Federation of Indian Petroleum Industry

PRE-BUDGET MEMORANDUM

UNION BUDGET 2025-26

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A. Direct Tax

I) Income Tax

Upstream

New Provisions

1. 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 which started commercial production till 1st April, 2017.

Government has now 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.

2. 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.

3. 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 been discontinued on such investments made after 31.03.2017.

Oil and Gas industry invests in high value Plant & Machinery every year for oil production. Tax incentive is required to boost these investments. Validity of deduction u/s 32 AC may thus be restored.

Suggestion

In order to sustain the existence and to be a part of the inclusive growth plans of the nation, Refineries are required to reinforce their infrastructure in terms of capacity augmentation & fuel-quality upgradation in line with Environmental norms. Commensurate investments will be required for supporting such expansion which would require a large amount of funds by Refineries.

Accordingly, in order to incentivize investments, the claim of deduction under section 32AC may be restored.

4. **Deduction for Exploration and Development expenditure u/s 42**

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 investment in exploration and development of for 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.

Amendment

1. **Withdrawal and Utilization of amount deposited as per Site Restoration Fund Scheme (Section 33ABA read with Site Restoration Fund Scheme, 1999).**

Background

Sub section 3 of section 33ABA provides that "Any amount standing to the credit of the assessee in the special account or the Site Restoration Account shall not be allowed to be withdrawn except for the purposes specified in the scheme or, as the case may be, in the deposit scheme."

Scheme as referred in section 33ABA means "Site Restoration Fund Scheme, 1999".

Para 8 of the Site Restoration Fund Scheme, 1999, provides that " A depositor shall be entitled to withdraw from the amount standing to the credit of the account only such amount as is necessary to meet any expenditure to be incurred by him on the expiry or termination of the agreement or relinquishment of part of the contract area, towards removal of all equipment and installations, in a manner agreed with the Central Government pursuant to an abandonment plan or towards all necessary site restoration in accordance with modern oilfield and petroleum industry practices and towards meeting all other expenses necessary to prevent hazards to life or property or environment consequent on such expiry, termination or relinquishment."

As per the safety norms and the current practice in industry, abandonment activities which inter-alia includes site restoration, removal of all equipment and installations are being carried

out regularly which in practice may or may not be coupled with the condition of expiry or termination of the agreement or relinquishment of part of the contract area.

However, Directorate General of Hydrocarbon i.e. the agency authorized by the Ministry of Petroleum & Natural Gas in this behalf, is denying the bona fide request for withdrawal of Site Restoration Fund for carrying out the planned abandonment activities on the plea that the abandonment activities proposed to be carried out are not followed/coupled by the expiry or termination of the agreement or relinquishment of part of the contract area.

Suggestion

It is, therefore, suggested that, para 8 of the Site Restoration Fund Scheme, 1999 may be modified as follows-

"A depositor shall be entitled to withdraw from the amount standing to the credit of the account only such amount as is necessary to meet any expenditure to be incurred by him either on the expiry or termination of the agreement or relinquishment of part of the contract area or otherwise, towards removal of all equipments and installations, in a manner agreed with the Central Government pursuant to an abandonment plan or towards all necessary site restoration in accordance with modern oilfield and petroleum industry practices and towards meeting all other expenses necessary to prevent hazards to life or property or environment consequent on such expiry, termination or relinquishment."

Downstream

Amendment

1. **Applicability of Significant Economic Presence (SEP) under Income Tax Act to digital businesses only**

Background

To address Base Erosion and Profit Shifting (BEPS) arising from the rapidly digitalizing economy, Finance Act 2018 expanded the concept of business connection to include a new nexus rule based on SEP to tax the digital economy, which hitherto enabled entities world over to carry out business in India without an actual physical presence, and thereby escape taxation in India.

Memorandum explaining the Finance Bill 2018 also mentioned that ''The scope of existing provisions of clause (i) of sub-section (1) of section 9 is restrictive as it essentially provides for physical presence-based nexus rule for taxation of business income of the non-resident in India. Explanation 2 to the said section which defines 'business connection' is also narrow in its scope since it limits the taxability of certain activities or transactions of non-resident to those carried out through a dependent agent. Therefore, emerging business models such as digitized businesses, which do not require physical presence of itself or any agent in India, is not covered within the scope of clause (i) of sub-section (1) of section 9 of the Act. In view of the above, it is proposed to amend clause (i) of sub-section (1) of section 9 of the Act to provide that 'significant economic presence' in India shall also constitute 'business connection'.

Under the SEP provisions, a "business connection" will be created in India based on either of the following conditions:

- Revenue-linked condition: Any transaction in respect of any goods, services or property carried out by a nonresident with any person in India, including the provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed.

- User-linked condition: Systematic and continuous soliciting of its business activities or engaging in interaction with such number of users in India, as may be prescribed.

In this regard, CBDT by insertion of Rule 11UD through Notification No. 41 dated 3 May 2021 prescribed revenue and user thresholds as below thereby putting SEP provisions into application from FY 2021-22.

- For revenue-linked condition stated above, a revenue threshold of INR 2 crores (INR 20 million) shall be applicable;
- For user-linked condition stated above, a user threshold of 3 lakhs (0.3 million) shall be applicable.

The above transactions or activities shall constitute SEP, whether the agreement for such transactions or activities is entered in India or the non-resident has a residence or place of business in India or the non-resident renders services in India. Further, once the nonresident triggers SEP in India, only so much of the income attributable to the transactions or activities referred above will be taxable in India. The language of the SEP provisions is broad and is likely to impact conventional transactions and activities even if they are not carried out in a digital form.

The assessing officer may take a view that the SEP of the non-resident is constituted in India, the income attributable to the transactions or activities as indicated above (i.e. purchase of goods, services, download of data etc.) would be deemed to be income accruing and arising in India and will be liable to tax in India.

The above provisions are although subject to DTAA's entered by India with various countries and does not alter actual taxability under the DTAA's as it follows the traditional permanent establishment definition. However, this development is of significant relevance to non-resident taxpayers who are resident in a jurisdiction which does not have a bilateral or multilateral tax treaty with India or the non-resident taxpayer is not eligible for tax treaty benefits.

Once taxation is triggered in India, the payer is required to withhold any tax due and the non-resident is obligated to file a tax return. Non-compliance with the withholding obligations can trigger disallowance of deductions and assessee in default (interest and penalties for the Indian payer). Furthermore, the Indian payer can also run the risk of being regarded as a representative assessee of the non-resident. It may be noted that there are no rules yet in place as to determine the income attributable to such a nexus or presence. In the absence of rule/guidance on the SEP income attribution principles, the payer may need to liaise with the tax authorities to determine the appropriate sum which should be regarded as taxable to comply with the withholding provisions.

Suggestion:

a) Considering the intent of the Government to tax digital business carried out by non-resident entities in India, Section 9 may be amended to ensure that the provisions related to significant economic presence are limited to digital commerce (i.e., business carried through digital medium) rather than commerce involving physical goods (import of goods) with traditional system of contract entering etc.

b) Till the rule relating to attribution of income component to the SEP are in place there should not be any obligation to deduct tax if such deduction obligation arises from this SEP provisions.

Clarification

1. **Exemption/Clarification for TDS u/s 194Q on purchase of goods**

Background

Finance Act 2021 inserted a new provision of Tax deduction at source (TDS) under section 194Q which provides for TDS at rate of 0.1% on any sum paid to any resident for purchase of any goods of the value or aggregate of such value exceeding Rs.50 lakh rupees in any previous year.

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/clarification for the following transactions:

a) **Exemption of TDS u/s 194Q on sale made by PSUs:**

The primary purpose of introducing the section is to expand the scope of tax net, to ensure greater tax compliance and to prevent tax revenue leakages. It would be desirable that section 194Q may please be exempted for all sale transactions of OMCs as the same is no way furthering the object of the section since OMCs fully comply by tax laws and this change will lead to avoidable compliance burden of mammoth proportion. Furthermore, the sales data of companies is already available with the department through the GSTIN portal.

b) **Calculation of Base Value for TDS deduction:**

CBDT has clarified that wherever GST value is separately indicated on the invoice, tax is required to be deducted on the value without including such GST value. However, the major products of the Oil Marketing Companies i.e., MS, HSD and ATF are outside the ambit of GST and Excise Duty/VAT/CST is levied on the same.

c) **Cross application of section 194Q and section 206C(1H):**

As per the provisions of section 206C(1H), sellers are not required to collect TCS from the buyer on a sale transaction where TDS under any section of the Act is applicable on the transaction and the buyer has deducted TDS on the said transaction. Oil Marketing Companies (OMCs) have a customer base of around 2 lakh customers and daily transactions are to the tune of 50,000. It becomes extremely difficult to check whether the buyers have deducted TDS u/s 194Q. Moreover, TDS deduction by the buyers can be confirmed by the OMCs only after Form 26AS of the quarter is available (after 1 month from the end of the quarter). In case of defaults identified after such a long period, responsibility is casted on the sellers to collect TCS thereafter.

d) **Unintended consequence of Rule 31AA:**

Rule 31AA of the Income tax Rules, 1962 have been amended with effect from 01.10.2020 which provides for incorporating the details of TCS not collected on sale of goods on which TDS is liable to be deducted under other provisions of the Act. However, an unintended fallout of amendment in the Rules, is that in case of purchase of goods on which the purchaser is obliged to deduct TDS u/s 194Q, the seller would still be required to incorporate details of such sale along with the details of TDS deducted by the purchaser. The seller has to collect the related information about TDS deducted by the purchaser and

then incorporate the same in his TCS Return u/s 31AA even when he is not responsible for collection of TCS on sale of goods covered under Section 206C(1H) in the first place.

Suggestion

a) Section 194Q may please be exempted for all sales transactions of OMCs as the same is in no way furthering the object of the section since OMCs fully comply by tax laws and this change will lead to avoidable compliance burden of mammoth proportion. If sales by PSUs cannot be exempted from the provisions of section 194Q, then category of excluded buyers (Govt./local authority) u/s 206C(1H) to be adopted for buyers under section 194Q.

b) A clarification may kindly be issued for exclusion of Excise Duty, Vat and CST for the purpose of deduction of TDS u/s 194Q in line with the clarification issued with respect to GST.

c) A suitable clarification may kindly be issued that in case of defaults by the buyer for non-deduction of TDS, sellers shall not be responsible for collection of TCS on such transactions.

d)

Natural Gas

New Provision

1. **Exemption of storage income on natural gas**

Background

Income of a foreign company on account of storage of crude oil in India and sale of crude oil there from to any person resident in India is exempt u/s 10(48A) subject to the condition that the storage and sale by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government and having regard to the national interest, the foreign company and the agreement or arrangement are notified by the Central Government in this behalf.

Suggestion

It is recommended to extend this exemption to Indian Companies which are engaged in the business of storage of natural gas in India. This will assist Indian Companies to expand their LNG storage facilities and will promote Natural Gas usage in the Country. This will also facilitate the optimum utilization of existing LNG terminals.

General

New Provisions

1. **Tax deduction u/s 37 of the Act**

Background

An obligation to incur restoration, rehabilitation and environmental costs arises by the development or ongoing production of an oil field. Such costs, discounted to net present value, are provided oil & gas companies for and a corresponding amount is capitalized at the start of each project, as soon as the obligation to incur such costs arises. These costs are charged to the statement of profit and loss over the life of the operation through the depreciation of the asset and the unwinding of the discount on the provision.

- Under the new regime (S 115BAA), deduction of site restoration (S 33ABA) is not available.
- Abandonment charge as charged to P&L account is also added back while computing taxable income also not excluded while computing depreciation under section 32 of the Act
- Expense to be allowed at the time of incurrence i.e. restoration of block. This will result in a business loss as no income will be available to the taxpayer for set off.

Suggestion
Provision made for site restoration is a contractual obligation made on a scientific basis and should be allowed as an allowable expenditure u/s 37 of the Act.

2. **Significant Economic Presence ('SEP ')**

Background
SEP was introduced in the Income-Tax Act, 1961 ('ITA') from April 1, 2018 in the background of BEPS discussions to tax digital economy.

Currently, SEP is defined to mean transaction in respect of any goods, services or property carried out by a non-resident in India, including the provision of download of data or software in India. The language of the provision is quite broad and impacts conventional transactions and activities even if they are not carried out digitally (example – offshore supplies)

Suggestion
It is requested to clarify whether SEP provisions apply only to digital transactions or conventional sale/ purchase of goods. Where the ambit of SEP includes conventional sale/ purchase of goods, specify TDS rate and value (gross or net value) on which such TDS rate to be applied while making payments to such non-residents

3. **Rationalizing the provisions of TDS under section 193 on Securities.**

Background
As per the provisions of section 193 of the Act, any person responsible for paying to a resident any income by way of interest on securities shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax at the rates in force on the amount of the interest payable.

Explanation to section 193 further provides that for the purposes of this section, where any income by way of interest on securities is credited to any account, whether called "Interest payable account" or "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 the provisions of this section shall apply accordingly.

The Finance Act, 2023 has withdrawn the exemption of withholding tax requirement under the aforesaid section in respect of interest payable on specified listed securities.

Accordingly, TDS is now deductible on interest on securities at the time of credit of such income to the payees or at the time of actual payment thereof whichever is earlier.

As per the accounting requirements, interest liability on debentures which has accrued but not due is required to be provided while finalization of accounts for a period. Accordingly, companies are providing interest accrued but not due liability in the books of accounts at the time of quarterly/annual closing of accounts which may not be the actual date on which the interest needs to be paid to the debenture holders and where they are not certain about the actual recipient of the interest provided in the books of accounts.

Further, the debentures are listed and tradeable on market and may pass hands before the actual payment of interest is made. Accordingly, companies are not clear in whose PAN TDS credit needs to be booked while filing the TDS returns for the period.

Suggestion

It is, therefore, suggested that, a new clause (x) may be provided in proviso 1 to section 193 of the Act as follow:

"any interest payable on any security issued by a company, where such security is in dematerialized form and is listed on a recognized stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the rules made thereunder wherein payee is not ascertainable."

Justification

The amendment to the Act has created an ambiguity regarding withholding of taxes where the identity of debenture holders is not confirmed at the time of accrual of such income.
The ITAT has also decided that TDS shall not be deductible under section 193 at the time of accrual of such income where the identity of the payee is not known.

4. Additional Depreciation

Background:

Section 32 of the Act provides for claim of additional depreciation @ 20% to companies engaged in the business of manufacturing. However, companies who have opted for concessional tax regime under section 115BAA/ 115BAB of the Act are not eligible to claim additional depreciation @ 20% prescribed under section 32 of the Act.

Suggestion / Justification:

Additional depreciation @ 20% under section 32 of the Act should be restored to be allowed to companies engaged in the business of manufacturing irrespective of opting for concessional tax regime under section 115BAA/ 115BAB of the Act.

5. 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.

6. 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.

