

# FIPI



Federation of Indian Petroleum Industry

## **GST Recommendations 2020 - 21**

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## EXECUTIVE SUMMARY

SL no.	Section	Suggestion	Pg Ref
<b>Goods and Services Tax (GST)</b>			
1.	Inclusion of petroleum products ie Crude Oil, Natural Gas, Petrol (MS), Diesel (HSD) and ATF under GST	The excluded petroleum products viz. Crude, Natural Gas, HSD, MS and ATF should be brought under levy of GST at appropriate rate so that the seamless credit is available to Petroleum Industries also.	1
<b>Upstream</b>			
2	GST on Royalty under PSCs in Upstream	Government may issue a circular clarifying that royalty paid under PSC is not service per se	1
3	Difficulty in availing Credit of Capital Goods being used for Taxable as well as Exempted Supplies	Rule-43(1)(h) of CGST Rules, 2017 may be amended suitably so that interest is not levied on reversal of ITC on monthly basis in case of Capital Goods commonly used for taxable and exempted supplies.	2
4	GST on Cash Call	Circular No.35/9/2018-GST dated 5.3.2018 issued by TRU requires further modification considering the view point as above of the Trade & Industry.	2
5	Customs duty on obsolete goods	Amendment is required in the notification No. 3/2017-IGST (Rate) and in the CGST, SGST and UTGST notifications.	3
6	Movement of goods from onshore to offshore beyond 12 Nautical Miles and vice versa for petroleum operation is not a supply	Supply of goods from onshore to offshore beyond 12 nautical miles and vice versa in connection with petroleum operation may be included under Schedule-III of the CGST Act.	5

7	CGST rate in respect of offshore works contract relating to Oil and Gas E&P in offshore area beyond 12 Nautical Miles	Since oil and gas exploration and production business intrinsically capital intensive with high degree of risk coupled with success rate just 10%, considering these aspects the CGST rate of composite works contract should be 6% for all locations.	5
8	GST exemption in case of Production Level Payment (PLP) on Coal Bed Methane (CBM) production payable to Central Government	Suitable amendment is required in the above notification to cover up PLP and extending the exemption from 1.7.2017.	6
9	Uniformity in merit rates between Onshore and Offshore Rigs	To avoid wide disparity of rate it is requested that both may be brought under the uniform rate of GST at 5%. To maintain uniformity in the Offshore and onshore Drilling Rigs.	6
10	Works Contract	We request that GST on on-shore works contracts relating to oil and gas exploration and production (E&P) should also be reduced to 12%, in line with Offshore works contract. To maintain uniformity between Offshore and onshore operations.	7
<b>DOWNSTREAM</b>			
11	Relief by way of exemption /lower rate of GST on input used in refining and marketing of petroleum products	We suggest for granting exemption / lower GST rate on procurement of major Capital Goods, input and input services for use in Refining, Marketing & Distribution of petroleum products in order to minimize the impact of GST, like <ul style="list-style-type: none"> <li>a. BS-VI MS &amp; HSD projects</li> <li>b. Reformate/ DHDT/ SRGO and other feeds for inter unit transfer for the manufacture of MS/HSD</li> <li>c. Regasification of LNG – from 18% to 5%</li> </ul>	7

		d. Procurement for setting up ethanol production facility	
12	Levy of GST on the LPG and SKO based on indenting	It is suggested that to avoid any ambiguity, suitable clarification may be inserted in the GST law that applicability of rate of GST on LPG and SKO between OMCs, Stock transfer from one state to another and import would depend upon ultimate use of the LPG and SKO.	8
13	Clarification for supply of Aviation Turbine Fuel (ATF) to foreign going aircraft as Exports / Zero Rated supply	<p>Till the time ATF is included under the GST, we would like to request for insertion of suitable explanation as per following alternatives to amend the definition of export of goods or zero rate goods under the IGST Act to enable us to avail ITC treating the supply as export:</p> <p>a. Amendment sought in export of goods definition u/s 2(5) of IGST Act: “export of goods”, with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes supply of Aviation Turbine Fuel to a foreign going aircraft”</p> <p>b. Alternatively, the definition of Zero-Rated supply, explained under Section 16 of IGS Act, may be amended to include the following supplies:</p> <ul style="list-style-type: none"> <li>• export of goods or services or both, or</li> <li>• supply of goods or services or both to a Special Economic Zone developer SEZ unit</li> <li>• supply of Aviation Turbine Fuel to a foreign going aircraft”</li> </ul>	8

14	Clarification on documentation for supplies to Special Economic Zone (SEZ) units under GST	Clarification circular to be issued for the documentation required for supplies to SEZ for establishing the proof of export to avoid any litigation at a later date.	9
15	Admissibility of Input tax credit in the manufacturing state incurred by the exporter for positioning of the Non GST goods for Export	Input tax credit to be allowed in the manufacturing state incurred by the exporter for positioning of the Non GST goods for Export, when the factory and export ware house are situated in different political states. This would provide relief to the exporters from burden of incurring GST taxes involved in positioning of the goods in the export warehouse as per the fundamental principles that taxes and duties are not to be loaded in case of exports.	9
16	Clarification regarding GST Rate on Liquefied Petroleum Gases (LPG) supplied to OMCs for onward supply to household domestic consumers	It is requested that suitable clarification may be issued that GST rate @ 5% on domestic LPG is applicable on LPG supplied by refiners/fractionators (like GAIL/ONGC) to OMCs for ultimate supply to household domestic consumers during the period from 01.07.2017 to 25.01.2018 in line with MOPNG letter ref. No. P 20023/2/2011-PP dated 23.07.2013 in terms of original entry 165 itself.	10
17	Double impact of GST on procurement and subsequent transfer of Pipes procured for laying other cross country Pipeline network	<p>In order to avoid double taxation under GST regime, it is suggested that an amendment / suitable clarification may be provided to the effect that:</p> <ol style="list-style-type: none"> <li>a. Since input tax credit is specifically denied on goods purchased for construction of pipeline, any subsequent stock transfer of such goods by one registered unit to another registered unit of same entity will not be liable to payment of GST</li> </ol>	11

		<p>b. Alternatively, a mechanism may be provided to allow Input Tax Credit (ITC) to the transferor unit of same entity at the time of Stock Transfer of such goods to another unit of same entity in line with the mechanism provided for airline industry. It is submitted that in the similar circumstances vide Circular reference no. 16/16/2017 dated 15.11.2017, the input tax credit (ITC) of aircraft engines/Parts has been explicitly allowed on inter-state transfer of these goods by airline industry.</p>	
18	<p>Permit Oil Marketing Companies (OMC) to pass on the benefit of GST charged on throughput fees for fuelling the aircraft for domestic operation</p>	<p>OMCs should be permitted to pass on the benefit of GST charged on throughput fees for fuelling the aircraft for domestic operation as this would eliminate the cascading effect of tax and facilitate availment of the input tax credit (ITC) for the Carrier. Upfront exemption to GST on throughput fees pertaining to supply of ATF to foreign bound aircrafts may be notified.</p> <p>Another option is Government may also consider issuing a notification for exclusion of through put charges and storage charges component for the purpose of valuation under the state VAT/sales tax laws.</p>	12
19	<p>Supply of LPG by standalone Refineries/ Fractionators to PSU Oil Marketing Companies (OMCs) for the period 1/07/2017 to 24/01/2018.</p>	<p>It is submitted that suitable clarification may be issued so that transactions between PSU OMCs, SARs/Fractionators with PSU OMCs, inter-state stock transfers of PSU OMCs, and PSU OMCs to the retailers for specific end use for LPG are covered under entry no. 165 &amp; 165A of the Schedule I for the levy of 5% GST right from 1st</p>	12

