PRE-BUDGET MEMORANDUM FOR UNION BUDGET 2022-23

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EXECUTIVE SUMMARY

S No.	Section	Suggestion	Page No
INDIRECT TAX – Goods and Services Tax (GST)			
1	**Request for inclusion of Crude oil, natural gas, MS, HSD and ATF under GST**	Earliest inclusion of petroleum products such Crude oil, natural gas, MS, HSD and ATF under GST regime	66
Upstream			
2	**Inclusion of Petroleum Products in GST**	Petroleum crude (crude oil) should be leviable to GST.	66
3	**GST on Royalty**	Suitable clarifications may be issued to exempt Royalty paid on crude oil and Natural Gas from applicability of GST.	66
4	**GST on Specified goods used in LSTK Contracts in E&P Sector**	Request to allow concessional GST rate of 5% on the LTSK contracts awarded in the E&P Sector also.	67
5	**Works Contract**	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 works contract used in Offshore.	67
6	**Movement of goods between blocks (located in different states/UT)**	Subsequent movement of goods which is intrinsic to E&P operations should be exempt from GST.	67
7	**Increase in Cost of other Services**	It is requested that the rate may be reduced to 12% for all	68

		services used for petroleum operations by the upstream sector	
8	**Uniformity in merit rates between Onshore and Offshore Rigs**	Requested that both may be brought under the uniform rate of GST at 5% to maintain uniformity in the Offshore and onshore Drilling Rigs.	68
9	**Taxation of Joint Venture**	(I) GST Council may be requested to provide clarifications in the lines of Petroleum Tax Guide, 1999 exempting UJVs from taking separate registrations in GST in view of non-availability of PAN No of the UJV. (II) Clarifications requested on the taxability of profit petroleum for the period from 01.07.2017 to 24.01.2018 in view of the Notification no 05/2018 - CT(Rate) dated 25.01.2018, which exempts Govt.'s share of profit petroleum w.e.f. 25.01.18 to avoid different interpretation by fields officers and to avoid possible litigation.	68
10	**E Way Bill requirement**	Exemption from e-Way Bill requirement on Movement of goods from one location to another location of the same entity within the same State	68
11	**The Oilfield (Regulation& Development) Act, 1948**	The rate of Royalty may be reduced under the Act so as to give some relief to the upstream sector which is already under pressure due to non-availability of ITC and lower crude oil price.	69

12	**Abolition/ Review of rate of OIDB cess on oil production in the Pre-NELP Exploration Blocks /Nomination regime**	(I)Request for abolition of OID Cess in respect of nomination / pre-NELP blocks is well justified. Exemption of Cess will improve the techno-economics of these Fields for further production. (II)In case, Cess is not abolished, considering the minimum price required to meet its cost of production and to sustain the operations	69
13	**Additional levy of Basic Excise Duty (BED) on Domestic Production of Petroleum Crude in addition to NCCD**	NCCD along with BED on production of domestic crude oil should be removed with immediate effect which would facilitate the compliance as well as ease of doing business.	70
14	**Tapering of Royalty rates**	Tapering of Royalty rates as proposed in Resolution dated 17 Mar'03 should be implemented and royalty on production from onland nominated blocks should be brought to the level of 12.50% that is equal to Royalty rates applicable to crude produced from NELP Blocks	71
15	**Deemed Export Benefit for empaneled technically qualified bidders** **Para 7.02 B.(f)(i) of FTP 2015-20**	As the empanelment of such technically qualified bidders is based on procedure of ICB which would be valid for a period of 3-5 years, a clarification to this effect is required to be issued by Ministry of Commerce that the proposed procedure to obtain price bid only from technically qualified empaneled bidders would be eligible for deemed	71

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		export benefits as specified in para 7.03 of FTP 2015-20.	
16	**Relaxation from Condition of ICB for Deemed Export Benefit**	Requested to relax the condition of ICB under Para-7.02(f)(i) of FTP as well for petroleum operations so that domestic manufacturer can continue to avail the benefit of deemed export on supply with tender value upto Rs. 200 Cr. as well as for procurements through GeM Portal.	72
17	**Service Tax on Royalty**	In view of above, a clarification may be issued that Royalty being paid is in the nature of tax and hence should not be subject to levy of Service Tax/GST.	73
18	**Clarification under Service Tax to the effect that consortium members including operator and the consortium formed under PSC are not two distinct persons**	Clarification, may please be issued that the transactions between members and the consortium (under PSC) for carrying out E&P activities in terms of PSC should not be treated as service provided by one person to another for levy of Service Tax.	74
19	**Service Tax on Cost Recovery (Cost Petroleum)**	Clarification under Service Tax may also be issued to the fact that cost petroleum is not a consideration for any services to GOI and therefore not leviable to service tax. This would avoid litigation.	74
20	**Service Tax on Profit Petroleum**	Clarification is requested to clarify that contractors share of profit petroleum is not a payment against any service and	20

		therefore not subject to service tax.	
		Downstream	
1	**Underutilization of Refinery Assets due to GST Applicability on Transfer of Intermediate Streams between Refineries and Blend components transferred within BPCL Refineries**	The transfer of intermediate products is essential and requisite for national importance. The transfers can be carried smoothly only by providing relief in the form of exemption from levy of GST on the transfer of intermediate streams like VGO from one refinery to another on the similar lines of the Notification No. 256/87-C.E. dated 25.11.1987 issued under the Excise law.	75
2	**Increase in cost due to non-availability of ITC for pipelines laid outside refineries**	Non – availability of ITC benefit leads to increase in cost. Hence there is need for inclusion of “pipeline laid outside factory premises” in the definition of plant & machinery so that ITC of GST paid on pipeline construction can be availed	77
3	**Levy of nominal GST on excluded petroleum products or include under Zero rated**	In order to remove stranding of taxes in the hands of petroleum industry, it is pertinent that either these excluded products are also levied nominal GST parallel with levy of Excise duty /VAT. Alternatively, these products may be included under zero rated good in GST to allow the full availment of input tax Credits under GST.	77

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4	**Relief by way of exemption /lower rate of GST on input used in refining and marketing of petroleum products**	In this regard, 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 a. BS-VI MS & HSD projects b. Reformate/ DHDT/ SRGO and other feeds for inter unit transfer for the manufacture of MS/HSD c. Regasification of LNG – from 18% to 5% d. Procurement for setting up ethanol/CBG/Bio Diesel production facility e. Lower Rate of 5% on input services used in Research Activities like notification no 45/2017 Central Tax (Rate) applicable for inputs	77
5	**Entry 164 of Schedule I of GST [Notification 1/2017-CT(rate) dt. 28.06.2017, as amended from time to time]- Supply of Furnace Oil falling under HSN 2710 for use as bunker**	Clarification from CBIC that the entire chain of supply of FO for use as bunker fuel including supply from refineries to supply locations, situated in other states, are also covered under entry 164 of Schedule I of GST	78
6	**Supply of Furnace Oil i.e. Bunker Fuel to Foreign Vessels to be zero rated in GST**	A timely action would not only help in restoring the Bunker fuel sales and improved collection of foreign exchange but also bring back the India's position amongst International Ship	78

		owners and traders. In view of this, we suggest/ recommend that necessary amendments are to be introduced in GST Act for treating the supply of Bunker Fuel zero rated.	
7	**Remission of GST for storage loss, handling loss and transit loss for petroleum products covered under GST**	It is recommended that considering the inherent nature of petroleum products covered within GST, GST paid on loss should be allowed as ITC or a mechanism to be put in place to compensate Oil companies on such stranded taxes due to the losses in line with earlier Tax regimes. Alternatively, a direction can be issued to allow certain percentage of tolerance in losses, up to which reversal of ITC should not be required.	79
8	**Liquidation of huge accumulated Input Tax Credit**	It is suggested that OMCs should be granted refund of ITC accumulation because we are still under dual tax regime. Therefore, suitable amendments in refund provisions under section 54 of GST Act and Rule 89 of CGST Rules, 2017 may be carried out so that these accumulated ITC can be refunded to OMCs	80
9	**Refund due to Inverted Duty Structure-Formula under rule 89(5) of CGST Rules, 2017**	Formula provided under rule 89(5) for refund of accumulated ITC to be amended to provide the refund of accumulated ITC equal to the value of inverted tax amount i.e. difference of ITC availed on direct inputs related	80

		to inverted rated supply and tax liability on outward inverted rated supply. Further, the prevailing formula may be continued for refund of accumulated ITC towards common inputs for inverted rated supply.	
10	**Cross utilization of GST Input Tax Credit against Excise duty/Sales Tax**	In case our request for levy of nominal GST is not practical, the ITC of GST paid purchases to be allowed to be set-off against output excise duty and sales tax payment on these products. Therefore, suitable amendment may be carried out in the CENVAT Rules to allow the tax credit of GST paid inputs against the output tax liability of Excise on non-GST products since the credit was earlier available under CENVAT & VAT laws	81
11	**Relief by way of exemption of GST on intermediate streams in process industry like Refinery**	In order to reduce environment pollution, oil industry is undertaking major capital investment to introduce cleaner fuels in the country. Major Capital Goods, input and input services are being considered for use in Refining, Marketing & Distribution of Intermediate streams. In order to leverage the refinery capabilities which are located in different States, inter unit transfer of Intermediate streams for manufacture of MS/HSD will result in optimum utilization of the refineries which is in the best interest of the oil	81

		industry. Providing exemption on transfer of intermediate products from one refinery to another without any loss to the exchequer will result in optimum refinery utilization which would result in better resource mobilization to both Central and State Governments.	
12	**Rationalization of GST rate on goods and services for construction of cross-country petroleum and gas pipeline**	Requested that applicable GST rate on such goods and services should be rationalized and be exempted or considered at lower rate of 5%.	82
13	**Clarification for supply of Aviation Turbine Fuel (ATF) to foreign going aircraft as Exports / Zero Rated supply**	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	82

		supply, explained under Section 16 of IGS 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	**Amendment in explanation inserted to Chapter V- Input Tax Credit of CGST Rules, 2017 to determine the value of Non-GST supply**	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	83
15	**Admissibility of Input tax credit in the manufacturing state incurred by the exporter for positioning of the Non-GST goods for Export**	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 warehouse are situated in different political states	83
16	**Matching of Inward supplies**	Necessary notification to be issued by Govt removing the condition of upload of invoice by supplier for availment of ITC by	84

		the recipient for ease of compliance.	
17	**Cross utilization of GST Input Tax Credit against Excise duty/Sales Tax**	Suitable amendment may be carried out in the CENVAT Rules and respective State VAT laws to allow the tax credit of GST paid inputs against the output tax liability of Excise / VAT on the products excluded from GST.	84
18	**Payment under Reverse Charge Mechanism (RCM) by Input Service Distributor**	Necessary notification to be issued by Govt. to allow the payment of RCM under ISD registration.	85
19	**Deemed export supplies under GST**	To avoid blockage of fund in GST paid in such cases following suggestion are made; • Deemed exports may be considered for zero-rated supplies by default, like the regular exports and such supplies can be made on without payment of tax under a Bond/LUT. • Facilitating expeditious liquidation of claims: Deemed export refund can be linked with GST return filing by seller. Auto-credit of refund to supplier account on the basis to return or input tax credit to be allowed to seller like RCM supplies.	85
20	**Allowing of GST credit on "Works Contract Services used for construction of an immovable property"**	It is suggested that credit of goods/services acquired in the construction of immovable property which are being used in the course or furtherance of	85

		Business should be allowed without any restrictions.	
21	**Clarification on goods for Tariff classification covered under Motor Spirit (commonly known as petrol) and High-Speed Diesel**	Clarity to be provided with regards to tariff covered in GST and not covered within the ambit of GST by suitable modification to fourth Schedule so as cover only those products namely petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel which are outside the ambit of GST as per provision of section 9(2) of CGST Act 2017 as per the 101st Constitutional Amendment Act.	86
22	**Interstate purchase for supply of ATF to foreign going airlines to be classified as deemed export under section 5(3) of CST Act, 1956, and allow the benefit of Form H for such purchases.**	It is suggested that the Govt. may pass an amendment notification classifying the sales to foreign going airlines both designated Indian carrier or foreign carrier as deemed export under section 5(3) of the CST Act and allow purchases without payment of CST under Form H and delete section 5(5) of the CST Act.	86
23	**Introduce a mechanism of reporting in customs portal for supplies made to foreign going airlines and discontinue the present system of filing of Non-EDI shipping bills.**	It is suggested to discontinue the present system of manual filing of shipping bills airport wise and introduce a mechanism of ATF supply reporting in customs portal Airport wise and airlines wise and will bring more transparency.	87
24	**Allow EDI shipping Bill**	It is suggested to allow the filing	87

	for ATF supplies	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.	
25	**Permit Oil Marketing Companies (OMC) to pass on the benefit of GST charged on throughput fees for fuelling the aircraft for domestic operation**	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.	87
26	**Uniformity in classifying ATF for Sales Tax/VAT and ATF to be brought under GST**	It is suggested that Centre should work with states to include ATF under the proposed Goods and GST (GST) regime when applicable, else may be brought under Essential Commodities to have uniform taxation. Local taxes such as Entry Tax,	88

		Octroi, resale tax act as an Entry barrier for the ATF suppliers and the Government may connect with states to enable abolition of these taxes. States may be given guidelines to provide Form H benefits to Penultimate buyers.	
Natural Gas			
1	**Inclusion of Natural Gas under GST**	Proposed that Natural Gas may be brought under GST ambit as it will have positive impact on the Natural gas-based industries and will avoid stranding of taxes.	88
2	**Input Tax Credit (ITC) not eligible on goods / services used for construction of Pipelines**	a. 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. b. The definition of term “factory” may be provided under the GST law in line with definition under the Central Excise Act.	89
3	**Rationalization of GST rate on services of transportation of Natural Gas through pipeline**	a. It is proposed that GST @ 5% applicable on the services of transportation of goods by pipeline may be provided with ITC Benefit.	90

		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.	
4	**Rationalization of GST on the service of regasification of LNG**	In order to promote gas-based industry in India, it is suggested that suitable amendment/ clarification may be made so that activity of regasification attracts GST @ 12% on job work basis.	90
5	**Change in rate of tax for the inward supplies related to supply chain of LPG Domestic**	Change in rate of tax for the followings inward supplies related to supply chain of LPG Domestic ➢ 14.2 KG Empty LPG Cylinders for supply of LPG Domestic – HSN 7311- from 18% to 12% ➢ Services of LPG Domestic Blending (i.e. Propane and Butane blending)- HSN 9988- from 12% to 5% ➢ Services of LPG Domestic Bottling (Bulk LPG to cylinders)- HSN 9985-from 18% to 5% ➢ Services of LPG Domestic Transportation thru Pipeline- HSN 9965-from 18% to 5%. It is worthwhile to note that suggested reduction in rate of tax as above, would not impact	91

		Govt. revenue, as final tax would continue to be paid by OMCs on supply of LPG Domestic at 5%.	
6	**Supply of LPG by standalone Refineries/ Fractionators to PSU Oil Marketing Companies (OMCs) for the period 1/07/2017 to 24/01/2018.**	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.	91
7	**Tariff 2710 12 90 Other in Central Excise Fourth Schedule**	Notification ref. 8/2019-CE(T) dt. 31.12.2019 to be amended to remove the rate of excise duty prescribed for tariff 2710 12 90 as same is subject to GS	92
8	**Supply of LPG (Domestic) / NDEC at concessional rate of 5% GST**	Clarification needs to be issued to provide such concessional rate of 5% GST is applicable for all Transactions of LPG meant for ultimate supply to household domestic consumers & NDEC for the period 01.07.2017 to 24.01.2018.	93
9	**GST Schedule Entry for LPG**	HSN for 'LPG Domestic' in Entry 165 & 165A of Schedule I to GST notifications ref. /2017-CT (rate) dt. 28.06.2017, notification ref. 1/2017-IT (rate) dt. 28.06.2017 and notification ref. 1/2017-UTT (rate) dt. 28.06.2017, to be amended as '2711 19 10' with	93

		retrospective effect from 01.01.2020.	
10	**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 to Deptt. to not initiate disputes, demanding GST @ 18% on domestic LPG supplied by refiners/fractionators (like GAIL/ONGC) to OMCs for ultimate supply to household domestic consumers for the period from 01.07.2017 to 25.01.2018, on similar lines as given by council recently on levy of interest on delayed payment of GST on net basis, retrospectively with effect from 01.07.2017.	94
11	**Double impact of GST on procurement and subsequent transfer of Pipes procured for laying other cross-country Pipeline network**	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	95

		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.	
12	**Clarification to exempt CBG from payment of VAT/Excise duty on sale after blending mixing with Natural Gas/CNG**	It is suggested that Bio Gas/CBG blended with Natural Gas/CNG may continue to attract GST on quantitative basis and will not be liable to levy of VAT/Central Excise Duty. This will promote usage of this Bio Gas/CBG on commercial basis in line with the policy of the government.	95
13	**Taxation on the net delivered quantity after accounting for the pre-estimated process losses for regasification.**	It is clarified that the Service Tax / GST charges for regassification of LNG being a volatile product are always on the net delivered quantity after considering the pre-estimated process losses during the regassification process.	96
14	**Taxation on LNG fuelled vehicles to be made comparable to Electric Vehicles** **Background**	GST rate on LNG fueled vehicles, and, import duty on components like LNG Fuel tank be reduced to 5% and 15% respectively in line with taxation on EVs. The vehicle scrapping policy may be amended to provide incentives to vehicle owners for switching to LNG vehicles. Replacement of old Diesel	96

		vehicles by LNG vehicles can be encouraged by levying GST @ ZERO rate on new LNG vehicles against a scrapped Diesel vehicle under the 'voluntary vehicle fleet modernization plan,' which is expected to be launched shortly. Additionally, the Government may consider grants towards the incremental vehicle cost, and / or waiver of registration charges to encourage the switch	
15	**Declared goods status for NG / RLNG in line with coal, crude oil, Liquefied Petroleum Gas (LPG)**	Being a primary energy source like crude oil and coal, NG should be treated at par and the same tax status granted, as an interim relief.	97
16	**No reversal of input credit relating to Non-GST supplies like NG from the common credit pool of Taxable and Non-taxable supplies.**	The correction shall remove the fallacy of the draft ratio of reversal of common credit which does not distinguish between the turnover of a service with that of traded good.	98
17	**Removal of Tax on Freight Charges for LNG import**	The GST on import freight for all LNG cargoes should be withdrawn to promote the usage of environmentally clean fuel in the country.	100
18	**LNG loaning and borrowing of in-tank quantity, at LNG terminals handling co-mingled goods with virtual segregation of title stocks,**	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	100

	should be specifically kept out of purview of taxable transactions	higher trade and consumption of this carbon efficient fuel by India entities.	
		General	
1	**Loss of ITC due to non-filing of returns by Vendors/ Suppliers**	It is requested to review the process of ITC availment and may provide suitable advisory to claim ITC by OIL Industries without linking it to GSTR 2A.	101
2	**Promoting Act East Policy of Government of India**	Additional Incentive for export to neighbouring countries adjoining to North East region: Taking advantage of road connectivity with Myanmar, Incentive by way of freight subsidy/reimbursement can be provided for export to Myanmar through road network so that Indian products are more competitive in Myanmar market. Project loans at Concessional Rate for Projects of National Importance : For capital intensive projects of national importance, there can be scheme for providing loans at a discounted rate than that levied by Financial Institution for normal Project finance. Extension of benefit of lower tax rate available under section 115BAB of the Income Tax Act for existing Companies implementing Projects in North East:	101

		To encourage economic activity and promote investment, section 115BAB of the Income Tax Act was introduced to allow new companies to pay tax at a lower rate of fifteen per cent. The company is to be set up and registered on or after the 1st October, 2019 and commence manufacturing on or before 31st March, 2023 to avail the lower tax rate. However, the provision does not cater into capacity expansion under its ambit, which in itself plays a vital role in economy revival and generating employment. Backward region are in dire need of such capital intensive projects. Hence, to harmonize with the objective of the Government, it would be prudent to treat extensive capacity expansion as a newly set-up entity and allow the benefit of lower rate of tax for such expanded capacity. Further, for large capital intensive projects, project commission period is normally higher (even more in north east region), and these projects may not be able to start commercial production within the stipulated timeline i.e. 31st March, 2023. Hence, relaxation in this criteria may also be given for such high capital intensive projects in North east region.	

		Tax benefit under Customs Act on importation of capital goods/material: Oil and Gas Sector is a pivotal sector for development of North East and growth of oil and gas sector is critical to ensure success of Act East Policy. The GOI vide said notification gives the benefit of concessional rate of BCD @ 5% only on importation of goods specified in Chapter 84 or any other chapter of the First Schedule to the Customs Tariff Act when imported into India for setting up of Crude Petroleum Refinery. However, there is no concession from the payment of IGST on such importation of goods. Government should amend rate of BCD and IGST on import of specified goods for setting up crude petroleum refinery should be at NIL so that project cost for expansion of refinery capacity in north east become lesser	
3	**Increasing value chain of Refineries in North East Region**	Such transactions attract GST @ 18 % and as such do not become economically feasible to undertake because NRL need to discharge excise duty towards finished product HSD and as a result subject to double taxation burden. Scheme to exempt GST on purchase / sale of intermediate products between the oil	103

		companies in order to avoid double taxation for improving the financials of these oil companies.	
4	**NCCD to be abolished**	It is suggested that NCCD on Crude oil should be discontinued	103
5	**Cess on Crude Oil levied under OIDB Act to be minimized**	OID Cess is not applicable on Crude oil being produced/to be produced from NELP Blocks/ Marginal Field Policy/HELP notified by the Government. Such incentives should also be extended to Crude Oil produced from Nominated blocks to augment domestic oil production.	104
6	**Services between Head office and its Units situated in another state**	Necessary notification to be issued by Govt providing exemption for deemed supply of services by head office to its units situated in another state and services by units to head office situated in another state. Such clarification would avoid unwarranted litigations at future date particularly in view of contrary AAR ruling in this regard.	104
7	**Payment to Supplier within 180 days (Section 16(2) of CGST Act, 2017)**	Necessary notification/clarification to be issued by Govt. that condition of 'fails to make payment within 180 days' to be reckoned with contractual conditions between the supplier and recipient and not from the date of invoice.	104

8	**Taxability on Renewable Energy Certificate**	To promote /increasing the share of renewable in the generation capacity in the country, it is essential that REC certificates self-utilized against own-RPO's should not be taxed under GST in case of interstate utilization. The same should be treated at par with revenue from sale of electricity which is presently outside the ambit of GST. Secondly, the RE projects continue to suffer from cost disadvantage in terms of non-availability of ITC on GST paid on inputs/ input services and capital goods. Hence, it is also essential that RE projects should be exempted from levy of GST on inputs, input services and capital goods	105
9	**Filing of fresh refund application consequent upon issue of deficiency memo**	It is suggested that suitable amendment be made in the rules whereby same application should be moved forward once reply is submitted by the applicant rectifying the deficiency or alternatively, fresh application should be deemed to be filed within two years' time limit if original application has been filed within the said period	106
10	**Amendment in Supplies reported in GSTR-1**	Necessary facility may be provided on GSTN portal to amend the B2CL transactions as B2B. Further, amendment in B2C transaction to B2B may be	106

		allowed for more than once for a period till annual returns are filed.	
11	**Availability of download of GSTR-1, ITC-04, GSTR-6, GSTR-7**	Excel download of GSTR-1, GSTR-6, GSTR-7 and ITC-04 returns filed may be made available on GSTN portal which would help to great extent in compliance.	107
12	**Clarification regarding GST Rate on Compressed Biogas (CBG)**	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.	107
13	**Inclusion of Electricity production and transmission in GST regime**	Electricity generation, transmission and distribution should be brought under the ambit of the GST regime.	107
14	**All Drop in Bio-fuels (intermediate & finished - from advanced biofuel**	HSN codes should be assigned to all the bio-products including bio-petrol, bio-jet, bio-char, etc.	108

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	processes) such as bio-petrol, bio-jet, bio-char, etc. to be classified under HSN and be brought under the ambit of GST at a uniform rate of 5%	Further, all bio-fuels such as bio-petrol, bio-jet, bio-char and others should be brought within the ambit of GST at a uniform rate of 5%.	
15	**Customs duty and GST exemption for all Capital Equipment on initial setting up of waste to energy plants and on project imports, renovation / modernization of renewable energy projects**	Exemption should be provided from Customs duty and GST on import of equipment required for setting up of waste to bio-fuel plant and on project imports, renovation / modernization of renewable energy projects.	109
16	**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 recipeint 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.	109
17	**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.	109

18	**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 ay revenue loss to the Government	110
INDIRECT TAX – Excise Duty			
Upstream			
1	**Excise Registration**	Exemption benefit on similar line as given to Coal Mining vides Notification no. 10/2011-Central Excise (N.T.) dated 24.03.2011 should be extended for E&P Industry also.	111
Downstream			
1	**Upfront exemption of duties of Excise on HSD**	To provide boost and incentive to the upstream sector, it is requested to restore the exemptions from the duties of excise (Basic Excise Duty, Special Excise Duty & additional duty of excise) on the HSD procured for the petroleum operations under ICB conditions.	111
2	**Ethanol Blended Motor Spirit - Section 11D demand**	Clarification or 11C notification may be issued by CBIC that in case of Ethanol Blended Petrol sold at the same price that of Motor Spirit would not be subjected to provision section 11D of Central Excise Act.	111
3	**Taxability of supply of Ethanol (E-100)**	Clarification to be issued that sale of bioethanol (E-100) as Standalone fuel or blended with	112

		MS/Additives denaturant wherein Ethanol is more than 30%, would be classified as GST product under HSN 22072000.	
4	**Ethanol from Captive Plants for MS blending**	Suitable amendment to exemption required under the Central Excise law for exempting the blended EBMS produced from Ethanol manufactured from their own ethanol plants, by removing the condition of blending of GST paid ethanol in MS.	112
5	**Gas Oil and oils obtained from gas oils: High Flash High Speed Diesel fuel conforming to standard IS 16861 2710 19 49 or Fuel (Class F) or marine fuels conforming to Standard IS 16731: Distillate oils 2710 19 61**	Entry prone to multiple interpretations as GST or Non-GST product. PSU oil companies are clearing HFHSD under the excisable goods. Thus, classification of Distillate oil (under marine fuel) under non excisable category may result in revenue loss to the Govt as well as business loss to PSU OMC.	113
6	**Introduction of Specific rate of excise duty on Aviation Turbine Fuel (ATF)**	Since, MS & HSD both are levied specific rate of excise duty, thus it is requested that ATF should also be levied specific rate of duty in place of ad- valorem duty. This would ensure correct payment of duty at the initial clearance stage itself and will eliminate complexities and difficulties in re-determination of duty on further stock transfers which sometime result in avoidable litigation.	113

7	**Concessional Rate of Duty – ATF for RCS flights**	A uniform date can be provided for the validity of the exemption for all supplies under RCS category to avoid disputes w.r.t to validity dates due to possible different interpretations	114
8	**Refund of pre-deposits**	It is suggested that in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not. If the Department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, which is in favour of the appellant, refund along with interest should be paid unless such order is stayed by a competent Appellate Authority	114
9	**Amendment to existing excise tariff for blending of More than 10% Ethanol with normal Petrol**	Suitable amendment needs to be undertaken in IS specification and under excise tariff / notification for covering the various ethanol blending ratios proposed.	115
10	**Rationalization of excise duty on premium diesel**	It is recommended to significantly reduce the excise duty differential between branded and regular diesel, bringing it close to or at par with excise duty on regular diesel.	115

		This will help create a market for an efficient branded fuel which will help reduce the environmental impact of vehicular emissions, and help improve the efficiency and performance of the vehicles.	
11	**Provide ITC benefits for Non-GST exports/deemed exports as well.**	It is suggested to provide a mechanism for ITC benefit and lay down a procedure to claim refund of ITC on Non-GST supplies exported/ deemed exported to outside India.	116
12	**Processing of Excise Duty refund claims**	It is suggested that access should be given to online refund application for quick processing.	116
13	**Notification of petroleum products under Rule 16 of Central excise rules to enable payment of Excise duty on stock transferred goods at the time of removal from depot / warehouse**	The warehousing provisions are provided for under the new central excise rules which is primarily applicable to petroleum products. Therefore, there is a case to urgently notify petroleum products under Rule 16 of the Central Excise Rules, 2017 requiring that in cases of stock transfer, the payment of excise duty is to be made only when they are sold from the depots for sale to customers, and not at the time of removal from the refinery/factory. This would be aligned with the provisions of law, past notifications, and the commitment to make doing business in India less complicated, and more friendly.	116

FIPI

Natural Gas			
1	**Exemption to CNG from payment of excise duty/GST**	It is suggested that the conversion of Natural Gas into CNG may be exempted either from levy of Central Excise Duty or GST. This will make CNG more economical and will promote use of this environment friendly fuel in domestic and commercial transportation sectors.	117
General			
1	**Exemption of Non-GST paid Ethanol/Bio diesel manufactured by Oil marketing Companies (OMC) and used for Ethanol Blended MS (Petrol) and Bio Diesel Blended HSD (Diesel)**	It is requested that Ethanol Blended MS (Petrol) and Bio Diesel Blended HSD (Diesel) which is a blend of self-produced Non GST paid Ethanol/Bio Diesel manufactured by OMC's and Excise paid MS/HSD similarly be exempted from further duties of excise as is currently being exempted for GST paid procurements.	118
INDIRECT TAX – Custom Duty			
Downstream			
1	**Withdrawal of exemption notification related to 'Social Welfare Surcharge' on custom duty on Petrol and Diesel in budget of 2021.**	It is requested that the exemption notification reducing SWS on MS and HSD from 10% to 3% may be restored.	119
2	**Clarification on applicable Import duty rate on Import of Propane and Butane**	Ministry of Finance to intervene and provide clarification in this respect to avoid litigation in this matter.	120

3	**Inclusion of Land Customs Station in Notification 208/77- Cus for claiming Duty Drawback Benefit**	To include LCS Barhni & Bhithamore as notified LCS under clause (c) of notification 208/77-Cus.	120
4	**Exemption of Customs Duty on import of Liquefied Natural Gas (LNG)**	Request to grant exemption of Basic Customs Duty (BCD) on import of Liquefied Natural Gas (LNG)	120
5	**Removal of National Calamity Contingent Duty on Crude Oil levied @ Rs.50/MT**	It is suggested that this additional burden of NCCD imposed on the Oil Refineries may be withdrawn.	121
6	**Rationalization of customs duty on import of petroleum products viz Motor Spirit (MS) and High Speed Diesel) HSD**	It is recommended that the Social Welfare surcharge should be abolished and import of petroleum products, that is MS and HSD should be rationalized in line with excise duty as applicable on indigenous procurements in order to bring parity in the duty rates when procured indigenously or imported	121
7	**Suggestion for changes in Notification No. 50/2017-Customs dated 30th June 2017 amended vide Notification No 25/2019-Customs dated 6th July 2019.**	Issue a notification with appropriate changes in the wordings to reflect the actual intention of the amended proviso to address these issues/challenges. 2. Also, in the Tax Research Unit (TRU) notes to Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners include an example of duty levy (including	122

		IGST and other applicable Customs duties) to avoid any misinterpretation. 3. Update the Electronic Data Interchange (EDI) so that it automatically calculates the duty as soon as the Notification no. is entered so as to avoid any ambiguity. 4.DGH to only certify that the goods are non-serviceable and would be cut-off and removed from original installations for disposal as scrap at the time of assessment of custom duty.	
8	**Customs Duty exemption required for Heavy Feedstock (such as Straight Run Fuel Oil, Vacuum Gasoil, Low Sulphur Wax Residue, Low Sulphur Fuel oil, Vacuum Residue, Slurry- HS Classification 2710 19 50 and 2710 19 90) for processing in Refinery.**	To remove disparity, with reference to the feedstock procured for "processing in the refinery", it is recommended for import of heavy feedstocks (HS Classification 2710 19 50 and 2710 19 90) as under: (a) Customs duty needs to be reduced to Nil, (b) levy of IGST/CGST/SGST should be exempted. (c) Similar treatment of NIL GST to be offered for inter refinery transfer of domestic FO/ heavy feedstock if "re-processed in refinery".	123
Natural Gas			
1	**Custom duty exemption on import of Liquefied Natural Gas (LNG)**	It is suggested that LNG Import may be exempted from payment of custom duty (present rate @ 2.5% plus SWS @10%) to provide	124

		relief to gas based industries and domestic consumers.	
2	**Clarification on applicability of Hon'ble Supreme Court's Unicorn Judgement on Customs Duty Assessment of imported Liquefied Natural Gas (LNG)**	It is suggested that suitable clarification may be issued regarding non applicability of SWS on notional value of CVD for the purpose of computing Custom Duty on Import of LNG. It will help to avoid unwarranted litigation that may arise by inappropriate application of Hon'ble Supreme Court' Unicorn Judgment. The suggested clarification will provide relief to the importers of LNG in particular and gas based industries and domestic consumers in general.	125
3	**Continuation of Customs duty exemptions provided to Oil & Gas companies under Serial No. 404 of the Customs Notification No. 50/2017-Cus dated 30 June 2017**	The cascading of GST for E&P companies has already gone up post implementation of GST and any further cost absorption will be detrimental for the industry. Withdrawing customs duty exemption for projects after large-scale investments have been committed will not only make the projects riskier and reduce the share of the Government but will also undermines investors' confidence in government policy. This also violates contract sanctity and increases barriers to investments	125

FIPI

INDIRECT TAX – Central Sales Tax			
Upstream			
1	**Issuance of C form for interstate sale of Petroleum Products (Natural Gas, Crude, Petrol, Diesel and ATF)**	Provision for issuance of C Form for inter-state gas sale even if it is for use in manufacture of GST goods till these products are included in the GST should be restored and necessary clarification in this regard should be issued.	127
Downstream			
1	**Inclusion of Definition of Motor Spirit (Commonly Known as Petrol) and High Speed Diesel under Section 2 CST Act, 1956**	Meaning of term 'Motor Spirit (Commonly Known as Petrol)' and 'High Speed Diesel (HSD)' to be provided under CST Act, 1956 to ensure uniformity in classification	127
DIRECT TAX			
Upstream			
1	**Climate Change, Environment Conservation & Conservation of natural resources**	1) At least 100% deduction of expenditure, revenue or capital, on efforts in mitigating climate change and environment conservation on the lines of section 35 "Expenditure on scientific research" may be provided. 2) Sunset Clause in Section 35CCB of Income Tax Act, 1961 may be increased from 31st march, 2002, to conserve the natural resources	129

2	**Deduction for Exploration and Development expenditure u/s 42**	In order to boost the oil production by the awardees of OALP, who are investing millions for the extraction of oil, weighted deduction for Exploration and Development expenditure is recommended to be allowed for the new blocks awarded under OALP. Weighted deduction of 200% of Exploration expenditure and 150% of Development expenditure for the new blocks awarded under OALP.	129
3	**Investment in new Plant & Machinery (Section 32AC)**	Validity of deduction u/s 32 AC should be restored w.e.f. Assessment year AY 2022-23	130
4	**Tax Holiday u/s 80IB(9)**	In order to boost the oil production, it is recommended to restore tax holidays for new blocks awarded under OALP	130
5	**Deduction for EOR expenditure**	To make these capital intensive and risky projects commercially viable, weighted deduction on EOR expenditure is recommended.	130
6	**Investment allowance (Section 32AC)**	Oil and Gas industry invests in high value Plant & Machinery every year for oil production. Tax incentive is required to boost these investments. This will incentivize investments in new plant and machinery and lead to faster growth in manufacturing sector	131