Amendments

1. Requirement of TDS certificates :

Background:
As per the provisions of the act a deductor is required to issue the TDS certificates within 15 days from the date of filing of return and the deductee is required to maintain these certificates and the same may be called upon by the AO during assessment.

With the provisions of 194Q applicable the number of TDS certificates received are huge and it becomes practically impossible for the large corporates to maintain the list of certificates received and the efforts for follow up is huge considering the magnitude of transactions.

Suggestion:
The income tax Department has brought in a very robust system wherein the TDS credit is made available in 26AS/ Annual Information Statement. This being an authenticated proof for availability of credit, income tax can amend the act to do away with the need for TDS certificates. This will bring lot of saving in time and manpower for the industries and there is also no loss to the income tax department as the data is clearly available in the 26AS/Annual information statement.

2. Time limit to file revised return:

Background:
As per section 139(5) of the income tax Act, the time limit for furnishing of the revised return is 31.12.2XXX. The normal due date for companies covered under transfer pricing is 30.11.2XXX, thus giving only one month time for the assessee to file a revised return.

Suggestion:
Considering that large corporates conducts a process of review, there is a requirement for the companies to have sufficient time for the same. Hence the time limit for filing of revised return shall be restored to earlier time lines i.e. before one year from the end of the relevant AY or before completion of assessment whichever is earlier

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

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

CBDT in order to safeguard assessee from financial burden of interest under section 234A, 234B and 234C of the Act, has issued an order bearing no. F. No. 400/129/2002-IT(B) dated 26 June 2006 granting power to the Chief Commissioner of Income-tax and Director General of Income-tax to reduce or waive interest payable under section 234A, 234B and 234C of the Act.

As per the CBDT order, no reduction or waiver of interest under section 234A, 234B and 234C of the Act would be allowed unless following conditions are satisfied –

- Assessee has filed his return of income for the year; and
- Assessee has paid the entire income-tax (principal component of demand) due on the income as assessed

Further, the CBDT order does not provide for any timeline for disposal of application made by the assessee for reduction or waiver of interest under section 234A, 234B and 234C of the Act.

Suggestion / Justification:
It is suggested that the conditions specified in the CBDT order dated 26 June 2006 should be amended/ relaxed to state that the application for reduction or waiver of interest under section 234B and 234C should be adjudicated by the Chief Commissioner of Income-tax and Director General of Income-tax within a period of 30 days from the date of filing of the application by the assessee.

Alternatively, in case the Chief Commissioner of Income-tax/ Director General of Income-tax is unable to adjudicate the application for reduction or waiver of interest under section 234B and 234C of the Act prior to filing the return of income then the assessee shall be allowed to file the return of income without payment of interest.

4. Allow Payment of Premium of Leasehold Land as a Revenue Expenditure

Background
Under the Ind AS 16, the upfront premium paid on leasehold land held under operating lease are being treated as prepaid expenses and would need to be charged to the Profit and Loss statement under the head “rentals” on a proportionate basis over the life of the lease period. These upfront lump sum premium lease payments for leasehold land are essential business

expenditure and do not generate any capital asset and hence are purely revenue in nature. These are just like payments made under any operating lease to utilise the leased property for the purposes of the business of the lessee and hence should be allowed just like any business expenditure for tax purposes.

Suggestion

Appropriate clarity should be provided to the effect that upfront premium payments for leasehold land, shall be allowed as deductible expenditure under the Act in the year of its debit to the statement of Profit and Loss.

5. **Taxability of Payments to nominee/legal heir of the deceased salaried employees (either in service or after superannuation)**

Background

Section 15 of the Income Tax Act, 1961 (herein after referred as “Act”) which provides the basis of charge for any income to be taxed under the head salary, provides that income shall be chargeable under the head salary only if it’s due to an employee from employer or former employer i.e., relationship of master and servant is a pre-condition for any income to be taxed under the head salary.

As per the extent practices and employee’s welfare polices/ schemes being followed/ implemented by the companies, many of the payments such as medical facilities/reimbursements, financial assistance etc. are being made to the dependent nominees of the employees after demise of the employee. As there is no specific mention of such payments in section 17 of the Act, which defines the terms “Salary”, Perquisite” and “Profit in lieu of Salary”, different practice, as regard TDS thereon, is being followed by the employers/companies.

Suggestion

It is, therefore, suggested that, a new clause may be provided in section 10/56 of the Act to provide for suitable taxability of such incomes

6. **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. Further, as per the pay revision guidelines for Public Sector Undertakings (PSU), issued by Department of Public Enterprises, PSU’s are allowed to contribute to certain superannuation benefits to their employees and to make their own schemes to manage these funds. One of such superannuation benefit is Post-Retirement Medical Benefits (PRMB). To provide better security as regards PRMB, Companies in industry are creating Trust and funds allocated for PRMB is being managed by these Trusts. However, Assessing Officers, applying the provision of the section 40A(9) are disallowing the same being funds/scheme not mentioned u/s 36 of the Act.

Suggestion: -

It is, therefore, suggested that, clause (9) of section 40A may be modified as follows-

"No deduction shall be allowed in respect of any sum paid by the assessee as an employer towards the setting up or formation of, or as contribution to, any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860 (21 of 1860), or other institution for any purpose, except where such sum is so paid, for the purposes and to the extent provided by or under clause (iv) or clause (v) of sub-section (10 of section 36, or as required by or under any other law for the time being in force or in order to comply with pay revision guidelines issued by Department of Public Enterprises."

Justification: -
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 utilize 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 or in order to comply with the government guidelines, 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.

7. 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 number 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
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.

Justification

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.

8. **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, 1961 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 Act 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.

Suggestion

In order to remove the aforesaid dichotomy in the methods of grossing up for TDS and for assessment purposes, suitable amendment may be made in section 195A of the Act 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.

Justification

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.

9. **Rationalizing the provisions of section 239A of the Act**

Background

As per the provisions of section 239A of the Income-tax Act, 1961, inserted by the Finance Act, 2022, 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, then, the payer may, within a period of

30 days from the date of payment of such TDS, file an application before the Assessing Officer for refund of such TDS in such form and such manner as may be prescribed.

If the aforesaid application for refund is rejected by the Assessing Officer, then, an appeal may be filed before the Commissioner of Income-tax (Appeals) u/s 246A of the Income-tax Act against the order rejecting the refund application.

Suggestion

Provisions of section 239A may be suitably amended to also cover the cases where the payer does not claim that no TDS was required to be deducted but is of the view that TDS was applicable at a rate lower than the rate at which the same has been deducted/deposited.

Justification

The aforesaid section provides an opportunity to file an application by the payer (who bears the applicable TDS) if such payer, after having deposited TDS, claims that no TDS should have been applicable. However, section 239A does not cover a situation where the payer feels that TDS should have been deducted/deposited at a rate lower than the rate at which the same has been deducted/deposited.

There could be instances where TDS is deposited @10% on gross sums payable to the non-resident considering the receipts of the non-resident to be taxable as "fees for technical services" u/s 115A of the Act and 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 239A of the Act and the language employed therein, the application for refund of excess TDS deposited may not be entertained by the Assessing Officer.

10. 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. Earnings estimates of oil companies are based on the prices and projections of crude oil and product prices in international markets. These prices are very difficult to predict as these are dependent on various geopolitical factors, world demand supply positions, policy decisions announced by major oil producing countries, economic trend of major world economies etc.

Earnings estimates at a point may completely go haywire due to any of the international event. Furthermore, pricing of major petroleum products sold domestically can't be predicted due to various reasons and at times, there are huge under-recovery on sales of LPG. For which OMCs seek financial support from Government. 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, if any that occur in respect of payment of Advance Tax is 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
Relaxation is provided from levy of interest u/s 234C in case of capital gains, winning from lottery, etc. Similarly, the Government is requested to provide the specific exemption to Oil Companies from applicability of provisions of these Sections or provide some other relaxation in payment of Advance tax so that undue hardship which the Oil Companies are facing now can be reduced to some extent.

11. Exclusion of non-residents from the ambit of sections 206AB and 206CCA

Background
As per the provisions of section 206AB of the Act, 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-

- who has not filed Return of Income for the assessment year relevant to the previous year immediately preceding the financial year in which TDS is deductible (for which time limit for filing Return of Income u/s 139(1) has expired);and

- the aggregate of TDS deducted and TCS collected in the case of such person is Rs. 50,000 or more in the said previous year.

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 may lead to certain issues to be faced by the resident deductor/collector in complying therewith.

Suggestion
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 system of the Income-tax Department, 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.

Justification
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 which will result in deduction of TDS at higher rate(s). In cases where tax is to be borne by Payer, it will come as an additional financial burden on the payer. 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.

12. PAN in 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 Form 26AS.

Suggestion / Justification:
Tax Authorities require reconciliation of income and TDS as per F-26AS during Assessment Proceedings and for compliance purpose. Further, reconciliation of TDS as per F-26AS and as per Return of Income is also necessary. Since, only one PAN is allowed to be obtained by a person, incorporating, PAN of the deductor also in addition to TAN 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 being created on the basis of TAN.

13. Section 194- TDS on Pass Through Dividend

Background
Pass-through dividend should be allowed to be distributed without deduction of TDS provided the holding company files declaration/ undertaking with its subsidiary company that dividend will be further declared.

If holding company does not declare dividend before the stipulated time period, then holding company should be liable to pay TDS amount with applicable interest to subsidiary company.

Suggestion
It is recommended that pass-through dividend should be allowed to be distributed without deduction of TDS provided the holding company files declaration/ undertaking with its subsidiary company that dividend will be further declared. If holding company does not declare dividend before the stipulated time period, then holding company should be liable to pay TDS amount with applicable interest to subsidiary company.

Pass-through dividends shall be allowed as a deduction from the Gross Total Income (GTI) of the Company receiving the dividend, provided the dividend received is up-streamed to its shareholders within the stipulated time period.

14. Online Filing of Form 10F:

Background

CBDT vide Notification No. 3 dated 16 July 2022 had notified certain forms including Form 10F to be furnished electronically as per Income Tax Rules, 1962. The Notification had come into effect from 16 July 2022.

Subsequently, on consideration of the practical challenge being faced in making compliance as per the above notification, those non-resident (NR) taxpayers who were not having PAN and not required to have PAN as per relevant provisions of the Income-tax Act,1961 read with Income-tax Rules, 1962, were exempted from mandatory electronic filing of Form 10F till 30th September 2023 by the competent authority.

Suggestion / Justification:

In view of practical challenge being faced by NR vendors, the aforementioned requirement should be made optional ie. both physical and electronic filing must be allowed to the NR vendors.

15. 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.

16. Allow deduction for Corporate Social Responsibility Expenditure – Section 37 Issues

Background

One of the highlights of the Companies Act, 2013 is that every company meeting the specified threshold would need to mandatorily spend 2% of their 'average net profits' on Corporate Social Responsibility (CSR).

As per amendment made by the Finance (No. 2) Act, 2014, the expenses incurred by the taxpayer on the activities relating to CSR referred to in Section 135 of the Companies Act, 2013 shall not be deemed to be incurred for the purpose of business and hence, shall not be allowed as a deduction under Section 37(1) of the Act.

The corporate sector spend is effectively assisting the Government in undertaking social projects for the country. Therefore, making an express provision for not allowing a deduction is unfair.

Suggestion

It is recommended that the Explanation 2 to section 37 of the Act should be omitted, and a deduction of CSR expenses incurred by the taxpayers pursuant to provisions of the Companies Act should be allowed under section 37 in computing business income.

17. 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 may be restored to at least 60%. This will encourage companies to invest more capital in renewable energy capacity addition.

18. Extension of sunset clause under Sec 115BAB on concessional tax rate option for new manufacturing Companies.

Background

The sunset clause under Sec 115BAB for concessional tax rate for Companies which commenced manufacturing or production of an article is 31st March, 2023.

Suggestion

It is recommended to extend sunset clause under Sec 115BAB for 4-5 years to enable the industry to plan their expansions. This will promote more manufacturing activities and investments in the Country and will bring clarity to the Companies which have expansion plans.

19. Reduction in rate of tax applicable on royalty and fees for technical services in case of foreign companies

Background

The Government vide Finance Act, 2023 has increased the rate of tax applicable on payment of royalty and fees for technical services in case of foreign companies from 10% (plus applicable surcharge and cess) to 20% (plus applicable surcharge and cess).

Suggestion

Oil and gas companies mostly avails services from foreign companies in relation to various technical aspects more particularly during turnaround/shutdown. Due to increase in withholding tax rate from 10% to 20% in case of fees for technical services availed from foreign companies will either deter non-resident vendor to provide such services to Indian Companies leading to reduction in supplier base or non-resident vendor insisting on grossing up of tax which in-turn will increase the cost of services.

Accordingly, it is suggested that the rate of tax applicable on fees for technical services in case of foreign companies should be restored to earlier rate of 10% (plus surcharge and cess) from existing rate of 20% (plus surcharge and cess).

20. **Section 17(2)(viia) of Income Tax Act- annual accretion by way of interest, dividend or any other amount**

Background

As per the earlier provision (sub-clause (vii) of Section 17(2)) of the Income-tax Act employer's contribution to superannuation fund, in excess of Rs.1.5 lacs was to be treated as perquisite, hence made taxable.

The above said clause has been amended by the Finance Act, 2020 wherein exempt contribution which an employer can make towards recognized Provident Fund (PF), National Pension scheme (NPS) and Superannuation Fund (hereinafter collectively referred to as 'employee welfare schemes') is capped at Rs. 7.5 lacs. The clause provides contribution to ‘employee welfare schemes’ if in excess of Rs. 7.5 lacs, the differential shall be taxed as perquisite in the hands of the employee.

Further, insertion of new sub-clause (viia) provides that interest/dividend accrued on any contribution to employee welfare schemes made by the employer, exceeding Rs. 7.5 lacs shall also be taxed as perquisite in the hands of the employees.

Issues

- There is a challenge in identifying the interest relevant to the excess contribution from the total interest getting credited to an employee’s account. Interest accumulation is on the opening balance and monthly contributions on a cumulative basis, hence deriving interest accrued on excess contribution will vary for different companies as it will be based on assumptions and the Returns being generated by individual funds.
- Further PF and SABF interest rates are declared after the close of the financial year, hence it is not very clear as to how the same would be taken for salary TDS computation in the previous year.
- Income on NPS account is a notional gain on a year-on-year basis as there is change only in net asset value of the fund. It is not clear as to how income on NPS for employer’s contribution exceeding the specified limit will be taxed annually as no real income gets credited to the employee’s account.
- If employer starts recovering TDS on estimated accrual it will complicate matter as the determination of income is ambiguous.