		July 2017 and disputes raised by the field formation are avoided	
20	Exempt GST on sale of lubricants to foreign bound vessels	It is requested that supply of lubricants to foreign bound vessels be treated as exports and exempt from tax as the recipient of the goods is situated outside India, the destination of the vessel is outside India and the revenue for such supplies results in a positive NFE. If not exempt, it is requested that lubricants be treated on par with bunker fuel and be given the same benefit of lower GST rate as bunker fuel to boost exports.	13
<b>Natural Gas</b>			
21	Rationalization of GST rate on services of transportation of Natural Gas through pipeline	<p>a. It is proposed that GST @ 5% applicable on the services of transportation of goods by pipeline may be provided with ITC Benefit.</p> <p>b. This will lead to lower cost of transportation of Natural Gas and will help in promotion of cleaner source of energy for Power and CNG sector where ITC of GST paid on transportation of Natural Gas is not available. This will also enable Natural Gas to compete with other alternative polluting fuels like Furnace Oil, Naphtha, etc.</p>	14
22	Rationalization of GST rate for construction of cross country petroleum and gas pipeline	It is requested that input credit of applicable GST on such goods and services should be permitted, alternatively they should be exempted or considered at lower rate of 5%.	14
23	Taxation on the net delivered quantity after accounting for the pre-	It should be clarified that the Service Tax / GST charges for regasification of LNG being a volatile product are always on the net delivered quantity	15



	estimated process losses for regasification	after taking into account the pre-estimated process losses during the re-gasification process.	
24	As an interim measure, till decision on inclusion of NG reached, removal of Tax on Freight Charges for LNG import	It is recommended that the GST on import freight for all LNG cargoes be withdrawn to promote the usage of environmentally clean fuel in the country.	16
25	As an interim measure, till decision on inclusion of Natural Gas reached, declared goods status for Natural Gas / RLNG in line with coal, crude oil, Liquefied Petroleum Gas (LPG)	Being a primary energy source like crude oil and coal, natural gas should be treated at par and the same tax status granted, as an interim relief.	16
26	LNG loaning and borrowing of in-tank quantity, at LNG terminals handling co-mingled goods with virtual segregation of title stocks, should be specifically kept out of purview of taxable transactions	Exemption from any taxing provision for Loan / Borrow transactions of In Tank LNG to enable optimum utilization of LNG Terminal facilities in India and facilitate higher trade and consumption of this carbon efficient fuel by India entities.	17
27	Exemption of GST on service of Sea transportation for LNG by vessel and Rationalization of GST on the service of regasification of LNG	In order to promote gas-based industry in India, it is suggested that transportation of LNG by a vessel / ship from a place outside India to India under voyage charter basis as well as time charter basis may be exempted from levy of GST. Similarly, the activity of regasification of LNG also may also be exempted from levy of GST.	18
28	Input Tax Credit (ITC) not eligible on goods / services	a. Considering that GST is applicable on the output supply of services from such Natural Gas / LPG pipelines, Input Tax Credit (ITC) on	18

	used for construction of Pipelines Background	<p>goods / services used for construction of Natural Gas / LPG pipelines may be allowed under GST laws to avoid cascading and inflationary effect</p> <p>b. The definition of term “factory” may be provided under the GST law in line with definition under the Central Excise Act.</p>	
<b>General</b>			
29	Clarification regarding GST Rate on Compressed Biogas (CBG)	It is proposed that a clarification regarding GST rate on CBG may be issued so as to avoid any future dispute that CBG industry may face. Further, in case ‘Biogas’/ CBG (Compressed Biogas) is supplied and transported through a common carrier pipeline or any other common transport or distribution system and becomes co-mingled and fungible with other gas in the pipeline/transportation/storage system and such gas is taken out from the system in the equal energy terms, or supplied through common dispensing unit, it may be considered as supply of ‘Biogas’/ CBG (Compressed Biogas) and may be taxable under GST.	20
30	Amendment in explanation inserted to Chapter V- Input Tax Credit of CGST Rules, 2017 to determine the value of Non-GST supply	<p>Considering the above, it is suggested that value of these non-GST petroleum products should be included in the Non-GST turnover of only in the manufacturing State and suitable amendment to be made in clause 2 of Explanation inserted to the end of Chapter 5- Input Tax Credit of CGST Rules, 2017, by insertion of a new sub-clause as per follows;</p> <p>“Explanation.- For the purpose of this Chapter,-</p>	20

		<p>(2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17-</p> <p>(c) the value of non-taxable goods i.e. MS (Petrol), HSD, ATF, Crude Oil and Natural Gas shall be included in the exempt turnover of only in the state where such goods are manufactured”</p>	
31	Proportionate reversal of credit on “Capital goods” for every tax period	It is requested to waive the interest payable in cases where surplus GST ITC is availed by the taxpayer in case of common capital goods.	21
32	Non-payment of interest for reversal of common credit attributable towards exempted supplies	It should be clarified that the provision for charging interest should not apply to such cases where credit is not actually utilized but merely availed thereby not causing any revenue loss to the Government.	21
33	Non-payment of GST on “Ocean freight” (as an importer)	In case of procurement of goods on CIF basis, the importer of goods is liable to pay GST under reverse charge on Ocean Freight. Further, while calculating the customs duty, assessable value includes the freight cost. Thus, there is double taxation on the ocean freight.	22
34	Canteen Services	During Service tax regime canteen services maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air heating at any time during the year.” were exempt from service tax. Similar exemption may be provided under GST regime.	22
35	Reverse Charge Mechanism (RCM) facility should be applicable for registered dealers for all goods and services	RCM facility should be made optional for recipient towards purchase of goods / services received from registered dealers. This will enable the recipient of service / goods to ensure that the GST amount will be remitted to the Department	22

		on a timely manner and due credit on the same may be availed by the recipient of goods/service. This option would also facilitate the easier compliance (i.e GST input tax credit reconciliation and matching GSTR 2A and 3B) in terms of availing Input tax credit.	
36	Inclusion of Electricity production and transmission in GST regime.	It is recommended that electricity generation, transmission and distribution should be classified under the GST regime.	22
37	ITC on rented/leased vessel/reg	Amendment to section-17 (5) (aa) is required in the following manner: (A) further supply of vessels for business activity	23
38	GST: Concessional rate of 5% on Renewable Energy devises and plants – currently applicable to Bio Gas and WTE projects to be extended to ‘Drop in’ Biofuels. GST for all Biofuels to be reduced to 5% to promote investments in and use of Biofuels. HSN codes need to be assigned to all the Bio-products including Bio-Gasoline, Bio-CO2, Biochar, etc.	Concessional rate of 5% on Renewable Energy devises and plants – currently applicable to Bio Gas and WTE projects to be extended to ‘Drop in’ Biofuels. GST for all Biofuels to be reduced to 5% to promote investments in and use of Biofuels. HSN codes need to be assigned to all the Bio-products including Bio-Gasoline, Bio-CO2, Biochar, etc.	23
39	Norms for sale of Bio CNG	It is recommended that norms for sales of bioCNG through city gas grid must be developed and implemented: <ul style="list-style-type: none"> <li>• Norms for quality (composition, pressure etc.) and testing standards for injecting bioCNG in grid must be develop</li> </ul>	24

		<ul style="list-style-type: none"> <li>• Provisions must be made to inject bioCNG in gas grid, at a point closest feasible to biogas plant</li> <li>• Capacity in gas pipeline must be made available on preferential basis for bioCNG</li> </ul> <p>Customers with grid connectivity, that enter into offtake arrangements with bioCNG plants through pipeline, must be able to avail GST credit for gas purchased</p>	
40	Allow EDI shipping Bill for ATF supplies	It is suggested to allow the filing of EDI shipping bills based on the actual supply of the quantity of ATF and get away with the customs assessment for ATF supply to foreign bound airlines to bring more transparency and accuracy in data and ease of doing business.	24

## **Goods and Services Tax (GST)**

### **1. Inclusion of petroleum products ie Crude Oil, Natural Gas, Petrol (MS), Diesel (HSD) and ATF under GST**

#### **Background**

Presently the specified petroleum products (viz Crude Oil, Natural Gas, HSD, MS & ATF) are excluded from levy of GST. Consequently, the credit of GST paid on inward supply of goods and services, are not available which becomes a cost to E&P industry. Besides there is an issue of dual compliance (both erstwhile tax laws and GST) by E&P Companies which needs to be resolved for ease of doing business.

