintained for domestic & export transactions on the basis of which refund claim may be filed. In cases where such records cannot be maintained, formula may be applied.

It is further suggested that no time limit be prescribed for filing the refund claim and refund be allowed based on available credit balance

83. 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.

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 case of Export of Services too in lines 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.*

84. 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.*

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

As per Rule 6 of CENVAT Credit Rules, 2004, the CENVAT Credit shall not be allowed on such quantity of inputs used in relation to the manufacture of exempted goods. In many manufacturing process unintended emergence of by-products takes place. As per the recent decision of Honorable Supreme Court in the matter of *M/s Hindustan Zinc Ltd vs Union of India (2014-TIOL-55-SC-CX); ;rule 6 would not apply when manufacture of dutiable final product results in emergence of exempted by-product on technological necessity*.

Therefore, provision of Rule 6 of CENVAT Credit Rules will not be applicable in the case of by-products.

Suggestion

It is suggested that a suitable clarification be issued to provide that Rule 6 is not applicable for the manufacture of by-products which would also help to avoid unnecessary dispute.

86. Amendment in Rule 6(3) of CCR

As per Section 65A (2) goods" means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. As per Section 66D (e) of Finance Act, 1994, trading of goods has been specified as service in negative list.

Issue

Investment activities in securities are considered as Trading of Goods and Proportionate Input Credit is reversed as per Rule 6(3) of CENVAT Credit Rules. Moreover, value of trading is taken as the total turnover and not only the profit earned thereon.

Also as per VAT, the goods are defined as every kind of moveable property other than newspapers, actionable claims, stocks, shares and securities. Securities are not treated as goods under VAT.

Suggestion

It is suggested that appropriate clarification be issued regarding the Investment in Securities. It the same is kept outside the purview of services the requirement of credit reversal be done away with.

87. 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.

88. Distribution of input service credit by Input Service Distributor to the Units to which it relates

Rule 7 was amended vide *Notification No 5/2014 – CE (NT) dated 24.02.2014* and subsequent *Circular No.178/4/2014-ST dated 11th July 2014*:

The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following conditions, namely :—

(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;

(b) credit of service tax attributable to service used by one or more units exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;

(c) credit of service tax attributable to service used wholly by a unit shall be distributed only to that unit; and

(d) credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period.

Explanation 1. - For the purposes of this rule, "unit" includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise.

Explanation 2. - For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5.

Explanation 3. - For the purposes of this rule, the 'relevant period' shall be,-

(a) If the assessee has turnover in the 'financial year' preceding to the year during which credit is to be distributed for month or quarter, as the case may be, the said financial year; or

(b) If the assessee does not have turnover for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed."

As per the amendment to sub-clause (d) of Rule 7 of the CCR, an effort has been made to get rid of determining cumbersome monthly turnover ratio used for distributing input service tax credit by the Input Service Tax Distributor.

To achieve this, as per the amended Rule, if a service is common to more than one Units (but not common to all the Units of the assessee) credit shall be distributed pro-rata to the Units to which the service relates.

However, the distributable credit shall be determined on the basis of turnover of the Units to which the credit relates to the total turnover of all the Units of the assessee. The use of the expression, "total turnover of all the Units of the assessee" will result in an unfair situation / unintended losses to the Industry due to non-distribution of some portion of credit. This is explained through the following example:

Assume, an assessee has four Units, say A, B, C and D. It is receiving advertisement service for a product which is manufactured only in A and C Units. Suppose credit on Advertisement service is ₹ 10,000/-.

	A	B	C	D	
Turnover in FY 2013-14 (in ₹ Crores)	150	250	400	200	
Total Turnover of A, B, C & D					1000

Unit A = $\frac{10,000 \times 150}{1,000}$ = ₹ 1,500

Unit C = $\frac{10,000 \times 400}{1,000}$ = ₹ 4,000

Thus, out of the total credit of ₹ 10,000 attributable wholly to dutiable goods, CENVAT credit of ₹ 5,500 can only be distributed and CENVAT Credit of ₹ 4,500 would be left unutilized.

Circular No. 178/4/2014-ST dated 11.7.2014 has clarified that the distribution for the purpose of Rule 7(d) will be done to all the units of the assessee irrespective of whether such common input services were used in all the units or in some of the units. Therefore, credit on services which are common to more than one unit of the assessee may be distributed to all units of the assessee.

While the intent of the amended Rule has been clearly spelled out in the Circular, however, the industry fears that the departmental authorities having jurisdiction over the manufacturing units to whom the credit is distributed may dispute the availability of the credit to the unit on the ground that such credit has no nexus

with the manufacturing activities being undertaken at the unit. In such a case, the entire distribution of credit by ISD would become futile.

Suggestion

It is suggested that Rule 7(d) be amended to allow distribution of all credit by taking turnover of the last financial year of only those Units to which the Input service relates instead of taking turnover of last financial year of all the Units.

Alternatively, it is suggested that the manner of distribution of Credit as per Rule 7 be simplified and manner of pro-rata distribution be done away with so as to prevent loss of Credit which can be utilized.

89. Delay in issuance of Certificate in case of transportation of goods by Railway

Service Tax on transport by rail was introduced with effect from 1st October 2012. An abatement of 70% has been allowed on freight as per *Notification No. 26/2012- ST dated 20.06.2012*.