Suggestion

The concept of Exempt-Exempt-Exempt (EEE) for social security schemes such as PF, SAF and NPS is being diluted for the high-income group. This may discourage long term investment and may even be contradictory to the principles of good tax governance. It is therefore requested to review section 17(2)(vii) i.e. on taxing Employer contribution beyond Rs 7.5 Lakhs and

interest accretion thereon u/s 17(2) (viia). It is submitted that contributions to approved superannuation fund and NPS be kept out of the scope of the provision considering that they are already under EET regime (partially).
The employer should be relieved of the obligation to do salary TDS on the interest portion in view of the difficulties for the employer to get the information in timely manner. The responsibility to pay self-assessment tax thereon be cast on the employee.

21. Minimum Alternate Tax – Allow MAT credit for companies availing beneficial rate of tax under section 115BAA.

Background
The companies who do not opt for the concessional tax regime are continued to be governed by the provisions of MAT.

The companies opting for beneficial rate of tax under section 115BAA are not permitted to carry forward and utilize their MAT credit in case the option is exercised.
MAT credit is excess tax paid over normal income in the preceding years. Hence, it is in the nature of advance tax paid by a Company. Thus, disallowing the companies to utilize their MAT credit merely because they opted for a beneficial provision of the Act does not seem to be in line with the Government's intention of providing a competitive edge to Indian corporates.

Suggestion
The Act should be amended to allow utilization of MAT credit even for companies exercising option under section 115BAA of the Act since the same is at par with advance tax and TDS.

22. Higher Rate of Depreciation on Assets resulting in reduction of emission

Background
Rate of depreciation on Plant and Machinery is 15% p.a. The accelerated depreciation ranging mostly between 80-100% was available for certain block of assets such as renewable energy devices, air pollution control equipment, energy saving devices, etc. up to AY 2016-2017. CBDT vide notification no. 103/2016, dated, November 7, 2016, has restricted the highest rate of depreciation to 40% with effect from 1 April 2017.

There is no special incentive available to assessee on investments to be made on projects resulting into reduction of emission. The only incentive available to assessee is the higher rate of depreciation of 40% (as against general rate of 15% on Plant and Machinery) on certain specified assets as mentioned in appendix I w.e.f. AY 2006-07 under the category of Air Pollution Control Equipment, Energy Saving Devices, Renewable Energy Devices etc.

Accelerated depreciation on assets like renewable energy devices, air pollution control devices, energy saving devices, computers, computer software, etc. was provided not as an incentive but considering their fast obsolescence due to rapidly changing technology.

Further, the list of equipment's eligible for higher rate of depreciation of 40% is very restrictive and has not been amended since long. It doesn't include many assets which help in reduction of emission. For example, Vapor Recovery Unit (Unit designed to remove unwanted vapors present in crude oil or distillate tanks allowing operators to comply with prevailing emission regulations), 2G and 3G ethanol Plants etc.

Suggestion

- The Current rate of depreciation on Plant and Machinery is 15% p.a. which is very low. Considering the fact that the companies who have adopted new tax regime under section 115BAA are not eligible for any capex-based incentive, it is suggested that the normal rate of depreciation on Plant and Machinery should be increased to 25% p.a.
- To incentivize the net-zero mission of the country, it is suggested that rate of depreciation on renewable energy devices, air pollution control devices, energy saving devices etc. should be increased from 40% p.a. to 60% p.a.
- List of equipment's under the category of renewable energy devices, air pollution control devices, energy saving devices, water pollution control equipment etc. should be amended to include Vapor recovery unit, 2 G and 3G ethanol plants, Effluent Treatment Plant, VOC Control System and all other equipment's and devices which result into reduction of emission whether directly or indirectly and contributing in achieving the Net Zero mission of Country.

23. Delegation of power to file return/appeals u/s 140:

Background:

Section 140/249 of the income tax act makes a stringent requirement for the MD of the company to verify/sign the income tax return/ appeal to CIT(A)/ITAT. The same creates lot of administrative difficulties for large corporates. The large corporate give Power of Attorney to the employees of the company, accordingly the act should allow for delegation of such powers to either any other director or such other person authorized by the board.

Suggestion:

The power to file ITR and appeals should be allowed to the person who holds POA from chairman of the company to perform such functions

24. 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.

25. **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.

26. **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 intension 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.

27. 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.

28. 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 it is proposed 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. It is therefore suggested 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.

29. Taxability of interest on PF contribution in excess of Rs. 2,50,000/-

Background

The Finance Act 2021 inserted Proviso to Sections 10(11) and 10(12) providing that the provisions of these clauses shall not apply to the interest income accrued during the previous year in the account of the person to the extent it relates to the amount or the aggregate of amounts of the contribution made by the person exceeding Rs. 2,50,000 in a previous year. This amendment shall apply only to the contribution made on or after 01-04-2021. Thus, any interest corresponding to the employee's contribution in excess of Rs. 2,50,000 shall be taxable from the assessment year 2022-23.

This interest income will become part of the total taxable income of the taxpayer. There are no special rates for taxability of this interest. Hence, such income shall be taxed at the prevailing income tax rates.

Suggestion

There are only a few investment opportunities which operate in a complete Exempt-Exempt-Exempt Category (EEE) and PF was one of them. The removal of legacy of EEE category of mandatory contribution to PF would not be intention of The Finance Act, rather it was introduce to curb the cases of exorbitant contributions made by few of the assessees.

Since, the contribution by the employer to the account of an employee in a recognized provident fund is chargeable to tax if such contribution exceeds 12% of salary, an equivalent contribution made by an employees I,e, 12% should also earn a tax free interest income and should not be taxable on accrual basis.

30. Widening the scope of deduction and enhancing the limit under Section 80TTA

Currently, section 80TTA provides deduction up to Rs. 10,000 p.a. only with respect to the interest from savings bank accounts with banks/ co-operative society/ post office. However, for the purpose of enabling majority of taxpayers to avail this tax benefit, the existing scope of the said section needs to be expanded in order to cover other types of interest such as interest on bank / post office term deposits, recurring deposit etc. Moreover, such threshold limit of Rs. 10,000 also needs to be enhanced to Rs. 20,000 as there was no change in the limit since its introduction by Finance Act 2012.

31. Increase in the threshold limit in case of Payment of Advance Tax by Individual

The threshold limit of Rs. 10,000 for payment of advance tax was last amended by Finance Act, 2009. Considering the inflation in the economy over the last 12 years as well as reducing compliance burden, there is a need to increase the threshold limit from the present Rs. 10,000 to Rs. 50,000.

Moreover, there are certain interest income which are not identifiable before seeing the Form-26AS, thus it is suggested that interest income should be kept out from the interest calculation u/s 234C.

32. Rationalization of the deduction limit for perquisites in respect of motor car

In terms of section 17(2) of the Income Tax Act, 1961 ('the Act') read with Rule 3(2A) [Table II-(2)(ii)] of the Income Tax Rules, 1962 ('the Rules') which provides for taxability of running and maintenance expenses of motor vehicle owned by the employee, which is reimbursed by employer, when such vehicle is used partly for official purpose and partly for personal purposes of the employee or any of his household i.e. where the employee owns a motor car but the actual running and maintenance charges are met or reimbursed by the employer and such reimbursement is for the use of the vehicle partly for official purposes and partly for personal purposes of the employee or any of his household.

The limit with respect to such deductions is not in consonance with the present fuel cost and needs to be adjusted for inflation and accordingly, enhanced. Further, the exemption limit of Rs. 1800/2400 was last revised in 2007 and thus, an upper revision in the same is long overdue. Such exemption limit may be hiked considering the inflation in last 15 years.

33. Increase the limit of deduction of interest on housing loan

Under the existing provision of the Act, a taxpayer may claim deduction of interest on housing loan while computing income from house property up to a limit of INR 2 lakh only. This threshold was fixed by the Finance (No.2) Act, 2014 by substituting the erstwhile threshold of

INR 1.5 lakh. Further, in case of self-occupied no carry forward of unabsorbed interest in not allowed.

In view of rising prices of properties limit of Rs. 2,00,000/- is inadequate amount. It is suggested to revise the amount of Rs. 200000/- and also allow the carry forward of unabsorbed interest in case of self-occupied property.

Clarification

1. Set Off of Refunds against Tax remaining Payable

Background

Adjustment of refunds due to assessee against erroneous demands shown outstanding in their cases causes great heartburn. Even where the assessee lodges his objection on the CPC portal pointing out that the demand sought to be adjusted against the refund was not outstanding and therefore is being erroneously adjusted, there is no remedy by which the CPC can take note of the same.

It is settled by several judicial pronouncements that where any demand outstanding against the assessee relates to a point which stands squarely covered by a decision in the assessee favour, such demand cannot be adjusted against any refund due to the assessee. Courts have logically explained in this regard that the assessee in such a case would have been undisputedly entitled to stay on recovery of such demand, and merely because the department is in possession of the assessee funds due to him as legitimate refund, it cannot be adjusted against such a demand.

Suggestion

It is suggested to amend the section so as to provide that no set-off of refund under this section shall be made by any income-tax authority without giving intimation in writing to such person of the action proposed to be taken under this section, and without dealing with the objections, if any, filed by such person in response to such intimation served on him. Systems should be amended/put in place to stop assessee funds being adjusted without authority of law. It is further suggested that proper guidelines be laid to introduce accountability and further avoid overlapping of responsibility between TRACES/CPC officers vis-à-vis the jurisdictional officers in such cases. It is further suggested that refund struck with the department due to adjustment against erroneous demand, non-grant of due TDS credit etc. be made eligible for interest @ 12% per annum.

2. Clarifications wrt TDS on E-Commerce Operator u/s 194 O

Background:

In case a website/portal is used to ensure smooth business and convenience to customers of the companies dealers/ distributors and the intention is just to facilitate booking of orders like booking of LPG cylinders in the portal of oil companies, the same is not for e-commerce but only a facility to place an order. Various Companies sell their products to dealers and dealers in turn sell it to the end customers. These companies provide a website facility so that their own dealers and customers can connect through a common portal. The main aim is to improve convenience to the customers so that orders can be placed in the portal rather than placing it physically. Further in certain utility services like LPG customers are linked to particular Dealership and online bookings facilitated by the Oil Companies through various online modes of booking facility. These portals are not operating as an e-commerce operator. Section 194 O

is widely worded, hence these transactions are unintentionally may get covered under the section.

In addition, provisions of section 52 of Central Goods & Service Tax Act, 2017 are also attracted in cases where consideration is collected by the e-commerce operator and passed on to distributors. In this case, there is a ITC accumulation of nearly 0.8% at the distributor’s end.

Suggestion:

Suitable clarification may be brought in the section 194O of the Income tax act section 52 of the Central Goods & Service Tax Act, 2017 defining Digital e commerce and e commerce operator so as to carve out digital solution for placing orders managed by the Corporate Entity for their dealers and existing linked customers particularly refill/repeat orders to avoid unnecessary litigations in future.

3. 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.

Issue

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 assessee 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 assessee.

Suggestion

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. It is suggested that similar dispensation may be provided to all assessee 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.

4. Office / IT assets provided to Independent director / IEMs etc:

Background:

Companies provide IT / office assets such as laptop / Ipad etc to the independent director / IEMs who are not employee of the company. Depending on the nature of assets / company policy, these assets may or may not be returnable.

Suggestion:

Clarification may be issued exempting provision of these assets from being treated as perquisite for section 194R.

5. Section 194R- FAQ

Background

1. FAQ 1 states that section 194R applies to a benefit or perquisite irrespective of whether such benefit is chargeable to tax and irrespective of the provision under which it is chargeable to tax.
   FAQ 1 may be reconsidered and it may be clarified that TDS under section 194R is applicable only to payment of benefit or perquisite which is taxable under section 28(iv). Appropriate consequential amendments/clarifications are also required to provide that deductor is required to check if the benefit or perquisite is taxable in the hands of recipient.
2. Waiver/write off/one time loan settlement by banks/financial institutions whether or not under insolvency resolution process may be clarified to be outside the scope of TDS under section 194R. It may be specifically clarified that any write off of debt whether unilateral or through negotiated settlement or under IBC is not a benefit or perquisite arising from business or exercise of profession and hence not liable to TDS under section 194R.
3. Reimbursement of out-of-pocket expenses to service providers for expenses incurred in rendering of services is not a benefit or perquisite. Inconsistencies created in this regard needs to be clarified.

Suggestion

It is requested that appropriate amendments are introduced in section 194R to remove inconsistency created by the Circular with correct legal position and/or practical challenges in application of FAQs.

6. Certificate u/s. 281

Background

Obtaining a no objection certificate or prior permission under section 281 of the Act (Section 281 Certificate) is a mandatory ‘condition precedent’ in a merger, acquisition, loan or other finance transactions. The IT Department portal displays the tax demand status of relevant entity as on that day. However, the application and issue of the certificate is still a manual

process. Generally, it takes a long time to obtain the 281 certificate, which delays the transaction.

Suggestion

Since the portal already captures the tax demand, its use should also be extended to apply for and issue of Section 281 certificate. This will increase the efficiency in the entire process. A clarification in this regard may be issued.

7. Tax Residency Certificate ('TRC')

Background

A Company incorporated in India is tax resident in India. There is a standard format for application of TRC. Further, last year's income-tax return is the only document required while making application for TRC. However, the application and issue of TRC is still a manual process and hence creates an inordinate delay.

Suggestion / Justification:

The application and issue of TRC should be done online so as to ensure quick turnaround.

8. Double Taxation of Employer's Contribution in NPS (National Pension Scheme)

Contribution in NPS (National Pension Scheme) account of the employee is includible in the taxable income of an employee-assessee as 'salary' in view of provisions of section 17(1)(viii) of the Act and even thereafter, by the Finance Act, 2020, an amendment has been made in the definition of 'perquisite' so as to include such contribution therein also in certain circumstances. Therefore, the said amendment is apparently capable of leading to double taxation in the hands of employee-assessee of very same amount of employer's contribution to his NPS account first, as salary and then again as perquisite.

Further, a perusal of memorandum to the Finance Bill, 2020 shows that intention for enacting substituted section 17(2)(vii) was only to bring to tax that part of the contribution made by employer to the NPS account of the employee which was exempt from tax and that too only when such contribution exceeds the specified limit of Rs. 7.50 lakh along with contribution to other two specified funds.

To avoid double taxation, the amount of contribution made by employer in the NPS account of employee, can be included in total income of such an employee either as salary under section 17(1)(viii) or as perquisite under section 17(2)(vii). Since both are legally permissible, one which is more beneficial to the assessee is to be adopted and the same shall be at the option of the assessee. In such circumstances, the provisions of section 17(2)(vii) of the Act, that is to treat the employer's contribution in NPS as perquisite will be more beneficial for the assessee and as such the assessee will opt for that. As a consequence of the same, unintended double benefit may also flow to the assessee in form of non-inclusion of amount of employer's contribution in NPS to the extent of Rs. 7,50,000/- under section 17(2)(vii) in the gross total income of the employee assessee, but still deduction under section 80CCD(2) in respect of the very same amount being allowed to him. The above double benefit is possible as because the provisions of section 80CCD falls in part B of chapter VI-A of the Act. The ambiguity

inserted by the Finance Act, 2020 in the law will also discourage employees for opting for NPS where it is not mandatory in the fear of double taxation or unnecessary litigation and in turn, will defeat the social objective of the Government for which NPS has been framed by it.