#### **Suggestion**

The excluded petroleum products viz. Crude, Natural Gas, HSD, MS and ATF should be brought under levy of GST at appropriate rate so that the seamless credit is available to Petroleum Industries also.

### **Upstream**

#### **2. GST on Royalty under PSCs in Upstream**

#### **Background**

Govt. of India has ownership rights over the crude and natural gas contained in the exploration area. Even if it is assumed that government has granted the right to extract the crude and gas to a distinct person represented by UJV, since the mining lease is a right vested in immovable property, it is a contract for transfer of immovable property. Then at best it may be subject to stamp duty if applicable, on transfer of immovable property.

Besides the above, the upstream sector mainly regulated by the Production Sharing Contract (PSC). The true nature of the PSC is that each PSC is an entrepreneurial venture where there is an element of risk and uncertainty, wherein each of the parties to the PSC contribute resources, time and effort in an entrepreneurial stream to maximize their profits from the co-venture, in which profits are reflected in the form of the Profit Petroleum. The O&G entities and the Government are joint ventures / co-ventures under the PSCs, and the relationship between the parties is not that of service provider and service recipient.

Thus, royalty paid to the Government under the PSC is economic profit shared under the PSC. As royalty is a part of profit share of the Government, it is not a service, so not taxable under the erstwhile service tax law or under the GST law.

## **Suggestion**

Government may issue a circular clarifying that royalty paid under PSC is not service per se.

### **3. Difficulty in availing Credit of Capital Goods being used for Taxable as well as Exempted Supplies**

#### **Background**

As per Rule-43 of CGST Rules, the entire Credit of GST paid on Capital Goods being commonly used for taxable as well as exempt supplies can be availed. However, as per Rule-43 (1) (h) of CGST Rules, 2017, the interest would be required to be paid on amount to be reversed on monthly basis till 60 months. Further, the issues get more complicated where substantial number of capital goods are purchased at different point of time which requires detailed calculation in respect of each such capital goods for the purchases of reversal along with interest. Further, in petroleum Industries, interest component would be much higher than the Credit amount due to higher exempted turnover on account of supply of crude oil & natural gas.

Considering the fact that GST is leviable on supply of majority of goods and services, it can be concluded that Rule-43 of CGST Rules is not applicable in case of other major industries and seamless credit of GST on Capital Goods is available.

#### **Suggestion**

Rule-43(1)(h) of CGST Rules, 2017 may be amended suitably so that interest is not levied on reversal of ITC on monthly basis in case of Capital Goods commonly used for taxable and exempted supplies.

### **4. GST on Cash Call**

#### **Background**

Circular No.35/9/2018-GST dated 5.3.2018 issued by TRU clarifies that cash call is merely a transaction of money and hence not in nature of “consideration” for any taxable service.

At the same time, it is also clarified that operator when recovering the cost appropriated towards own resources from other members in their participating interest ratio would be treated as “service”.

Industry is of the view that operator’s own resources used for joint petroleum operation cannot be taxed under GST for the following reasons:

- i) PSC signed by the GOI with each PI Holder does not create a distinct entity. It is only a Consortium/UJV.

- ii) Joint development or operation of oil and gas Block results only in an operational integration but does not mature into a legal integration like Association of Person.
- iii) There is no service contract between UJV and the operator. Hence there is no service provider and service recipient relationship.
- iv) As per judicial decisions the common expenditure shared/reimbursed is not a service irrespective mode, manner or method of payment.
- v) Sharing of expenses for the activity performed in accordance with PSC cannot constitute a service.
- vi) Cash Calls are akin to capital contribution or investment made by each member to JV.

The manpower deployed by the Operator to carry out the operation is not an arrangement separate from joint operation. It is the skill contribution of the Operator to fulfil its obligation to joint operation and thus creates employer-employee relationship.

### **Suggestion**

The circular requires further modification considering the view point as above of the Trade & Industry.

## **5. Customs duty on obsolete goods**

### **Background**

Govt. of India vide Customs Notification No. 50/2017-Cus dated 30.06.2017 has provided levy of customs duty at concessional rate of 5% (BCD-Nil, IGST-5%) under Sl. No. 404 on import of specified goods (as per List-33 of said notification), subject to condition specified therein (Condition No.-48 of said notification) such as on production of Essentiality Certificate (EC) from DG, Hydrocarbons (DGH) etc. Similar notifications have been issued under GST Law as well [(Notification No. 3/2017-IGST (Rate)] where 5% GST (IGST or CGST & SGST/UTGST) is levied, subject to same conditions.

E&P companies or its sub-contractors import material for laying of pipe-line or construction of facilities or one-year spares part of major equipment/facilities etc. on estimated basis by availing the benefit of concession or exemption of custom duty in terms of customs notifications issued from time to time. In certain cases, some of the excess material remains after completion of contract. As for example, for laying of pipe line, the imported bare pipes of specified diameter and specifications are initially converted into marine pipes and laid down on the sea bed. In some of the cases, the small quantity of marine pipe becomes excess. Due to its odd size or specification, such excess pipes are occasionally not usable in the industry and remain in storage yard for long time occupying valuable space besides carrying insurance and other running cost.

During exploration phase also, the exact requirement of materials for such activities is difficult to be determined for the following reasons.



- i) Number of Wells projected for one year are considered for procurement of short lead time items and Drilling Plan for up to 2-3 years look ahead is considered for procurement of long lead items like- wellhead, casing, tubing, etc.
- ii) G&G data is considered to work out the tentative Well construction. Based on inputs from exploratory phase, requirement of materials may get changed for development phase.
- iii) Material requirement also covers contingencies inbuilt in the Well construction like – flush casings, liner hanger, casing hanger, odd size drill bits etc.
- iv) Some of the items like expandable tubular, hard formation drill bits, etc. are procured as insurance items for the Wells.
- v) Material requirement may get changed due to change in design at a later date post geo-mechanical / completion design study.

Over a period of time this has resulted into accumulation of surplus. These surplus materials are no more required for petroleum operation. Normally, industry declares such items as scrap if not usable and lying for long time.

Accumulation of unused inventory is a universal problem for E&P industry. The surplus inventory has been accumulated over the period of project construction/exploration activity. It has not been the intention to import excess material without payment of duty with sole motive to earn profit by selling the same. Needless to mention the requirement of materials for proposed projects is scrutinized at various levels including Directorate General of Hydrocarbons, Govt. of India at the time of issuance of Essentiality Certificate / PAC. Therefore, no E&P companies would procure more than their projected requirement. Generation of some surplus after completion of project is therefore inevitable.