CBEC has amended Rule 9(1) of CENVAT Credit Rules, 2004 vide *Notification No. 26/2014- ST dated 27.08.2014* and included service tax certificate issued by Railway along with photo copies of railway receipt as valid document for availment of CENVAT credit.

Companies are incurring huge amount of railway freight for procuring the raw material and dispatching finished goods to depots located in different parts of the country.

Issue

CENVAT credit of service tax paid on railway freight is available against the certificate issued by Railway only and in some cases the same is getting delayed. In some cases it takes 6 to 9 month time, due to which huge amount of service tax gets blocked which result in undue financial hardship to the manufacturer.

Suggestion

It is suggested that railways issue certificate(s) in a timely manner so that assessee may avail timely credit accordingly.

Alternatively, Credit be allowed on the basis of Challan(s) or any other document otherwise the same be brought under ambit of Reverse Charge.

90. 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 assessees, 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.

Currently, transfer of credit is being questioned based on the quantity of inputs being transferred. It is possible that due to payment of taxes by cash, credit has accumulated without any inputs lying in stock. Department seeks correlation between the credit available and duty paid on inputs transferred.

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.

Further, it is suggested that a clarification be issued that one-to-one correlation is not relevant when the transfer of Credit is under question. Since much inventory is being transferred during merger, acquisition etc., the duty paid on the same be allowed as CENVAT Credit.

91. 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.

92. Recovery of CENVAT credit wrongly taken or erroneously refunded

Rule 14 of CENVAT Credit Rules has been amended vide *Notification No. 6/2015 –CE(NT) dated 01.03.2015* to provide that where the CENVAT credit has been wrongly taken or utilised / has been erroneously refunded, the same along with interest shall be recovered from the manufacturer or the provider of the output service.

Also a new sub-rule 2 has been inserted which provides that all credits taken during a month shall be deemed to have been taken on the last day of the month and the utilisation thereof shall be deemed to have occurred in the following manner, namely: -

(a) the opening balance of the month has been utilised first;

(b) credit admissible in terms of these rules taken during the month has been utilised next;

(c) credit inadmissible in terms of these rules taken during the month has been utilised thereafter.

Issues

- Rule 14 was amended to substitute the word "or" with "and" w.e.f. 01.04.2012 making both irregular availment and utilization necessary to attract interest and penalty. Merely taking of CENVAT credit wrongly cannot be constituted as an offence which leads to a case of revenue loss to the Exchequer.

- It has been provided that all credits taken during a month shall be deemed to have been taken on the last day of the month and the utilisation thereof shall be deemed to have occurred in the prescribed manner. Now, the opening balance of CENVAT credit shall be automatically deemed to be utilised first. Hence, in cases where the CENVAT has been taken but not utilised due to interpretational issues, the assessee shall not be able to plead that such CENVAT was only availed and not utilised. Also, the unutilized inadmissible CENVAT credit of this month will become the opening balance of the next month. The order being opening balance of CENVAT first, the utilization of inadmissible credit is automatic. Even if sufficient credit balance is maintained, there is no protection for inadmissible credit in the succeeding month. This provision is resulting in undue financial hardship. At times assessee decides to avail the CENVAT Credit but holds the utilization due to pending litigation in similar issue, availment of CENVAT is done only to ensure that there is no loss of CENVAT in case the litigation is decided in favour of the assesse. This action is necessary in view of the Rule 4(1) & 4(7) of the CCR, 2004, which prescribes for availment of CENVAT on input/input services within one year from the date of invoice due to this reason only the assesse avails the CENVAT on the similar items/services but holds the utilization of the same till the final outcome of the litigation.

Suggestions

- *It is suggested that no interest or penalty be levied for merely taking the credit erroneously as that will only add to assessees hardships rather than increasing compliance.*

- *It is suggested that the changes brought in Rule 14 be rolled back to make it beneficial for the assessees.*

- *It is suggested that suitable clarification be issued to the effect that in cases where the assessee is able to prove non utilization of wrongly availed CENVAT Credit by showing sufficient balance in credit, no interest would be payable.*

93. 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".

94. 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.

95. 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.

96. 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 before the movement of goods has commences, 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

97. Old Definition of Term ''Relative''

As per the Explanation (ii) to Section 4(3)(b) in the Central Excise Act, 1944,

"Relative" shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956 (1 of 1956);

As per Section 2(41) of Companies Act, 1956 "relative" means, with reference to any person, anyone who is related to such person in any of the ways specified in section 6, and no others:

Section 6: A person shall be deemed to be a relative of another if, and only if,-

(a) they are members of a Hindu undivided family; or

(b) they are husband and wife; or

(c) the one is related to the other in the manner indicated in Schedule IA

Section 2(77) of Companies Act, 2013

''relative'' with reference to any person, means anyone who is related to another, if—

(i) they are members of a Hindu Undivided Family;

(ii) they are husband and wife; or

(iii) one person is related to the other in such manner as may be prescribed.

Issue

Section 4 of Central Excise Act, 1944 continues to refer Section 2(41) of the Companies Act 1956 as against the Section 2(77) of Companies Act, 2013 to define the term ***'relative'***.

Suggestion

It is suggested that Section 4 of Central Excise Act, 1944 be suitably amended to give effect to the new definition of the term "Relative".