7	**Deduction for Exploration and Development expenditure B**	In order to boost the oil production by the awardees of OALP, who are investing millions for the extraction of oil, weighted deduction for Exploration and Development expenditure is recommended to be allowed for the new blocks awarded under OALP. Weighted deduction of 200% of Exploration expenditure and 150% of Development expenditure for the new blocks awarded under OALP. This will help encourage companies to invest capital in the efforts to boost domestic hydrocarbon production and reduce dependence on imported crude.	131
8	**Section 42 - Deduction in case of business of prospecting of mineral oil**	Considering the genuine hardship of the assessee, an explanation may be inserted in section 42(1)(a) that an intimation by the assessee for surrender of area to appropriate authority will be construed as area surrendered for allowing the deduction of infructuous or abortive exploration expenses.	131
9	**Inclusion of Profits chargeable to Tax under section 41 and certain interest income in first proviso to section 234C**	Considering the hardship as faced by all the assesse because of unpredictable nature of income other than those mentioned in first proviso to section 234C, it is suggested to also consider the profits as mentioned under section 41 and	132

		Interest income on Tax refunds in the exclusion list under first proviso of section 234C.	
	Downstream		
1	**Section 208 – Reducing slabs for Advance Tax payment**	The slab of advance payment of tax may be changed to 65% for payment to be made by 15th Dec and 90% for payment to be made by 15th Mar in place of the current 75% and 100% respectively. The balance tax may be allowed to be paid by 30th June of the assessment year. This will result into administrative convenience for Corporate and tax authorities without any loss of government revenue.	132
2	**Deduction for Expansion and Up-gradation of Refineries**	In order to sustain the existence and to be a part of the inclusive growth plans of the nation, either a profit-based or investment-based incentive should be provided to Refineries for expansion and up-gradation of their refineries.	133
3	**Introduction of 194Q and overlap with Section 206C(1H) and unintended consequence of Rule 31AA**	Therefore, it is requested to make suitable amendments in Income Tax Rules, 1962 to exempt such requirement as per Rule 31AA.	133
4	**Clarification that loss on Sale of Oil bonds is a revenue loss**	It is suggested that Section 37(1) needs to be suitably amended to provide deduction for business	133

		loss arising from sale of such bonds.	
5	**Waiver of Interest under section 234B and 234C**	It is imperative to pass on necessary administrative instructions by the Board for disposal of waiver applications in a time bound manner.	134
6	**Reduction of TDS rate u/s 194LC**	It is requested to please reduce the rate from 5% to 4% for all types of borrowings covered u/s 194LC to have a uniform single rate.	135
	Natural Gas		
1	**Safe harbour allowances for LNG import prices under Transfer Pricing should be based on the actual dispersion of custom import prices for the year and not on ad-hoc basis.**	Considering the above challenges, safe harbour rules for LNG imports should be introduced which are based on actual dispersion of custom import prices. This is of utmost importance and will avoid litigation costs involved.	135
General			
1	**Faceless Assessments**	Steps should be taken to mitigate following difficulties : Number of Attachments and size per attachment is the major constraint while uploading details. Number of errors are thrown by system, which includes error in file name, repeat document (some reply needs repetitive attachments). The attachments accepted are only in pdf, excel, csv format. Zip	135

		files and videos should also be accepted, to enable better explanation of queries.	
2	**Non-availability of MAT credit under section 115JAA of the Act.**	It is suggested that the allowability of existing MAT credit may be re-considered, by inserting a suitable clarification / amendment in section 115JAA of the Act, either in full or in equal installments for 5 or 10 years. The provision so to be inserted may also bring out the modality for setting off of MAT credit.	135
3	**Deducibility of expenditure incurred on abandonment and site restoration activities in accordance with Site Restoration Fund Scheme, 1999.**	It is, therefore, suggested that to bring clarity in this regard to avoid unnecessary litigation, a new sub-section (10) may be inserted in section 33ABA which may read as follows- "Nothing contained in sub-sections (5), (6) and (7) shall apply in respect of such assessees who have exercised the option provided in section 115BAA, for such amount which have been deposited or credited by way of interest during the previous year in which such option is exercised or any subsequent previous year and for which deduction has not been allowed under sub-section (1)."	136
4	**Availability of deduction u/s. 36 in respect of contribution made to**	It is, therefore, suggested that suitable amendments may be made in section 36 and/or section 40A(9) of the Act so as to provide that deduction would be	137

	Trusts etc., set up for employees' welfare.	available in respect of contribution made by an employer towards a Fund/Trust/Scheme set up for the welfare of employees if such Fund/Trust/Scheme is registered/recognized/approved under the provisions of the Income-tax Act, 1961.	
5	**Restriction on adjustment of demands exceeding 20%, pending disposal of appeal filed against the order**	It is suggested that suitable provisions may be inserted in section 245 (which empowers the assessing officer to adjust refunds against the outstanding demands) or section 220 of the Act (which deals with payments of outstanding demands) restricting the assessing officers to raise and collect demands (by any mode) exceeding 20% of total disputed amount pending disposal of appeal by CIT(A). It may also be provided therein that the demand in excess of 20% of disputed amount may be raised and recovered by the assessing officer only with the prior approval of Chief Commissioner of Income-tax.	138
6	**Rationalizing TDS Provisions - TDS if amount is credited unilaterally**	As this is a problem faced by all assessees and not just the banking fraternity, it is suggested that similar dispensation may be provided to all assessees by making suitable amendments in the provisions of the relevant sections contained in Chapter XVII-B of the Income-tax Act, 1961, dealing with	138

		deduction of tax at source. At the same time, to safeguard the interests of the revenue, it may be provided that the requirement not to deduct tax at source from sums so credited to any account shall apply only if the credit is afforded unilaterally i.e., without any invoice having been received from the payee, the amount is not credited to any particular payee's account, and the entire amount of the credit so afforded at the end of an accounting period is reversed at the beginning of the succeeding accounting period by the payee.	
7	**TDS credit to be allowed irrespective of the Assessment Year**	It is suggested that the TDS credit may be allowed to the deductee irrespective of the Assessment Year in which the corresponding income is offered to tax.	139
8	**Changes in section 234C of the Income-tax Act, 1961 (Interest for deferment of advance tax)**	It is suggested that upstream oil & gas companies may be exempted from the rigors of section 234C or the rigors may be relaxed by providing that no interest shall be leviable on shortfall of installment of advance tax, if any, to the extent that such shortfall is attributable to either of the following reasons: (a) Fluctuations in the international prices of Crude Oil.	140

		(b) Movements in the Exchange Rates for foreign currencies, (c) Government directives on subsidy sharing.	
9	**Dichotomy in methods of grossing-up of income subject to tax u/s. 44BB for TDS and assessment purposes**	It is suggested that suitable amendment may be made in section 195A of the Income-tax Act, 1961 so as to provide that where income of the non-resident is taxable u/s. 44BB of the Act, the same would be subject to single stage grossing-up for TDS purposes also.	140
10	**Rationalizing the provisions of section 248 of the Act**	It is suggested that the provisions of section 248 may be suitably amended to also cover the cases where the payer does not deny the liability of TDS but is of the view that TDS is applicable at a rate lower than the rate determined pursuant to the order u/s. 195(2).	141
11	**Interest on Refunds paid to the assesse to be at par with interest charged by the revenue on short payment of Income tax**	It is submitted that the interest rate on the refunds due to the assessee and on the amounts payable by the assessee to the Government should be same on the ground of equity.	141
12	**Providing Consequences of Non-disposal of Rectification Applications under section 154 of Income-tax Act, 1961.**	It is suggested that it should also be provided in the said sub-section (8) of section 154 that if the income-tax authority does not dispose of the application made to it within six months, the application shall be deemed to have been allowed. This would	142

		ensure promptness in disposal of applications under section 154 and avoid undue harassment to the taxpayers.	
13	**Insertion of specific definition of “month”**	Absence of specific definition of “month” leads to differential interpretation thereof and, hence, the avoidable litigation. It is, therefore, suggested the provisions of section 2 of the Act may be amended so as to incorporate therein definition of “month”.	142
14	**Consideration of interest for granting refunds u/s. 244A**	Absence of ample clarity as to whether the interest u/s. 244A is payable only on the amount of tax refund OR interest, penalty and other components of refund would also be covered within the ambit thereof leads to avoidable litigation. It is, therefore, suggested that a suitable clarificatory provision may be inserted in section 244A of the Act in this regard.	143
15	**Exclusion of non-residents from the ambit of sections 206AB and 206CCA**	It is suggested that, in view of the apparent impossibility of compliance, the provisions of sections 206AB and 206CCA may be suitably amended to exclude the non-resident payees/payers from the ambit thereof.	143
16	**Rationalizing the provisions of section 194-O dealing with TDS by e-commerce operators**	It is submitted that, the provisions of section 194-O may me appropriately amended to provide specific dispensation from TDS in respect of the cases	144

		where payment of sale consideration is made directly by the buyer to the seller without any intervention of the e-commerce operator.	
17	**Corporate Social Responsibility Expenditure to be allowed as deduction for payment of Income Tax**	To encourage the application of CSR in letter & spirit, expenditure incurred beyond statutory limit of 2% should be allowed under business expenditure to the assessee paying tax under normal provision as well as to assessee paying tax u/s 115BAA. In view of mandatory nature of CSR expenses under new Companies Act, 2013, it is suggested to insert an amendment under Income Tax Act allowing deduction of CSR expenditure beyond statutory limit of 2%.	146
18	**Depreciation provisions (Section 32)**	The rate of depreciation should be restored to at least 60%. This will encourage companies to invest more capital in renewable energy capacity addition.	146
19	**Revised return u/s 139(5)**	There is a need to retain the time limit for filing of revised tax return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier. The due date for filing of return u/s 139(1) for a company who is required to furnish a Report u/s 92E for international transactions with Associated	146

20		Enterprises or specified domestic transactions, is 30th November of the relevant Assessment year. Thus the existing provision allows such assessees only 1 month time to file revised return after filing of the original return, which is practically not adequate.	
20	**Rectification of mistake u/s 154 of the Income Tax Act, 1961**	It is suggested that sub-section (8) of section 154 may be amended to provide that if the income-tax authority does not dispose of the application made to it within six months, the application shall be deemed to have been allowed. This would ensure promptness in disposal of applications under section 154 and avoid undue hardship to the taxpayers	147
21	**MAT Credit Entitlement u/s 115JAA**	As per the provisions of section 115JAA of the Income Tax Act, 1961, if, during a year, a company has paid tax liability as per MAT provisions u/s 115JB, it is entitled to claim credit of excess of MAT paid over the normal tax liability in the following year(s). MAT credit can be carried forward for 15 years following the year of credit generation.	147
22	**TDS rate on payments covered under section 44BB of the Income Tax Act, 1961 (Act) - Amendment to Part II of**	Section 44BB was introduced within the ambit of Income Tax Act, 1961 (Act) with the object of simplifying the provisions relating to taxation of entities	147

	First Schedule to the Finance Act	(non-resident) engaged in the business of providing services and facilities used in connection with exploration and production of mineral oil and provides effective tax rate of 4% (Foreign Company)/3% (Not being a company) (plus applicable surcharge and cess) on gross receipts. However, Part II of First Schedule to the Finance Act, which provide rates of TDS, does not provide any specific rate for payments covered under section 44BB of the Act and therefore subject to TDS at 40%/30% (plus applicable surcharge and cess)	
23	**TDS on cash call**	Clarification is recommended to be issued to avoid such unnecessary litigations.	148
24	**Issue of Withholding Tax Certificate u/s 195(3)**	It should be clarified that for the purpose of Section 195(3) of the income tax act, branch includes a Project Office to avoid a situation where field formations deny the benefit of Section 195(3).	148
25	**15% corporate tax rate for new mining companies**	Please extend the benefits of Sec 115BAB to new mining companies also. With effect from 1ST April 2020, government has introduced new section 115BAB for new manufacturing companies and exclude the mining from it . In	149

		order to promote Aatam nirnbhar bharat , benefits of this section should also be extended to mining companies	
26	**Section 80 M**	Intercompany dividends eligible for 80 M deduction should be treated as exempt for the purpose of MAT calculation as well as setting of such dividend income with business losses/unabsorbed depreciation. As per section 80M, any dividend received from body corporate used further to declare divided to its shareholder is not taxable and eligible for deduction. Though this amount is eligible for deduction but still taxable for MAT purpose and will generate MAT credit which is not the intention of this section after abolishment of DDT provision. Even under normal tax provision where the company has business loss, instead of claiming the deduction under Sec 80 M dividend income has to first set off against with business loss which results in tax loss to the company as same can be set off in future years with business income. Thus, whole purpose of non-taxing the dividend income in case used to distribute it further is defeated.	149

27	**Section 194 O**	It is practically impossible for e commerce operator to comply with provisions of section 194O where the payments flow directly from buyer to seller and even e commerce operator not aware about the amount involved as contracts run for n number of months or year and quantity/price also changes time to time .	149
28	**Restoration of weighted Deduction on R&D Activities and inclusion of expenditure incurred on Bio-fuels -Section 35 (2AB) and 35(2AA)**	It is suggested to delink the R&D Deduction with the Option of 115BAA/115BAB by allowing "Weighted Deduction on R&D @ 200% of expenditure.	150
29	**Section 43B allows certain expenditure only upon payment**	To mitigate the hardship, it is suggested that an Explanation be inserted in Section 43B to the effect that payment to the fund would be equivalent to payment to employees	150
30	**Social and community welfare expenses – allowance under section 37(1) as business expenditure**	These expenses are incurred with the noble intention of helping the socially and economically weaker sections of the society. In doing so, the assessees share the duties of the Government in this regard. However, such expenses are being disallowed on the ground that they do not relate to the business of the assessee. This serves as a disincentive to the assessee in fulfilling their CSR. In order to encourage, such	150

		expenses may be allowed as business expenditure u/s 37(1)	
31	**Children's Education Allowance, Hostel Allowance etc.) mentioned in Rule 2BB r.w.s. 10(14)**	The Exemption limits for various allowances (eg: Children's Education Allowance, Hostel Allowance etc.) mentioned in Rule 2BB r.w.s. 10(14) was fixed in 1995. This needs to be revised keeping in view the cost inflation.	151
32	**Perquisite tax in the hands of employees was reintroduced vide Notification No. 94/2009**	The threshold limit for perquisite value to be taxed in the hands of employees, needs to be revised keeping in view the cost of inflation.	151
33	**Threshold exemption u/s 10(10AA**	It is suggested to revise the limit from Rs.3 lakhs to Rs.20 lakhs in line with the revised salaries.	151
34	**CSR expenditure**	Since Corporates support the social and developmental agenda of the Government, especially, COVID 19, it is imperative that the said expenditure be permitted as a deduction while computing the business income	151
35	**Allowance of Deduction under section 80G for the purpose of Section 115BAA and 115BAB Background**	It is suggested that deduction under section 80G of Chapter VI-A should be allowed while computing the total income under section 115BAA and Section 115BAB.	151
36	**Restoration of weighted Deduction on R&D Activities and inclusion of expenditure incurred on**	Currently India is a technology importing country. In order to promote innovation in technology through research	152

	Bio-fuels -Section 35 (2AB) and 35(2AA)	activities and to support Make in India, deduction under these section should be restored to 200%.	
37	**Request for Clarifications under section 206C(1H) - TCS on Sale of Goods**	Central Government may, by notification in the Official Gazette, specify Public Sector Undertaking (PSU), as any other person not to be included within the meaning of buyer as per Clause (C) of Explanation (a) to the Section 206C(1H) of the Income Tax Act 1961.	152
38	**Waiver of Interest for Short-deposit of Advance Tax Instalments for FY 2020-21 on account of COVID-19 outbreak**	It may be proposed that in line with other reliefs extended by the Government, a provision may be introduced as a COVID-19 Relief to waive off the Interest to be levied under section 234C specifically for the FY 20-21.	153
39	**Reduction of Period of Holding for Units of InvIT to 12 months from 36 months**	Considering the investor hardship and keeping it more exposed, we suggest to consider the period of holding for units of Business Trust including InvIT units same as considered for listed securities under section 2(42A). Moreover, such change will help investor to go for listed units and on the other side this will propel unlisted InvITs to go for its listing. Accordingly, 1st & 3rd proviso of section 2(42A) to be suitably amended to cover period of holding for Units of Business Trust including InvIT units as 12 months and 24	154

		months for listed and unlisted units respectively.	
40	**Creation of PAN sub user login in case of big corporates**	Considering the hardship faced by large assessee, multiple login may be allowed in the form of Sub-user for single PAN/TAN may be enabled for the benefit and ease of compliance of various activities by the tax payers Similar facility is also available for GST login wherein multiple logins can be used for single GST registration.	155
41	**Delegation of power to Functional Director or to any other authorized person u/s 140 for signing and verifying certain forms and declarations**	Provision of the section 140 may be suitably amended on the stringent requirement of the Act of verification/signing of the Income tax return by MD. Board of Directors of the Company may be allowed to delegate such power to any authorized person for this purpose. That would certainly help corporate houses to function well in each and every scenario as big corporate are facing difficulties in getting all the documents signed by their MD.	155
42	**Relaxation in provision of section 281: Prior permission to create a charge on the asset of the business**	The objective of the section of safeguarding the interest of the revenue against any fraudulent charge. We therefore, without altering the intention of the said section, suggest to provide some relaxation by fixing some quantum of default/pending demands/blanket demand (in	155

		absolute or percentage term with respect to total asset) and amount exceeding the quantum fixed would require assessee to pay off or clear the pending demands. Such amendment will streamline the process for Bonafide assessee and provide ease of business.	
43	**Inclusion of Work from Home Allowance under sub clauses of rule 2BB**	Since the expenses may qualify the definition under section 10(14)(i) of the Act i.e. special allowance or benefit, specifically granted to meet expenses wholly, necessarily and exclusively in the performance of the duties of an office, therefore we suggest to suitably insert expenses made for the setup of office and its maintenance for the purpose of work from home under sub-clause of rule 2BB.	156
44	**LTC cash voucher scheme extension for all the years**	The LTC cash voucher scheme may be extended for all the Assessment Years as not everybody wants and likes to travel or finds it comfortable to travel. Therefore, we propose to amend section 10(5) suitably and allow cash expenses under the blanket of the said section. Even now the situation has not normalized and the same seems uncertain for the near future as well. Considering the adversity as is being faced by people because of many ongoing restrictions, the above scheme	157

		may be suitably inserted under the said provision.	
45	**An option of Nil deduction of TDS u/s 197 for Large Tax Payers**	Considering the above, suitable provisions may be inserted u/s 197 for PSUs or any other large taxpayer by providing an option to apply of Nil rate of TDS certificate by depositing lumpsum amount on the basis of previous TDS liability. This will provide ease to the assessee from TDS reconciliation and generate upfront revenue to the department.	157
46	**Certain deduction to be restored for the taxpayers opted to pay tax u/s 115BAA**	It is suggested to provide 35AD deduction pipeline wise to PSUs undertaking specific pipeline for the development of cross-country pipeline as a whole.	158
47	**Deemed acceptance of rectification application if rectification is not carried out in 6 months' time**	It is recommended that where action on rectification application is not carried out within a period of six months, such application should be deemed to have been allowed. It is also requested that in cases of tax refunds due to the assessee, the time-limit of four years for rectification should be waived off, more particularly in cases where the assessee is not at fault for the delay in disposal of an application for rectification	158
48	**Prescription of exemption from deeming of fair market value of**	It is suggested that in order to enable the benefit of the amendment introduced in Finance Bill 2019, CBDT should	159

	shares for certain transactions	prescribe such transactions undertaken by certain class of persons where the consideration for transfer of shares is approved by certain authorities and the person transferring the share has no control over such determination, to which the provisions of section 56(2)(x) and 50CA shall not be applicable. Transaction such as (a) Assets acquired through bidding process, (b) Transaction of Government companies or PSUs may be kept outside of its purview.	
49	**Deduction of Interest on Certain loans from Employers to Salaried Person, which otherwise is deductible if taken from Bank/financial Institution**	For the sustenance of the Government's objective we propose to normalize the conditions as imposed for availing the benefit of the said section by inserting loan from Employers also as the valid source along with the financial institution. Housing for all is the great mission that our government is focusing on and therefore providing another source of loan to the assessee will outspread the zeal towards the mission of the government.	159
50	**Clause (a) of Explanation 2A of section 9(1)(i)**	It is recommended that the provision be appropriately re-drafted so that the language of the provision is aligned to the intent of the legislature with which it was introduced – that is,	161

		to tax revenue arising from only digital presence.	
51	**Employees' contribution to Provident Fund - Section 36(1) (va)**	It is hereby suggested that suitable amendment should be made in the Act so as to bring the provisions relating to the Employees' contribution towards employee welfare funds in line with the employer's contribution towards such funds.	161
52	**Relaxation in rule 6DD for payment of more than Rs. 10,000 in cash in foreign country - section 40A(3)**	It is hereby suggested that relaxation may be provided in Rule 6DD where cash exceeding Rs. 10,000 is used in foreign country by employees on behalf of the company having regard to factors such as high cost of living, risk of online fraud etc. subject to condition that foreign currency carried in each foreign trip is within permitted limits as per Foreign Exchange Management Act.	161
53	**Amortization of capital expenditure**	It is suggested that provisions may be incorporated in the Act to allow amortization of such capital expenditures which are essential to run the business.	162
54	**Retirement Funds**	In the context of the current rates of interest and the high cost of annuities and considering that pensions are in any case taxable in the hands of the employees at the time of receipt, it is suggested that the overall limit for PF and	162

		Superannuation contributions (in line with the current stipulations in the Income Tax Rules) be increased to 35%.	
55	**Amount paid for increase in authorized capital – Section 35D**	It is suggested that fee paid to Registrar of companies for increase in authorized capital may be allowed as revenue expenditure in 5 equal installments u/s 35D.	162
56	**Allowance of Provision for Post-Retirement Medical Scheme**	A separate sub section under section 36 to be introduced to allow provision for post-retirement medical benefits or suitable clarification to that effect may be issued by CBDT	163
57	**Section 80JJAA – Deduction of additional employee cost for 3 years – Relaxation of upper cap on total emoluments which is Rs 25000 p.m. currently**	The intention of this section is to promote creation of new jobs which is especially critical in today's macro environment and at least for a foreseeable future. The government has practically exempted individuals with NTI up to Rs.5 lakhs from paying any tax as small taxpayers or new earners. To bring consistency in policy, the government should change the upper cap from Rs. 25000 p.m. to those whose Net Total Income exceed Rs.5 lakhs. This will allow a meaningful deduction for industry which will incentivize creation of additional jobs especially for young skilled graduates.	163
58	**Scrapping of ICDS**	It is suggested that the entire ICDS may be scrapped	163

		altogether and erstwhile system may be put in place.	
59	**Availment of Input Tax Credit after the end of September of the next FY** **Background**	It is hereby requested, to review the period of availing ITC by an assesse for the previous Financial Year or it may be allowed until the filing of Annual Return.	164
60	**Interest on account of rule 42 (2) CGST rules**	it can be looked into to waive the interest part of account of rule 42 (2) calculation. The need of reversal arises only due to change in the ratio of taxable and non Taxable supply. Since there is no intention to evade ITC, accordingly no Interest should be imposed.	164
61	**TDS u/s 194 Q- Clarification regarding non applicability of TDS on Indirect taxes like Excise duty /VAT/CST like GST if charged separately in invoice**	It is requested you to please provide a clarification on similar grounds for exclusion of Excise Duty, VAT and CST.	165
62	**Weighted Deduction for eligible R&D Expenses in New Tax regime**	R&D weighted average deduction to be reintroduced in new regime, this will promote more research and development activities in the country.	165
63	**Covid Treatment Expenses**	The Government should introduce a deduction which can be adjusted against the future earnings of the individual, this will help in recouping the savings lost to the individuals.	165

64	**Standard Deduction**	Salaried Employees standard Deduction limit should be increased to Rs 1 Lakh from present Rs 50000. Considering the fact that salaried individuals do not get any deductions for medical and transport subsidy/allowances in lieu of which standard deduction was introduced subsuming these deductions. In the recent past there is a burgeoning rise in the transportation cost due to unprecedented rise in fuel prices and the medical expenses have also seen astronomical rise. The proposed increase in standard deduction is reasonable to compensate and give relief to a certain extent Moreover salaried tax-payer are honest tax payers, relief should be provided to them for these basic expenses for which standard deduction was instituted.	165
65	**No disallowance for the domestic company, for charges paid to a PE in India of a foreign company**	It is, therefore, recommended that the expense claims (in such a scenario) should not be subject to transfer pricing assessment and disallowance.	166
66	**100% deduction of capital expenditure under Section 35 AD for specified projects which include Solid Waste Management – to be**	In the interest of a level playing field, 100% deduction of capital expenditure under Section 35 AD which is available for specified projects including those relating to Solid Waste	166

	extended to 'Drop in' Biofuels	Management should be extended to 'Drop in' Biofuels.	
67	**Clarification to prevent erosion of Indian tax base through Transfer Pricing adjustments in hands of Foreign Companies**	Considering the above, we request you to clarify either by making necessary amendments in the provisions of section 92 of the Act; or by issuance of a circular, ideally being the latter, to prevent the unintended application of the TP provisions of India in the manner, as aforesaid; and also obviate the hardship faced by foreign companies in India.	166
68	**Section 139(5) – Reduction in time limit for filing revised return – Request to bring back erstwhile time limit for filing of revised tax return at least in cases of claim of foreign tax credit**	Keeping in mind the aforesaid hardship of double taxation which may arise to the individual assessee as he may not be able to claim foreign tax credit in the absence of overseas income-tax return, there is a need to retain the time limit for filing of revised tax return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier. Therefore, the earlier time limit may be brought back at least in respect of revision required for claiming foreign tax credit.	169
69	**Section 80JJAA – Deduction of additional employee cost for 3 years – Relaxation of upper cap on total emoluments which is Rs 25000 p.m. currently**	The intention of this section is to promote creation of new jobs which is especially critical in today's macro environment and at least for a foreseeable future. The government has practically exempted individuals with NTI	170

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		up to Rs 5 lakhs from paying any tax as small taxpayers or new earners. To bring consistency in policy, the government should change the upper cap from Rs 25000 p.m. to those whose Net Total Income exceed Rs 5 lakhs. This will allow a meaningful deduction for industry which will incentivise creation of additional jobs especially for young skilled graduates.	
70	**Transfer pricing compliances should also be exempted for Non-Residents when tax has been deducted at rates as per section 115A of the Income Tax Act**	The Finance Act 2020, while exempting Non- Residents on the requirement to file the Return of income, based on the criteria mentioned in the overview above, the assessee has to continue with the Transfer pricing compliances as a similar amendment has not been made in the Transfer pricing provisions. If the Transfer pricing compliances are also exempted it would be encouraging to the assessee by removing the compliance requirement totally and beneficial to the assessee who is offering the relevant income to withholding as per the provisions of the Act.	170
71	**Clarity on equalization levy and need for a FAQ on e-commerce activities and operators**	Clarification required on following points: i. Interpretation of words viz. “electronic”, “digital”, “facility” and “platform” required to identify the	171

		transactions covered within the ambit of newly inserted EL provisions. ii. Whether Non Resident can claim EL paid in India as a foreign tax credit while filing their tax returns in respective countries of incorporation, or would it result in an additional tax cost	
72	**Section 94B – Limitation on interest deduction**	Clarification required on following points: i. Whether EBITDA for the purpose of section 94B of the Act should be as per books of accounts or as per Income Tax ii. On quantification of 'maximum allowable interest' in relation to interest disallowed in earlier years which is carried forward and eligible for set off during the year iii. In case of gross up of tax, whether the grossed up amount of expense should be considered for the calculation of limitation iv. The limitation of carry forward for 8 years to be relaxed further so that the allowable expenses are not unjustly disallowed.	171
73	**Significant Economic Presence ('SEP'): As per provision of section 9 of**	A clarification is required whether the provisions and limit of SEP is applicable on	171

	the Act, income is deemed to accrue or arise in India if it has SEP in India. The term SEP has been defined to inter-alia include transaction of goods and services with any person in India including provision of download of data or software in India where the aggregate of payments arising from such transactions exceeds INR 2 Crore.	transactions with non-resident e-commerce operators, site, etc. or on all transactions entered with a non-resident for which payment is made by a resident; If the provision of SEP on all the transactions, the aggregate payment limit should be increased from the existing INR 2 Crores considering the transactions entered by large MNCs.	
74	**Exemption under section 10(48) of the Act on income received in India in INR terms by residents of Russia, Venezuela etc. (countries affected by US sanctions) similar to Iran**	Applying the analogy for Iran, it is suggested that similar notification be issued for other countries as well.	172
75	**Income-tax Compliances:**	The certificate to be issued under section 281 of the Act should be issued electronically on the income-tax portal by the faceless assessment centre as they can easily determine if there would be any tax outflow on account of the pending assessment proceedings. Further, the TRC should also be issued electronically since it would save the time and paper work and the TRC can be issued without any delay.	172
76	**Delay in issuance of refund- Issuing of refund**	CPC should not be permitted to transfer the return to the	173

	is postponed though the return is processed under section 143(1) of the Act if the notice under section 143(2) for scrutiny assessment has been issued.	jurisdictional Assessing officer after processing of intimation u/s. 143(1) in the interest of ensuring refund to the taxpayer within reasonable time, avoiding unreasonable delay.	
77	**PAN to be mentioned in F-26AS**	Reconciliation of income and TDS as per F-26AS is required by Tax Authorities while Assessment Proceedings and for compliance purpose. Further, they also need reconciliation of TDS as per F-26AS and as per Return of Income. Since, only one PAN is allowed to be obtained by a person, incorporating, PAN of the deductor also in F-26AS would help in eliminating creation of multiple Vendor / Customer Master (on basis of TAN) for the same vendor / customer in the books of account. This would simplify the process of reconciliation by reducing complexities created due to multiple ledger accounts created on the basis of TAN.	173

INDIRECT TAX

Goods and Services Tax (GST)

1. Request for inclusion of Crude oil, natural gas, MS, HSD and ATF under GST

Background

At the onset, non-inclusion of basic petroleum products such as Crude oil, natural gas, MS, HSD and ATF under the newly introduced GST regime is affecting the sector adversely. Presently, the industry is paying GST on procurement of plant machinery and services and is unable to get the input tax credit as the final product is not included under GST. This is leading to immense pressure on the industry, which, in turn, is straining the entire economy.

Suggestion

Earliest inclusion of petroleum products such Crude oil, natural gas, MS, HSD and ATF under GST regime.

Upstream

2. Inclusion of Petroleum Products in GST

Background

Presently Five Petroleum Products are kept outside GST till it is notified for inclusion on the recommendation of the Goods and Services Tax Council.

Suggestions

Crude Oil is an Industrial Input for production of petroleum products [MS (petrol), HSD, ATF etc]. Hence, petroleum crude (crude oil) should be leviable to GST.

Likewise, Natural gas, which is primarily an Industrial fuel, should also come within GST.

This will allow E&P Companies to utilize the credit for GST paid on Inputs and avoid stranding of taxes. Further this will also help in reducing the cost of production of MS, HSD and ATF etc.

3. GST on Royalty

Background

In the Sectoral series on Government Services, CBIC has clarified that Royalty payment made for assignment of Right to use natural resources is to be treated as consideration for supply of services and GST is to be charged.

Suggestions

The Royalty payment made by E&P companies to State Governments under the provisions of Section 6A of the ORD Act,1948 is in the nature of taxes and not consideration for any services received/receivable from the Government. Suitable clarifications may be issued to exempt Royalty paid on crude oil and Natural Gas from applicability of GST.

This will provide relief to E&P sector which is already stressed by increasing burden of stranding of taxes and also avoid any future litigation.

4. GST on Specified goods used in LSTK Contracts in E&P Sector

Background

Concessional GST rate @5% is available for the materials used in E&P operations as per the Notification no. 03/2017 Integrated Tax (Rate) dated 28.06.2017 subject to issue of Essential Certificate from DGH.

However, LTSK contracts has been classified as Works Contracts as per Schedule II of the GST Act and accordingly taxable at 18% GST.

Suggestions

Since no input credit is available to the E&P Sector, request concessional GST rate of 5% on the LTSK contracts awarded by the E&P Sector.

Otherwise, sector is not able to avail the intended benefit of the notification no 03/2017 - Integrated Tax (Rate) dated 28.06.2017 even in those cases where materials consists more than 50% of the total contract cost. This will help in providing some relief to the E&P Sector

5. 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

Suggestions

It is requested 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. This will help in minimising the impact of stranding of taxes on Onshore E&P operations.

6. Movement of goods between blocks (located in different states/UT)

Background

Transfer of goods from one block to another (located in different State/UT) is presently charged GST@ 5% subject to EC from DGH. Otherwise such transfer is chargeable at merit rate.

Suggestions

Subsequent movement of goods which is intrinsic to E&P operations should be exempt from GST.

Moreover, It is requested that once goods have been previously imported or procured under EC/DGH certificate, further movement of such goods within the same PAN No. should not require any EC/DGH certificate.

This will help to avoid extra cost burden due to subsequent levy of GST on each movement as no input tax credit is available to the sector.

7. Increase in Cost of other Services

Background

Presently GST is levied commonly at 18% on majority of the services, which is higher than the previous regime i.e. 15%.
Since no input credit is available to E&P Sector, it is requested that the rate may be reduced to 12% for all services used for petroleum operations by the upstream sector.

This will help encourage risk capital in exploration & investments to increase production.

8. 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%.
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.

9. Taxation of Joint Venture

Background (I)
Unincorporated Joint Venture (UJV) – Registration under GST requires PAN No.

GST Council may be requested to provide clarifications in the lines of Petroleum Tax Guide, 1999 exempting UJVs from taking separate registrations in GST in view of non-availability of PAN No of the UJV to avoid different interpretation by fields officers and to avoid possible litigation.

Background (II)

Unincorporated Joint Venture – Profit Petroleum
Clarifications requested on the taxability of profit petroleum for the period from 01.07.2017 to 24.01.2018 in view of the Notification no 05/2018 -CT(Rate) dated 25.01.2018, which exempts Govt.'s share of profit petroleum w.e.f. 25.01.18 to avoid different interpretation by fields officers and to avoid possible litigation.

10. E Way Bill requirement

Background

Exemption from e-Way Bill requirement on Movement of goods from one location to another location of the same entity within the same State.

E&P companies are required to move Rigs, Casings & Tubings, pipes and other stores and capital items from one well/drilling site to another for the purpose E&P operations on a regular basis. It is therefore, requested that exemption may be given to E&P Companies from

generation of e-way bill on movement of goods from one location to another location of the same entity within the same state for E&P operational purpose on the ground of ease of doing business.

11. The Oilfield (Regulation& Development) Act, 1948

Background

Royalty is charged on the pre-discounted Price at 20% on Crude Oil and 10% on Natural Gas. The maximum Royalty that can be levied as per the Act is 20%.

The rate of Royalty may be reduced under the Act so as to give some relief to the upstream sector which is already under pressure due to non-availability of ITC.

This will help E&P sector to lower the burden of stranding of taxes.