### **Suggestion**

Considering the ease of doing business and Swachh Bharat Campaign by Govt. of India, it is requested to amend Condition No. 48 (e) of Sl. No. 404 of Notification No 50/2017-Cus as under:

(e) where the goods so imported are sought to be disposed of as such, the importer or the transferee, as the case may be, may pay the duty of customs which would have been payable but for the exemption contained herein, on the depreciated value of such goods subject to the condition that the importer or the transferee, as the case may be, produces before the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, having jurisdiction over the port of import, a certificate from a chartered engineer duly endorsed by the authorised officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the said goods are no longer required for the petroleum operations or coal bed methane operations, and the depreciated value of the goods shall be equal to the original value of the goods at the time of import reduced by 5% calculated by straight line for each quarter of a year or part thereof from the date of clearance of the goods and rate of duty of customs shall be as applicable on the date of disposal.,

Similar amendment is required in the notification No. 3/2017-IGST (Rate) and in the CGST, SGST and UTGST notifications.

**6. Movement of goods from onshore to offshore beyond 12 Nautical Miles and vice versa for petroleum operation is not a supply**

**Background**

No storage place is available in the offshore location for storing goods required for petroleum operation. The drilling rig can only store the goods which are required for its own operation. In the offshore drilling activity, most of the time the supply vessel is used as a storage space for storing goods temporarily in addition to transfer of goods from onshore to offshore. During this movement the vessel travels from one GST territory to another with goods. Such movement of goods for petroleum operation should not be considered as 'supply'.

**Suggestion**

Supply of goods from onshore to offshore beyond 12 nautical miles and vice versa in connection with petroleum operation may be included under Schedule-III of the CGST Act.

**7. CGST rate in respect of offshore works contract relating to Oil and Gas E&P in offshore area beyond 12 Nautical Miles**

**Background**

CGST rate on composite supply of works contract in respect of offshore works contract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles has been reduced to 6% vide notification No.31/2017-CT (Rate) dated 13.10.2017.

Blocks located in the offshore location within 12 nautical miles or on-land Blocks or platform facilities located within 12 nautical miles are deprived of such concession.

**Suggestion**

Since oil and gas exploration and production business intrinsically capital intensive with high degree of risk coupled with success rate just 10%, considering these aspects the CGST rate of composite works contract should be 6% for all locations.

## **8. GST exemption in case of Production Level Payment (PLP) on Coal Bed Methane (CBM) production payable to Central Government**

### **Background**

Central Government share of “profit petroleum” due from petroleum operation is exempt from GST vide notification No.5/2018-Integrated Tax (Rate) and CGST notification No.5/2018 both dated 25.1.2018. However, this exemption is not available to Production Level Payment (PLP) on coal bed methane (CBM) production payable to the Central Govt.

There is no cost recovery mechanism in the CBM Contract. Hence in lieu of profit petroleum, the Central Govt. takes PLP. Since GOI share of profit petroleum is exempt from GST vide notification No.5/2018-Integrated Tax (Rate) and CGST notification No.5/2018 both dated 25.1.2018, on the same analogy no GST is also payable on PLP paid to Central Govt.

Even though the understanding of Industry could be that nature of PLP in CBM contract is the same as ‘profit petroleum” under NELP contract, in view of the language used in above notification i.e. “profit petroleum as defined in the contract entered into by the Central Government in this behalf”, there could be another view that the exemption in terms of above notification will not be available to PLP.

### **Suggestion**

Hence suitable amendment is required in the above notification to cover up PLP and extending the exemption from 1.7.2017.

## **9. Uniformity in merit rates between Onshore and Offshore Rigs**

### **Background**

Offshore Rigs are classified under HSN 8905 which is chargeable to merit rate of GST at 5%. Whereas Onshore rigs are classified under HSN 8430 which is presently chargeable to merit rate of GST at 18%.

### **Suggestion**

To avoid such wide disparity of rate it is requested that both may be brought under the uniform rate of GST at 5%. To maintain uniformity in the Offshore and onshore Drilling Rigs.

## **10. Works Contract**

### **Background**

GST rate applicable to on shore and off shore works contract initially was 18%.

The GST council has decided in its 22nd meeting held on 6th October,2017 to reduce the GST on works contract services to 12% in respect of offshore works contract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles

### **Suggestion**

We request that GST on on-shore works contracts relating to oil and gas exploration and production (E&P) should also be reduced to 12%, in line with Offshore works contract.

## **Downstream**

### **11. Relief by way of exemption /lower rate of GST on input used in refining and marketing of petroleum products**

#### **Background**

In the scenario wherein the major petroleum products i.e. MS, HSD and ATF is kept outside the GST regime, the input taxes paid on input, capital goods and input services is not available for set off to downstream sector of Oil & Gas. This has become an under-recovery to this sector.

#### **Suggestion**

In this regards, we suggest for granting exemption / lower GST rate on procurement of major Capital Goods, input and input services for use in Refining, Marketing & Distribution of petroleum products in order to minimize the impact of GST, like

- BS-VI MS & HSD projects
- Reformate/ DHDT/ SRGO and other feeds for inter unit transfer for the manufacture of MS/HSD
- Regasification of LNG – from 18% to 5%
- Procurement for setting up ethanol production facility

## **12. Levy of GST on the LPG and SKO based on indenting**

### **Background**

The GST rate for domestic LPG is 5% whereas for non-domestic LPG, tax rate is 18%. Similarly, GST rate for SKO (PDS) is 5% whereas for SKO (Non-PDS), tax rate is 18%. There is also import of substantial quantity of LPG for domestic end use purpose.

### **Suggestion**

It is suggested that to avoid any ambiguity, suitable clarification may be inserted in the GST law that applicability of rate of GST on LPG and SKO between OMCs, Stock transfer from one state to another and import would depend upon ultimate use of the LPG and SKO.

## **13. Clarification for supply of Aviation Turbine Fuel (ATF) to foreign going aircraft as Exports / Zero Rated supply**

### **Background**

Under the present form of GST, even though major petroleum products have been kept out of GST ambit, however, exports of such goods are considered 'Zero Rated' (u/s 16 of IGST Act) to enable them to avail Input Tax Credit on such exports to avoid exporting taxes.

While going through the GST provisions relating to Zero Rated supply, an ambiguity has arisen regarding supply of ATF to foreign going airlines. Under the GST provisions, the term 'exports of goods' have been defined, as taking goods out of India to a place outside India. Though, the ATF is supplied to a foreign going aircraft for the purpose of "consumption outside India" but may not get covered directly within the definition of export of goods to treat them as zero rated supply as it is being "supplied within India".

### **Suggestion**

Till the time ATF is included under the GST, we would like to request for insertion of suitable explanation as per following alternatives to amend the definition of export of goods or zero rate goods under the IGST Act to enable us to avail ITC treating the supply as export:

- Amendment sought in export of goods definition u/s 2(5) of IGST Act:  
"export of goods", with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes supply of Aviation Turbine Fuel to a foreign going aircraft"
- Alternatively, the definition of Zero-Rated supply, explained under Section 16 of IGST Act, may be amended to include the following supplies:

- ✓ export of goods or services or both, or
- ✓ supply of goods or services or both to a Special Economic Zone developer SEZ unit
- ✓ supply of Aviation Turbine Fuel to a foreign going aircraft”

#### **14. Clarification on documentation for supplies to Special Economic Zone (SEZ) units under GST**

##### **Background**

Prior to 01.07.2017, for supply of goods without payment of duty to SEZ units, ARE-1 was required to be prepared as per provisions of Rule 30 of the SEZ rules and Central Excise law. Bill of export along with ARE-1 was required to be prepared only in cases where claim of export entitlement were involved.

As per section 16 of the IGST Act 2017, supplies to SEZ are treated as zero rated supplies. Post 01.07.2017, preparation of ARE-1 for GST products is not relevant for goods covered under GST law. Further there is no clarity on the preparation of Bill of export with respect to supplies of GST goods to SEZ units and also the documents which might be required to substantiate the proof of export. In certain places the SEZ authorities are not willing to sign the bill of exports.