98. Benefit of exemption from payment of excise duty be made optional

Finance Act, 2005 amended Section 5A of the Central Excise Act, 1944 to provide that if any excisable goods are exempted from the payment of excise duty unconditionally, then manufacturer of such goods will be bound to avail the exemption.

Issue

The manufacturer is mandatorily required to avail the exemption if any excisable goods are exempted from the payment of excise duty unconditionally even when inputs or capital goods are obtained on payment of duty of which credit cannot be availed. Such provisions work against the large manufacturers who intend to set up factories by making huge investment in duty paid capital goods, credit of which cannot be availed and thus adds to their cost significantly.

Suggestion

It is suggested that the earlier scheme of optional exemption be restored for the benefit of assesses.

99. Presumption That The Incidence Of Duty Has Been Passed On To The Buyer – 12B

Section 12B of Central Excise Act, 1944 provides that every person who has paid the duty of excise on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods.

Issue

Presently, department denies refund where credit notes are issued to dealers on the ground that the burden was passed on to ultimate buyers, despite the precedent decision by Judiciary.

Suggestion

It is suggested to suitably amend Section 12B of Central Excise Act, 1944 to allow refund where credit notes are issued to dealers.

100. 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.

101. Section 23C. Application for advance ruling.

As per Section 23C of Central Excise Act, 1944 an applicant desirous of obtaining an advance ruling may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought shall be in respect of, -

(a) classification of any goods ;

(b) applicability of a notification having a bearing on the rate of duty;

(c) the principles to be adopted for the purposes of determination of value of the goods ;

(d) notifications issued, in respect of duties of excise under this Act, and any duty chargeable under any other law for the time being in force in the same manner as duty of excise leviable under this Act;

(e) admissibility of credit of service tax paid or deemed to have been paid on input service or excise duty paid or deemed to have been paid on the goods used in or in relation to the manufacture of the excisable goods.

(f) determination of the liability to pay duties of excise on any goods under this Act

Issue

Presently Section 23C does not includes an application on admissibility of CENVAT credit on capital goods used in a factory or by a service provider.

Suggestion

It is suggested that Section 23C be suitably amended to enable making an application on admissibility of CENVAT credit on Capital goods used in a factory or by a service provider.

102. 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 lies 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.

103. Reduction of Limit for Application for settlement of cases

Section 32E of Central Excise Act, 1944 provides that an assessee may, in respect of a case relating to him, make an application, before adjudication, to the Settlement Commission to have the case settled, in such form and in such manner as may be prescribed and containing a full and true disclosure of his duty liability which has not been disclosed before the Central Excise Officer having jurisdiction, the manner in which such liability has been derived, the additional amount of excise duty accepted to be payable by him and such other particulars as may be prescribed including the particulars of such excisable goods in respect of which he admits short levy on account of misclassification, under-valuation, inapplicability of exemption notification or CENVAT credit and any such application shall be disposed of in the manner hereinafter provided: Provided that no such application shall be made unless,—

(a) the applicant has filed returns showing production, clearance and central excise duty paid in the prescribed manner;

(b) a show cause notice for recovery of duty issued by the Central Excise Officer has been received by the applicant;

(c) the additional amount of duty accepted by the applicant in his application exceeds three lakh rupees; and

(d) the applicant has paid the additional amount of excise duty accepted by him along with interest due under section 11AB

Issue

After inclusion of service tax within the purview of settlement under Section 83, the additional tax liability to be admitted has to be reduced to Rs.1 lakh to enable the service providers to avail the option to settle the cases.

As the condition of maintaining a record relating to production and clearance by a manufacturer has been deleted, then why the condition of filing application along with the enclosure of filed returns by manufacturer showing production, clearance and central excise duty paid in the prescribed manner is required

Suggestion

It is suggested that the provisions may have separate limit for acceptance of additional duty / tax liability for Manufacturers/Importers/Exporters and service providers so as to promote ease of doing business.

It is suggested that Section 32E may be amended to delete the condition that "the applicant has filed returns showing production, clearance and Central excise duty paid in the prescribed manner", since the condition that a manufacturer should have maintained records relating to production and clearance was deleted. This will enable the government to improve the revenue collection through settlement of more number of cases

104. 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).

105. 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.

106. 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 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 Minster Speech he said that " to expedite the process of disposal of appeals, amendment have been proposed in Custom and Central Excise Act with a view to freeing appellate authorities from hearing Stay application 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.*
- *It is suggested that in order to prevent the frivolous demands, Tribunal be allowed to waive the pre deposit in deserving cases.*
- *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.*

107. 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 (No. 2), 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 assessees 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.

108. 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.

109. 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.

Issue

The system of filing monthly excise returns adds to the administrative transaction cost of the assessees. Also, when there is no assessment by Excise

officers, the return has only the immediate utility of meeting the statistical purposes. The statistical data is always collected by range officers and furnished to Board without waiting for Returns. Also in spite of online filing of Returns hard copies of Returns are filed unofficially as a practice in every Excise office which in turn adds to the cost of the assessees.

Suggestions

- *It is suggested that the system of filing monthly excise returns be made quarterly/ half-yearly i.e. at par with filing of VAT returns/ 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.*

110. Credit of duty on goods brought to the Manufacturer's Depot/Stockyard

As per Rule 16 of Central Excise Rules, 2002, where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules.