B. Indirect Tax

I) Excise Duty

Upstream

Amendments

1. **Removal of levy of Special Additional Excise Duty (SAED) on Petroleum Crude**

   Background
   SAED was introduced by Ministry of Finance @ Rs.23,250 per MT on production of Crude Oil with effect from 1st July, 2022. As per media reports, SAED had been imposed by the Govt. due to the extraordinary increase in prices of Crude Oil and the levy was to be reviewed on fortnightly basis. The prices have gradually subsided since then however the levy nevertheless continues. Such levy in addition to all other existing levies, is significant considering that the Crude Oil prices are quite volatile averaging only USD 70/bbl in last five years.

   Suggestion
   In view of above, the SAED should be removed or if need is felt to continue the levy for some time as an extraordinary measure, then the rate be changed to an ad-valorem levy of 20% of incremental crude price over USD 100.

   Justification
   The levy is over and above heavy burden of royalty (20% onshore/10% offshore) and OID Cess (20% ad valorem). Further, the levy is calculated on per tonne of production rather than as a percentage of realized price, thereby causing hardship to oil producers when the prices get reduced. The levy has an adverse impact on exploration and development capex proposals.
   The mechanism of levy of SAED is causing another anomaly. Royalty and VAT are payable on actual sale price, whereas SAED triggers as and when sale price goes above US$75 / bbl. As a result, it lowers net realization to ONGC. For example, if crude price is US$100 per bbl and SAED is US$ 25 /bbl, in such a case royalty and VAT are levied on US$ 100 (sale price) leading to net realization to ONGC around US$70/bbl instead of US$75/bbl.

2. **Removal of Basic Excise Duty (BED) and 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.

   Further, Basic Excise Duty (BED) @ Rs. 1 per MT was introduced through Finance Bill, 2019, and Special Additional Excise Duty (SAED) was introduced from 1st July, 2022 leading to avoidable hardship of compliance of Excise Law.

Suggestion

BED and NCCD further add to the complexity of dual compliance with GST and various Non-GST taxes on the E&P Industry. The removal of BED & NCCD would be a step towards ease of doing business.

3. **Supplementary Note to Chapter 27- Customs Tariff Act**

Background

Vide Finance Act, 2019, Supplementary Note to Chapter 27 has been substituted as under:

"(17) in Chapter 27, —

(i) for the Supplementary Note, the following Supplementary Note shall be substituted, namely: —

'Supplementary Note:

In this Chapter, reference to any standard of the Bureau of Indian standards refers to the last published version of that standard.

Illustration: IS 1459 refers to IS 1459: 2018 and not to IS 1459: 1974"

However, the Supplementary Note to Chapter 27 as available in the CBIC portal has not substituted the amended Supplementary Note as provided in Fifth Schedule to Finance Act, 2019, instead, has appended the new entry (In this Chapter, reference to any standard of the Bureau of Indian standards refers to the last published version of that standard. Illustration: IS 1459 refers to IS 1459: 2018 and not to IS 1459: 1974) in Supplementary Note along with the erstwhile entries provided prior to 01.01.2020.

Further, in the erstwhile Supplementary Note, HSD has reference to IS 1460:2005, however, as per tariff table, HSD has reference to IS 1460, 16861, 16531.

Explanation to Notification no. 01/2017- Central Tax (Rate) provides that:

> (iii) "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).

Suggestion

To avoid the unwarranted litigations due to ambiguity and interpretational issues, it is suggested to amend the Supplementary Note in line with the amendment of Finance (no 2) Act, 2019.

Downstream

Amendments

1. **Exclusion of MS/ HSD/ ATF from the operation of Rule 18/19 of Central Excise Rules (CER), 2017 effective 01.07.2022**

Background

Vide notification no. 02/2022 dt 30.06.2022, MS/ HSD/ ATF has been excluded from the applicability of Rule 18/19 of CER, 2017 which provides for the operating procedure for movement of said goods for export purpose. Oil companies are exporting MS/HSD/ATF from locations other than the refinery locations. Further, there are cases of Merchant export as well.

Suggestion

Clarification may be issued for clearances and movement of goods cleared for the purpose of export as procedures specified under Rule 18/19 is no longer available. New procedure for clearances for the purpose of export may be notified.

2. **Upfront Exemption of Duties of Excise on HSD**

Background

Excise duty was exempt on procurement of High-Speed Diesel (HSD) under procedure of ICB in connection with petroleum operations vide Notification No. 12/2012-CE dated 17.03.2012 as the HSD was covered as 'specified goods.

Post introduction of GST, the exemptions were withdrawn and rates were prescribed for Excise Duty w.e.f 01.07.2017 on HSD vide Notification No.11/2017-CE. Therefore, E&P Companies started paying excise duty on procurement of such HSD procured for petroleum operations. However, since the import of HSD (i.e., specified goods) for petroleum operation was exempted from levy of BCD under Customs Law, the excise duty paid on domestic procurement of HSD was eligible for deemed export benefit by way of refund under Foreign Trade Policy (FTP). Accordingly, the E&P sector were claiming refund of excise duty in terms of FTP on procurement of HSD required for petroleum operations.

Recently, the list of 'specified goods' on import of which the exemption from BCD was available to E&P sector, got pruned vide Customs Notification No. 02/2022-Cus dated 01.02.2022, resulting into non-eligibility of HSD from exemption of BCD on its import. Consequently, the deemed export benefit in respect of excise duty paid on such HSD also became ineligible for refund under FTP w.e.f. 02.02.2022.

Suggestion

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 to provide boost and incentive to the upstream sector.

Justification

This would provide boost and incentivize the sector as this sector is already burdened with huge taxes due to non-availability of ITC of Duties paid on HSD (being Non-CENVATable goods) as well as GST paid on other inputs, due to exclusion of its main products/output for levy of GST.

3. **Exemption to CNG from payment of excise duty/GST**

Background:

Presently Excise duty in applicable on CNG. 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.

Suggestion

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.

4. **Different excise duty prescribed for unblended HSD intended for retail customers.**

Background

Govt. of India increased the basic excise duty of Rs 2 per liter on the Unblended HSD intended for retail sale w.e.f. 01.10.2022 vide Central Excise notification no 01/2022 dated 01.02.2022. This notification was superseded by notification no-31/2022-CE dt 30.09.2022 providing effective date of implementation of higher basic excise duty of Rs. 2/ ltr for unblended HSD intended for retail sale being 01.04.2023. The date has been further extended to 01.04.2025 vide notification no 04/2024-CE dated 25.01.2024.

Suggestion

In view of the non-availability of bio diesel and various operational/commercial issues, the said notification may be withdrawn, and end use based different excise duty to be negated.
Further, the requirement of certification by Statutory auditor for clearances of MS/ HSD may also be dispensed.

5. **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 MS, HSD, ATF (excluded petroleum products) 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%);
    - complying with a multiple tax regime, its related costs and efforts;

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 $ 85/bbl, putting pressure on refining margins.

Suggestion / Justification:

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, 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 in para 4 above, even while having no adverse impact whatsoever, on the quantum of taxes being collected by the Government from the sector.

6. 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% ad valorem). In terms of one of the conditions for the concessional rate of excise duty, such concessional rate is applicable up to 3 years from date of commencement of operations of RCS- UDAN airport or heliport or water drome as notified by Ministry of Civil Aviation or till the end of scheme period whichever is earlier (Sunset clause for the exemption).

Suggestion

Necessary amendment to be carried out in the exemption notification no. 11/2017 to provide exemption from Central Excise duty rates based on commencement of RCS routes as notified rather than commencement of RCS airports.

7. 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 be observed that after introduction of GST, the process of compression of Natural Gas into CNG by third party, is also exigible to GST. Thus, the

conversion process is now suffering 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 from levy of Central Excise Duty and/or GST. This will make CNG more economical and will promote use of this environment friendly fuel in domestic and commercial transportation sectors.

8. Exemption to CBG from payment of Excise duty on blending/mixing with Natural Gas for 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 is blended with Natural Gas for further sale as CNG. However, after its blending with Natural Gas, it attracts Excise duty and VAT as applicable to CNG and Input Tax credit of GST paid on procurement of Bio gas/CBG is also not available. This results in significant increase in tax incidence of quantity of bio gas/CBG and make it difficult to market the same. In the Budget 2023, exemption from payment of Central Excise duty was provided on Compressed Natural Gas (CNG) blended with biogas or Compressed biogas (CBG) to the extent of GST paid on Bio-Gas /Compressed Bio Gas contained in such blended CNG. Though a marginal relief has been provided by way of exemption to the extent of GST paid, still there will be substantial impact on account of remaining Excise Duty and VAT on the blended CNG.

Suggestion:

In view of above, it is suggested that Bio Gas/CBG when blended with Natural Gas for conversion to CNG may be exempt in full from Central Excise Duty on quantitative basis i.e. based on the proportion of Bio Gas/CBG and Natural Gas in resultant CNG. This will help to promote usage of Bio Gas/CBG on commercial basis in line with the policy of the government.

9. 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 GST

Clarifications

1. Classification of Sustainable Aviation Fuel (SAF) under Excise Tariff

Background

Neat SAF can be blended up to 50% with Fossil based Aviation Turbine Fuel (ATF)- IS 1571 as per various ASTM approved methodologies. Initially, it is proposed for 1% blending of neat SAF with normal ATF which will increase progressively over the years.
IS 17081:2019 provides specification for Aviation Turbine Fuel (Kerosene Type, Jet A-1) Containing Synthesized Hydrocarbons. Part-1 of Table I of IS speaks about Basic Requirements of Aviation Turbine Fuels Containing Synthesized Hydrocarbons which is similar to ATF falling under IS 1571. Part-2 of Table I provides for Extended Requirements.

Annexure-E of IS 17081 provides for the specifications of ALCOHOL-TO-JET SYNTHETIC PARAFFINIC KEROSENE (ATJ-SPK) as one of the ways to blend synthetic component with conventional ATF.

Suggestion

Vide Finance Act (No. 2) Act, 2024, entry for "Blended Aviation Turbine Fuel" has been provided under First Schedule to Customs Tariff along with suitable Supplementary Note under Chapter-27, however, necessary entry to be introduced under Central Excise Tariff.

Further, exemption may be provided from Excise duty from blending of Neat SAF with ATF on similar line as that for bio diesel blended HSD. The condition of GST paid SAF may also be removed for indigenous SAF as SAF will be produced by OMCs themselves. In addition, separate HSN Code may be prescribed for neat SAF along with concessional rate of 5%.

2. EBMS 10% - Amendment required in EBMS Excise exemption notification (Sr.No.5 of Notification No. 11 /2017 Central Excise dated 30.06.2017).

Background:

At present 10% Ethanol blended Petrol is exempted from Excise Duty subject to the fulfilment of conditions specified in the said notification, which read as below.

(1)	(2)	(3)
"5	2710	10% ethanol blended petrol that is a blend, - (i) consisting, by volume, of 90% Motor spirit, (commonly known as petrol), on which the appropriate duties of excise have been paid and of 10% ethanol on which the appropriate central tax, State tax, Union territory tax or integrated tax, as the case maybe, have been paid and; (ii) Conforming to the Bureau of Indian Standards specification 2796.

In January 2022, the Bureau of Indian Standards specification 2796:2017 has amended the tolerance limit for the Ethanol content i.e EBMS 10% blend shall contain Ethanol in the range of 10 ± 1.0%. Therefore, EBMS 10 fuel may now contain blends with ethanol from 9% to 11% and motor spirit from 91% to 89% respectively.

However, in order to be eligible for the exemption contained in Sl. No. 5 above, the ethanol blended petrol must consist of 90% motor spirit on which excise duty has been paid and 10% ethanol on which GST has been paid. Thus, there would be situations where motor spirit by volume would be 89% while ethanol by volume would be 11%. In such cases, excise duty would be paid on 89% motor spirit and not 90% motor spirit and it is uncertain whether the exemption would still be available to the blended fuel. In apprehension of the same, the Ministry of Petroleum & Natural Gas made a representation to the Tax Research Unit pursuant to which Office Memorandum F. No. 354/03/2022-TRU dated 02.02.2022 was issued clarifying that the exemption continues to be available to blended fuel adhering to tolerance under BIS specifications with ethanol content of 10 ± 1% (v/v) (i.e. 9% to 11%).

While the clarification vide Office Memorandum F. No. 354/03/2022-TRU dated 02.02.2022 (copy attached) issued by the TRU evidences the intention of the Central Government to continue the availability of exemption in respect of blended petrol with ethanol content of 9% or 11%, the wording of the relevant entry has not been suitably amended to align the exemption entry with this intention, which could lead to unnecessary litigation in the future. The relevant exemption entry contains two distinct conditions. Even if the ethanol blended petrol conforms to Indian Standard 2796, it only fulfills condition (ii) of the entry, however, it must still satisfy condition (i) thereof, which remains unchanged and provides that the blend consists of 90% motor spirit on which excise duty has been paid and 10% ethanol on which GST has been paid. In a situation where 89% or 91% motor spirit is blended with 11% or 9% ethanol, the claim of exemption may be jeopardized on the count of non-fulfillment of condition (i) of the entry

Suggestion/ Justification:
It is Suggested that the relevant entries, particularly condition (i) thereof, are suitably amended to harmonize the same with the Indian Standard 2796 and alleviate any confusion regarding availability of the exemption in respect of ethanol blended fuel and the amendment entry may read as follows.

(1)	(2)	(3)	(4)
"5	2710	10% ethanol blended petrol that is a blend, - (i) consisting, by volume, of 90 ± 1% Motor spirit, (commonly known as petrol), on which the appropriate duties of excise have been paid and of 10 ± 1% ethanol on which the appropriate central tax, State tax, Union territory tax or integrated tax, as the case maybe, have been paid and; (ii) conforming to the Bureau of Indian Standards specification 2796.	Nil

3. **Demand of Special Additional Excise Duty (SAED) on ATF supplied as fuel to foreign going aircraft treated as physical export by department**

   Background
   Since July 2022, government excluded supply of ATF as fuel to foreign going aircraft from the definition of exports and levied SAED on physical exports of ATF.

   At our refineries, department is issuing SCN asking us to pay SAED on supply of ATF as fuel to foreign going aircraft from July 2022 disregarding the fact that ATF supplies as fuel to foreign going aircraft is not covered under Exports.

   SAED is levied only on export and export does not include ATF supplies as fuel to foreign going aircraft.

   Furthermore, as per the convention of international Civil Aviation at Chicago and ministry of Civil Aviation's notification 3720 dated 18th Nov 2002, no duty as such can be levied on fuel supply in receptacle of the aircraft which is operating on international air services to and from India. Hence, department is wrong in interpreting notification in any way which leads them to levy duties on ATF supplied to foreign going aircraft.