##### **Suggestion**

Clarification circular to be issued for the documentation required for supplies to SEZ for establishing the proof of export to avoid any litigation at a later date.

#### **15. Admissibility of Input tax credit in the manufacturing state incurred by the exporter for positioning of the Non GST goods for Export**

##### **Background**

As per section 16, Zero rated supply means export of goods and the state which exports the Non GST goods are eligible for ITC. However in case of movement of Non GST goods from manufacturing unit situated in one political state to Export ware house situated in another political state, GST ITC is not eligible, as such stock transfer movement is not termed as transaction under section 16 of the IGST Act 2017 in the manufacturing state even though the Central excise procedure is fully followed in such cases for movement of bonded product.

##### **Suggestion**

In view of above, Input tax credit to be allowed in the manufacturing state incurred by the exporter for positioning of the Non GST goods for export, when the factory and export ware house are situated in different political states. This would provide relief to the exporters from burden of incurring GST taxes involved in positioning of the goods in the

export warehouse as per the fundamental principles that taxes and duties are not to be loaded in case of exports.

## **16. Clarification regarding GST Rate on Liquefied Petroleum Gases (LPG) supplied to OMCs for onward supply to household domestic consumers**

### **Background**

- a) Under GST regime, GST @ 5% is applicable on LPG for supply to household domestic consumers or to non-domestic exempted category (NDEC) customers by IOCL, HPCL and BPCL at entry no 165 of schedule 1 of the notification no. 1/2017-Central Tax (Rate) dated 28.06.2017. In other cases, the GST is payable @ 18% on supply of LPG
- b) As per industry practice, GST @ 5% is applicable on the manufacture of LPG supplied to OMCs for ultimate supply to household domestic consumers. Accordingly, after introduction of GST Laws, the manufacturers of LPG are supplying LPG to OMCs @ 5% based on the end use certificates given by OMCs for domestic use.
- c) During Pre-GST regime, VAT was levied on LPG in similar manner and LPG for domestic use was attracting concessional rate of VAT. LPG for domestic use was included in the category of declared goods under section 14 of the CST Act 1956 under which there was upper ceiling of State VAT rate of 4% / 5%. The MoPNG had also clarified vide letter ref. No. P 20023/2/2011-PP dated 23.07.2013 to the effect that the LPG supplied in bulk as well as in cylinders by refiners/fractionators to OMCs for ultimate sale for domestic use will qualify as supply of LPG for domestic use by such refiners/fractionators.
- d) Subsequently, a new entry no. 165A had also been inserted w.e.f. 25.01.2018 to expand the scope of the concessional rate of GST @ 5% on LPG for supply to household domestic consumers by suppliers of LPG which was intended for private suppliers who were not covered under entry 165.
- e) The CBIC vide Circular No. 80/54/2018-GST dated 31.12.2018 again clarified at para 6 that GST @ 5% would be applicable to LPG supplied by fractionators like GAIL/ONGC to OMCs during the period from 25.01.2018 onwards i.e. date of notification whereby entry 165A. Since entry 165A was inserted with effect from 25.01.2018 to cover the LPG domestic supplied by private manufacturers, the clarification contained in para 6 is not proper and can-not be applicable to LPG supplied by fractionators like GAIL/ONGC to OMCs during the period from 01.07.2017 to 24.01.2018.
- f) However, the GST authorities have viewed that concessional GST rate @ 5% is not applicable on domestic LPG supplied by fractionators like GAIL/ONGC to OMCs during the period from 01.07.2017 to 24.01.2018 even when such supply was meant for ultimate supply to domestic household consumers and accordingly notices have been issued for the same in Gujarat. GAIL and ONGC both have filed in Gujarat High court against the notices issued by Gujarat authorities

## **Suggestion**

It is requested that suitable clarification may be issued that GST rate @ 5% on domestic LPG is applicable on LPG supplied by refiners/fractionators (like GAIL/ONGC) to OMCs for ultimate supply to household domestic consumers during the period from 01.07.2017 to 25.01.2018 in line with MOPNG letter ref. No. P 20023/2/2011-PP dated 23.07.2013 in terms of original entry 165 itself.

### **17. Double impact of GST on procurement and subsequent transfer of Pipes procured for laying other cross country Pipeline network**

#### **Background**

Under GST Laws, the input tax credit (ITC) is specifically denied on goods purchased for construction of pipeline laid outside factory premises. Thus, the goods required for construction of cross country pipeline such as pipes, pipe fittings, metering instruments etc. are not eligible for input tax credit (ITC) under GST regime.

In most cases, such pipe, pipe fittings, metering instruments etc. are procured in bulk in one State and thereafter stock transferred to other State for laying of pipeline network. Under the GST regime, such stock transfer of goods by one registered unit to another registered unit of same entity is a taxable supply and is subject to GST @ 18%. Thus, at each such stock transfer of goods, GST is applicable @ 18% at every stage. This result in double taxation on the same goods and increases the capital cost of Pipeline network.

#### **Suggestion**

In order to avoid double taxation under GST regime, it is suggested that an amendment / suitable clarification may be provided to the effect that:

- i. Since input tax credit is specifically denied on goods purchased for construction of pipeline, any subsequent stock transfer of such goods by one registered unit to another registered unit of same entity will not be liable to payment of GST.
- ii. Alternatively, a mechanism may be provided to allow Input Tax Credit (ITC) to the transferor unit of same entity at the time of Stock Transfer of such goods to another unit of same entity in line with the mechanism provided for airline industry. It is submitted that in the similar circumstances vide Circular reference no. 16/16/2017 dated 15.11.2017, the input tax credit (ITC) of aircraft engines/Parts has been explicitly allowed on inter-state transfer of these goods by airline industry.



## **18. Permit Oil Marketing Companies (OMC) to pass on the benefit of GST charged on throughput fees for fuelling the aircraft for domestic operation**

### **Background**

ATF is currently stored under the custody of Storage/ fuelling operators located at the airports. GST is levied and collected by on such storage charges and into plane charges.

As per the current provisions of the VAT/sales tax laws for the purpose of valuation both the components (i.e. through put charges and into plane charges and GST thereon) shall be considered, which is resulting in double taxation of the same transaction twice once under the GST and second time under the relevant state VAT/sales tax laws.

### **Suggestion**

OMCs should be permitted to pass on the benefit of GST charged on throughput fees for fuelling the aircraft for domestic operation as this would eliminate the cascading effect of tax and facilitate availment of the input tax credit (ITC) for the Carrier. Upfront exemption to GST on throughput fees pertaining to supply of ATF to foreign bound aircrafts may be notified.

Another option is Government may also consider issuing a notification for exclusion of through put charges and storage charges component for the purpose of valuation under the state VAT/sales tax laws.

## **19. Supply of LPG by standalone Refineries/ Fractionators to PSU Oil Marketing Companies (OMCs) for the period 1/07/2017 to 24/01/2018.**

### **Background**

In order to meet the LPG Demand and improve the logistics efficiency PSU OMCs procure LPG from other PSU OMCs, Stand Alone Refineries (SARs) like Reliance Industries Ltd (RIL), Essar Oil Limited (EOL), etc. and fractionators like ONGC and GAIL.

Based on the GST notifications issued by CBIC, LPG procured from SARs, fractionators like ONGC/GAIL and OMC's for onward intended supply of same by PSU OMCs to household domestic consumers/NDEC customers though their distributors are being levied at concessional rate of 5% GST. Further, OMC distributors are also charging 5% GST on supply to household domestic consumers/NDEC customers.

CBIC vide Circular No. 80/54 /2018-GST dated 31st December, 2018, where it is clarified that LPG supplied in bulk, whether by a refiner/fractionator to an OMC or by one OMC to another for bottling and further supply for domestic use will fall under the S. No. 165A of the notification No. 1/2017- Central Tax (Rate) dated 28.06.2017 and shall, accordingly, attract a GST rate of 5%, with effect from 25.1.2018.