Issue

As per the above provision a manufacturer can take CENVAT credit of the goods **only in case the goods are brought back to the factory.** However, there is no provision for bringing back such goods to the depot/stockyard of the manufacturer. A large manufacturing unit operates through number of depots/stockyards situated across the country. Bringing back goods to the factory results in increased expenditure on account of freight cost, if the factory is situated at a long distance from the customer's place. Therefore along with factory, depot/ stockyard may also be provided for bringing the goods back for re-made, refined, etc.

Suggestion

It is suggested that the existing rule be suitably amended to provide that goods can also be brought back to the depot/stockyard of the manufacturer.

111. Purchase of input without payment of duty

Under Rule 19 of the Central Excise Rule, raw material can be procured without payment of excise duty by following Notification No. 43/2001/CE (NT), dated 26th June, 2001 for the purpose of use in the manufacture or processing of export goods and their exportation out of India.

But practically this procedure becomes impossible for a company exporting goods as well as selling them in domestic market as they have to maintain separate record for raw material purchased without excise duty, its production, scrap record etc. Therefore, the majority of the companies are following refund procedure method and suffering losses due to blockage of money in excise duty, interest losses on this blockage money and also incurring administrative cost for refund.

Suggestion

It is suggested that input output ratio for every industries may be notified and if assessee has fulfilled the notified ratio within a given period then it may be deemed that assessee has followed export procedure. For example, in case of steel industries where notified ratio is 100:82. Its means if a company purchase raw material of 100 kg without excise duty under advance license and in a given period, the company export 82 kg of its steel finished goods products, then it is considered that company has followed export procedure.

112. Penalty under Central Excise for Offences.

Rule 26(2) of Central Excise Rules, 2002 provides that any person, who issues any document other than excise duty invoice or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made there under like claiming of CENVAT credit under the CENVAT Credit Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or ₹ 5,000, whichever is greater.

Issue

The words "likely to take" penalizes the dealer of importer unreasonably as the government has a mechanism in place to verify whether the recipient of goods or service has taken credit or not.

Suggestion

It is suggested that the words "likely to take" be deleted from the said rule to avoid unnecessary penalization of dealers.

113. SSI exemption for clearance of goods to Nepal or Bhutan.

Notification No. 8/2003- CX dated 01 March, 2003 grants exemption to small scale industries from excise duty on their clearances of goods for home consumption up to the limit of ₹ 150 Lakhs. However, as per explanation G of the said notification, exports to Nepal and Bhutan are not granted exemption and considered at par with clearances of goods for home consumption.

Notification No. 42/2001- CX dated 26 June 2001, provided that benefit of clearances of goods from factory without payment of excise duty would be granted on export to all countries (except Nepal and Bhutan). The said Notification was amended vide *Notification No. 26/2011-CX dated 05 December, 2011* to provide exemption benefit on exports to Nepal.

Issue

Exports to Nepal are considered at par with exports to other countries but *Notification No. 8/2003 - CX dated 01 March, 2003* is still not amended to give effect to the same i.e. provide benefit of exports without payment of excise duty.

Due to such ambiguity, small-scale industries are unable to determine whether exports to Nepal should be included in the threshold limit of INR 150 Lakhs as it would be contrary to blanket exemption given under the *Notification No. 42/2001- CX dated 26 June 2001*. It will also put small-scale industries in disadvantageous position as compared to other small industries that don't have any exports to Nepal and will lead to unscrupulous practices

by industries to float separate companies for the purpose of exports to Nepal and domestic sales.

Suggestion

It is suggested that Explanation no. G of Notification No. 8/2003 - CX dated 01 March, 2003 be amended to exclude exports to Nepal from the said explanation retrospectively from 01 March'2012.

114. Recovery proceedings pending disposal of stay petition.

CBEC vide *Circular No. 967/01/2013-CX dated 1st January, 2013,* provided the Departmental officers to initiate recovery proceedings in cases where the assessee has not filed an application for stay or has not obtained a Stay Order on lapse of a specified period of time after passing of Stay Order.

Further, CBEC vide *Circular No. 984/08/2014-CX, dated 16th September, 2014* clarified that *Circular No. 967/01/2013-CX dated 01.01.2013* would not apply to cases where appeal is filed after the enactment of the amended Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962. However, there is no change in the position with respect to the cases where appeal is filed before enactment of amended section i.e. 6th August, 2014.

Issue

The *Circular No. 967/01/2013-CX dated 01.01.2013* works against the principles of natural justice as it seeks to deny rightful legal remedies available to assessee. Further, assessee is, invariably, not in a position to expedite the litigation and hasten proceedings before quasi-judicial authorities and courts of law. The taxpayer can only file an appeal before the appellate Commissioner / Tribunal within the statutory period. It is not within the competence of the taxpayer to ensure that his stay application is also disposed off within 30 days of filing of appeal.

In practice, there are several reasons why stay application / appeals take time to get disposed off:-

- Huge amount of existing back-log/pendency of matters before quasi-judicial/ judicial forums;
- The law generally does not provide for a definite timeline for the authorities to decide a stay application or the appeal on merits. For instance, it is provided that a commissioner (Appeals)may decide on a stay application within 30 days from the date of its filling, where it is possible to do so;
- Department's representative may seek adjournments for various reasons;
- Matters listed before CESTAT/Courts and not heard for constraint of time or on account of hearing going on for earlier matters, etc.