12. Abolition/ Review of Rate of OIDB Cess on Oil Production in the Pre-NELP Exploration Blocks /Nomination Regime

Background

OID Cess is levied on crude oil in terms of The Oil Industries (Development) Act, 1974. Till Feb'16, OID Cess was levied at specific rate (Rs. / MT) and revised from time to time keeping in view crude oil prices. Considering unprecedented reduction in crude prices, OID Cess was reviewed and revised from Rs. 4,500/MT to ad-valorem 20% w.e.f. 01 Mar'16. Though, in the Budget, introduction of ad-valorem OID Cess rate was envisaged by the Government as relief for the industry, its unduly high rate at 20% has impacted industry adversely. As, historically OID Cess has been levied in range of 8-10% of crude price, Industry has been making representation to Govt. for review and reduce the rate of OID Cess.

OID Cess is levied @ 20% only on crude oil produced from nominated blocks and Pre-NELP Exploratory Blocks. Most of the Fields of the Pre-NELP and nomination regime are already in the decline stage and need more initiatives and expenditure to maintain/enhance the existing production level. **It is pertinent to mention that OID Cess is not applicable in NELP, OALP and DSF blocks. It is understood that these incentives have been extended under relevant schemes to augment domestic oil production.**

Further OID Cess is levied only on crude oil produced domestically. Thus, it places domestic crude oil producers at a significant disadvantage vis-à-vis imported crude oil. This levy, thus, is against the very spirit of "Make in India" and "Atmanirbhar Bharat" and needs an amendment.

Besides OID Cess, other statutory levies viz. royalty (@ 10% and 20% on offshore & onshore production respectively) and VAT (@ 5%) are also paid. Both royalty and OID Cess are production levies and not pass through to Buyers and form part of cost of production. It makes many new development projects economically unviable. During low crude oil price regime, it also results into significant amount of impairment loss of ONGC's Assets.

Suggestion

(a) Request for abolition of OID Cess in respect of nomination / pre-NELP blocks is well justified. Exemption of Cess will improve the techno-economics of these Fields for further

production. The increased liquidity will encourage the contractor for continuous investment in these fields for maintaining/enhancing the production. This will make many projects viable and with increased production, any balance revenue gap will be more than compensated.

(b) In case, Cess is not abolished, considering the minimum price required to meet its cost of production and to sustain the operations, it is proposed to levy OID Cess based on a fair graded system linked to crude oil prices to calibrate volatility in prices:

Crude Oil Prices ($/bbl)	OID Cess (Ad-valorem)	Clarification
Upto 25	NIL	Nil
25 to 50	5%	5% of crude oil price above USD 25/bbl (A)
50 to 70	10%	(A)+10% of crude oil price above USD 50/bbl = (B)
70 and above	20%	(B)+ 20% of crude oil price above USD 70/bbl

13. Additional Levy of Basic Excise Duty (BED) on Domestic Production of Petroleum Crude in addition to NCCD

Background

The Hon'ble Finance Minister in her budget speech 2019 stated that tobacco products and crude oil attract National Calamity & Contingent Duty (NCCD). In certain cases, this levy has been contested on the ground that there is no BED on these items. To address this issue, a nominal basic excise duty has been imposed.

Accordingly, Forth Schedule to Central Excise Act has been amended to levy BED at the rate of 'Rs. 1 per tonne' on domestic production of petroleum crude. This additional levy of BED has created hardship in compliance of Excise Law in respect of each producing assets. In addition to BED, the OID Cess, a duty of excise is being discharged through centralised concept by obtaining single Excise Registration in view of Circular No. 18/88 dated 20.05.1988 issued by Ministry of Finance.

Further, the NCCD was introduced by Ministry of Finance @ Rs 50 per MT on indigenous crude oil. This duty was to be valid for one year i.e. upto 29.02.2004 so as to replenish the National Calamity Contingency Fund, but it is still continuing. Accordingly, Oil Industry has been representing from time to time for removal of NCCD.

GST has been introduced since 1st July 2017 subsuming most of the indirect tax levies including Excise duty, Service Tax, VAT, Central Sales Tax etc. However, Crude Oil, Natural Gas in addition to Petrol (MS), Diesel (HSD), ATF are temporarily kept out of GST. Hence, there is substantial stranding of taxes in the hands of company effecting cash flow negatively. Further, Company is burdened with dual compliance of GST law as well as Central Excise & VAT laws.

Suggestion

In view of above, the NCCD along with BED on production of domestic crude oil should be removed with immediate effect which would facilitate the compliance as well as ease of doing business.

14. Tapering of Royalty rates

Background

Keeping in view the proposed dismantling of Administered Pricing Mechanism (APM), a Committee headed by Sh J.M. Mauskar, Joint Secretary (Exploration) in the Ministry of Petroleum & Natural Gas (MoP&NG) was constituted in 2000 for evolution of a new scheme of royalty w.e.f. 1.4.1998. Based on the recommendations of the Mauskar Committee, the new royalty scheme effective from 01.04.1998 was circulated vide Resolution dated 17 Mar'03. Salient features of the Resolution dated 17 Mar'03 are as under:

(i) Royalty will be fixed on Ad valorem basis.
(ii) Royalty will be calculated on cum-royalty basis
(iii) Effective from 01.04.2002, for onland areas, royalty will be paid @ 20% of the wellhead price till 2006-07. The convergence process would commence w.e.f. 2007-08 with tapering rates of royalty @ 1.5% each year so as to facilitate convergence with NELP royalty rate of 12.5% by 2011-12. For offshore areas, royalty will be paid @ 10% of the wellhead price.

Subsequently, the scheme of royalty was issued by Government vide notification dated 16 Dec'04, wherein it was decided that the royalty on production from nomination blocks shall be levied @ 20% and 10% of well head price in respect of onland and offshore areas respectively.

The convergence process, which was envisaged from 2007-08 with tapering rate/s of royalty @ 1.5% each year so as to facilitate convergence with NELP royalty rate of 12.5% by 2011-12 did not happen and royalty on production from onland nominated blocks are still being paid @ 20% of well head price.

Suggestion

Tapering of Royalty rates as proposed in Resolution dated 17 Mar'03 should be implemented and royalty on production from onland nominated blocks should be brought to the level of 12.50% that is equal to Royalty rates applicable to crude produced from NELP Blocks.

15. Deemed Export Benefit for Technically Qualified Empaneled Bidders

Para 7.02 B.(f)(i) of FTP 2015-20

Background

Various facilities such as Well-platform, Process Platforms, pipelines etc in offshore and onshore for extraction and production of hydrocarbons. For construction of such facilities, ONGC invites international competitive bid (ICB) under two-bid system i.e., technical bid and price bid. Accordingly, companies shortlist technically qualified bidders at first stage and price bids are opened subsequently in respect of technically qualified bidders alone. The contracts are awarded to lowest price bidder who is technically shortlisted. Considering the high value tenders and complexities of technical criteria, the shortlisting of technically

qualified bidders is a time-consuming process which takes 8 – 10 months. In order to minimize the tendering process and accelerate domestic production of hydrocarbon, one of the option available is to short list & empanel technically qualified bidder for each category of service through ICB and price bids will be sought from such short listed & empaneled bidders only.

It is pertinent to mention that under Sl. No. 404 of Customs Notification 50/2017-Cus dated 30.06.2017, the import of specified goods required for petroleum operation attracts 5% customs duty (BCD-Nil, IGST-5%).

Further, as per para 7.02 B.(f)(i) of FTP 2015-20, the deemed export benefit is allowed to domestic supplier (manufacturer) on supply of goods to any project or for any purpose in respect of which the Ministry of Finance, permits import of such goods under Customs Notification No. 50/2017-Cus dated 30.06.2017 with Zero Basic Customs Duty. However, such supply should be under procedure of ICB. Accordingly, domestic manufacturers supplying goods under ICB for construction of facilities for petroleum operations are eligible for deemed export benefits.

Since procedure of ICB is neither defined under Foreign Trade Policy nor Customs/GST Law, it is apprehended that field formation may deny the Deemed export benefit to the eligible domestic manufacturer supplying goods for the contract awarded based on price bids obtained from bidders already empaneled based on technical criteria on ICB basis.

Suggestion

As the empanelment of such technically qualified bidders is based on procedure of ICB which would be valid for a period of 3-5 years, a clarification to this effect is required to be issued by Ministry of Commerce that the proposed procedure to obtain price bid only from technically qualified empaneled bidders would be eligible for deemed export benefits to the domestic suppliers as specified in para 7.03 of FTP 2015-20.

16. Relaxation from Condition of ICB for Deemed Export Benefit

(Para 7.02 B.(f)(i) of FTP 2015-20)

Background

Supply of goods to any project or for any purpose in respect of which the Ministry of Finance, by erstwhile Notification No. 12/2012 –Customs dated 17.3.2012, as amended from time to time, had permitted import of such goods at zero customs duty (with exemption of both BCD and CVD) subject to conditions specified therein and which are continued under the Customs Notification No. 50/2017-Customs dated 30.6.2017 with exemption of zero basic customs duty and subject to conditions mentioned in the said new notification. Benefits of deemed exports shall be available only if the supply is made under procedure of ICB.

Now, the Govt. of India, Ministry of Finance (Dept. of Expenditure) vide F.No. 12/17/2019-PPD dated 15.05.2020 has amended the General Financial Rules, 2017, *inter-alia,* that no Global Tender Enquiry (GTE) shall be invited for tender upto Rs. 200 Crore.

In view of above, under procedure of National Competitive Bidding (NCB) or through GeM, the domestic manufacturer would not be eligible for deemed export benefit due to mandatory requirement of ICB under Para-7.02(f)(i) of FTP.

Here, it is pertinent to mention that, there is relaxation from the condition of procurement of goods under procedure of ICB for setting up of Mega Power Projects and for Nuclear Power Project at Para-7.02(f)(iii) & 7.02(h)(iv) respectively of extant FTP.

Suggestion
In this regard, it is requested to relax the condition of ICB under Para-7.02(f)(i) of FTP for petroleum operations so that domestic manufacturers can continue to avail the benefit of deemed export:

(i) on supply with tender value upto Rs. 200 Crore; and

(ii) for the procurements through GeM Portal.

17. **Service Tax on Royalty**

Background
Like any taxing statue, ORD Act & PNGR under which Royalty is levied has a charging provision (Section 6A of ORDA, 1948), provisions for granting exemption [Section 6A(5)], imposition of penalties, by way of imprisonment for failure to pay [Section 9(1)], power of enter and inspect any mine [Section 11(1)(a)], order production of any document [Section 11(1)(b)], etc. and examine any person [Section 11(1)(c)], besides the Rule making powers. Monthly returns are also filed in terms of Rule 14 (2).

The rate of royalty etc. under ORD Act is fixed by the statute and not by the agreement between the parties. The rate of royalty may be revised subject to the limitation contained in the act in respect whereof the lessee have no say in the matter. Even the principle of natural justice are not required to be complied with. The lessee even cannot transfer mining lease without following the prescribed procedure under the law. The amount of royalty received by the state is expended as general revenue.

Such royalty as being paid by companies is in the nature of tax. Accordingly, the service tax should not be applicable on payment of such royalty which is an imposition under Law as well as there is absence of quid pro quo.

It is also pertinent to mention that in case of India Cement Ltd. vs. State of Tamil Nadu, the Seven Judges Bench of the Hon'ble SC held that royalty is a tax. However, in case of Mineral Area Development Authority vs. M/s Steel Authority of India (SAIL) & others, this matter is pending before the Larger Bench of Nine Judges of the Hon'ble SC.

Suggestion

In view of above, a clarification may be issued that Royalty being paid by ONGC u/s 6A of ORD Act is in the nature of tax and hence should not be subject to levy of Service Tax/GST.

18. Clarification under Service Tax to the effect that consortium members including operator and the consortium formed under PSC are not two distinct persons

Background

In order to augment the indigenous production of Crude Oil and Natural Gas, Govt of India announced New Exploration Licensing Policy (NELP) in the year 1999 which, inter-alia, provides fiscal stability during entire period of contract. Accordingly, international competitive bids are invited for award of hydrocarbon bearing Blocks. Normally, Indian and/or Foreign Companies form consortium and participate in the tender. After award of contract, Production Sharing Contract (PSC) is signed by the Govt. with the respective consortium Members for carrying out E&P activities.

In terms of PSC, one of the consortium members is designated as an operator who has to carry out E&P activity based on work plans and budget duly approved by Management Committee which includes Government nominee as well. Hence, the operator is executing the PSC for exploration & production of hydrocarbons on behalf of consortium and other members are merely making the financial/capital contribution in terms of their participating interest. Therefore, the consortium formed under PSC is not an Association of Persons (AoP) and operator is not providing any service to its consortium members or vice-versa. Operator, as designated under PSC, is incurring expenditures from the contribution received from the partners for the Exploration and Production of hydrocarbons. Hence, there is neither any intention to provide service by operator to its members nor consortium formed under PSC can be treated as an AoP for the purpose of levy Service Tax.

Suggestion

As per the provisions of Income Tax Act, the constituent members of the PSC are not taxed as Association of Persons (AoP) but are taxed in their individual capacity. Therefore, the consortium members including operator and the consortium are not distinct persons.

In line with above, a clarification, may please be issued that the transactions between members and the consortium (under PSC) for carrying out E&P activities in terms of PSC should not be treated as service provided by one person to another for levy of Service Tax.

19. Service Tax on Cost Petroleum Service Tax on Cost Recovery (Cost Petroleum) recovered by upstream oil and gas companies under Production Sharing Contracts (PSC)

Background

- The field formations are confirming levy of Service Tax on the cost recovery (Cost Petroleum).
- PSC is an economic sharing agreement and not a service contract. Government is a partner in the venture it is entitled to receive royalty and its share of any profit petroleum either in cash or in kind if revenue is generated from sale of hydrocarbon. Similarly, the Oil & Gas Companies are also entitled to their share of profit petroleum and a recovery of cost (cost petroleum) as agreed in the PSC.

- Under the PSC arrangement, the Companies spend costs relating to Petroleum Operations ie exploration, development & production of hydrocarbon. To manage the inherent risk of exploration, the PSC includes a provision to recover cost and capital spent in exploring and developing the field, if revenue is generated.
- This is just a mechanism (formula) to determine the share of petroleum which will belong to Companies and to the Government. This is not linked to any service.
- The CBIC has already issued a circular clarifying that Cost Petroleum is not a service rendered to the Government.
- As this is a clarificatory circular it should be equally applicable to the service tax regime. Despite circular in the GST regime, the field formations are confirming levy of Service Tax on this cost recovery which is a matter of grave concern for the industry.
- Note that the underlying services or supplies from vendors have already suffered appropriate taxes

Suggestion

Clarification should be issued under the Service Tax Law (Finance Act 1994) confirming that Service Tax is not applicable on such Cost Petroleum Similar to clarification issued under the GST regime.

20. Service Tax on Profit Petroleum

Background

Field formations have indicated their intention to issue notices seeking to levy service tax on Contractors share of profit petroleum which will result in unnecessary litigation.

- Profit petroleum is the share in petroleum after recovery of cost which is shared between the Contractor and the Government.
- This is not a consideration for any service. VAT is already paid at the time of sale of the petroleum products (crude/ natural gas) by the Contractors.
- Recently, field formations have indicated their intention to issue notices seeking to levy service tax on Contractors share of profit petroleum which will result in unnecessary litigation.
- The Contractor's share of profit petroleum is an entrepreneur revenue from sale of Crude Oil/ Natural Gas and not a consideration for any service.
- Field formations have indicated their intention to issue notices seeking to levy service tax on Contractors share of profit petroleum which will result in unnecessary litigation

Suggestion: -

An urgent clarification is requested to clarify that contractors share of profit petroleum is not a payment against any service and therefore not subject to service tax.

Downstream

1. Underutilisation of Refinery Assets due to GST Applicability on Transfer of Intermediate Streams between Refineries and Blend components transferred within BPCL Refineries

To utilize the refinery assets optimally and maximize production of value added products, the Refineries resort to transfer of intermediate streams and blending components within the

own group of refineries and also from other Indian Refineries. Such transfers enables not only optimal utilization of the refinery assets but also avoids import of products and export of intermediates.

Stock transfer of intermediate product streams between refineries suffers GST with nil or minimal input tax credit available as products finally manufactured by Refineries are under Excise/VAT regime. Due to this, the transfer of Intermediate products between Refineries becomes commercially infeasible, which in effect results into underutilization of Refinery assets and production capacities and causes loss of optimum utilisation of nation's resources.

It is to be noted that BPCL has spent INR 16,500 Crores on IREP and a large secondary unit capacity has been created. Effective utilization of these refinery assets will add tremendous value to the corporation and to the Nation. We have also incurred capital expenditure of Rs. 530 Crores in laying of Heat Traced Pipeline between Refinery tankages and the Jetty, at both the refineries at Mumbai and Kochi, to enable the integration of the two refineries by enabling transfer of high pour intermediate product streams like HSVR / LSVR, fuel oil and VGO through coastal movement.

Due to un-viability of such intermediate stream transfers, we are not able to utilise the production capacities at KR to produce high value added products. Also, at Mumbai Refinery, we are exporting the low value added product at sub optimal price. Simultaneously, it leads to under - utilization of the secondary processing technology in the other refinery. Further, it compels us to undertake the costlier imports to satisfy the environmental norms of low sulphur plant fuel. Therefore, it results in loss to the corporation from all the above accounts

At present, the intermediate products at Mumbai Refinery such as HSVR and LSVR are converted into Furnace Oil 380 (FO) and are completely exported out of India since there is no demand of such quality of product in India. At the same time, the production capacity at Kochi Refinery remains unutilised.

In earlier tax regime, such transfers between two units of the same company were exempted from state taxes and in case of taxes like Excise, full tax credit was available to the receiving units. Further in some cases specific exemption were available viz. vide Notification No. 256/87-C.E. dated 25.11.1987, Petroleum Products under Chapter 27 manufactured by HPCL, Bombay and transferred to BPCL, Bombay or vice-versa was exempt from whole of Excise Duties.

Therefore, the said transfer which were either duty free or on which full tax credit was available under earlier regime is now taxable at the rate of 18% and very less (20%-30%) tax credit for the same is available. We wish to submit that there will be increase in Revenue of Government in form of GST/Excise Duty/VAT, if the levy of GST is exempted on transfer of intermediate products from one refinery to another.

Suggestion:-

From the deliberations above, it can be comprehended that the transfer of intermediate products is essential and requisite for national importance. The above transfers can be carried smoothly only by providing relief in the form of exemption from levy of GST on the transfer of intermediate streams like VGO from one refinery to another on the similar lines of the Notification No. 256/87-C.E. dated 25.11.1987 issued under the Excise law.

2. Increase in cost due to non-availability of ITC for pipelines laid outside refineries

Background

Oil Industries have an extensive network of pipeline in the country. Pipelines have been the preferred mode of transportation of Oil and Gas over the conventional mode such as Trucks and Rails for several reasons.

As per section 17 (5) of CGST Act, Input Tax Credit (ITC) is not available for works contracts when it supplied for construction of immovable property other than plant and machinery. However, as per the explanation to the section 17, plant and machinery does not cover pipeline laid outside factory premises. Accordingly, pipeline laid outside factory is not eligible for taking ITC benefit.

Suggestion

Non – availability of ITC benefit leads to increase in cost. Hence there is need for inclusion of "pipeline laid outside factory premises" in the definition of plant & machinery so that ITC of GST paid on pipeline construction can be availed.

3. Levy of nominal GST on excluded petroleum products or include under Zero rated

Background

Though major petroleum MS, HSD, ATF, Crude Oil and Natural Gas has now been constitutionally included under GST, however, these products have been kept out from levy of GST till the GST councils recommends it. These products are continued to be liable under the existing excise and sales tax/VAT laws.

Since the inputs/input services procured by the petroleum industry post GST scenario is liable to tax under GST whereas the major final products of the petroleum industry continue to be liable under the existing excise and sales tax/VAT laws, etc. Thus, credit of input GST is not allowed when used in supply of these non-GST goods, such exclusion is resulting into higher stranding of taxes in the hands of the petroleum industry.
It is against the objective of introducing stability and uniformity in taxation of goods and services all over the country. Also, it has resulted in more compliance work for the Petroleum Industry and Government as well.

Suggestion

In order to remove stranding of taxes in the hands of petroleum industry, it is pertinent that either these excluded product are also levied nominal GST parallel with levy of Excise duty /VAT. Alternatively, these products may be included under zero rated good in GST to allow the full availment of input tax Credits under GST.

4. 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 are 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 regard, 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

f. BS-VI MS & HSD projects

g. Reformate/ DHDT/ SRGO and other feeds for inter unit transfer for the manufacture of MS/HSD

h. Regasification of LNG – from 18% to 5%

i. Procurement for setting up ethanol/CBG/Bio Diesel production facility

Lower Rate of 5% on input services used in Research Activities like notification no 45/2017 Central Tax (Rate) applicable for inputs

5. Entry 164 of Schedule I of GST [Notification 1/2017-CT(rate) dt. 28.06.2017, as amended from time to time]- Supply of Furnace Oil falling under HSN 2710 for use as bunker

Background

The prevailing rate of tax on supply of following FO grades as bunker fuel for use in ships or vessel is 5%. (b) The following bunker fuels for use in ships or vessels, namely, i. IFO 180 CST ii. IFO 380 CST iii. Marine Fuel 0.5% (FO)" Furnace Oils are produced at refineries and thereafter transferred to supply points, which may be situated in state different to the state of said refineries, for onward supplies to ships or vessels for use as bunker fuel. Further, there is no process undertaken by such supply points and FO is supplied as such to ships/vessels as bunker fuel. Therefore, the initial leg of such FO supplies, which is ultimately supplied as bunker fuel, from refineries to supply points situated in different state also to be covered under the principal entry 164 and applicable tax on the same to be 5% GST.

Suggestion

Clarification from CBIC that the entire chain of supply of FO for use as bunker fuel including supply from refineries to supply locations, situated in other states, are also covered under entry 164 of Schedule I of GST

6. Supply of Furnace Oil i.e. Bunker Fuel to Foreign Vessels to be zero rated in GST

Background

All the OMCs are engaged in supplying of Furnace Oil i.e. Bunker Fuel to the Foreign vessels which is used to run the vessel. The product Bunker fuel is a GST product which initially attracted GST rate of 18% from 01.07.2017 to 12.10.2017 and with effect from 13.10.2017, it attracts GST rate of 5% whereas the supply of Bunker Fuel, in the earlier regime, attracted Nil Central Excise Duty as it was termed as deemed export.

Our Country has approximately 7,500 km long coastline, 14,500 km of potentially navigable waterways and strategic location on key international maritime trade routes. There are about 32,000 nos. of Foreign vessels come across these routes and procure Bunker Fuel. The charge of GST on supply of Bunker Fuel, has led the Foreign Vessels to avoid refueling in India and

to opt out to other countries located en-route in Sri Lanka, Singapore or Fujairah (UAE) etc. diminishing the bunker fuels demand at Indian ports.

The GST rate of 5% has threatened to wipe out the nascent Indian bunker trade which was beginning to show signs of growth over the last couple of years as the nation sought to leverage the port visits of thousands of cargo ships into Asia's third biggest economy. The steep fall in bunker sales is having a cascading effect on foreign exchange earnings, logistics, barge operations and ancillary services and has severely impacted the business of Bunker Fuel as the market share is shifting to other nearby countries.

India is one of the fastest growing large economies in the world and ports play an important role in the overall economic development of the country. Approximately 95 % of India's merchandise trade (by volume) passes through sea ports. In this connection, Ministry of Shipping, Government of India has also launched flagship Programme "Sagarmala" which interalia aims at unlocking the full potential of India's coastline and waterways and improving export competitiveness.

Suggestion

We would like to bring to attention that a timely action would not only help in restoring the Bunker fuel sales and improved collection of foreign exchange but also bring back the India's position amongst International Ship owners and traders. In view of this, we suggest/ recommend that necessary amendments are to be introduced in GST Act for treating the supply of Bunker Fuel zero rated.

7. Remission of GST for storage loss, handling loss and transit loss for petroleum products covered under GST

Background

a) The weight and volume of petroleum products by its inherent nature is dependent upon the temperature and density.

b) The transmission process of the petroleum products, either by direct pipeline, vessel, tank wagon, tank lorry etc. the company incur loss due to variation in temperature and / or density. This loss in commonly understood and termed as "transit loss". This fact of handling or storage loss or transit loss is well recognized within the petroleum industry for petroleum products and variation tolerance within 1% to 2% is also well accepted.

c) In the Excise law, there were various Government notifications in this regard.

d) The current GST law does not provide any dispensation on account of loss of petroleum products which occurred either during transit or during storage.

e) Under GST law, tax is payable based on the supply from the refineries on the basis of quantities dispatched, OMCs will not be able to take the ITC of GST for quantities lost as the receiving location will not have such quantity of physical stock.

Suggestions

It is recommended that considering the inherent nature of petroleum products covered within GST, GST paid on loss should be allowed as ITC or a mechanism to be put in place to compensate Oil companies on such stranded taxes due to the losses in line with earlier Tax regimes. Alternatively, a direction can be issued to allow certain percentage of tolerance in losses, up to which reversal of ITC should not be required.

8. Liquidation of huge accumulated Input Tax Credit

Background

There are various common Inputs, Capital Goods and input services, which are covered under GST and used for supply of Non-GST products [MS (Petrol), HSD (Diesel) and ATF] as well as GST Products [LPG, SKO, Furnace Oil and other GST product]. As per the provision of GST Act, input tax credits can be claimed only if the output is also under GST.

There is huge Input Tax accumulation amounting to Rs. 613 crores approximately till December 2020 in majority of the states where BPCL has taken GST Registration because of following main reasons:-

- Major proportion of Final Product [MS (Petrol), HSD (Diesel) and ATF] is outside GST.
- Furthermore, input service/Capital Goods used for supply of GST Goods is taxed at higher rates, however, the outward taxable supply is taxed at lower rate, for instance, LPG Domestic & SKO PDS.

This ITC Accumulation results in blockage of huge amount of working capital to the Corporation.

Suggestion -

In view of the above, it is suggested that OMCs should be granted refund of ITC accumulation because we are still under dual tax regime. Therefore, suitable amendments in refund provisions under section 54 of GST Act and Rule 89 of CGST Rules, 2017 may be carried out so that these accumulated ITC can be refunded to OMCs.

Alternatively, unutilized balance in CGST and IGST credit ledger may be allowed to be transferred between distinct persons (entities having same PAN but registered in different states), without going through the refund procedure, subject to certain safeguards. Similar proposition was recommended by 45th GST Council meeting with respect to unutilised balance in Cash Ledger.

9. Refund due to Inverted Duty Structure-Formula under rule 89(5) of CGST Rules, 2017

Background

Section 54- Clause (ii) of proviso to section 54(3) Provide for Refund of accumulated ITC on account rate of tax on input being higher than rate of tax on output supplies (other than nil rated or fully exempt supplies). Further, rule 89(5) of CGST Rule, 2017, provide for refund of

ITC for inverted rated supply as per following formulaMaximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services. Explanation: - For the purposes of this sub-rule, the expressions – "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and "Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4). The prevailing provision of rule 89(5) regarding computation of refund for 'inverted duty structure' is over-simplification of refund formula and is restrictive in nature as it provides the refund of 'net ITC' in proportion of supply of inverted supply to the total turnover of the GSTIN.

Suggestion

Formula provided under rule 89(5) for refund of accumulated ITC to be amended to provide the refund of accumulated ITC equal to the value of inverted tax amount i.e. difference of ITC availed on direct inputs related to inverted rated supply and tax liability on outward inverted rated supply. Further, the prevailing formula may be continued for refund of accumulated ITC towards common inputs for inverted rated supply.

10. Cross utilization of GST Input Tax Credit against Excise duty/Sales Tax

Background

As per the provision of GST Act, input credits can be claimed only if the output is also under GST. Therefore, purchases of goods and services which are to be used for MS, HSD & ATF will not be entitled for input tax credit.

Suggestion

In case our request for levy of nominal GST is not practical, the ITC of GST paid purchases to be allowed to be set-off against output excise duty and sales tax payment on these products. Therefore, suitable amendment may be carried out in the CENVAT Rules to allow the tax credit of GST paid inputs against the output tax liability of Excise on non-GST products since the credit was earlier available under CENVAT & VAT laws;

11. Relief by way of exemption of GST on intermediate streams in process industry like Refinery

Background

Intermediate streams on processing of crude oil can be further refined to MS/HSD etc.

Suggestion

In order to reduce environment pollution, oil industry is undertaking major capital investment to introduce cleaner fuels in the country. Major Capital Goods, input and input services are being considered for use in Refining, Marketing & Distribution of Intermediate streams. In order to leverage the refinery capabilities which are located in different States, inter unit transfer of Intermediate streams for manufacture of MS/HSD will result in optimum utilization of the refineries which is in the best interest of the oil industry. Providing exemption on transfer of intermediate products from one refinery to another without any loss to the exchequer will result in optimum refinery utilization which would result in better resource mobilization to both Central and State Governments.

12. Rationalization of GST rates on Inputs used 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%.

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 in SEZ unit
- supply of Aviation Turbine Fuel to a foreign going aircraft.

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

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 un-interrupted 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 into 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. It is worth mentioning here that Under Cenvat Credit Rules, 2004 also, the value of traded goods was considered at only 10% value of traded goods for calculating reversal ratio for common input services. 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 only in in the exempt turnover of the state where such goods is manufactured" or, in case of traded excluded petroleum goods, value will be considered @ 10%

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 section16, 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 warehouse 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. Matching of Inward Supplies

Background

Section 16 of CGST Act, 2017 read with section 42 and rule 36(4) of CGST Rules, 2017 provides for restriction on availment of input tax credit based on the upload of invoices by the corresponding suppliers in their outward supply return (GSTR-1). As a recipient once service/goods are received, credit is availed against tax invoice and payment along with tax charged therein is made to the supplier, making the recipient responsible for tracking the invoices of respective supplier on portal and providing restriction on availment of input tax credit (ITC) in case of non-upload by supplier, is an additional burden on the recipient. Further, reversal of ITC due to non-upload by supplier also leads to double financial implication on the recipient as payment for the same has already been made to supplier. In case, payment of tax is not made by supplier, necessary action needs to be taken against the respective supplier under the provisions of CGST & SGST Act or IGST Act as the case may be, instead of putting additional financial burden on legitimate recipient through disallowance of ITC. Further, considering the PAN India presence of oil marketing companies and such voluminous transactions, the exercise of matching for each transaction is cumbersome and time consuming.

Suggestion

Once the original tax invoice has been received along with receipt of supply, buyer should not be penalized for noncompliance by the seller. GST should be recovered from supplier and not the recipient of such supply. Necessary notification to be issued by Govt removing the condition of upload of invoice by supplier for availment of ITC by the recipient for ease of compliance. However, even if the matching of ITC is continued, it should be made quarterly to reduce the compliance burden

17. Cross utilization of GST Input Tax Credit against Excise duty/Sales Tax

Background

As per the provision of GST Act, input credits can be claimed only if the output is also under GST. Therefore, purchases of goods and services which are to be used for MS, HSD & ATF will not be entitled for input tax credit.

Suggestion

In case our request for levy of nominal GST is not acceded, the ITC of GST paid purchases to be allowed to be set-off against output excise duty and sales tax payment on these products. Therefore, suitable amendment may be carried out in the CENVAT Rules and respective State VAT laws to allow the tax credit of GST paid inputs against the output tax liability of Excise / VAT on the products excluded from GST. Since, the credit was already available in the CENVAT & VAT laws; there would not be additional outgo on the Govt. by allowing cross utilization

18. Payment under Reverse Charge Mechanism (RCM) by Input Service Distributor

Background

As per CGST Rules, in case Input service distributor (ISD) wants to take RCM supplies, a separate normal registration is required. Further, rule 54 (1A) provides that such common RCM supplies can be transferred to ISD by raising an invoice. Accordingly, following three documents are prepared for a common RCM inward supply received by ISD:

j. Payment of tax under RCM by normal registration and generation of tax invoice as recipient in case of unregistered supplier.

k. raising an invoice under rule 54(1A) of CGST Rules, 2017 from normal registration for such common RCM on ISD registration.

l. raising an ISD invoice on respective recipient from ISD registration. Generation of three documents for a single transaction is leading to unnecessary additional compliance. In case ISD is allowed to make the payment of RCM supplies, the requirement to raise tax invoice under 54(1A) can be removed.

Suggestion

Necessary notification to be issued by Govt. to allow the payment of RCM under ISD registration.

19. Deemed export supplies under GST

Background

All the supplies notified as supply for deemed export will be subject to levy of taxes i.e. such supplies can be made on payment of tax and cannot be supplied under a Bond/LUT. However, the refund of tax paid on the supply regarded as Deemed export is admissible to either the supplier or the recipient on filing the requisite application subject to certain conditions.

Suggestion

To avoid blockage of fund in GST paid in such cases following suggestion are made;

• Deemed exports may be considered for zero-rated supplies by default, like the regular exports and such supplies can be made on without payment of tax under a Bond/LUT.

• Facilitating expeditious liquidation of claims: Deemed export refund can be linked with GST return filing by seller. Auto-credit of refund to supplier account on the basis to return or input tax credit to be allowed to seller like RCM supplies.

20. Allowing of GST credit on "Works Contract Services used for construction of an immovable property"

Background

Section 17(5) of the CGST/SGST Act provides that 'Input tax credit shall not be available in respect of the: …… (c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service; (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. Input Tax Credit on works contract and construction services are not

allowable except in case where similar service is provided. This is causing a genuine hardship to the persons who are using such goods/services for construction of their factory or constructing a property for letting it out.

Suggestion

It is suggested that credit of goods/services acquired in the construction of immovable property which are being used in the course or furtherance of Business should be allowed without any restrictions.

21. Clarification on goods for Tariff classification covered under Motor Spirit (commonly known as petrol) and High-Speed Diesel

Background

Presently, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel are outside the ambit of GST as per the section 9(2) of the CGST Act 2017.

However, the GST law does not define Motor Spirit (commonly known as petrol) and High-Speed Diesel. Various interpretations may be there what is covered under petrol and High-Speed Diesel (HSD) depending upon the sources. Accordingly, clarity is required as to which tariff would be covered under GST and which would be outside the ambit of GST.

Further the Fourth schedule to the Central Excise Act 1944 covers various goods which are covered under GST with blank against rate of duty column.

Under the IS specification (i.e. IS 2796 / IS 1460) - BS IV and BS VI grades are covered. However, BS II & BS III grades of Petrol and Diesel are not covered in any of the IS specification. Hence inter refinery transfer of BS II / BS III may have issues on classification as Motor Spirit / Diesel.

Suggestion

Further, clarity to be provided with regards to tariff covered in GST and not covered within the ambit of GST by suitable modification to fourth Schedule so as cover only those products namely petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel which are outside the ambit of GST as per provision of section 9(2) of CGST Act 2017 as per the 101st Constitutional Amendment Act.

In other words, schedule IV may specify the only products covered for levy of Central Excise duty and not the products covered under GST law to bring clarity across board.

22. Interstate purchase for supply of ATF to foreign going airlines to be classified as deemed export under section 5(3) of CST Act, 1956, and allow the benefit of Form H for such purchases.

Background

Currently supply of ATF to foreign going airlines both designated Indian carrier and foreign carriers are exempted from levy of sales tax/VAT in the respective state, however the corresponding interstate purchases made for such sales are not exempted. This resulting in increased cost of ATF for supply to foreign going airlines when inter-state purchases made for supply.

Suggestion

It is suggested that the Govt. may pass an amendment notification classifying the sales to foreign going airlines both designated Indian carrier or foreign carrier as deemed export under section 5(3) of the CST Act and allow purchases without payment of CST under Form H and delete section 5(5) of the CST Act.

23. Introduce a mechanism of reporting in customs portal for supplies made to foreign going airlines and discontinue the present system of filing of Non-EDI shipping bills.

Background

Currently filing of shipping bills are mandatory for supply of ATF to foreign going airlines and this process is manual and it is only increasing the additional work burden on the Airport Co-ordinators and others in doing the compliance without any benefit of reporting into the Customs Portal.

Suggestion

It is suggested to discontinue the present system of manual filing of shipping bills airport wise and introduce a mechanism of ATF supply reporting in customs portal Airport wise and airlines wise and will bring more transparency.

24. 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.

25. 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.

26. Uniformity in classifying ATF for Sales Tax/VAT and ATF to be brought under GST

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. The General rate of sales tax / value added tax on ATF charged by various states in India goes up to up to 30% approx. No uniformity is there in classifying ATF. Some states classify under Sales tax and some under VAT. India being an ATF surplus country, disparate and relatively high rate of sales tax/ VAT is impacting the competitiveness of Indian ATF supplying companies vis-à-vis Imports.

Suggestion

It is suggested that Centre should work with states to include ATF under the proposed Goods and GST (GST) regime when applicable, else may be brought under Essential Commodities to have uniform taxation.

Local taxes such as Entry Tax, Octroi, resale tax act as an Entry barrier for the ATF suppliers and the Government may connect with states to enable abolition of these taxes.
States may be given guidelines to provide Form H benefits to Penultimate buyers.

Natural gas

1. Inclusion of Natural Gas under GST

Background

a. 'Natural Gas' is presently kept outside the ambit of GST till the recommendation of GST Council and existing legacy taxes viz. Central Excise Duty, State VAT, Central Sales Tax will continue to be applicable on Natural Gas. Non-inclusion of Natural Gas under GST regime is having adverse impact on Natural Gas prices due to stranding of taxes in the hands of Gas producers/suppliers and is also impacting Natural Gas based industries due to stranding of legacy taxes paid on Natural Gas.

b. The VAT rate on Natural Gas is very high in different states (viz. AP 24.5%, UP 14.5%, Gujarat 15%, MP 14%, etc.). Since Gas based industries do not get benefit of tax credit of VAT paid on purchases of Natural Gas, it is resulting in increase in cost of production of such industrial consumers and would have inflationary effect on the economy.

Suggestion

In view of above that it is proposed that Natural Gas may be brought under GST ambit as it will have positive impact on the Natural gas-based industries and will avoid stranding of taxes. Inclusion of NG under GST is required to provide uniform taxation and to encourage

free trade of NG across the country without any tax anomalies. This is one of the key pre-requisites for the development of gas exchange in the country.

2. 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:

a) Pipelines laid outside the factory premises

b) Land, building or any other civil structures

c) Telecommunication towers

i. 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, fertilizer and CGDs, 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:

a. 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.

b. The definition of term "factory" may be provided under the GST law in line with definition under the Central Excise Act.

3. 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.

c.

4. 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. 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 presently attracts high GST @ 18%.

c. The levy of GST at higher rate of 18% on the 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. Regasification of LNG is under GST ambit resulting in stranding of taxes, and a higher rate of tax owing to limited clarification is reducing the competitiveness of RLNG with other polluting fuels.

d. The activity of regasification may be considered as manufacturing, going by the definition of manufacture as per Sec 2(72) of the CGST Act and the transaction of regasification under job work will attract GST @ 12% vide notification no. 20/2019 Central

Tax Rate dated 30.09.2019, instead of present rate of 18%. However presently the industry is not considering the said definition due to lack of clarity and continues to charge GST @ 18%.

Suggestion:

In order to promote gas-based industry in India, it is suggested that suitable amendment/ clarification may be made so that activity of regasification attracts GST @ 12% on job work basis.

5. Change in rate of tax for the inward supplies related to supply chain of LPG Domestic

Background

Public Sector Oil Marketing Companies (OMCs) viz, Indian Oil Corporation (IOCL), Bharat Petroleum Corporation Ltd (BPCL) and Hindustan Petroleum Corporation Ltd (HPCL) are engaged in inter-alia of marketing of Liquified Petroleum Gas (LPG) for supply to domestic household consumers / NDEC customers, which includes propane and butane (hereinafter referred as LPG Domestic). Supply of LPG domestic is taxable at 5% GST in terms of entry 165A/165 of Schedule I of GST notification no. 1/2017-CT(rate) dt. 28.06.2017. Supply chain of LPG Domestic involves regular procurement of certain capital goods and services of which mainly consist of empty cylinders, blending services, bottling services and transportation services There exists an anomaly in tax structure for the business of marketing LPG Domestic (supply to household domestic consumers / NDEC customers) as tax rate on finished product is 5% whereas related capital/inputs are taxable at higher rate of tax. Though, Input tax credit (ITC) for the aforesaid items is admissible to OMCs, however, there has been considerable increase in ITC due to anomaly in rate structure i.e. higher tax structure for inward supplies and lower tax structure for its related outward supplies. This has also been increased due to spending by OMCs for increased demand and new connection under Govt. of India's flagship programme of Pradhan Mantri Ujjawala Yojana (PMUY) which is likely to continue for few more years.

Suggestion

Change in rate of tax for the followings inward supplies related to supply chain of LPG Domestic

➢ 14.2 KG Empty LPG Cylinders for supply of LPG Domestic – HSN 7311- from 18% to 12%

➢ Services of LPG Domestic Blending (i.e. Propane and Butane blending)- HSN 9988-from 12% to 5% ➢ Services of LPG Domestic Bottling (Bulk LPG to cylinders)- HSN 9985-from 18% to 5%

➢ Services of LPG Domestic Transportation thru Pipeline- HSN 9965-from 18% to 5%.

It is worthwhile to note that suggested reduction in rate of tax as above, would not impact Govt. revenue, as final tax would continue to be paid by OMCs on supply of LPG Domestic at 5%.

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

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 for the period 1.7.17 to 24.1.2018 (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%. Also GST Audit Cell of Madhya Pradesh has issued Audit Memo observing short payment of GST of 13% for the said period on GAIL.

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.

7. Tariff 2710 12 90 Other in Central Excise Fourth Schedule

Background

As per notification ref. 8/2019-CE(T) dt. 31.12.2019, the tariff 2710 12 90 – Other, provide for tariff of 14% + Rs. 15.00 per litre. Though in terms of Sl. No. 10 of notification ref. 11/2017-CE dt. 30.06.2017 (amended vide notification ref. 9/2019-CE dt. 31.12.2019), the effective rate of tax is 'nil'. Thus, this entry gives impression that there could be certain products which may fall in this entry and leviable to Central Excise and not GST. However, in terms of 101st Constitutional Amendment Act and Section 9 of CGST Act, 2017, only five petroleum products i.e. MS (Commonly known as petrol), HSD (High Speed Diesel), ATF (Aviation Turbine Fuel), Natural Gas and Crude Oil are subject to levy of Central Excise Duty.

Suggestion

Notification ref. 8/2019-CE(T) dt. 31.12.2019 to be amended to remove the rate of excise duty prescribed for tariff 2710 12 90 as same is subject to GS

8. Supply of LPG (Domestic) / NDEC at concessional rate of 5% GST

Background

Entry 165 to Schedule I of Notification No. 1/2017 - Central Tax dated 28.06.2017 provides that Liquefied Propane, Butane & LPG for supply to household domestic consumers or to NDEC Customers by IOCL, HPCL & BPCL are taxable at 5% GST.

Vide notification dated, 06/2018-CT dated 25.01.2018, entry 165 was amended and entry 165A was inserted as under:

Entry 165- Liquefied Propane, Butane & LPG for supply to NDEC Customers by IOCL, HPCL & BPCL is taxable at 5% GST.

Entry 165A- Liquefied Propane, Butane & LPG for supply to household domestic consumers is taxable at 5% GST.

Further, CBIC vide circular dated 31.12.2018 has clarified that supply of LPG Dom by refiners/fractionators to OMCs for ultimate supply to household domestic consumers will attract 5% GST w.e.f. 25.01.2018. However, ambiguity with regards to applicability of GST rate on transaction undertaken during 01.07.2017 to 24.01.2018 remains under dispute.

Intention of the Govt is clear that LPG, Butane and Propane for supply to household domestic consumers should suffer the concessional rate of GST @ 5%. Even though intention is clear, however, there is possibility of dispute on the eligibility of such exemption for transactions between IOCL, BPCL & HPCL with other Refinery, fractionators & private oil companies and between the PSU OMCs for the period 01.07.2017 to 24.01.2018.

The language of the notification granting exemption to LPG (Dom) prior to the amendment is the exact replica of the language used for grant of exemption from central excise duty. During period prior to 01.07.2017, PSU OMCs were purchasing LPG for the specified end use without payment of central excise duty by such SARs/Fractionators and also from other PSU OMCs. The above was settled proposition of the law for given specified transactions and the same has never been disputed by the Central Excise Authorities. Any dispute in this regard under the GST regime now may have repercussions in the pre-GST regime under Central Excise law as entries in both regimes are identical. It is learnt that enquiry has been initiated by the department in the state of Gujarat.

Suggestion

Clarification needs to be issued to provide such concessional rate of 5% GST is applicable for all Transactions of LPG meant for ultimate supply to household domestic consumers & NDEC for the period 01.07.2017 to 24.01.2018. Such clarification is required to avoid any possible litigation at field units due to interpretation.

9. GST Schedule Entry for LPG

Background

Entry 165 & 165 A of Schedule I to notification ref. 1/2017-CT (rate) dt. 28.06.2017 provide HSN ‘2711 19 00’ for Liquified Petroleum Gas (LPG) Domestic Similar entry also exists in sr. 165 and 165A of Schedule I to notification ref. 1/2017-IT (rate) dt. 28.06.2017 and notification ref. 1/2017-UTT (rate) dt. 28.06.2017 Explanation (iii) to the said notification provide that the "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act,

1975 (51 of 1975). Customs tariff entry for LPG Domestic was amended vide the Finance (No. 2), Act 2019 (notified effective 01.01.2020) as under2711 19 10 - LPG (for non-automotive purposes) conforming to standard IS 4576 Accordingly, effective 01.01.2020, the tariff entry in Customs Tariff is '2711 19 10' however, under GST rate Schedules, the erstwhile entry i.e. '2711 19 00' is still continued, which is not available in amended Customs Tariff, leading to anomaly in two tariff entries for same product.

Suggestion

HSN for 'LPG Domestic' in Entry 165 & 165A of Schedule I to GST notifications ref. /2017-CT (rate) dt. 28.06.2017, notification ref. 1/2017-IT (rate) dt. 28.06.2017 and notification ref. 1/2017-UTT (rate) dt. 28.06.2017, to be amended as '2711 19 10' with retrospective effect from 01.01.2020.

10. 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-Cenral 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 was also 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 cannot 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 and Madhya Pradesh. GAIL and ONGC both have filed Writ Petition in Gujarat / MP High court against the notices issued by GST authorities of respective states.

Suggestion:

It is requested that suitable clarification may be issued to Deptt. to not initiate disputes, demanding GST @ 18% on domestic LPG supplied by refiners/fractionators (like GAIL/ONGC) to OMCs for ultimate supply to household domestic consumers for the period from 01.07.2017 to 25.01.2018, on similar lines as given by council recently on levy of interest on delayed payment of GST on net basis, retrospectively with effect from 01.07.2017.

11. 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.

12. Clarification to exempt CBG from payment of VAT/Excise duty on sale after blending mixing with Natural Gas/CNG

Background:

Government is promoting production and use of Bio Gas and CBG which is presently attracting GST @ 5% unlike Natural Gas/CNG which attracts VAT/Excise duty. With a view to make the sale of Bio Gas/CBG commercially viable, it will have to be blended with Natural Gas /CNG for further sale. However, after its blending with Natural Gas/CNG, it will attract VAT/Excise duty as applicable to Natural Gas/CNG and Input Tax credit of GST paid on

procurement of Bio gas/CBG will also not be available. This will result in significant increase in tax incidence of quantity of bio gas/CBG and make it difficult to market the same.

It may therefore be clarified that Bio Gas/CBG blended with Natural Gas/CNG will continue to attract GST on quantitative basis to bring clarity /certainty in the matter.

Suggestion:

It is suggested that Bio Gas/CBG blended with Natural Gas/CNG may continue to attract GST on quantitative basis and will not be liable to levy of VAT/Central Excise Duty. This will promote usage of this Bio Gas/CBG on commercial basis in line with the policy of the government.

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

Background

Gasoline or LNG, which are naturally volatile and evaporating, are susceptible to continuous erosion of quantity. LNG is NG that has been cooled to a liquid state at -160 degrees centigrade and compressed by 600 times. LNG will be converted to gaseous form and evaporate on its own when it is exposed to ambient conditions.

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 intrinsic nature of losses of the product that is inherent to its handling and processing, it is a standard global practice 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 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 regassification of LNG being a volatile product are always on the net delivered quantity after considering the pre-estimated process losses during the regassification process.

14. Taxation on LNG fuelled vehicles to be made comparable to Electric Vehicles

Background

India is transitioning from the long-standing model of oil as the fuel of choice for transportation to a mosaic of fuels including relatively cleaner fuels such as CNG, LNG and EVs to meet the emerging mobility needs. Out of these alternative fuels, LNG is a suitable fuel for Heavy Duty transport and for inter-state bus travel from the multi-pronged parameter of environment and economics.

LNG, is gas compressed 600 times, this high energy density makes long distance travel and transportation possible

LNG is cleaner than other liquid fuels that it would replace; LNG fueled vehicles have comparably lower emissions for CO_2, and for SOx and PM that affect local air quality. As such LNG should be promoted as a transport fuel for long distance travel and transportation

At present, large scale commercial production, and, adoption of LNG fuelled vehicles is muted due to the incremental capex ask from fleet operators. LNG fuelled vehicles, and critical components like LNG fuel tank, are taxed at the same rate as Diesel and Petrol vehicles.

As LNG is a cleaner fuel, to support its prompt adoption, a tax rate equivalent to that of EVs should be applicable. GST rate on EVs' and EV chargers has been reduced to 5%, similarly customs duty on EV imports has been reduced to 15%. In addition, enabling policies would facilitate faster adoption of LNG vehicles esp. as replacement for the BS-III/IV which will be phased out progressively in the near-future as per the extant polices.

Suggestion

GST rate on LNG fueled vehicles, and, import duty on components like LNG Fuel tank be reduced to 5% and 15% respectively in line with taxation on EVs.

The vehicle scrapping policy may be amended to provide incentives to vehicle owners for switching to LNG vehicles. Replacement of old Diesel vehicles by LNG vehicles can be encouraged by levying GST @ ZERO rate on new LNG vehicles against a scrapped Diesel vehicle under the 'voluntary vehicle fleet modernization plan,' which is expected to be launched shortly.

Additionally, the Government may consider grants towards the incremental vehicle cost, and / or waiver of registration charges to encourage the switch

15. Declared goods status for NG / 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, Liquified Petroleum Gas (LPG). NG/RLNG presently attracts varying Value Added Tax (VAT) rates across the country. The status of declared goods (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 capping 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 24.5%). Rationalization of NG/RLNG 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.

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, NG should be treated at par and the same tax status granted, as an interim relief.

16. No reversal of input credit relating to Non-GST supplies like NG from the common credit pool of Taxable and Non-taxable supplies.

Background

As NG/RLNG is yet to brought under the ambit of GST, the prevalent indirect laws of VAT as per the CST and State VAT Act would continue to apply.

Under this dual indirect tax regime, the mechanism of allocating common credits used by companies engaged in both GST services and (non-GST) trading turnovers has not been correctly defined. The said mechanism has categorised income from both revenue streams of service and trade as 'turnover'. However, under the prevailing Cenvat Credit Rules trading turnover was clarified vide an explanatory note to mean the 'value add' or difference between cost and sales for comparing with a service income. This difference or margin alone constitutes income for a trading entity.

It would be grossly erroneous and unfair to compel a company to lose common credit merely because it has (non-GST) trade turnover which is more than 10 times higher than a service income merely for the same unit of measure due to the cost of the traded goods. This cost of traded goods is not a value add of a trader and therefore should be excluded from the definition of turnover for comparing with a service income. This turnover based disallowance which inflicts a damage of up to 10 times on the common credits genuinely purchased by a business entity for his business.

To explain further, a GST enabled service income stream like 'regasification tariff' consists of less than a Dollar per unit measure. However, the price of a traded NG can be up to $10-15 per unit measure based on global demand-supply environment. Hence a business entity engaged in regasification service and trading of a petroleum product like LNG would have an adverse ratio due to the high turnover values of traded goods, and therefore lose its entire common credit due to the reversal mechanism being based on gross turnover which includes the price paid for a purchased trade stock(LNG). This is akin to comparing the price of an air conditioner with the installation charges of an Air Conditioner by an AC dealer to its customer and denial of common credits on business costs of the AC Dealer. What is more reasonably comparable is the margin made by the dealer on the sale of the Air Conditioner with the installation charges for the Air Conditioner. This was correctly contained in the Cenvat Credit Rules under an Explanation 1 of sub rule 3 (D) of Rule 6 which stated that:

'Value' for the purpose of sub rules (3) and (3A)

c. 'in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten percent of the cost of goods sold, whichever is more.

In the absence of such an explanation as part of the GST Rules there is an apparent lacuna in the draft of Clause 7 (i) of the Input Tax Credit Rules which warrants immediate correction.

Suggestion

Categorisation of petroleum products under the GST Laws:

Clause 7 – Manner of determination of input tax credit in certain cases and reversal thereof:

EXCERPTS FROM INPUT TAX CREDIT RULE

(i) The amount of input tax credit attributable towards exempt supplies, be denoted as 'D1' and calculated as:

D1= (E÷F) × C2; where,

'E' is the aggregate value of exempt supplies, that is, all supplies other than taxable and zero-rated supplies, during the tax period, and 'F' is the total turnover of the registered person during the tax period:

(112) "turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union

- From the definition of the CGST / SGST Act

EXCERPTS FROM CGST / SGST Act

(47) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

(78) "non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), NG and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

From a combined reading of the various provisions of the GST Act it is evident that

- the exempt turnover includes non-GST leviable category i.e. the petroleum goods
- Turnover as it stands in the bill includes the cost of traded goods for a trading entity.

Incorrect Classification of Petroleum Goods as 'Exempt"

It is also being pointed out that including the petroleum goods as exempt category is unfair as VAT and Excise duties etc will continue to be applicable taxes on the manufacture and sales of these products.

Exclusion of petroleum products from GST renders them ineligible to avail input credit which were availed under the extant VAT & Excise laws. Under these laws (i.e. Gujarat VAT) regasification of LNG to RLNG constituted 'manufacture' and therefore VAT on sale of LNG was offset against VAT purchases used for conversion of LNG to RLNG. This hitherto available input tax credit is not only available under the existing GST regime, but also denied the input tax credit of common credits used in the business of a non-GST and GST revenue streams.

It is therefore earnestly requested for the GST Council to take note of this inadvertent error in the drafting of the GST Rules and kindly correct the same by excluding the petroleum goods (being taxed separately) from the purview of exempt and total turnover under the Clause 7 (i) of the Input Tax Credit Rules.

Hence, the redrafted Explanation under sub clause (i) of the Input Tax Credit Rules should read as follows:

Explanation : 'For the purposes of this clause, the aggregate value of exempt supplies and total turnover shall exclude the turnover of such goods not leviable to tax under the Act currently (i.e. petroleum crude, high speed diesel, motor spirit, natural gas and aviation fuel) and the amount of any duty or tax levied under entry 84 of List 1 of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

This correction shall remove the fallacy of the draft ratio of reversal of common credit which does not distinguish between the turnover of a service with that of traded good.

17. 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:-

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

18. 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

NG is liquefied to -160 Degrees for ease of transportation and 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 and 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 entities with virtual segregation of title stocks. However, due to the 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 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.

General

1. Loss of ITC due to non filing of returns by Vendors/ Suppliers

Background

1). ITC is the backbone of the GST taxation system. One of the reason why GST is beneficial to the business is because it will help to claim ITC seamlessly and in more efficient manner than the previous regime. ITC can be availed under GST regime based on declaration received from supplier in GSTN portal. GSTR-1 has to be filed for outward supplies and same details will be appeared as GSTR-2A to the recipient of goods and services.
2). Government has made it mandatory that ITC can be availed based on auto populated GSTR-2A only. Accordingly, it has become very important that vendors/ suppliers has filed GST returns regularly so that ITC can be availed. However, it is observed that, most of the vendors and suppliers do not file GST returns regularly, which leads to non availment of ITC by Numaligarh Refinery Limited. Vendors/ suppliers have been informed continuously to file their pending returns so that ITC can be availed.
3). Multi-month GSTR-2A report assists businesses to reconcile the input tax credit claimed across the tax periods in a financial year. Some businesses file GST returns in GSTR-1 monthly whereas some file it quarterly. This leads to a delay in reconciliation exercise by a business especially, when the supplier is filing quarterly GSTR-1 as compared to business filing it regularly every month.

4). It is observed that late fees for non-filing return is very minimal as compared to the loss of ITC to any recipient. Further, compliance rating mechanism (which was supposed to be introduced in GST system) is also not operational in GST system as on date. Since strict compliance mechanism is not introduced in GST system, suppliers may not be willing to file their GST return regularly.

Suggestion

Ministry is requested to review the process of ITC availment and may provide suitable advisory to claim ITC by OIL Industries without linking it to GSTR 2A.

2. Promoting Act East Policy of Government of India

Background

1) Act East Policy seeks economic integration of India's economy with global supply chains which are concentrated in Southeast Asia and East Asia.

2) In order to become a manufacturing hub, India should do holistic reforms to make its manufacturing competitive. In this context there is a need for capital sector reforms, labour reforms, easing of land acquisition and bridging infrastructure deficit.

3) This will also help India to check its trade deficit. A balanced, fair and equitable trade relationship is critical for a resounding Act East Policy.

4) However, North East region faces certain inherent constraints which creates roadblock for successful implementation of Act East Policy such as:

a) Higher Capital Cost: Due to the seismic nature of the terrain, geographical location, prolonged rainy season, etc.

b) Higher Logistics Cost: Due to unavailability of Ports logistics cost of imported goods are high

c) Lack of private investment: There is very low level of investment from private sector in the North East. In order to induce industrial growth, public sector has to provide the thrust in investment and act as a catalyst for industrial growth in this region.

Suggestion

a) **Additional Incentive for export to neighbouring countries adjoining to North East region:**

Taking advantage of road connectivity with Myanmar, Incentive by way of freight subsidy/reimbursement can be provided for export to Myanmar through road network so that Indian products are more competitive in Myanmar market.

b) **Project loans at Concessional Rate for Projects of National Importance :**

For capital intensive projects of national importance, there can be scheme for providing loans at a discounted rate than that levied by Financial Institution for normal Project finance.

c) **Extension of benefit of lower tax rate available under section 115BAB of the Income Tax Act for existing Companies implementing Projects in North East:**

To encourage economic activity and promote investment, section 115BAB of the Income Tax Act was introduced to allow new companies to pay tax at a lower rate of fifteen per cent.

The company is to be set up and registered on or after the 1st October, 2019 and commence manufacturing on or before 31st March, 2023 to avail the lower tax rate.

However, the provision does not cater into capacity expansion under its ambit, which in itself plays a vital role in economy revival and generating employment. Backward region are in dire need of such capital intensive projects.

Hence, to harmonize with the objective of the Government, it would be prudent to treat extensive capacity expansion as a newly set-up entity and allow the benefit of lower rate of tax for such expanded capacity.

Further, for large capital intensive projects, project commission period is normally higher (even more in north east region), and these projects may not be able to start commercial production within the stipulated timeline i.e. 31st March, 2023. Hence, relaxation in this criteria may also be given for such high capital intensive projects in North east region.

d) **Tax benefit under Customs Act on importation of capital goods/material:**

Oil and Gas Sector is a pivotal sector for development of North East and growth of oil and gas sector is critical to ensure success of Act East Policy.

The GOI vide said notification gives the benefit of concessional rate of BCD @ 5% only on importation of goods specified in Chapter 84 or any other chapter of the First Schedule to the Customs Tariff Act when imported into India for setting up of Crude Petroleum Refinery.

However, there is no concession from the payment of IGST on such importation of goods.

Government should amend rate of BCD and IGST on import of specified goods for setting up crude petroleum refinery should be at NIL so that project cost for expansion of refinery capacity in north east become lesser

3. Increasing value chain of Refineries in North East Region

Background

1) Numaligarh Refinery Limited has a capacity to process and upgrade by product/ intermediate product of other North East Refineries due to its better secondary processing facility and availability of processing capacity . By doing so, it can add value to the petroleum product thereby leading to higher revenue generation for both the companies. The following para can substantiate this aspect.

2) Because of the higher secondary processing capability of NRL there are opportunities to upgrade low value products produced in the other NE refineries to high value products at NRL.

3) These refineries has approached NRL for further processing of their selected low value streams at NRL to achieve value addition in the ultimate finished product to be sold to customer. Such proposal will bring incremental revenue for the company as well as respective state government

Suggestion

1) Such transactions attract GST @ 18 % and as such do not become economically feasible to undertake because NRL need to discharge excise duty towards finished product HSD and as a result subject to double taxation burden.

2) Scheme to exempt GST on purchase / sale of intermediate products between the oil companies in order to avoid double taxation for improving the financials of these oil companies.

3)

4. NCCD to be abolished

Background

Government had introduced NCCD @ 50/- per MT on Indigenous Crude Oil which was initially introduced for one year. But it is still being collected.

It is suggested that NCCD on Crude oil should be discontinued. This will help in minimizing stranding of taxes

5. Cess on Crude Oil levied under OIDB Act to be minimized

Background

It is collected on quantity & Value of Crude Oil delivered to a Refinery. W.e.f. 01.03.2016 the rate of Cess was revised to 20% ad-valorem.

It was levied at Rs. 2,500/MT from 01.03.2006 till 16.03.2012, and was revised to Rs. 4,500/MT effective from 17.03.2012, when the price of Indian basket of crude was in the range of US$ 110/bbl.

It is pertinent to mention that historically cess on crude oil was effectively levied in the range of 8% to 10% even though the same was collected on per MT basis.

The industry has been representing for reducing the rate of Cess to 8% ad valorem in view of rising crude oil prices in the international market and fall in US Dollar exchange rate.

Suggestion

OID Cess is not applicable on Crude oil being produced/to be produced from NELP Blocks/ Marginal Field Policy/HELP notified by the Government. Such incentives should also be extended to Crude Oil produced from Nominated blocks to augment domestic oil production.

6. Services between Head office and its Units situated in another state

Background

Section 7 read with schedule III provides applicability of GST for transactions amongst distinct persons of the same entity. Issue arises whether head office is providing services to its unit situated in other political state or whether units are providing services to head office. The issue has further attained significance in case of AR ruling in the case of M/s Columbia Hospital wherein it was held that head office is providing services to units and employee cost is required to be included in the value of services. Since, employees are for the company as a whole and not permanently mapped to any unit of the organization, cannot be considered as providing services among distinct persons.

Suggestion

Necessary notification to be issued by Govt providing exemption for deemed supply of services by head office to its units situated in another state and services by units to head office situated in another state. Such clarification would avoid unwarranted litigations at future date particularly in view of contrary AAR ruling in this regard.

7. Payment to Supplier within 180 days (Section 16(2) of CGST Act, 2017)

Background

Second proviso to section 16(2) provides that in case recipient fails to pay the value of goods/service alongwith tax to the supplier within 180 days from the date of invoice, ITC availed needs to be reversed along with interest thereon. The condition of payment to supplier is generally governed by the contractual agreement between the parties which depends on the various factors such as nature of work, credibility of the recipient etc. Once the payment of tax has been made by the supplier to Govt., disallowance of ITC to the recipient where he is not contractually liable to release the payment within 180 days from the date of invoice is unfound and is unnecessary burden on the legitimate recipient.

Suggestion

Necessary notification/clarification to be issued by Govt. that condition of 'fails to make payment within 180 days' to be reckoned with contractual conditions between the supplier and recipient and not from the date of invoice.

8. Taxability on Renewable Energy Certificate

Background

The Government of India's Policy initiatives have led to a tremendous growth and development of renewable energy (RE) sector in the country. Government of India (GOI) has framed various policies for changing the energy mix ratio towards non-pollutant sources of energy and thus promoting the uses of renewable energy. One such initiative is inclusion of Renewable Purchase Obligation (RPO) in the National Tariff Policy 2006/ National Solar Mission 2010. Such policies are amended from time to time to increase solar/ non-solar RPO from 0.25% in 2012 to 3% by 2022. The GOI in July 2018 notified the Long-Term growth trajectory of Renewable Purchase Obligations (RPOs) for Solar as well as Non-solar, uniformly for all States/ Union Territories, reaching 21% of RPO by 2022 with 10.5% for solar based electricity. The RPO targets specified for solar and non-solar power are to be adhered and met uniformly by the Obligated Entities (which includes Discoms, Open Access Consumers and Captive power producers) of all the States and Union Territories. In line with RPO regulations, Indian Oil has been implementing various solar and non-solar RE projects across India with total installed capacity of 216 MW (167.6 MW Wind and 48.6 MW Solar as on 31.03.2019) to meet its RPO obligations. Accordingly, Indian Oil realigned its investment decisions to fall in line with the GOI policies and invested huge sum of money in highly capital-intensive renewable energy generation. These investments were made in various states of Union of India based on the detailed technical study about availability of required wind speed and the available radiation for installation of Wind/Solar plants to meet the RPO obligations towards the captive generation of electricity by Indian Oil Refineries located in various states. As per CERC regulations, RE Generator is permitted to retain the certificates for offsetting its renewable purchase obligation (RPO) or for their consumption units located in different parts of the country. For example, Renewable Energy Certificates (RECs) generated by Indian Oil at Rajasthan Windmill Plants (72.3 MW)) are self-retained by Indian Oil and endorsed thru SDLC in the name of Indian Oil Guwahati Refinery to meet their RPO obligations. However, the utilization of REC generated by Indian Oil RE project in one state and utilized for Indian Oil refineries in another state is subject to levy of GST. Presently REC certificates fall under GST tariff heading 4907 and trading of REC certificates are subject to GST @12%. Since refineries are producing both GST and non-GST goods, there is loss of ITC proportionate to non-GST turnover of the refinery. Indian Oil has already invested huge sum of money in installing non-conventional power plants (Wind/Solar, the electricity tariff of which is getting reduced each year by State Authorities. The imposition of GST on the REC's used as RPO is an additional financial burden and also against the spirit of the policies to promote non-conventional power.

Suggestion:
To promote /increasing the share of renewable in the generation capacity in the country, it is essential that REC certificates self-utilized against own-RPO's should not be taxed under GST in case of interstate utilization. The same should be treated at par with revenue from sale of electricity which is presently outside the ambit of GST. Secondly, the RE projects continue to suffer from cost disadvantage in terms of non-availability of ITC on GST paid on inputs/ input services and capital goods. Hence, it is also essential that RE projects should be exempted from levy of GST on inputs, input services and capital goods.

9. Filing of fresh refund application consequent upon issue of deficiency memo

Background

Section 54(1) of the CGST Act, 2017 provides that any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. Rule 90(3) of the CGST Rules, 2017 provides that where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies. When a deficiency memo is issued and applicant is asked to file a fresh refund claim, two years of time limit from relevant date would be considered for fresh application though the original application was filed within the time limit mentioned in the section 54 of the act. Now, there may be a situation where original application for the refund was filed within the last week of the due date and a deficiency memo was issued against the same requiring filing of fresh application. This would invariably result in filing of fresh refund application after the due date. In such a scenario, there is a high probability that refund claim could be treated as time-barred application by the department.

Suggestion
It is suggested that suitable amendment be made in the rules whereby same application should be moved forward once reply is submitted by the applicant rectifying the deficiency or alternatively, fresh application should be deemed to be filed within two years' time limit if original application has been filed within the said period

10. Amendment in Supplies reported in GSTR-1

Background
Certain times amendments are required for correction in supplies reported in GSTR-1 under B2C and B2CL category as B2B due to incorrect data uploads. GSTN portal allows amendment from B2C to B2B only once whereas amendment of B2CL supplies as B2B are not allowed, which have implication on input tax credit to the recipient.

Suggestion
Necessary facility may be provided on GSTN portal to amend the B2CL transactions as B2B.
Further, amendment in B2C transaction to B2B may be allowed for more than once for a period till annual returns are filed.

11. Availability of download of GSTR-1, ITC-04, GSTR-6, GSTR-7

Background

Download of following returns in excel is not available on GSTN portal which leads to difficulties in reconciliation after submission of returns-

➢ Outward Supply Return (GST-1)

➢ ISD return (GSTR-6)

➢ GST TDS return (GSTR-7)

➢ Job-work return (ITC-04)

Suggestion

Excel download of GSTR-1, GSTR-6, GSTR-7 and ITC-04 returns filed may be made available on GSTN portal which would help to great extent in compliance.

12. 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.

13. 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 (Electricity Duty) 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
Electricity generation, transmission and distribution should be brought under the ambit of the GST regime.

14. All Drop in Bio-fuels (intermediate & finished -from advanced biofuel processes) such as bio-petrol, bio-jet, bio-char, etc. to be classified under HSN and be brought under the ambit of GST at a uniform rate of 5%

Background
All Drop in Biofuels (intermediate & finished -from advanced biofuel processes) should be brought under GST at a uniform rate of 5% on the lines of Ethanol and Bio-CNG.
Drop in bio-fuels are directly produced using catalytic thermochemical processes from biomass residues/waste derived from

1. the forestry sector (sawdust, slash, forest litter, pre-commercial thinnings, etc.),
2. the agricultural sector (bagasse, corn stover, cotton straw, castor stalks, paddy straw, cane tops/trash, mulberry sticks, jatropha cuttings, etc.) and
3. the municipal sector – Municipal Solid Waste (solid mixed organic waste including select plastics).

A drop-in fuel can be used "as is" in currently available engines either in pure form and/or blended in any amount with other drop-in neat, drop-in blend, or conventional fuels.
India can reduce crude imports by a significant amount besides addressing the problem of pollution to some extent if all the MSW and agricultural waste are converted into fuels.
Some other benefits of drop-in biofuels is as follows:

- Benefits expected to farmers on account of agricultural waste being procured from them at competitive prices and in a sustainable manner. Potential solution for eliminating the issues around burning of agricultural waste.
- Use of mixed organic municipal solid and other kinds of waste (MSW) will greatly help in achieving objectives of the Swachh Bharat Mission on a large scale. The process will also help in contributing to climate change mitigation, creating new employment opportunities and leading to environmentally sustainable development.
- Significantly reduces land required for landfills – only inerts and sweeping wastes sent to landfills; gives an impetus to Green India while also reducing reliance on polluting fuels.

Since Biofuels are seen as non-polluting and clean with several benefits as enumerated in the preceding paragraphs, it is important in the interest of a level playing field that all biofuels/products should be brought under the ambit of GST.
Apart from petrol, diesel, ATF, natural gas, crude and alcohol for human consumption all other goods are covered under the ambit of GST. While bio-diesel is specifically classified under HSN code 3826 0000, there is no specific classification for bio-petrol, bio-jet and bio-char. Thus, it is not clear if all bio-fuels shall fall under HSN code 27 (applicable to petrol/diesel) or shall be classified under separate HSNs.

Suggestion
HSN codes should be assigned to all the bio-products including bio-petrol, bio-jet, bio-char, etc. Further, all bio-fuels such as bio-petrol, bio-jet, bio-char and others should be brought within the ambit of GST at a uniform rate of 5%.

15. Customs duty and GST exemption for all Capital Equipment on initial setting up of waste to energy plants and on project imports, renovation / modernization of renewable energy projects

Background
Setting up a waste of waste to energy bio-fuel plant involves substantial capital requirement for the main processing plant, renovation and modernization of renewable energy projects and initial sourcing of certain equipment from outside India. Investment in such plants aligns with the Government's ambition for import substitution of crude/fuels, energy security and reduction in pollution thereby promoting a clean energy eco-system.

Suggestion
Exemption should be provided from Customs duty and GST on import of equipment required for setting up of waste to bio-fuel plant and on project imports, renovation / modernization of renewable energy projects.

16. 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 onboarded 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 recipeint 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.

17. 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.

18. 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 ay revenue loss to the Government.

FIPI

Excise Duty

Upstream

(1) Excise Registration

Background

Excise registration is required to be obtained for each factory.
E&P operations are carried out across the field area granted by the DGH and production takes places across various producing wells scattered across.
However, taking registration for each producing wells is not practically feasible.

Suggestion:-

Exemption benefit on similar line as given to Coal Mining vides Notification no. 10/2011-Central Excise (N.T.) dated 24.03.2011 should be extended for E&P Industry also.

Downstream

(1) Upfront Exemption of Duties of Excise on HSD

Background

Excise duty was exempt for High-Speed Diesel (HSD) procured under ICB conditions for the E&P sector vide Notification No. 12/2012-CE dated 17.03.2012. Post introduction of GST, exemptions were withdrawn and rates were prescribed for Excise Duty w.e.f. 01.07.2017 on High-Speed Diesel (HSD) vide Notification No.11/2017-CE. E&P Companies pay excise duty on procurement of diesel that is used for petroleum operations.

Under the Foreign Trade Policy 2015-20, goods procured under ICB are eligible for benefits applicable to 'Deemed Export'. Accordingly, the excise duty paid on diesel procurement for petroleum operations is eligible for refund.

Suggestion

To provide boost and incentive to the upstream sector, it is requested to restore the exemptions from the duties of excise (Basic Excise Duty, Special Excise Duty & additional duty of excise) on the HSD procured for the petroleum operations under ICB conditions.

(2) Ethanol Blended Motor Spirit - Section 11D demand

Background

Oil companies are blending Ethanol / bio diesel with MS / HSD in the prescribed ratio for selling Ethanol Blended MS (EBMS) / Diesel blended with Bio Diesel (B5 HSD). Excise law provides for exemption of duty on such blending activity. As per ministerial direction the sale price of these products is kept same as that of non-blended MS / HSD.

Department is raising issue with regard to the recovery of the excise duty through price by the oil companies on the ethanol / bio diesel portion of the blended product on the ground that price is the same.

Suggestion

Clarification or 11C notification may be issued by CBIC that in case of Ethanol Blended Petrol sold at the same price that of Motor Spirit would not be subjected to provision section 11D of Central Excise Act.

(3) Taxability of supply of Ethanol (E-100)

Background

Vide Order ref no. GSR 203(E) dated 22.03.2021 issued under Section 3 of the Essential Commodities Act, 1944, MoPNG has amended the Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 by inserting a new clause i.e. 6B, thereby allowing sale of Bioethanol (E100) by oil company for use as standalone fuel or blending with motor spirit, for compatible automobiles As per explanation provided in the order, bioethanol (E100) means anhydrous alcohol recognized by BIS under "IS 15464: 2004" under the name "Anhydrous alcohol for automotive use. BIS 15464:2004 provide specifications for Anhydrous Ethanol for use as automotive Fuel. The meaning of Anhydrous Ethanol under para 3.3 is provided as -"Anhydrous Ethanol is essentially ethyl alcohol, which is denatured and is meant for use as fuel in automobile engines." Accordingly, E-100, would be sold as standalone or 93% Ethanol will be blended with 7% MS as denaturant and some additive to resolve safety issues. Under the Customs Tariff, Anhydrous Ethanol (called Bioethanol or E-100) is covered under chapter heading 22072000 under the heading "Ethyl Alcohol and other spirits, denatured, of any strength. The present rate of GST on HSN 22072000 is 18%. Further, in terms of Entry 84 of List I Union List to Seventh Schedule to the Constitution of India, Fourth Schedule of Central Excise, Tariff 22 of Custom Tariff and BIS 15464:2004 (subject to amendment), it may be inferred that bioethanol (E-100) sold as Standalone fuel or blended with MS/Additives denaturant wherein Ethanol is more than 30%, would be classified as GST product under HSN 22072000. However, States are having their own definition of MS/Petrol under respective State VAT/Sales Tax laws and it appears that bioethanol (E-100), is sold as Standalone fuel or blended with MS/Additives as denaturant, State Authorities may on their own wisdom classify the same as MS/Petrol.
Suggestion

Clarification to be issued that sale of bioethanol (E-100) as Standalone fuel or blended with MS/Additives denaturant wherein Ethanol is more than 30%, would be classified as GST product under HSN 22072000.

(4) Ethanol from Captive Plants for MS blending

Background

Exemption for 10% EBMS from all duties of excise is subject to conditions i.e 10% of GST paid Ethanol is blended with 90% of Duty paid MS OMCs are now putting up 2G plants for manufacturing ethanol to be used captively for blending with MS in order to produce EBMS. Under GST law, goods supplied to itself for consumption within state, GST is not payable. Accordingly, Ethanol manufactured by IOCL in their 2G plants, if utilized for blending EBMS with in the same political state, GST is not payable Exemption for EBMS would not be available, as the Ethanol manufactured by IOCL would not have suffered GST.

Suggestion

Suitable amendment to exemption required under the Central Excise law for exempting the blended EBMS produced from Ethanol manufactured from their own ethanol plants, by removing the condition of blending of GST paid ethanol in MS.

(5) Gas Oil and oils obtained from gas oils: High Flash High Speed Diesel fuel conforming to standard IS 16861 2710 19 49 or Fuel (Class F) or marine fuels conforming to Standard IS 16731: Distillate oils 2710 19 61

Background

Presently IOCL is classifying LSHF HSD and HFHSD under this category of Diesel and excise duty is being paid as applicable to Diesel. It is understood that IS 16731 is the international standard for bunker fuel has two tables specifically for distillate fuel and residual marine fuel. The distillate would include HSD grade marine fuel. The bunker fuel of HSD grade cleared from refinery would meet both IS 16861 & IS 16731 as both the IS have lot of parameter which are over lapping.

Suggestion

Entry prone to multiple interpretations as GST or Non-GST product. PSU oil companies are clearing HFHSD under the excisable goods. Thus, classification of Distillate oil (under marine fuel) under non excisable category may result in revenue loss to the Govt as well as business loss to PSU OMC.

(6) Introduction of Specific rate of excise duty on Aviation Turbine Fuel (ATF)

Background

ATF is falling under ITC (HS) code 2710.19.20 of the Central Excise Tariff Act and presently chargeable at 11% ad-valorem rate of excise duty. Concessional rate of 2% is applicable for ATF sold under Regional Connectivity Scheme.

Generally, ATF is received at AFSs through intermediate storage locations (Depot/Terminal) instead of directly from Refinery. At the point of removal, the excise duty is paid on destination assessable value by following the principle of Normal Transaction Value under Section 4 of the Central Excise Act read with Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. In case of further stock transfers by the intermediate storage locations, the duty payable is again determined based on the value applicable to the final receiving locations i.e. AFSs which result in payment of differential duty. This creates problem in re-ascertaining the correct transaction value for payment of differential excise duty at Refinery.

The extension of same rule for payment of duty on account of further stock transfer of products from one depot to another depot, makes the compliance of valuation rule very difficult for the oil companies. The adoption of the provisional assessment would be complicated and not a pragmatic solution due to untenable and unending exercise to trace the original duty paying documents for finalization of the provisional assessment both for the department and the oil industry.

Suggestion
Presently MS & HSD are levied specific rate of excise duty whereas ATF is levied ad-valorum rate of duty. MS, HSD and ATF have been kept out from GST levy and continue to be levied under the levy of Excise duty & VAT. Since, MS & HSD both are levied specific rate of excise duty, thus it is requested that ATF should also be levied specific rate of duty in place of ad-valorem duty. This would ensure correct payment of duty at the initial clearance stage itself and will eliminate complexities and difficulties in re-determination of duty on further stock transfers which sometime result in avoidable litigation.

(7) Concessional Rate of Duty – ATF for RCS flights

Background

Notification no - 11/2017-CE as amended by notification 7/2019-CE dated 22/08/19 extends the concessional rate of excise duty @ 2% to Aviation Turbine Fuel (ATF) supplied to RCS airline operators for Regional Connectivity Services (RCS) flight from RCS airport subject to conditions as stated therein (Normal rate of Excise duty on ATF currently is 11%). In terms of one of the conditions for the concessional rate of excise duty, such concessional rate is applicable up to 3 year from date of commencement of operations of RCS- UDAN airport or heliport or waterdrome as notified by Ministry of Civil Aviation or till the end of scheme period whichever is earlier (Sunset clause for the exemption).

Suggestion

A uniform date can be provided for the validity of the exemption for all supplies under RCS category to avoid disputes w.r.t to validity dates due to possible different interpretations.

(8) Refund of pre-deposits

Background
Where the appeal is decided in favour of the assessee, he is entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to the date of refund in terms of Section 35FF of the Central Excise Act, 1944/Section 129EE of the Customs Act 1962/ Section 115 of CGST Act 2017. Pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944/ Section 27 of the Customs Act 1962/ Section 54 of CGST Act 2017.

Suggestion
It is suggested that in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not. If the Department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, which is in favour of the appellant, refund along with interest should be paid unless such order is stayed by a competent Appellate Authority

(9) Amendment to existing excise tariff for blending of More than 10% Ethanol with normal Petrol

Background
IOCL is proposing to blend 12 % of Ethanol with MS. Currently the excise tariff and notification provides only for 5% and 10 % EBMS. The tariff also provides for 20% EBMS under E20 category. However, the IS and excise tariff does not cover the E 12.

Suggestion
Suitable amendment needs to be undertaken in IS specification and under excise tariff / notification for covering the various ethanol blending ratios proposed

(10) Rationalization of excise duty on premium diesel

Background
It is an acknowledged fact that premium fuel reduces environmental impact by cleaner burning of the fuel and enhances the life of the engine, thereby improving the overall efficiency. Inspite of the fact that such offerings are there in the Indian market for more than a decade, the market for branded diesel is practically non-existent. The key reason for this is higher taxation on branded diesel thereby making the product too expensive for the diesel market.
The excise duty on branded diesel is INR 2.36/Ltr higher as compared to regular diesel. After incorporating the impact of state and local levies (sales tax/VAT, Entry Tax, LBT etc.) the difference in taxation between branded diesel and regular diesel is more than INR 3/Ltr. Hence, the higher excise duty on branded diesel makes the fuel commercially unviable for a highly price sensitive diesel market in India. This is very much evident from the fact that even after more than a decade of introduction of branded diesel the penetration of branded diesel is less than "0.01%" of the total diesel market in India.

Hence there is a need to bring the excise duty on branded diesel at par with non-branded diesel urgently to promote an efficient fuel. The key benefits of encouraging the usage of branded diesel by reducing the excise duty differential when compared with regular diesel are:

1. Reduced environmental impact of vehicular emissions by cleaner/complete burning of fuels
2. If the Excise duty differential is reduced significantly even without bringing it completely at par with regular diesel, it will increase the government revenues by developing the market for branded diesel.

Suggestion
It is recommended to significantly reduce the excise duty differential between branded and regular diesel, bringing it close to or at par with excise duty on regular diesel. This will help create a market for an efficient branded fuel which will help reduce the environmental impact of vehicular emissions, and help improve the efficiency and performance of the vehicles.

(11) Provide ITC benefits for Non-GST exports/deemed exports as well.

Background

Currently ATF is outside the ambit of GST and export of ATF is exempted however the corresponding input tax credit for such exports are not permitted under the present GST laws.

Suggestion

It is suggested to provide a mechanism for ITC benefit and lay down a procedure to claim refund of ITC on Non-GST supplies exported/ deemed exported to outside India.

(12) Processing of Excise Duty refund claims

Background

Currently where movement of bonded stock is not possible, duty paid stock is supplied to foreign going airlines and duty refund is claimed. This process takes inordinately long delay.

Suggestion

It is suggested that access should be given to online refund application for quick processing.

(13) Notification of petroleum products under Rule 16 of Central excise rules to enable payment of Excise duty on stock transferred goods at the time of removal from depot / warehouse

Background

Excise duty, being one of the levies that the petroleum industry continues to be subject to, is an indirect tax intended to be a pass through tax, i.e. to be collected from the customer and paid to the Government. Excise duty is required to be paid at the time of removal of the goods from the refinery/factory, regardless of whether the goods are removed for immediate sale to customers or by way of stock transfer to depots. Thus, in cases where goods are stock transferred to the depots for subsequent sale to ultimate customers, Excise duty is payable much in advance of sale and receipt of sale proceeds.

Based on the current provisions of the law, although Excise duty is intended to be an indirect tax, the companies are required to pay a significant amount upfront whilst stock transferring goods to the depot, while the realization from the customer happens at a much later date. This results in a huge strain on working capital of the companies.

The levy of excise duty in this situation, loses its primary characteristic of a pass-through levy since the tax is paid by the producer even before it is collected from the customer. Also the petroleum sector attracts the highest rates of indirect taxes like excise duty, cesses, VAT etc. to enable higher revenue collections for the government. Also, exclusion of petroleum goods from GST has already saddled the sector with high indirect tax costs.

Issue / Multiple challenges

The petroleum sector is currently saddled with multiple challenges, key amongst which are:

(a) exclusion from the GST regime and having to continue dealing with multiple taxes thereby being subject to a cascading tax effect, and reversing of GST input tax credit (the

credit for input taxes cannot be taken against any duty other than GST, leaving the industry with stranded taxes that can be as high as around 60%);

(b) challenges in sourcing of crude, particularly the heavy crude which is traditionally available from Iran and Venezuela, on account of restriction imposed by US in May 2018 to procure from those countries.

(c) steady rise in crude price worldwide, from $ 52/bbl to $80/bbl, putting pressure on refining margins.

Suggestion:

Under the erstwhile Rule 20 of the Central Excise Rules, 2001 and Rule 20 of the erstwhile Central Excise Rules, 2002 similar provision existed as under Rule 16 (*supra*). Prior to 2001, the Government had a long standing practice of granting the oil producing companies, the facility to pay Excise duty at the time of removal from depot / warehouse instead of removal from factory. In continuation with the policy, when the new Central Excise Rules, 2001, were introduced, the Government had issued notification no. 47/2001-CE (NT) dated June 26, 2001 notifying various petroleum products falling under Chapter 27, along with other products on which excise duty was not payable at the time of stock transfer of goods. Thus, the government had been cognizant of the challenges to the industry and had been providing the aforesaid relaxation viz. payment of Excise duty only when goods were cleared from the warehouse.

The warehousing provisions are provided for under the new central excise rules which is primarily applicable to petroleum products. Therefore, there is a case to urgently notify petroleum products under Rule 16 of the Central Excise Rules, 2017 requiring that in cases of stock transfer, the payment of excise duty is to be made only when they are sold from the depots for sale to customers, and not at the time of removal from the refinery/factory. This would be aligned with the provisions of law, past notifications, and the commitment to make doing business in India less complicated, and more friendly.

Accordingly, the need to re-implement the enabling provision by way of notification is accentuated by the current environment. Further, this will help to ease the burden on a sector that is currently drained by multiple challenges mentioned above, even while having no adverse impact whatsoever, on the quantum of taxes being collected by the Government from the sector.

Natural Gas

1. Exemption to CNG from payment of excise duty/GST

Background

Presently, Central Excise duty is applicable on CNG due to Chapter Note 3 of Chapter Note to Chapter 27 of CETA. It may also be observed that after introduction of GST, the process of compression of Natural Gas into CNG is also exigible to GST. Thus, the conversion process is now suffering with double taxation i.e. Central Excise and GST, thereby increasing the overall cost of CNG leading to inflated pricing. It is desirable that conversion of Natural Gas into CNG be exempted either from Central Excise Duty or GST, at least to avoid the double taxation. This will promote usage of this environmentally friendly fuel in domestic and commercial transportation sectors.

It may also be observed that after introduction of GST considering that credit of GST paid on input/input services/ capital goods used for production/supply of CNG is not available to producers and suppliers of CNG which in turn leads to cascading and inflationary effect.

Suggestion

In view of the above, the conversion of Natural Gas into CNG may be exempted either from levy of Central Excise Duty or GST. This will make CNG more economical and will promote use of this environment friendly fuel in domestic and commercial transportation sectors.

General

(1) Exemption of Non-GST paid Ethanol/Bio diesel manufactured by Oil marketing Companies (OMC) and used for Ethanol Blended MS (Petrol) and Bio Diesel Blended HSD (Diesel)

Ministry of Petroleum and Natural Gas vide Notification No, F. No.P-13032(16)/18/2017-CC dated June 8, 2018 has notified National Policy on Biofuels 2018. The Goal as specified in the said Policy is to improve availability of biofuels thereby increasing its blending percentage, which can be achieved through reinforcing ongoing ethanol/biodiesel supplies or through increasing domestic production by setting up Second Generation (2G) bio refineries. In addition, in order to prevent burning of crop stubble, which is one of the major reasons of environmental pollution, OMCs are in the process of Setting up of Second Generation Bio Diesel and Ethanol Plants.

Currently OMC's procure Ethanol and Bio Diesel from independent manufacturers for blending with MS (Petrol) and HSD (Diesel) to market Ethanol Blended MS (Petrol) & Biodiesel Blended HSD (Diesel)

In order to avoid double payment of excise duty, CBIC has exempted Ethanol Blended MS (Petrol) and Bio Diesel Blended HSD (Diesel) which is a blend of GST paid Ethanol/Bio Diesel and Excise paid MS/HSD from further levy of duties through various notifications which are given in Attachment-B.

Pursuant to the Govt.'s aim to reduce import dependence as well as to minimize pollution, OMCs are now in the process of setting up their own 2G Ethanol and Bio diesel manufacturing plants at various locations where raw materials for this would be available. Ethanol and Bio diesel manufactured by the OMC's will be used for blending. Since OMC's will themselves be producing these products, own consumption of ethanol/bio diesel produced will not be subject to GST. Thus, exemption vide the aforesaid notifications will not be available as the self-produced ethanol/bio diesel used by OMC's themselves for blending will not be GST paid.

Suggestion:

It is requested that Ethanol Blended MS (Petrol) and Bio Diesel Blended HSD (Diesel) which is a blend of self-produced Non GST paid Ethanol/Bio Diesel manufactured by OMC's and Excise paid MS/HSD similarly be exempted from further duties of excise as is currently being exempted for GST paid procurements.

Customs Duty

Downstream

(1) Withdrawal of exemption notification related to 'Social Welfare Surcharge' on custom duty on Petrol and Diesel in budget of 2021.

Background :

Social Welfare Surcharge (SWS) was introduced by Finance Bill 2018 @ 10% on total Custom Duty. By an exemption notification (Notification No.12/2018-Customs dated 2nd February 2018) SWS on MS and HSD was reduced to 3%.This exemption has been rescinded by the Finance Bill 2021 (Notification No.12/2021-Customs dated 1st February 2021) thereby restoring the effective rate of SWS to 10% on MS and HSD vis a vis 3% earlier.

Total Aggregate Customs Duty on MS and HSD has a Counter Veiling Duty (CVD) component which is equivalent to excise duty (Rs 32.90 per litre for MS ad Rs 31.80 per litre for HSD) . A 7% increase in custom duty due to withdrawal of the said exemption notification is amounting to an additional cost of around Rs. 2.30/Ltr. on MS and Rs.2.23/Ltr. on HSD on all MS/HSD imports.

Oil marketing Companies are required to import MS and HSD regularly to fulfill supply demand gap to meet domestic requirement. The demand supply gap occurs due to seasonal demand variations, planned/unplanned shutdowns in domestic refineries and mismatch between marketing and refining capacities of individual marketing companies and different manufacturing and consumption points.

The impact is not only restricted to imports but also percolating to purchase from domestic standalone refineries in private and public sector who regularly supply MS and HSD to OMCs. An increase in import duty component is providing an opportunity to the standalone refineries and the companies, having surplus products domestically, to negotiate a higher premium over and above RTPs for supply to marketing companies needing the products which is a current reality. It is also to be noted that private sector refiners who have substantial refining capacities and provide products to OMCs are guided by their own business imperatives to price the supply to domestic marketing companies depending on the opportunities and the alternatives available.

Due to continuously growing economy and rebound in demand post COVID, MS and HSD demand is growing and is expected to grow further. According to M/s IHS Markit, MS is expected to grow at CAGR 5% from 2021-30 and HSD is expected to grow at CAGR of 3.1%. Financial implication of the under recovery on above account though different for different companies depending on their supply demand gaps, is significant and is not getting absorbed in market price.

In HPCL case, impact due to above for FY 2021-22 is likely to be in the range of Rs. 350-400 Crore since HPCL is a net buyer.

Suggestion/Requirement:

It is requested that the exemption notification reducing SWS on MS and HSD from 10% to 3% may be restored.

(2) Clarification on applicable Import duty rate on Import of Propane and Butane.

Background :

Import of Propane and Butane meeting IS specs. 4576 for Non-Domestic Supplies by OMC's falls under specific Tariff Item 2711 1200 - Propane and specific Tariff Item 2711 1300 - Butane. as per Sl. No.156 & 157 of Customs Notification no. 50/2017 dated 30th June 2017 which specifies a levy of Basic Customs Duty of 2.5% with Nil Conditions.

Recently Customs Authorities post amendment in Customs Tariff Schedule effective 01.01.2020 arising pursuant to changes as per Finance Act 2019 are insisting for clearance of Imported Propane and Butane under Tariff Item 2711 1910 LPG (for non-automotive purpose conforming to standard IS 4576) having Basic Customs Duty of 5%.

Suggestion/Requirement:

Ministry of Finance to intervene and provide clarification in this respect to avoid litigation in this matter.

(3) Inclusion of Land Customs Station in Notification 208/77- Cus for claiming Duty Drawback Benefit

Background

Clause (c) of Notification ref. no. 208/77 as amended from time to time issued under Section 76 of the Customs Act, 1962 provides for admissibility of duty drawback claim on export of petroleum products by Indian Oil Corporation Ltd to Nepal Oil Corporation through notified Land Customs Station (LCS) namely Panitanki, Raxaul, Jogbani, Sonauli, Rupedya, Gauriphanta and Dharchula. However, LCS Barhni & Bhithamore are not included in the said notification for NOC supplies. Hence IOCL is not able to file drawback on the exports to NOC undertaken through above said LCS.

Suggestion

To include LCS Barhni & Bhithamore as notified LCS under clause (c) of notification 208/77-Cus.

(4) Exemption of Customs Duty on import of Liquefied Natural Gas (LNG)

Background

Liquefied Natural Gas (NG) is a clean fuel and mainly used in fertilizer and Power sector. Recognizing the shortage of Gas, Government has encouraged import of LNG. Presently, import of LNG attracts BCD @2.5% + SWS Cess @ 10%. However, Basic Customs Duty levied on import of Crude Oil is only Rs 1 per MT. Since LNG falls in the same logical category as Crude Oil, they must have the same level of taxation as applied to Crude Oil.

Suggestion

Request to grant exemption of Basic Customs Duty (BCD) on import of Liquefied Natural Gas (LNG)

(5) Removal of National Calamity Contingent Duty on Crude Oil levied @ Rs.50/MT

Background

When the Nation was facing a severe drought during 2003, the Union Finance Budget of 2003- 04 imposed National Calamity Contingent Duty (NCCD) of Rs.50 per metric tonne on domestic as well as on imported crude oil, amongst various other goods, to augment the fund available with the Govt. and to support the relief work in the areas affected by natural calamity. It was mentioned in the Finance Bill, 2003 that this new levy will be limited to one year only. However, the Govt. has kept this levy for year after year. This levy has put an additional burden on the Oil Refining Companies.

Suggestion
It is suggested that this additional burden of NCCD imposed on the Oil Refineries may be withdrawn.

(6) Rationalization of customs duty on import of petroleum products viz Motor Spirit (MS) and High Speed Diesel) HSD

Background

Budget 2015 implemented duty rationalization measures for central excise and customs duty for petroleum products viz. Motor Spirits and HSD. While the additional duty of excise and additional duty of customs (commonly known as "Road Cess") were revised upwards, simultaneously, basic excise duty rates on MS and HSD (both branded and unbranded) were reduced, thereby keeping neutralizing the overall impact of the rate change.

Besides, as a rationalization measure, one of the key amendments was that education cess and secondary and education cess leviable on excise duty had been fully exempted. Given this, education cess and secondary education cess as applicable to petroleum products, including MS and HSD, were also fully exempted. To compensate and adjust for this impact, additional duty of excise has been increased. However, as mentioned above, the overall impact on the aggregate effective excise duty remained unchanged as the additional duty was increased after exemption to cess.

As consequence of revisions in basic excise duty and additional duty of excise for MS and HSD, Countervailing Duty (CVD) and additional customs duty were also revised. While the rate rationalization was done primarily for excise duty thereby fully exempting education cess and secondary and higher education cess, for the purpose of customs duty, education cess and secondary and higher education cess continue to apply on imports of petroleum products, that is, MS and HSD. Consequently, overall effective customs duty on import of petroleum products is higher as compared to effective duty of excise as applicable on indigenous procurement of such products. Historically the government has always maintained parity and uniformity in both duty rates and duty structure between the Central Excise and Customs.

Impact:

In terms of additional duty impact, the effect has been that imports of MS & HSD have become expensive by approximately INR 0.54/litre for Diesel and by INR 0.67/Litre for Petrol, when compared to effective excise duty when procured indigenously. Also this additional impact is now dependent upon excise duty which the Government changes from time to time therefore creating an uncertainty about the effective landed cost of the product for an importer.

This change impacts the industry wherever imports of MS and HSD are involved and more so, where company is trading and will not be eligible for credits for these duties and hence, even marginal distortion has significant impact on the cost of imported product.

In the absence of rationalization, companies which are importing products are the ones who are most impacted. It does not impact those entities which are involved in indigenous production primarily affecting multinational companies operating in this field. In a market where the companies operating in fuel retail alone are already disadvantaged due to lack to access to indigenous products and basic customs duty on imports, this additional impact of cess is another barrier. Hence in the interest of a level playing field and fair competition, this anomaly should be addressed as a priority. This will help enable investment in and business growth of retail petroleum sector.

Budget 2018 abolished the Education Cess and Secondary and Higher Education Cess on imported goods and in its place imposed a Social Welfare Surcharge at the rate of 10% of the aggregate duties of Customs, on imported goods, to provide for social welfare schemes of the Government. The imposition of cess has been a long-standing anomaly with respect to import of petrol and diesel as the corresponding cess on excise duty had been abolished a few years ago. Doing away with this cess and imposing a surcharge makes no change at the ground level as imports continue to be burdened with an additional liability as compared to indigenous production. Removal of this anomaly would be in tune with the spirit of level playing field to companies which are importing petrol and diesel for distribution in India.
Suggestion:-
It is recommended that the Social Welfare surcharge should be abolished and import of petroleum products, that is MS and HSD should be rationalized in line with excise duty as applicable on indigenous procurements in order to bring parity in the duty rates when procured indigenously or imported.

(7) Suggestion for changes in Notification No. 50/2017-Customs dated 30th June 2017 amended vide Notification No 25/2019-Customs dated 6th July 2019.

Background

Petroleum Industry is actually not able to avail the benefit of duty concession due to ambiguous nature of the notification.

1. Transferee is not defined in the Notification or Customs Law, Hence, its open for interpretation.
2. For Transaction Value referred in the Proviso, Customs is referring to the definition from section 14 of customs law 1962 which says price paid or payable at the time of import.

However, the intention of the amended Proviso is to collect duty on scrap value of non-serviceable goods at the time of disposal of goods (cut-off and removed from installations)

and not on the original value at the time of import. This needs to be made clearer and unambiguous.

3. The Proviso mentions rate of duty of 7.5%.

However, it is not clear whether 7.5% is only the Basic Duty OR inclusive of other duties of customs e.g. IGST, Social Welfare Charges (SWC), etc.

It is also not clear whether the rate of IGST should be 5% or 18%.

4. The Proviso mentions DGH to certify that said goods have been mutilated before disposal.

There is a practical difficulty to certify for large structures coming from offshore that the goods have been mutilated at the time of issue of the certificate by DGH because the decommissioned structures would be cut-off and removed from installations offshore and brought onshore for further disposal as scrap after customs clearance on payment of duty after the issue of certificate by DGH.

Suggestion

1. Issue a notification with appropriate changes in the wordings to reflect the actual intention of the amended proviso to address these issues/challenges.

2. Also, in the Tax Research Unit (TRU) notes to Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners include an example of duty levy (including IGST and other applicable Customs duties) to avoid any misinterpretation.

3. Update the Electronic Data Interchange (EDI) so that it automatically calculates the duty as soon as the Notification no. is entered so as to avoid any ambiguity.

4.DGH to only certify that the goods are non-serviceable and would be cut-off and removed from original installations for disposal as scrap at the time of assessment of custom duty.

5. Against Condition No. 48, in clause (e), the following proviso shall be inserted at the end, namely: -

"Provided that where the said goods so imported are sought to be disposed of in non-serviceable form, after mutilation, the importer or the transferee, as the case may be, may at his option, pay duty at the rate of 7.5 per cent. on transaction value of such goods subject to production of a certificate from a duly authorised officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India, to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, having jurisdiction over the port of import, to the effect that the said goods are non-serviceable and have been mutilated before disposal."

(8) Customs Duty exemption required for Heavy Feedstock (such as Straight Run Fuel Oil, Vacuum Gasoil, Low Sulphur Wax Residue, Low Sulphur Fuel oil, Vacuum Residue, Slurry- HS Classification 2710 19 50 and 2710 19 90) for processing in Refinery.

Background:

Presently various feedstock used in the petroleum refinery as alternative input to Crude Oil attracts Customs Duty. Heavy Feedstock such as Fuel Oil, Straight Run Fuel Oil, Vacuum Gasoil, Low Sulphur Wax Residue, Low Sulphur Fuel Oil, Vacuum Residue, Slurry which are

classified under 2710 19 50 and 2710 19 90 of Indian Import Tariff while importing in India required to pay Basic Customs Duty – 5% and IGST – 18%. The Indian Refineries have made substantial investment for installing units in the refinery which are technically capable to process these feedstock. It is challenging to source heavy Crude Oil in the global market smoothly due to current geopolitical situation. The use of these feedstock will reduce dependability of India on Crude Oil and this will enable refineries optimal utilization of internal units. Thus it is highly strategic for India to move for heavy feedstocks as alternate to Crude Oil. Therefore, considering alternate option to Crude Oil and economic feasibility of these heavy feedstocks for processing in refineries critically requires Government support by treating them at par with Crude Oil. Currently, Basic Customs Duty on imported Crude Oil is Rs. 1 per MT and no CVD.

Suggestion

To remove disparity, with reference to the feedstock procured for "processing in the refinery", it is recommended for import of heavy feedstocks (HS Classification 2710 19 50 and 2710 19 90) as under:

(a) Customs duty needs to be reduced to Nil,

(b) levy of IGST/CGST/SGST should be exempted.

(c) Similar treatment of NIL GST to be offered for inter refinery transfer of domestic FO/ heavy feedstock if "re-processed in refinery".

Natural gas

1. Custom duty exemption on import of Liquefied Natural Gas (LNG)

Background

a. Import Duty (Basic Customs Duty) @ 2.5% plus Social Welfare surcharge @10% is applicable on import of Liquefied Natural Gas (LNG), the effective Customs duty comes to 2.75%.

b. Import of LNG for exclusive consumption in generation of electric energy for public distribution is exempt from custom duty subject to certain conditions. However, other important sectors like fertilizer, LPG, CNG, PNG, and Petrochemical bears the burden of effective Custom duty @ 2.75%.

c. The Custom duty increases the landed cost of imported LNG for domestic and industrial consumers. 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 supply of Natural Gas for priority sectors such as Fertilizer, CNG, LPG, PNG etc.

d. Natural Gas is an environment friendly fuel and it is desirable that import of LNG is exempted from custom duty to enable cost effective supply of gas to major industries like fertilizer, LPG, CNG, PNG, Petrochemical and power.

Suggestion

It is suggested that LNG Import may be exempted from payment of custom duty (present rate @ 2.5% plus SWS @10%) to provide relief to gas based industries and domestic consumers. This will also promote usage of this environmental friendly fuel in industrial and domestic sectors.

2. Clarification on applicability of Hon'ble Supreme Court's Unicorn Judgement on Customs Duty Assessment of imported Liquefied Natural Gas (LNG)

Background

a. Import Duty (Basic Customs Duty) @ 2.5% plus Social Welfare Surcharge @10% is applicable on import of Liquefied Natural Gas (LNG), the effective Customs duty comes to 2.75%.

b. Recently, Customs Authorities has proposed to levy Social Welfare Surcharge (SWS) on additional duty of customs (CVD) component on notional basis by incorrect interpretation of a recent Hon'ble Supreme Court' Unicorn Judgment thereby increasing the effective rate of Custom Duty from 2.75% to 4.19%.

c. Excise Duty on LNG is exempt in terms of Entry 8 of Notification No. 11/2017-CE dated 01.07.2017, hence no CVD is leviable on LNG under Section 3(1) of the Customs Tariff Act, 1975. Further, as per Section 110 of the Finance Act, 2018, SWS is to be computed "on the aggregate of duties, taxes and cesses which are **levied and collected**". Since no duty (CVD) is collected from GAIL, it will be inappropriate to charge SWS on CVD on notional basis.

d. The application of principles of SC Unicorn Judgement by Customs authorities while assessing Customs Duty on LNG import is misconceived and is not applicable in the circumstances of import of LNG by GAIL

e. If the referred principle is incorrectly applied then, it would have significant adverse impact with retrospective effect and will result in protracted litigation. Since the Customs duty on LNG would increase significantly, such a measure will most certainly lead to higher RLNG price for Indian consumers and would, by implication, work against Government's stated objective of increasing the share of natural gas in the country's energy basket.

Suggestion

It is suggested that suitable clarification may be issued regarding non applicability of SWS on notional value of CVD for the purpose of computing Custom Duty on Import of LNG. It will help to avoid unwarranted litigation that may arise by inappropriate application of Hon'ble Supreme Court' Unicorn Judgment. The suggested clarification will provide relief to the importers of LNG in particular and gas based industries and domestic consumers in general.

3. Continuation of Customs duty exemptions provided to Oil & Gas companies under Serial No. 404 of the Customs Notification No. 50/2017-Cus dated 30 June 2017

Background

Review of the Customs duty exemption notification is being undertaken and withdrawal/amendment of exemption provided to Oil & Gas companies under Serial No. 404 of the said notification will have serious commercial and financial implications on the Oil & Gas companies.

Customs duty exemptions provided to Oil & Gas companies under Serial No. 404 of the Customs Notification No. 50/2017-Cus dated 30 June 2017 should be continued. E&P activities require highly sophisticated equipment which are not manufactured in India. Further, in order to continue with the product warranty, spare parts of certain equipment have to be purchased from the same Original Equipment manufacturer (OEM) which are also manufactured outside India. Thus, domestic procurements of these goods is not an option.

Suggestion

Pre-dominantly, the policy of the Government has been to provide Customs duty exemptions as evident from the New Exploration and Licensing Policy (NELP), Production Sharing Contracts (PSC) signed by the Government of India, Hydrocarbon Exploration & Licensing Policy (HELP) and Open Acreage Licensing Policy (OALP).

E&P companies have evaluated and already committed investments to the E&P projects in the light of NELP and other policies which guaranteed duty free imports for capital goods and other specified inputs required for these E&P Projects.

E&P projects are highly risk prone and globally capital investment in these projects is without any tax burden.

Both, crude oil and gas have been fully exempted from BCD. Imposing any BCD on goods in list 33 which are required for E&P activities, would be counter-productive. This will lead to larger preference for direct imports of oil and gas resulting in increased import dependence and import bills of India which already imports more than 80% of crude oil and more than 50% of natural gas.

The cascading of GST for E&P companies has already gone up post implementation of GST and any further cost absorption will be detrimental for the industry.

Withdrawing customs duty exemption for projects after large-scale investments have been committed will not only make the projects riskier and reduce the share of the Government but will also undermines investors' confidence in government policy. This also violates contract sanctity and increases barriers to investments

General

Central Sales tax

Upstream

(1) Issuance of C form for interstate sale of Petroleum Products (Natural Gas, Crude, Petrol, Diesel and ATF)

Background:-

Vide the Union Budget 2021-22, Section 8(3)(b) of Central Sales Tax (CST) Act has been amended, whereby, the benefit of concessional rate of 2% CST against Form-C on the inter-state procurement of Non-GST goods (Crude Oil, Natural Gas, and HSD, MS, ATF together referred as 'petroleum products') would not be available unless the buyer is a trader of same goods or manufactures/produces such Non-GST Goods.

Suggestion

Provision for issuance of C Form for inter-state gas sale even if it is for use in manufacture of GST goods till these products are included in the GST should be restored and necessary clarification in this regard should be issued.

Post Budget 2021-22, the benefit of 2% CST against Form-C would not be available on inter-state sale of gas and petroleum products to the power generating companies, mining companies and manufacturing companies like fertilizers, Petrochemical etc.

Since there is no credit of CST available, the cost on purchase of Natural Gas and other fuel will increase significantly (increase by up to 25%) for such industries and the customers.

This change will reduce the competitiveness of domestic gas vis-à-vis alternate sources as the domestic taxes on Natural Gas will become higher than the alternatives. Natural gas is outside of GST. As a result, tax rates (VAT /CST) on natural gas vary in different states across the country ranging from 3% to 26%. Currently issuance of C form was a key lever towards a uniform taxation for various gas customers and addressed the issue of tax distortion to an extent.

Any move to block issuance of C forms will increase cost burden across key economic sectors including power generation, fertilizers, petrochemical, steel etc. reducing their competitiveness.

Downstream

(1) Inclusion of Definition of Motor Spirit (Commonly Known as Petrol) and High Speed Diesel under Section 2 CST Act, 1956

Background

With the implementation of GST effective 01.07.2017 and consequent to the Constitutional (101st) Amendment Act, 2016, Entry 92A of Union List Seventh Schedule to Constitution of India provide for levy of tax on inter-state sale by Central Govt. Quote- Entry 92ATaxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce. Further, Entry 54 of List II State List to Seventh Schedule to the Constitution of India provide for levy of taxes by State Govt. on intra-state sale of "motor spirit (commonly known as petrol)". The relevant entry after amendment vide the Constitution 101st Amendment Act, 2016 is produced as underQuote Entry 54- "54.

Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods."; Therefore, effective 01.07.2017, State are having power to levy tax on sale of high speed diesel, motor spirit (commonly known as petrol), within the state. However, the term Motor Spirit (Commonly Known as Petrol) and High-Speed Diesel (HSD) has not been defined under the CST Act, 1956. Whereas certain State VAT/Sales Tax laws are having varied meaning of term 'Motor Spirit and HSD, classified into following broad categories- 'motor spirit', can be referred as-

➢ any inflammable hydrocarbon (including any mixture of hydrocarbons or any liquid containing hydrocarbons) which is capable of being used for providing reasonable efficient motive power for any form of motor vehicle.

➢ any liquid or admixture of liquids which is ordinarily used directly or indirectly as fuel for a motor vehicle or stationary internal combustion engine.

➢ power alcohol, that is, ethyl alcohol of any grade (including such alcohol when denatured or otherwise treated), which is either by itself or in admixture with any such hydro-carbon, is capable of being used for providing reasonable efficient motive power for any form of motor vehicle or vessel of any kind of aircraft Further, the definition of 'petrol', it can be inferred that –

➢ any inflammable hydrocarbon oil (excluding crude oil) which either by itself or in admixture with any other substance, is suitable for use as fuel in spark ignition engines.

➢ Petrol means dangerous petroleum as defined in the Petroleum Act 1934 (Central Act XXX of 1934) and includes a mixture of power alcohol, as defined in the Indian Power Alcohol Act 1948 (Central Act XXII of 1948) and Petrol. Considering the above and in order to avoid ambiguities in classification of products as at field formation level, it is felt necessary that term Motor Spirit (Commonly Known as Petrol) and High Speed Diesel (HSD) defined under CST Act, 1956.

Suggestion Meaning of term 'Motor Spirit (Commonly Known as Petrol)' and 'High Speed Diesel (HSD)' to be provided under CST Act, 1956 to ensure uniformity in classification

Direct Tax

Income tax

Upstream

1. Climate Change, Environment Conservation & Conservation of natural resources

Background

At present, there is no provision in income tax act, 1961 for providing Tax benefits to entities making expenditure (whether research and development or otherwise) towards efforts in mitigating climate change and environment conservation.

Suggestion

1) At least 100% deduction of expenditure, revenue or capital, on efforts in mitigating climate change and environment conservation on the lines of section 35 "Expenditure on scientific research" may be provided.

2) Sunset Clause in Section 35CCB of Income Tax Act, 1961 may be increased from 31st march, 2002, to conserve the natural resources

Though environment conservation is covered under the Schedule VII of CSR provision of Companies Act, 2013 provides but expenditure in respect of that is not allowed under the proviso to section 37(1) of the Income Tax Act,1961.

Considering the commitments of India to Paris Agreement on climate change, UN Sustainable Development Goals (SDGs) on climate action and (India) as a signatory to Convention on Biological Diversity (CBD), it is of utmost importance to encourage the entities to contribute in achievement of such commitments of the nation by providing tax incentive on expenditure incurred directly or indirectly by paying sum to research association, university, college, or other institution engaged in such activity on the lines of Section 35 of Income tax act, 1961.

Further, to conserve the natural resources it is imperative to extend the sunset clause so that entity can make concerted effort in saving natural resources.

2. Deduction for Exploration and Development expenditure u/s 42

Background

Currently, 100% deduction u/s 42 is available to the entities.

Suggestion

In order to encourage investment of risk capital by the awardees of OALP, who are investing millions for the extraction of oil, weighted deduction for Exploration and Development expenditure is recommended to be allowed for the new blocks awarded under OALP. Weighted deduction of 200% of Exploration expenditure and 150% of Development expenditure for the new blocks awarded under OALP. Weighted deduction may be allowed at 200% of Exploration expenditure and 150% of Development expenditure for the new blocks awarded under OALP.

It will encourage companies to spend more resources on technology to boost oil production within the country which will indirectly help in reducing the dependence of the country on import of crude oil.

3. Investment in new Plant & Machinery (Section 32AC)

Background

Section 32 AC provided for a deduction of 15% of the actual cost of new assets acquired and installed by a company, if the amount of investment exceeded Rs.25 crores.

No deduction under this section shall be allowed for any Assessment Year commencing on or after the 1st day of April, 2018.

Suggestion

Validity of deduction u/s 32 AC should be restored w.e.f. Assessment year AY 2022-23.

This will incentivize investments in new plant and machinery and support the Atmanirbhar Bharat Abhiyaan.

4. Tax Holiday u/s 80IB(9)

Background

Restoration of provision of Tax holiday for new blocks awarded under OALP.
In the past, the government has incentivized the high risk and capital intensive Oil and gas industry through tax holiday granted for 7 years. This benefit was available for undertaking started commercial production till 1st April, 2017.
Recently, government has brought Open Acreage Licensing Policy (OALP) on revenue sharing contract basis, wherein total 105 blocks have been awarded till date.

Suggestion

In order to boost the oil production, it is recommended to restore tax holidays for new blocks awarded under OALP.

5. Deduction for EOR expenditure

Background

Weighted deduction of 150% of Enhanced Oil Recovery (EOR) expenditure
Enhanced Oil Recovery, a stage of hydrocarbon production that involves use of sophisticated techniques to recover more oil than would be possible by utilizing only primary production techniques or waterflooding. These new techniques require heavy investment in Oil and Gas business.

On 10th October, 2018, GOI notified policy framework to promote and incentivize Enhanced Recovery Method for Oil and Gas which provides various incentives on account of Indirect Taxes, such as, waiver of 50% in OIDA cess, waiver of royalty on incremental production on gas, etc. However, there is no incentive announced under Income Tax for the expenditure incurred in relation to EOR.

Suggestion
To make these capital intensive and risky projects commercially viable, weighted deduction on EOR expenditure is recommended.

6. Investment allowance (Section 32AC)

Background

Restoration of Investment allowance. In the past, the government has incentivized the oil and gas industry with the allowance under section 32AC on capital expenditure made on Plant & Machinery. Investment allowance has discontinued on such investments made after 31.03.2017.

Suggestion

Oil and Gas industry invests in high value Plant & Machinery every year for oil production. Tax incentive is required to boost these investments. This will incentivize investments in new plant and machinery and lead to faster growth in manufacturing sector.

7. Deduction for Exploration and Development expenditure B

Background

Weighted deduction of 200% of Exploration expenditure and 150% of Development expenditure for the new blocks awarded under OALP.

Suggestion

In order to boost the oil production by the awardees of OALP, who are investing millions for the extraction of oil, weighted deduction for Exploration and Development expenditure is recommended to be allowed for the new blocks awarded under OALP. Weighted deduction of 200% of Exploration expenditure and 150% of Development expenditure for the new blocks awarded under OALP.

This will help encourage companies to invest capital in the efforts to boost domestic hydrocarbon production and reduce dependence on imported crude.

8. Section 42 - Deduction in case of business of prospecting of mineral oil

Background
Under section 42(1)(a) of the Income Tax Act, deduction for expenditure by way of infructuous or abortive exploration expenses is available in respect of any area surrendered prior to the beginning of commercial production.
As a result of requirement of surrender of the area prior to the beginning of commercial production, the taxpayer is not able to avail deduction from taxable income, of expenses on account of abortive exploration expenses until the certificate of area surrender is obtained from the appropriate authority. Further, even after giving intimation of area surrender to appropriate authority, getting certificate of area surrender from the authority takes very long time.

Further, on reading of section 42 along with the Model Production Sharing Contract, it is not clear whether tax payer is eligible to claim deduction for exploration expenses (including survey expenditure) and drilling expense in the year of incurrence against other business income even though no commercial production has been started.

Suggestion

Considering the genuine hardship of the assessee, an explanation may be inserted in section 42(1)(a) that an intimation by the assessee for surrender of area to appropriate authority will be construed as area surrendered for allowing the deduction of infructuous or abortive exploration expenses. It may also be clarified by inserting proviso in Section 42 that taxpayer will be eligible to claim deduction for exploration drilling expenses (including survey expenditure) in the year of incurrence against other business income irrespective of fact that commercial production has started or not.

9. Inclusion of Profits chargeable to Tax under section 41 and certain interest income in first proviso to section 234C

Background

Under the Income-tax Act, different types of interests are levied for various kinds of delays/defaults. One of its kind is section 234C, dealing with interest levied for non-payment or short payment of quarterly instalment or instalments of advance tax. The advance tax is calculated on the expected profit of the business and such projection is being made in normal course of business. Sometimes unpredictable and windfall profits as mentioned under section 41 and Interest income leads to difficulty in reasonable estimation of taxable profit and under estimation of advance tax results in levy of interest u/s 234C. The intention of this section is to ensure that assessee should discharge its advance tax liability in the manner prescribed without any delay. However, by virtue of first proviso to section 234C, certain uncontrolled / unpredictable sources of income were already taken into consideration by providing exclusions for capital gains, dividend income, etc.

Suggestion

Considering the hardship as faced by all the assesse because of unpredictable nature of income other than those mentioned in first proviso to section 234C, it is suggested to also consider the profits as mentioned under section 41 and Interest income on Tax refunds in the exclusion list under first proviso of section 234C.

Downstream

1. **Section 208 – Reducing slabs for Advance Tax payment**

Background

Under Section 208, advance tax in case of Corporate assessee is payable as follows:

- On or before June 15th of previous year - 15%
- On or before Sept. 15th of previous year - 45%
- On or before Dec. 15th of previous year - 75%
- On or before Mar. 15th of previous year - 100%

In present competitive market scenario, it is difficult to make the realistic estimate of taxable income on 15th of Dec. and 15th of Mar. of the previous year by a large Corporate.

Suggestion

The slab of advance payment of tax may be changed to 65% for payment to be made by 15th Dec and 90% for payment to be made by 15th Mar in place of the current 75% and 100% respectively. The balance tax may be allowed to be paid by 30th June of the assessment year.

This will result into administrative convenience for Corporate and tax authorities without any loss of government revenue.

2. **Deduction for Expansion and Up-gradation of Refineries**

Background:

Plans for faster and inclusive growth will result in higher consumption of energy/fuel which will entail infrastructural preparedness by the Oil Companies (OMCs) and Standalone Refineries

Given the large expected step-up in fuel demand, the OMCs/Standalone Refineries are required to reinforce their infrastructure in terms of capacity augmentation & fuel-quality Upgradation in line with Environmental norms. Needless to say, commensurate investments will be required for supporting such expansion which would require a large amount of funds by OMCs/Standalone Refineries have substantial interest costs, etc.

Suggestion

In order to sustain the existence and to be a part of the inclusive growth plans of the nation, either a profit-based or investment-based incentive should be provided to Refineries for expansion and up-gradation of their refineries.

3. **Introduction of 194Q and overlap with Section 206C(1H) and unintended consequence of Rule 31AA :**

Background:-

In case of purchase of goods on which the purchaser is obliged to deduct TDS u/s. 194Q the seller is still required to incorporate the details of such sale under Rule 31AA (Return) along with the details of TDS deducted on purchase for the purpose Sec. 206C(1H). In order to incorporate the details of TDS the seller has to collect the details of TDS. It would be difficult for the seller to collect the related information with regards to TDS applied by the buyer and then incorporate the same in TCS return under Rule 31AA. Even if, the seller is not responsible for collection of TCS on sale of goods u/s. 206C(1H) he will have to update in the return.

Suggestion :

Therefore, it is requested to make suitable amendments in Income Tax Rules, 1962 to exempt such requirement as per Rule 31AA.

4. **Clarification that loss on Sale of Oil bonds is a revenue loss**

Background

As per the Government's directives petrol, diesel, SKO through Public Distribution System (PDS) and LPG for domestic use are sold to the consumers at the price fixed by the Govt. of India. The selling prices of such products are lower than the cost and therefore, resulting into operating losses. To compensate these operating losses suffered by OMCs, the GOI issues

Special Oil Bonds to the OMCs. Entire amount is offered to tax on receipt of intimation for issue of such special oil bonds by GOI. The Special Oil Bonds issued by GOI have long redemption period ranging from 7 to 17 years. The bonds are issued only in the paper format bearing specified rate of interest and no cash is getting transferred in this regard. Further these special oil bonds do not have any statutory liquidity ratio status thus Banks and Financial Institution are unwilling to buy such bonds and therefore, market demand of these bonds are limited.

GOI Special bonds so received are shown under current asset (current investment) and valued at cost or market price whichever is lower in line with valuation of stock-in-trade. Accordingly, the provision for diminution in bonds value i.e. investment is added back in the computation of total income. Loss incurred at the time of sale of such GOI special Bonds are claimed as revenue loss. However, the Assessing authority is of the view that loss on sale of GOI special Oil Bonds is capital loss as the same is incurred on sale of investment.

GOI Special bonds are based on the scheme as framed by GOI. IOCL has not suo-moto invested in it. Further, had GOI given cash compensation in time or allowed IOCL to charge price and not the subsidized rate, the borrowings would have been reduced to the great extent. GOI Special Bonds are sold primarily to meet the working capital and/ or curb the borrowings.

Suggestion

It is suggested that Section 37(1) needs to be suitably amended to provide deduction for business loss arising from sale of such bonds.

5. **Waiver of Interest under section 234B and 234C**

Background

As per the provisions of Income Tax Act, interest under Section 234B is applicable in case, when an assessee who is liable to pay advance tax, has failed to pay such tax or an assessee who has paid advance tax, but the amount of advance tax paid by him is less than 90% of the assessed tax. Interest u/s 234C is chargeable when the assessee defers the payment of Advance Tax.

Presently, oil industry is determining the prices of the products on the basis of the Market Driven Pricing Mechanism, which is now a day's facing a wide fluctuation of the prices of input material such as crude oil and resulting in volatility of prices of the products. So it is very difficult for Oil Marketing companies to determine the projected profits for the financial year although every effort is made to estimate the profits near to the actual.

Therefore, the shortfalls that are occurring in respect of payment of Advance Tax are not an intentional one but it is as a result of fluctuation of profits due to various reasons beyond the control of the Oil Companies.

Suggestion

It is imperative to pass on necessary administrative instructions by the Board for disposal of waiver applications in a time bound manner.

6. **Reduction of TDS rate u/s 194LC**

Background

TDS u/s 194LC @5% is to be deducted in case of payment of interest by an Indian Company or a business trust in respect of money borrowed in foreign currency under a loan agreement or by way of issue of long-term bonds (including long-term infrastructure bond). This TDS is to be paid by IOCL as the interest payment is done on net of tax basis. In the finance bill 2020, TDS u/s 194LC was reduced from 5% to 4% in case where interest is payable in respect of Long-term Bond or Rupee Denominated Bond listed on recognized stock exchange located in IFSC.

Suggestion

It is requested to please reduce the rate from 5% to 4% for all types of borrowings covered u/s 194LC to have a uniform single rate.

Natural Gas

1. Safe harbour allowances for LNG import prices under Transfer Pricing should be based on the actual dispersion of custom import prices for the year and not on ad-hoc basis.

Background

The entities engaged in the LNG sector typically engage in intercompany trade to varying degrees as per their business requirements to facilitate trade, and this practice is in line with the global energy industry. In India, the intercompany trade is also likely to witness an uptick as the reliance on imported LNG increases. This warrants determination of arms-length prices which adhere to relevant transfer pricing legislation. Additionally, as the long-term LNG contracts are increasingly being replaced by spot contracts, which are largely determined by several instantaneous factors. Nearly 35% of LNG globally is now traded on the spot/short-term market. This involves identification of potential spot purchasers, agreement with potential counterparties, negotiation for logistics services, re-gasification and trading prices; wherein determining safe harbour ad hoc can be extremely challenging.

Suggestion

Considering the above challenges, safe harbour rules for LNG imports should be introduced which are based on actual dispersion of custom import prices. This is of utmost importance and will avoid litigation costs involved.

General

(1) **Faceless Assessments**: Steps should be taken to mitigate following difficulties :

a. Number of Attachments and size per attachment is the major constraint while uploading details. Number of errors are thrown by system, which includes error in file name, repeat document (some reply needs repetitive attachments).

b. The attachments accepted are only in pdf, excel, csv format. Zip files and videos should also be accepted, to enable better explanation of queries.

(2) Non-availability of MAT credit under section 115JAA of the Act.

As per the provisions of section 115JAA of the Income-tax Act, 1961, where tax is payable by a company as per the provisions relating to MAT {as prescribed under section 115JB of the Act}, the credit for tax so paid (i.e., the difference between the tax paid under MAT and tax

computed under other provisions of the Act) would be allowed to the company. Such MAT credit can be carried forward for fifteen assessment years immediately succeeding the assessment year in which the credit becomes allowable. The MAT credit is allowable to be set off in the year in which the tax becomes payable as per the other provisions of the Act.

While the amendment made in provisions of section 115JB of the Act {providing for non-applicability of the MAT provisions in case a domestic company opts to pay tax under the newly inserted section 115BAA of the Act} is highly appreciated, the provisions of section 115JAA of the Act have also been amended providing that credit available for set-off under section 115JAA would not be available for set-off in subsequent assessment years.

MAT is calculated on book profits of a company in the year in which tax calculated on taxable income of the company is less than MAT. As the additional tax in the form of MAT, is paid on the premise that credit thereof would be available against tax payable in subsequent years, denial of set-off of MAT credit to a company, would mean end up paying tax on income which has never resulted.

In view of the above, the allowability of existing MAT credit may be re-considered, by inserting a suitable clarification / amendment in section 115JAA of the Act, either in full or in equal installments for 5 or 10 years. The provision so to be inserted may also bring out the modality for setting off of MAT credit.

(3) Deducibility of expenditure incurred on abandonment and site restoration activities in accordance with Site Restoration Fund Scheme, 1999.

Background: -

As per the provisions of section 33ABA of the Income-tax Act, 1961 (Act), any amount deposited in a separate and dedicated account, maintained in accordance with Site Restoration Fund (SRF) Scheme,1999, including interest accrued thereon is allowed as deduction in the year in which such deposit (including interest accrued as deemed deposit) is made. Further, the aforesaid section, inter-alia, provides that expenditure incurred for the purposes specified in the SRF Scheme, by withdrawing amount from the SRF account, shall not be allowed as deduction in the year in which such expenditure is incurred.

If a domestic company opts for the new tax regime u/s 115BAA of the Act, it would not be entitled to certain deductions and exemptions as specified therein which are otherwise available under the law to other assessees. Exemptions and deductions which would not be available under new tax regime include deduction under section 33ABA of the Act, in respect of amount deposited in an account maintained under SRF Scheme.

Under the Income-tax Act, deduction is allowable in respect of any expenditure incurred wholly and exclusively for the purpose of business. Thus, if under the new tax regime, deduction is not available at the time of depositing the sum in an account maintained under SRF Scheme (including interest credited thereon), the same should be available in the year in which the expenditure is incurred for the purposes specified in SRF Scheme by withdrawing the amount from SRF account.

However, since section 115BAA or section 33ABA does not provide the mechanism for claiming deduction in respect of expenditure which shall be incurred for abandonment and site restoration activities, out of amounts withdrawn from SRF account, which are/were

deposited from the year in which the option for new tax regime is exercised, litigation would be imminent to occur.

It is apprehended that, in absence of requisite clarity on the issue, the Income-tax Authorities may tend to disallow the expenditure incurred towards abandonment and site restoration activities even in respect of expenditure incurred for which deduction was not claimed in the year of deposit of amount in SRF Account, for the years for which new tax regime is opted.

Suggestion: -

It is, therefore, suggested that to bring clarity in this regard to avoid unnecessary litigation, a new sub-section (10) may be inserted in section 33ABA which may read as follows-

"Nothing contained in sub-sections (5), (6) and (7) shall apply in respect of such assessees who have exercised the option provided in section 115BAA, for such amount which have been deposited or credited by way of interest during the previous year in which such option is exercised or any subsequent previous year and for which deduction has not been allowed under sub-section (1)."

(4) Availability of deduction u/s. 36 in respect of contribution made to Trusts etc., set up for employees' welfare.

Background: -

Section 36 of the Income-tax Act, 1961, provides for deduction in respect of contribution made by an employer towards certain funds/schemes set up for employees' welfare as specified therein. Further, section 40A(9) disallows any deduction in respect of any sum paid by an employer towards setting up or formation of any fund, trust, company etc., except to the extent provided by section 36 of the Act. As a consequence, deduction is available to the employer only in respect of contribution made towards funds/schemes specified in section 36 of the Act. If contribution is made towards any other fund/trust/scheme set up for the welfare of employee, no deduction would be available to the employer in respect of the same notwithstanding the fact that such fund/trust/scheme is recognized/registered under the provisions of the Income-tax Act, 1961.

The aforesaid section 40A(9) was inserted by the Finance Act, 1984 (with retrospective effect from 01-04-1980) as a measure to combat tax evasion. While explaining the rationale for insertion of section 40A(9), the Memorandum to the Finance Bill, 1984 had brought out that:-

"Instances have come to notice where certain employers have created irrevocable trusts, ostensibly for welfare of employees, and transferred to such trusts substantial amounts by way of contribution. Some of these trusts have been set up as discretionary trusts with absolute discretion to the trustees to utilise the trust property in such a manner as they may think fit for benefit of employees, without any scheme or safeguards for the proper disbursement of these funds. Investment of trust funds has also been left to the complete discretion of trustees. Such trusts are, therefore, intended to be used as a vehicle for tax avoidance by claiming deduction in respect of such contributions, which may even flow back to the employer in the form of deposit"

It further states that with a view to discourage creation of such trusts, the Finance Bill seeks to make the amendments (i.e., to insert section 40A(9)]. Thus, going by the aforesaid rationale, deduction in respect of contribution to a Fund/Trust should be disallowed only if such Fund/Trust has been created as a measure for tax evasion. Consequently, if a Fund/Trust

is formed with a *bona fide* intention for welfare of employees, there ought not to be any bar on deduction in respect of contribution made towards such Fund, Trust, etc. Registration/recognition/approval of a Fund/Trust/Scheme under the provisions of the Income-tax Act, 1961 ought to be sufficient to establish the bona fides of creation of such Fund/Trust/Scheme for the benefit of employees.

Suggestion: -

It is, therefore, suggested that suitable amendments may be made in section 36 and/or section 40A(9) of the Act so as to provide that deduction would be available in respect of contribution made by an employer towards a Fund/Trust/Scheme set up for the welfare of employees if such Fund/Trust/Scheme is registered/recognized/approved under the provisions of the Income-tax Act, 1961.

(5) Restriction on adjustment of demands exceeding 20%, pending disposal of appeal filed against the order

Background: -

The Central Board of Direct Taxes had, vide Office Memorandum dated 29-02-2016 and 31-07-2017, issued guidelines for granting stay of demands pending disposal of appeals by first appellate authority. As per the aforesaid guidelines, where the outstanding demand is disputed before the CIT(A), the assessing officer shall grant stay of demand till disposal of first appeal on payment of 20% of the disputed amount.

However, in practice, it has been observed that, pending disposal of appeal by CIT (A), the amount of demands raised and collected by the assessing officers often exceed 20% of total disputed amount and in certain cases, the entire demand is collected by way of payment / adjustment of refunds arising in any other assessment year.

Suggestion: -

Pending disposal of appeal by the first appellate authority, deposit of substantial part of disputed demand (by way of payment or adjustment against the refunds due) causes undue hardship to the assessee. The same is also not in line with the guidelines issued by the Central Board of Direct Taxes.

It is, therefore, suggested that suitable provisions may be inserted in section 245 (which empowers the assessing officer to adjust refunds against the outstanding demands) or section 220 of the Act (which deals with payments of outstanding demands) restricting the assessing officers to raise and collect demands (by any mode) exceeding 20% of total disputed amount pending disposal of appeal by CIT(A). It may also be provided therein that the demand in excess of 20% of disputed amount may be raised and recovered by the assessing officer only with the prior approval of Chief Commissioner of Income-tax.

Further, to safeguard the Revenue's interest, certain exceptions to the aforesaid general rule may also be provided in line with the ones contained in CBDT's Office Memorandum dated 29-02-2016.

(6) Rationalizing TDS Provisions - TDS if amount is credited unilaterally

Background: -

Various sections contained in Chapter XVII-B of the Income-tax Act, 1961, dealing with deduction of tax at source from sums payable to residents/non-residents mandates tax to be

deducted at source at the time of credit of such sum to the credit to the account of the payee or at the time of payment thereof, whichever is earlier. It is also provided that where any such sum is credited to any account, whether called "Suspense account" or by any other name in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and tax is, therefore, required to be deducted accordingly.

A liability for expenses which may have been incurred by a person as on the Balance Sheet date but for which neither the payee has preferred any claim nor the amount payable has been quantified is often provided on an entirely ad-hoc basis in the books of account by assessees to avoid any adverse comment from auditors to the effect that the accounts do not reflect a true and fair view. In most of these cases, even the identity of the payees is not known and a consolidated liability is provided on an entirely ad-hoc basis such as the amount which had been paid on a particular account in the preceding years. Owing to such ad-hoc nature of such liabilities, they are mostly reversed at the start of the succeeding year and whenever identity of the payees and amounts payable to them becomes clear, liability for the same is provided subsequently. In circumstances where the identity of the payee and the amount payable to that payee are not known and only an ad-hoc liability is provided, the requirement to deduct tax at source causes hardship to assessees. Thus, there is a need to revise the provisions in view of practical difficulties.

Suggestion: -

Considering somewhat similar situation faced by banks wherein provision of liability for interest is made without any constructive credit to depositors' accounts, the Central Board of Direct Taxes has, vide circular no. 03/2010 dated 02-03-2010, clarified that there is no need for banks to deduct tax at source on provisioning of interest since no constructive credit to depositor's/payee's account takes place. As this is a problem faced by all assessees and not just the banking fraternity, it is suggested that similar dispensation may be provided to all assessees by making suitable amendments in the provisions of the relevant sections contained in Chapter XVII-B of the Income-tax Act, 1961, dealing with deduction of tax at source. At the same time, to safeguard the interests of the revenue, it may be provided that the requirement not to deduct tax at source from sums so credited to any account shall apply only if the credit is afforded unilaterally i.e., without any invoice having been received from the payee, the amount is not credited to any particular payee's account, and the entire amount of the credit so afforded at the end of an accounting period is reversed at the beginning of the succeeding accounting period by the payee.

(7) TDS credit to be allowed irrespective of the Assessment Year

Background:-

Credit for TDS deducted is available to the deductee in the year in which the corresponding income is offered to tax. If, for any reason, credit for TDS is not claimed in the relevant year, the same would get lapsed and would not be available against tax payable by the deductee on income of any subsequent year. The aforesaid leads to undue hardship to the deductees from whom TDS was rightfully deducted and is also reflected in Form no. 26AS.

Suggestion: -

It is, therefore, suggested that the TDS credit may be allowed to the deductee irrespective of the Assessment Year in which the corresponding income is offered to tax.

(8) Changes in section 234C of the Income-tax Act, 1961 (Interest for deferment of advance tax)

Background: -

Section 234C of the Income-tax Act, 1961, provides for levy of interest where there is shortfall in any installment of advance tax actually paid vis-à-vis the installment of advance tax payable as per the returned income.

Suggestion: -

It is suggested that upstream oil & gas companies may be exempted from the rigors of section 234C or the rigors may be relaxed by providing that no interest shall be leviable on shortfall of installment of advance tax, if any, to the extent that such shortfall is attributable to either of the following reasons:

(a) Fluctuations in the international prices of Crude Oil.

(b) Movements in the Exchange Rates for foreign currencies,

(c) Government directives on subsidy sharing,

since such unpredictable factors lead to difficulty in reasonable estimation of taxable profit and under estimation results in levy of interest u/s. 234C for no fault of the upstream oil & gas companies.

(9) Dichotomy in methods of grossing-up of income subject to tax u/s. 44BB for TDS and assessment purposes

Background:-

(I) Section 195A of the Income-tax Act requires multi-stage grossing up of income for TDS purposes if tax on the income of the payee is to be borne by the payer.

(II) Section 44BB of the Income-tax Act, 1961 is a deeming provision which provides that income of a non-resident engaged in the business of providing services and facilities in connection with prospecting for, or extraction or production of mineral oils, shall be deemed to be 10% of the amounts specified in sub-section (2) thereof. Sub-section (2) of section 44BB would include any tax payable in respect of the sums payable to the non-resident. It has been held by the Hon'ble Uttarakhand High Court that the provisions of section 44BB admit of only single stage grossing up and the Hon'ble Supreme Court has dismissed Special Leave Petition filed by the Revenue against the Hon'ble High Court's judgment. Thus, the issue has attained the finality.

As a consequence of the aforesaid, in tax protected contracts with non-residents (where tax liability is to be borne by the payer), if income of the non-resident is taxable u/s. 44BB of the Act, then, for TDS purposes, the same is subject to multi-stage grossing up whereas for assessment purposes, the income can be grossed-up using single stage grossing-up only. As a consequence, TDS is always higher than the tax rightfully chargeable in such cases.

Suggestion: -

It is, therefore, suggested that suitable amendment may be made in section 195A of the Income-tax Act, 1961 so as to provide that where income of the non-resident is taxable u/s. 44BB of the Act, the same would be subject to single stage grossing-up for TDS purposes also.

(10) Rationalizing the provisions of section 248 of the Act

Background:-

As per the provisions of section 248 of the Income-tax Act, 1961, where under an agreement or arrangement, TDS applicable on any income (other than interest) payable to a non-resident is borne by the payer and, the payer claims that no TDS is required to be deducted from the income so payable as against the TDS directed in the order issued u/s. 195(2), then an appeal may be filed by the payer against such order u/s. 195(2) claiming that no TDS was deductible on such income.

The aforesaid section provides an opportunity to file an appeal by the payer (who bears the applicable TDS) who is aggrieved by TDS determined pursuant to the order issued by the Income-tax Department u/s. 195(2). The section, however, covers only the cases where the payer claims that no TDS is applicable on the income of the non-resident.

Section 195(2) of the Income-tax Act, 1961, is meant to determine the proportion of the income of the non-resident which is chargeable to tax in India and applicability of TDS is regulated accordingly. There could be instances where the payer does not deny the liability to effect TDS on income of the non-resident but is of the view that the proportion determined to be taxable by the Income-tax Department in the order u/s. 195(2) is erroneous.

For instance, the Income-tax Department directs that the income of the non-resident is taxable as “fees for technical services” u/s. 115A of the Act and, accordingly, gross income of the non-resident is subject to income-tax (TDS) @10% (plus applicable surcharge and health and education cess) whereas the payer is of the view that, the income is covered under the deeming provisions of section 44BB of the Act, and, hence, only 10% of total income of the non-resident is subject to income-tax at the rate of 40% (plus applicable surcharge and health and education cess) thereby arriving at an effective rate of 4% (plus applicable surcharge and health and education cess). In such a case, it is apprehended that, given the coverage of section 248 of the Act and the language employed therein, appeal filed by the payer u/s. 248 may be rejected by an appellate authority on the ground of maintainability.

Suggestion: -

It is, therefore, suggested that the provisions of section 248 may be suitably amended to also cover the cases where the payer does not deny the liability of TDS but is of the view that TDS is applicable at a rate lower than the rate determined pursuant to the order u/s. 195(2).

(11) Interest on Refunds paid to the assesse to be at par with interest charged by the revenue on short payment of Income tax

Background: -

Under the provisions of section 244A, the rate of interest applicable on refunds due to an assessee is 0.5% per month or part thereof whereas under the provisions of sections 234A, 234B and 234C, the rate of interest chargeable from the assessees is 1% per month or part thereof. Further, interest on refunds is subject to tax in the hands of the assessee whereas no deduction is admissible for interest paid by an assessee.

Suggestion: -

It is, therefore, submitted that the interest rate on the refunds due to the assessee and on the amounts payable by the assessee to the Government should be same on the ground of equity.

(12) Providing Consequences of Non-disposal of Rectification Applications under section 154 of Income-tax Act, 1961.

Background:-

Section 154(7) of the Income-tax Act, 1961, specifies a time limit of four years for making amendments to orders for rectification of mistakes apparent from records. This time limit is reckoned from the end of the financial year in which the order sought to be amended was passed. However, it is seen that, in a large number of cases, the assessing officers simply do not dispose of an assessee's application under section 154 for years together, which results in loss to the assessee. Apparently to overcome this problem, a new sub-section (8) was inserted in section 154 by the Union Budget, 2001, to provide that an application made by the assessee under this section would be disposed of within a period of six months. However, the consequences that would arise if the application so made is not disposed of within six months have not been spelt out.

Suggestion:-

Therefore, it is suggested that it should also be provided in the said sub-section (8) of section 154 that if the income-tax authority does not dispose of the application made to it within six months, the application shall be deemed to have been allowed. This would ensure promptness in disposal of applications under section 154 and avoid undue harassment to the taxpayers.

(13) Insertion of specific definition of "month"

Background:-

Under the Income-tax Act, the term "month" has been mentioned in a number of provisions. However, the same has not been specifically defined thereunder.

In absence of specific definition of "month" under the Income-tax Act, 1961, meaning thereof has been interpreted differently by different courts of law. While some courts of law has adopted the meaning of "month" as defined in General Clauses Act i.e., the calendar month reckoned according to the British calendar, the other courts of law has interpreted the meaning of month as 30 days' period reckoned on date to date basis.

Suggestion: -

Absence of specific definition of "month" leads to differential interpretation thereof and, hence, the avoidable litigation. It is, therefore, suggested the provisions of section 2 of the Act may be amended so as to incorporate therein definition of "month".

(14) Consideration of interest for granting refunds u/s. 244A

Background:-

Section 244A deals with interest payable on refunds due to an assessee. Sub-section (1) of section 244A starts with the phrase "Where refund of any amount becomes due to the assessee…..".

On a literal construction of the aforesaid, it may be inferred that the phrase "..any amount…" occurring in section 244A(1) refers to the total amount of refund due to an assessee not just the tax component thereof. Thus, the interest should be calculated on the amount of tax, interest, penalty etc., comprising the total amount of refund.

However, the provisions of section 244A does not contain any clarificatory clause as to whether or not interest and other components of refund would also form part of "any amount of refund" as mentioned above.

Suggestion: -

Absence of ample clarity as to whether the interest u/s. 244A is payable only on the amount of tax refund OR interest, penalty and other components of refund would also be covered within the ambit thereof leads to avoidable litigation. It is, therefore, suggested that a suitable clarificatory provision may be inserted in section 244A of the Act in this regard.

(15) Exclusion of non-residents from the ambit of sections 206AB and 206CCA

Background:-

As per the provisions of section 206AB of the Income-tax Act, 1961, inserted by Finance Act, 2021, if any TDS is deductible from a "specified person", then, TDS would be deducted at higher of the following rates-

(a) at twice the rate specified in the relevant provision of the Act;
(b) at twice the rate or rates in force;
(c) at the rate of 5%.

For the above purpose, "specified person" means a person-

(i) who has not filed Return of Income for two consecutive assessment years relevant to the financial years immediately preceding the financial year in which TDS is deductible (for which time limit for filing Return of Income has expired); and

(ii) the aggregate of TDS deducted and TCS collected in the case of such person is Rs. 50,000 or more in each of the aforesaid two financial years.

Similar provisions have been introduced in the context of TCS by insertion of section 206CCA. Apart from the resident deductees/collectees, the provisions of section 206AB and 206CCA are also applicable in the cases of sums payable/receivable to/from a non-resident having a Permanent Establishment (PE) in India. The applicability of sections 206AB and 206CCA in the cases of non-residents payees/payers (having a PE in India) may lead certain issues being faced by the resodent deductor/collector in complying therewith.

The Central Board of Direct Taxes (CBDT) has provided a functionality for carrying out compliance check to ascertain whether or not a person is covered within the meaning of "specified person" for the purpose of sections 206AB and 206CCA of the Act. The functionality apparently checks the status of a person with reference to the conditions enumerated in (i) and (ii) above as per the records of the Income-tax Department, and does not take care of existence or otherwise of a non-resident's PE in India. In fact, it does not seem to be feasible by the Income-tax Department to ascertain/maintain the status of a non-resident's PE in India on a year-to-year basis especially for a financial year for which no Return of Income has been filed by the non-resident.

Accordingly, there could be instances where a non-resident, despite having satisfied the conditions (i) and (ii) above, is not covered within the ambit of section 206AB/206CCA of the Act by virtue of not having a PE in India. However, the status of such a non-resident may still be shown as "specified person" by system of the Income-tax Department. In such cases, not deducting/collecting TDS/TCS at the higher rates specified by sections 206AB/206CCA may result in defaults being shown by TRACES portal and may lead to the avoidable litigation.

Suggestion: -

It is, therefore, suggested that, in view of the apparent impossibility of compliance, the provisions of sections 206AB and 206CCA may be suitably amended to exclude the non-resident payees/payers from the ambit thereof.

Alternatively, if status of a non-resident deductee/collectee, as shown by the functionality, is a "specified person", an opportunity may be provided to the deductor/collector to submit/upload a no PE conformation (obtained from the non-resident) at the time of filing quarterly TDS Statement and, upon submission thereof, the higher rates envisaged by sections 206AB and 206CCA should not be invoked.

(16) Rationalizing the provisions of section 194-O dealing with TDS by e-commerce operators

Background: -

As per the provisions of section 194-O(1) of the Act, where sale of goods or provision of services is facilitated by an e-commerce operator through its digital or electronic facility or platform, the e-commerce operator is required to deduct tax at source (TDS) on the amount of sale or services at the time of crediting the same to the account of e-commerce participant (i.e., the seller) or at the time of payment thereof, whichever is earlier.

Explanation to the aforesaid section clarifies that, any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for sale of goods or provision of services facilitated by e-commerce operator, shall be deemed to be the amount credited or paid by e-commerce operator to the e-commerce participant and shall be included in the gross amount of such sale and services for the purpose of deduction of TDS under the above section. The instant issue pertains to the non-availability of ample clarity on various aspects arising from the aforesaid provisions.

Section 194-O covers the cases where sale of goods or provision of services is facilitated by an e-commerce operator. It has, however, not been clarified as to when sale of goods or

provision of services would be construed to have been "facilitated" by an e-commerce operator. To be specific, it is not clear whether the cases where sale agreement is made outside e-platform and payment is also made directly by the buyer to the seller would also be covered within the ambit of section 194-O of the Act.

Further, section 194-O(1) casts an obligation on an e-commerce operator to deduct TDS on sums payable towards, inter-alia, sale consideration of goods to the seller at the time of crediting the sums to the account of the seller or at the time of actual payment thereof, whichever happens earlier. On a literal interpretation of the aforesaid provision, it may be inferred that, only the cases where payment of sale consideration is routed through an e-commerce operator are covered within the ambit thereof.

However, Explanation to section 194-O(1) of the Act, brings out a deeming fiction by providing that, where payment is made directly by the buyer to the seller, such payment would be deemed to be the amount paid or credited by e-commerce operator to the seller and would be included in gross amount for goods/services for the purpose of deduction of TDS under the above section. The aforesaid Explanation sounds in contradiction with the main provisions of section 194-O(1) of the Act and the legislative intent.

Suggestions: -

(i) The provisions of section 194-O may be suitably amended to clarify as to when sale of goods or provision of services would be construed to have been "facilitated" by an e-commerce operator so as to cover within the ambit of TDS thereunder. Such a clarification may have a specific reference of the cases where e-auction platform is used only for the purpose of identifying the prospective buyers and sale is effected outside the platform.

From the bare provisions of section 194-O(1) especially from the phrase *"at the time of crediting the sums to the account of the seller or at the time of actual payment thereof"* appearing therein. The legislative intent appears to be to cover the cases where payment of sale consideration is routed through e-commerce operator. However, the deeming fiction of the Explanation to section 194-O(1) apparently intends to also cover the cases where payments are made by directly by the buyer to the seller. Explanation is meant to explain the main provisions. However, in the instant case, since the language employed by the Explanation is in apparent contradiction of the provision, the same may lead to differential interpretation.

If it is interpreted that, by virtue of the Explanation, the cases of direct payments by the buyer to the seller are also covered within the ambit of section 194-O, the implementation and compliance of section 194-O would pose serious challenges on the part of e-commerce operator as he would not be in a position to monitor and to keep track of the payments made by the buyer to the seller and, accordingly, to ensure deduction of TDS thereon.

It is, therefore, submitted that, the provisions of section 194-O may me appropriately amended to provide specific dispensation from TDS in respect of the cases where payment of sale consideration is made directly by the buyer to the seller without any intervention of the e-commerce operator.

(17) Corporate Social Responsibility Expenditure to be allowed as deduction for payment of Income Tax

Background

As per Explanation 2 to Section 37(1), any expenditure incurred by an assessee on the activities relating to Corporate Social Responsibility referred to in Section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred for Business purposes.

Corporate social responsibility expenditures have become part of business operations a company, particularly in case of PSU. Further New Companies Act 2013 also provides for mandatory CSR expenses to the extent of 2% of average Net profit of a company in last 3 preceding year. In order to promote development of the country, CSR expenses need to be promoted. Under CSR various development programmes like development of schools for poor children, roads & bridges in rural areas, financial assistance to NGOs engaged in helping poor by providing employment are carried out. Normally, entire CSR expenditure is disallowed in the hands of assessee. Some of the companies are spending even more than the mandatory limit of 2%.

Suggestion

To encourage the application of CSR in letter & spirit, expenditure incurred beyond statutory limit of 2% should be allowed under business expenditure to the assessee paying tax under normal provision as well as to assessee paying tax u/s 115BAA. In view of mandatory nature of CSR expenses under new Companies Act, 2013, it is suggested to insert an amendment under Income Tax Act allowing deduction of CSR expenditure beyond statutory limit of 2%.

Further amounts spent on awareness programmes and public outreach campaigns regarding the covid-19 vaccination drive are also permitted by MCA to be classified as CSR activity. It is expected that deduction for such expenditure may be allowed regardless of whether it is for employees or for public at large.

This will provide more incentive to companies to spend additional amount on CSR and will ultimately accelerate social wellness and improve public health.

(18) Depreciation provisions (Section 32)

Background

The Accelerated Depreciation (AD) available to wind and Solar power plants was 80 per cent till Assessment year 2017-18 which has been reduced to 40 per cent starting from April 2017.

Suggestion

The rate of depreciation should be restored to at least 60%. This will encourage companies to invest more capital in renewable energy capacity addition.

(19) Revised return u/s 139(5)

Background

As per Section 139(5) a revised return may be filed by the assessees at any time before the end of the relevant assessment year or before the assessment is made, whichever is earlier

Suggestion

There is a need to retain the time limit for filing of revised tax return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier. The due date for filing of return u/s 139(1) for a company who is required to furnish a Report u/s 92E for international transactions with Associated Enterprises or specified domestic transactions, is 30th November of the relevant Assessment year. Thus the existing provision allows such assessees only 1 month time to file revised return after filing of the original return, which is practically not adequate.

(20) Rectification of mistake u/s 154 of the Income Tax Act, 1961

Background

Section 154(7) of the Income-tax Act, 1961, allows a time limit of four years for making amendments to orders for rectification of mistakes apparent from records. It is reckoned from the end of the financial year in which the order sought to be amended was passed. However, in a large number of cases, the assessing officers do not dispose of an assessee's application under section 154 for years together.

In order to overcome the above problem, a new sub-section (8) was inserted in section 154 by the Union Budget, 2001, to provide that an application made by the assessee under this section would be disposed of within a period of six months. However, the consequences of failure to dispose of the application within the six months have not been spelt out.

Suggestion

It is suggested that sub-section (8) of section 154 may be amended to provide that if the income-tax authority does not dispose of the application made to it within six months, the application shall be deemed to have been allowed. This would ensure promptness in disposal of applications under section 154 and avoid undue hardship to the taxpayers

(21) MAT Credit Entitlement u/s 115JAA

Background

Allow the set-off of 2 times of the difference of the tax under normal tax and MAT provisions, in the year in which the normal tax liability exceeds tax liability under MAT provisions for Oil and Gas industry

Suggestion

As per the provisions of section 115JAA of the Income Tax Act, 1961, if, during a year, a company has paid tax liability as per MAT provisions u/s 115JB, it is entitled to claim credit of excess of MAT paid over the normal tax liability in the following year(s). MAT credit can be carried forward for 15 years following the year of credit generation.

(22) TDS rate on payments covered under section 44BB of the Income Tax Act, 1961 (Act) - Amendment to Part II of First Schedule to the Finance Act

Provide preferential rate of 4% (Foreign Company)/3% (Non being a company) for deducting TDS on persons covered under section 44BB of the Act

Section 44BB was introduced within the ambit of Income Tax Act, 1961 (Act) with the object of simplifying the provisions relating to taxation of entities (non-resident) engaged in the business of providing services and facilities used in connection with exploration and production of mineral oil and provides effective tax rate of 4% (Foreign Company)/3% (Not being a company) (plus applicable surcharge and cess) on gross receipts.

However, Part II of First Schedule to the Finance Act, which provide rates of TDS, does not provide any specific rate for payments covered under section 44BB of the Act and therefore subject to TDS at 40%/30% (plus applicable surcharge and cess)

(23) TDS on cash call

Background
Suitable clarification is required that cash call is in the nature of capital contribution and no TDS is applicable on the same.

For the purpose of extracting oil, company is required to enter into a Profit Sharing Contract (PSC) with Government of India. Parties to the PSC are called as the “Co-ventures” and one of them, making all the expenditure on behalf of the venture is called as the “operator”. To meet the expenditure made by the operator on behalf of other co-ventures, the contribution of the other co-ventures are taken by way of “Cash call”.
Cash call paid by co-ventures in a Block to “operator”, who control over day-to-day operations is a capital contribution. Thus, TDS is not applicable. The Hon’ble Supreme Court in CIT vs Enron Oil & Gas Ltd., 305 ITR 75 already held that cash call is an investment. However, for some of the Companies, unwarranted tax litigations are going on for non-deduction of TDS on cash call payments.

Suggestion
Clarification is recommended to be issued to avoid such unnecessary litigations.

(24) Issue of Withholding Tax Certificate u/s 195(3)

It should be clarified that for the purpose of Section 195(3) of the income tax act, branch includes a Project Office to avoid a situation where field formations deny the benefit of Section 195(3).

Every foreign company operating through branch/ project office etc. must procure a Withholding Tax certificate to determine the rate of withholding for the receipts from customers. The withholding tax certificate may be obtained under section 195(3) for a company which has a track record of filing tax returns in India or under section 197.

Recently, the application made to the department u/s 195(3) by companies operating in India through a Project Office is being rejected on the grounds that section 195(3) applies only to foreign companies operating through “Branch Office” and not through “Project Office”.

It may be noted that the concept of Branch Office, Project Office and Liaison Office is prescribed under the Foreign Exchange Management Act, 1999 (‘FEMA’) for non-resident companies planning to set up an office in India. This distinction should be restricted only to FEMA and cannot be imported into the Income tax laws.

A project office is nothing but a branch office of a foreign company for the purpose of Income Tax Act, 1961 and accordingly, the project office should not be denied the right to make an application under section 195(3).

Section 195 (3) states that - Subject to rules made under sub-section (5), any person entitled to receive any interest or other sum on which income-tax has to be deducted under sub-section (1) may make an application in the prescribed form to the Assessing Officer for the grant of a certificate authorizing him to receive such interest or other sum without deduction of tax under that sub-section, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).

(25) 15% corporate tax rate for new mining companies

Please extend the benefits of Sec 115BAB to new mining companies also. With effect from 1ST April 2020, government has introduced new section 115BAB for new manufacturing companies and exclude the mining from it . In order to promote Aatam nirnbhar bharat , benefits of this section should also be extended to mining companies.

(26) Section 80 M

Intercompany dividends eligible for 80 M deduction should be treated as exempt for the purpose of MAT calculation as well as setting of such dividend income with business losses/unabsorbed depreciation.

As per section 80M, any dividend received from body corporate used further to declare divided to its shareholder is not taxable and eligible for deduction. Though this amount is eligible for deduction but still taxable for MAT purpose and will generate MAT credit which is not the intention of this section after abolishment of DDT provision.

Even under normal tax provision where the company has business loss, instead of claiming the deduction under Sec 80 M dividend income has to first set off against with business loss which results in tax loss to the company as same can be set off in future years with business income.

Thus, whole purpose of non-taxing the dividend income in case used to distribute it further is defeated.

(27) Section 194 O

Suitable clarification that section 194O is not applicable where e-auction is conducted for price discovery only and actual sale transaction is concluded outside of ecommerce platform and payment is made directly by the Buyer to seller.

Looking at hardship one commerce operator where its platform used only for B2B transaction and either party already complying with provision of TDS. requesting to give exemption for B2B transaction.

It is practically impossible for e commerce operator to comply with provisions of section 194O where the payments flow directly from buyer to seller and even e commerce operator not aware about the amount involved as contracts run for n number of months or year and quantity/price also changes time to time .

(28) Restoration of weighted Deduction on R&D Activities and inclusion of expenditure incurred on Bio-fuels -Section 35 (2AB) and 35(2AA)

Background

The weighted deduction for R&D Expenditure under Sec. 35(2AB) not available in case Section 115BAA is opted. The expenditure on R&D was allowed as weighted deduction with a vision to the strengthen R&D Activities in India which directly related to"Make in India" concept. R&D is the backbone for industrialization of any country and linked to development and growth of the economy. Further India's expenditure on R&D as a percentage of GDP is very dismal as compared to World Average. Reinstating of R&D weighted deduction, would help in further development of new technology and avoiding brain drain and continuous dependence on foreign technology.

Suggestion

It is suggested to delink the R&D Deduction with the Option of 115BAA/115BAB by allowing "Weighted Deduction on R&D @ 200% of expenditure.

(29) Section 43B allows certain expenditure only upon payment. Primarily, taxes and welfare expenditure on employees fall under this section. Effective 01/04/2002, a new clause (f) was inserted to permit deduction of any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee, only upon payment. Large Corporates set up dedicated funds for 'Leave Encashment' and basis the actuarial valuation, contributes an amount equivalent to the liability to the said fund. In such cases, employer no longer retains the said funds in the business operations. However, Assessing Officers deny the expenditure on the pretext of 43B(f) as contribution to the fund is not considered by them to be equivalent to payment to employees. In this manner, a genuine business expenditure gets disallowed and the claim of expenditure is deferred.

Suggestion :

To mitigate the hardship, it is suggested that an Explanation be inserted in Section 43B to the effect that payment to the fund would be equivalent to payment to employees

(30) Social and community welfare expenses – allowance under section 37(1) as business expenditure

Social and community welfare expenses are incurred by assessees in fulfillment of their Corporate Social Responsibility (CSR). Specifically, the Public Sector Enterprises expend these sums under the Special Component Plan/ Tribal Component plan under the directions of the administrative Ministry. These expenses are incurred with the noble intention of helping the socially and economically weaker sections of the society. In doing so, the assessees share the duties of the Government in this regard. However, such expenses are being disallowed on the ground that they do not relate to the business of the assessee. This serves as a disincentive to the assessee in fulfilling their CSR. In order to encourage, such expenses may be allowed as business expenditure u/s 37(1). Being recognized as a good corporate citizen serves the business of the assessee in creating a favorable business environment and branding of the business. Moreover, inasmuch as the expenses are incurred under the directions of the administrative Ministry, they also partake the character of Business expenditure.

Accordingly, expenditure on Social and community welfare expenses may be made as allowable business expenditure.

(31) The Exemption limits for various allowances (eg: Children's Education Allowance, Hostel Allowance etc.) mentioned in Rule 2BB r.w.s. 10(14) was fixed in 1995. This needs to be revised keeping in view the cost inflation.

(32) After the abolition of Fringe Benefit Tax vide Finance (No.2) Act 2009, Perquisite tax in the hands of employees was reintroduced vide Notification No. 94/2009 dt. 18/12/2009 from FY 2009-2010 by inserting new Rule 3 basis which, few perquisites like Free food and non-alcoholic beverages, is taxable if the cost per meal per employee exceeds Rs. 50/- and Gift from employer is taxable if the value exceeds Rs.5000 p.a etc.

Suggestion:

The threshold limit for perquisite value to be taxed in the hands of employees, needs to be revised keeping in view the cost of inflation.

(33) With implementation of successive pay commission recommendations, the leave salary of both Public and Private Sector employees has substantially increased. Whereas, a threshold exemption u/s 10(10AA) fixed at Rs.3 lakhs in the year 2002 hasn't undergone any revision over the years.

Suggestion:

Accordingly, it is suggested to revise the limit from Rs.3 lakhs to Rs.20 lakhs in line with the revised salaries.

(34) CSR expenditure mandated under the Companies Act, 2013 are towards fulfilling Government's social and developmental agenda. By inserting a specific explanation (Explanation 2 to Section 37(1) of the Act) to the effect that CSR expenditure is not deemed to be incurred wholly and exclusively for the purposes of carrying on business, Companies do not get tax break on such expenditure.

Suggestion

Since Corporates support the social and developmental agenda of the Government, especially, COVID 19, it is imperative that the said expenditure be permitted as a deduction while computing the business income.

Accordingly, it is requested to revisit the said provision.

(35) Allowance of Deduction under section 80G for the purpose of Section 115BAA and 115BAB Background

The Taxation Laws (Ordinance), 2019 introduced two new corporate tax rates, i.e., at 15% (Section 115BAB) and 25% (Section 115 BAA) for the domestic companies. However, the benefit of reduced tax rate is available only when total income of the company is computed without claiming specified deductions, incentives, exemptions and additional depreciation available under the Income-tax Act. Under both the sections, it is mentioned that total income of the company will be computed without any deduction Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA. Chapter VI-A under the heading C mainly covers the profit linked deductions.

Deduction under chapter VI-A under the heading ''A'' and ''B'' such as deduction under section 80G i.e. donations to charitable trust, institutions etc was allowed under both the sections. However, by the Act no 20 of 2020, effective from AY 2021-22, Chapter VI-A under the heading "C shall be substituted by Chapter VI-A other than the provisions of section 80JJAA or section 80M". As per the amendment, no deduction will be allowed under section 115BAA and 115BAB for entire Chapter VI-A except Section 80M and 80JJAA. It may be worthwhile to note that deduction under section 80G even for contribution made to charitable trust and institutions, which are of national importance such as Prime Minister National Relief Fund, Prime Minister Drought Relief fund etc. will not be allowed as deduction u/s 115BAA and 115BAB.

Suggestion

It is suggested that deduction under section 80G of Chapter VI-A should be allowed while computing the total income under section 115BAA and Section 115BAB.

(36) Restoration of weighted Deduction on R&D Activities and inclusion of expenditure incurred on Bio-fuels -Section 35 (2AB) and 35(2AA)

Background

The Finance bill 1997 introduced a sub section (2AB) in Section 35 of Income Tax Act 1961 allowing a deduction of 200% of the expenditure to encourage Research & Development (R&D) initiatives by the Industry and to make R&D an attractive proposition. Though, such expenditure needs to be approved by the prescribed authority (Secretary, DSIR). However, the weighted deduction on in-house R&D expenditure under section 35 (2AB) and on contribution to National laboratory, University or IIT etc. under section 35(2AA) has been reduced from 200% to 150% by Finance Act 2016 effective from FY 2017-18 to 2019-2020 and thereafter no weighted deduction is available.

Suggestion

Currently India is a technology importing country. In order to promote innovation in technology through research activities and to support Make in India, deduction under these section should be restored to 200%.

(37) Request for Clarifications under section 206C(1H) - TCS on Sale of Goods

Background

With an objective to widen and deepen the tax net, Government has introduced section 206C(1H) vide Finance Act 2020. The sub-section provides that in case of sale of any goods, seller shall collect TCS at the rate of 0.1% of the value of goods. (1% in case of buyer who does not have PAN) Public sector undertakings (PSUs) particularly those in Oil and Gas sector have very high value transactions of purchase / sale of petroleum crude oil, petroleum products and natural gases. Accordingly, Oil Marketing Companies have sought for exemption for the following transactions

a) Purchase of goods by one PSU from another PSU: The primary purpose of introducing the subsection to Sec206C is to expand the scope of tax net, to ensure greater tax compliance and to prevent tax revenue leakages. PSUs should be kept out from applicability of TCS in case of purchase of goods amongst themselves keeping in view the fair and transparent tax procedures and compliances followed by PSUs in general. Further, TDS provisions prescribed

u/s 51(1)(a) of CGST Act are also not applicable in case supply of goods or services from a PSU to another PSU.

b) Purchase of goods by PSU from Private entities: The primary purpose of introducing the subsection to Sec206C is to expand the scope of tax net, to ensure greater tax compliance and to prevent tax revenue leakages. PSUs should be kept out from applicability of TCS in case of purchase of goods by them, keeping in view the transparent and fair tax procedures and compliances followed by PSUs in general. Since purchases from private sector entities are already subject to GST TDS, with a very low threshold of Rs. 2,50,000 per transaction, and same are deposited and reported on a monthly basis, there is a strong case for exempting PSUs purchases from the provisions of TCS. Since GST Council has already mandated for submission of data of purchases by all GST registered entities, information about purchases of PSUs from private entities are already available with GST tax authorities.

Suggestion

Central Government may, by notification in the Official Gazette, specify Public Sector Undertaking (PSU), as any other person not to be included within the meaning of buyer as per Clause (C) of Explanation (a) to the Section 206C(1H) of the Income Tax Act 1961.

(38) Waiver of Interest for Short-deposit of Advance Tax Instalments for FY 2020-21 on account of COVID-19 outbreak

Background

The Income Tax payers are required to estimate the current income and compute the income tax as per the rate in force and deposit the income tax in advance on quarterly basis during the financial year as per the timelines mentioned below:

(Refer section 209, 210 & 211)

Timeline	Cumulative Advance Tax Payable
Till 15th June	>=15% of the Estimated Total Tax payable in a year
Till 15th September	>=45% of the Estimated Total Tax payable in a year
Till 15th December	>=75% of the Estimated Total Tax payable in a year
Till 15th March	100% of the Estimated Total Tax payable in a year

There exist penal provisions in the form of levy of Interest under section 234C, if the installments of Advance Tax are not deposited or under-deposited computed w.r.t final tax liability for whole of the financial year. This penal interest is to be computed and is required to be deposited before filing the Income Tax Return.

During the fag end of FY 19-20, a Covid-19 pandemic broke-out globally which had impacted the economic situation in almost all the countries. Indian Government had also taken various measures to safeguard the health of the residents. Government of India has imposed a series

of Lock downs in the country from March 2020 and was remain in force for a substantial time period during the FY 20-21.

The ability of taxpayers to correctly estimate the income and advance tax installment was hampered due to the economic slowdown during the initial two Quarters of FY 20-21 and time required for economic revival. However, due to overwhelming support from Government, the economic situation in India has revived to certain extent during the second half of the FY 20-21. Due to this, there has been a difference in the initial estimates and actual Income generated after the year end.

Suggestion

Due to changes in initial estimations and actual profitability, Industry is facing the heat of attracting penal Interest under section 234C for short deposit of Advance Tax Instalments specially for the initial two Quarters of the FY 20-21. This is undue hardship being faced by the tax payers for levying the interest for short-deposit of advance tax installments particularly during this FY 20-21 due to uncontrolled situations.

It may be proposed that in line with other reliefs extended by the Government, a provision may be introduced as a COVID-19 Relief to waive off the Interest to be levied under section 234C specifically for the FY 20-21.

(39) Reduction of Period of Holding for Units of InvIT to 12 months from 36 months

Background

The definition of "business trust" has been provided in clause (13A) of section 2 of the Act, which includes a trust registered as an Infrastructure Investment Trust (InvIT) or a Real Estate Investment Trust (REIT) under the relevant regulations made under the Securities and Exchange Board of India (SEBI) Act, 1992 and the units of which are required to be listed on a recognised stock exchange in accordance with the relevant regulations. Later, referring the notification no. SEBI/LAD- NRO/GN/2019/10 of Securities and Exchange Board of India (Infrastructure Investment Trusts) (Amendment) (Regulations), 2019 the section was suitably amended through Finance Bill, 2020 after considering non-requirement of mandatory listing requirement for InvITs. However, no distinction was made in respect of period of holding defining the category of capital asset.

Bifurcating the units of listed InvITs, which are in the nature of securities listed in Recognized Stock Exchange, has not attained same status for defining its period of holding as defined in first and third proviso to the section 2(42A) for categorizing it as short-term or long term Capital Asset.

Suggestion:

Considering the investor hardship and keeping it more exposed, we suggest to consider the period of holding for units of Business Trust including InvIT units same as considered for listed securities under section 2(42A). Moreover, such change will help investor to go for listed units and on the other side this will propel unlisted InvITs to go for its listing. Accordingly, 1st & 3rd proviso of section 2(42A) to be suitably amended to cover period of holding for Units of Business Trust including InvIT units as 12 months and 24 months for listed and unlisted units respectively.

(40) Creation of PAN sub user login in case of big corporates

Background

At present, only single login is allowed (PAN/TAN) for logging in to Income Tax E filing portal https://www.incometax.gov.in by the Tax Payer at a time. As a result, large corporates/assesses having branches/locations spread across India, facing hardships in accessing, using and submitting various responses like E-proceedings etc which requires login by various users (of same PAN/TAN) from various locations.

Further, the new filing procedure for form 15CA after introduction of new Income Tax portal w.e.f 07-06-2021 do not provide facility to bulk upload of Form 15CA (Like in old Income Tax e-filing portal). Online filling of Form 15CA by entering values field by field for large assesses (having single PAN/TAN) from one login is creating hardships for timely compliance.

Suggestion

Considering the hardship faced by large assessee, multiple login may be allowed in the form of Sub-user for single PAN/TAN may be enabled for the benefit and ease of compliance of various activities by the tax payers

Similar facility is also available for GST login wherein multiple logins can be used for single GST registration.

(41) Delegation of power to Functional Director or to any other authorized person u/s 140 for signing and verifying certain forms and declarations

Background

Section 140 deals with the verification of return of income for different types of assessee and the amendment in the provisions of Act relating to verification of the return of income was done in Finance Bill 2020 i.e. in case of company, the return is required to be verified by the managing director (MD) thereof or where the MD is not able to verify for any unavoidable reason or where there is no MD, any director thereof **(or any other person as may be prescribed for this purpose)** can verify the return. This amendment though has extended a bit relaxation but till date, nothing has been prescribed under section 140.

Suggestion

Provision of the section 140 may be suitably amended on the stringent requirement of the Act of verification/signing of the Income tax return by MD. Board of Directors of the Company may be allowed to delegate such power to any authorized person for this purpose. That would certainly help corporate houses to function well in each and every scenario as big corporate are facing difficulties in getting all the documents signed by their MD.

(42) Relaxation in provision of section 281: Prior permission to create a charge on the asset of the business

Background

Section 281 of the IT Act requires an assessee to obtain the permission of the assessing officer before creating a charge on certain assets or transfer of certain assets in the event there are ongoing tax proceedings or pending claims/demands against such assessee. The main objective of section 281 is to safeguard the interests of the revenue against assessees who may fraudulently part with their assets to avoid payment of taxes.

Thus, if any person transfers or alienates any property while any proceedings under the Income-Tax Act is pending, such transfer/alienation is void as against demand from income-tax unless (a) the transaction is for adequate consideration and without notice of pending proceedings/demand; or (b) with previous approval of the tax officer.

Further, referring to circular C**IRCULAR NO. 4/2011 [F. NO. 402/69/2010-ITCC], DATED 19-7-2011**, where requisites have been prescribed before granting of permission u/s 281. One of the conditions as prescribed is **"If there is no demand outstanding and there is no likelihood of demand arising in the next six months"**.

The above circumstance as mentioned in the circular has created significant inconvenience to the assessee in obtaining certificates from the concerned authority. It is pertinent to note that Some returns are recurring and periodical in nature and TDS return being voluminous, default may be witnessed on account of technical/clerical errors. Further such error correction takes uneven time to get processed and adds on the time of getting the clearance letter from the department.

Moreover, once the demand outstanding gets cleared then exist a major question in front of assessing officer to test the likelihood of demand which may arise in next six months, this then becomes the major haul in proving the uncertain things to the authority. Also, it may be considered that with the introduction of faceless assessment and dismantling of LTU there exists multiple sources of demand say TPO, Faceless Assessment, CPC, etc. and envisaging the expected demand in six months is practically not possible for the Assessee as well as the Assessing Officer. The hardship as being encountered defeats the government's ease of doing business initiative.

Suggestion

The objective of the section of safeguarding the interest of the revenue against any fraudulent charge. We therefore, without altering the intention of the said section, suggest to provide some relaxation by fixing some quantum of default/pending demands/blanket demand (in absolute or percentage term with respect to total asset) and amount exceeding the quantum fixed would require assessee to pay off or clear the pending demands. Such amendment will streamline the process for Bonafide assessee and provide ease of business.

(43) Inclusion of Work from Home Allowance under sub clauses of rule 2BB

Background

The ongoing pandemic has entailed employee as well as employer to set up office at home to extend support for the benefit of the organization, such has given a great scope of working remotely and protecting employees from the exposure of the ongoing pandemic. Corporate houses have done a lot for safeguarding their employees from the vulnerability of the virus by setting up offices and sponsoring the setups required for work from home facility. Considering the generosity of such expenses and the need of hour, employer should be encouraged for such setup at home to propel for the better health of their employees.

Suggestion

Since the expenses may qualify the definition under section 10(14)(i) of the Act i.e. special allowance or benefit, specifically granted to meet expenses wholly, necessarily and exclusively in the performance of the duties of an office, therefore we suggest to suitably

insert expenses made for the setup of office and its maintenance for the purpose of work from home under sub-clause of rule 2BB.

(44) LTC cash voucher scheme extension for all the years

Background

Under the existing provisions of the Act, clause (5) of section 10 of the Act provides for exemption in respect of the value of travel concession or assistance received by or due to an employee from his employer or former employer for himself and his family, in connection with his proceeding on leave to any place in India. In view of the situation raised out of outbreak of COVID pandemic, the value in lieu of any travel concession or assistance received by, or due to, an individual shall also be exempt under this clause subject to fulfilment of conditions in respect of specified expenditure during the specified period.

The said amendment was a welcome move by the government as it provided tax relief to the millions of the asssessee, who were unable to travel due to the Covid-19 pandemic. Further such scheme boosted the demand that got crippled due to the nationwide lockdown.

Suggestion

The LTC cash voucher scheme may be extended for all the Assessment Years as not everybody wants and likes to travel or finds it comfortable to travel. Therefore, we propose to amend section 10(5) suitably and allow cash expenses under the blanket of the said section. Even now the situation has not normalized and the same seems uncertain for the near future as well. Considering the adversity as is being faced by people because of many ongoing restrictions, the above scheme may be suitably inserted under the said provision.

(45) An option of Nil deduction of TDS u/s 197 for Large Tax Payers

Background

As per Chapter XVII-B of Income Tax Act, 1961 TDS is required to be deducted on specified payments and TDS certificate will be issued by the deductor. Later on, deductee will claim the tax credit for the TDS deducted by the deductor at the time of filing Income tax return. As per section 197 of Income Tax Act, an assessee can apply for nil/lower rate of TDS certificate in form 13 with the Assessing officer in certain circumstances.

In case of large corporates especially for Public Sector undertakings (PSUs), reconciliation of TDS deducted by various customers with the tax credit appearing in Form 26AS is cumbersome and consuming many man hours due to large volume of transactions and many customers spread across India. For some instances, due to mismatch of TDS deducted with form 26AS, assessee may not avail tax credit for the same in ITR which results in loss of benefit.

Further, at present, application for nil rate of TDS certificate u/s 197 is allowed only for specified circumstances like Loss making company, nil tax liability etc.

Suggestion

Considering the above, suitable provisions may be inserted u/s 197 for PSUs or any other large taxpayer by providing an option to apply of Nil rate of TDS certificate by depositing lumpsum amount on the basis of previous TDS liability. This will provide ease to the assessee from TDS reconciliation and generate upfront revenue to the department.

(46) Certain deduction to be restored for the taxpayers opted to pay tax u/s 115BAA

- **Deduction u/s 35AD in lieu of depreciation for cross-country pipelines**

Background

Section 35AD provides benefit of 100% deduction (in lieu of depreciation) in respect of whole of any expenditure of capital nature incurred for laying and operating a cross country natural gas or crude or petroleum oil pipeline network subject to the conditions, inter-alia, that such pipeline network to be approved by PNGRB and has common carrier capacity as per PNGRB regulations.

However, such deduction has been done away with the introduction of new tax regime.

Suggestion

Considering the vision of government towards gas-based economy we propose to reinstate deduction u/s 35AD for laying of pipeline asset as these projects take substantial time and are not viable during the initial stage of its commencement. Through 35AD there is only deferment of deduction and this will encourage PSUs to go for more CAPEX over the year. Moreover, the government has brought in PLI Scheme for Promotion of Domestic Manufacturing of critical Key Starting Materials (KSMs)/ Drug Intermediates and Active Pharmaceutical Ingredients (APIs) and has not considered the infrastructural development requirement for Cross Country Pipeline.

We therefore also suggest to provide 35AD deduction pipeline wise to PSUs undertaking specific pipeline for the development of cross-country pipeline as a whole.

- **Deduction u/s 80G when donation is made to Prime Minister or Chief Minister Fund**

Background

According to the Finance Act, 2020, any domestic company opting for Concessional Tax Regime under section 115BAA of the Act cannot claim deduction under any provisions of Chapter VI-A other than section 80JJA or section 80M effective from AY 2021-22. Thus, the Government while enacting the Finance Act, 2020 has deferred the condition of not claiming any deduction falling under Chapter VI-A other than section 80JJA or section 80M to next financial year i.e. FY 2020-21.

Suggestion

To encourage the values of bestowment, deduction u/s 80G may be allowed to the assessees opting to pay tax u/s 115BAA for the contributions made towards PM & CM funds at least.

(47) Deemed acceptance of rectification application if rectification is not carried out in 6 months' time

Background

Section 154(8) provides that where an application for rectification is made to an Income-tax authority, the authority shall pass an order within a period of six months from the end of the month in which the application is received.

Suggestion

It is recommended that where action on rectification application is not carried out within a period of six months, such application should be deemed to have been allowed. It is also requested that in cases of tax refunds due to the assessee, the time-limit of four years for rectification should be waived off, more particularly in cases where the assessee is not at fault for the delay in disposal of an application for rectification.

(48) Prescription of exemption from deeming of fair market value of shares for certain transactions

Background

The existing provisions of the section 56(2)(x) of the Income-tax Act, inter alia, provide for chargeability of income in case of receipt of money or specified property for no or inadequate consideration. For determining the amount of income for receipt of certain shares, the fair market value of the shares is taken into account. Similarly, section 50CA provides for deeming of fair market value of unquoted shares for computing the capital gains from the transfer of such shares. For both these provisions, the fair market value is determined based on the prescribed method.

Determination of fair market value based on the prescribed rules may result into genuine hardship in certain cases where the consideration for transfer of shares is approved by certain authorities and the person transferring the share has no control over such determination.

In order to provide relief to such types of transactions from the applicability of sections 56(2)(x) and 50CA, it was proposed in Finance Bill 2019 to amend these sections to empower the Board to prescribe transactions undertaken by certain class of persons to which the provisions of section 56(2)(x) and 50CA shall not be applicable.

Suggestion

It is suggested that in order to enable the benefit of the amendment introduced in Finance Bill 2019, CBDT should prescribe such transactions undertaken by certain class of persons where the consideration for transfer of shares is approved by certain authorities and the person transferring the share has no control over such determination, to which the provisions of section 56(2)(x) and 50CA shall not be applicable. Transaction such as (a) Assets acquired through bidding process, (b) Transaction of Government companies or PSUs may be kept outside of its purview.

(49) Deduction of Interest on Certain loans from Employers to Salaried Person, which otherwise is deductible if taken from Bank/financial Institution

A. Tax Deduction on interest affordable housing u/s 80EEA for Loan from Employer

Background

In order to provide an impetus to the 'Housing for all' objective of the Government and to enable the home buyer to have low-cost funds at his disposal, a new section 80EEA in the Act was inserted in Finance Bill, 2019 so as to provide a deduction in respect of interest up to **One Lakh Fifty Thousand** rupees on loan taken for residential house property from **any financial institution** subject to the following conditions:

- Loan has been sanctioned by a financial institution during the period beginning on the 1st April, 2019 to 31st March 2022. (Extended)
- The stamp duty value of house property does not exceed forty-five lakh rupees;
- Assessee does not own any residential house property on the date of sanction of loan.

Suggestion

For the sustenance of the Government's objective we propose to normalize the conditions as imposed for availing the benefit of the said section by inserting loan from Employers also as the valid source along with the financial institution. Housing for all is the great mission that our government is focusing on and therefore providing another source of loan to the assessee will outspread the zeal towards the mission of the government.

B. Tax incentive for electric vehicles u/s 80EEB for Loan for Employer

Background

With a view to improve environment and to reduce vehicular pollution, a new section 80EEB was inserted in the Act so as to provide for a deduction in respect of interest on loan taken for purchase of an electric vehicle from any financial institution up to one lakh fifty thousand rupees subject to the following conditions:

- The loan has been sanctioned by a financial institution including a non-banking financial company during the period beginning on the 1st April, 2019 to 31st March, 2023;
- The assessee does not own any other electric vehicle on the date of sanction of loan.

Suggestion

Condition as inserted by the section that the loan from financial institution and NBFC would only qualify for the deduction narrows down the sources of fund available to the assessee. The said section has failed to appreciate the other sources which are available to assessee for financing the Vehicle. We therefore suggest to open up the other source of fund i.e. Loan from Employer also, such will provide ease to the assesses in making the investment and such will be conducive to rapidity of the intend of the government to improve environment and reducing vehicular pollution.

C. Interest on Education Loan from Employer to be covered u/s 80E

Background

As per section 80E, In computing the total income of an assessee, being an individual, there shall be deducted, in accordance with and subject to the provisions of this section, any amount paid by him in the previous year, out of his income chargeable to tax, by way of interest on loan taken by him from **any financial institution or any approved charitable institution** for the purpose of pursuing his higher education

Suggestion

Condition as inserted by the section that the loan from financial institution and approved charitable institution would only qualify for the deduction narrows down the sources of fund available to the assessee. The said section has failed to appreciate the other sources which are available to assessee for sourcing Education Loan. We therefore suggest to open up the other source of fund i.e. Loan from Employer also as this will provide ease to the assesses in availing loan for the education purposes.

(50) Clause (a) of Explanation 2A of section 9(1)(i)

Background:-

A clarification be provided that transactions in respect of only digital goods, services or property are covered under Significant Economic Presence (SEP)

Even though it is clear that SEP provisions have been introduced in the Act to address tax challenges arising out of digital businesses which do not require physical presence of itself or agent, there is no reference to “digital” in the language of Explanation 2A either in respect of transaction in goods, services or property i.e. clause (a) or in respect of soliciting of business or engaging with users as per clause (b).

Consequently, the current provision of SEP is so widely worded that the scope of coverage is unclear i.e. whether it is restricted to digital goods / digital means or includes physical goods / traditional means as well

Suggestion

It is recommended that the provision be appropriately re-drafted so that the language of the provision is aligned to the intent of the legislature with which it was introduced – that is, to tax revenue arising from only digital presence.

(51) Employees’ contribution to Provident Fund - Section 36(1) (va)

Background:-

Section 43B of the Act allows deduction towards employer contribution to PF/ any other fund for the welfare of the employees if the same is deposited up to the date of filing the return of income. However, deduction for employees' contribution to PF/ ESI or any other fund is governed by section 36(1)(va) of the Act which mandates that the employees’ contribution should be credited to the relevant fund by the due date specified under the relevant Act, rule, order or notification governing that fund.

Suggestion:

It is hereby suggested that suitable amendment should be made in the Act so as to bring the provisions relating to the Employees' contribution towards employee welfare funds in line with the employer's contribution towards such funds.

(52) Relaxation in rule 6DD for payment of more than Rs. 10,000 in cash in foreign country - section 40A(3)

Background

Section 40A(3) of the Act disallows cash payments made in excess of Rs. 10,000 subject to payments made in those cases and circumstances as mentioned in Rule 6DD. Section 40A(3) does not restrict itself to transactions in Indian rupees but also covers cash payment in foreign currency.

Companies like NRL send their employees on business trips or for short duration assignments outside India. In such scenario, NRL provide their employees with foreign currency travel card to meet their daily expenses abroad. While the intention is not to evade tax or make payments in cash only, due to unavoidable circumstances, expenses may be incurred in cash by the employees on behalf of the company and such amount could easily exceed Rs. 10,000

on account of stronger foreign currency. Triggering section 40A(3) disallowance in the hands of company in such a case causes undue hardship resulting in multiple disallowances amounting to a huge figure.

Suggestion

It is hereby suggested that relaxation may be provided in Rule 6DD where cash exceeding Rs. 10,000 is used in foreign country by employees on behalf of the company having regard to factors such as high cost of living, risk of online fraud etc. subject to condition that foreign currency carried in each foreign trip is within permitted limits as per Foreign Exchange Management Act.

(53) Amortization of capital expenditure

Background

Presently, there is no provision in the Act for amortization of capital expenditure such as fees paid for increase in authorized share capital and payment made towards elimination of competition or premium paid on acquisition of leasehold rights in land etc. Such expenditure being capital in nature cannot be charged to revenue as there is no provision for claiming these expenses in computing the income.

Suggestion

It is suggested that provisions may be incorporated in the Act to allow amortization of such capital expenditures which are essential to run the business.

(54) Retirement Funds

Background

As per rule 87 of the Income Tax Rules, the employer is permitted to make a total contribution not exceeding 27% of the employee’s salary in respect of Provident Fund and Superannuation.

Further, as per schedule IV of Part A rule 6 of the Income Tax Act, the employer is permitted to contribute upto 12% of the employee’s salary in respect of Recognised Provident Fund. In other words, the Income Tax Law permits contribution upto 15% for Superannuation and 12% for PF.

Suggestion

In the context of the current rates of interest and the high cost of annuities and considering that pensions are in any case taxable in the hands of the employees at the time of receipt, it is suggested that the overall limit for PF and Superannuation contributions (in line with the current stipulations in the Income Tax Rules) be increased to 35%.

(55) Amount paid for increase in authorized capital – Section 35D

Background

Currently, amount paid for increase in authorized capital is not allowed as deduction. After a company is incorporated with a minimum paid up capital (for which there is no minimum limit now), and it wishes to increase its authorised capital, the company is required to pay registration fee to Registrar of Companies.

Fee on incorporation of a company is allowed as per specified limits in 5 installments u/s 35D,

however amount paid for increase in authorized capital is not allowed as deduction at all, though the amount is paid to government as a fee.

Suggestion

It is suggested that fee paid to Registrar of companies for increase in authorized capital may be allowed as revenue expenditure in 5 equal installments u/s 35D.

(56) Allowance of Provision for Post-Retirement Medical Scheme

Background

Usually all PSU's provide post-retirement medical benefit for its employees and expenses for same are provided in accounts annually on basis of actuarial valuation in accordance with Ind AS19.

The income tax authorities have been taking a view from a long period that any expenses on account of post-retirement medical benefit booked is not a crystallized liability and same will be disallowed. Thereby such expenses are only allowed on actual payment only.

Suggestion

A separate sub section under section 36 to be introduced to allow provision for post-retirement medical benefits or suitable clarification to that effect may be issued by CBDT.

(57) Section 80JJAA – Deduction of additional employee cost for 3 years – Relaxation of upper cap on total emoluments which is Rs 25000 p.m. currently

Background

Currently, Section 80JJAA of the Income-tax Act, 1961 allows for a deduction of 30% of additional employee cost incurred for 3 assessment years each in respect of the total emoluments paid to additional employees employed during a previous year. However, additional employees only cover new employees whose total emoluments are up to Rs 25000 p.m.

Suggestion

The intention of this section is to promote creation of new jobs which is especially critical in today's macro environment and at least for a foreseeable future. The government has practically exempted individuals with NTI up to Rs.5 lakhs from paying any tax as small taxpayers or new earners. To bring consistency in policy, the government should change the upper cap from Rs. 25000 p.m. to those whose Net Total Income exceed Rs.5 lakhs. This will allow a meaningful deduction for industry which will incentivize creation of additional jobs especially for young skilled graduates.

(58) Scrapping of ICDS

Background

Conceptually, tax should be paid on income; logically, income should be as per the books of accounts, especially if they are audited and maintained in accordance with generally accepted accounting principles, except to the extent of fair value accounting adjustments that neither cause income nor create losses in a recognized sense, as required under IFRS or Ind AS.

ICDS introduces a significant element of complexity and, more importantly, it is inconsistent with the concept of real income for example: Concept of capitalising borrowing costs irrespective of whether the funds utilized or not for the capital project, concept of materiality not recognized by ICDS by which small amounts have to be reconciled and taxed accordingly.

Various assessees are mandatorily required to follow method of accounting as per the Accounting Standards (AS) applicable in India, which is prescribed by the ICAI. However, section 145A deviates from the AS to certain extent. As per Guidance Note issued by ICAI in respect of method of accounting with regards to inclusive method as per S.145A, or exclusive method as per AS-2/Ind AS 2, there is no impact on the assessee's profit. Though there is no impact on profit and loss account, whether the assessee follows inclusive method or exclusive method, to comply with s.145A, the assessee needs to prepare profit and loss account following inclusive method, which is duplication of effort. Further, ICDS also requires that the valuation of inventories should be based on inclusive method of accounting.

Suggestion

It is suggested that the entire ICDS may be scrapped altogether and erstwhile system may be put in place.

(59) Availment of Input Tax Credit after the end of September of the next FY

Background

a) As per section 16 (4) of CGST Act, a registered person shall not be entitled to take Input Tax Credit, in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing return under section 39 for the month of September following the end of Financial year to which such invoice relates or furnishing of the relevant annual return whichever is earlier.

b) Some assesse may not have accounted the invoices within September of the next Financial Year due to various reasons beyond control. Due to the above time barred situation, Input Tax Credit cannot be claimed on invoices posted after September

Suggestion

It is hereby requested, to review the period of availing ITC by an assesse for the previous Financial Year or it may be allowed until the filing of Annual Return.

(60) Interest on account of rule 42 (2) CGST rules

Background

a) As per CGST rules 42 (2), yearly calculation of ITC reversals needs to be done by 30th September of the following year for the previous Financial year. While calculating the annualized ratio with monthly ratio, if any excess credit is found, same has to be paid along with 18% interest.

b) In earlier Excise law also, reversal of excess credit has to be done by 30th June for previous year without any interest component.

Suggestion

In similar way it can also be looked into to waive the interest part of account of rule 42 (2) calculation. The need of reversal arises only due to change in the ratio of taxable and non Taxable supply. Since there is no intention to evade ITC, accordingly no Interest should be imposed.

(61) TDS u/s 194 Q- Clarification regarding non applicability of TDS on Indirect taxes like Excise duty /VAT/CST like GST if charged separately in invoice

Finance Act 2021, has inserted a new provision of Tax Deduction at Source under section 194Q which provides for TDS @ 0.1% of any sum paid to any resident for purchase of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year. Explanation to Sub Section (1) of 194Q defines “Buyer” as person having Turnover , Gross Receipts, Sales more than 10 Crore in the preceding financial year. CBDT vide Circular No 23/2017, dated 19/07/2017 has clarified that “ whatever in terms of the agreement or contract between the payer and the payee, the component of “GST on services” comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid or payable without including such ‘GST on services’ component. GST for these purpose shall include IGST, CGST, SGST and UTGST”.Since 194Q also falls under Chapter XVII-B of the Act, TDS for “GST on goods” should also fall on the same terms. Based on the above circular CBDT has vide Circular No 13/2021 dated 30.06.2021 clarified that GST on goods shall also be excluded while calculating TDS u/s 194Q.

However since the major products of the Oil Companies ie. MS, HSD and ATF are outside the ambit of GST and Excise Duty/VAT/CST is levied on the same, We request you to please provide a clarification on similar grounds for exclusion of Excise Duty, Vat and CST.

(62) Weighted Deduction for eligible R&D Expenses in New Tax regime

R&D weighted average deduction to be reintroduced in new regime, this will promote more research and development activities in the country.

(63) Covid Treatment Expenses

Due to Covid, CBDT introduced a provision wherein any expenses which are incurred for covid treatment shall be exempt when reimbursed by employer or any other individuals. However if the individual incurred expenditure from their own pocket there was no deduction provided to them. Considering this pandemic as an unforeseen event many of the individuals savings have eroded, Accordingly the Government should introduce a deduction which can be adjusted against the future earnings of the individual, this will help in recouping the savings lost to the individuals.

(64) Standard Deduction :

Salaried Employees standard Deduction limit should be increased to Rs 1 Lakh from present Rs 50000. Considering the fact that salaried individuals do not get any deductions for medical and transport subsidy/allowances in lieu of which standard deduction was introduced subsuming these deductions. In the recent past there is a burgeoning rise in the transportation cost due to unprecedented rise in fuel prices and the medical expenses have also seen astronomical rise. The proposed increase in standard deduction is reasonable to compensate and give relief to a certain extent

Moreover salaried tax-payer are honest tax payers, relief should be provided to them for these basic expenses for which standard deduction was instituted.

(65) No disallowance for the domestic company, for charges paid to a PE in India of a foreign company

Background

Often, domestic companies' expenditure includes fees / charges in respect of services / facilities availed from foreign companies. If the services / facilities are availed from an associated enterprise, the expense claim is scrutinized in detail and is often the subject matter of disallowance.

Unless the associated enterprise is subject to gross basis of taxation in India, or presumptive taxation resulting in a lower effective tax rate than the domestic company, such transactions result in the following tax effect:

– Tax break, at 30% (plus surcharge and cess), in the hands of the domestic company

– Income in the hands of the foreign company, to be included while computing taxable income – which would be taxable at 40% (plus surcharge and cess)

Thus, there is no tax loss to the exchequer.

Suggestion

It is, therefore, recommended that the expense claims (in such a scenario) should not be subject to transfer pricing assessment and disallowance.

(66) 100% deduction of capital expenditure under Section 35 AD for specified projects which include Solid Waste Management – to be extended to 'Drop in' Biofuels

Background

The catalytic thermochemical technology converts municipal solid waste including plastics, agricultural and forest waste into drop-in bio-fuels. It is very much in sync with the Swatch Bharat mission of the Government and also contributes to energy security. Hence certain tax benefits are needed to make this sustainable in the long run while also ensuring that it is able to compete with similar technologies.

Suggestion

In the interest of a level playing field, 100% deduction of capital expenditure under Section 35 AD which is available for specified projects including those relating to Solid Waste Management should be extended to 'Drop in' Biofuels.

(67) Clarification to prevent erosion of Indian tax base through Transfer Pricing adjustments in hands of Foreign Companies

Background

- There are many cases where Indian taxpayers may receive loans, services or licenses of intangibles from their overseas associated enterprises (AEs), with respect to which, the overseas AEs may decide either not to charge any consideration; or charge moderate consideration, which may otherwise be less than the market driven or arm's length price (ALP).

- Any receipt of interest, fees or royalty on such loans, services and licenses respectively, would attract income tax in the hands of the overseas AEs in India @ 10% under

Indian domestic tax laws and/ or tax treaties, where the overseas AEs do not have permanent establishments in India.

- On the other hand, any payment of such consideration would obtain tax breaks in the hands of the Indian taxpayers @ 30%, through deduction or allowance while computing business profits.
- Thus, in other words, the Indian taxpayers, either by not paying any such consideration; or paying any consideration less than the arm's length price, the Indian exchequer would have only benefitted in the form of tax savings @ 20% thereof. This is generally referred to as the "base erosion" theory or concept.

- In the background of identical facts, a TP adjustment was made by the Indian Revenue in the hands of a foreign company in the case of Instrumentarium Corporation Ltd v ADIT [2016] 49 ITR(T) 589 (Kolkata - Trib), by disregarding the concept of "base erosion". The TP adjustment ultimately reached the Hon'ble Income Tax Appellate Tribunal (the Tribunal) for resolution. Being a matter having nationwide ramification, the erstwhile Hon'ble President of the Tribunal had constituted a Special Bench of the Tribunal in Kolkata in 2009 for deciding the matter. The case was finally heard and disposed of by the Special Bench of the Tribunal in the month of July, 2016, by dealing with the matters arising in the hands of the aforesaid assessee and another intervener.

- The Special Bench had decided the issue in favour of the Revenue, by disregarding the concept of "base erosion".

- Incidentally, while doing so, the Special Bench had seemingly misinterpreted the provisions of section 92(3) of the Income-tax Act, 1961 (the Act) read with Circular No. 14 of 2001 issued by the Central Board of Direct Taxes (CBDT) in the year 2001 to explain the newly introduced provisions of TP (Circular). Section 92(3) of the Act reads as under (inserted the context, wherever required):

- "The provisions of this section shall not apply in a case where the computation of income under sub-section (1) or sub-section (2A) or the determination of the allowance for any expense or interest under sub-section (1) or sub-section (2A), or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under sub-section (2) or subsection (2A) (all these subsections provides for determination of value o international transaction at arm's length price), has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction or specified domestic transaction was entered into."

- Though it is not very explicitly coming out from the above mentioned provisions of section 92(3) of the Act, the Central Board of Direct Taxes (CBDT) at paragraph 55.5 of the said Circular explained as under:

- "The new provision is intended to ensure that profits taxable in India are not understated (or losses are not overstated) by declaring lower receipts or higher outgoings than those which would have been declared by persons entering into similar transactions

with unrelated parties in the same or similar circumstances. The basic intention underlying the new transfer pricing regulations is to prevent shifting out of profits by manipulating prices charged or paid in international transactions, thereby eroding the country's tax base. The new section 92 is, therefore, not intended to be applied in cases where the adoption of the arm's length price determined under the regulation would result in a decrease in the overall tax incidence in India in respect of the parties involved in the international transactions."

- The Revenue Officers and the Special Bench of the Tribunal have actually applied TP provisions in a reverse manner, which again, defeats the whole purpose of introducing TP. You may note that the concept of "base erosion", under identical circumstances, has been approved by the Australian Tax Office (ATO) vide one of its rulings, being equivalent to circulars issued by the CBDT. However, the Special Bench of the Tribunal had refused to be persuaded by the ruling of the ATO on grounds, not appealing to logic.

- The main logic applied by the Special Bench of the Tribunal in taking the aforesaid view, is that since the Indian TP regulations do not contain the provisions of compensatory downward adjustment in the hands of the paying company upon a TP adjustment being made in the hands of the payee company, by virtue of the restrictions contained in section 92(3) of the Income-tax Act, 1961 (Act) as in the aforesaid cases, the concept of "base erosion" could not be applied in the context of Indian TP provisions.

- The aforesaid ruling of the Special Bench of the Tribunal is likely to have far reaching negative tax consequences in the hands of several foreign companies in India, who might not have charged either any consideration of the above nature; or charged less than arm's length consideration, from their Indian AEs, under a bona fide and correct belief that by not charging such consideration, the Indian exchequer was not getting impacted in any way, being the very object of introducing TP regulations in India.

- Further, if the said interpretation of the Special Bench of the Tribunal is to be accepted, then all foreign companies would, most likely, start charging interests, royalties and fees from their Indian AEs, even under situations, where, for various commercial reasons, they would not have charged so, as a result of which, the Government exchequer would be actually losing to the extent of 20% of all such charges, in the form of income tax, being a reverse form of "base erosion", which one finds difficult to comprehend. This will significantly erode the tax base of India, which perhaps could be only the country in the world to be applying the provisions of TP to its disadvantage.

- In the case of Cummins Inc. v. ADIT [2016] 73 taxmann.com 207 (Pune), the assessee had provided services to the Indian entities and had received charges in respect of desktop/laptop software licence and internet mail and had determined the value of transactions by allocating cost based on cost estimates. However, the TPO did not accept the same and made the adjustment. The Pune Tribunal held that where the assessee is a foreign company and is a recipient of internet mail charges and desktop /laptop service charges from the Indian entities and in case the assessee have to charge higher amounts from the Indian entities, then the same would result in reduction of overall tax base of India. In such circumstances, the Indian Transfer Pricing provisions are not to be applied. The Pune Tribunal observed that during the subsequent Assessment Years, the DRP and the AO have not made

any similar adjustment in the hands of assessee on account of internet mail service charges and desktop/laptop service charges though identical international transactions were carried out in those years.

- The said intention of the TP provisions is also clear from the introduction of section 92CE providing for secondary adjustment vide Finance Act, 2017 wherein it is provided that "where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in such manner as may be prescribed."
- The above clearly demonstrates that intention of the TP provisions is to bring back excess money eroded from India rather than allowing foreign companies to take excess money out of India. If upward TP adjustment in the hands of the foreign company is sustained, as per the provisions of section 92CE, foreign company is required to bring money, however, since they have earned this income they will be required to remit this money out of India, this will create an absurd situation, not intended by the law.

Suggestion

Considering the above, we request you to clarify either by making necessary amendments in the provisions of section 92 of the Act; or by issuance of a circular, ideally being the latter, to prevent the unintended application of the TP provisions of India in the manner, as aforesaid; and also obviate the hardship faced by foreign companies in India.

(68) Section 139(5) – Reduction in time limit for filing revised return – Request to bring back erstwhile time limit for filing of revised tax return at least in cases of claim of foreign tax credit

Background

The Finance Act 2017 amended section 139(5) to provide that the time for furnishing of revised return shall be available upto the end of the relevant assessment year or before the completion of assessment, whichever is earlier. This particularly impacts claims for any Foreign Tax Credit (FTC) in respect of the taxes paid by the individual assessee(s) in the overseas tax jurisdiction. Generally the information/ final payment of foreign taxes/ tax return is unlikely to be available within the timeline for filing the revised tax return i.e. by the end of the relevant assessment year.

As an example, USA follows calendar year as their tax year and the first due date of filing a USA income-tax return is April 15th of the following calendar year, meaning thereby, the USA income-tax return for calendar year 2018 will be required to be filed by 15th April, 2019. In a case of Indian income tax return for tax year 2017- 18, the due date to file a revised return as per the said amendment will be 31st March, 2019. In the above situation, the assessee may not have his final tax return available with him till 15th April 2019, hence, such assessee will not be able to claim the FTC of the final USA taxes paid by him in his Indian Income Tax return as he may not have the final USA tax details by 31 March 2019.

Suggestion

Keeping in mind the aforesaid hardship of double taxation which may arise to the individual assessee as he may not be able to claim foreign tax credit in the absence of overseas income-tax return, there is a need to retain the time limit for filing of revised tax return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier. Therefore, the earlier time limit may be brought back at least in respect of revision required for claiming foreign tax credit.

(69) Section 80JJAA – Deduction of additional employee cost for 3 years – Relaxation of upper cap on total emoluments which is Rs 25000 p.m. currently

Background

Currently, Section 80JJAA of the Income-tax Act, 1961 allows for a deduction of 30% of additional employee cost incurred for 3 assessment years each in respect of the total emoluments paid to additional employees employed during a previous year. However, additional employees only cover new employees whose total emoluments are up to Rs 25000 p.m.

Suggestion

The intention of this section is to promote creation of new jobs which is especially critical in today's macro environment and at least for a foreseeable future. The government has practically exempted individuals with NTI up to Rs 5 lakhs from paying any tax as small taxpayers or new earners. To bring consistency in policy, the government should change the upper cap from Rs 25000 p.m. to those whose Net Total Income exceed Rs 5 lakhs. This will allow a meaningful deduction for industry which will incentivise creation of additional jobs especially for young skilled graduates.

(70) Transfer pricing compliances should also be exempted for Non- Residents when tax has been deducted at rates as per section 115A of the Income Tax Act

Background

Finance Act 2020, amended the provisions of section 115A to the extent that, where the income in a previous year of the Non-resident, consisted only of income in the nature of Royalty or Fees for technical services and withholding tax thereon has been deducted at a rate not less than the rate as per the provisions of the Act, then it shall not be necessary for the Assessee to furnish return of income under section 139(1) of the Income Tax Act. However, similar exemption is not available for Transfer Pricing compliances.

Suggestion

The Finance Act 2020, while exempting Non- Residents on the requirement to file the Return of income, based on the criteria mentioned in the overview above, the assessee has to continue with the Transfer pricing compliances as a similar amendment has not been made in the Transfer pricing provisions. If the Transfer pricing compliances are also exempted it would be encouraging to the assessee by removing the compliance requirement totally and beneficial to the assessee who is offering the relevant income to withholding as per the provisions of the Act.

(71) Clarity on equalization levy and need for a FAQ on e-commerce activities and operators

Background

Finance Act, 2020 has expanded the scope of Equalisation Levy (EL) with effect from 1 April 2020 to non-resident e-commerce operators earning revenues from the Indian market / person resident in India. The key features of the levy are as under:

- The EL is applicable at the rate of 2% of the consideration received by the non-resident e-commerce operators from e-commerce supply/ services.
- The EL is required to be discharged by the non-resident e-commerce operator.

Suggestion

Clarification required on following points:

iii. Interpretation of words viz. "electronic", "digital", "facility" and "platform" required to identify the transactions covered within the ambit of newly inserted EL provisions.

iv. Whether Non Resident can claim EL paid in India as a foreign tax credit while filing their tax returns in respective countries of incorporation, or would it result in an additional tax cost

(72) Section 94B – Limitation on interest deduction

Background

As per provisions of section 94B of the Act, 'total interest' in excess of 30% of the earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise ('AE') whichever is less shall not be deductible.

Highly capital intensive companies (viz. in oil and petroleum sector) with low margin / profit will never be able claim interest deduction though the provision provides for carry forward upto 8 years. Although such transactions are conducted within parameters laid down by Income Tax Act (at arms-length principle) and FEMA, the non-deductibility of valid expense is unjust.

Suggestion :

Clarification required on following points:

v. Whether EBITDA for the purpose of section 94B of the Act should be as per books of accounts or as per Income Tax

vi. On quantification of 'maximum allowable interest' in relation to interest disallowed in earlier years which is carried forward and eligible for set off during the year

vii. In case of gross up of tax, whether the grossed up amount of expense should be considered for the calculation of limitation

viii. The limitation of carry forward for 8 years to be relaxed further so that the allowable expenses are not unjustly disallowed.

(73) Significant Economic Presence ('SEP'):

Background

As per provision of section 9 of the Act, income is deemed to accrue or arise in India if it has SEP in India. The term SEP has been defined to inter-alia include transaction of goods and

services with any person in India including provision of download of data or software in India where the aggregate of payments arising from such transactions exceeds INR 2 Crore.

From the plain reading it implies that SEP would apply if the payment exceeds INR 2 Crore in a Financial Year on **any transaction** made with a non-resident / payment made by resident to a non-resident, irrespective of nature of transaction.

Suggestion :

i. A clarification is required whether the provisions and limit of SEP is applicable on transactions with non-resident e-commerce operators, site, etc. or on all transactions entered with a non-resident for which payment is made by a resident;

ii. If the provision of SEP on all the transactions, the aggregate payment limit should be increased from the existing INR 2 Crores considering the transactions entered by large MNCs.

iii.

(74) Exemption under section 10(48) of the Act on income received in India in INR terms by residents of Russia, Venezuela etc. (countries affected by US sanctions) similar to Iran

Background

CBDT vide Notification dated 28 December 2018, having regard to national interest, notified National Iranian Oil Company as a foreign company under section 10(48) of the Act. Consequently, income received by National Iranian Oil Company in India in Indian currency will be exempt from tax in India pursuant to the bilateral trade payments entered between the Government of India and Government of Iran subject to the condition that the said foreign company shall not engage in any activity in India, other than the receipt of income under the aforesaid arrangement

The above notification only provides exemption to Iranian Company and not to other countries such as Russia, Venezuela etc which have been affected by sanctions imposed by United States of America.

Suggestion :

Applying the analogy for Iran, it is suggested that similar notification be issued for other countries as well.

(75) Income-tax Compliances:

Background:

Issue of certificate under section 281 of the Act as well as Tax Residency Certificate ('TRC') manually by the jurisdictional Assessing Officer

With the shift of assessment proceedings to faceless mode all the details pertaining to assessments and other data pertaining to the assessee is available online on the income-tax portal with the Assessing officer conducting the faceless assessment however the 281 certificate as well as TRC is issued by Jurisdictional officer (JAO) who does not have access to on-going assessment proceedings and other related data. Hence JAO has to get a confirmation regarding outstanding dues from the AO doing faceless procedure resulting in delay in issue of the certificates.

Suggestion :

The certificate to be issued under section 281 of the Act should be issued electronically on the income-tax portal by the faceless assessment centre as they can easily determine if there would be any tax outflow on account of the pending assessment proceedings.

Further, the TRC should also be issued electronically since it would save the time and paper work and the TRC can be issued without any delay.

(76) Delay in issuance of refund

1) In Normal Cases

Background:

Issuing of refund is postponed though the return is processed under section 143(1) of the Act if the notice under section 143(2) for scrutiny assessment has been issued. .

Suggestion :

CPC should not be permitted to transfer the return to the jurisdictional Assessing officer after processing of intimation u/s. 143(1) in the interest of ensuring refund to the taxpayer within reasonable time, avoiding unreasonable delay.

2) In case of merged entities

Background:

Refunds are required to be issued manually for the entities which are amalgamated and not into existence. Further, since the entity is merged, refund is issued manually in the bank account of existing company. This creates a practical challenge in refund processing both to the AO and Assessee.

Suggestion

When Assessment Proceedings, Appeal, etc. have been done faceless this step should be done online. In case of merger, bank accounts of company in existence should be allowed to be pre validated based on relevant order of NCLT/Court and refund should be issued electrically like in normal cases. This will ensure the process is shorter and simpler, resulting into quick refunds to Assessee and savings in interest cost for the department.

(77) PAN to be mentioned in F-26AS

Background:

In Form 26AS only TAN of the deductor appears, and a deductor can have multiple TAN's. This creates huge challenges while doing reconciliation between Income and TDS as per 26AS.

Suggestion

Reconciliation of income and TDS as per F-26AS is required by Tax Authorities while Assessment Proceedings and for compliance purpose. Further, they also need reconciliation of TDS as per F-26AS and as per Return of Income. Since, only one PAN is allowed to be obtained by a person, incorporating, PAN of the deductor also in F-26AS would help in eliminating creation of multiple Vendor / Customer Master (on basis of TAN) for the same vendor / customer in the books of account. This would simplify the process of reconciliation by reducing complexities created due to multiple ledger accounts created on the basis of TAN.