The above circular has raised concerns on the GST rate of LPG supplied in bulk, whether by a refiner/fractionator to an OMC or by one OMC to another for bottling and further supply for domestic use prior to 25.1.2018.

Subsequent to issue of the aforesaid clarification Show cause notices have been issued during November 2018 by Commissioner of GST, Gujarat on M/s Nayara Energy, Reliance Industries Limited, Gujarat, GAIL and ONGC demanding differential GST of 13% for sales effected by it during the period 01.07.2017 to 24.01.2018 on the ground that supplies of LPG by these companies to PSU OMCs for onward supply to household domestic customers/NDEC customers is not entitled for concessional rate of tax of 5%.

The clarification has resulted in an unintended consequence as the LPG so purchased is always used for domestic purposes only, omitting only a period from 01/07/2017 to 24/01/2018 appears unintended and is not justified.

### **Suggestion**

In view of the above it is submitted that suitable clarification may be issued so that transactions between PSU OMCs, SARs/Fractionators with PSU OMCs, inter-state stock transfers of PSU OMCs, and PSU OMCs to the retailers for specific end use for LPG are covered under entry no. 165 & 165A of the Schedule I for the levy of 5% GST right from 1st July 2017 and disputes raised by the field formation are avoided

## **20. Exempt GST on sale of lubricants to foreign bound vessels**

### **Background**

Before the implementation of GST, lubricants supplied to foreign -bound vessels were exempt from tax as the sales was a "deemed export" and hence, no tax was attracted on the sale. However, under the GST regime, the "place of supply" for sale of lubricants is the location where the goods are on-boarded on the vessel . As the goods are on-boarded at Indian ports, the destination of the vessel become immaterial and the transaction is subject to GST as the place of supply is India. The change in tax treatment of such transaction has hugely impacted the Oil and Gas Industry, making bunkering at Indian ports a less-preferred option in comparison to other ports where the supply is tax free. After considerable representations made by the Industry bodies, GST rate was reduced from 18% to 5% for bunker fuel supplied at Indian ports. This concession, however is not applicable to lubricants and lubricants supplied to vessels at Indian ports continue to attract GST at 18%, making the Indian market uncompetitive for refueling

### **Suggestion**

It is requested that supply of lubricants to foreign bound vessels be treated as exports and exempt from tax as the recipient of the goods is situated outside India, the destination of the vessel is outside India and the revenue for such supplies results in a positive NFE. If not exempt, it is requested that lubricants be treated on par with bunker fuel and be given the same benefit of lower GST rate as bunker fuel to boost exports.

## **Natural Gas**

### **21. Rationalization of GST rate on services of transportation of Natural Gas through pipeline**

#### **Background**

- a) It may be observed that presently GST rate on the services of 'transportation of Natural gas through pipeline' is applicable @12% (with ITC benefit) and @5% (without ITC benefit).
- b) Further, as per GST Laws, two different registered units of an entity are considered distinct persons and inter-unit billing for supply of goods/ services between such units is required to be carried out with applicable GST. Considering such provisions under GST Laws, the lower GST rate @5% (without ITC Benefit) could not practically be implemented so far, as Input Tax Credit (ITC) of GST payable on the inter-unit billing, for services of transportation of Natural Gas, will not be available to recipient unit of GAIL.
- c) Further, Natural gas a much more cleaner source of energy than other alternative available and is primarily used in priority sectors like Power, CNG and fertilizer sector. The high rate of GST on the services of transportation of goods by pipeline will make Natural Gas costlier for power and CNG sector where Input Tax Credit of GST paid on transportation of Natural Gas is not available as the output product is not covered / exempted under GST. Further, this will also enable Natural Gas to compete with other alternative polluting fuels like Furnace Oil, Naphtha, etc.

#### **Suggestion**

- a) It is proposed that GST @ 5% applicable on the services of transportation of goods by pipeline may be provided with ITC Benefit.
- b) This will lead to lower cost of transportation of Natural Gas and will help in promotion of cleaner source of energy for Power and CNG sector where ITC of GST paid on transportation of Natural Gas is not available. This will also enable Natural Gas to compete with other alternative polluting fuels like Furnace Oil, Naphtha, etc.

### **22. Rationalization of GST rate for construction of cross country petroleum and gas pipeline**

#### **Background**

The goods and services purchased for construction of cross country petroleum and natural Gas pipeline such as pipes, pipe fittings, gas compressors, metering instruments, works contract services, etc. are not eligible for input tax credit (ITC) under GST regime and attract GST up to 28%(on Gas compressors).

Applicability of high GST rate on goods and services required for laying the pipeline without benefit of ITC substantially increase the cost of such projects.

### **Suggestion**

Pipeline transfer is a very important means of environmentalist protection as it saves major fuel consumption in logistics.

Since the goods and services purchased for construction of cross country petroleum and gas pipeline such as pipes, pipe fittings, gas compressors, metering instruments, works contract services etc. are not eligible for input tax credit (ITC), GST on such goods will increase the cost of pipeline projects. Therefore, it is requested that input credit of applicable GST on such goods and services should be permitted, alternatively they should be exempted or considered at lower rate of 5%.

## **23. Taxation on the net delivered quantity after accounting for the pre-estimated process losses for regasification**

### **Background**

Naturally volatile and evaporating products like gasoline or LNG are susceptible to continuous erosion of quantity in their natural state. LNG is liquefied NG compressed by 600 times and remaining in liquid form only at temperatures of -160 degrees centigrade. Exposed to ambient conditions the entire product evaporates on its own.

The usable form of LNG is its regasified state as NG. The process of regasification of LNG involves the passing of the liquid through heat exchangers, compressors and pipelines in a controlled manner.

Due to the continuous nature of losses of the product that is inherent to its handling and processing, it is the norm worldwide to pre-agree on a percentage of such process losses of LNG / gas while contracting for the regasification of LNG. This loss is pre-agreed between the parties and is a process loss not a consideration. This is done with a view to bring certainty to the contractually deliverable quantities and the ad valorem price per unit for the same. However, due to misunderstanding of the process there are claims on taxability on such pre-agreed process loss tolerance.

### **Suggestion**

It is clarified that the Service Tax / GST charges for regasification of LNG being a volatile product are always on the net delivered quantity after taking into account the pre-estimated process losses during the re-gasification process.

**24. As an interim measure, till decision on inclusion of NG reached, removal of Tax on Freight Charges for LNG import**

**Background**

With effect from 22nd January 2017, the new Notification on service tax imply that Prepaid Ocean Freight (OFR) at Origin on Imports into India by way of Vessel is subject to Service Tax (now GST). This law applies to all Cargo that arrives India on Vessels. Therefore, Tax is payable on import freight for Container Cargo, Bulk Cargo, RORO and even LNG.

This additional tax on import freight of LNG cargo has resulted in increase in cost of LNG for the importer.

**Suggestion**

We recommend that the GST on import freight for all LNG cargoes be withdrawn to promote the usage of environmentally clean fuel in the country.

**25. As an interim measure, till decision on inclusion of Natural Gas reached, declared goods status for Natural Gas / RLNG in line with coal, crude oil, Liquefied Petroleum Gas (LPG)**

**Background**

NG / RLNG should be brought under the new GST Regime. However, as an interim measure, it should at least be granted a declared goods status, in lines with coal, crude oil, Liquefied Petroleum Gas (LPG). Presently there is varying Value Added Tax (VAT) on NG, including RLNG, across the country. It may be advisable for the Government to treat RLNG / NG as a “declared good” so that they have a common concessional rate of VAT. Status of “Goods of Special Importance” under Section 14 of Central Sales Tax (CST) Act 1956 for NG / RLNG in line with Coal, crude oil, LPG would result in ceiling the state tax rate to the concessional CST rate (currently~2%). Under the current system, delivered price of gas from the same source of supply varies considerably on account of taxation differences (ranges from 2% to 14.5%). Rationalization of gas taxation would result in lower prices for consumers and in turn lead to growth in consumption. Growth of gas markets would ultimately increase the tax revenue generation as growing gas markets would attract higher investments in pipeline and city gas distribution networks.