Unless the necessary legislative amendments are put in place and the same is followed rigorously, operation of this circular may find resistance from the industry. In the current form, the circular may lead to unintended consequences and the further litigation.

Suggestion

- *It is suggested that on grounds of natural justice, Circular No. 967/01/2013-CX dated 01.01.2013 be amended/ withdrawn.*
- *Departmental officers may be instructed not to resort to coercive action during pendency of applications for Stay and in cases where Stay Order has been granted but the matter is pending for disposal.*

115. Disparity between interest payable by assessee and Department under central excise and customs

At present, interest @ 18% is payable by the assessee when duty is short levied/ short paid or not levied /not paid. However, in case of delayed refunds, the Department is liable to pay interest @ 6%.

Further, interest for duty/tax demands is charged from the date on which duty becomes due, whereas interest on delayed refunds is paid from the date after expiry of three months from the date of receipt of refund application. Presently, assessee has to apply for interest on delayed refund.

Issue

There is a significant gap, between the rate of interest payable by the assessee and the Department. Further, interest on demand is charged from the date on which duty is due whereas interest on delayed refund is calculated after the expiry of three months from the date of receipt of refund application.

Suggestions

- *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 was actually paid.*

116. Different forms under Central Excise for procurement of goods without payment of duty

Presently there are different forms like Annexure-I, CT-1, CT-2, CT-3 etc and all these forms are meant for procurement of goods without payment of duty. Also to claim rebate or refund under different provisions, different forms are prescribed. Too many forms confuse the trader and add to the transaction cost.

Form A.R.E.1 is an application for removal of excisable goods for export whether without payment of duty or on payment of duty with a claim for rebate.

Form A.R.E.2,is an application for removal of goods for export under claim for rebate of duty paid on inputs used in the manufacture and packing of such goods as well as removal of excisable finished goods under claim for rebate or under a bond without payment of duty leviable on export goods.

CT-1 is a certificate for procurement of specified goods without payment of duty from EOU.

CT-2 is a certificate used for procurement of excisable goods without payment of duty under procedure for export warehousing.

CT-3 is similar to CT-2 but issued by Superintendents in Charge of EOUs. It is also a certificate for removal of excisable under bond. Only on receipt of CT-3 certificate, the manufacturers can commence supplies without payment of duty to the EOU. A manufacturer exporter who is desirous of removing goods for export without payment of duty has the option of furnishing a letter of undertaking in form UT-1 in place of executing a bond.

Issue

Different forms under Central Excise like Annexure-I, CT-1, CT-2, CT-3, etc. are meant for the same purpose which create a confusion/hindrance while doing business and also add to the transaction cost of the assessee

Suggestion

It is suggested that a single form for procurement of goods without payment of duty and another form for claiming refund be introduced to save the time & cost to the assessee.

117. Sealing of Goods & Consolidation of Cargo by same group of companies manufacturing goods or providing services.

Presently the facility is available only for consolidation cargo in another factory of the same manufacturer as it does not include the facility for sealing of dutiable goods in a factory by proper officer of excise and consolidations of cargo in another factory of an organization belong to the same group.

Suggestion

It is suggested that Central Excise Rules 2002 be modified or a new rule be inserted for sealing of dutiable goods in a factory by proper officer of excise and consolidations of cargo in another factory of an organization belong to the same group

118. 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

119. Determination of Bond / Bank Guarantee value for Provisional Assessment of Customs Goods. (Section 18 of Customs Act, 1962)

Under section 18, value of bond is left on the discretion of the proper officer and it has been observed that bond is taken as security in some customs houses for the full FOB value.

Suggestion

It is suggested that appropriate amendment be made limiting amount of security / Bond amount up to value of Custom Duty only..

120. On-line facility for filing of Shipping Bills, Amendment & Cancellations and refunds thereon

E-facility of shipping bill submission, amendments and cancellations would help a lot to reduce documentation issues, and assessment etc. This would be environment friendly and a step forward towards "go green".

Suggestion

- *It is suggested that on-line facility for filing of shipping bills, amendments in shipping bills filed provisionally (u/s 18 of Custom Act) or otherwise filed u/s Section 17 of Custom Act and cancellation of shipping bills may be implemented unless goods actually been exported.*
- *It is suggested that E-payment of Export duty payment against shipping bill be implemented.*
- *Further, it is suggested that refund claims pertaining to Short Shipment, Cancellation of shipping bills and decrease in realization may also be made online.*

121. Payment of interest in case differential duty arisen for Shipping Bills filed provisionally

As per Section 18(3) of Custom Act, the importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to

the final assessment order or re-assessment order under sub-section (2), at the rate fixed by the Central Government under section 28AB from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

Suggestion

- *It is suggested that the date for payment of interest on differential duty should be from the date of Final Assessment rather that the 1st day of the month in which Shipping Bill has been filed.*
- *It is also suggested that the Interest rate should be equated with interest rate as prescribed for delayed refunds.*

122. 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 gods 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".

123. Refund of Customs duty - Section 27 of Custom Act 1962

It has been observed that specified time limit is not followed by the officers in granting the refund even after submission of all relevant documents. The prolonged delay in refunds is causing undue financial hardship.