   Suggestions
   Requesting CBIC to issue instruction to excise officers to not create avoidable litigations. The amount of ATF supplies as fuel to foreign aircraft is huge for Indian Refiners and even a nominal duty demand pet litre can run into hundreds of crores. When the matter travels to higher forum, we will be required to pay huge amount of pre deposit as well even when the demand is unjust.

4. **Demand of basic excise duty on supply of ATF as fuel to foreign going aircraft disregarding the exemption notification**

   Background:
   Basic excise duty on supply of ATF as fuel to foreign going aircraft is exempted vide notification 08/2024-dated 30th June 2024.

   From July 2022 rule 18/19 of central Excise rules, 2017 are not applicable on supply of ATF. It was under rule 19 of CER where the procedure for movement of petroleum products using CT-2 was prescribed.

   In the absence of any procedure post the amendment in rule, we are following erstwhile process of movement under bond i.e. CT-2.

   Now, at our refineries, department is issuing SCN asking us to pay BED on supply of ATF as fuel to foreign going aircraft from July 2022 saying that ATF cannot be moved under CT-2. This is disregarding the exemption notification 08/2022-CE dated 30th June 2022.
   Notification 08/2024 CE dated 30th June 20222 is clearly exempting BED on ATF supplied as fuel to foreign going aircraft. Hence department can not seek BED on such supplies.

Moreover, department has not prescribed any procedure for movement such ATF supplies as fuel to foreign going aircraft, that is the reason why we are supplying under CT-2. Assessee should not be punished for failure of department to prescribe requisite procedure for such movements

Suggestions:
Requesting CBIC to issue instruction to excise officers to not create frivolous litigations.

The amount of ATF supplies as fuel to foreign aircraft is huge for Indian Refiners and duty demand of 11% will run into hundreds of crores.

When the matter travels to higher forum, we will be required to pay huge amount of pre deposit as well even when the demand is unjust.

5. **Clarification with respect to period of excise exemption to Aviation Turbine Fuel (ATF) drawn by the selected airline operators or cargo operators for the RCS flights from RCS-UDAN airport/heliport/waterdrome.**

Background:
Sl.No.7 of Notification 11/2017-CE dated 30.06.2017 as amended by Notification 07/2019-CE dated 22.08.2019 allows Basic Excise Duty (BED) exemption in excess of 2% to Aviation Turbine Fuel (ATF) drawn by the selected airline operators or cargo operators for the RCS flights from RCS-UDAN airport or heliport or waterdrome. However, the exemption is valid up to the expiry of a period of three years from the date of commencement of operations of the Regional Connectivity Scheme (RCS) – Ude Deshka Aam Nagrik (UDAN) airport or heliport or waterdrome as notified by the Ministry of Civil Aviation or till the end of scheme period whichever is earlier.

In this regard, various notifications are issued by the Ministry of Civil Aviation to notify the date of commencement of RCS routes by RCS flights for the purpose of above referred excise exemption. These notifications issued by the Ministry of Civil Aviation refer to the excise exemption notification issued by the Ministry of Finance while laying down the dates of commencement of operations of RCS route, thus confirming that these dates are being notified for the purpose of the said exemption.

Hence, due to language used in the Excise exemption notification a confusion lies as to whether the 3-year period of exemption starts from the date of commencement of operations of RCS airport or date of commencement of operations of each RCS flight.

Moreover, Airport Authority of India being the nodal agency for RCS scheme has also clarified the Notification No:7/2019 dated 22.08.2019 vide approval letter no: F.No.AAI/Excise Duty/ATF/2019-RCS Cell dated 14.10.2019 that “period of three years for each RCS flight shall be calculated from the date of commencement of RCS flight from the airport.”

Suggestions:

A suitable clarification in this regard may please be issued by the Ministry of Finance on similar lines as issued by the Airport Authority of India. Alternatively, the wording in notification 11/2017 may be changed to:

"Provided that nothing contained in this notification shall apply to goods specified against Sl. No. 7 of the said table after the expiry of a period of three years from the date of commencement of operations of the each Regional Connectivity Scheme (RCS)- Ude Deshka Aam Nagrik (UDAN) flight as notified by the Ministry of Civil Aviation or till the end of scheme period whichever is earlier"

6. 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 though rate of duty column is kept blank.

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

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 of excise 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.

II) Customs Duty

Upstream

New Provision

1. **Restoration of pre-amended list 33 on goods imported for petroleum operations**

Background

While the GST was introduced in India, petroleum products were kept outside the ambit of the GST till the date it gets notified. However entire goods and services procured for undertaking petroleum operations are subject to GST and the GST paid on such goods/services becomes non-creditable thus raising the cost of operations of the upstream sector.

Since inception of GST, upstream sector was entitled to concessional rate of 5% GST on the goods procured domestically for petroleum operations and similar concessional rate existed for imports of goods for petroleum operations vide Notification 03/2017-CGST(Rate) dated 28.06.2017 and No. 50/2017-Customs dated 30.06.2017 under Serial No. 404, Condition 48 respectively.

It is pertinent to mention that the import of such goods were fully exempt under Pre-GST regime.

- Recently, the erstwhile List-33 containing list of goods required for petroleum operations has been pruned and the concerned HSN Codes have been prescribed against the revised description of goods vide Notification No. 02/2022-Customs dated 01.02.2022 and notification no. 30/2024-customs dated 23.07.2024.
- A number of items including oilfield chemicals and polymer (Partially Hydrolyzed Poly Acrylamide) which are removed from List 33 are not available in India and the lead time of domestic producers is much longer which will result in delays in petroleum operations causing delay in increase of domestic production of oil and gas.

Pruning of list for concessional rate of IGST on goods imported for petroleum operations in upstream Sector followed by increase in GST/IGST rate on domestic/imported goods to 12% (from 5%)

Suggestion

It is requested to kindly consider restoration of pre-amended List-33 on import of “oilfield chemicals” including polymer (Partially Hydrolyzed Poly Acrylamide)with validity at least till inclusion of the Crude Oil and Natural Gas for levy of GST.

Amendments

1. **Insertion of HSN in List-33 of Customs Notification 50/22017 and Pruning of List-33**

Background

E&P companies historically enjoyed customs duty exemption and concessional rate of IGST on imports of capital goods and supplies under Government policies (NELP, HELP etc.) as well as Contracts signed with GoI (Customs Notification 50/2017 - List 33).
Finance Act 2022 amended the customs notification as follows:

- Customs HSN Codes was incorporated in the list along with the description of goods.
- The list of eligible items was significantly pruned.

A) Issue due to insertion of HSN Code against Description of Items:

— Prior to the amendment, there was no HSN Code specified for availing customs duty benefit on import of specified goods;
— The items specified under revised list despite having wider coverage gets restricted due to corresponding HSN.

B) Pruning of List of Items eligible for Customs Duty Exemption:

— The revised list has been prepared considering availability of domestic goods in view of Make in India Policy of the Govt. However, in certain cases such goods are domestically not manufactured or there is capacity constraint of domestic suppliers to fulfil the requirement of E&P Industry. Also, several items not available in India are kept out of the New List.

— As a result, merit rate of duty is being charged (BCD, SWS & IGST) at the time of customs clearance on import of goods which have now been removed or there is inconsistency in the description and HSN code.

It is pertinent to mention that the said concessional rate of IGST on such imports has been increased from 5% to 12% vide Customs N/No.40/2022 dt.13.07.2022.

Suggestion

The reference of HSN Code under Revised List should be removed or should be maintained at Chapter Level i.e. upto 2 digit instead of 4-8 digit level. This suggestion is in line with all other lists (List 1 to 32 & 34) pertaining to other Industries in the same customs notification. Items which are not manufactured in India or where there are capacity constraints in the country, should be re-added to the revised list.

2. Removal of Sunset clause from Serial No. 404 of the Customs Notification No. 50/2017-Cus dated 30 June 2017 (as amended)

Background

E&P Sector is eligible for concessional rate of Customs Duty (BCD-Nil & IGST@12%) in terms of Sl. No. 404 (Condition-48) to the Customs Notification No. 50/2017-Cus (as amended) on import of specified goods required in relation with petroleum operations.

However, in the Union Budget 2024-25, vide Customs Notification no. 30/2024 dt.23.07.2024, the Customs Notification No.50/2017 was amended to impose sunset of this concession, post 31st March 2026.

Suggestion

It is, therefore, requested to remove the Sunset Clause from Sl.No.404 of Customs Notification 50/2017.

Justification

This concession was granted considering that the Petroleum Operations require complex equipment and materials which often, have nil or limited availability domestically. In absence of the concession, merit rate of duty (BCD, SWS & IGST) will be leviable at the time of customs clearance on import of such goods. This will adversely impact the project economics and thereby investments in the domestic E&P sector.

Clarifications

1. **Disposal of unused and surplus items to be covered along with scrap sale under notification 02/2022-customs**

Background

As per pre-amended condition 48 (earlier condition 40A) read with TRU clarification D.O.F. no. 334/7/2017-TRU dated 01.02.2017, as per which the condition of disposal of goods on payment on payment of customs duty was applicable for unused, surplus, condemned and obsolete items as well.

However, the amended condition 48 vide notification no. 02/2022-customs read with associated explanation, the industry is of view that effective from 02.02.2022, such disposal condition is applicable only in respect of goods which are sought to be disposed off after their use in unserviceable / scrap form. Thus, the surplus generated from imports cannot be disposed of unless it is put to use in petroleum operations.

Suggestion

E&P activities are highly probabilistic where the exact quantity of items required for various petroleum operations such as exploration, mining or drilling cannot be predicted in advance, resulting in generation of surplus items due to various reasons such as variation in initial estimation, advancement of technology etc.

Since the amended condition allows disposal of goods as scrap, it is requested to clarify/ amend even surplus/ obsolete items can be cleared upon payment of 7.5% duty on transaction value, in manner as prescribed under condition 48(d) to notification 02/2022-customs.

2. **Creation of Facility of Online Payment of Customs Duty on Disposal of Scrap which were Imported earlier at Concessional Rate of Customs Duty**

Background

E&P Sector is eligible for concessional rate of Customs Duty (BCD-Nil & IGST@12%) in terms of Sl. No. 404 (Condition-48) to the Customs Notification No. 50/2017-Cus (as amended) on import of specified goods required in relation with petroleum operations.

Further, as per condition no. 48(d) of such notification, the imported goods which are sought to be disposed of, inter-alia, in non-serviceable form are permitted to be disposed of on payment of Basic Custom Duty (BCD) @ 7.5% as per the procedure prescribed therein. Accordingly, whenever there is a disposal of scrap by any oil company, pursuant to such condition, the BCD is required to be deposited.

In this regard, over a period of time it is experienced that though the ICEGATE (Customs Portal) has enabled facility of online payment (e-payment) for almost all Duties of Customs, there is no provision for making online payment directly at Customs Portal in case where duty becomes payable as a result of the said disposal of imported goods. As a result, the difficulties are being faced by Oil & Gas Industry whereby an official is required to visit the office of concerned Customs Commissionerate in person with TR-6/ GAR-7 Challans along with Demand Draft to deposit such duty in respect of each disposal.

Suggestion

Looking into the Ease of Doing Business initiative of Govt., it is requested to kindly consider the creation of facility of online payment of duty in the aforesaid cases of disposal of the goods as scrap which were imported earlier at concessional rate of duty in relation to Petroleum Operations.

Justification

The existing process of deposit of duty manually in such cases, is a time taking process and also not in line with the Digital India and Ease of Doing Business initiatives of the Govt.

3. Clarification required on unused obsolete goods on which import exemption was claimed under Serial No. 404 of the Customs Notification No. 50/2017-Cus dated 30 June 2017

Background

The import exemption is available to the Oil & Gas companies on actual usage condition. The revised condition 48 to the said exemption entry prescribes that the goods so imported which are sought to be disposed after their use in unserviceable form or as scrap, customs duty shall be applicable on the transaction value of such goods. However, no clarification is provided on the treatment of imported goods under the exemption entry which remain unused and become obsolete.

Given the nature of business activities and the operations of Oil & Gas companies, certain goods are imported to meet contingencies and scheduling challenges.

Some of these goods do not get utilized during their lifecycle as they become obsolete, or the operations are closed down before the goods are put to use.

Since these involve high value investments, discharging Customs duty on original import value after the operations close down or after the goods become obsolete will have huge financial implications for the companies.

Accordingly, a clarification on treatment of such goods is necessary under the Customs Law.

Suggestion

Clarification should be provided that Customs duty on unused goods should also be applied on the Transaction Value if they are held for more than a specified number of years.

Alternatively, Customs Duty can be levied on disposal based on notional depreciated value. This is similar to the Cenvat Credit Reversal provisions on capital goods as was applicable under the erstwhile Cenvat Credit Rules which is also continued under the GST Law.

Downstream

Amendments

1. **Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020)**

   Background
   CAROTAR rules is issued under Notification No. 81/2020- Customs (N.T.) dt 21.08.2020. Rule 3 of CAROTAR, 2020 mandates certain origin related details to be entered in the Bill of Entry, as available in the Certificate of Origin. Further as per Rule 8(3) of CAROTAR, 2020, - "In the event of a conflict between a provision of these rules and a provision of the Rules of Origin, the provision of the Rules of Origin shall prevail to the extent of the conflict.

   Suggestion
   The CAROTAR,2020 does not provide procedure to deal with the case in which Certificate of Origin (CoO) was not available at the time of filing Bill of Entry. This has resulted into denial of benefit of preferential exemption at adjudication stage. To honor the trade agreement, it is requested for issuance of suitable amendment in the CAROTAR Rules, 2020 for claiming exemption on the basis of CoO issued retrospectively.

2. **Custom duty exemption on LNG, propane, butane & LPG import against Certificate of Origin from UAE**

   Background
   With the intention of increasing trade with UAE under CEPA, the Govt. of India has issued Custom Notification no. 22/2022 dated 30.04.2022 making Nil customs duty on LNG, propane, butane and LPG for non-automotive purpose produced in UAE and imported into India. As per the Notification Certificate of Origin (CoO) to be issued by the proper authority in proper format who is authorized to sign and issue the CoO. The benefit of concessional duty can be availed on the basis of CoO issued by Ministry of Economy, UAE within the timelines (max 12 months) as provided under Rules of Origin.

   Considering the involvement of multiple traders in import transactions and in view of requirement of signing by Ministry of Economy at UAE, the issuance of CoO as per format prescribed in CEPA takes substantial time. Practically it is difficult to obtain Certificate of Origin at the time of Custom clearance of LNG cargos and to avoid delay in custom clearance and further operational issues, the oil companies are bound to pay custom duty and file refund claim subsequently which would take considerable time & efforts. It is defeating the intention of the Govt to facilitate and promote the import from UAE as per CEPA.