The biggest impact of declaring NG as a declared good would be on economic development of small on-land and isolated fields. A large number of such fields awarded under New Exploration Licensing Policy (NELP) block remain unattractive due to high local sales tax. In addition, lower tax will reduce large subsidy burden on these products. Declared goods status will also make imported LNG cheaper, and thus relatively more affordable for local industries.

Higher penetration of gas as an energy option would also mean lesser pollution, reduced oil dependency and overall macro-economic benefit (Forex and subsidy savings) for the country.

### **Suggestion**

Being a primary energy source like crude oil and coal, natural gas should be treated at par and the same tax status granted, as an interim relief.

## **26. LNG loaning and borrowing of in-tank quantity, at LNG terminals handling co-mingled goods with virtual segregation of title stocks, should be specifically kept out of purview of taxable transactions**

### **Background**

For the purpose of transportation, NG is liquefied to -160 Degrees for ease of handling. This liquefied NG or LNG is transported and stored in special vessels and storage tanks that are heavily insulated in order to maintain the temperature of LNG. NG is sold in energy units of the contents thereby making it widely tradable without determination of its physical characteristics or source of supply etc. However, due its transmission over high seas from countries around the world, the supply happens in ship loads the schedule of which cannot be accurately determined. LNG Storage Tanks are also expensive to build and maintain due to the storage requirements of NG.

These LNG storage tanks are used to store the goods of various parties with virtual segregation of title stocks. However, due to limited storage space, varying ship schedules, there are situations where demand exists with a certain entity while the title of LNG stock in the Tank is held by another entity resulting in mismatch and restriction of free trade and commerce of LNG in India, i.e. LNG is available in the Tank, there are willing customers at the gate, but the LNG cannot be supplied to them.

The Indian entities are apprehensive of application of laws like 'Right to Use of Goods', rules of barter etc and thereby hesitant to carry out loan / borrow of in tank LNG so as to enable transfer of goods to that entity which has the demand orders in hand.

### **Suggestion**

It is sought to seek exemption from any taxing provision for Loan / Borrow transactions of In Tank LNG to enable optimum utilisation of LNG Terminal facilities in India and facilitate higher trade and consumption of this carbon efficient fuel by India entities.

## **27. Exemption of GST on service of Sea transportation for LNG by vessel and Rationalization of GST on the service of regasification of LNG**

### **Background**

- a) Since the domestic production of Natural Gas is not enough to cater the increasing demand, import of LNG at large scale is required to augment the supply of Natural Gas for use in priority sectors such as Fertilizer, CNG, LPG, PNG etc.
- b) Presently GST @5% is applicable on the transportation of LNG by vessel / Ship from a place outside India to the first customs station of landing in India
- c) Further, the imported LNG has to be re-gasified and converted into Natural Gas (known as RLNG - Regasified Liquefied Natural Gas) for transportation and consumption in India. The activity of regasification of LNG attracts GST @ 18%
- d) The levy of GST on sea transportation of LNG and on the activity of regasification of LNG increases the landed cost of imported LNG for domestic industrial consumers. 'Natural Gas' is being kept outside the ambit of GST till the recommendation of GST council. Transportation of LNG and regasification activity is under GST ambit resulting in stranding of taxes while selling Natural Gas.

### **Suggestion**

In order to promote gas-based industry in India, it is suggested that transportation of LNG by a vessel / Ship from a place outside India to India under voyage charter basis as well as time charter basis may be exempted from levy of GST. Similarly, the activity of regasification of LNG also may also be exempted from levy of GST. In case, it is not possible to fully exempt GST on such services, it is requested that GST rates on regasification and transportation services relating to Natural Gas may be reduced to 5%.

## **28. Input Tax Credit (ITC) not eligible on goods / services used for construction of Pipelines**

### **Background**

- a) As per the extant provisions of GST laws, Input Tax Credit (ITC) is not eligible on goods / services used for construction of immovable property (other than plant and machinery). Further, the definition of Plant & Machinery specifically excludes 'Pipelines laid outside the factory premises'.
- b) In view of aforesaid provision of GST law, it may be interpreted that ITC is not available on goods/services received for construction of Natural Gas / LPG pipeline networks being immovable property and not covered in the definition of plant & machinery
- c) It is submitted that under the erstwhile provisions of Cenvat Credit Rules, input tax credit (CENVAT Credit) was eligible, in general, on the goods/services received for construction of pipeline

- d) It is also submitted that the GST is applicable on the services of transportation of goods through such Natural Gas / LPG pipeline and GAIL is making payment of GST on the transportation of entire Gas being transported through Natural Gas / LPG pipelines. The non-availability of ITC on the goods/services received for construction of pipeline has substantially increased the costs of pipeline projects resulting in higher transmission tariff and will lead to cascading and inflationary effect which is against the basis spirit and concept of GST
- e) Key definitions under GST laws is as below for reference. It may be observed that term “factory” is not defined under the GST law
- f) Plant & Machinery is defined as apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes following:
  - i. Pipelines laid outside the factory premises
  - ii. Land, building or any other civil structures
  - iii. Telecommunication towers
  - iv. Construction includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization
- g) It may not be out of place to mention that Natural gas is mainly (around 70%) used in priority sectors like Power and fertilizer, non-availability of ITC on the GST paid on procurement on goods and services required for construction of pipeline would lead to increase in the transmission tariff and will in turn make Natural Gas costlier for power and fertilizers sectors. This may result in an adverse effect on many thrust sectors including the priority agricultural sector and may increase the subsidy burden on the Government for such sectors.

### **Suggestion**

1. Considering that GST is applicable on the output supply of services from such Natural Gas / LPG pipelines, Input Tax Credit (ITC) on goods / services used for construction of Natural Gas / LPG pipelines may be allowed under GST laws to avoid cascading and inflationary effect
2. The definition of term “factory” may be provided under the GST law in line with definition under the Central Excise Act.



## **General**

### **29. Clarification regarding GST Rate on Compressed Biogas (CBG)**

#### **Background**

'Bio Gas' is covered under GST regime and is taxable at the rate of 5% [sl.no. 127 of Schedule I of Notification No. 1/2017-CT (Rates)]. However, GST rate for CBG (Compressed Biogas) is not prescribed under GST law. It is understood that in absence of any separate GST rate for CBG (Compressed Biogas), taxation at the rate of 5% (i.e. the rate which is applicable on supply of 'Biogas') may be challenged by the GST authorities. 'Biogas'/ CBG (Compressed Biogas) can be transported and supplied in equal energy terms in a common pipeline network along with existing Natural Gas in the pipeline network.

#### **Suggestion**

In view of above, it is proposed that a clarification regarding GST rate on CBG may be issued so as to avoid any future dispute that CBG industry may face. Further, in case 'Biogas'/ CBG (Compressed Biogas) is supplied and transported through a common carrier pipeline or any other common transport or distribution system and becomes co-mingled and fungible with other gas in the pipeline/transportation/storage system and such gas is taken out from the system in the equal energy terms, or supplied through common dispensing unit, it may be considered as supply of 'Biogas'/ CBG (Compressed Biogas) and may be taxable under GST.

### **30. Amendment in explanation inserted to Chapter V- Input Tax Credit of CGST Rules, 2017 to determine the value of Non-GST supply**

#### **Background**

Section 2(47) of CGST Act defines exempt supply to include non-taxable supply, therefore, for the purpose of common input tax credit (ITC) reversal, turnover of these excluded products would be counted as exempt supply as per formula prescribed under Rule 42 and Rule 43 for the reversal of common Input / Input Services and Capital goods credit respectively.

Petroleum products manufactured in oil refineries are stock transferred out of the state to other states in order to cater the demand in those States and to maintain uninterrupted supply of these essential commodities across the country. In some cases goods are further stock transferred to another state due to change in mode of transportation like pipeline to railway/road and other logistic requirement. Since, GST is a State specific levy, every state has to apply its reversal ratio based on taxable & exempted turnover of that State.

The above provision is resulting in to reversal of ITC on account of same goods in multiple states. Since, this product has already suffered ITC reversal in the manufacturing State, the same should not be included in turnover of the subsequent states.

### **Suggestion**

Considering the above, it is suggested that value of these non-GST petroleum products should be included in the Non-GST turnover of only in the manufacturing State and suitable amendment to be made in clause 2 of Explanation inserted to the end of Chapter 5- Input Tax Credit of CGST Rules, 2017, by insertion of a new sub-clause as per follows;

*“Explanation.- For the purpose of this Chapter,-*

*(1) ....*

*(2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17-*

*(a) ...*

*(b) ...*

*(c) the value of non-taxable goods i.e. MS (Petrol), HSD, ATF, Crude Oil and Natural Gas shall be included in the exempt turnover of only in the state where such goods is manufactured”*

## **31. Proportionate reversal of credit on “Capital goods” for every tax period**

### **Background**

In respect of capital goods used in the production of GST and Non-GST goods ITC on capital goods will be reversed along with 18% interest. Further, the formulae for reversal of credit are also very complicated due to which taxpayers are having unnecessary compliance and administrative hassle.

### **Suggestion**

To waive the interest payable in cases where surplus GST ITC is availed by the taxpayer in case of common capital goods.

## **32. Non-payment of interest for reversal of common credit attributable towards exempted supplies**

### **Background**

As per Rule 43 of Input Tax Credit Rules, the registered person shall be liable to reverse common credit in respect of capital goods, attributable towards exempted supplies along with the interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount is added to the output tax liability, as mentioned in sub-rule (h), and is paid.

## **Suggestion**

It should be clarified that the provision for charging interest should not apply to such cases where credit is not actually utilized but merely availed thereby not causing any revenue loss to the Government.

### **33. Non-payment of GST on “Ocean freight” (as an importer)**

In case of procurement of goods on CIF basis, the importer of goods is liable to pay GST under reverse charge on Ocean Freight. Further, while calculating the customs duty, assessable value includes the freight cost. Thus, there is double taxation on the ocean freight.

### **34. Canteen Services**

During Service tax regime canteen services maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air heating at any time during the year.” were exempt from service tax. Similar exemption may be provided under GST regime.

### **35. Reverse Charge Mechanism (RCM) facility should be applicable for registered dealers for all goods and services**

RCM facility should be made optional for recipient towards purchase of goods / services received from registered dealers. This will enable the recipient of service / goods to ensure that the GST amount will be remitted to the Department on a timely manner and due credit on the same may be availed by the recipient of goods/service. This option would also facilitate the easier compliance (i.e GST input tax credit reconciliation and matching GSTR 2A and 3B) in terms of availing Input tax credit.

### **36. Inclusion of Electricity production and transmission in GST regime.**

#### **Background**

Electricity generation does not come under Excise, and there is no Service Tax on sale of Electricity either.

Tax on consumption or sale of electricity is levied by States through specific legislations and is based on the value or the units of electricity. This tax is charged by the electricity distributors to consumers.

Electricity needs to be subsumed into GST, for the energy sector be able to avail credits of GST paid on inputs, services and capital goods used in sale of electricity.

This mismatch of tax structure on input / raw material vs electricity sold breaks the tax credit value chain adding to the burden on either the electricity generation / distribution companies or on the end consumers.

## **Suggestion**

We recommend that electricity generation, transmission and distribution should be classified under the GST regime.

### **37. ITC on rented/leased vessel/reg**

#### **Background**

Vessel and rig are essentially required for petroleum operation. Leasing, hiring or renting of vessel and rig are common business transaction for the industry. Apart from transportation of goods, vessel is used for marine security operation, surveillance to prevent sea piracy, diving operation, deep sea intervention jobs, etc.

As provided in section-17 (5) (aa) of the CGST Act input tax credit (ITC) is available on vessels when they are used-

(i) (A) further supply of such vessels

(ii) for transportation of goods

From the above it is emerging that rented/leased vessel when used for providing services security patrolling, surveillance, diving operation and sea intervention jobs would not be eligible for ITC. Denial of ITC would be a substantial burden for the oil and gas service provider, which they must pass on to E&P companies through increased cost of service.

#### **Suggestion**

Amendment to section-17 (5) (aa) is required in the following manner:

(A) further supply of vessels for business activity

### **38. GST: Concessional rate of 5% on Renewable Energy devices and plants – currently applicable to Bio Gas and WTE projects to be extended to ‘Drop in’ Biofuels. GST for all Biofuels to be reduced to 5% to promote investments in and use of Biofuels. HSN codes need to be assigned to all the Bio-products including Bio-Gasoline, Bio-CO2, Biochar, etc.**

#### **Background**

Biofuels have a crucial role due to growing energy security and environmental concerns. To encourage the use of biofuels, different countries have come up with various subsidies and tax-based incentives based on their domestic requirements. Setting up such plants shall help in meeting the energy requirements of the country that too without polluting the environment

## **Suggestion**

Concessional rate of 5% on Renewable Energy devices and plants – currently applicable to Bio Gas and WTE projects to be extended to ‘Drop in’ Biofuels. GST for all Biofuels to be reduced to 5% to promote investments in and use of Biofuels. HSN codes need to be assigned to all the Bio-products including Bio-Gasoline, Bio-CO<sub>2</sub>, Biochar, etc.

### **39. Norms for sale of Bio CNG**

#### **Background**

The government is encouraging more Bio CNG plants to be set up, but distributing gas through retail cylinders or through cascades significantly adds to costs and safety related risks, and thus is an impediment to growth of Bio CNG industry.

The norms for injecting Bio CNG in grid, and offtake of equivalent molecules at customer end, need to be developed further. Moreover Bio CNG is under GST while natural gas is not. Bio CNG, once injected in grid, is not treated as a separate product, and customers are not able to avail input credit

#### **Suggested**

We recommend that norms for sales of bioCNG through city gas grid must be developed and implemented:

- Norms for quality (composition, pressure etc.) and testing standards for injecting bioCNG in grid must be developed
- Provisions must be made to inject bioCNG in gas grid, at a point closest feasible to biogas plant
- Capacity in gas pipeline must be made available on preferential basis for bioCNG

Customers with grid connectivity, that enter into offtake arrangements with bioCNG plants through pipeline, must be able to avail GST credit for gas purchased

### **40. Allow EDI shipping Bill for ATF supplies**

#### **Background**

Currently Non-EDI shipping bills (i.e. manual shipping bills) are filed for supply of ATF to foreign bound airlines, this results in additional work to the airport in charge at the locations. Further this data is not getting captured fully as the records are maintained manually. It is also increasing the burden to the customs officials to verify the data filled in the manual shipping bills.

## **Suggestion**

It is suggested to allow the filing of EDI shipping bills based on the actual supply of the quantity of ATF and get away with the customs assessment for ATF supply to foreign bound airlines to bring more transparency and accuracy in data and ease of doing business.

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