Suggestion

- *It is suggested that suitable amendment be made prescribing proper time limit for granting of refund which should be obligatory in nature. Further, it is suggested to give mandatory interest on delayed refunds.*
- *Concept of running account for payment of export duty and import duties and suo-moto adjusting the due refunds and collecting refunds may be implemented.*
- *It is suggested that in case provisionally filed Shipping Bill is not finalized within a prescribed period, refund claim of excess duty paid be allowed and granted.*

124. Interest on delayed refunds.

If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below 5% and not exceeding 30% per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.

Issue

Sometimes assessees waive their claim for interest and take up only the refund amount net of interest to expedite the refund process. Procedure of seeking waiver of claim for interest by the department from applicants is deterrent and needs to be discontinued.

Suggestion

It is suggested that interest on refund be automatically computed from the end of 3 months from date of refund claim. If refund application is admitted and processed, applicant has no basis to issue waiver of claim of interest.

125. Duties collected from the buyer to be deposited with the Central Government

Section 28B of Customs Act 1962 provides that every person who is liable to pay duty under this Act and has collected any amount in excess of the duty assessed or determined or paid on any goods under this Act from the buyer of such goods] in any manner as representing duty of customs, shall forthwith pay the amount so collected to the credit of the Central Government.

Correspondingly, Section 11DD of Central Excise Act & Section 73B of Finance Act provide that where such excess amount is collected the person liable to pay the amount to Central Government shall, in addition to the amount, be liable to pay interest at such rate not below 10%, and not exceeding 24%/36% per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the amount ought to have been paid under this Act, but for the provisions contained in sub-section (3) of section 11D/ 73A, till the date of payment of such amount

Issue

The provision for charging interest provided in Excise/ Service Tax is not provided for Customs.

Suggestion

It is suggested that provisions of charging interest be applied in these cases also as in the case of Excise/ Service Tax Law.

126. Calling for information or scrutiny by the officers is largely unregulated.

If paper based communication is made, the information shall be printed on the officially printed security paper which shall be serially numbered. The usage of these security printed papers shall be linked with the cases of scrutiny, etc. Officers shall be made accountable for any missing papers. Also public

awareness shall be given that assessees shall respond only to such notices printed on official high security papers.

Issue

The process of calling for information or scrutiny by the officers needs regularization. The officers are not authorized for misusing their powers to run an unofficial scrutiny and harassing the assessee. Thus business friendly tax administration would come into play.

Suggestion

It is suggested that suitable modification be made in the provisions of the law to avoid the issue. Any electronic communication from the Department to the assessee be made only through system generated mails and sent through official IDs. Such mail generating system will keep a track of the case proceedings till its closure.

127. 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.

128. Valuation of goods imported from related overseas entities

Value declared for goods imported from related overseas entities are subject to examination by the Special Valuation Branch (SVB). Based on the examination of the information/ documents submitted by the importer, SVB issues necessary orders for acceptance of declared value. Pending completion of the process, the imports are provisionally assessed to Customs duty and are subject to Extra Duty Deposit of generally 1%.

In terms of Customs *Circular No 1/98-cus dated 1 January, 1998* as amended by *Circular No 11/2001-cus dated 23 February, 2001* ('SVB circulars'), the investigation and finalization of assessment should be completed within four months from

the date of reply to the questionnaire and in the event, no decision is taken within four months, the Extra Duty Deposit should be discontinued.

However, in practice the SVB proceedings due to various reasons are taking considerable time in completion ranging upto 1 year. Given this delay in closure of SVB proceedings, the importers are facing financial burden even though no further information/ document requirement is pending from the importer.

Suggestion

- *Suitable amendment should be made in law to provide for time bound SVB proceedings rather than outlining it under a Circular.*
- *Similarly, amendment be made to provide that if proceedings are not closed within a period of four months, Extra Duty Deposit should be discontinued.*
- *Alternatively, since Customs have moved to a Self-Assessment Post Import Audit Regime, the valuation proceedings can form part of post import audit rather than a pre-audit proceeding.*

129. Dispensing 1% EDD in case of Related Parties imports

Special Valuation Branch is a Branch of the Custom House, specialising in investigating the transactions involving relationship between the supplier and the importer and certain other special features like Technical Collaboration between the parties, etc. Special Valuation Branch examines the influence of relationship on the invoice value of the imported goods in respect of transactions between related parties. All those importers who are having relationship with the suppliers or those who are having Technical Collaboration, etc., shall furnish a declaration about the relationship in the GATT declaration form at the time of filing of Bill of Entry in the Appraising Group. On examination of the circumstances of sale and keeping in view the invoice value of identical or similar goods, the group will make a reference to Special Valuation Branch for further investigation of influence of relationship on assessable value.

On receipt of the reference from Appraising Groups, the case is registered in Special Valuation Branch and a PD Circular for provisional assessment is issued. Copies of the same are issued to the importer and to the Appraising Groups as

well. The importer shall indicate the PD Circular No. at the time of provisional assessment of all their imports in the Appraising Group and execute PD Bond with 1% Extra Duty Deposit on the assessable value of the goods.

Issue

The practice of loading 1% EDD in case of related party transactions cause undue hardship to the assessees. When the customs department has data on various goods being imported, transaction value must be accepted as it is. Also the same may be compared with similar transactions between unrelated parties.