   Suggestion
   Various difficulties are being faced by the industry during the initial phase in obtaining CoO, hence, in order to honor the bilateral agreement, benefit to be allowed for imports till 31.03.2024 where CoO has been issued even after 12 months.

3. **Extension of RoDTEP scheme to entities registered under MOOWR**

   Background
   Govt. vide notification no. 19/2015-20-Customs dated 17.08.2021 has announced scheme guidelines for Remission of Duties and taxes on exported products (RoDTEP).

Under the Scheme, a rebate would be granted to eligible exporters at a notified rate as a percentage of FOB value with a value cap per unit of the exported product, wherever required, on export of items which are categorized under the notified 8-digit HSN Code.

RoDTEP benefit is not available, if Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act, 1962 (52 of 1962) i.e., MOOWR

Suggestion

Some of the Petrochemical products manufactured in refineries are covered in the RoDTEP Scheme. The refineries are registered under section 65 of the Customs Act. Hence, no benefit of RoDTEP scheme is available on export of prescribed products from those refineries. RoDTEP Scheme was introduced with the intention to boost exports. Hence, it is suggested that benefit of RoDTEP scheme should be extended to entities registered under MOOWR also for boosting exports from India.

4. Customs duty concession for laying of product and gas pipeline

Background:

Oil companies are building large number of cross-country pipelines for supplying the products to consumer at a reduced cost. In order to build such facility, Government is requested to waive the applicable customs duty on all materials required for building cross-country pipeline meant for Product and Gas movement.

Suggestion

It is suggested that the customs duty on import of materials viz. pipes; valves; flanges; data communication system for laying of petroleum products and gas pipelines falling under the Customs Tariff headings 72, 73, 74, 75, 76, 78, 79 should be exempted from payment of customs duty. The pipeline transportation is environment friendly with NIL pollution and is very cost effective. It shall also result in reduction of consumption of fuel in road transportation (replaced by pipeline transportation) which in turn helps in conserving precious foreign exchange towards import of crude used in producing the fuel.

5. Anti-dumping duty on petrochemicals

Background:

Huge quantity Bitumen is getting imported in the country from sources in the middle east. Bitumen is also imported in Bags and Drums and subsequently converted into bulk post landing in India. This practice results into bitumen imported being non confirming to quality and specifications. The rampant dumping of bitumen into the country is causing margin erosion for Bitumen manufacturers like BPCL.

Further, Iso Nonyl Alcohol (INA) which is a substitute to 2 Ethyl hexanol (2EH), is expensive than 2EH in international market. In India, antidumping Duty exist on 2EH from major countries and manufacturers, however, absence of Anti-dumping duty on INA makes it a cheaper alternate in Indian Market and hence it is being dumped by Manufacturers from abroad. This has impacted 2EH manufacturers like BPCL.

Suggestion
It is suggested to impose Anti-Dumping Duty on Bitumen and INA imports through Ministry of Finance, DGTR in order to incentivise Indian producers.

6. Customs duty on Base Oil

Background:
The import of base oil (specifically 65N and 70N) has increased significantly in recent times leading to higher overall inventories in India.

The imported base oil is hampering make in India initiative and hindering Indian producers of base oil. The current custom duty (including SWS) is 5.50% of assessable value.

Suggestions
An increase in the customs duty rate can help boost local production of base oil, leading to fair competition and supporting the Make in India initiative; or Antidumping Duty may be imposed on Import of base oil.

7. Exemption from the purview of Section 65A of Customs Act.

Background
Section 65A has been inserted in the Customs Act, vide Finance Act 2023, which provides for payment of IGST and Compensation cess while depositing goods in a licensed warehouse for carrying out manufacturing and other operations under Section 65. The effective date of coming in force of provisions of Section 65A has not yet been notified.

If the amended provision (Section 65A) is given effect as such, taxpayers would be liable to discharge IGST and GST Compensation cess on imported goods and the benefit of duty deferment would be substantially curtailed. The same may result in substantial cash flow issue and may also affect the project viability to companies like IOCL who have committed to heavy capex in Capacity expansions. The taxpayers may be compelled to revalidate the feasibility and merit in the continuation under the MOOWR scheme.

However, the Central Government has power to exempt certain categories of goods, importers or exporters or industry from the purview of Section 65A of the Customs Act.

Suggestion
It is requested to exempt petroleum refining & petrochemicals industry from the purview of Section 65A of the Customs Act.

8. Rationalization of Custom Duty on Petrochemicals Product

Background
At Present, Custom Duty rate of majority of Petrochemical Products are 7.5% except for products PTA (HSN 29173600) and Mono Ethylene Glycol (MEG) (HSN 29053100) where the rate is 5% and for Butadiene (HSN 29012400) where rate is 2.5%. As the above Products are

freely tradable products which resulting into easily import of these products into the Indian Market in large volume.

Suggestion

To rationalize the custom duty rates on petrochemical products, it is suggested that custom duty rate on PTA and MEG may be increased to 7.5%. This will bring all petrochemical products into single Custom Duty Rate.

Also, it will minimize the availability of imported product in Indian market and further it will be boost to domestic producer to sell their PC products into the domestic market.

9. Continuation of IGST deferment under MOOWR scheme to petroleum refineries

Background

Currently, Section 65 of the Customs Act allows Manufacture and Other Operations Warehousing Regulations 2019 (called as MOOWR Scheme) in bonded warehouse. This provides deferment of Basic Customs Duty, Integrated Goods and Services tax (IGST) and CESS. However, Finance Act 2023 has inserted a new Section 65A (notification awaited), whereby importer must first pay IGST and Compensation Cess before taking material into bonded warehouse. Petroleum refinery falls under ambit of dual tax structure Excise Duty, VAT/CST and GST. Therefore, partial loss of input tax credit demotivates Indian petroleum refineries to invest in the current scenario of geo-political volatility. Discontinuation of deferment of IGST and Cess would defeat the objective of petroleum refineries who has opted for MOOWR scheme and invested huge amount in the industry to increase production capacity.

Suggestion

It is requested to exclude petroleum refinery from the new Section 65A. This will enable the petroleum refineries to get temporary relief of input tax credit losses on IGST due to dual tax system. This will encourage domestic production and boost "Make in India" mission.

10. Notification no 12/23-Custom dated 1st Feb. 2023

Background

R&D division of Indian Oil Corporation Ltd. is availing the benefit of concessional rate of custom duty on import as provided vide notification no 51/96 custom dated 23rd July 1996 as amended time to time.

Now by issuing the notification no 12/23-custom dated 01.02.2023, original notification (51/96 dated 23rd July 1996) is being withdrawn w.e.f 1st April 2024.

Suggestion

It is suggested to continue the notification no 51/96 dated 23rd July 1996 as amended time to time for the benefit of the industry in whole. To boost up the technological updation further, concessional rate of tax is the incentive which will adversely affect the industry conducting technological reforms by way of research and development activities.

Natural Gas

Amendment

1. **Exemption from Custom Duty on import of 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%. Import of Gas in the form of LNG is imperative to meet the target as set by Govt. of India of increasing the share of Natural Gas in the country's energy basket to 15% by 2030 considering the shortage of domestic gas exploration in the country.

   Suggestion

   It is suggested that import of LNG may be exempted from customs duty (present rate @ 2.5%) on the lines of crude oil to provide relief to gas-based industries and domestic consumers. This will also promote usage of this environmentally friendly fuel in industrial and domestic sectors. Like Power Sector, this will especially boost the City Gas Distribution, where the Government aims to promote the clean fuel in a massive way.

General

Amendments

1. **Levy of interest in case of delayed payment of custom duty**

   Background

   At present once the Bill of Entry assessed for payment of custom duty, importers are required to pay custom duty within same day failing which interest @ 15% p.a. is applicable.

   There are instances where assessment in the EDI system takes place even in the late hours result in delay in payment of custom duty to next day. Interest component on custom duty payment is increasing transaction cost in the hands of importer.

   Suggestion

   To address this issue, interest free 1 day i.e. once the Bill of Entry is assessed for payment of custom duty, importer shall be allowed to make payment within 1 day instead of same day.

2. **Filing of Bill of Entry as per Section 46 of Customs Act 1962**

   Background

   As per section 46 of Custom Act 1962, importers are required to file Bill of Entry 1 day prior to arrival of vessel (through sea route) and within same day (for Air route) shipments. Delay in filing Bill of Entry as per prescribed time limit as mentioned above resulting in payment of late presentation charges in the hands of importer. Due to current geopolitical situation and disturbance in trade / banking channel, there is a delay observed in handling of import documents and same are received late in the hands of importer and sometime even after arrival of vessel.

Suggestion
To address this issue, Government shall allow importer to file Bill of Entry within 48 hours i.e. 2 days upon arrival of the shipments whether through sea or air which will reduce the transaction cost of import.

Clarification

1. **Mechanism of Special Valuation Branch ('SVB') in Customs**

Background
Presently, the SVB mechanism is entirely a manual exercise and is not in sync with Transfer Pricing Regulations under Income Tax Act 1961. Both these regulations i.e. Transfer Pricing and Customs Valuation Rules, 2007 so far it relates to related party continue to examine the intent of the assessee in opposite directions which increase complexity.

Suggestion
SVB mechanism should be in sync with Transfer Pricing Regulations under Income Tax Act 1961. Indian Government has been taking various steps toward improving the 'Ease of Doing Business' in India. Simplifying SVB is one such initiative. SVB may be made as self-declaration followed by scrutiny selection in deserving cases only (case to be basis). There can be a declaration from a foreign supplier added to provide a confirmation that the price is not influenced by the relationship.

III) GST Tax

Upstream

New Provision

1. **Inclusion of Petroleum Products under GST**

Background
Goods and Services tax (GST) has replaced the erstwhile taxes of Excise Duty, Service Tax, VAT etc., and is made effective in India w.e.f. 01.07.2017. However, as per the existing law, GST on supply of five specified petroleum products viz. Crude oil, Natural Gas, High Speed Diesel (HSD), Petrol (MS) and Aviation Turbine Fuel (ATF) would be levied from a later date on the recommendation of GST Council. This has severe negative impact on the bottom-line of upstream oil companies as GST paid on input materials/services remains stranded and increases cost of production besides dual compliances.

Suggestion
It is requested to include Crude Oil and Natural Gas under levy of GST to allow seamless credit across the value chain. Further, in order to provide immediate relief to E&P Sector, at least inclusion of Natural Gas should be considered as a first step towards it.

Justification
Government of India's mission of One Nation One Tax is not complete without bringing all the products under GST. As Crude Oil and Natural Gas are outside GST, the chain of Input Tax Credit breaks due to which upstream companies are losing substantial amount of input tax credit on input material and services.

This would enable some relief to Petroleum companies through some reduction of under recovery on account of non-inclusion of such petroleum products under GST.
Alternatively, supply of these products may be considered as "Zero Rated Supplies" under section 16 of IGST Act so as to allow full ITC.

Amendments

1. IGST rate change on import of goods required for Oil & Gas operations from 12% to 5% or Nil

Background

Prior to introduction of GST laws, no customs duty/CVD was payable on imports for Oil & Gas operations (O&G Sector).

However, after introduction of GST laws, IGST was levied at the time of import on value of goods at 5% which has been increased to 12% subsequently.

High value goods are imported for O&G sector which attract IGST at 12% on value of import. Whereas the output "mining services" also attracts GST at 12% on the rental/ service charges for which the imported goods are used. This leads to huge accumulation of GST balances

Suggestion

Clarification be issued for allowing exemption from IGST on imports for O&G operations - as was the case under pre-GST regime where entire customs duty/ CVD was exempt.

Alternatively, restore the IGST rate to 5% as was the case during 1 July 2017 till 17 July 2022.

This will help the Oil & Gas Service Providers (OGSP) in better working capital management thus resulting in cost efficiency and bringing down the overall cost of operations. Thus eventually benefitting the NOCs and private operators in O&G sector.

2. Continuance of concessional rate of GST for goods used in upstream petroleum operations under Notification no. 3/2017-Central Tax (Rate)

Background

Concessional rate of GST @ 5% was available to the goods specified in list mentioned in Notification no. 3/2017-Central Tax Rate dated 28 June 2017 required in connection with Petroleum operations undertaken under specified contracts or New Exploration Licensing Policy or Marginal Field Policy (‘MFP’) or Coal bed methane policy or Petroleum operations or coal bed methane operations undertaken under specified contracts under the Hydrocarbon Exploration Licensing Policy (HELP) or Open Acreage Licensing Policy (OALP). The Concessional rate of 5% has been reinstated to a higher 12% withdrawn vide Notification No. 08/2022-Central Tax Rate dated 13 July 2022.

Suggestion

GST exemptions originally provided to Oil & Gas companies for all the goods specified in list mentioned in Notification no. 3/2017-Central Tax Rate dated 28 June 2017 required in

connection with Petroleum operations undertaken under specified contracts or New Exploration Licensing Policy or Marginal Field Policy ('MFP') or Coal bed methane policy or Petroleum operations or coal bed methane operations undertaken under specified contracts under the Hydrocarbon Exploration Licensing Policy (HELP) or Open Acreage Licensing Policy (OALP) should be reinstated at 5%.

3. **Need of amendment in Condition to GST-Rate Notification No. 03/2017 similar to Customs Notification no.02/2022**

Background
Under GST-Rate Notification No. 03/2017 on procurement of specified goods domestically whereby 5% GST is applicable, subject to compliance of conditions which is akin to the pre-amended condition no. 48 of Customs Notification No. 50/2017-Cus. Accordingly, as per extant GST-Rate Notification on procurement of specified goods domestically which are required in connection with petroleum operations, a certificate from DGH is required.

Justification
As relaxation from certificate of DGH has been provided under Customs Notification no.02/2022 dt.01.02.2022, there is a need of similar relaxation under the said GST-Rate notification 03/2017 as well with respect to domestically procured specified goods to be used for petroleum operation. Such an amendment would result in uniformity of procedure for procuring goods at concessional rate under Custom Law and GST Law and would facilitate ease of doing business for E&P sector.

Suggestions
As relaxation from certificate of DGH has been provided under Customs Notification no.02/2022 dt.01.02.2022, there is a need of similar relaxation under the said GST-Rate notification 03/2017 as well with respect to domestically procured specified goods to be used for petroleum operation.

4. **Abolish/Review rate of Oil Industry Development (OID) cess on oil production in the Pre-NELP Exploration Blocks/Nomination regime**

Existing Law
OID Cess is levied on crude oil in terms of "The Oil Industries (Development) Act, 1974. Till February 2016, OID Cess was levied at specific rate (Rs. / MT) and revised from time to time keeping in view prevailing 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 March 2016.

Background
High Cess disincentives production and incremental investments. Due to high Cess, Small & marginal oil fields could not be developed primarily due to economic reasons. It further increases tax burden, which is high vis-à-vis other importing countries

It is also against "Make in India" vision of GOI as imports are tax exempt. Thus, Domestic crude oil has become expensive compared to imported crude oil owing to high rate of cess. Level-Playing- Field is required to Domestic crude oil Producers. Given India's geological landscape hence it is important to rationalize cess rates.

Recommendation
Government may abolish the Cess on crude oil and to make it at par with NELP, DSF and OALP regimes. This will also make the Domestic and imported crude oil prices at same level resulting in generating healthy competition among for the buyers. OID Cess is to be adjusted in such a way that imported and domestic crude oil prices are at the same level after paying duties/ levies for the buyers in the Aatmanirbhar Bharat regime.

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

Clarifications

1. Non levy of GST on goods re-imported after being sent to FTWZ for warehousing

Background
IGST is payable on the value of goods at the time of import into India.

However, there are practical scenarios in O&G sector where goods are stored in FTWZ when not in use/ non-availability of active contract. Upon subsequent clearance to DTA, IGST is again payable on value of goods resulting in multiple IGST payments on import of same goods.

Specific Customs notification no 45/2017 is available to cover the above scenario however the benefit of the same is not extended to O&G Sector.

This results in GST accumulation and also adverse working capital blockage

Suggestion
Clarification to be issued stating that the reimport of goods from the FTWZ should be allowed without payment of IGST which will significantly help in mitigating the GST credit accumulation arising currently on same goods being imported multiple times

2. Input Credit on Imported and domestic leasing/renting/hiring of Vessels/ Rigs

Background
The upstream service providers (i.e., service contractors of E&P companies) provide services for petroleum operations through imported vessels and rigs for a temporary contractual period. At the time of import of such vessels and rigs required for petroleum operations, the importer

(buying such vessels & rigs) has to pay GST @ 5% on full value of vessels/rigs. Further, in case of import on lease/rental basis, GST@5% is payable on such periodical lease/rental charges. Subsequently, on domestic provision of services through such vessels and rigs, upstream service providers charge GST on their services as per GST Law.

Earlier, such upstream service providers used to take input credit of GST paid while importing the vessels/ rigs towards discharging their output i.e. drilling or mining services to E&P companies. However, by subsequent amendment in GST legislation, the GST paid on such imports has been put in negative list u/s 17(5)(aa) of CGST Act. Consequently, there is serious issue for the entire industry as the service providers will have to pay the GST twice resulting into cascading effect despite being part of GST chain.

Suggestion:
A suitable clarification may be issued clarifying the position for availability of ITC.

Justification
Since the navigation is secondary in case of Rig and Vessels being used for providing output services, there is a merit in the instant case to clarify in favor of the availability of the ITC in order to remove the avoidable disputes with Department. Further, unless the input credit is allowed, the service providers would load GST on such import of rigs/vessels on their service charges which will indirectly increase the cost of operation of E&P companies.

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

Background
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 executes the PSC for exploration & production of hydrocarbons on behalf of consortium and, other members merely make 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 does not provide any service to its consortium members or vice-versa. Operator, as designated under PSC, incurs 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 of Service Tax/GST.

Suggestion
A clarification may 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/GST.

Justification
Presently, 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 should not be treated as distinct persons under GST Law as well. This would also avoid the dispute of levy of Service Tax/GST on Operator's own share in such UJV which equates to service provided/supplied to self through operator's internal resources.

4. **Clarification under GST/Service Tax on operator's own share under UJV on supply of services through its own resources**

   Background

   In terms of Production Sharing Contract (PSC), one of the consortium members is designated as an operator who has to carry out E&P activity on behalf of other partners. The operator incurs expenditure from the contribution received by way of Cash Call from the partners. Though such cash calls are clearly in the nature of capital contributions made by Participating Interest (PI) Holders, however, under GST law, the department considers operators and UJV as distinct person and demands GST on provision of services for petroleum operations for the UJV through operator's internal resources.

   Justification

   CBIC vide Circular No.179/5/2014-ST dated 24.09.2014 at para-3 has clarified that cash calls are capital contributions made by the members of JV to the JV and are not subject to Service Tax. Industry is of the view that since UJV is not a distinct person, the Service Tax/GST is not payable to the extent of Operator's own share in such UJV as it equates to service provided/supplied to self.

   Suggestion

   A clarification may be issued in this regard that Service Tax/GST would not apply on Operator's own share in UJV on provision of services through operator's internal resources.

5. Need for Clarity on Scope of Support Service to Exploration, Mining or Drilling

   Background

   The Govt. has levied concessional rate of 12% GST instead of 18% on Support Services to exploration, mining or drilling of petroleum crude or natural gas or both.

   However, GST rate on Support service to mining other than above is 18%. There is overlapping of the word "mining" in above cases. Since scope of exploration, mining or drilling are not defined anywhere under GST Law, it is apprehended that the field formations may take restricted interpretation and may cover such Services under 'Support services to Mining Services' which attracts 18% GST.

   Suggestion

   It is requested that a suitable clarification may be please issued on applicability of 12% GST on the services availed by the E&P sector which are required for 'Petroleum Operations' as defined under the Petroleum Tax Guide issued by Ministry of Petroleum & Natural Gas, Govt. of India.

Downstream

Amendments

1. **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

- Reformate/ DHDT/ SRGO and other feeds for inter unit transfer for the manufacture of MS/HSD
- Regasification of LNG – from 18% to 5%
- Transportation of Natural Gas through Pipeline-from 12% to 5% (with ITC benefit)
- Procurement for setting up ethanol/CBG/Bio Diesel production facility.
- Works Contract Services-from 18% to 12%
- Restoration of Lower Rate of 5% on input services used in Research Activities (notification no 45/2017) Central Tax (Rate) applicable for inputs.

2. Lower rate of GST on inter- refinery transfer of intermediate products

Background

Intermediate products are shared between Refineries to ensure full capacity utilization of secondary units of the refineries, to take care of the situation arising due to shutdown/technical interruption and ensure production of BIS compliant petroleum products to maintain marketing demand. This also results into saving of precious foreign exchange on import of petroleum products. Reformate, DHDT Feed, SRGO, Isomerate, Alkylate, LCO, VGO, Naphtha & Furnace Oil are common streams shared among the Refineries.

These streams are taxed under GST at 18%, but due to their being used in manufacturing of non-GST goods the credit is not available to receiving refinery and thus makes the proposition of utilizing the streams in other refineries economically unviable in many cases and at times force refiner to export these intermediate products.

Suggestion

Supply of intermediate streams amongst refineries/OMCs for further manufacturing of non-GST goods may be kept at lower GST Rate of 0.1% to minimize the impact of loss of input tax credit to downstream sector and to facilitate the optimum utilization of secondary processing capacity of refineries.

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

Background

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

- 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.
- In the Excise law, there were various Government notifications in this regard. An extract from Manual of Departmental Instructions on Excisable Manufactured Products Petroleum Products (Pages 62-67).
- The current GST law does not provide any dispensation on account of loss of petroleum products which occurred either during transit or during storage.
- 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 under 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.

4. 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
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.

HFHSD which is used as bunker fuel should also be brought under GST regime to boost Bunker Fuel business. Currently, it is leviable to excise duty of Rs. 15.80 per litre, causing difference in pricing compared to neighboring countries.

5. **Appropriate relief against Garnishee attachment orders from GST monthly payments issued by Sub Courts**

Background
Sub Courts in Kerela have been issuing Garnishee notices on BPCL for attachment of taxes payable to Government of Kerela (GoK). As per Rule 46 of the Code of Civil Procedure 1908, courts can attach debts payable to principal debtor from the garnishee liable to pay such debts. Sub Courts issue such garnishee orders on account of non-payment of compensation by GoK to petitioners in relation to land acquisition and other matters.

During the erstwhile KGST/VAT regime also, this practice was followed and BPCL used to make deductions from sales tax dues to GOK and remit to the Sub Courts based on court orders. The Commercial Taxes Department, Kerala has not given credit for the garnishee payments made by us to various sub courts till 2014 based on the attachment orders. The total demand on account of garnishee deductions relating to the period from 2000-01 to 2013-14 is Rs.188 Crores. We have filed Writ Petition before the Hon'ble High Court of Kerala – WP (C) 21626 of 2013 on which final decision is yet to come.

On this Writ Petition, High Court had given an interim order on our Writ Appeal – WA No. 388/2014 dated 13.03.2014. By this Order, High Court had given direction to all Civil Courts forbidding all garnishee deductions from sales tax payments based on Sec. 49A of KGST Act and Sec 79A of VAT Act, introduced w.e.f. 01.04.2005, which prohibits any deduction from tax dues.

However, there is no prohibitory clause under GST in line with the VAT Act. Further, there is no mechanism under GST to adjust such garnishee deductions from the outward GST liability. Hence, with the existing framework, we are not in a position to make any adjustments with respect to garnishee deductions while filing the returns.

Suggestion
In view of the above, it is humbly requested that

a. Appropriate amendments in GST Act in line with Kerala VAT Act and Kerala General Sales Tax Act are brought about to prohibit such garnishee recovery from GST revenues; or

b. A gateway is provided for enabling the taxpayers to make garnishee payments through GST portal so that the same is reflected in Electronic Cash Ledger of the taxpayers which can be utilized for filing of Returns Or
c. Any other suitable mechanism is provided to adjust garnishee deductions against our outward liability in the GSTR 3B return.

6. **Transfer of Crude Oil (raw material) from Port States to Refineries in different states, should not be deemed as Exempt/Non-Taxable Supplies for the purpose of Rule 42/43 of CGST Rules.**

Background

IOCL is having 9 refineries units spread across the country. Crude oil for all these refineries is imported/sourced primarily at Ports in Gujarat and Odisha States. To ensure lowest crude & shipping/logistic costs, Crude Oil requirement of all the Refineries is pooled together and sourced at these 2 ports. Subsequently, such crude is transferred to respective refinery through captive shared crude oil pipelines at east & west coast, from Vadinar port in Gujarat, crude oil is transferred to Panipat, Gujarat & Mathura Refineries and from Paradip port in Odisha, to Paradip, Haldia, Barauni, Guwahati & BGR refineries.

However, because of provisions of Section 7 read with Schedule I, transfer of such crude oil from Vadinar & Paradip Ports to Refineries in different states (distinct persons in GST), such transactions, may be deemed as exempt supply, within the meaning of the term as per section 2(47) and thus, and negatively impact the GST Input Tax credit of transferring state applying Rule 42.

It is submitted that crude oil is raw material for refineries and such transfers from port state to refineries are undertaken because of operational & logistic constraints. This transfer should not be deemed as exempt/non-taxable supply for the purpose of Rule 42/43 of CGST Rules.

Suggestion

Necessary amendments may be made in CGST Act/Rules so that such transfer of crude oil, is not deemed at Exempt/non-taxable supplies for the purpose of Rule 42/43 of CGST Rules.

7. **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 request for levy of nominal GST is not practical, the ITC of GST for 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.

8. **Rationalization of GST rate on goods and services for construction of cross-country petroleum and gas pipeline**

Background
Inward supplies of 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) as per section 17(5) of CGST Act and while these supplies attract GST up to 28% (viz. 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
It is requested that GST rate on goods and services used for construction of cross-country petroleum and natural gas pipelines should be rationalized and be exempted or considered at lower rate of 5%.

9. **GST Exemption required for Heavy Feedstock falling under Customs Tariff sub heading 2710 19 (such as Fuel Oil, Straight Run Fuel Oil, Low Sulphur Wax Residue, Vacuum Residue, Slurry and Vacuum Gasoil for processing in Refinery)**

Background
In the previous budget Central Government has reduced Basic Customs Duty (BCD) from 5% to 2.5% on the heavy feedstock falling under Customs Tariff sub heading 2710 19 viz. Fuel Oil, Straight Run Fuel Oil, Low Sulphur Wax Residue, Vacuum Residue, Slurry and Vacuum Gasoil. 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 Indi a to move for heavy feedstock as alternate to Crude Oil. Therefore, considering alternate option to Crude Oil and economic feasibility of these heavy feedstock 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 CVD of Rs. 1 per MT.

Suggestion
To remove disparity, with reference to the feedstock procured for "processing in the refinery", it is recommended for import of heavy feedstock (HS Classification 2710 19) to further reduce Basic Customs Duty to Nil.

10. **Supply of LPG by refiners/fractionators to OMC during 01.07.2017 to 24.01.2018 for ultimate supply to Domestic Household and NDEC customers**

Background:
This is with reference to the Circular No. 80/54/2018-GST dated 31.12.2018 clarifying applicability of GST rate of 5% on supply of Liquefied Petroleum Gas (LPG) by refiners/fractionators (like GAIL / ONGC) to Oil Marketing Companies (OMC) for ultimate supply to household domestic consumers in terms of Ministry of Petroleum and Natural Gas (MoP&NG) letter No. P 20023/2/2011-PP dated 23:07.2013.

In this regard, we would like to submit as under :-

- OMCs have to procure the quantity of Domestic LPG, not only from own refineries but also from standalone refineries including private refineries, fractionators, from other OMCs as well as through direct imports.

- The entire chain for supply of LPG for domestic use starts from the procurement of bulk LPG through imports or from the refineries/fractionators/OMCs to the bottling plant and thereafter sale of LPG for domestic use in cylinders to the consumers.

- Applicability of GST rate of 5% on supply of Liquefied Petroleum Gas (LPG) to household domestic consumers or to Non-domestic Exempted Category (NDEC) customers is covered under entry at S.No. 165 and 165A respectively of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017. However, it is worth mentioning that S.No. 165A was inserted w.e.f. 25.1.2018 and earlier supply of LPG by OMC to both household domestic consumers or to NDEC customers was covered under entry at S.No. 165 during 1.07.2017 to 24.01.2018 only.

- There was an ambiguity on applicability of GST rate on supply by refiners /fractionators to OMCs for ultimate supply to household domestic consumers or to NDEC customers. Therefore, Oil industry has requested for issuance of clarification that such supply should also attract 5% GST.

- Though Govt. has issued above mentioned circular dated 31.12.2018 clarifying that supply of LPG by refiners /fractionators to OMCs for ultimate supply to household domestic consumers will attract 5% GST w.e.f. 25.01.2018, however, an ambiguity has arisen regarding applicability of GST rate on such transactions taken place during 01.07.2017 to 24.01.2018.

- Similarly, supply by refiners/fractionators to OMCs for ultimate supply to NDEC customer under S.No. 165 has not been covered under this circular.

Suggestion

Therefore, in order to resolve above said ambiguity, the suggestive amendments further required in the subject circular are summarized below for your kind consideration:

S.No.	Issue	Status	Amendments sought
1.	Supply by refiners/fractionators to OMC during 01.07.2017 to 24.01.2018 to Domestic Household and NDEC customers	W.e.f. 1.7.2017 to 24.01.2018, supply of LPG by OMCs (IOC,BPC,HPC) to NDEC and Domestic Household Consumers were attracting GST at the rate of 5% in terms of entry in S.No. 165 of Notification No. 01/2017 – Central Tax (Rate) dated 28.06.2017.	Circular No. 80/54/2018- GST doesn't include supply of LPG to OMCs under S.No. 165 for ultimate supply to both NDEC and domestic consumers upto 24.01.2018. Hence, S.No. 165 to be included in the circular w.e.f. 01.07.2017 itself.
2.	Supply by refiners /fractionatorss to OMC w.e.f. 25.1.2018 for supply to NDEC	Consequent to insertion of S.No.165A, Notification No. 1/2017- Central Tax (Rate), the S.No.165 was amended to omit the	S.No. 165 is still applicable for supply of LPG to NDEC consumers, as amended by Notification No. 06/2018 –

	customers	supply to household consumers. Thus, w.e.f. 25.01.2018, S.No. 165 is applicable for supply to only NDEC consumers. S.No. 165A is applicable w.e.f. 25.01.2018 for Supply to household consumers.	Central Tax (Rate) dated 25.01.2018, thus Circular No. 80/54/2018-GST should include S.No. 165.

In view of the above ambiguity, it needs to be appreciated that issuing notice/ demand by field force to supplier refiners /fractionators for differential tax cannot be ruled out and such demand would finally be passed on the OMCs even though the LPG purchased by OMC was supplied for household consumers only.

Considering above, it is requested that the aforesaid **Circular No. 80/54/2018-GST** dated **31.12.2018** may be amended suitably as under:

'It is being 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 to NDEC and Domestic Household consumers will attract a GST rate of 5%, under S.No. 165 and S.No. 165A retrospectively w.e.f. 01.07.2017'.

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

Background

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

- Petroleum products manufactured in oil refineries are stock transferred out of the State to other States in order to cater the demand in those States and to maintain 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, 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 manufacturing State alone and suitable amendment to be made in clause 2 of Explanation to 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 are manufactured"

or,

in case of traded excluded petroleum goods, value will be considered @ 10%.

12. Exemption of GST on Ethanol/Bio Diesel used in blending with MS/HSD

Background

Ethanol is blended into Motor Spirit (MS), to improve automobile emissions, reduce Greenhouse Gases and reduce dependency on fossil fuels. Ethanol is covered under GST regime and is subjected to CGST/SGST or IGST as the case may be and Ethanol blended Petrol (EBP) is covered under Central Excise & State VAT. There is an exemption under Central Excise for not treating the blending as manufacture, thus no additional excise amount needs to be paid on blending of EBP. Since Petrol and Diesel being exempted supplies under GST, credit with respect to ethanol and bio diesel is not available when blended with petrol and diesel respectively. Thus, the GST paid on additives Ethanol/Bio diesel is a cost to companies.

Suggestion

Ethanol/Bio Diesel meant for blending with petrol/diesel should be levied to minimum rate of GST as to incentivize OMCs and not create unnecessary pressure on prices of petrol and diesel. Appropriate amendment be brought out in excise notification so that blending of non GST paid ethanol also does not attract Excise duty.

13. GST on Ethanol manufactured from Captive Plants for blending with MS in the same state

Background:

Many OMCs have set up their own 2G ethanol manufacturing plant. Currently, stock transfers of ethanol within state is not leviable to GST, however exemption under Excise is available to EBMS if GST paid ethanol is blended in MS.

Suggestions

Suitable amendment in exemption notification 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.

Clarifications

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

   Background

   As per the section 16 of IGST act, 2017 Zero Rated supply means export of goods or services or both or supplies to SEZ developer or SEZ unit. Further, section 16 of CGST act, 2017 states that a taxable person may avail ITC of inputs used in making taxable supplies including zero rated supplies. However, since ATF supplied to foreign going aircraft is not explicitly covered as zero rated supply in GST, OMCs are not able to avail the above benefit on supply of ATF to foreign going aircraft.

   It may be noted that supply of ATF to foreign going aircraft is not leviable to any duty under Central Excise and VAT.

   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.

   Suggestion:

   It is requested that supply of ATF as fuel to foreign going aircraft may please be treated as 'Zero-rated' supply paving way for availing ITC in terms of Section 16/17 of the GST law.

2. **Value of Taxable Supplies not to include grant received from Government.**

   Background

   As per section 2(31) of CGST Act 2017- "consideration" in relation to the supply of goods or services or both excludes subsidy given by the Central Government or a State Government.

   Further, sec 15 also exclude subsidies provided by the Central & State government for the value of Taxable supply.

   The term subsidy has not been defined under the act. In common parlance in relation to sale price of goods, it is understood that subsidy means the amount which a supplier is being compensated for the difference between original/open market sale value viz-a-viz price at which product was actually sold to end consumer.

   At times, this compensation is also termed as grant by concerned ministries. However, tax authorities may dispute the interchangeable use of terms grant and subsidy.

   Suggestion

   It is suggested a suitable clarification specifying at par treatment of "Grants" with the term "Subsidy" may please be issued for exclusion from levy of GST.

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

Background

Section 7 read with Schedule I provides applicability of GST for transactions amongst distinct persons of the same entity. In this context, issue arises whether functions performed by head office of a business enterprise, viz. accounting, advisory, treasury, legal etc., can said to be services provided to its unit situated in other political state or vice versa.
The issue attained significance as AR ruling in the case of M/s Columbia Hospital held that head office is providing services to units and employee cost is required to be included in the value of services.

Circular no. 199/11/2023 dated 17.07.2023 is issued by CBIC clarifying the valuation of internally generated services. As per the circular, employee cost need not be added to internally generated services provided by Head Office to branches. However, what constitute 'internally generated services' has not been clarified in the circular.

Since, employees are for the company as a whole and perform activities for whole enterprise, the services in the nature as mentioned above, are those provided by said employee to head office as well as to branches, which are constituent part of the enterprise. Accordingly, these services are covered under clause 1 to schedule III of CGST Act and are not liable to GST.
Though the circular has been issued to address the valuation issues in this regard and considering the principle enunciated in the circular, there won't be any financial impact on persons who are eligible for availing full ITC. However, registered persons, like those in Oil & Gas Sector, are very much impacted with the judgement in M/s Columbia Hospital matter as also with the circular.

Suggestion

Necessary notification/ circular 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.

4. Taxability of supply of Ethanol (E-IOO)

Background:

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. Since, States are having their own definition of MS/Petrol under respective State VAT/Sales Tax laws and it appears that bioethanol (E-IOO), 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.

Suggestions

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

5. Compressed Natural Gas blended with Biogas/Compressed Biogas

Background:

Exemption Notification for Compressed Natural Gas blended with Biogas/Compressed Biogas (CBG) has created an ambiguity in the industry. As per the notification, blending of Biogas or CBG with CNG is treated as manufacture under Excise.

As per the current understanding of the exemption notification, the quantum of GST Paid on Biogas/CBG used in the blending process is allowable against the quantum of excise duty leviable on blended CNG.

Suggestions

The interpretation of the notification as stated above is not in line with what has been provided in case of Ethanol when blended with MS. A clarification in this regard is sought from the government. A detailed representation on this issue has also been provided by the industry.

Natural Gas

Amendment

1. 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 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.

Clarification

1. **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 can-not be applicable to LPG supplied by fractionators like GAIL/ONGC to OMCs during the period from 01.07.2017 to 24.01.2018.
   f. However, the GST authorities have viewed that concessional GST rate @ 5% is not applicable on domestic LPG supplied by fractionators like GAIL/ONGC to OMCs during the period from 01.07.2017 to 24.01.2018 even when such supply was meant for ultimate supply to domestic household consumers and accordingly notices have been issued for the same in Gujarat 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.

General

New Provisions

1. **Exemption from GST on supply of research and development services**

   Background

   GST council in its 54th meeting held dated 9th September 2024 recommended to exempt supply of research and development services by a Government entity; or a research association, University, College or other institution, notified under clause (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act,1961 using Government or private grants.

   The R&D Centre of the company is instrumental in supporting the "Atmanirbhar Bharat" initiatives through the development of cost effective and eco-friendly technological solutions. The Centre's endeavors also extend to emerging fields such as Nano Technology, Solar, Bioenergy, Hydrogen, Fuel Cell, and Energy Storage, thus charting the course for the future.

   Suggestion

   To incentivize the research activities in Oil & Gas Sector, it is suggested that exemptions may be extended to Research institutions, registered with DSIR, and engaged in oil & gas related research activities.

2. **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.

Amendments

1. **Admissibility of Input tax credit in the manufacturing state incurred by the exporter for positioning of the non-GST goods for Export.**

   Background

   As per section 16, zero rated supply means export of goods and the state which exports the non-GST goods are eligible for ITC. However, in case of movement of non-GST goods from manufacturing unit situated in one political state to Export warehouse 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 to export warehouse.

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.

2. 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 Year 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.

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.

Clarifications

1. Clarification on levy of GST towards lease rentals payment made to National Highway Authority of India (NHAI) (by NHAI or through its subsidiary)

Background

Renting of immovable property is leviable to GST @ 18%. In case services are provided by Central Govt (excluding the Ministry of Railways (Indian Railways)), State Govt, Union Territory

and Local Authority to any registered person, the tax is payable under Reverse Charge Mechanism (RCM), as per Notification 13/2017 CGST (Rate) dated 28th June.2017. When services are provided by a Govt. Entity, GST is payable under Forward Charge Mechanism (FCM). There is no exemption of said services provided by a government entity to a business entity.

As per NHAI/NHLML, the services are provided on behalf of Central Govt. and the revenue also belongs to Govt. of India. Accordingly, it is claimed by said service providers that there is no supply of services from NHAI/NHLML and thus, GST is not applicable on payment of such lease rentals.

Considering the above, supply of services by way of renting of immovable property will go unnoticed for payment of GST.

Suggestion

Issuance of suitable clarification / instructions with regards to applicability of GST on the lease rental paid by OMCs to NHAI/NHLML.

2. Availability of ITC to recipient upon Cancellation of GST Registration of supplier Retrospective

Background

Based on invoices populated in GSTR2B, assessee is availing GST ITC subject to other compliances u/s 16 of the CGST Act, however, at times GST registration of supplier are cancelled with retrospective effect.

In such cases tax authorities are of the view that GST ITC should be reversed by the recipient despite the fact that various High courts have pronounced the issue in favor of assessee by ordering that the recipient has taken the valid GST ITC on the basis of return filling status of vendor and retrospective cancellation of suppliers GST registration cannot be envisaged by the assessee.

Suggestion

Issuance of suitable clarification confirming admissibility of such GST ITC to avoid undue hardship faced by assessee.

3. Interest liability under rule 37 to be done away with

Background

As per rule 37 of CGST rules, 2017, a registered person, who has availed input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within a period of 180 days shall reverse such credit along with applicable interest.

Sometimes in the event of dispute w.r.t. quality of products or services payment is kept on hold beyond 180 days. The above provision regarding reversal with interest creates unnecessary burden on taxpayer, even when tax would have been rightfully paid by supplier to government

and same is getting reflected in GSTR 2B as well. Also there is no loss to revenue in the subject case.

Suggestion

In view of the above it suggested that interest should not be applicable on such reversal under rule 37 to remove the difficulty for compliant taxpayers.

4. 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 along with 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.

5. Requirement of state-wise trial balance

Background:

As per Section 35 of the CGST Act, 2017, a registered person is not required to maintain a separate trial balance for a separate GST registration.

Field officer and Audit officers has been insisting for state level trial balance and non-submission lead to levy of penalties and best order judgement on ground of non-cooperations.

Suggestion / Justification:

Circular should be issued clarifying the requirement of state-wise trial balance along with a detailed format.

IV) Central Sales Tax

Downstream

Amendments

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 92A-

Taxes 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 under-

Quote 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, States are having power, inter alia 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, from 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 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.

2. Abolition of Central Sales Tax Act for Petroleum Products

Under the CST Act, registered dealers are eligible to certain concessions and exemptions of tax on inter-state transactions on submission of prescribed declarations in forms 'C', 'E-I' / 'E-II' and 'F'. The State Governments grant these incentives to dealers for furtherance of trade and commerce, on production of these declaration forms.

As part of implementation of Value Added Tax (VAT) and introduction of Goods and Service Tax (GST) in the country, the Centre and the States had agreed to phase out CST through one per cent annual cut starting 1st April 2007, over a period of four years and it was planned to be completely abolished by 2010-11. Accordingly, rate of CST against declaration form 'C' was reduced from four per cent to three per cent in 2007-08, and further to two per cent in 2008-09 after the introduction of VAT. It was scheduled to be reduced by another one per cent, starting 1st April 2009.

In a significant departure from original plan, the Centre and States decided not to reduce the CST rate further in 2009-10 and instead, decided that the tax will be completely withdrawn once the proposed GST is introduced.

The original roadmap for implementation of GST was 1st April 2011 which was subsequently shifted and finally GST was implemented w.e.f. 1st Jul 2017.

While, petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel are constitutionally included under GST, the date on which GST shall be levied on such goods, shall be as per the decision of the GST Council. As per the section 9(2) of the CGST Act, inclusion of all excluded petroleum products, including petrol and diesel in GST will require recommendation of the GST Council. In other words, major petroleum products, MS, HSD and ATF, being manufactured and marketed by OMCs are outside GST and are subjected to Excise, VAT and CST.

Oil Companies are responsible for positioning sensitive petroleum products across the length and breadth of the country. For this purpose, petroleum products are moved from refineries and port locations to depots at demand centers. Placement of petroleum products involves lot of logistic costs, apart from tax costs on account of CST.

The Tax cost of product placement has increased with implementation of GST since inter-state movement of MS, HSD & ATF is being considered as non-taxable turnover for the purpose of reversal of Input Tax Credit.

Levy of CST is impacting the bottom-line of Oil Companies as also causing environment concerns in following ways–

a. Under-recovery of CST in case of supplying to retail outlet from outside State
b. Increased logistic cost to avoid incurrence of CST, which involves movement of products through Tank Trucks for longer route and thereby increased emissions.

Suggestion

As originally planned, phase out CST on petroleum products, which are outside GST ambit, by reducing rate from 2% to NIL.

Clarification

1. **Issuance of C Form for interstate sale of Petroleum products (Natural Gas, Crude, Petrol, Diesel and ATF)**

Background

Section 8(3)(b) of Central Sales Tax (CST) was amended by Finance Act 2021-22, whereby, the benefit of concessional rate of 2% CST against Form-C on the interstate procurement of Non-GST goods (Natural Gas, Crude, Petrol, Diesel and 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.

The benefit of 2% CST against Form-C would not be available on interstate sale of petroleum products to the power generating companies, mining companies and manufacturing companies like fertilizers and petrochemicals etc. Since there is no credit of CST available, cost on purchase of petroleum products will increase significantly (increase by up to 25%) for such industries and customers. Any move to block issuance of C forms will increase cost burden across key economic sectors including power, fertilizers, petrochemicals, steel etc.

Suggestion:

Provision for issuance of C form for interstate sale even if it is for use in manufacture of GST goods till these products are included in the GST should be restored.