Suggestion

It is suggested that the requirement of executing PD Bond with 1% Extra Duty Deposit on the assessable value of the goods be dispensed with

130. Suspension or revocation of licence of Custom House Agent

(1) The Commissioner of Customs may, subject to the provisions of regulation 22, revoke the licence of a Customs House Agent and order for forfeiture of part or whole of security, or only order forfeiture of part or whole of security, on any of the following grounds, namely :-

(a) failure of the Customs House Agent to comply with any of the conditions of the bond executed by him under regulation 10;

(b) failure of the Customs House Agent to comply with any of the provisions of these regulations, within the jurisdiction of the said Commissioner of Customs or anywhere else;

(c) any misconduct on his part, whether within the jurisdiction of the said Commissioner of Customs or anywhere else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station.

(2) Notwithstanding anything contained in sub-regulation (1), the Commissioner of Customs may, in appropriate cases where immediate action is necessary, within fifteen days from the date of receipt of a report from investigating authority, suspend the licence of a Customs House Agent where an enquiry against such agent is pending or contemplated.

(3) Where a licence is suspended under sub-regulation (2), notwithstanding the procedure specified under regulation 22, the Commissioner of Customs may, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs House Agent whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs House Agent.

Issue

Until final disposal of finding against the CHA, license cannot be suspended. Threat of suspension coupled with delay in disposal of appeals is being resorted to as can be seen from the large number of matters involving CHA Regulations pending before Tribunal.

Suggestion

It is suggested that operation of regulation 20 be restricted only to cases where stay from the operation is not granted by a Court or Tribunal.

131. Determination of Assessable Value for levy of Export Duty for Final Assessment of Provisionally filed Shipping Bill

There is no set mechanism or rules prescribed specifying the methodology for computing assessable value for the purpose of levy of Export duties as defined for valuation of imported goods.

In this regard, it has been observed that custom authorities are taking their own different stands for finalizing the value for the purpose of computing Export duties. The same is also not uniform at different ports.

Custom Valuation (Determination of value of Export Goods) Rules, 2007 brought vide *Notification No. 95/2007-Cus (NT) Dated 13/9/2007* also not describe the methodology for determining the assessable values.

There has been no time line defined to do final assessment of provisionally assessed shipping bills, departmental officers are taking their own time to make the final assessments.

Suggestion

It is suggested that suitable rules may be prescribed for the purpose of determination of assessable value, specifying the adjustment to be made with components like changes in the value of goods, freight components etc.

132. 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.

133. 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.

134. Amendment in Shipping Bill filed or cancellation of Shipping Bills filed

Section 149 does not specify the extent of amendment allowed in a Shipping Bill filed against which Goods are not exported. It has been observed that for any change request in shipping bill, Custom Authorities are insisting for cancellation of shipping bill and to submit a fresh shipping bill for incorporating the changes.

Further, export duty already paid on cancelled Shipping Bill is not allowed to be adjusted against export duties to be paid against new shipping bill and there is considerable delay in processing and refunding of export duties, paid against cancelled Shipping Bill and is granted after submitting lot of documents and procedural hassles.

Suggestion

- *It is suggested that suitable amendments be made in section 149 specifying the changes to be allowed in Shipping Bill and documents submitted.*
- *Further, it is suggested that suitable amendments be inserted for allowing adjustment of export duty paid on cancelled Shipping Bill and Short Shipments.*
- *It is also suggested that a set of rules may be prescribed providing methodology to be adopted for amendment or cancellation of shipping bill at different stages like prior to Let Export Date, after issuance of Let Export Order.*

135. Rectification on genuine mistake made by Assessing Officer

The current provisions for rectification of mistake do not specify the scope and obligation on part of officer.

Suggestion

It is suggested to incorporate the scope of rectification of mistake in the assessment made by assessing officer.

136. 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.

137. 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)*

138. 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).

139. 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 looses 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.

140. 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.

141. 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 though 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.

142. 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.

143. Increase in limit of Duty Free Allowance

Customs Baggage Declaration Regulations, 2013 provide that Passengers of Indian origin and foreigners of over 10 years of age residing in India are allowed a Duty Free Allowance of ₹ 45000 presently.

Issue

Considering the INR vs USD rate the said limits comes up to be very low

Suggestion

It is suggested that the limit of Duty Free Allowance be enhanced from ₹ 45000 to ₹ 75000.

144. 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

145. Reduction in CST Rate and rate of declared goods

The CST rate has remained unchanged at 2%. Further, rate on declared goods is enhanced from 4 per cent to 5 per cent. Declared goods are of special importance like cereals, coal and coke, cotton, crude oil, sugar, textiles, jute, iron and steel, tobacco products, oil seeds, pulses, LPG etc. Increase in rate has increased the cost of such special importance items especially when they are used for the domestic purpose having no VAT benefit.

Suggestion

It is suggested to reduce CST rate to 1% and bring down maximum CST rate of declared goods to 4%.

146. 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 EI/EII 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.*

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

- *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 of .....in which the goods Covered by this Form are/will be delivered."*

F. OTHERS

148. Concessions to Special Economic Zones (SEZ)

Section 50 of SEZ Act, 2005 provides that the State Government may, for the purposes of giving effect to the provisions of this Act, notify policies for Developers and Units and take suitable steps for enactment of any law:-

(a) granting exemption from the State taxes, levies and duties to the Developer or the entrepreneur;

(b) delegating the powers conferred upon any person or authority under any State Act to the Development Commissioner in relation to the Developer or the entrepreneur.

Issue

Presently, as the above provisions are discretionary, there is no mechanism to regulate the state governments in extending concessions to SEZ as envisaged in SEZ Act and Rules. Due to lack of co-ordination between central and state governments the concessions like supply of goods without payment of CST is being denied by many state governments resulting in added cost to such units.

Suggestions

It is suggested that the above provisions be made mandatory by amending Section: 51 of the SEZ Act to provide that the provisions of this Act shall have effect notwithstanding anything contained in any state tax laws.

149. Introduction of annexures in Central Excise & Service Tax returns for capturing Sales & Purchase details to align with the proposed GST regime

Presently, in most of the States, VAT dealers are required to provide their sale/ purchase details while filing of VAT returns.

Suggestions

- *It is suggested that under present scenario also for Service Tax & Central Excise summarized details of invoices be required to be submitted through the ACES website along with the Service Tax/ Excise returns. This will provide better*

transparency, reduce litigation and would also be in line with the proposed GST regime.

- *ACES to have facility of filing Single Return for all the factories or premises of an assessee instead of independent return for each factory or premises. This will also enable ease of doing business & will be in line with consolidated returns under proposed GST regime.*

150. 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.

151. Jurisdiction of new CESTAT Benches be modified

CBEC has set up new CESTAT Benches at Allahabad, Chandigarh & Hyderabad to reduce the pendency of cases and enable their fast track disposal. Jurisdiction of these benches would be determined with reference to the Jurisdiction of respective High Courts which may pose problems to the assessees. At present, CESTAT is having 5 benches at New Delhi with jurisdiction over entire north India. The new benches of Allahabad & Chandigarh are proposed to have jurisdiction over entire states of Uttar Pradesh, Punjab, Haryana, Himachal

Pradesh and Jammu & Kashmir. Thus jurisdiction of CESTAT, New Delhi would be confined to Delhi, Rajasthan, Madhya Pradesh & Chhattisgarh with comparatively fewer cases.

Suggestion

Jurisdiction of new CESTAT Benches at Allahabad & Chandigarh be modified to exclude Delhi – NCR region i.e. Gurgaon, Faridabad, Noida, Ghaziabad etc. This will be reasonable as well as practical as trade and industry people from Noida, Ghaziabad, Faridabad and Gurgaon will not be made to travel to Allahabad or Chandigarh for getting their appeals decided by Tax Tribunals. This would also be in line with the jurisdiction of Delhi ITAT Benches which duly extends to Noida, Ghaziabad, Faridabad and Gurgaon.

152. Waiver from penalty if duty and interest paid before service / issue/ receipt of Show cause notice under different statue

The Finance Act, 2015 has granted complete waiver from penal provisions in cases not involving fraud, collusion, willful misstatement, suppression and contraventions of provisions with the intention to evade duty in the following manner:

Section 76 of the Finance Act now provides where service tax has not been levied or paid, or has been short levied or short paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or willful misstatement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent. of the amount of such service tax:

Provided that where such service tax and interest is paid within a period of thirty days of–

(i) the date of **service** of notice under sub-section (1) of section 73, no penalty shall be payable;"

Section 11AC(1) of Central Excise Act, 1944 as amended provide that ….(a) where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, for any reason other than the reason of fraud or collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of section 11A shall also be liable to pay a penalty not exceeding ten per cent. of the duty so determined or rupees five thousand, whichever is higher:

Provided that where such duty and interest payable under section 11AA is paid either before the issue of show cause notice or within thirty days of **issue** of show cause notice, no penalty shall be payable…."

Section 28(2) of Customs Act, 1962 as amended provides that where notice under clause (a) of subsection (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of **receipt** of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said **notice is served** under clause (a) of subsection (1) shall be deemed to be concluded.";

Issue

With regards to show cause notice the usage of the word 'service' in Service tax, 'issue' in Central Excise and 'receipt' in Customs, will lead to interpretational disputes and frivolous litigation which does not seem to be the intention of the Government. This is evident from the TRU Letter II annexed to the Budget documents, wherein these words have been used interchangeably.

The difference between the meaning of the terms 'issue' and 'service' of notice cannot be ignored. In legal parlance distinction exists and its significance is high. 'Issue' of notice cannot be same as the 'service' of notice. The 'service' of notice ideally means the time when the delivery of notice is complete in the hands of the Noticee. On the other hand, 'issue' of notice would happen when its delivery is merely initiated. There may be a situation that a notice may be issued today, but may be served 2-3 years later.

Suggestion

The provisions under the three statue be harmonized so as to provide complete waiver from penal provisions where tax/ duty and interest is paid within 30 days of the ***'receipt'*** *of the notice rather than 'issue' of notice.*

153. 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 (assessees). 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.

154. 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 assessees 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.

155. 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.

156. 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.

157. 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 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, assessees 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

Addressee ….Name 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 & G[1] in Form No. 2 have been prepared in all material respects in accordance with the applicable service tax laws except the following[2]:

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

1 As may be applicable.

2 To be given only if such difference exists.

payable is in accordance with the books of accounts, 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 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 relationship	Nature of Transaction, 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 *vis-a-vis* 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? 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 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 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%**			
5A	Works Contract Services (works contract related to moveable property - 70% value)	**50%**			
5B	Works Contract Services (residuary	**50%**			

	works contract -60% value)				
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%**			
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%			
	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')			

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)]			

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: