PRE BUDGET MEMORANDUM FOR UNION BUDGET 2017-18

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EXECUTIVE SUMMARY

DIRECT TAXES – INCOME TAX			
SL no.	**Section**	**Suggestion**	**Pg Ref**
Upstream			
1.	Phase out plan for Tax holiday under section 80-IB	Cut-off criteria for the phasing out of tax holiday u/s. 80-IB (9) may be kept as the intimation of discovery on or before 31.03.2017 rather than the start of commercial production by that date. Alternatively, it should be made applicable on PSC signed after that date and not on the PSC already signed and in operation	1-2
2.	Clarification on definition of the term 'Mineral Oil'	Both crude oil and natural gas are included in the definition of 'Mineral Oil' for the purpose of section 80 IB (9) retrospectively irrespective of NELP rounds	2
3.	Tax holiday on the basis of Field rather than Contract Area under PSC	Under section 80 IB (9), each field may be regarded as a separate undertaking for the application of tax holiday.	3
4.	Extending the tax holiday period	Tax holiday benefit may be either extended from the existing 7 years to 15 years or for a period of at least 10 consecutive years within 15 years period from the year of commercial production to encourage O&G exploration in India.	3-4
5.	Amendment/Removal of Anomaly in Section 42 of the Income-tax Act, 1961	The word "surrendered" may be deleted from section 42(1) (a)	4-5
6.	Ceiling on profits for Site Restoration Fund (SRF) contribution	Deduction should be based on full contribution without any ceiling.	5
Downstream			
7.	Deduction under section 80IB (9) (iii) for undertaking engaged in refining of mineral oil	1. Removal of the sunset date and continuation of the deduction till the year 2022 (i.e. the year of Amrut Mahotsav, the 75th year, of India's independence). 2. Deduction should be made available for substantial expansion of the refinery.	6-7
8.	Deduction for Expansion and Up-gradation of Refineries	A profit-based or investment-based incentive should be provided	7
9.	Classifying Euro VI project under Pollution Control category for 100% depreciation benefit	Higher depreciation will help in improving the IRR of the project as the additional compensation for such projects are generally not commensurate to the investments made.	8

10.	Tax abatement to Refineries on new value added projects to maximize yield of HSD to conserve forex	Suitable incentives, in the form of tax abatement are to be provided	8
11.	Investment Allowance - Section 32AC of Income Tax Act, 1962	Be extended for two more years up to 31.03.2019	8-9
12.	100% Depreciation allowance for Projects undertaken for upgradation of fuel quality - Section 32	The expenditure incurred on this should be made eligible for 100% Depreciation under Section 32	9-10
13.	200% Weighted tax deduction in respect of in-house R&D Centre - Section 35 (2AB) and 35(2AA) - inclusion of expenditure incurred on Bio-fuels	1. Extend the weighted deduction of 200% up to 31-03-2020. 2. Expenditure incurred on Bio- Fuel activities should also qualify for a deduction of 200% under Section 35(2AB)	10
14.	Amendment in Section 35AD	Remove the condition imposed in Section 73 for carry forward and setoff of losses from specified business	10-11
Natural Gas			
15.	Safe harbour allowances for LNG import prices under Transfer Pricing should be based on the actual dispersion of custom import prices for the year and not on ad-hoc basis. [Transfer Pricing]	Allowing for safe harbour rules for LNG imports based on actual dispersion of custom import prices is of utmost importance and will avoid litigation costs involved	11
16.	Obtainment of secret comparables from corporates under Sec 133(6) of Income Tax Act should not be applicable for non-commodities like LNG. [Transfer Pricing]	As secret comparison analysis is not accurate, this practice should not be applicable for non-commodities like LNG.	12
17.	Benefit of Section 80IA to be extended to 'Gas projects'	1. In order to promote import of LNG, LNG facility at port location may also be included in the definition of "Industrial Infrastructure" in section 80-IA 2. The word "loading and unloading facility", may be substituted by "the loading or unloading facility" for the purpose of definition of "Port" for section 80-IA 3. To remove/extend the sun set clause of 31.03.2017 to promote the make in India campaign.	12-13
18.	Amendment in section 73A and 72A of the Income Tax	Set off of loss computed under section 35AD may be allowed against profits of any other	13-14

	Act for set off and carry forward of the loss on account of deduction claimed u/s 35AD for growth of cross country Gas pipeline network and building the National Gas Grid (NGG)	business carried on by the assesse by suitably amending section 73A of the Income Tax Act in line with the provision under section 70 of the Act. Section 72A needs to be amended so that carried forward loss of business of laying and operating a cross country natural gas pipeline network. (u/s 35AD) of a demerged company or amalgamating company is allowed to be carried forward and set off in the hands of the resulting company in case of demerger or amalgamation.	
General			
19.	ICDS-IX	ICDS be totally de-notified or deferred till a broad consensus is reached	14-15
20.	Amendment under Section 36(1)	Amendments are to be brought in Section 36(1) of the Act, permitting the deduction while transferring of the money to the welfare fund.	15-16
21.	Section 37(1)	Suitable provision be inserted in the Act whereby prior period expenses are allowed as deduction in the current year under section 37(1) of the Income Tax Act, 1961	16
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23.	Rule 37BB	Outer limit of 30 days to be fixed for issuance of such certificates.	17
24.	TDS Credit to be allowed irrespective of the Assessment Year	TDS Credit to be allowed irrespective of the Assessment Year.	17
25.	Section 43A	Necessary amendment is made in the section to allow capitalization of exchange rate differential arising out of loan borrowed in foreign currency even if the Asset is indigenous.	17-18
26.	Section 43B	Explanation be inserted in Section 43B to the effect that payment to the fund would be equivalent to payment to employees.	18
27.	Section 92BA, Finance Act 2012	To exclude the transaction between the companies of same tax brackets from the transfer pricing provision and to consider excluding transaction between two PSU company from the scope of transfer pricing provisions.	18-19
28.	Section 115O	Section 115O shall not be made applicable to PSUs, to the extent of dividend, payable on shares held in the name of President,	19

		Government of India. The effective tax rate of DDT is recommended to be reduced to 10%.	
29.	Section 115JAA	Be extended to 15 years in place of 10 years	19
30.	Perquisite Tax	The threshold limit for perquisite value to be taxed in the hands of employees, needs to be revised keeping in view the cost inflation.	19-20
31.	U/S 10(A0AA)	To revise the limit from Rs.3 lakhs to Rs.10 lakhs.	20
32.	Exclusion of Dividend Exempt u/s 10(34) from the scope of Section 14A	Suitable amendments may be made to Section 14A to exclude dividend exempt u/s 10(34) from the operation of this section.	20
33.	Disallowance of expenditure incurred in relation to exempt income - Section 14A	1. Be amended to provide that if the investments in assets which yield tax free income are made out of own funds such as share capital, free reserves etc. then the addition under this Section should not be made. 2. There should be an upper limit based on certain percentage of exempt income and not the total expenditure claimed by Assessee.	21
34.	Providing Consequences of Non-disposal of Rectification Applications under section 154 of Income-tax Act, 1961	Should also be provided in the said sub-section (8) of section 154 that if the income-tax authority does not dispose of the application made to it within six months, the application shall be deemed to have been allowed.	21-22
35.	TDS on Transportation payment under section 194C	TDS deduction to be made compulsory for all transporters or the exemption may be provided to all	22-23
36.	Do away with requirement of Withholding tax certificate u/s 195 / 197 for Foreign Company having a PE in India	The requirement of withholding tax should be similar to the Indian companies. Alternatively, the requirement of WHT should not be applicable for the registered PE dealing with Purchase and Sale of goods in India.	23
37.	Section 208 – Reducing slabs for Advance Tax payment	The slab of advance payment of tax may be changed to 65% for payment to be made by 15th Dec and 90% for payment to be made by 15th Mar in place of the current 75% and 100% respectively. The balance tax may be allowed to be paid by 30th June of the assessment year.	23-24
38.	Exemption of Interest U/S 234B and 234C to Oil Companies	Specific exemption to Oil from applicability of provisions of these Sections	24-25
39.	Abolition of MAT provisions	MAT may be abolished	25-26
40.	Exemption from Minimum Alternate Tax (MAT)	E&P sector may be exempted from MAT during the tax holiday period.	26
41.	Interest on Refunds paid to the assesse to be at par	The interest rate on the refunds due to the assessee and on the amount payable by the	26

	with interest charged by the revenue on short payment of Income tax	assessee to the government should be same on the ground of equity.	
42.	Amendment in certain sections like 35 /43B and 115JA to accommodate the benefit of deduction /set off of MAT credit to successors in case of amalgamation.	Section 2(19AA) be amended to provide that the shares of the transferee company should be issued on a proportionate basis to the shareholders of demerged company to whom shares are issued under First condition. New section be inserted in chapter IV providing that in case of reorganization/demerger, deduction in relation to expenditures incurred in pre-reorganization period but allowable during post-reorganization period eg: deduction u/s35DDA and Expenditures incurred during the previous year but allowable on certain criteria for e.g. payment basis under Section 43B, etc. will be allowed to successor as it would have been allowed to the predecessor.	27
43.	Underlying Tax Credit for foreign subsidiaries	Suitable provisions be inserted in the Act at appropriate place(s) to permit the allowance of underlying tax credit.	28
44.	Incentivizing CSR Activities (Allowing 200% deduction)	Aforesaid amendment may be rolled back and it may be provided that CSR expenditure would be deductible in the year of incurrence thereof.	28-29
45.	Making section 14A inapplicable to dividend received by companies from Debt Mutual Funds.	1. Section 14A may be suitably amended to provide that the same shall not apply to expenditure incurred by a company in relation to dividend received by it from a debt mutual fund on which DDT has been paid as per the provisions of section 115R 2. Dividend received after suffering dividend-distribution tax should not be treated as exempt income and no expenditure should be disallowed as relatable to the same.	29-30
46.	Removing cap on non-taxable employer contribution to approved superannuation fund	Amount of any contribution to an approved superannuation fund by the employer in respect of the assesse may be made fully non-taxable.	30-31
47.	Removal of maximum limit under Section 17(2) (v) of Income-tax Act, 1961, & insertion of clarificatory Explanation	The aforesaid limit may, therefore, be either totally dispensed with or enhanced to at least Rs. 1,00,000/= per year in line with the proposal to enhance it to Rs. 50,000 which was proposed in the last draft of the DTC.	31-32
48.	Clarification that loss on Sale of Oil bonds is a revenue loss	Suitable clarification to be issued in this regard that Loss incurred at the time of sale of such GOI special Bonds are to be allowed as revenue loss.	32-33

49.	Income Deemed to Accrue or Arise in India	Non-resident should be taxable in India only if he has a permanent establishment in India and rendered services in India.	33-34
50.	Place of effective management (POEM) of a Company	Earlier provision under section 6 (3) should be restored and a company should be treated as resident in India if it is an Indian Company	34-35
51.	Deferment of Residency test for foreign companies - Place of Effective Management ('POEM')	To defer the implementation from 1.4.2016 to 1.4.2017.	35
52.	Statutory Dues not to be included in the gross receipts for the purpose of section 44BB of the ITA	Section 44BB of the ITA should be amended to provide that statutory taxes and dues (such as service tax) recovered by the non-resident service provider from the Indian residents would not form part of gross receipts for computing deemed income under the Section.	35
53.	No disallowance for the domestic company, for charges paid to a PE in India of a foreign company	Expense claims should not be subject to transfer pricing assessment and disallowance.	36
54.	Taxability of unrealized gains due to revaluation of shares after adoption of Ind-AS	Committee recommendation of including the retained earnings adjustment in book profit for the purpose of levy of MAT in the year of adoption of Ind-As or over a period of 3 years starting from the year of the first time adoption of Ind AS or on realization , should not be accepted.	36-37
55.	Reduction in Corporate Tax Rate – Finance Act	To reduce the corporate tax rate from existing 30%.	37
56.	Perquisite tax on housing accommodation provided to employees of CPSE'S - Rule 3(1)	Removing the distinction between employees of Central / State Government and CPSEs in the matter of Housing Perquisite Tax and providing for the same type of treatment to both these category of employees.	37-38
57.	Stepping up the exemption on allowances - Section 10 of the Income Tax Act, 1962	New limits can be set at Rs. 1,000 for children education, Rs. 2,000 for hostel allowance.	38
58.	Raising the reimbursement limit for medical expenses - Section 17(2) of the Income Tax Act, 1962	Increasing this limit to Rs. 50,000	39
59.	Overall limit for Deduction under-Sec-80CCE - Sec-80C,80CCC and 80CCD (1)	Increase the limit to Rs.300,000/-	39
60.	Rule 10(14)	Exemption limits need to be revised keeping in view the cost inflation.	39
61.	Tax Loss Carry back	Clarification sought for option to carry back tax losses to earlier year.	39-40

62.	TDS applicable on payment made to non-residents should explicitly say which all the transactions subject to TDS	Clarification sought for the nature of payments	40
63.	Specified domestic transfer pricing should be made applicable only to companies which are subject to concessional rate of tax like section 10A or section 80 IA/IB	Clarification sought	41
64.	Rationalizing TDS Provisions	Clarification sought	41-43
65.	Supreme Court decision in ONGC on section 44 BB	CBDT should consider issuing directions that the ratio decidendi of the aforementioned ruling of Supreme Court must be adhered to by the field officers in all cases where the subject issues are involved.	43
66.	Deduction u/s.80-IA(4) of the Act for oil storage units and LPG bottling plants	Governments to grant the infrastructure status to LPG bottling plant u/s.80-IA(4) of the Act.	43-44
67.	Group Tax Consolidation / Fiscal Unity	Fiscal unity tax regime to be introduced	44
68.	Agency Fee/Sponsorship Fee paid by EIL to Agent / Sponsor	Suitable amendments may be made to Income Tax laws to allow such commission payments as business expenditure	44-45
69.	Expanding Double Taxation Treaty base	India should enter into more treaties of similar nature.	45
INDIRECT TAXES – CUSTOMS DUTY			
Upstream			
1.	Request to amend Condition No. 40A(d) of Sl. No. 357A of Customs Notification No. 12/2012-Cus (as amended) so as to do away with the requirement of obtaining NoC in case of transfer of imported goods for petroleum operation from one eligible project to another eligible project, where there is no change in either Licensee/Contractor or the sub-contractor of such Licensee/Contractor	1. Clarification to the effect that upto 20% of goods imported and cleared for home consumption for petroleum operation but remain unused and declared scrap shall be allowed to be disposed of on payment of customs duty on the sale value of scrap. 2. Enlarging the List-34 of goods (of Sl. No. 357A of Notification No. 12/2012-Cus) that could be imported, duty free, by the upstream sector for petroleum operation	46-57

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2.	Clarification on exemption from Custom Duty	A residuary clause be inserted in the list as below: List-13: (25) all goods other than those mentioned above imported for use in relation to petroleum Operation. List-14: (20) all goods other than those mentioned above imported for use in relation to CBM operation.	58
3.	Clarification with regard to treatment of surplus goods, which were imported while claiming an exemption from customs duty on the basis of EC issued by DGH	Clarification circular should be issued to reduce the litigation.	58-59
Downstream			
4.	Zero customs duty for new Refineries/Refinery expansions, product and gas pipelines to be made nil.	Zero customs duty should be introduced for the capital goods imported for the new refineries and laying new pipelines.	59
5.	Full exemption to be granted on Liquid and Gas pipelines projects covered under chapter 98	Present customs duty being levied at the rate of 5% should be reduced to Nil on Liquid as well as Gas pipelines projects covered under chapter 98.01.	59-60
6.	Import duty benefit on LNG should be extended to all sectors apart from power sector, according the same status as crude petroleum.	1. Import duty of LNG may be made at par with the import duty of crude petroleum, which is presently zero. The benefit should be for all sectors. 2. The custom duty exemption to LNG/Natural Gas may be granted on imports made by any person boosting development of competitive gas markets in India and such should be extended beyond power sector to 'end-use' for other sectors as well	60-61
7.	Customs Duty on Styrene Butadiene Rubber (SBR) under CEPA with South Korea and ASEAN	1. Review of India-Korea CEPA and India-ASEAN FTA and exclusion of Styrene Butadiene Rubber falling under tariff heading 4002 from all tariff concessions. 2. Govt. should impose Safeguard Duties on import of Styrene Butadiene Rubber under FTA with South Korea & ASEAN	61-62
8.	Advance Authorisation benefit should be allowed for NCCD paid on crude oil imports.	All the duties paid under Customs act on import should be allowed under Advance authorization.	62
9.	Nil Customs Duty on certain imports	The BCD on project imports should be reduced to nil for the following capital goods 1. Crude, petroleum product and gas pipelines	62

		2. Developing LNG regasification/ CNG / auto LPG infrastructure. 3. Floating Storage and Regasification Units	
10.	Zero Customs Duty on imported equipments, machinery and other material required for petrochemical projects at BPCL, Kochi Refinery	To bring out amendment to Notification 12/ 2012 – Cus dated 17/3/2012 to include as part of general exemption no 165 under Section 25(1) of the Customs Act, 1962 for granting Zero Customs Duty on imported equipments, machinery and other material	63-64
11.	Levy of Safeguard Duty on import of capital goods under Project Import Regulation	Exemption to be provided under Section 8(b) of the Customs Tariff Act for materials imported under Project Import Regulation falling under Chapter 98 of the Customs Tariff	64-65
12.	Restoration of Customs duty on ATF	The customs duty on ATF may please be restored to the original level to help the refiners recover the revenues foregone from November 2008 and also partly fund the expenses /offset the losses incurred by the refiners in the- pan India roll- out of BS-IV grade of MS and HSD from April 2017.	65
13.	Rationalization of customs duty on import of petroleum products viz Motor Spirit (MS) and High Speed Diesel) HSD	The customs duty on import of petroleum products, that is MS and HSD should be rationalized in line with excise duty as applicable on indigenous procurements in order to bring parity in the duty rates when procured indigenously or imported.	66-70
Natural Gas			
14.	Clarification on non leviability of customs duty on LPG used for non-domestic purposes in locations storing both imported and indigenous LPG in common tankages as long as there is adequate quantity of indigenous LPG in the tanks.	Clarification sought	70-71
General			
15.	Request seeking amendment in Customs Act regarding levy of Education CESS and Secondary Higher Education CESS	Necessary amendment in the Customs Act that CESS of Customs duty levied under Section 94 of Finance (No.2) Act, 2004 and Section 139 of Finance Act, 2007.	71-72

INDIRECT TAXES – EXCISE DUTY			
Upstream			
1.	Government to review the present rate of 20% of OID Cess and to moderate it to 10% of realized crude oil price.	Government to review the present rate of 20% of OID Cess and to moderate it to 10% of realized crude oil price.	73-74
2.	Extension in time limit for availment of CENVAT Credit for Inputs / Input Services	No time limit should be fixed for availment of Cenvat credit on input/input services	74-75
3.	Cenvat credit on OIDB Cess on crude.	CENVAT credit should be extended for this cess also	75
Downstream			
4.	Removal of NCCD for import of Crude oil	Removal of NCCD for import of Crude oil	75
5.	Exemption of excise duty for captive consumption of petroleum products as fuel or otherwise and supplies to Defence / Fertilizer units should be covered in Rule 6(6) of Cenvat credit Rules, 2004 i.e. Rule 6(6) of CCR, 2004 to be made applicable to supplies against end used based exemptions.	Exemption by way of notification as applicable to manufacturer only needs to be covered under Rule 6 (1) to (3).	75-77
6.	Duty Credit on MS, HSD and LDO brought to refinery for reprocessing	Non-Cenvatable products like MS and HSD when received in the Refinery for re-processing should either be exempted from payment of duty or Cenvat Credit should be allowed on these products at the time of receipt.	77
7.	Clarification on reversal of Cenvat credit on input and input services under Rule 6(3) of the CCR, 2004 on domestic clearance under Notification No. 34/2006-CE dated 14.06.2006	To consider inclusion reference to the goods cleared under SFIS	77-79
8.	Payment of duty at refinery to be made at quantity at 15 degree	Duty shall be levied at quantity at 15 degree on all removals from refinery.	79
9.	Rationalization of excise duty on premium diesel	Reduce the excise duty differential between branded and regular diesel, bringing it close to or at par with excise duty on regular diesel.	79-83
10.	Permitting Mixed Bonding in Intermediate storage tanks for ATF and Bunkering	Same facility of Mixed bonding of Bonded and Duty paid should also be extended to the intermediate storage tanks	83-84

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	Fuels		
11.	Excise Duty on Transit Loss on ATF	Allowance should be given for the quantities lost in transit or storage as prescribed by the Govt. of India despite the fact that they are removed under export warehouse procedure.	84
12.	Dispute on rate of excise duty on intermingling loss of SKO in pipeline transportation	Withdrawal of the Circular is required or appropriate clarification may be issued	85-86
13.	Anomaly in excise and customs Notification for exemption of duty on furnace oil	Consider aligning the import duties (BCD and CVD) on import of FO and excise duty on manufacture of FO	86-87
14.	100% Excise Duty concession to North East Refineries for long term sustenance and viability.	Exemption of Excise Duty for the North East Refineries should be enhanced from 50% to 100%	87-88
15.	CENVAT credit eligibility for capital goods and inputs for Desalination plant located outside the factory of manufacture	Clarification sought	88-89
16.	Introduction of Specific rate of excise duty for Aviation Turbine Fuel (ATF)	ATF should also be levied specific rate of duty in place of ad-valorem duty.	89-90
17.	Excise duty exemption/ refund on HFHSD	Benefit of unconditional refund of excise duty paid to OMCs for procurement of HFHSD be allowed as the benefit of exemption is not being passed on to O&G companies by OMCs	90
18.	Exemption in respect of additional duty levied on HSD	Extend the said benefit in respect of additional duty levied on HSD by amending the respective notifications.	90-91
Natural Gas			
19.	Exemption of Excise Duty for compression of natural gas into Compressed Natural Gas (CNG) for use in Natural Gas Vehicles (NGVs)	Compression of natural gas into CNG should be exempted from Excise duty	91
20.	Activity of LNG loaning and borrowing in quantity terms in LNG terminals handling, a co-mingled mix of title, goods of same product should be specifically kept out of purview of taxable transactions.	Sought to seek exemption from any taxing provision for Loan / Borrow transactions of In Tank LNG to enable optimum utilisation of LNG Terminal facilities in India	92

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General			
21.	Availment of balance Education & SHE cess available on as on 28.02.2015	Necessary instructions to be issued regarding treatment of unutilized Cenvat credit on of CESS paid on inputs/capital goods/ input services received prior to 28.02.2015	93
22.	Definition of “Input Services” should include setting up of factory	To include the word Setting up in the definition of “Input Services” of Cenvat Credit Rule 2004, as prior to 01.04.2011.	93-94
23.	Non-applicability of unjust enrichment for captive consumption, provisional assessment, pre-deposit etc.	Pressing need to implement atleast in the current budget in line with the recommendations and also for consequential refunds where duty was paid	94
24.	Exemption to the supply of goods under International Competitive Bidding contracts	To clarify the necessary conditions to be fulfilled for a contract to be construed as ICB compliant contract.	94-95
25.	Exclusion of PSU’s from execution of Bank Guarantee under Rule 20	Suitable amendments may be made under Rule 20 to exclude PSU’s from execution of Bank guarantee.	95-96
26.	Allowing manufacturer to avail CENVAT credit on goods purchased through LSTK contractor	Suitable amendments may be made to enable the manufacturer to avail the credit on the goods purchased by him through the LSTK contractor.	96-97
27.	Denial of credit on excise duty and service tax when the capital goods installed in the factory becomes fixed to earth	Specific provisions may be made to enable the manufacturer to avail the CENVAT credit on the goods which when installed in the factory of production becomes fixed to earth.	97-98
28.	Allowing manufacturer to avail CENVAT credit on construction goods and construction services	100% set off of the construction goods and construction services used by the manufacturer for his manufacture and business of sale needs to allowed.	98-99
29.	Mandatory fixed pre deposit	Suggested that mandatory pre deposit may be exempted.	99-100
30.	Processing of Excise Duty refund claims	Access should be given to online refund process for quick processing with online Real Time Gross Settlement (RTGS) refund	100
31.	Applicability of Pre Deposit provisions only from second stage appeal/CESTAT level.	Provisions of section 35F of the Central excise Act 1944 and section 129E of the Custom Act 1962 to be made applicable only from second stage appeal/CESTAT level.	100-101
32.	CENVAT Credit on storage of goods procured from third parties (Traded Goods)	Clarification sought	101-102
33.	Swachh Bharat cess	To allow Cenvat credit of Swachh Bharat cess under Cenvat Credit Rules, 2004.	102

INDIRECT TAX – SERVICE TAX			
Upstream			
1.	Service Tax on Lost in Hole Equipment's (LIH)	Clarity on taxability of LIH issue be provided.	103
2.	Remove ambiguity on applicability of service tax on "Royalty" and "Profit Petroleum" for E&P companies	Suitable clarification is issued confirming that no Service Tax is levied on Royalty and other payments under the PSC.	103-105
3.	Clarification to the effect that, no Service Tax is applicable on payment of Royalty u/s 6A of the Oil Fields (Regulation and Development) Act, 1948 and Rule-13 & 14 of the Petroleum and Natural Gas Rules, 1959	Clarification to the effect that royalty payable u/s 6A of the Oil Fields (Regulation and Development) Act, 1948 and Rule-13 & 14 of the Petroleum and Natural Gas Rules, 1959 would not be subject to levy of service tax be issued.	105-106
4.	Clarification to the effect that consortium members including operator and the consortium formed under PSC are not distinct entities	Transactions between operator and the consortium/ member of Consortium 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.	107-108
Downstream			
5.	Modification in negative list Section 66 D (p) of service tax to include goods transported thru time chartered vessel	Movement of product in time chartered vessel vessel from outside India upto the custom station of clearance of India should be added in negative list.	108
6.	Extension of Abatement to transportation through Time charter Vessels	Abatement should also be extended to the transportation by time charter vessels	108-109
7.	Permit Oil Marketing Companies (OMC) to pass on the benefit of service tax charged on throughput fees for fuelling the aircraft for domestic operation	OMCs should be permitted to pass on the benefit of service tax charged on throughput fees for fuelling the aircraft for domestic operation	109
Natural Gas			
8.	Exemption of Service Tax on sea transportation of LNG by vessel and LNG regasification activity	1. Exemption of Service Tax on sea transportation of LNG by vessel and LNG regasification activity 2. Activity of regasification of LNG also needs to be exempted from levy of Service Tax. 3. Activity of transportation of LNG by a	109-110

		vessel/Ship from a place outside India to India may be exempted with status of 'zero rated supply' under GST regime	
9.	Valuation of taxable services for naturally evaporating products like LNG should be clarified in detail to apply on the charges for conversion of the delivered product.	Clearly clarify that the charges for the delivered quantity of a volatile product shall be taxable as services in order to avoid double taxation.	110-111
10.	Exemption from levy of Service Tax on Transmission Charges Included in Sale Price of Gas	CBEC may like to consider and issue a suitable clarification that Service Tax will not be payable on any activity associated with transaction of sale where the component of value relatable to such activity forms part of total sale price and attracts VAT/CST under CST/VAT laws.	111-112
General			
11.	Exemption of Service tax on deputation of manpower to Government Departments.	Any deputation to Government or local authorities should be a part of negative list under section 66 D.	112
12.	Clarification on fine or a penalty for violation of law / contractual obligation	Amend definition of service	112-113
13.	Applicability of service tax on penalties recovered by the Oil Marketing Companies	Clarification sought	113-114
14.	Service under corporate social responsibility (csr) projects of the company to be incorporated under negative list for levy of service tax.	Service under corporate social responsibility (csr) projects of the company to be incorporated under negative list for levy of service tax.	115
15.	Clarification that Liquidated Damage [LD] (a pre-estimated loss) recoverable from supplier/ provider of service is not a consideration for levy of service tax	Liquidated damages deducted from bill of contractor without reducing the gross taxable value as shown in Invoice, would not be subject to levy of service tax.	115-116
16.	Exemption/Clarification that Mandatory Deputation of ONGC personnel in Directorate General of Hydrocarbons (DGH), a Technical arm of MoP&NG, Govt of India or any Govt. Department is not a taxable Service.	To issue exemption/clarification that Mandatory Deputation of personnel from PSU in Directorate General of Hydrocarbons (a Technical arm of MoP&NG, Govt of India) or any Govt Departments, is not a Taxable Service.	117-118

17.	Clarification on non-applicability of service tax and GST on cash calls under existing regime and GST regime respectively	Clarification should be issued under existing regime as well as GST regime that consortium and parties to consortium are not distinct entities and the cash calls are not consideration for services but only a contribution made by contractors.	118
18.	Clarification on non-applicability of service tax and GST on cost petroleum under existing regime and GST regime	Clarification should be issued under existing regime as well as under GST regime that Profit Petroleum/ Cost Petroleum is not consideration for service; these are formulas to determine the Government's share in the production	119
19.	Duty credit scrip under Service Export from India Scheme	To make projects involving services from India as well as supervisory site services at overseas location eligible for duty credit scrip under Service Export from India Scheme.	119
INDIRECT TAX - CENTRAL SALES TAX			
Upstream			
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2.	Removal of CST	CST may be made 'Nil' for inter-state sales	120
Natural Gas			
3.	Amendment in CST Act to consider inter-state Stock Transfer of Natural Gas on deemed movement basis in line with amendment in Section 3.	Amendment in Section 6A of the Central Sales Tax Act, 1956 may be introduced to effectively implement the amendment brought in Section 3 of the CST Act vide Union Budget 2016.	121-122
4.	Include Natural Gas as declared goods under CST act	Natural Gas should be included as declared goods under CST act.	122-123
General			
5.	Changes in provision for submission of FORM C from quarterly basis to monthly basis	Necessary amendment is made for issuance of FORM C covering transaction in a month on monthly basis in line with provisions for issuance of FORM F.	123

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PRE-BUDGET MEMORANDUM FOR UNION BUDGET 2017-18

DIRECT TAX

INCOME TAX

Upstream

1. **Phase out plan for Tax holiday under section 80-IB**

   The national security of a country is inextricably linked to its energy security. There is a significant gap between the demand for, and production of, hydrocarbons in India. The need to bridge this gap cannot, therefore, be overemphasized. That having been said, it is also a fact that exploration for hydrocarbons is an inherently risky business with high input costs without any assurance of a commensurate return. Hence, to encourage investments in this critical sector of the Indian industry, it is necessary to incentivize investments therein. Fortunately, the need to do so was recognized in the following special provisions contained in the Income-tax Act, 1961-

   a. **Section 42,** which provides for the deduction of expenses incurred in the prospecting for, extraction and production of mineral oils in accordance with the agreement entered into by the assesse with the Central Government (these provisions continue to be largely un-amended and explorers who have successfully bid for blocks under the New Exploration Licensing Policy in force since 1999 are allowed deduction for their revenue and capital expenses in the year of incurrence in accordance with the terms contained in the Production Sharing Contracts (PSCs) executed by them with the Government); and

   b. **Section 80-IB,** which provides a seven year tax holiday for profits derived by an undertaking from the production of mineral oils in India. These provisions have witnessed a significant whittling down over the last five years.

   The rationale for allowing a tax holiday to the profits derived by an undertaking from production of hydrocarbons can be understood from the following statement contained in the memorandum to Finance (No. 2) Bill, 1998:-

“In recognition of the need to boost the production of Petroleum and Natural Gas, it is proposed to give tax incentives. The business of enterprises engaged in extraction, production and refinement of Petroleum & Natural Gas is of a unique nature and needs special tax provisions.…”

India continues to be significantly hydrocarbon deficient and, therefore, the need to incentivize the upstream hydrocarbon sector persists. However, the Finance Act, 2011, has inserted a Proviso after clause (ii) of sub-section (9) of section 80-IB to the effect that tax holiday in respect of the production from blocks which are awarded under contracts licensed after 31-03-2011 would not be allowable. Thus, tax holiday under section 80-IB (9) was made unavailable if hydrocarbon production resulted from blocks which are awarded under contracts licensed after 31-03-2011. Further, in a bid to phase out tax holiday under section 80-IB (9) completely, the Finance Act, 2016, has introduced sun set clauses in the provisions of section 80-IB (9) which provide that no tax holiday would be available if commercial production is started after 31-03-2017. This would apply even to production from blocks which are awarded under contracts licensed till 31-03-2011.

The commencement of commercial production of oil and gas is the culmination of a long series of exploratory and development activities which span over several years. Such exploratory and development activities entail investment of huge amounts of funds. An entity which has already committed huge funds for the exploration and development of an oil and gas block but is not able to commence commercial production by 31.03.2017 due to geological, regulatory, or operational factors would be hugely disadvantaged vis-à-vis another entity which is able to commence commercial production by 31.03.2017 owing to different geological, regulatory, or operational factors.

Suggestion

It is, therefore, suggested that the cut-off criteria for the phasing out of tax holiday u/s. 80-IB (9) may be kept as the intimation of discovery on or before 31.03.2017 rather than the start of commercial production by that date. Alternatively, it should be made applicable on PSC signed after that date and not on the PSC already signed and in operation.

2. **Clarification on definition of the term 'Mineral Oil'**

Section 80IB (9) of the Income Tax Act, 1961(ITA) does not define the term 'Mineral Oil'. There have been frequent changes on the status of tax holiday applicable to oil and gas (O&G) as per budget notifications issued from time to time (NELP VII to NELP IX). This has created an uncertain fiscal climate for investments in the exploration and development of natural gas in the country.

Suggestion

It is, therefore, recommended that a clarification may be issued to ensure that both crude oil and natural gas are included in the definition of 'Mineral Oil' for the purpose of section 80 IB (9) retrospectively irrespective of NELP rounds as non-inclusion of Natural gas creates unfavourable impact for only gas fields and also lack of clarity for oil & gas fields.

3. **Tax holiday on the basis of Field rather than Contract Area under PSC**

Explanation to Section 80 IB (9) of the ITA stipulates that all fields which are licensed under a single PSC shall be treated as a single undertaking.

Considering the significant investment required to develop a field, it is a common practice to develop different fields within the contract area independent of each other. Also, a separate field development plan is required to be submitted for development of each field. Thus, applying the tax holiday on a contract area basis will not only affect investments in the sector but will also adversely affect the economic viability of developing hydrocarbons in the country.

Suggestion

It is, therefore, recommended that under section 80 IB (9), each field may be regarded as a separate undertaking for the application of tax holiday.

4. **Extending the tax holiday period**

Considering the capital intensive nature of the sector it is recommended that the tax holiday benefit may be either extended from the existing 7 years to 15 years or for a period of at least 10 consecutive years within 15 years period from the year of commercial production to encourage O&G exploration in India.

Suggestion

Tax holiday benefit may be either extended from the existing 7 years to 15 years or for a period of at least 10 consecutive years within 15 years period from the year of commercial production to encourage O&G exploration in India.

5. **Amendment/Removal of Anomaly in Section 42 of the Income-tax Act, 1961**

Section 42(1)(a) of the Income-tax Act, 1961, provides for deduction of "expenditure by way of infructuous or abortive exploration expenses in respect of any area surrendered prior to beginning of commercial production" in computing the profits and gains of any business consisting of the prospecting for or extraction or production of mineral oils. The deduction for infructuous or abortive exploration expenses is not allowed till the surrender of the area, though the same are charged off in the books of accounts. Deduction in respect of well found and declared dry during a particular year should justifiably be allowed without the requirement of surrender of the PEL/ML area to smoothen appropriate phasing of expenditure by the assessee and revenue collections for the Government and to bring uniformity in tax treatment. However, the word "surrendered" in the above clause precludes allowability of deduction for expenditure incurred in an area which cannot be surrendered for any practical constraints.

Suggestion

It is therefore suggested that the word "surrendered" may be deleted from section 42(1) (a) as brought out in the table below:

Provision proposed to be amended	**Existing provision**	**Proposed provision**
Clause (a) of sub-section (1) of section 42 of the	to expenditure by way of infructuous or abortive expenses in respect of any	to expenditure by way of infructuous or abortive expenses in respect of any

Income-tax Act, 1961	area **surrendered** prior to the beginning of commercial production by the assessee.	area prior to the beginning of commercial production by the assessee.

Alternatively, in order to align this provision applicable exclusively to the upstream hydrocarbon sector with industry terminology and to avoid unnecessary litigation, it is suggested that the word "surrendered" may be replaced with the term "relinquished in full or in part" in line with the terminology used in Petroleum & Natural Gas Rules to denote the act of giving up of an area by a licensee. It is pertinent that the word "surrendered" is not used anywhere in the Petroleum & Natural Gas Rules and, therefore, its usage is susceptible to differing interpretation by different persons.

Further disallowance of deduction for farm in cost (past cost plus premium), reduces the activity in this market and is clearly against the interests of expediting exploration. This is despite the fact that income arising out of farming out any interest in the block is taxable in the hands of assignor under Section 42(2). Thus, it is suggested that Section 42 is amended suitably to add a provision for deduction of acquisition (farm-in) expenses.

6. **Ceiling on profits for Site Restoration Fund (SRF) contribution**

Abandonment and site restoration of O&G installations are significant part of the project life cycle in the E&P sector. This phase involves huge capital outlay and has considerable environmental implications.

Section 33 ABA of the ITA provides for tax deduction on contribution to the Site Restoration Fund (SRF) subject to a ceiling of 20% of the profits from the business. This ceiling could result in a situation where the assesse is unable to claim full deduction for the amount deposited in the SRF in the absence of sufficient profits.

Suggestion

It is, therefore, recommended that the deduction should be based on full contribution without any ceiling.

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Downstream

7. **Deduction under section 80IB (9) (iii) for undertaking engaged in refining of mineral oil**

100% deduction under section 80 IB(9) (iii) was available for seven years to an undertaking engaged in refining of mineral oil and begins such refining on or before the 31st day of March, 2012. The said deduction was not available for substantial expansion of the existing capacity of the refinery.

Oil Refineries requires huge capital outlay for its set up/expansion and with very low return on its operation, makes the investment in oil refining business less viable. Discontinuation of the deduction would further discourage the industry for setting up new refinery or expanding its capacity.

Prime Minister's vision of 'Team India' aims to make India the manufacturing hub. Continuation of the said deduction at least till the year 2022 (i.e. the year of Amrut Mahotsav, the 75th year, of India's independence) and encouraging the new set up/expansion of refinery, will be contributory to Prime Minister's vision of 'Team India' to make India the manufacturing hub and give a strong push to energy growth of the country.

Therefore, the said deduction should be continued and the period of deduction should be increased from 7 (seven) years to 10 (ten) years; moreover, deduction should also be made available for substantial expansion of the existing capacity of the refinery.

The 'Team India' vision also envisages bringing North Eastern regions at par with the rest of the country, which are presently lagging behind in development on many fronts. Hence, to promote development in the region period of deduction should be increased from 7 years to 15 years in the North Eastern Region, which will encourage the setup of the new industry/expansion of the existing capacity in the region.

Suggestion

a. Removal of the sunset date and continuation of the deduction till the year 2022 (i.e. the year of Amrut Mahotsav, the 75th year, of India's independence).

b. Deduction should be made available for substantial expansion of the refinery.

c. Period of deduction to be increased from 7 (seven) years to 10 (ten) years.

d. Period of deduction in North Eastern Region to be increased from 7 (seven) years to 15 (fifteen) years.

IOC's 15 MMTPA capacity mega refinery project at Paradip, Orissa has commissioned in Nov 2015. The above project of IOC was prescribed for the benefit of section 80-IB(9) vide Notification No. 66/2008 dated 30.05.2008. It was initially envisaged that the project would be completed and commissioned before 31.03.2012. However, the completion of this project has been delayed due to various reasons beyond the control of IOC.

This issue was also taken up by MOP&NG with MOF in earlier year's Union Budget proposals for the oil industry, wherein it was requested to extend the sunset clause from 31.03.2012 to 31.03.2017. However, the request was not acceded.

Non availability of such benefit under section 80-IB(9) will affect the economics of the project adversely.

The delay in the project completion is due to unavoidable circumstances which were beyond the control of the company, it is suggested that the benefit of section 80-IB(9) may be reintroduced for the said project by allowing for project completion date from 31.03.2012 to 30.03.2017.

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

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

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

Suggestion

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

9. **Classifying Euro VI project under Pollution Control category for 100% depreciation benefit**

   Refineries in India have to incur huge capital expenditure on Euro-VI projects. The expenditure incurred will not result in any additional revenue generation to the refineries. Since the objective of Euro – VI project is to reduce the content of Sulphur and other pollutants in the petroleum products, these machineries are to be classified as Pollution control Equipments and depreciation @100% may be allowed on such equipments as against the existing normal rate of depreciation of 15% applicable to plant & machinery.

   Suggestion

   Higher depreciation will help in improving the IRR of the project as the additional compensation for such projects are generally not commensurate to the investments made.

10. **Tax abatement to Refineries on new value added projects to maximize yield of HSD to conserve forex.**

    With the growing demand for diesel in the Indian Economy, suitable incentives, in the form of tax abatement are to be provided to the refineries to undertake projects that maximise the yield of HSD. This would serve the twin objectives of reducing the import of diesel thereby conserving valuable foreign exchange and also encourage refineries to convert the low value bottom distillates to high value middle and light distillates.

11. **Investment Allowance - Section 32AC of Income Tax Act, 1962**

    The Finance (No.2) Bill, 2014 has amended Section 32AC of the Income Tax Act, 1961 (which promotes growth in the area of manufacture) by extending the deduction available for investments made in plant and machinery from 31/03/2015 to 31/03/2017. However to promote Make in India initiative the deduction should be extended upto 31.03.2019.

    BPCL is implementing a major capacity expansion project at its Kochi Refinery in Kerala State from present 9.5 MMTPA to 15 MMTPA. The Propylene Derivatives Petrochemical Project (PDPP) under this expansion plan envisages production of 47 TMT of Acrylic acid, Acrylates viz. 180 TMT of Butyl Acrylate, 10 TMT of 2 Ethyl Hexyl Acrylate and Oxo Alcohols viz. 38 TMT of Normal Butanol, 47 TMT of 2 Ethyl Hexanol and 7 TMT of Iso Butanol. The identified products are predominantly being imported and hence this project promotes the "Make in India" initiative under the Petrochemicals category of the Chemicals Sector as notified by Government of India. The estimated cost of the project is approx. Rs. 4600 crores.

However, considering the high capital investment for this pioneering petrochemical venture of BPCL, it would be difficult to remain competitive unless adequate support is received from Central Government by tax deduction in form of Investment allowance.

Suggestion

The investment Allowance may please be extended for two more years.

12. **100% Depreciation allowance for Projects undertaken for upgradation of fuel quality - Section 32**

Under the Auto Fuel policy, the Govt. has directed oil companies to supply High Speed Diesel with minimum prescribed Sulphur content. Now as per proposed Auto Fuel Policy of Government, Oil companies are required to provide the HSD with maximum Sulphur content of 0.005% (BS-IV) with effect from 01.04.2017 throughout the country.

Huge capital investment is required to be undertaken so that they can comply with the Directives of the Govt. and to remove the Sulphur from crude oil which is in excess of prescribed limits. Such reduction of Sulphur content helps to reduce the Air Pollution. As per Section 32 of the Income Tax Act, 1961 the assessee who are engaged in the Business or Profession are allowed the Depreciation Allowance in respect of assets used in Business or Profession. Rule 5 of the Income Tax Rules along with Appendix-1 provides for the rate of deprecation on various categories of assets. As per this rule, 100% depreciation allowance is admissible in respect of air/ water pollution control equipment..

Further government in a move to fight pollution is going to implement BS VI norms by 1st April, 2020 in order to comply with these norms huge outlay of more Rs. 5000 crore is estimated.

Suggestion

Upgradation of Refinery to help reduce the Air Pollution by limiting the Sulphur content from fuel, the expenditure incurred on this should be made eligible for 100% Depreciation under Section 32.

13. **200% Weighted tax deduction in respect of in-house R&D Centre - Section 35 (2AB) and 35(2AA) - inclusion of expenditure incurred on Bio-fuels**

Finance Act, 2016 has amended section 35(2AB) so as to reduce the weighted deduction to 150% w.e.f. FY 2017-18 and 100% w.e.f. FY 2020-21. However weighted deduction of 200% should be allowed to boost corporate for increase in Research and development in India. This will also help in achieving Make in India Program by providing incentive for promoting innovation. This would also be in line with the government policy of encouraging innovation and R&D.

Suggestion

In order to encourage research, it is recommended to extend the weighted deduction of 200% up to 31-03-2020.

It is further suggested that any expenditure incurred on Bio- Fuel activities should also qualify for a deduction of 200% under Section 35(2AB) in order to promote investment/ R&D initiatives for renewable/ non-conventional energy sources.

14. **Amendment in Section 35AD**

Under the existing provisions of section 35AD of the Income-tax Act w.e.f. 01.04.2010, investment-linked tax incentive is provided by way of allowing 100% deduction in respect of any expenditure of capital nature (other than on land, goodwill and financial instrument) incurred wholly and exclusively, for the purposes of the “specified business”. The ‘specified business’ include the business of laying and operating a cross country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network. The incentive is available if the project of cross country pipeline is approved by Petroleum & Natural Gas Regulatory Board and is being operated on common carrier principle. The crude oil pipeline dedicated for the Refineries and also dedicated product and gas pipelines for customer are inadvertently getting excluded. Further as per sec 73 the carry forward and setoff of loss from such specified business can be set off against the same business.

Suggestion

It is suggested that the approval of PNGRB for the common carrier principle may please be waived off. Further, these pipelines are capital intensive projects and the revenue generation for breakeven from this project will require substantial time. Therefore it is also requested to remove the condition imposed in Section 73 for carry forward and setoff of losses from specified business.

Natural Gas

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

The LNG sector like much of the global energy industry today is such that practically every company will have to engage in intercompany trade to a greater or lesser extent. In India, specifically, as the reliance on imported LNG increases, there is bound to be intercompany trade. With this trade comes a need to determine prices which adhere to relevant transfer pricing legislation, which normally reflects arms-length pricing. Increasingly, long term pricing for LNG is being replaced by spot prices which are largely determined by a number of instantaneous factors. Nearly 25% of LNG globally is now traded on the spot market. Functions here often involve the identification of potential spot purchasers, agreement with potential counterparties, and range of intermediary logistic services. Further the challenges of accommodation of re-gasification and trading prices, wherein determining safe harbour ad hoc can be extremely challenging.

Suggestion

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

16. **Obtainment of secret comparables from corporates under Sec 133(6) of Income Tax Act should not be applicable for non-commodities like LNG. [Transfer Pricing]**

The term secret comparable denotes a comparable whose data is not available in the public domain but is known only to the tax authority which is making the transfer pricing adjustment. Determination of LNG pricing is highly complex, due to international price changes, varying cost of intermediary logistic services etc. Thus, secret comparables obtained from corporates are usually far from accurate and hence should not be applicable. Arms-length price for LNG needs to account for functional differences. Thus, allowing use of secret comparables for non-commodities, where pricing isn't as straight forward as commodities, leads to a high number of disputes and unnecessary protracted litigations between both government and corporates.

Best Practices

Developed countries, such as the US & UK have an official policy of not using secret comparables for any Arm's Length Principle (ALP) evaluation. In Australia and Netherlands, under specific judicial pronouncements, secret comparables are not allowed.

Suggestion

As secret comparison analysis is not accurate, this practice should not be applicable for non-commodities like LNG.

17. **Benefit of Section 80IA to be extended to 'Gas projects'**

In order to cater the nation's energy requirement of numerous industries like CGD, Power sector, refineries etc., Natural Gas is very much needed in India. In Union Budget speech of 2012-13, Oil and Gas / LNG storage facilities and oil and gas pipelines have been recognized as 'Infrastructure' and declared eligible for Viability Gap Funding (VGF) under PPP. Similar eligibility should be given to PSUs like IOCL for undertaking oil and gas pipelines projects for captive use.

The definition of Infrastructure facility under explanation to section 80-IA(4) read with Circular no. 793/2000 dated 23.06.2000 include a port including structures at port for storage, loading and unloading etc. upon fulfillment of conditions.

Natural Gas is imported in liquefied form for which storage and/or unloading facility is built at the port.

Suggestion

In order to promote import of LNG, LNG facility at port location may also be included in the definition of "Industrial Infrastructure" in section 80-IA of Income Tax Act 1961. Further, the word “loading and unloading facility”, may be substituted by “the loading or unloading facility” for the purpose of definition of “Port” for section 80-IA. Further benefit of Section 80-IA (4) has been restricted to any infrastructure facility starts operation up to 31.03.2017. It is suggested to remove/extend the sun set clause to promote the make in India campaign.

18. **Amendment in section 73A and 72A of the Income Tax Act for set off and carry forward of the loss on account of deduction claimed u/s 35AD for growth of cross country Gas pipeline network and building the National Gas Grid (NGG)**

Under section 35AD of Income Tax Act, 100% deduction in respect of capital expenditure incurred prior to commencement of operation of the specified business to the assesses engaged in laying & operating a cross-country Natural Gas/Crude/Petroleum pipeline network for distribution is allowed. The following restrictions in section 73A and 72A are also causing problem for Natural Gas pipeline industry and needs to be addressed:

a. Section 70 provides that in case of loss under any head of income (other than head of Capital gain), assesses are entitled to set off such loss from any other source of income under the same head. Therefore loss from one business can be set off from profits of other businesses. However section 73A provides that loss computed under sec 35AD will be set off only against profits & gains of Specified Business (in our case business of laying and operating a cross-country natural gas pipeline laid after 01.04.2007). This restricts the claim for adjustment of 35AD loss against the profits of other pipelines laid prior to 1st April 2007 and other businesses of the company, which is allowed otherwise in all other cases. This discrimination needs to be removed and set off of loss computed under section 35AD may be allowed against profits of any other business carried on by the assesse as provided under section 70 of the Act.

b. Section 72A needs to be amended suitably so that in case of amalgamation or demerger of a company, accumulated losses in specified business (u/s 35AD) of amalgamating company or demerged company shall be allowed to be carried forward and set off in the hands of the resulting company where such loss of specified business (u/s 35AD) is directly related to the undertakings transferred to the resulting new company.

Suggestion

It is suggested that Set off of loss computed under section 35AD may be allowed against profits of any other business carried on by the assesse by suitably amending section 73A of the Income Tax Act in line with the provision under section 70 of the Act.

Section 72A needs to be amended so that carried forward loss of business of laying and operating a cross country natural gas pipeline network. (u/s 35AD) of a demerged company or amalgamating company is allowed to be carried forward and set off in the hands of the resulting company in case of demerger or amalgamation.

<u>General</u>

19. **ICDS-IX**

ICDS-IX, dealing with “Borrowing Costs” requires modification with reference to computation of borrowing costs eligible for capitalization out of funds borrowed generally as the current wording of the Standard conflicts with the provisions contained in Section 36(1)((iii) of the Income Tax Act, 1961.

CBDT had notified ten Income Computation and Disclosure Standards (ICDS). These were applicable to all taxpayers following the mercantile system of accounting from the AY 2016-17 (FY 2015-16). However, CBDT by a press release dated 06.07.2016, deferred the applicability of ICDS by one year, i.e. will be applicable from AY 2017-18 (FY 2016-17). It may be noted that, various issues and clarifications were pointed out to the CBDT by the taxpayers/professionals, following which the implementation was deferred by one year.

The implementation would lead to spate of disallowances and consequent litigations. Enforcement of ICDS would only increase the cost of tax compliance and litigation. It is imperative that as much as exemptions are removed/rationalized, the proposals that have the effect of increasing the tax rate should also be removed/rationalized and avoided especially, if it has the effect of only advancing the tax collection, which otherwise is certain. Therefore, it is recommended that ICDS be totally de-notified or deferred till a broad consensus is reached among the tax payers and Department.

Suggestion

It is recommended that ICDS be totally de-notified or deferred till a broad consensus is reached among the tax payers and Department.

20. **Amendment under Section 36(1)**

Under the Companies Act, P&L Accounts of the Company has to be in compliance with certain mandatory accounting standards, one of which is AS-15(Revised). As per the Standard, it is mandatory to provide for long term employee benefits such as post- retirement medical benefits, death benefit, leave encashment etc., based on actuarial valuation. While the Books cannot reflect true and fair view unless complied with the Accounting Standards, the Assessing Officer treats these expenditure as a contingent liability and disallows deduction, primarily because of Section 36(1) that permits only few of the chosen retirement benefits, namely, PF, Gratuity and Pension.

After all, in Public Sector Organizations, Department of Public Enterprises has mandated providing a portion of their salary to its employees in the form of 'Retirement Benefits'. In a Going Concern, there would get accumulated, substantial expenditure towards Long Term Employee Benefits, incurred year after year, that gets allowed under the current Income Tax provisions. As a result, 'tax cost' as a % of profit before tax goes higher and higher with consequent piling up of Deferred Tax Assets.

Suggestion

Considering the genuineness of the Business Expenditure and disallowance by the Assessing Officer leads only to delaying the deduction under Income Tax

Act,suitable amendments are to be brought in Section 36(1) of the Act, permitting the deduction while transferring of the money to the welfare fund namely, ‘Post-Retirement Medical Benefit Fund’ and ‘Death Benefit Fund’ in addition to PF & Gratuity, currently specified in the said section.

21. **Section 37(1)**

It is suggested that suitable provision be inserted in the Act whereby prior period expenses are allowed as deduction in the current year under section 37(1) of the Income Tax Act, 1961. A limit (say not exceeding 1% of the turnover) can be prescribed for such expenditure. It will obviate administrative difficulties in claiming the deduction in respect of previous years and rectifications proceedings etc. There will not be any revenue loss to the government from this clarification, since corporate tax rates over a period of years have remained more or less the same.

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

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

Suggestion

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

23. **Rule 37BB**

Under existing Income tax provisions, there are no time limits defined for disposal of application, seeking No Objection Certificate for remittance of TDS u/s 195/197 of the Act. As per the Provisions of section 195 and as per Rule 37BB, any payment made to Non-residents requires payer to obtain a No Objection Certificate from Assessing officer or a Certificate from a Chartered Accountant in Form 15CB before making payment to the concerned party.

Suggestion

In order to avoid inordinate delay in obtaining these certificates, it is suggested that an outer limit of say, 30 days shall be fixed for issuance of such certificates, failing which the rate sought in the Application shall be deemed to have been approved. Further a clarification may also be issued on Rule 37BB, so as to exempt the Trade payments for imports made from Non-resident parties, wherever they do not have any Permanent Establishment in India. This will reduce the administrative difficulty with regard to the volume of transactions involved vs. tedious compliance procedures as per New Rule 37BB.

24. **TDS Credit to be allowed irrespective of the Assessment Year**

In respect of Tax deducted at source , TDS certificate issued by the deductor would reflect in Form 26AS statement .If the income in respect of such TDS was booked and offered to tax in one particular year and the amount of deduction is made in any subsequent year by the deductor, then such TDS credit is not provided to the benefit of the assessee stating that the income has not been offered for tax in that relevant year.

Suggestion

Hence, it is suggested that the TDS Credit to be allowed irrespective of the Assessment Year.

25. **Section 43A**

Section 43A permits adjustment to 'cost of Assets' imported from outside India. The background to the introduction of this section was devaluation of rupee done during 1966-67, which, but for introduction of this section would have led to disallowance of exchange rate differential, impacting large number of Corporate Assessees. Over the last 5 decades, funding of capital projects have undergone sea change and External Commercial Borrowing is one of the major sources of low-cost funding of large projects wherein Assets acquired need not be imported from outside India and it could be Indian Assets as well.

Suggestion

The hon'ble Prime Minister's theme of 'Make in India', would get a huge fillip if necessary amendment is made in the section to allow capitalization of exchange rate differential arising out of loan borrowed in foreign currency even if the Asset is indigenous. This would also enable keeping the effective tax rate at 25%, intended to be achieved over the 4 years.

26. **Section 43B**

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

Suggestion

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

27. **Section 92BA, Finance Act 2012**

In Finance Act 2012, Section 92BA has been inserted so as to include specified domestic transaction under the purview of 'Transfer Pricing Provisions'. Considering that transactions between PSU Oil Companies for exchange of products are anyway concluded at arm's length and such products are exchanged on tonne to tonne basis, it is suggested that entire Inter – PSU Oil

Company Agreements shall be excluded from the purview of Department's scrutiny of 'arm's length'.

Suggestion

It has been suggested to exclude the transaction between the companies of same tax brackets from the transfer pricing provision and to consider excluding transaction between two PSU company from the scope of transfer pricing provisions.

28. **Section 115O**

Section 115O of the Income Tax Act provides for payment of tax on distributed dividends by companies. Since majority of shares in PSUs is held by the Govt. of India, and as and when dividend is declared on such shares, it becomes the property of the Govt., enjoying constitutional immunity of taxes, income tax should not be again levied thereon.

Suggestion

Therefore, it is suggested that Section 115O shall not be made applicable to PSUs, to the extent of dividend, payable on shares held in the name of President, Government of India. The effective tax rate of DDT is recommended to be reduced to 10%.

29. **Section 115JAA**

Tax Credit u/s 115JAA in respect of tax paid on deemed income has been allowed to be carried forward for set off to future years but such carry forward shall not be allowed beyond the 10th assessment year. Such restriction on carry forward be extended to 15 years in place of 10 years, now.

30. **Perquisite Tax**

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

Suggestion

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

31. **U/S 10(A0AA)**

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

Suggestion

Accordingly, it is suggested to revise the limit from Rs.3 lakhs to Rs.10 lakhs.

32. **Exclusion of Dividend Exempt u/s 10(34) from the scope of Section 14A**

Section 14A provides that no expenses shall be allowed in respect of expenses incurred in relation to the income which do not form part of total income. The section provides that the amount of expenditure, which is deemed to have been incurred, shall be computed in the prescribed manner.

One major income, which is exempt from total income, is dividend earned from investments from domestic companies. This dividend is distributed by the companies out of the Profit After Tax and after payments of dividend distribution tax. Thus the amounts earned and distributed by the domestic companies are taxed in the hands of the domestic company twice namely in the form of corporate tax and Dividend distribution tax. Over and above this, a deemed expenditure is disallowed in the hands of the recipient of the dividend by virtue of provisions of Section 14A and the provisions of Rule 8D.

This leads to an anomalous situation of a tax-free income getting taxed in the hands of the recipient indirectly by way of disallowances. The extension of section 14A to be applicable to dividend income earned is not equitable especially in the light of levy of dividend distribution tax and safeguards built in the act to avoid dividend stripping.

Suggestion

Suitable amendments may be made to Section 14A to exclude dividend exempt u/s 10(34) from the operation of this section.

33. **Disallowance of expenditure incurred in relation to exempt income - Section 14A**

As per provisions of Sec. 14A of the Act, the expenditure which is incurred in respect of exempt income shall not be allowed while calculating the Income of the assessee. Rule 8D (Inserted with effect from 24.03.2008) as amended by Finance Act 2016 provides for the method of calculating the amount of expenditure incurred in case of exempt income. Disallowance u/s 14A read with Rule 8D is aggregate of the following amounts:

• Expenditure directly attributable to exempt income.

• 1% of the annual average of the monthly average of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income

Even though the investments made in assets generating exempt income are out of Own funds of the Company, the Income Tax Dept. is not accepting the fact and have made heavy additions under this Section for the years where assessment has been completed.

Suggestion

Section 14A may be amended to provide that if the investments in assets which yield tax free income are made out of own funds such as share capital, free reserves etc. then the addition under this Section should not be made.

Further, without prejudice to above even if rule 8D is applicable, there should be an upper limit based on certain percentage of exempt income and not the total expenditure claimed by Assessee.

34. **Providing Consequences of Non-disposal of Rectification Applications under section 154 of Income-tax Act, 1961**

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

Suggestion

Therefore, it is suggested that it should also be provided in the said sub-section (8) of section 154 that if the income-tax authority does not dispose of the application made to it within six months, the application shall be deemed to have been allowed. Simultaneously, the assessee may also be given the right to appeal against an order in respect of which he had filed an application under section 154 but which is lying undisposed for more than six months. This would ensure promptness in disposal of applications under section 154 and avoid undue harassment to the taxpayers.

35. **TDS on Transportation payment under section 194C**

No deduction of TDS if deductee provides a self declaration that he owns or likely to own ten or less goods carriage at any time during the Previous Year. Based on the declaration, deductor provides the exemption from TDS u/s 194C towards payment of transportation. Relevant extract of the Act is as under:

"(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum"

In our Petroleum industry, where transportation of goods across India is being carried out by transport contractors, We in IOCL receive the thousands of self-declaration (mainly from Proprietor/ HUF) from our transporters, keeping the record of the same and providing the exemption from TDS through system becomes a challenging and tough task. These certificates are obtained on annual basis from the transporter and to be uploaded in our system for non-deduction of TDS.

Suggestion

It is requested that the above provision is resulting in to unnecessary huge compliance. Either the TDS deduction to be made compulsory for all transporters or the exemption may be provided to all. Condition of obtaining the self-declaration form, from the deductee and updating every time in ERP system is a very cumbersome & time consuming process.

36. **Do away with requirement of Withholding tax certificate u/s 195 / 197 for Foreign Company having a PE in India**

Currently all foreign companies are required to obtain a withholding tax order u/s 195 or 197 from the income tax authorities to ascertain the WHT rate to be applied on their sales proceeds in India. The companies with registered PE in India file returns in India and operate in a manner similar to an Indian company. It is common in Petroleum sector and infrastructure sector to do business through a branch of a foreign company.

Suggestion

To provide a level playing field to the foreign company having a registered PE in India it is requested that the requirement of withholding tax should be similar to the Indian companies. Alternatively, the requirement of WHT should not be applicable for the registered PE dealing with Purchase and Sale of goods in India. It may be noted that a PE cannot be closed unless a NOC is obtained from the Income Tax authorities to safeguard revenue interest.

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

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

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

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

Suggestion

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

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

38. **Exemption of Interest U/S 234B and 234C to Oil Companies**

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

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

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

Currently, interest u/s 234B/234C charged on the Assessee is 1% per month whereas interest u/s 244A payable to Assessee is 0.5%.

Suggestion

a. The Government is requested to provide the specific exemption to Oil Companies including NRL from applicability of provisions of these Sections or provide some relaxation in payment of Advance tax so that undue hardship which the Oil Companies are facing now can be reduced to some extent.

b. It is suggested to bring parity in the rates and further the rate be linked to any 'reference rate' thereby making it dynamic.

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

   i. Fluctuations in the international prices of Crude Oil.

   ii. Movements in the Exchange Rates for foreign currencies,

   iii. Government directives on subsidy sharing,

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

39. **Abolition of MAT provisions**

The profits of the oil industry is integrally linked to:

a. International Crude Oil and product prices and Foreign exchange

b. Government policy on duty structure, Pricing of products, subsidy –sharing etc.

Changes in both these factors significantly affect the refining margins and cannot be foreseen or reasonably estimated. Therefore, a correct estimation of profits for the year and remitting the correct amount of the advance tax instalments is not possible.

The existing MAT provisions adversely impact the oil companies that are on the path of recovery from losses.

The objective of MAT is to tax companies that have earned book profits but do not pay taxes by availing tax exemptions. Extending MAT to companies recovering from losses is not in consonance with the objectives of MAT.

Suggestion

Accordingly, it is suggested that MAT may be abolished.

At the least, Companies that are recovering from losses and turnaround from losses to profits should be exempt from the provision of MAT.

40. **Exemption from Minimum Alternate Tax (MAT)**

The benefit of granting tax holiday to Exploration & Production (E&P) sector is nullified to a large extent by the application of MAT. Following the commencement of commercial production, E&P projects are subject to MAT during the 7 year tax holiday period. E&P is a highly capital intensive sector and availing the full benefit of the tax holiday is necessary to encourage investments in this sector.

Suggestion

It is, therefore, recommended that E&P sector may be exempted from MAT during the tax holiday period.

41. **Interest on Refunds paid to the assesse to be at par with interest charged by the revenue on short payment of Income tax**

At present the rate of interest payable on refunds (0.5% per month) by department is less than the rate of interest charged by the department from the assessee i.e 1% per month. Further, the interest on refunds is subject to tax by the assessee, where as the interest paid by the taxpayer is not allowable as deduction. This further creates inequity and makes the effective interest on excess payment of tax (refund) is less than 4% p.a on a post tax basis as against any long term infrastructure government bonds yield a commoner a tax abatement in the year of investment and above 6% p.a on post tax basis.

Suggestion

The interest rate on the refunds due to the assessee and on the amount payable by the assessee to the government should be same on the ground of equity.

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42. **Amendment in certain sections like 35 /43B and 115JA to accommodate the benefit of deduction /set off of MAT credit to successors in case of amalgamation.**

Section 2(19AA) of the Act defining Demerger specifies conditions which are conflicting in nature. First condition requires that at least 75 percent shareholders of transferor should become shareholder of transferee. Second condition provides that shares should be issued to the shareholders of the transferor company on a proportionate basis. If one logically reads the two conditions, it means that shares should be issued on a proportionate basis to the shareholders of demerged company to whom shares are issued under First condition. However, to avoid litigation, clarity needs to be provided

Suggestion

It is suggested that the section 2(19AA) be amended to provide that the shares of the transferee company should be issued on a proportionate basis to the shareholders of demerged company to whom shares are issued under First condition. It should be clear that proportionate basis does not apply provided that the shares of the transferee company should be issued on a proportionate basis to the shareholders of demerged company to whom shares are issued under First condition. It should be clear that proportionate basis does not apply to all shareholders.

It is also suggested that a new section be inserted in chapter IV providing that in case of reorganization/demerger, deduction in relation

a. to expenditures incurred in pre-reorganization period but allowable during post-reorganization period eg: deduction u/s35DDA and
b. Expenditures incurred during the previous year but allowable on certain criteria for e.g. payment basis under Section 43B, etc. will be allowed to successor as it would have been allowed to the predecessor.

Section 115JAA of the Act should also be amended to provide that successors in case of amalgamation, demerger or any other form of reorganization should be eligible to claim benefit of MAT Credit.

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43. **Underlying Tax Credit for foreign subsidiaries**

There is no provision under the Act for claiming credit for tax on income paid by a foreign subsidiary (hereinafter referred to as underlying tax credit). The non-allowance of underlying tax credit creates a discriminatory tax environment in favour of a foreign branch model for investing overseas as against a foreign subsidiary company model. This is for the reason that, while profits earned by a foreign branch or a 100% foreign subsidiary both beneficially belong to the Indian assessee and are taxed in India (branch profits when earned and subsidiary profits when repatriated to India), credit for foreign income tax paid is allowed in the case of foreign branch but not in the case of a foreign subsidiary.

Suggestion

Since the decision as to which model should be to used for investing overseas is guided primarily by commercial considerations and not by tax considerations, and being forced to opt for the foreign branch model for tax reasons could make Indian entities un-competitive vis-à-vis entities of countries which allow underlying tax credit, it would be apt to allow underlying tax credit. Suitable provisions may, therefore, be inserted in the Act at appropriate place(s) to permit the allowance of underlying tax credit.

44. **Incentivizing CSR Activities**

The Finance (No. 2) Act, 2014, has inserted an Explanation in section 37 of the Income-tax Act, 1961, with effect from financial year 2014-15, to provide that any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013, shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession. The Explanatory Memorandum to the Finance (No. 2) Bill, 2014, states that CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business and since the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for computing the taxable income of the company.

While there was a demand for incentivizing incurrence of CSR expenditure by allowing 200% deduction for the same, the aforesaid amendment has even withdrawn the 100% deduction which was otherwise admissible. Further, while the making of a voluntary donation may be said to be application of one's income, incurrence of expenditure in compliance with the mandate of a statute cannot be said to be so. In the cases of Public Sector Enterprises, CSR activities are not only mandated by statute but are also closely monitored by their administrative ministries and are undertaken in various areas of national importance. Expenditure incurred on such CSR activities is, therefore, better targeted and more beneficial for the nation and society as large as compared to voluntary donations. It, therefore, appears incongruous that, deduction of CSR expenditure has been disallowed while continuing to allow 100%/50% deduction in respect of voluntary donations.

Suggestion

It is, therefore, suggested that the aforesaid amendment may be rolled back and it may be provided that CSR expenditure would be deductible in the year of incurrence thereof. If a complete roll-back is not considered desirable, the same may be rolled back for at least Public Sector Enterprises.

45. **Making section 14A inapplicable to dividend received by companies from Debt Mutual Funds.**

Section 14A of the Income-tax Act, 1961, provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act. The rationale behind this provision is that no deduction should be allowed for any expenditure which an assessee incurs in relation to tax free income.

Section 10(35) of the Income-tax Act, 1961, provides that any income received in respect of the units of a Mutual Fund shall not form part of the Total Income. In other words, dividend from a Mutual Fund is exempt from tax in the hands of the recipient. However, u/s. 115R of the Income-tax Act, 1961, the Mutual Fund is required to pay Dividend Distribution Tax (DDT) @ 30% plus surcharge @

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12% plus Education Cess @ 3% resulting in an effective DDT rate of 34.608% when dividend is distributed to a company. As per sub-section (2A) of section 115R, DDT is to be calculated by grossing up the amount of dividend.

The effect of the above provisions is that a company in receipt of dividend from a debt mutual fund receives dividend after DDT payment by the mutual fund. The DDT payment is equal to the tax which the recipient company would have paid if the dividend had not been subjected to DDT and would have been taxable in the company's hands itself. Thus, effectively, the recipient company is paying the full amount of tax on dividend received from a debt mutual fund and the amount received is really not tax free in the hands of the recipient company.

Suggestion

Accordingly, it is suggested that section 14A may be suitably amended to provide that the same shall not apply to expenditure incurred by a company in relation to dividend received by it from a debt mutual fund on which DDT has been paid as per the provisions of section 115R. The Income Tax Simplification Committee headed by Justice (Retd.) R.V. Easwar has also recommended that dividend received after suffering dividend-distribution tax should not be treated as exempt income and no expenditure should be disallowed as relatable to the same.

46. **Removing cap on non-taxable employer contribution to approved superannuation fund**

Section 17(2)(vii) of the Income-tax Act, 1961, provides that the amount of any contribution to an approved superannuation fund by the employer in respect of the assesse, to the extent it exceeds one lakh fifty thousand rupees, is treated as a taxable perquisite in the employees' hands. Approved superannuation funds are governed by the provisions of Schedule IV to the Income-tax Act, 1961, and Rules 82 to 97 of the Income Tax Rules. As per Rules 87 and 88, a cap of 27% of an employee's salary (including the 12% contribution to provident fund) has been prescribed for employer's contribution to an approved superannuation fund. Thus, an employer's contribution to an approved superannuation fund is capped at 15% of an employee's salary. Employer's contribution to superannuation funds is, in the case of Public Sector Enterprises, also restricted by guidelines of the Department of Public Enterprises.

Employer's contribution to a recognized provident fund, which is also meant to meet the social security needs to employees post retirement, is, however, taxed in the employee's hands only if the same is made at a rate exceeding 12% of the employee's salary. Therefore, while employer's contribution to a recognized provident fund is taxed in the employee's hands only if the same is made at a rate exceeding 12% of the employee's salary, an employer's contribution to an approved superannuation fund becomes taxable the moment it exceeds Rupees One Lakh Fifty Thousand, even if the same is well within the cap of 15% of salary.

Suggestion

Hence, it is suggested the amount of any contribution to an approved superannuation fund by the employer in respect of the assesse may be made fully non-taxable. Merit of considering the entire employer's contribution to an approved superannuation fund as non-taxable in the employee's hands had been recognized in the last draft of the Direct Taxes Code (DTC) since the same does not subject employer's contribution to an approved superannuation fund to tax in the employee's hands without any maximum limit.

Without prejudice, if the aforesaid suggestion is not agreed to, then the amount of one lakh fifty rupees specified in section 17(2)(vii) of the Income-tax Act, 1961, may be raised to at least two lakh fifty thousand rupees to allow accumulation of sufficient corpus to meet post retirement needs of employees in the scenario of increased life expectancy and high inflation.

47. **Removal of maximum limit under Section 17(2) (v) of Income-tax Act, 1961, & insertion of clarificatory Explanation**

Clause (ii) of the Proviso to sub-section (2) of section 17 of the Income-tax Act, 1961, provides that expenditure incurred/reimbursed by an employer for treatment in an employer maintained hospital, government approved hospital or

CCIT approved hospital (in respect of prescribed ailments) is fully exempt from tax. However, clause (v) of the Proviso to sub-section (2) of section 17 provides for exclusion from perquisite chargeable to tax of a sum not exceeding Rs.15,000/= in the previous year in respect of any sum paid by the employer in respect of any expenditure actually incurred by an employee on the medical treatment of himself or his family members other than in a employer maintained hospital, government approved hospital or CCIT approved hospital. Thus, any sum exceeding Rs. 15,000/= paid by the employer in respect of medical expenses actually incurred by the employee is taxed. This results in the employee suffering on two counts – one by way of suffering of himself or a family member from a disease and the other by having to pay tax on the reimbursement of expenditure on medical treatment actually incurred by him - especially in cases of serious diseases, the treatment of which is very costly.

Suggestion

The aforesaid limit may, therefore, be either totally dispensed with or enhanced to at least Rs. 1,00,000/= per year in line with the proposal to enhance it to Rs. 50,000 which was proposed in the last draft of the DTC. Further, a clarificatory Explanation may also be inserted to clarify that where an employee has/had to avail treatment, purchase medicines or get tests conducted in an emergency or life-threatening situation, the full cost of such treatment, medicines and tests shall also be treated as fully exempt from tax.

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

As per the Government's directives petrol, diesel, SKO through Public Distribution System (PDS) and LPG for domestic use are sold to the consumers at the price fixed by the Govt. of India. The selling prices of such products are lower than the cost and therefore, resulting into operating losses. To compensate these operating losses suffered by OMCs, the GOI issues Special Oil Bonds to the OMCs. Entire amount is offered to tax on receipt of intimation for issue of such special oil bonds by GOI. The Special Oil Bonds issued by GOI have long redemption period ranging from 7 to 17 years. The bonds are issued only in the paper format bearing specified rate of interest and no cash is getting transferred in this regard. Further these special oil bonds do not have any statutory liquidity ratio status thus Banks and Financial Institution are unwilling to buy such bonds and therefore, market demand of these bonds are limited.

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

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

Suggestion

It is suggested that a suitable clarification to be issued in this regard that Loss incurred at the time of sale of such GOI special Bonds are to be allowed as revenue loss.

49. **Income Deemed to Accrue or Arise in India**

Sec 9(1) (v), (vi) & (vii), provides that income of a non-resident shall be deemed to accrue or arise in India under clause (v) or clause (vi) or clause (vii) of sub-section (1) and shall be included in the total income of the non-resident, whether or not (i) the non-resident has a residence or place of business or business connection in India; or (ii) the non-resident has rendered services in India.

As a result of above provision, if a service is utilized in India rendered by a Non-resident, he will be taxable in India whether or not he has permanent establishment in India or whether or not he has actually rendered services in India.

In recent years, incidence of tax on both services and goods are kept at par. Goods imported from outside India for use In India are not subject to Income Tax in India. Similarly services generated outside India should not be taxable in India just because the service recipient is a resident of India.

Further, the above provision has increased the cost of procurement of services from Non-residents located outside India as Indian tax costs are built in the cost of services.

Suggestion

It is suggested that non-resident should be taxable in India only if he has a permanent establishment in India and rendered services in India.

50. **Place of effective management (POEM) of a Company**

Before amendment, Section 6 (3) of the Act provided that a company is resident in India in any previous year, if it is an Indian Company; or during that year, the control and management of its affairs is situated wholly in India.

However the concept of residential status of a company has been changed by Finance Act 2015, as per the amendment a company will be said to be resident, if it is an Indian company or its places of effective management (POEM) is in India at any time during the year.

Place of effective management means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as whole are, in substance made.

The amendment has caused confusion in determination of place of effective management of a company incorporated out-side India and controlled by Indian holding company. It the above amendment will hamper the Global business by Indian Companies which are carrying out their business out-side India through a Subsidiary Company incorporated outside India but controlled from India. The above provision is stringent and in case of POEM of a of a foreign Company is in India it will be required to pay tax and file an Income Tax return in India like an Indian Company.

Suggestion

It is suggested that earlier provision under section 6 (3) should be restored and a company should be treated as resident in India if it is an Indian Company; or during that year, the control and management of its affairs is situated wholly in India.

51. **Deferment of Residency test for foreign companies - Place of Effective Management ('POEM')**

The CBDT had on 23rd December, 2015, issued the Draft Guiding Principles for determination of POEM of a company, for public comments and suggestions. The said guiding principles have not been finalized so far.

Therefore, the taxpayers will again be in uncertainty from 1st April 2016 till the time the same are issued by the Government. Bringing such guidelines/ clarifications in the middle of the year will not allow the taxpayers to have any time to gear themselves.

Suggestion

Therefore, it is recommended to defer the implementation from 1.4.2016 to 1.4.2017.

52. **Statutory Dues not to be included in the gross receipts for the purpose of section 44BB of the ITA**

Section 44BB of the ITA provide for taxation of non-residents on a presumptive basis. This section deems a specified percentage of the amounts received by the non-residents for the activities covered by the provisions as income under the ITA. In the past there has been considerable litigation on whether Government dues, such as service tax, recovered by the non-residents from the Indian parties would constitute part of gross receipts as these statutory dues are to be paid over by the non-resident taxpayers to the Government, there is no income element therein.

Suggestion

In view of the above, section 44BB of the ITA should be amended to provide that statutory taxes and dues (such as service tax) recovered by the non-resident service provider from the Indian residents would not form part of gross receipts for computing deemed income under the Section. This will be fair and will eliminate unnecessary litigation on the issue.

53. **No disallowance for the domestic company, for charges paid to a PE in India of a foreign company**

Often, domestic companies' expenditure includes fees / charges in respect of services / facilities availed from foreign companies. If the services / facilities are availed from an associated enterprise, the expense claim is scrutinized in detail and is often the subject matter of disallowance.

Unless the associated enterprise is subject to gross basis of taxation in India, or presumptive taxation resulting in a lower effective tax rate than the domestic company, such transactions result in the following tax effect:

a. Tax break, at 30% (plus surcharge and cess), in the hands of the domestic company
b. Income in the hands of the foreign company, to be included while computing taxable income – which would be taxable at 40% (plus surcharge and cess)

Thus, there is no tax loss to the exchequer.

Suggestion

It is, therefore, recommended that the expense claims (in such a scenario) should not be subject to transfer pricing assessment and disallowance.

54. **Taxability of unrealized gains due to revaluation of shares after adoption of Ind-AS**

Refer to the recommendation dated 23rd July, 2016 by MAT -IND AS committee set up by CBDT on the issue of Investment –Fair value adjustments through profit & loss Account, the Committee has deliberated and identified the following options-

a. Continuing with the current recommendation i.e. the retained earnings adjustment should be included in the book profit in the year of first time adoption of Ind AS.
b. The retained earnings adjustment should be included in the book profit at the time of realization.
c. The retained earnings adjustment should be included in the book profit over a period of 3 years starting from the year of first time adoption of Ind AS.

Considering the dual aspects of taxation of unrealized gains/ losses and maintenance of records, the committee recommended option C.

Suggestion

The implementation of MAT -IND AS committee recommendation of option C will cause hardship and injustice to assessee as MAT shall be levied on notional gain over a period of 3 years. Further profit on sale of long term listed shares on which securities transaction tax is levied is exempt under section 10 (38) of the Income Tax Act, 1961.

In view of the above, it is suggested that committee recommendation of including the retained earnings adjustment in book profit for the purpose of levy of MAT in the year of adoption of Ind-As or over a period of 3 years starting from the year of the first time adoption of Ind AS or on realization , should not be accepted.

55. **Reduction in Corporate Tax Rate – Finance Act**

In Budget 2015 Honorable Finance Minister proposed a phased reduction in corporate tax rate along with phased elimination of exemptions. In Budget 2016 a plan of phasing out exemptions was announced; however Corporate tax rate was lowered only for new manufacturing companies and relatively small enterprises.

As per budget speech 2016 phasing out exemptions include accelerated depreciation being limited to 40% from 01.04.2017 which will be impacting the corporate profitability.

Suggestion

It is recommended to reduce the corporate tax rate from existing 30%.

56. **Perquisite tax on housing accommodation provided to employees of CPSE’S - Rule 3(1)**

The valuation of perquisite on rent free accommodation is currently divided in to two categories:

a. central and state government employees: Valuation is equal to license fee charged for such accommodation as reduced by rent actually paid by employee.
b. other employees (including employees of PSU’s /PSEs) on company owned/ leased accommodation is based on three slabs 15%/10% and

7.5% effective from 01.04.2006 by Finance Act,2007 based on the population of the location, as per census of 2001. The discrimination between employees of Central/ State Government and those of CPSEs like BPCL with regard to Housing Perquisite Tax, has led to widespread discontent amongst employees of CPEs as deduction of Housing Perquisite Tax based on valuation of 15%, 10%, 7.5% (depending upon population of cities) of annual salary has eroded the income of employees substantially, more so, since for the purpose of annual salary, various components like Pay, Allowances, Bonus or any monetary payment by whatever name called are taken into account.

The gap between the earnings of CPSE employees occupying company accommodation and those on HRA is widening day by day. Besides, the heavy incidence of Housing Perquisite Tax has been a long standing grievance of employees in CPEs who are occupying company accommodation.

Suggestion

We recommend removing the distinction between employees of Central / State Government and CPSEs in the matter of Housing Perquisite Tax and providing for the same type of treatment to both these category of employees.

57. **Stepping up the exemption on allowances - Section 10 of the Income Tax Act, 1962**

As per current tax laws, children education allowance, hostel allowance are tax exempt up to a nominal amount of Rs. 100, Rs. 300 per month respectively. These limits have not changed in a decade and it's time that these are revisited as expenses towards the same have increased drastically.

Suggestion

The new limits can be set at Rs. 1,000 for children education, Rs. 2,000 for hostel allowance.

58. **Raising the reimbursement limit for medical expenses - Section 17(2) of the Income Tax Act, 1962**

Salaried individuals are currently entitled to a tax exemption of Rs. 15,000 on medical reimbursement.

Suggestion

In view of the spiralling medical costs, increasing this limit to Rs. 50,000 would provide some respite.

59. **Overall limit for Deduction under-Sec-80CCE - Sec-80C,80CCC and 80CCD (1)**

An increase in Section 80CCE to Rs. 300,000/- would definitely help in mobilization of savings and forced investments in various income generating options

Suggestion

It is recommended to increase the limit to Rs.300,000/-

60. **Rule 10(14)**

The Exemption limits for various allowances (eg: Children's Education Allowance, Hostel Allowance etc.) mentioned in Rule 2BB r.w.s. 10(14) was fixed in 1995. We wish to recommend that the same needs to be revised keeping in view the cost inflation. It may be noted that the said Rule was amended last year only in case of Transportation allowance.

61. **Tax Loss Carry back - Clarification**

Tax loss carryback is a concept similar to the tax loss carry forward. The principle difference is that a year in which a loss is noted is not carried forward to a subsequent year. Instead, the tax loss carry back is applied to a previous year in which the assessee has paid large sum of taxes, and allows you to reduce taxes already paid, which usually results in a refund of some of the taxes paid by the assessee. This system is widely practiced in United States by the Internal revenue service (IRS) of United States Federal Government.

Under this system, the assessee will have to refile the tax return of previous year for the carry back year, and request a refund accordingly, if the assessee have filed its tax return on time in the past. There is a specific provision in the US tax law system which allows them to carry back upto three immediate proceeding years in order to avoid unlimited time for reopening an assessment related to previous years.

With the Indian Tax laws, aligning with global tax laws, this concept can be introduced in India also.

This would go a long way in incentivising commodity sectors that are badly affected by pricing cycles like Oil & gas and other commodities that are exposed to extreme volatility in International prices.

Thus in a business that had terrifically profitable years, an extremely bad business year might prompt an attempt to recoup some of the taxes paid in profitable years through a tax loss carry back .The above provision would also be attractive for Foreign funds and institutions which are exposed to such environment globally but denied in Indian Taxation laws.

62. **TDS applicable on payment made to non-residents should explicitly say which all the transactions subject to TDS - Clarification**

The tax withholding in respect of non-residents scope is widened in the section 195. Section 195 contemplates that in the case of composite payments made to a non-resident, which have an element of income embedded or incorporated in them, the payer is under an obligation to deduct TDS in respect of such income attributable to the composite payments. In the case of purchase of indigenous crude oil, the price payable is determined based on International markets and hence it would not be possible to determine the profit element embedded in the total payment made towards purchase. It is also to be noted that the prices of crude are independent of cost associated for exploration and production of crude oil. Hence section 195 making it obligatory to on the part of the assessee to withhold tax in respect of the whole or part of the income attributable of the other income.

In view of the divergence of opinions under the existing tax regime for example, royalty would be subject to withholding tax while copy righted materials and goods are not subject to withholding tax, clarifications need to be issued by CBDT specifying the nature of payments which attract withholding tax. It should be noted that the following phrase, "**any other sum chargeable under the provisions of the Act"** should be removed from the section 195 of the income tax act to bring in more clarity on the payments which are subjected to TDS.

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63. **Specified domestic transfer pricing should be made applicable only to companies which are subject to concessional rate of tax like section 10A or section 80 IA/IB - Clarification**

Section 92BA has been inserted vide Finance Act 2012 by which the coverage of transfer pricing has been expanded to include certain 'Specified Domestic Transactions' if the aggregate amount of all such transactions entered by the assessee in the previous year exceeds Rs. 5 crores in the previous year.

The intention of the amendment was to cover a situation wherein there could not be any loss to the exchequer and has to be in line with the suggestion provided by the Supreme Court in case of Glaxo Smithkline. The Supreme Court had provided that the situation of domestic transfer pricing should be applicable only in the case of transactions between a profit making and a loss unit/company and the other scenario which was envisaged by the Supreme Court was transactions between units/assesses having different tax rates. Other than the scenarios contemplated above, a corresponding adjustment should be allowed in the respective entity and the same has to be provided for in the statue.

It should also be suitably clarified that the transfer pricing provisions would only apply to revenue expenditure referred to in section 40A(2)(a) of the Act, and not to payments made to persons specified in section 40A(2)(b) of the Act.

Since the specified domestic transfer pricing concept itself is in nascent stage where people are not familiar with and is open to different interpretations, there are disputes relating to applicability of the transaction in certain cases. In these circumstances, the penal provisions of 2% of the value of the disputed transaction for non maintanence of books and records would be detrimental and increase the burden of taxpayer considerably and thus the penalty should be restricted to the tax in dispute and not linked to the value of transactions.

64. **Rationalizing TDS Provisions - Clarification**

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

A liability for expenses which may have been incurred by a person as on the Balance Sheet date but for which neither the payee has preferred any claim nor the amount payable has been quantified is often provided on an entirely ad hoc basis in the books of account by assessees to comply to avoid any comment from auditors to the effect that the accounts may 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 has been 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 ho liability is provided, the requirement to deduct tax at source causes hardship to assessees.

Considering somewhat similar situation faced by banks wherein provision of liability for interest is made without any constructive credit to depositors' accounts, the Central Board of Direct Taxes has, vide circular no. 03/2010 dated 02-03-2010, clarified that there is no need for banks to deduct tax at source on provisioning of interest since no constructive credit to depositor's/payee's account takes place. As this is a problem faced by all assessees and not just the banking fraternity, it is suggested that similar dispensation may be provided to all assessees by making suitable amendments in the provisions of the relevant sections contained in Chapter XVII-B of the Income-tax Act, 1961, dealing with deduction of tax at source. At the same time, to safeguard the interests of the revenue it may be provided that the requirement to deduct tax a 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.

65. **Supreme Court decision in ONGC on section 44 BB**

There has been a considerable legal debate on applicability of the section 44BB of the ITA with respect to technical services provided in relation to E&P activities. This issue was recently analysed and discussed in detail by the Supreme Court (SC) in the case of Oil and Natural Gas Corporation Limited v/s. CIT in Civil Appeal No. 731 of 2007 (SC) and has been held in favour of the service providers.

Suggestion

In view of the above, it is recommended that CBDT should consider issuing directions that the ratio decidendi of the aforementioned ruling of Supreme Court must be adhered to by the field officers in all cases where the subject issues are involved.

66. **Deduction u/s.80-IA(4) of the Act for oil storage units and LPG bottling plants**

The International Energy Agency (IEA) predicts that by 2020, India will be the largest oil importer, increasing its vulnerability to threats of physical supply disruptions and to large price fluctuations. A strategic oil inventory is imperative for energy security given this scenario.

Thus oil storage and LPG bottling plant facilities in India should get the infrastructure status and accordingly, be granted the exemption u/s.80-IA(4) of the Act. Section 80-IA(4) of the Act grants exemptions to enterprises carrying on business of developing or operating and maintaining, or developing, operating and maintaining any infrastructure facilities (e.g. roads, highways, water, ports etc).

Suggestion

Considering the fact that land acquisition is a big hurdle faced by OMCs, commercially it is economically feasible for the OMCs to outsource these projects to Oil/LPG Storage companies. With the Government's vision to create 10 crore new cooking gas connections over next 3 years and oil ministry's directions to OMCS to prepare a project plan with the private players, it would be imperative for the Governments to grant the infrastructure status to LPG bottling plant u/s.80-IA(4) of the Act.

67. **Group Tax Consolidation / Fiscal Unity**

At present, in India there is no fiscal unity tax regime wherein companies within a particular group could opt to file a single consolidated tax return for the entire group. The infrastructure companies in India have witnessed cost overruns, long gestation periods and lower profitability which results in negative internal rate of returns ('IRR').

Suggestion

In case, fiscal unity tax regime is introduced, borrowing would be at holding company level while the interest cost would be offset against the income derived by the project SPV thus supporting the infrastructure companies by way of improved cash flows and increased operating profits which would lead to higher IRR at project level.

68. **Agency Fee/Sponsorship Fee paid by EIL to Agent / Sponsor -** In some of the Middle East / Far East / other countries, tenders/proposals can be submitted only through Agent who should be a business entity belonging to that respective country. To meet this requirement, an agency agreement is required to be entered into with the prospective agent.In line with RBI guidelines, such persons/business entities who act as agents can be paid agency commission on job to job basis. EIL has to appoint Sponsor/Sponsoring Agency too as per the requirements of specific countries. Income Tax department presently disallows the expenditure of commission paid to these overseas agents for non-deduction of TDS thereon/other grounds.

Suggestion

It is recommended that suitable amendments may be made to Income Tax laws to allow such commission payments as business expenditure.

69. **Expanding Double Taxation Treaty base**

Presently India has double taxation treaties only with limited number of countries.

It is suggested that India should enter into more treaties of similar nature. This would help companies like EIL to expand services geographically in a competitive manner.

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INDIRECT TAXES

CUSTOMS DUTY

Upstream

1. **Request to amend Condition No. 40A(d) of Sl. No. 357A of Customs Notification No. 12/2012-Cus (as amended) so as to do away with the requirement of obtaining NoC in case of transfer of imported goods for petroleum operation from one eligible project to another eligible project, where there is no change in either Licensee/Contractor or the sub-contractor of such Licensee/Contractor**

   a. Sl. No. 357A of Notification No. 12/2012-Cus provides exemptions from whole of BCD & CVD on import of specified goods (List-34) for petroleum operations, subject to prescribed conditions as under:

   i. If importer is a Licensee/Contractor, he has to produce essentiality certificate (EC) from Directorate General of Hydrocarbon (DGH);

   ii. In case if importer is sub-contractor of licensee/contractor, he has to produce EC along with undertaking from such licensee/contractor that in case of non-compliance of exemption conditions by importer, the licensee/contractor shall pay customs duty along with fine and penalties;

   Normally, the Licensee/Contractor are carrying out petroleum operations in nominated as well as NELP/Pre-NELP Blocks. Hence, the high value imported goods such as drilling rigs, supply vessels etc. are frequently required to be moved from one eligible project to another eligible project. In this regard, as per condition no. 40A (d) of Sl. No. 357A of customs notification no. 12/2012-Cus, the NoC from DGH & Customs is required for prior to each such movement.

   b. In this connection, it is submitted that obtaining No Objection Certificate (NOC) from DGH & Customs prior to the movement of high value goods for petroleum operation from one eligible project to another is infructuous where there is no change in either Licensee/Contractor or the sub-contractor of such Licensee/Contractor. This infructuous exercise of obtaining NOC is time-consuming process and also creates hindrance in optimal utilization of high value resources.

Suggestion

Condition No. 40A(d) of Sl. No. 357A of the said customs notification, should be suitably amended so as to do away with the requirement of obtaining NOC in case of transfer of imported goods for petroleum operation from one eligible project to another eligible project, where there is no change in either Licensee/Contractor or the sub-contractor of such Licensee/Contractor.

c. Request for clarification to the effect that upto 20% of goods imported and cleared for home consumption for petroleum operation (Exploration & Exploitation of Hydrocarbons) on payment of a Nil or concessional rate of customs duty, but remain unused and declared scrap shall be allowed to be disposed of on payment of customs duty on the sale value of scrap.

i. Oil and Exploration Companies import various oil field equipment, spares, consumables, drill pipes, etc for petroleum operation in the oil field allotted on a nomination basis, as well as in NELP Blocks.

ii. Material such as line pipes, line/marine pipes etc is imported against the contract/purchase order on an estimated basis.

iii. Occasionally, after actual utilization of the goods, a small percentage of the imported consignment remains unused. The leftover / excessive goods are utilized in any other eligible project to the extent possible. However, sometime these pipes being of a particular specification cannot be utilized and remain unused. Hence, such goods need to be disposed of as a scrap.

iv. Due to ambiguity in the applicability of customs duty, the rate of customs duty etc, old materials lie in store and occupy valuable space.

Suggestion

Request for clarification to the effect that upto 20% of goods imported and cleared for home consumption for petroleum operation (Exploration & Exploitation of Hydrocarbons) on payment of a Nil or concessional rate of customs duty but remain unused and declared scrap shall be allowed to be disposed of on payment of customs duty on the sale value of scrap.

d. Enlarging the List-34 of goods (of Sl. No. 357A of Notification No. 12/2012-Cus) that could be imported, duty free, by the upstream sector for petroleum operation

List-34 (Sl. No. 357A) of Customs Notification No. 12/2012-Cus dated 17.03.2012 (as amended) provides list of goods required for petroleum operation on which the customs exemption is provided. This list was prepared long time back and since then the same has not been revised inspite of the fact that there have been various technological changes and the requirement of additional equipments specially required for deep/ultra-deep sea. The software required for petroleum operations are not covered specifically under the existing list. Further, the Sl. No. 9 of List-34 does not indicate the onshore and offshore platform/facilities specifically. A revised list of suggested items is enclosed herewith at Annexure-I for incorporation.

Amendment to List-34 (Sl. No. 357A) of Notification No.12/2012-Cus dt. 17.03.2012:

SL. No.	Existing List of Goods	Proposed Revised List of Goods	Justification
1.	Land Seismic Survey Equipment and accessories, requisite vehicles including those for carrying the equipment, seismic survey vessels, global positioning system and accessories, and other materials required for seismic work or other types of Geophysical and Geochemical surveys for onshore and offshore activities.	Land Seismic survey, **Aero Magnetic survey equipment** and accessories, requisite vehicles including those for carrying the equipment, seismic **Offshore** survey vessels, global positioning system and accessories and other materials required for seismic work or **all other types of surveys** for onshore and offshore **including CBM** activities, **software, hardware, sample bottles and associated equipment required for petroleum operations.**	To include the items not specifically covered in the list though required for petroleum operations. Further, the aero magnetic survey is required in CBM for mapping the different formations having susceptibility to magnetism.
2.	All types of drilling rigs, jackup rigs, submersible rigs, semi-submersible rigs, drill ships, drilling barges, shot-hole drilling rigs, mobile rigs, workover rigs consisting of various equipment and other	All types of Drilling rigs, jack up rigs, submersible rigs, semi submersible rigs, drill ships, drilling barges, **dynamically positioned rigs**, shot-hole drilling rigs, **air drilling rigs, with air packages consisting of**	Added to include the Dynamically positioned rigs, modular rigs and on land drilling and

	drilling equipment required for drilling operations, snubbing units, hydraulic workover units, self-elevating workover platforms, Remote Operated Vessel (ROV).	**compressors and boosters**, mobile rigs, workover rigs **including modular rigs, on land drilling and workover rigs,** consisting of various equipment required for drilling operations **including** snubbing units, **nitrogen units acid pumpers**, hydraulic work over units, self elevation work over platforms, Remote Operated Vessels (ROV).	workover rigs. Coal is susceptible to formation damage during drilling operations, therefore air drilling is used world-wide.
3.	Helicopters including assemblies/parts.	Helicopters including assemblies/parts	No change
4.	All types of marine vessels to support petroleum operations including work boats, barges, crew boats, tugs, anchor handling vessels, lay barges and supply boats, marine ship equipment including water maker, DP system and Diving system.	All types of marine vessels to support petroleum operations including **Offshore Supply Vessel (OSV), Platform Support vessel (PSV), Multi Support Vessel (MSV**), work boats, barges, crew boats, tugs, anchor handling vessels, lay barges and supply boats, marine ship equipment including water Maker, DP system and diving system.	To detail all type of Vessels.
5.	All types of equipment/ units for specialised services like diving, cementing, logging, casing repair, production	All types of Equipment/ Units/ **requisite vehicles** for specialized services like diving, cementing, logging **including**	To bring clarity of the items covered under this item.

	testing, simulation and mud services, oil field related lab equipment, reservoir engineering, geological equipment, directional drilling, stimulation, Coil Tubing units, Drill Stem Testing (DST), data acquisition and processing, solids control, fishing (as related to downhole retrieval in oil field operations or coal bed methane operations), well control, blowout prevention(BOP), pipe inspection including Non Destructive Testing, coring, gravel pack, well completion and workover for oil/ gas/ CBM wells including wireline and downhole equipment.	**perforation units and equipments**, casing repair production testing, simulation and mud services, oil filed related lab equipment, reservoir engineering, geological equipment and Diving system equipment, directional/ **Horizontal** drilling, stimulation, Coil Tubing units, Drill Stem testing (DST), data acquisition and processing, **including all types of software,** solids control, fishing (as related to downhole retrieval in oil field operations or coal bed methane operations), well control, Blowout Prevention (BOP), **crisis Management Equipments** pipe inspection including Non destructive Testing, coring, gravel pack, **Hydro- fracturing units, Well completion and workover for oil/gas/water injection wells/** CBM wells including wireline and downhole equipment, **including equipment for riserless drilling, LWD/MWD, PWD, SDMM, MRDH/ SRDH tools rotary steerable tools, expandable casings, casing drilling system, whip stocks, milling tools, surface control/**	

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		monitoring units.	
6	All types of casing pipes, drill pipes, production tubing, pup joints, connections, coupling, kelly, cross overs and swages, Drive Pipes.	All types **and sizes** of casing pipes, drill pipes, **drill collars, rotary and vibratory hoses, floating equipments, liner hangers, core drilling rods, core barrels,** production tuning, pup joints, connections, coupling. Kelly, crossovers and swages, drive pipes**, thread protectors and fittings.**	To include all types of pipes and fitting required for petroleum operations. Thread protectors on some occasions are to be imported separately if they are damaged in transit / storage.
7.	All types of drilling bits, including nozzles, breakers and related tools.	All types of drilling bits, **DTH hammers,** including nozzles, breakers and related tools.	DTH hammers are required for carrying out air-drilling operations
8.	All types of oil field chemicals or coal bed methane chemicals including synthetic products used in petroleum or coal bed methane operations, oil well cement and cement additives, required for drilling, production and transportation	All types of oil field chemicals or coal bed methane chemicals including synthetic products used in petroleum or coal bed methane operations, oil well cement and cement additives, required for drilling production and transportation of oil or gas.	No Change

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	of oil or gas.		
9.	Process, production and well platforms/ installation for oil, gas or CBM and water injection including items forming part of the platforms/ installation and equipment required like process equipment, turbines, pumps, generators, compressors, primemovers, water makers, filters and filtering equipment, telemetery, telecommunication, tele-control and other material required for platforms/ installations.	**Sub sea/ floating / fixed** process production and well platforms/ installation and **onshore/offshore/ facilities/ terminals for storage/ production/ Well control systems/ processing of** oil, gas or CBM and water injection including items forming part of the platform/ installation/ **onshore facilities** and equipments/ **raw materials** required **including** process equipment, turbines, pumps, generators compressors, prime movers, water makers, filters and filtering equipment, **all types of electrical & electronics and instrumentation items, control systems, equipments, soil improvement, construction equipment**, telemetry, telecommunication, tele-control **security and access control** and other materials required for platforms/ installations.	To cover all types of offshore and onshore facilities and equipment materials required for petroleum operations.
10.	Line pipes for flow lines and trunk pipelines including weight-coating and wrapping.	Line pipes for flow lines, **jumpers** and trunk pipelines including **all types of** coating and wrapping, **pipeline fittings, flanges**	To cover all the materials required for pipelines both

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		connection systems and associated items, painting and insulation.	offshore and onshore.
11.	Derrick barges, Mobile and stationary cranes, trenchers, pipelay barges, cargo barges and the like required in the construction/ installation of platforms and laying of pipelines.	Derrick barges, mobile and stationary cranes, trenchers, pipe lay barges, cargo barges and the like required in the construction/ installation / **operation** of platforms and laying of pipelines.	To cover the vessels required during operational phase.
12.	Single buoy mooring systems, mooring ropes, fittings like chains, shackles, couplings marine hoses and oil tankers to be used for oil storage and connected equipment, Tanks used for storage of oil, condensate, coal bed methane, water, mud, chemicals and related materials.	Single buoy mooring systems, mooring ropes, fittings like chains, shackles, couplings marine hoses and oil tankers to be used for oil storage and connected equipment, tanks **& vessels** used for storage of oil, condensate, coal bed methane, **NGL** (Natural Gasoline), water, mud, **cement** chemicals and related materials.	
13.	All types of fully equipped vessels and other units /equipment required for pollution control, fire prevention, fire fighting, safety items like Survival Craft, Life Raft, fire and gas detection equipment, including H2S monitoring equipment.	All types of fully equipped vessels and other units/equipment required for pollution control, **Ambient air monitoring equipments**, fire prevention, fire fighting, safety **related** items like survival craft, life raft fire and gas detection equipment, including H2S monitoring equipment.	To ensure that all types of fire and gas detection, fighting and suppression systems are covered.

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14.	Mobile and skid mounted pipe laying, pipe testing and pipe inspection equipment.	Mobile and skid mounted pipe laying, pipe testing and pipe inspection equipment **and consumables.**	
15.	All types of valves including high pressure valves.	All types of valves **and assemblies** including high pressure valves	To include valve actuators and other assemblies.
16.	Communication equipment required for petroleum or coal bed methane operations including synthesized VHF Aero and VHF multi channel sets/ VHF marine multi channel sets.	**All types of** communication equipment required for petroleum or coal bed methane operations including synthesized VHF aero and VHF multi channel sets/ VHF marine multi channel sets.	To give clarity to the issue and cover all communication equipments.
17.	Non-directional radio beacons, intrinsically safe walkie-talkies, directional finders, EPIRV, electronic individual security devices including electronic access control system.	Non directional radio beacons, intrinsically safe walki-talkies, directional finders, **EPIRB,** electronic individual security devices including electronic access control system.	An error in the original list.
18.	Specialized antenna system, simplex telex over radio terminals, channel micro wave systems, test and measurement equipment.	Specialised antenna system, simplex telex over radio terminals, channel micro wave systems, test and measurement equipment.	No Change
19.	X-band radar transponders, area surveillance system.	**All types of transponders including** X-band transponders,	To include all types of

		area surveillance system.	transponders.
20.	Common depth point (CDP) cable, logging cable, connectors, geo-phone strings, perforation equipment and explosives.	Common depth point (CDP) cable, logging cable, connectors, geophone strings, perforation equipment and explosives.	No Change
21.	Wellhead and christmas trees, including valves, chokes, heads spools, hangers and actuators, flexible connections like chicksons and high pressure hoses, shut down panels.	Wellhead and christmas trees **surface as well as subsea** including valves, chokes, heads spools, hangers and actuators, flexible connections like chicksons and high pressure hoses, shut down panels, **flow metres, sand detectors, DTS, MLS artificial lift equipment including surface and subsurface equipment / such as control heads subsurface safety valves, storm choke gas lift valves and mounting and accessories.**	To include in the list equipments based on latest technologies.
22.	Cathodic Protection Systems including anodes.	Cathodic protection systems including anodes **and corrosion detection, monitoring and control systems.**	Added to cover all corrosion prevention / monitoring items.
23.	Technical drawings, maps, literature, data tapes, Operational and Maintenance Manuals required for	Technical drawings, maps, literature **all types of** data tapes/**cartridges, data storage media,** operational and	To include new types of data storage media using new

	petroleum or coal bed methane operations.	maintenance manuals required for petroleum or coal bed methane operations.	technologies.
24.	Sub-assemblies, tools, accessories, stores, spares, materials, supplies, consumables for running, repairing or maintenance of the goods specified in this List	Sub-assemblies, tools, accessories, stores, spares, materials, supplies, consumables for running, repairing or maintenance of the goods specified in this List	No Change
25.	No Entry	All types materials , equipments, instruments, required for deep water projects and associated facilities like subsea templates, modules well heads, X mas trees, subsea control system equipments and material umbilical, hydraulic oils, connector clamps, subsea structures, assemblies, control modules, jumpers, testing and calibration systems. Simulators, intervention vessels, instrumented safety systems.	New Item added to cover the equipment and materials required for deep water / subsea field developments which are being taken up in India.
26.	No Entry	All types of pre-fabricated structures like manifolds, PLEMS, PLET, decks jackup boat landings, buildings flare/ vent boom, subsea modules.	To cover the import of prefabricated items which are fabricated outside and imported.

2. **Clarification on exemption from Custom Duty**

   Goods imported in relation to E&P activities are exempt from the levy of customs duty vide customs Notification no. 12/20129 (Sl. No 357A). This exemption is available to goods specified under List 13/14 but an exhaustive list is not provided. In other words, there are only few line items describing the specified goods which would be exempt from levy of customs duty and may be subject to different interpretation. The List 13/14 should be an illustrative list, granting specific exemption to all goods / equipment imported in relation to E&P (DGH, at the time of issuing the Essentiality Certificate, is anyway verifying the purpose of use of goods for petroleum operation).

   Suggestion

   It is, therefore, recommended that a residuary clause be inserted in the list as below:

   List-13: (25) all goods other than those mentioned above imported for use in relation to petroleum Operation.

   List-14: (20) all goods other than those mentioned above imported for use in relation to CBM operation.

3. **Clarification with regard to treatment of surplus goods, which were imported while claiming an exemption from customs duty on the basis of EC issued by DGH**

   Presently, exemption from customs duty is granted on import of goods required for oil and gas exploration and exploitation subject to condition of producing EC issued by DGH. Given this, the goods are imported with an intention to use in petroleum operations without payment of customs duty. However, over a period of 5 – 10 years, there is an unused surplus which accumulates and needs to be disposed.

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Suggestion

It has been observed that the customs authorities have been issuing show cause notices to demand customs duty on surplus goods as such surplus goods have not been used for oil and gas exploration. This issue remains under litigation inspite of a positive Supreme Court decision in case of Clough Engineering. Hence, a clarification circular should be issued to reduce the litigation.

Downstream

4. **Zero customs duty for new Refineries/Refinery expansions, product and gas pipelines to be made nil.**

   Suggestion

   Zero customs duty should be introduced for the capital goods imported for the new refineries as was extended to RPL Refinery, instead of the current rate of duty of 22.85% (viz., 5% Basic+ 12.00% CVD+ 3% Edu. Cess + 4% SAD), so as to provide a level playing field to the new Refineries of the PSUs.

   It is also suggested that the Customs duty on import of material viz. pipes, valves, flanges, data communication system for laying of petroleum products and gas pipelines is made nil.

5. **Full exemption to be granted on Liquid and Gas pipelines projects covered under chapter 98**

   Liquid (crude oil & petroleum products) and Natural gas pipeline projects have been notified as Project imports under Chapter heading 98.01 at Entry no.33 of Notification no.42/96-Cus, dated 23.07.96 as amended. Further, vide entry no.510 of the Notfn No.12/2012-Cus, dated 17.03.12 as amended, all goods under chapter heading 98.01 are leviable to 5% customs duty.

   Considering that these projects are capital intensive in nature and important for country's energy security, there is a need to grant exemption of customs duty on the subject projects.

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Suggestion

It is suggested that present customs duty being levied at the rate of 5% should be reduced to Nil on Liquid as well as Gas pipelines projects covered under chapter 98.01.

6. **Import duty benefit on LNG should be extended to all sectors apart from power sector, according the same status as crude petroleum.**

Import of LNG presently attracts Basic Customs Duty of 5.15% ad valorem which adds to the cost of supply to end-users. Till 25 June 2011, this was the same rate, import of crude petroleum attracted until it was brought down to zero. Hence it is no longer at parity with crude.

LNG and Natural Gas (NG) imported for generation of power have been exempted from Customs Duty vide Notification No. 12/2012 dated 17.03.2012 (Serial Number 139). However, this exemption is applicable only to the power sector and that too in case of imports for supply to a power generating company only. This exemption is not applicable to other sectors like fertilizer and petrochemicals, which results in additional costs for use of LNG and also currently leads to preferential treatment for imported crude, without justification i.e. cleaner fuel i.e. Natural Gas imports is discriminated with crude oil imports.

The benefits of using LNG are far-reaching than the revenue loss to the exchequer. International LNG prices are at least 20-25% lower than the Crude Oil (or petroleum fuels) on heat equivalent basis and thus, reduces the cost of energy to end-consumer in addition to the Forex saving.

Many countries have exempted custom duty on import of natural gas, for example Argentina, Brazil, Mexico, USA and Norway. Moreover, there is no justification to have differential tax treatments for LNG and crude petroleum**.**

Suggestion

The import duty of LNG may be made at par with the import duty of crude petroleum, which is presently zero.

Moreover, it is suggested that the custom duty exemption to LNG/Natural Gas may be granted on imports made by any person boosting development of competitive gas markets in India and such should be extended beyond power sector to 'end-use' for other sectors as well, to ensure parity with imported crude.

7. **Customs Duty on Styrene Butadiene Rubber (SBR) under CEPA with South Korea and ASEAN**

Synthetic rubber industry is a key sector of manufacturing and plays a vital role in the country's industrial growth. It plays a complimentary role to natural rubber in Indian rubber industry. The sector supports the automotive industry with supply of critical raw materials to tyre industry.

Annual demand for synthetic rubber in India is 650,000 MT and is expected to grow at the rate of 12% per annum. However, benefit of such healthy growth in demand is not being realized by domestic manufacturing sector. While domestic capacities for SBR, PBR and Butyl Rubber are being added, the three major synthetic rubbers used by the industry, 80% of demand is still met through import. Value of synthetic rubber import exceeds U$ 1.2 billion.

Indian Synthetic Rubber Private Limited (ISRPL), a Joint Venture of Indian Oil Corporation Limited (50%), TSRC Corporation, Taiwan (30%) and Marubeni Corporation, Japan (20%), has implemented and commissioned the Nation's first State of Art Styrene Butadiene Rubber (SBR) plant at Panipat, Haryana based on Butadiene available from Indian Oil's Panipat Naphtha Cracker Complex. Completed at an estimated cost of Rs 958 crore, ISRPL's SBR project was dedicated to the Nation on 29th November 2013. The project is designed to produce 120,000 MT per annum of high quality Styrene Butadiene Rubber which is currently imported for manufacture of automotive tyres and other applications. This prestigious project is considered as a path breaking venture of national importance since the entire domestic demand is currently met through imports.

Under the Comprehensive Economic Partnership Agreement (CEPA) with South Korea and ASEAN, the effective Customs Duty rate on imports from South Korea and ASEAN reduced to zero. Consequent to this elimination of Duties, the imports from South Korea and ASEAN have surged from 30% to

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70-80% thereby restricting the operations of new domestic capacities to about 20% in previous year.

Such low capacity utilization constrains the Refinery & Petrochemical Complexes in the Country to downgrade the available valuable feedstock like Butadiene for alternate use as fuels while the country continues to import Styrene Butadiene Rubber to meet its domestic demand which could have otherwise been produced within the country thereby leading to loss of precious foreign exchange upto USD 500 million per annum.

Suggestion

In view of the above, it is submitted that the Government may kindly consider a review of India-Korea CEPA and India-ASEAN FTA and exclusion of Styrene Butadiene Rubber falling under tariff heading 4002 from all tariff concessions. Alternatively, Govt. should impose Safeguard Duties on import of Styrene Butadiene Rubber under FTA with South Korea & ASEAN. Unless duty protection to ISRPL is considered by the Government of India, survival of this strategic national “Make in India” project would be at stake.

8. **Advance Authorisation benefit should be allowed for NCCD paid on crude oil imports.**

   Suggestion

   All the duties paid under Customs act on import should be allowed under Advance authorization.

9. **Nil Customs Duty on certain imports**

   Capital goods for projects generally carry a Customs Duty. Further, cenvat credit is unavailable for pipeline projects on the grounds that manufacturing activity is not carried out, even for crude pipelines.

   Suggestion

   With a view to facilitate investments in the petroleum sector, particularly in petroleum infrastructure it is sought that for the following projects, the BCD on project imports should be reduced to nil for the following capital goods:

   a. Crude, petroleum product and gas pipelines
   b. Developing LNG regasification/ CNG / auto LPG infrastructure.
   c. Floating Storage and Regasification Units

10. **Zero Customs Duty on imported equipments, machinery and other material required for petrochemical projects at BPCL, Kochi Refinery**

BPCL is implementing a major capacity expansion project at its Kochi Refinery in Kerala State from present 9.5 MMTPA to 15 MMTPA. The Propylene Derivatives Petrochemical Project (PDPP) under this expansion plan envisages production of 47 TMT of Acrylic acid, Acrylates viz. 180 TMT of Butyl Acrylate, 10 TMT of 2 Ethyl Hexyl Acrylate and Oxo Alcohols viz. 38 TMT of Normal Butanol, 47 TMT of 2 Ethyl Hexanol and 7 TMT of Iso Butanol. The identified products are predominantly being imported and hence this project promotes the "Make in India" initiative under the Petrochemicals category of the Chemicals Sector as notified by Government of India. The estimated cost of the project is approx. Rs. 4600 crores.

However, considering the high capital investment for this pioneering petrochemical venture of BPCL, it would be difficult to remain competitive unless adequate support is received from Central Government by way of tax concessions and exemption from duties. As requested by BPCL, the Government of Kerala has sanctioned financial incentives such as deferment of Kerala Government Sales Tax (KGST)/VAT and CST for a period of 15 years and reimbursement of works contract tax for the project, considering the importance of the same.

There is presently no domestic manufacturer for Acrylic Acid and Acrylates that constitute about 70% of the sales volume and only a small producer for Oxo Alcohols. During the year 2013 the total volume of these petrochemicals imported into India was 184 TMT valued at approx. US$ 330 Million. The PDPP, envisaged to be commissioned in mid 2018, would enable production of petrochemicals henceforth not made in India and facilitate import substitution. The total volume of these petrochemicals that BPCL plans to manufacture is 329 TMT which is valued at approx. US$ 800 Million (based upon forecast prices). Hence, there would be considerable savings of foreign exchange.

PDPP is proposed to be located in the vicinity of Kochi Refinery in order to exploit the advantages of integration of feedstock supply, utilities, offsites and other general facilities with the refinery. Land required for the project is already available. The technology for the process units is to be sourced from reputed international licensors who have been identified. Considering the specialised nature of products, the process technology is closely guarded by the technology licensors and hence there would be requirement to import key equipment, machinery and other material.

The products are used in application areas like paints & coatings, adhesives, water treatment etc. with considerable scope for the setting up of downstream and ancillary industries. The potential demand for the products mentioned can be considerable in view of “Housing for all by 2022” policy adopted by the Union Cabinet. Further, one of the identified products, Acrylic Acid can be utilised for a future Super Absorbent Polymer (SAP) Plant. SAP is also not presently manufactured in India is an import substitute and has important applications in health and hygiene, agriculture etc.

Suggestion

In view of the significance of the project as explained above, we earnestly request to bring out amendment to Notification 12/ 2012 – Cus dated 17/3/2012 to include as part of general exemption no 165 under Section 25(1) of the Customs Act, 1962 for granting Zero Customs Duty on imported equipments, machinery and other material required for the Propylene Derivatives Petrochemical Project (PDPP) of BPCL. This would immensely enhance the viability of this important “Make in India’ initiative and save valuable foreign exchange for the nation in the form of import substitute. The estimated duty component of the exemption sought would amount to Rs.60 Cr.

11. **Levy of Safeguard Duty on import of capital goods under Project Import Regulation**

Projects of national importance approved by Govt of India involving huge capital outlays are being implemented by Oil Companies. In our case we have undertaken substantial expansion of our Kochi Refinery and there are further more projects in pipeline for future implementation. We have in liaison with Ministry of Finance have obtained concessional rate of customs duty on project imports under Project Import Regulation. The import of capital goods are effected in line with the procedures laid down under the Project Import

Regulations. The items imported under the Project Import Regulation falls under Chapter 98 of the Customs Tariff. Whereas these items primarily falls under different Chapter heading owing to its basic classification. Safeguard duty has been imposed vide Notification on these items falling under the primary classification and no duty is imposed on items falling under Chapter 98 of the Customs Tariff. However, field formations are of the view that although these items are imported under Chapter 98, but since the primary classification is subject to safeguard duty, such duty shall be imposable on these items. This is resulting in unnecessary litigations and substantial increase in the cost of the projects.

Suggestion

We request exemption to be provided under Section 8(b) of the Customs Tariff Act for materials imported under Project Import Regulation falling under Chapter 98 of the Customs Tariff.

12. **Restoration of Customs duty on ATF**

The customs duty on ATF was reduced to Nil in November 2008 in the wake of very high crude oil prices subsisting at more than 100$/BBl to help the aviation industry, which faced significant cost pressures from high ATF prices and the refineries like CPCL took a hit of more than Rs. 40 Crores per annum. With the reduction in crude prices to the current levels of $ 45 /BBl, the aviation industry has returned to profitability. Further, it is in this back ground of lower crude prices that the GoI has increased in the Excise Duty on MS and HSD.

Suggestion

In view of the above, the customs duty on ATF may please be restored to the original level to help the refiners recover the revenues foregone from November 2008 and also partly fund the expenses /offset the losses incurred by the refiners in the- pan India roll- out of BS-IV grade of MS and HSD from April 2017.

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

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

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

As consequence of revisions in basic excise duty and additional duty of excise for MS and HSD, Countervailing Duty (CVD) and additional customs duty were also revised. While the rate rationalization was done primarily for excise duty thereby fully exempting education cess and secondary and higher education cess, for the purpose of customs duty, education cess and secondary and higher education cess continue to apply on imports of petroleum products, that is, MS and HSD. Consequently, overall effective customs duty on import of petroleum products is higher as compared to effective duty of excise as applicable on indigenous procurement of such products. Historically the government has always maintained parity and uniformity in both duty rates and duty structure between the Central Excise and Customs. Please refer to Annexure 1.

Impact:

In terms of additional duty impact, the effect has been that imports of MS & HSD have become expensive by approximately INR 0.54/litre for Diesel and by INR 0.67/Litre for Petrol, when compared to effective excise duty when procured indigenously. Also this additional impact is now dependent upon excise duty which the Government changes from time to time therefore creating an uncertainty about the effective landed cost of the product for an importer. Please refer to Annexure 1.

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

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

Suggestion

It is recommended that the customs duty on import of petroleum products, that is MS and HSD should be rationalized in line with excise duty as applicable on indigenous procurements in order to bring parity in the duty rates when procured indigenously or imported. Suitable amendments may be made to fully exempt education cess and secondary and education cess leviable on customs duty to align the customs duty rate with excise duty.

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Excise Duty on Petrol (in INR per Litre)							
		Effective date of duty revision			Post Budget 2015		
		14.09.2012	02.12.2014	17.01.2015		17.01.2015	31.01.2016
1	Basic Excise Duty	1.20	4.95	8.95	5.46	7.06	9.48
2	Additional Duty	2.00	2.00	2.00	6.00	6.00	6.00
3	Special Addl Duty	6.00	6.00	6.00	6.00	6.00	6.00
4	Edu Cess (2%)	0.18	0.26	0.34			
5	SHE Cess (1%)	0.09	0.13	0.17			
a	Total (1+2+3+4+5)	9.48	13.34	17.46	17.46	19.06	21.48
Customs Duty on Petrol (in INR per Litre)							
6	Basic Customs Duty (2.5% on price of 30/ltr)	0.75	0.75	0.75	0.75	0.75	0.75
7	CVD	1.20	4.95	8.95	5.46	7.06	9.48
8	Additional Duty	2.00	2.00	2.00	6.00	6.00	6.00
9	Special Addl Duty	6.00	6.00	6.00	6.00	6.00	6.00
10	Edu Cess (2%)	0.20	0.27	0.35	0.36	0.4	0.44
11	SHE Cess (1%)	0.10	0.14	0.18	0.18	0.2	0.22
b	Total (7+8+3+10+11)	9.50	13.36	17.48	18.01	19.66	22.15
a-b	Difference	-0.02	-0.02	-0.02	-0.55	-0.60	-0.67

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Excise Duty on Diesel (in INR per Litre)							
		Effective date of duty revision			Post Budget 2015		
		14.09.2012	02.12.2014	17.01.2015		17.01.2015	31.01.2016
1	Basic Excise Duty	1.46	3.96	7.96	4.26	4.66	11.33
2	Additional Duty	2.00	2.00	2.00	6.00	6.00	6.00
3	Special Addl Duty	0.00	0.00	0.00	0.00	0.00	0.00
4	Edu Cess (2%)	0.07	0.12	0.20			
5	SHE Cess (1%)	0.03	0.06	0.10			
a	Total (1+2+3+4+5)	3.56	6.14	10.26	10.26	10.66	17.33
Customs Duty on Diesel (in INR per Litre)							
6	Basic Customs Duty (2.5% on price of 30/ltr)	0.75	0.75	0.75	0.75	0.75	0.75
7	CVD	1.46	3.96	7.96	4.26	4.66	11.33
8	Additional Duty	2.00	2.00	2.00	6.00	6.00	6.00
9	Special Addl Duty	0.00	0.00	0.00	0.00	0.00	0.00
10	Edu Cess (2%)	0.08	0.13	0.21	0.22	0.23	0.36
11	SHE Cess (1%)	0.04	0.07	0.11	0.11	0.11	0.18
b	Total (7+8+9+10+11)	3.59	6.16	10.28	10.59	11.00	17.87
a-b	Difference	-0.02	-0.02	-0.02	-0.33	-0.34	-0.54

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Annexure 1: Historical changes to Excise duty and Customs duty

Note: Historically the overall difference between Excise Duty and Customs Duty has been the 2.5% Basic Customs duty and all other components of Excise and Customs have moved in line with each other every time the government has announced a change in the duty structure.

Natural Gas

14. **Clarification on non leviability of customs duty on LPG used for non-domestic purposes in locations storing both imported and indigenous LPG in common tankages as long as there is adequate quantity of indigenous LPG in the tanks.**

With effect from 02/05/2005 Customs duty on import of LPG/Butane/ Propane for Domestic PDS purposes has been made 'Nil' vide Notification No. 37/2005 dtd. 02/05/2005. LPG is also produced by our own refineries. At port locations LPG indigenously produced as well as imported is stored in common storage tanks in commingled condition since irrespective of the source; the BIS specification of the product is same. Though LPG is primarily used only for domestic PDS purposes, some minor quantity of LPG is also required for Non domestic purposes. Differential Excise duty is duly deposited for such use by our refineries. LPG plants are duty paid locations and there is no mandatory requirement of maintaining stock records as per FIFO basis for receipts and dispatches.

Customs authorities however have initiated proceedings under the Customs Act on the ground that on the basis of FIFO system some portion of the Imported LPG is also being used for non-domestic purposes and the exemption extended for imports is not applicable, therefore appropriate Custom duty should also be paid for such use inspite of Excise duty having been deposited.

Appropriate clarification should be issued to confirm that since the locations storing LPG are duty paid locations storing imported as well as indigenous LPG in common tankages, there should be no requirement to pay any Customs duty for LPG used for non-domestic purposes as long as there is sufficient indigenous product available at the given time for such use on which appropriate Excise duty is paid. A representation on this issue is already pending with the CBEC.

General

15. **Request seeking amendment in Customs Act regarding levy of Education Cess and Secondary Higher Education Cess**

As a move towards Goods & Service Tax (GST), the Central Govt. has exempted/ subsumed all goods from the levy of Education Cess and Secondary Higher Education Cess (hereinafter collectively referred as “CESS”) on Central Excise duty with effect from 1st March, 2015. However, the levy of CESS on Customs duty continues.

As per the Customs law, CESS is levied at the rate of 3 per cent on total Customs duty i.e. Basic Customs Duty, Duty levied under Section 3(1) of Customs tariff Act which is equivalent to Central Excise duty and some other duties being levied under the various Acts.

Since, the CESS levied under the Central Excise law on any other law for the time being in force on manufacture or production of any article or goods in India, has been subsumed / exempted per se; therefore, while making import from outside the country, no further CESS should be levied on part of customs duty which is equivalent to all central excise duties being levied on manufacture or production of any article or goods domestically.

Up to 28.02.2015, when CESS was levied on both Central Excise and Customs law, the Central Govt. in 2012 exempted the levy of CESS of portion of duty equivalent to Central excise duty (CVD) on import of all article & goods, so that it might not be levied twice. Accordingly, when CESS has been exempted on Central Excise duty with effect from 01.03.2015; the relevant potion of customs duty which is equivalent to Central Excise duties should not be considered for computation of CESS at all.

Suggestion

In this backdrop, it is requested that necessary amendment in the Customs Act that CESS of Customs duty levied under Section 94 of Finance (No.2) Act, 2004 and Section 139 of Finance Act, 2007, on import of any article or goods, will not be charged on that portion of customs duty which is equivalent to all central excise duties being levied on manufacture or production of any article or goods in the country.

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INDIRECT TAXES

EXCISE DUTY

Upstream

1. **Government to review the present rate of 20% of OID Cess and to moderate it to 10% of realized crude oil price.**

   OID Cess is levied on crude oil produced as a duty of excise under The Oil Industries (Development) Act, 1974. OID Cess is being levied on crude oil from nominated blocks and Pre-NELP Exploratory Blocks. Till Feb'16, OID Cess was being levied at a specific rate of Rs. 4,500 per MT. Keeping in view, the unprecedented reduction in crude prices, representations were made by Upstream Oil Companies including ONGC with the Government to review and reduce the rate of OID Cess and make it 8% to 10% ad-valorem.

   However, in terms of Notification dated 28 Mar'16, Government of India, has amended Oil Industries (Development) Act, 1974 and made OID Cess as **"20 percent ad-valorem" effective from 01.03.2016.**

   In view of above, post-budget, various representations are made by industry including ONGC to MoP&NG to review the OID Cess and revise to 8% to 10% of realized crude oil price.

   ONGC's comments on the financial implications on review of OID Cess are given hereunder:

a. OID Cess was earlier revised from Rs. 2,500/MT to Rs. 4,500/MT, when the price of Indian basket of crude was in the range of US$ 110/bbl. Under the revised rate of 20% ad valorem, at a crude price of US$ 110/bbl, OID Cess would work out to more than double of pre-revised rate of Rs. 4,500/MT.
b. Though, in the Budget, the change in OID Cess was sought by industry and intended by the Government as a relief to the industry, the actual impact would be to the contrary and would result into increase in OID Cess from the pre-revised rate of Rs. 4,500/MT even at moderate crude oil prices.
c. In addition to OID Cess, other statutory levies viz royalty (@ 10% and 20% on crude oil production from offshore & onshore areas respectively), VAT (@ 5%) and Octroi (@4.5%, wherever applicable) are also payable on production/

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sale of crude oil. At prevailing crude oil prices, with the revised rate of 20% for Cess, ONGC would end up paying almost one-half of crude price towards statutory levies. Moreover, since both royalty and OID Cess are production levies and not pass through to Buyers, it directly increases the cost of production of crude oil.

d. Effective from Mar'16, in terms of statutory provisions, OID cess is being paid @ 20% ad-valorem on sale price net of taxes and duties. In case the rate of OID Cess is revised from existing 20% to 10% ad valorem, out of savings in OID Cess to ONGC, around 61% would plough back to Government in the form of Profit Petroleum, Corporate tax, Dividend and Dividend Distribution Tax.

Suggestion

In view of above, we once again request Government to review the present rate of 20% of OID Cess and to moderate it to 10% of realized crude oil price.

2. **Extension in time limit for availment of CENVAT Credit for Inputs / Input Services**

With effect from September 1, 2014 as per Rule 4 of CENVAT Credit Rule, 2004 (CCR, 2004) the manufacturer or the service provider should avail of CENVAT credit of the duty paid on inputs or the service tax paid on input services, within 1 year from the date of the relevant document specified in Rule 9 of the CCR, 2004, e.g. Invoice. Further, with effect from 01.03.2015, the subject time limit has been made as one year from the date of invoice.

Prior to 01.09.2014, there was no time limit fixed for availing Cenvat credit on excise duty paid /service tax paid on input /input services respectively.

No business entity would like to postpone the availment of Cenvat credit, however, there can be instances where on account of various reasons i.e. non-clarity on the issue with regard to eligibility, contractual disputes etc Cenvat credit could not availed within the stipulated period.

Suggestion

It is suggested that no time limit should be fixed for availment of Cenvat credit on input/input services in line with the provisions related to capital goods where there is no such time limit is given or the time limit to be fixed upto 5 years as provided under the provisions for issuance of Show Cause notices/demands. There is no revenue implications involved; however, this would facilitate ease of doing business.

3. **Cenvat credit on OIDB Cess on crude.**

Presently Crude oil produced in the exploration block, attracts OIDB cess @ Rs. 2,500/- per MT under Appendix III under Miscellaneous Acts. Since cess is a duty of excise, CENVAT credit should be extended for this cess also.

Downstream

4. **Removal of NCCD for import of Crude oil**

The levy of NCCD @ Rs. 50 / MT on import of crude oil was introduced in the year 2003 to meet the emergency situation that arose due to the natural calamity that struck Maharashtra in the form of an earthquake. However, the NCCD element still continues even after a period of 10 years, although at the time of such levy it was indicated that it was only for a period of 1 year.

5. **Exemption of excise duty for captive consumption of petroleum products as fuel or otherwise and supplies to Defence / Fertilizer units should be covered in Rule 6(6) of Cenvat credit Rules, 2004 i.e. Rule 6(6) of CCR, 2004 to be made applicable to supplies against end used based exemptions.**

Presently Rule 6 of Cenvat Credit Rule, 2004 provides for exception to sub rule (1), (2) , (3) & (4) for supplies effected to following:

a. cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorised operations; or

b. cleared to a hundred per cent. export-oriented undertaking; or

c. cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or

d. supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excise, dated the 28th August, 1995, number G.S.R. 602(E), dated the 28th August,

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1995; or (iva) supplied for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of Notification No. [12/2012-Central Excise, dated the 17th March, 2012, number G.S.R. 163(E), dated the 17th March, 2012]; or

e. cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or

f. gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or [zinc by smelting; or]

g. all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied, —

(a) against International Competitive Bidding; or

(b) to a power project from which power supply has been tied up through tariff based competitive bidding; or

(c) to a power project awarded to a developer through tariff based competitive bidding, in terms of Notification No. [12/2012-Central Excise, dated the 17th March, 2012];

h. supplies made for setting up of solar power generation projects or facilities.

Supplies made to Defence are covered by notification no 64/95 dated March 16, 1995 as amended at nil rate of duty. Notification no 83/92-CE dated 16/09/1992, covers inputs captively consumed for the manufacture of final products cleared to units as covered under notification no 64/95 and exempt from the levy of whole of the duty of excise. Hence, supplies to Defence should also be covered under Rule 6(6) of Cenvat credit Rules, 2004.

Exempted goods as defined in CCR, 2004 are “exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to “NIL” rate of duty. Duty of excise is levied on the goods manufactured and payable by the manufacturer. There may be instances where same goods are cleared on payment of duty and cleared without duty as exempted by notification to specified class of customers. Hence exemption by way of notification as applicable to manufacturer only needs to be covered under Rule 6 (1) to (3). Where goods are cleared under end used based exemption notification, should not be considered for the purpose of reversal and as such to be specifically covered under Rule 6(6).

6. **Duty Credit on MS, HSD and LDO brought to refinery for reprocessing**

As per Rule 16 of the Central Excise Rules, 2002, if the goods on which duty is paid at the time of removal thereof are brought back into the factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules. These goods can be cleared again on payment of applicable duty after subjecting them to manufacturing process.

After clearance on payment of duty sometimes petroleum products become off-spec. and have to be brought back to the Refinery for re-processing so as to make them marketable. In case of products such as MS and HSD which are non-Cenvatable, Refinery is not eligible to get any CENVAT credit and duty has to be paid again at the time of their clearance after re-processing, resulting in double payment of duty.

Suggestion

It is suggested that non-Cenvatable products like MS and HSD when received in the Refinery for re-processing should either be exempted from payment of duty at the time of clearance after re-processing or Cenvat Credit should be allowed on these products at the time of receipt in the Refinery by suitably amending the definition of ‘Input’ contained in the Cenvat Credit Rules’2004 for re-processing of such products in the refinery.

7. **Clarification on reversal of Cenvat credit on input and input services under Rule 6(3) of the CCR, 2004 on domestic clearance under Notification No. 34/2006-CE dated 14.06.2006**

Aviation Turbine Fuel (ATF) is sold by Oil Companies to various airlines for use as fuel for their domestic and international flights. Such ATF is stock transferred by our Refinery to Aviation Fuel Stations (AFS) through pipeline or tank lorry. The Foreign Trade Policy (2009-14) allows for duty free imports by service providers engaged in providing specified tradable services for which payment is received in convertible foreign exchange under Served from India Scheme (SFIS). Notification No. 34/2006 dated 14th June, 2006 specifically provides for exemption from excise duty to consumables when cleared against the SFIS scheme.

Moreover, a clarification was issued by DGFT that supply of ATF shall qualify under the category of consumables for use by the airline companies. Further, DGFT had vide letter No. F. No. 01/94/180/1130/AM08/PC3/718 dated 10.12.2013 clarified that in terms of Para 3.12.6 and para 3.12.8 of the Foreign Trade Policy (2009-14) Aviation service providers can utilize SFIS scrips for payment of excise duty for procurement of Aviation Turbine Fuel (ATF) from domestic sources.

In line with the above provisions of law, we have been supplying ATF to M/s. Jet Airways for supply to foreign run aircraft by debiting the duty against SFIS scrips. There is a doubt as to whether goods cleared against SFIS scrip shall be in the nature of exempted goods or dutiable goods for the purpose of availing Cenvat credit in terms of Rule 6(3) of the Cenvat Credit Rules, 2004. CBEC issued Circular No. 973/07/2013-CX dated 04.09.2013 clarifying that the debit of duty through DEPB scrips shall be regarded as “payment of duty” for the purpose of Cenvat Credit Rules, 2004 and therefore the provisions of Rule 6(3) shall not be attracted. The relevant portion of the circular is reproduced as under:

“…….The matter has been examined. One of the conditions for availing of these exemptions is that duties leviable, but for these exemptions, shall be debited in or on the reverse of said scrip. The scrip holder is also permitted to avail of Cenvat credit of the duties debited in the scrip. In view of these provisions it has been decided that such debit of duty in these scrips shall be treated as payment of duty for the purpose of determining the applicability of rule 6 of the Cenvat Credit Rules, 2004. Therefore, it is clarified that in respect of goods cleared availing the benefit of any of notifications no. 29/2012-CE, 30/2012-CE, 31/2012-CE, 32/2012-CE and 33/2012-CE all dated 9th July, 2012, payment of amount under Rule 6(3) of the Cenvat Credit Rules, 2004 is not applicable.”

However, the above circular does not make any reference to goods cleared under SFIS scrip. In absence of any clarifications, Department may raise a dispute in this regard claiming that the goods cleared against SFIS scrip are in the nature of exempted goods and consequently Cenvat credit reversal would be required to be made.

Suggestion

Request TRU to consider inclusion reference to the goods cleared under SFIS scrip under Notification No. 34/2006 dated 14th June, 2006 in the above mentioned clarificatory circular thereby providing goods cleared under SFIS, the character of dutiable goods and thus the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004 shall not be attracted.

8. **Payment of duty at refinery to be made at quantity at 15 degree**

   In order to eliminate litigations, it is suggested that duty shall be levied at quantity at 15 degree on all removals from refinery.

9. **Rationalization of excise duty on premium diesel**

   It is a well-known fact that premium fuel reduces environmental impact by cleaner burning of the fuel and enhances the life of the engine, thereby improving the overall efficiency. Inspite of the fact that such offerings are there in the Indian market for more than a decade, the market for branded diesel is practically non-existent. The key reason for this is higher taxation on branded diesel thereby making the product too expensive for the diesel market. Please refer to Annexure 2.

   The excise duty on branded diesel is INR 2.36/Ltr higher as compared to regular diesel. After incorporating the impact of state and local levies (sales tax/VAT, Entry Tax, LBT etc.) the difference in taxation between branded diesel and regular diesel is more than INR 3/Ltr. Hence, the higher excise duty on branded diesel makes the fuel commercially unviable for a highly price sensitive diesel market in India. This is very much evident from the fact that even after more than a decade of introduction of branded diesel the penetration of branded diesel is less than "0.01%" of the total diesel market in India.

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

1. Reduced environmental impact of vehicular emissions by cleaner/complete burning of fuels
2. If the Excise duty differential is reduced significantly even without bringing it completely at par with regular diesel, it will increase the government revenues by developing the market for branded diesel. Please refer to Annexures 2 & 3

Suggestion

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

Annexure 2: Analysis of historical trends in excise duty on branded fuels and its impact on market for premium fuels.

An analysis of historical trends in the excise duty rate difference between regular and branded for both petrol and diesel and its impact on the market for premium fuels is shown below.

Retail Sales taken	Apr-Sept 12	Oct 12-Mar 13	Apr 13-Mar 14	Apr-Jun 14	July 14-Mar 15	Apr 15-Mar 16
Total **Petrol** Sale (tonne)	7670073	7945653	16962231	4767733	14190821	16297455
Branded Petrol (tonne)	238495	76931	83243	15361	106840	550016
Branded Penetration	3.1%	1.0%	0.5%	0.3%	0.8%	3.4%
ED Difference	1.18	6.49	6.49	6.49	1.18	1.18

between regular and premium petrol (Rs/litre)						
An increase in excise duty differential for petrol by 5 fold in 2012 resulted in a 10 fold drop in branded petrol penetration within 2 years thereby effectively hurting the market for such fuels and the government revenues. In July 2014 government rolled back the excise duty differential for branded petrol by decreasing it 5 fold, and this saw an increase in branded MS penetration by 10 fold.						
Total **Diesel** Sale (tonne)	28163895	29832827	61423490	16842277	43539682	63679419
Branded Diesel (tonne)	56250	4579	4792	1009	4117	7327
Branded Penetration	0.20%	0.02%	0.01%	0.01%	0.01%	0.01%
ED Difference between premium and regular Diesel (Rs/litre)	1.18	2.36	2.36	2.36	2.36	2.36
An increase in excise duty differential for diesel by 2 fold in 2012 resulted in a 20 fold drop in branded diesel penetration within 2 years thereby effectively hurting the market for branded diesel and the government revenues. It also highlighted the price sensitive nature of premium diesel market. Given the price sensitive nature of premium diesel and advantages of premium fuels, it will be beneficial for the government revenues, consumer and the environment to promote the market for premium diesel by significantly reducing the excise duty differential for branded diesel. The benefits of reducing the excise duty difference towards government revenues can be seen in case of petrol where reducing the difference between premium and branded petrol in July 2014 significantly increased the market penetration of branded petrol as illustrated above.						

PETROFED

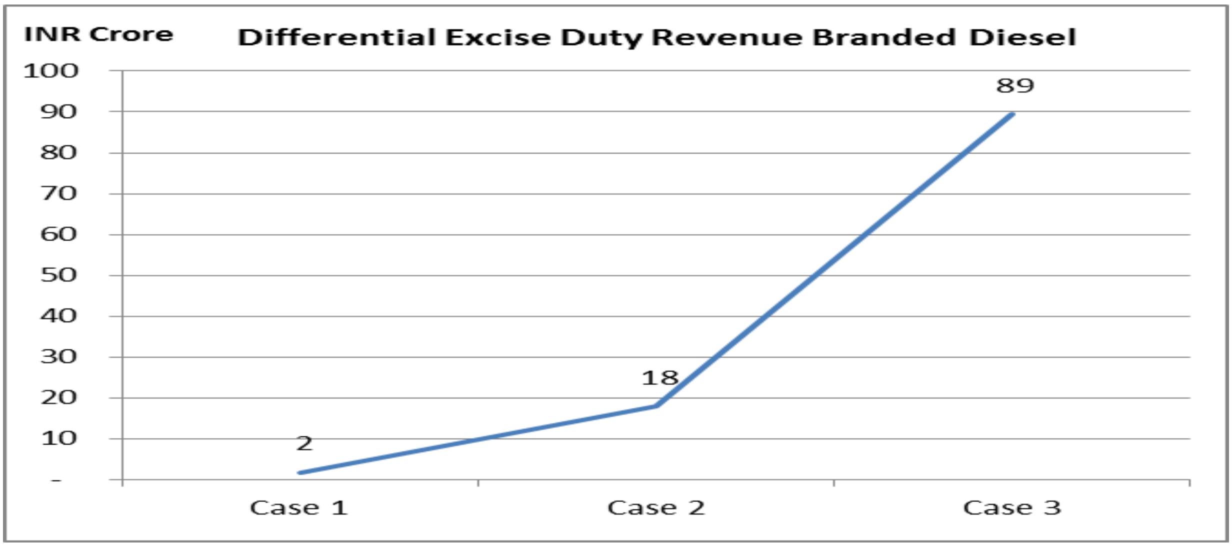
The above analysis highlights that how increasing the excise duty differential between branded and regular fuel in 2012 (for both petrol and diesel) had a significant impact on the market for branded fuels and the drop in the market penetration of the branded fuels was many folds compared to the increase in excise duty. This highlights that the Government revenues actually suffered due to increase in excise duty.

The above analysis also highlights that how reducing the excise duty on branded petrol in 2014 increased the penetration of petrol by many folds more than the reduction in excise duty differential. This had a positive impact on the government revenues.

Hence it is expected that a significant reduction in the excise duty differential for branded diesel will have a multi-fold impact on the penetration of branded diesel and will have a positive impact on the government revenues.

Annexure 3: An illustration of reduction in the Excise Duty differential between branded diesel and regular diesel and its impact on excise duty revenues.

** As illustrated below, decreasing the excise duty on branded diesel should increase the government revenues by giving a strong boost to the market for branded diesel. In addition to increase in the additional excise duty revenue, there will be some increase in the taxes collected at the state level.*



Diesel volume base (FY 2015-16)	Case 1	Case 2	Case 3
Volume (Mln Ltr)	75,774	75,774	75,774
Branded Penetration (%)	0.01%	0.20%	2%
Penetration Assumption	Actual (FY 2015-16)	Actual (Apr-Sept 12)	Assumed 2%
Excise Duty Difference (INR/ltr)	**2.36**	**1.18**	**0.59**
Differential ED Revenue (Crore)	**2**	**18**	**89**

10. **Permitting Mixed Bonding in Intermediate storage tanks for ATF and Bunkering Fuels**

After withdrawal of the warehousing provision the board has permitted establishment of the intermediate storage locations for storing of Bonded ATF. However, no mixed bonding of the bonded and duty paid ATF is permitted in such intermediate storage locations. This puts enormous operational constraints particularly in places where there are limitations on the availability of the storage tanks.

Suggestion

Mixed bonding of Bonded and Duty paid is permitted at AFS. The same facility should also be extended to the intermediate storage tanks. Segregation of the duty paid and bonded ATF can be maintained through accounting records.

11. **Excise Duty on Transit Loss on ATF**

With the withdrawal of warehousing provision vide notification no. 17/2004-CE dated: 04.09.2004 no movement from the refineries can be done without payment of duty. However in terms of circular date: 4th January 2005 the duty has to be paid on the quantity at the time of clearance from the refinery, and therefore duty has to be paid on the quantities lost in transit or storage after its clearance from the refinery.

Further as regards the clearance of ATF to be ultimately supplied to foreign Going Aircraft it was specified that though ATF can be removed for an export warehouse without payment of duty but no condonation will be allowed as regards the storage losses suffered during the storage of ATF either at Intermediately Storage Location or at Export Warehouse. Such losses are treated as diversion for home consumption and duty leviable along with interest at the rate of 24%.

These losses occur because of the peculiar nature of petroleum products which expands with the rise in temperature and contracts with the fall in temperature and which are beyond our control and occur purely because of natural causes.

Allowance should be given for the quantities lost in transit or storage as prescribed by the Govt. of India despite the fact that they are removed under export warehouse procedure.

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12. Dispute on rate of excise duty on intermingling loss of SKO in pipeline transportation

a. Oil Companies have been using the pipeline for transportation of multiple products i.e. MS, HSD and SKO from its Refinery to various pipeline head depots /installations. Each parcel of HSD, SKO and MS individually is called a batch. The sequence of the products is MS then SKO then HSD then SKO. Since all the products packed inside the pipeline move at very high velocity and pressure, some commingling/intermixing of batches is unavoidable at the boundary of the continuous batches and this intermixing of two adjoining product inside a pipeline is called an INTERFACE. The interfaces between MS-SKO or HSD–SKO are generally upgraded to MS or HSD respectively. Not very clear to me and no need to mention.

b. After removal of warehousing facility for petroleum products w.e.f. 06.09.2004, the Board Circular no 796/29/2004 CX dated 04.09.2004 states that the excise duty is liable to be paid by the refineries at the time of removal. Rule 4(1) of Central Excise Rule 2002 states that no excisable goods on which any duty is payable, shall be removed without payment of duty from a place where they are produced or manufactured or from a warehouse.

c. Thus the applicable duty on MS, HSD, SKO–PDS manufactured by the Refinery needs to be discharged at the factory gate on clearance through the pipeline (here the applicable duty rate on SKO PDS is nil) after removal of the warehousing facility for petroleum products.

d. The Department however disputed the practice followed by Refineries based on Board Circular No 637/27/2002-CX dated 22.04.2002 and issued a Show Cause Notice demanding the higher of the two duties i.e. duty payable on SKO not used for the intended purpose and duty payable on surge/gain in MS or HSD against the loss quantity of SKO PDS. This Circular is no more valid as post removal of the warehousing provision with effect from 2.9.2004, duty is to be discharged at the point of removal.

e. Based on a reading of the Board Circular, it is clear that the benefit of nil duty/concessional duty cannot be extended against loss of SKO PDS as this is not utilized for the intended purpose. Accordingly, Refineries have been paying the applicable duty on SKO against the loss quantity of SKO PDS, which was also recognized in the first part of the Circular. The Board clarification on the second part on the payment of the higher of the two duties i.e. duty payable on SKO not used for intended purpose and duty payable on surge/gain in MS or HSD against the loss quantity of SKO PDS contradicts the Central Excise Provision after withdrawal of warehousing provision for petroleum products, which itself created the basis for litigation.

f. Furthermore, in a recent case, BPCL vs CCE Coimbatore 2013-TIOL-1215-CESTAT - MAD, CESTAT has criticized the approach of the Department on imposing duty liability based on a Circular issued by the CBEC, without explaining the legal provisions under which duty liability arose.

In view of the above, withdrawal of the Circular is required or appropriate clarification may be issued

13. **Anomaly in excise and customs Notification for exemption of duty on furnace oil**

As per Notification No. 12/2012- Customs dated 17.03.2012, customs duty in case of import of Furnace Oil is exempt provided such import of Furnace Oil is for the purpose of manufacture of fertilizers. However, Notification No.12/2012- Excise dated 17.03.2012, exempts excise duty on the furnace oil provided the following two conditions are satisfied:

a. Such furnace oil is intended for use as feedstock in the manufacture of fertilizers.

b. The exemption shall be allowed if it has been proved to the satisfaction of an officer not below the rank of the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction that such goods are cleared for the intended use specified in column (3) of the Table.

On account of this an anomaly in the notification under customs & excise, the sale of this product indigenously has been affected as the customers are able to import the product free of duty even if the product is not intended for use as feedstock in the manufacture of fertilizer. This result in higher imports and drain in foreign exchange even though the product is available locally.

Suggestion

Consider aligning the import duties (BCD and CVD) on import of FO and excise duty on manufacture of FO for use in fertilizers by allowing same exemption to domestic manufacture as has been allowed in case of imports, or impose levy of BCD and CVD on import of FO for use other than in the feedstock in the manufacture of fertilizer so as to bring in price parity between imported and indigenously manufactured FO.

By this, we shall be providing domestic manufacturer equal opportunity to compete with imports, keeping in line with Government's Policy of 'Make in India' Initiative.

14. **100% Excise Duty concession to North East Refineries for long term sustenance and viability.**

Public sector oil refineries located in the North East (NE) have been receiving 50% Excise Duty concession to mitigate the hardship caused due to inherent locational disadvantages and for its sub-economic capacity. This was implemented vide notification no. 21/2002-CE dated 01.03.2002 and then vide notification no 29/2002- CE dated 13.05.2002. The refineries had been able to sustain its operation over the years because of this concession.

Even the sub-economic capacity is not being utilized due to the non availability of crude oil. This has forced BGR to import crude oil and all NE refineries share the transportation cost . With the fall in crude oil production , probably we will have to increase the import in quantity from this year onwards which will further lead to increase in crude oil cost. Cost of crude for the NE refineries has become substantially higher though they are located on the Crude oil well heads. Estimated additional cost above FOB price for NE Refineries is around USD 9.00 per Barrel (Based on FY 2014-15 numbers).

NE Refineries are also landlocked and due to poor growth and industrialization the demand is very limited . NE Refineries are required to bear substantial additional cost for evacuating the products due to freight and CST under recovery, which is around USD 3.00 per Barrel,

Hence, continuation of excise duty exemptions is absolutely important for the survival of these refineries

Suggestion

It is proposed that the exemption of Excise Duty for the North East Refineries should be enhanced from 50% to 100% for its long term sustenance and viability. It may also be noted that Standing Committee of Petroleum & Natural Gas in its 6th Report of Action taken by the Govt. on the recommendation contain on the 23rd Report (4th Lok Sabha) has reiterated its recommendation to grant 100% Excise Duty concession to all the four refineries on the North East region till they become profitable.

15. **CENVAT credit eligibility for capital goods and inputs for Desalination plant located outside the factory of manufacture.**

M/s Chennai Petroleum Corporation Limited, Manali, Chennai manufacturing various petroleum products had set up a desalination plant in the year 2008-09. The desalination plant has been set up 17 Kms away from CPCL's refinery complex. After due process of the sea water drawn, the desalined water is pumped from the plant to the refinery for captive use in cooling water tower, Boiler feed water etc.,

The Desalination plant set up by CPCL is unique of its type and the first to be set up in the whole of India. As the duty for the water is nil under the Excise tariff, CPCL has not taken Central Excise registration. Thus no credit on the capital goods, inputs viz, chemicals consumed for treating the water and service taxes paid for erection & Commissioning were availed by CPCL.

Notification 3/2011 dated 01-03-2011 brought out amendments to the Capital goods & input definition. The definition of capital goods was amended to include a new subrule (1A) which reads as follows:

"Capital goods used outside the factory of the manufacturer of final products for generation of electricity for captive use within the factory;"

In respect of inputs, the definition was amended to include "all goods used for generation of electricity or steam for captive use"

By the above inclusions electricity that was generated outside the factory of the manufacture if captively consumed entitles the assessee to avail cenvat credit on capital, inputs and input services.

CPCL's Desalination plant is similar to the situation of generation of electricity outside the place of manufacture but captively consumed. Thus it is requested that the same analogy may be applied for the Desalination plant too and included in the capital goods & input definitions.

16. **Introduction of Specific rate of excise duty for Aviation Turbine Fuel (ATF)**

ATF is falling under ITC (HS) code 2710.19.20 of the Central Excise Tariff Act and presently chargeable at 8% ad-valorem rate of excise duty.

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

The extension of same rule for payment of duty on account of further stock transfer of products from one depot to another depot, makes the compliance of valuation rule very difficult for the oil companies.

The adoption of the provisional assessment would be complicated and not a pragmatic solution due to untenable and unending exercise to trace the original duty paying documents for finalization of the provisional assessment both for the department and the oil industry.

Suggestion

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

17. **Excise duty exemption/ refund on HFHSD**

The import of HFHSD for oil exploration business is exempted under sr. no. 358 of Notification 12 / 2012 – Customs. However, since HFHSD is canalized product, the same needs to be procured from domestic Oil Marketing Companies.

Though the contract for procurement of HFHSD is awarded under International Competitive Basis and goods supplied vide contract awarded under ICB are exempted from excise duty, the benefit of exemption under excise legislation is not being passed on to E&P companies by Oil Manufacturing Companies (OMCs) due to logistical problems faced.

Suggestion

In view of this, it is recommended that the benefit of unconditional refund of excise duty paid to OMCs for procurement of HFHSD be allowed as the benefit of exemption is not being passed on to O&G companies by OMCs.

18. **Exemption in respect of additional duty levied on HSD**

HSD / LDO is continuously required for running offshore supply vessels and rigs as a fuel. Additional duty of excise is levied on HSD @ Rs.6 per Ltr. which adversely affects the fund flow of the E&P companies. Since goods required for petroleum operation have been exempted from all other customs and excise duties (provided supplied under International Competitive Bidding) as mentioned above, it is desirable to extend the said benefit in respect of additional duty levied on HSD by amending the respective notifications.

Suggestion

It is desirable to extend the said benefit in respect of additional duty levied on HSD by amending the respective notifications.

Natural Gas

19. **Exemption of Excise Duty for compression of natural gas into Compressed Natural Gas (CNG) for use in Natural Gas Vehicles (NGVs)**

Compression of gas is considered as a ‘Manufacturing of Goods’ and results in levying of an Excise duty (@ 14.42%) on compression of gas into CNG for use in NGVs.

It is worthwhile to note that the compression of natural gas for supplying to the vehicular segment entails change of mass density in order to increase the storability. Hence conversion of natural gas to compressed form is only for the purpose of transportation and should not be considered as manufacturing, thus excise duty should be exempted on CNG.

We have not come across any such instance in any other gas market where it attracts duties like Excise duty. Exemption of Excise duty will result in significant price-differential in CNG and Diesel prices that in-turn would incentivize the use of gas as a vehicular fuel. This will also help the country to reduce on its diesel subsidy.

Suggestion

It is suggested that compression of natural gas into CNG should be exempted from Excise duty as there is no element of manufacturing and the objective is only to improve the storage of gas.

20. **Activity of LNG loaning and borrowing in quantity terms in LNG terminals handling, a co-mingled mix of title, goods of same product should be specifically kept out of purview of taxable transactions.**

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

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

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

Suggestion

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

General

21. **Availment of balance Education & SHE cess available on as on 28.02.2015**

In the Union Budget 2015-16, Education cess leviable under Section 91 read with Section 93 of the Finance Act, 2004 and Secondary and higher education cess leviable under Section 136 read with Section 138 of the Finance Act, 2007 (hereinafter collectively referred as “CESS”) on Excise duty has been abolished with effect from 01.03.2015. Thus, the CESS is not leviable with effect from 01.03.2015 on the excise duty paid on the final products cleared from the factory gate.

In this regard, CBEC vide Notification No. 12/2015-C.E. (N.T) dated 30.04.2015, clarified that CESS paid on inputs, capital goods and input services received on or after 01.03.2015 can be utilized against payment of basic excise duty. However, there is no clarification on utilization of

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CESS paid on inputs, capital goods and input services received prior to 1.3.2015 but invoices received only after 28.02.2015 and Cenvat credit of CESS remaining unutilized as on 28.02.2015.

This has resulted in non-utilization of Cenvat credit attributable to CESS paid on inputs, Capital goods and Input services resulting in incremental cost of production.

Suggestion

It is imperative that necessary instructions to be issued regarding treatment of unutilized Cenvat credit on of CESS paid on inputs/capital goods/ input services received prior to 28.02.2015 for which invoices were received after 01.03.2015 and in respect of unutilized credit balance of CESS as on 28.02.2015.

22. **Definition of “Input Services” should include setting up of factory**

The CBEC vide notification No. 3/2011-CE(NT) dated 1.3.2011 (effective from 1.4.2011) amended the definition of input service and removed the word “Setting up” from definition.

Setting up of a refinery requires huge investment and takes number of years to fully set up and come in operation stage like our grass root Paradip refinery. Now, if law restrict to take credit of CENVAT on the services which are used during the setting up of factory then it would become injustice to assesses, as these services are being ultimately directly or indirectly used in manufacture of product after commencing refinery/plant

Suggestion

CBEC is requested to include the word Setting up in the definition of "Input Services" of Cenvat Credit Rule 2004, as prior to 01.04.2011.

23. **Non-applicability of unjust enrichment for captive consumption, provisional assessment, pre-deposit etc.**

In Chapter 7, Para 6.7.2, Kelkar Committee has recommended that the provisions of unjust enrichment should not be applied for refunds consequent to the finalization of provisional assessments, pre-deposit of duty and goods captively consumed. This was not implemented in any of the subsequent budgets.

Suggestion

There is a pressing need to implement atleast in the current budget in line with the recommendations and also for consequential refunds where duty was paid suo moto under protest or duty was recovered by adjustment of refund, pending initiation of adjudication/appeal proceedings.

24. **Exemption to the supply of goods under International Competitive Bidding contracts**

a. Customs Notification No. 12/ 2012 and Excise Notification No 12/2012 provide an exemption from the supply of goods effected under International Competitive Bidding (ICB) for specified purposes, subject to the fulfillment of specified conditions.

b. The term ICB is not defined under the Customs or Excise Notifications, Act, Rules. Thus, it is a very subjective area of interpretation as to whether the supplies of goods are made under ICB or not?

c. Generally, when international players are permitted to bid on a contract and a suitable advertisement is issued to this regard in a national/international newspaper etc, this should be sufficient to construe that the supply of goods is effected under the ICB.

d. However, in the absence of any guidelines on this matter, Field Formation are denying the benefit of exemption of supply of goods under ICB stating various reasons such as:

i. A proper advertisement was not issued in a national or international newspaper etc or even if the advertisement is issued, the term ICB is not mentioned in advertisement

ii. Proper procedure of Request for Proposal and Bidding was not followed

iii. Selection of respective participants was not done in the specified manner

iv. Contract was issued to local vendor even though the foreign vendors were only eliminated at the bidding stage

v. Extension of contract awarded in continuance of an earlier contract issued under ICB cannot be construed as supply of goods made under ICB

e. The intention of the legislature seems to allow the benefit when the foreign players are competing with Indian players. Thus, the bid inviting/permitting to tender/bid by a foreign and Indian player should be construed as ICB and thus, the benefit of exemption should be extended to all such contracts.

f. It is requested that a Circular is issued by the CBEC to clarify the necessary conditions to be fulfilled for a contract to be construed as ICB compliant contract. \

25. **Exclusion of PSU's from execution of Bank Guarantee under Rule 20**

Circular No.58/2004 – Customs dated 21-10-2004 has specified norms for execution of Bond and Bank Guarantee under Advance licence and EPCG scheme. In the above circular vide point No.3.1 Ministry of finance has excluded public Sector Undertakings from furnishing Bank Guarantee. In the light of above policy provision, only bond is executed for authorisations under Advance Licence & EPCG licence. Only in cases where there is a violation by the licence holder, attracting penal provisions does the PSU become ineligible for Bank Guarantee exemption.

In respect of warehousing of goods for export under excise rule 20, the procedure requires that every exporter registered under Rule 9 to establish an export warehouse shall execute before the Assistant Commissioner a bond under Rule 19 of Central Excise Rules 2001. Further, it also requires that the exporter should furnish security equal to 25% of the bond amount.

The above requirement under Rule 20 has posed great hardships to CPCL. On one hand when customs is allowing imports under EPCG licence without furnishing bank guarantee, Excise provisions on the other hand requires the exporter who exports the products to satisfy the export obligation under EPCG licence, to furnish bank guarantee equivalent to 25% of the bond amount.

It is requested that suitable amendments may be made under Rule 20 to exclude PSU's from execution of Bank guarantee.

26. **Allowing manufacturer to avail CENVAT credit on goods purchased through LSTK contractor**

CENVAT credit eligibility for capital goods and inputs for Desalination plant located outside the factory of manufacture Rule 2A (i) of Service Tax valuation Rules 2006 states that the "Value of service portion in the execution of works contract shall be equivalent to the gross amount charged for the works contract less the value of the property in goods transferred in the execution of the works contract"

Further, explanation No 2 to Rule 2A of Service tax rules 2006 states as follows:

***"*the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004."**

Thus as per the above provision, CENVAT credit on inputs is not available to the works Contractor. However, he is entitled to credit on capital goods and input services.

In respect of the manufacturer, CENVAT credit on inputs and capital goods is available on receipt of the same in the factory of production. This is explicitly provided through Rule 4(1) of CENVAT Credit Rules 2004 in case of inputs and Rule 4(2) (a) and Rule 4(2) (b) of CENVAT Credit Rules 2004 in respect of Capital goods.

In case of Lump sum turnkey (LSTK) contracts, when the manufacturer receives the goods through the contractor as part of sale under the works contract and transferred/sold by the contractor during the course of execution of works contract, credit is being denied to the manufacturer on the grounds that it is only the contractor who utilises the goods in the execution of the project and hence only the contractor is entitled to claim credit on them. However, vide explanation 2 to 2A the contractor too is denied of availing credit on the inputs used in relation to the works contract.

As the Lump sum amount in the LSTK contracts includes the value of the goods sold to the manufacturer, a view cannot be taken that the goods are owned by the contractor. If such interpretation is taken, then the manufacturer will be denied the eligible CENVAT credit on the goods purchased by them through the LSTK contractor, defeating the fundamentals of CENVAT credit Rules 2004.

It is requested that suitable amendments may be made to enable the manufacturer to avail the credit on the goods purchased by him through the LSTK contractor.

27. **Denial of credit on excise duty and service tax when the capital goods installed in the factory becomes fixed to earth**

Allowing manufacturer to avail CENVAT credit on goods which when installed in the factory of production becomes fixed to earth

a. Capital goods definition as per Rule 2 (a) of CENVAT credit Rules 2004 is as follows:

Capital goods means:

A. The following goods namely:-

(i) All goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90 of the first schedule to the Excise Tariff Act;

(ii) Pollution Control Equipment

(iii) Components, spares and accessories of the goods specified at (i) and (ii) ;

(iv) Moulds and dies, jigs and fixtures;

(v) Tubes and pipes and fittings thereof;

(vi) Storage tank..........

Used –

1) In the factory of the manufacturer of final products, but does not include any equipment or appliance used in office ....

Thus, the manufacturers can avail credit on the capital goods that satisfies the above definition. Further, Rule 4(2) (a) and Rule 4(2) (b) of CENVAT Credit Rules 2004 explicitly states that CENVAT credit can be availed by the manufacturer on the receipt of the goods in the factory of production.

In most of the cases, the goods when installed in the factory of production become fixed to the earth. The capital goods Credit on excise duty & Service tax are denied on the premise that the goods which are fixed to the earth structure are not excisable.

In terms of the definition of 'capital goods' as given in Rule 2(a) of the CENVAT credit Rules 2004, capital goods are those goods which are specified in the rules and which are used in the factory of the manufacturer of the final products. Thus, any goods covered by the list of items mentioned in Rule 2 (a) of CENVAT credit Rules 2004, and is used in the factory of production for manufacture of final products, would be covered by the definition of the capital goods and accordingly eligible for CENVAT/service tax credit.

If credit of excise duty and service tax is denied just because the goods are installed and fixed to earth, then most of the capital goods enumerated in the definition viz., the machinery, equipment/ instruments covered under chapter 84,85 & 90, pipes and tubes, pollution control equipment, refractory when installed becomes fixed to the earth and thus becomes non excisable. Thus, denial of credit on excise and service tax on the above premise is against the CENVAT law.

It is requested that specific provisions may be made to enable the manufacturer to avail the CENVAT credit on the goods which when installed in the factory of production becomes fixed to earth.

28. **Allowing manufacturer to avail CENVAT credit on construction goods and construction services**

Rule 2(l) of the Rules defines 'input service' as follows:

“(l) ‘Input service’ means any service

(i) used by a provider of output service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal.”

But excludes,-

A. Service portion in the execution of works contract and construction services in so far as they are used for-

a) Construction or execution of works contract of a building or a civil structure or a part thereof; or

b) Laying of foundation or making of structures for support of capital goods.

By way of the exclusion clause the construction services viz., architect. Design. Site formation services have been excluded. The same has been excluded without assigning any reasons. Similarly, construction goods like cement, bricks, steel etc are also excluded from availing CENVAT credit.

In the background of the proposed GST, 100% set off of the construction goods and construction services used by the manufacturer for his manufacture and business of sale needs to allowed.

29. **Mandatory fixed pre deposit**

With the enactment of Finance Act, 2014, section 35F of the Central Excise Act, 1944 and the relevant section of Customs Act and Finance Act 1994 have been amended for payment of mandatory pre deposit for all appeals to be filed before Commissioner (Appeals) / Tribunal subject to outer limit of Rs 10 Cr.

Considering the complexities involved in the modality of business of OMC and various issue requiring clarification / interpretation, there are litigations involving substantial amount of demand at various levels of adjudication. Mandatory pre deposit for all the appeals thus results in tremendous hardship to the OMCs, who are already bearing the burden of under recoveries and having a fragile working capital position. Further, the time lag involved in resolving the disputes shall block the liquidity of the OMCs.

Suggestion

Since tribunal is the final fact finding authority, it is suggested that mandatory pre deposit may be exempted.

30. **Processing of Excise Duty refund claims**

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

Suggestion

It is suggested that access should be given to online refund process for quick processing with online Real Time Gross Settlement (RTGS) refund.

31. **Applicability of Pre Deposit provisions only from second stage appeal/CESTAT level.**

The Finance Act (No.2), 2014 has substituted new Section 35F of the Central Excise Act, 1944 which is also applicable for Service Tax vide Section 83 of the Finance Act, 1994 and Section 129E of the Customs Act, 1962 to prescribe mandatory pre-deposit of 7.5% or 10% for first stage or second stage appeal, of duty demanded where duty demanded is in dispute or where duty demanded and penalty levied are in dispute and where penalty alone is in dispute, the pre-deposit shall be calculated on the penalty imposed. The said amendments have become applicable for the appeals to be filed after August 6, 2014 and all pending appeals/stay applications filed prior to August 6, 2014 shall be governed by the erstwhile provisions.

Above provisions have led to considerable amount of money being stuck in litigations which do not have any substance.

Suggestion

We request that the provisions of section 35F of the Central excise Act 1944 and section 129E of the Custom Act 1962 to be made applicable only from second stage appeal/CESTAT level.

32. **CENVAT Credit on storage of goods procured from third parties (Traded Goods)**

Effective Rule 2(l) of Cenvat Credit Rules (as effective from 1-4-2011), defines 'input service' as follows –

"Input service" means any service, –

(i) used by a provider of taxable service for providing an output service; or

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

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, **storage upto the place of removal,** procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

CBE&C *vide* circular No. 137/3/2006-CX.4 dated 2-2-2006 has confirmed that when the words 'place of removal' are not defined in Finance Act, definition under Central Excise Act is to be considered. It has been clarified that in case of depot sale, depot is place of removal.

The term 'place of removal' is not defined in Cenvat Credit Rules, but is defined in section 4(3)(c) of Central Excise Act as follows –

"Place of removal" means—

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory

from where such goods are removed.

The words 'from where such goods are removed' apply to all the three clauses.

Generally, OMCs procure products either from their own refinery or from third party refineries. In case of third party procurement, the OMCs take a position that since these are traded goods, CENVAT credit on storage services won't be available as a set-off.

However, storage services rendered by companies like IOT have no nexus with the trading activities i.e. procurement of traded goods by OMCs and futher selling of the same to regional distributors.

On a project size of INR 300 crs, the impact of service tax is approx. INR 45 crs thus leading to cost absorption by companies creating storage facilities. Government should clarify such trading activities considering the definition of place of removal which would then entitle the OMCs to claim the set-off of service tax charged by oil storage companies (for storing traded goods).

33. **Swachh Bharat cess**

Cenvat credit of Swachh Bharat cess is not allowed. We request to allow Cenvat credit of Swachh Bharat cess under Cenvat Credit Rules, 2004. Cascading effect of Swachh Bharat cess will be eliminated.

INDIRECT TAX

SERVICE TAX

Upstream

1. **Service Tax on Lost in Hole Equipment's**

   In E&P sector, oilfield contractors render various services such as seismic survey, drilling, well intervention, engineering, etc. to E&P companies. In the course of provision of these services, there is a possibility that certain equipment's gets damaged / destroyed without any fault on the part of service provider. Such damaged / destroyed equipment is typically termed as 'Lost-in-Hole' ('LIH').

   Since the cost of recovering LIH equipment is very high, such LIH equipment's are generally not recovered. Hence, the service provider charges cost of LIH equipment from E&P companies in terms of pre-agreed terms of contract.

   Suggestion

   In this connection, it may be noted that there is no clarity whether the consideration paid by E&P companies to service provider towards cost of LIH equipment would attract service tax post introduction of negative list regime or not. In the absence of clarity the service providers are demanding service tax on the LIH issue. Also in certain situations levy of service tax is over and above levy of VAT.

   Hence, it is recommended that clarity on taxability of LIH issue be provided.

2. **Remove ambiguity on applicability of service tax on "Royalty" and "Profit Petroleum" for E&P companies**

   The Finance Act, w.e.f. 01.04.2016 levies service tax on services provided by the Government or a local authority at effective rate of 15%. CBEC vide circular no. 192/02/2016 dated April 13, 2016, clarified that periodic payments in relation to any natural resource shall be taxable – i.e. Spectrum User Charges (telecom), monthly payments with respect to the coal extracted from the coal mine or Royalty payable on extracted coal. This has resulted in ambiguity of coverage of periodic Royalty and other payments in O&G sector, needing urgent clarification. O&G companies are, in terms of Production Sharing Contracts ("PSC") and the Oilfields (Regulation and Development) Act, 1948, obliged to pay the Government Royalty and Profit Petroleum (Government share of Profits) on mineral oil produced. The Circular has brought in ambiguity as to taxability of Royalty and other payments made to the Government, which for the following principles/reasons is not a service, and not liable to Service Tax:

Payout is for statutory function of the Government: Royalty is statutorily required and regulated. Thus, being pursuant to statutory function, Royalty cannot be treated as consideration for service by the Government to O&G companies. Absent a quid pro quo in these transactions, there is no 'activity for consideration'.

Royalty is not consideration for service; it is the Government's share in the profit and produce

Government and the O&G companies are joint / co-venturers under the PSC: The share in revenues cannot be treated as payment of consideration by one member of the venture to the other for services.

Payouts are in the nature of taxes and there can be no tax levied on a tax.

The levy of Service Tax on Royalty is not only significant, but also an addition to the costs of transactions, since it is not available as set-off (CENVAT Credit) for O&G companies. In this context, it is noteworthy that the PSC issued in terms of the New Exploration Licensing Policy ("NELP") provides assurances of fiscal stability to attract investment in the sector and provide certainty and stability on fiscal terms. Such a tax erodes the competitiveness of the O&G sector, particularly since the pricing in the industry is based on import price parity, and imported crude oil does not suffer incidence of such taxes.

Suggestion

We suggest that a suitable clarification is issued confirming that no Service Tax is levied on Royalty and other payments under the PSC.

3. **Clarification to the effect that, no Service Tax is applicable on payment of Royalty u/s 6A of the Oil Fields (Regulation and Development) Act, 1948 and Rule-13 & 14 of the Petroleum and Natural Gas Rules, 1959**

(i) Finance Act, 2015 amended the Negative List of Services pertaining to support services provided by Govt. and accordingly all services provided by Govt. or local authority were made taxable w.e.f. 01.04.2016. Vide Circular dated 13.04.2016, while responding to the queries, it was mentioned that monthly payment with respect to coal extracted from coal mines or royalty payable on extracted coal would attract service tax. It appears that based on the above, the DGCEI has sought details of the service tax paid on payment of royalty by E&P Sector considering that such royalty is being paid in pursuance to the assignment of right to extract the natural resources viz mineral oil & natural gas.

(ii) In this regard, it is pertinent to mention that the E&P Sector is paying Petroleum Exploration License **(PEL)** Fee and Mining Lease **(ML)** Charges to the Govt. towards the assignment of right to use natural resources and is also paying service tax on such license fee or lease charges considering the assignment of right to use as a service provided by Govt.

(iii) As per Section 6A of the Oil Fields (Regulation and Development) Act, 1948 and Rule-13 & 14 of the Petroleum and Natural Gas Rules, 1959, the Govt. levies Royalty on extraction of mineral oil & natural gas from the leased area at the rates specified in the schedule. Accordingly, the Lease Holder is required to discharge such levy in the form of Royalty to the Govt. and to file periodical returns. In case of default on the part of such Lease Holder (Assessee), Section 9 of the Oil Fields (Regulation and Development) Act, 1948 provides for penalty and imprisonment etc. Therefore, the Royalty itself is a tax and accordingly as per Sl. No. 3 of CBEC Circular dated 13.04.2016, the service tax cannot be levied on Royalty (Tax) paid u/s 6A of the Oil Fields (Regulation and Development)

Act, 1948 and Rule-13 & 14 of the Petroleum and Natural Gas Rules, 1959.

(iv) There is no *quid pro quo* specified in any of these legislations under which royalty is levied that the Government is required to fulfil obligation in lieu of royalty received. Grant of mining rights is not dependent on the extent of or even payment of any amount of royalty by the licensee. In fact it is only the holder of a mining license who has to pay the royalty. Mining license is a pre-condition for payment of royalty and not vice versa. Therefore, *royalties are in the nature of compulsory exactions and* ***not in the nature of any consideration*** *for service performed or to be performed by the Government so as to come in the ambit of GST law.*

(v) It would also be worthwhile to mention that unlike in other sectors, CENVAT Credit is not available to the E&P Sector. The E&P of hydrocarbons is a high risk capital intensive business. Therefore, the Government has provided fiscal stability clause under NELP Policy during the entire period of contract, primarily to attract investment in this sector.

(vi) Further, it is submitted that with levy of 15% service tax on Royalty, the E&P Sector would end up paying almost one-half of crude price towards taxes & duties in nominated blocks, considering other extant statutory levies such as Royalty (@ 20% on production of onshore crude, 10% on offshore crude and 10% on natural gas), OID Cess (@20% on crude oil), VAT @5% on crude, around 15% on natural gas, and Octroi @4.5%, wherever applicable. Also, since the Companies are operating under low crude price regime which is around US$ 45 per bbl, this additional burden will further shrink the margin and will jeopardize the exploration & development activities of the company.

Suggestion

In view of above, a clarification to the effect that royalty payable u/s 6A of the Oil Fields (Regulation and Development) Act, 1948 and Rule-13 & 14 of the Petroleum and Natural Gas Rules, 1959 would not be subject to levy of service tax, may kindly be issued. Also, on implementation of GST, these recommendations may please be incorporated mutatis-mutandis.

4. **Clarification to the effect that consortium members including operator and the consortium formed under PSC are not distinct entities:**

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

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

(iii) It is also pertinent to mention that in pursuance to Sl. No. 357A of Customs Notification No 12/2012-Cus dated 17th March 2012 (as amended), CBEC vide its Circular No. 21/2013-Cus dated 16.05.2013 at para 2.3.1 has stated that *"Consortium" unlike a "Joint Venture" is not a distinct legal entity capable of importing the goods by themselves*. Similarly, as per the provisions of Income Tax Act, the constituent members of the PSC are not taxed as AOP but are taxed in their individual capacity. Therefore, the consortium members including operator and the consortium are not distinct entities.

Suggestion

A clarification, may please be issued that the transactions between operator and the consortium/ member of Consortium 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. Also, on implementation of GST, these recommendations may please be incorporated mutatis-mutandis.

Downstream

5. **Modification in negative list Section 66 D (p) of service tax to include goods transported thru time chartered vessel**

   Currently, as per section 66 D (p) (ii) of negative list, service by way of transportation of goods by an aircraft or vessel from a place outside India upto the customs station of clearance in India is covered in negative list.

   Suggestion

   On similar line, movement of product in time chartered vessel vessel from outside India upto the custom station of clearance of India should be added in negative list.

6. **Extension of Abatement to transportation through Time charter Vessels**

   Oil Marketing Companies (OMCs) transport the petroleum products either through Voyage Charter vessels or through the Time Chartered vessels. For transportation of goods through voyage chartered vessel 50% abatement, is available. OMC's are unable to claim this abatement in case of transportation of petroleum product by Time chartered vessel as the service falls under the category of "supply of tangible goods" service and not as a transportation of goods by vessel in view of the CBEC clarification earlier issued. This is an additional cost to the corporation.

Suggestion

Since the purpose for hiring the vessel on time charter is for transportation of the petroleum products the abatement should also be extended to the transportation by time charter vessels. This can be done either through notification or clarification by CBEC.

7. **Permit Oil Marketing Companies (OMC) to pass on the benefit of service tax charged on throughput fees for fuelling the aircraft for domestic operation**

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

Suggestion

OMCs should be permitted to pass on the benefit of service tax charged on throughput fees for fuelling the aircraft for domestic operation as this would eliminate the cascading effect of tax and facilitate availment of the Cenvat Credit for the Carrier. Upfront exemption to Service Tax on throughput fees pertaining to supply of ATF to foreign bound aircrafts may be notified.

Natural Gas

8. **Exemption of Service Tax on sea transportation of LNG by vessel and LNG regasification activity**

Since the domestic production of Natural Gas is not enough to cater the increasing demand, import of LNG at large scale is required to augment the supply of Natural Gas for use in priority sectors such as Fertilizer, CNG, LPG, PNG etc. Presently service tax (@15%) is applicable on the transportation of LNG by vessel/Ship from a place outside India to the first customs station of landing in India. Further, the imported LNG has to be re-gasified and converted into Natural Gas (known as RLNG - Regassified Liquefied Natural Gas) for transportation and consumption in India. The activity of regasification of LNG attracts Service Tax.

The levy of Service Tax on sea transportation of LNG and on the activity of regasification of LNG increases the landed cost of imported LNG for domestic industrial consumers. As per the Constitution (one hundred and first) Amendment Act 2016, 'Natural Gas' is being kept outside the ambit of GST till the recommendation of GST council. It is understood that transportation of LNG and regasification activity will be under GST ambit resulting in stranding of taxes while selling Natural Gas.

Suggestion

In order to promote gas-based industry in India, it is suggested that transportation of LNG by a vessel/Ship from a place outside India to India under voyage charter basis as well as time charter basis may be exempted from levy of Service Tax. Similarly, the activity of regasification of LNG also needs to be exempted from levy of Service Tax.

It is also suggested that the activity of transportation of LNG by a vessel/Ship from a place outside India to India may be exempted with status of 'zero rated supply' under GST regime. Similarly, the activity of regasification of LNG also needs to be exempted from levy of GST.

9. **Valuation of taxable services for naturally evaporating products like LNG should be clarified in detail to apply on the charges for conversion of the delivered product.**

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

The usable form of LNG is its regassified state as natural gas. The process of regasification of LNG involves the passing of the liquid through heat exchangers, compressors and pipelines in a controlled manner. Any repair to the regasification machinery in the normal course involves the venting of the liquid / gas contained therein to the atmosphere under regulated conditions. Due to the continuous nature of losses of the product that is inherent to its handling and processing, it is the norm worldwide to pre-agree on a percentage of such losses and consumption or usage of LNG /gas while contracting for the regasification of LNG. This is done with a view to allocate the risk of handling the product between parties and bring certainty to the contractually deliverable quantities and the ad valorem price per unit for the same.

Shortfalls and excess of actual losses over pre-agreed norms are compensated by the service provider or taken as part of stock and disposed of as per provisions of Generally Accepted Accounting Principles (GAAP), VAT and Income Tax laws. However, due to misunderstanding of the process there are claims on taxability of the tolerance norms and any quantities of the product lying in excess over the loss tolerance quantities by both VAT and Service Tax. The same value should not be taxable under two separate indirect taxes.

Suggestion

It should be clearly clarified that the charges for the delivered quantity of a volatile product (after taking into account the losses during regasification) shall be taxable as services in order to avoid double taxation. The value of product lost or consumed during the process of regasification shall be deemed includible in the charge levied for processing as it is intrinsic to the process itself.

10. **Exemption from levy of Service Tax on Transmission Charges Included in Sale Price of Gas**

Presently, Natural gas is sold to the customer including transportation to customer's premises as a bundled activity. The transmission charges form part of Sale price of such gas and VAT is being paid on the component of transportation charges (as it forms part of sale price of gas). Accordingly, Service Tax should not be chargeable on the component of transmission charges. However, service tax on the component of transmission charges is being demanded by local officers resulting in double taxation.

There has been huge litigation in the past over imposition of Service Tax on certain services which are as such part of supply of goods or treated as supply of goods under various state statutes.

Suggestion

It is suggested that CBEC may like to consider and issue a suitable clarification that Service Tax will not be payable on any activity associated with transaction of sale where the component of value relatable to such activity forms part of total sale price and attracts VAT/CST under CST/VAT laws. Alternatively, "any activity integrally connected with transaction of sale wherein the component of value relatable to such activity forms part of sale price under CST/VAT laws" may be added in the exclusions to the definition of 'service' under sub-section (44) of the new section 65B.

General

11. **Exemption of Service tax on deputation of manpower to Government Departments.**

It is a practice of Oil Industry that officers on regular basis with requisite experience are deputed to Government Deparments like PPAC, PCRA, DGHC and Center for High Technology under the control of MOP&NG and the actual costs to the sponsoring Oil PSUs are recovered from them.

Suggestion

Keeping in mind that the objective and the purpose of these departments is to assist MOP&NG, we suggest, any deputation to Government or local authorities should be a part of negative list under section 66 D.

Representation to such effect already submitted and duly acknowledged on 14.08.2010 by CBEC.

12. **Clarification on fine or a penalty for violation of law / contractual obligation**

As per guidance note 2.3.1, it has been clarified that fines and penalties which are legal consequences of a person's actions are not in the nature of consideration for an activity. Similarly, any amount collected towards fine or penalty for violation of contract (Liquidated damages recovered for delay in completion or price reduction clause due to delay in delivery of product) should also be treated as legal consequences of person's action and hence are not in the nature of consideration for an activity.

Movement of petroleum products is governed by Essential Commodity Act. To enforce Essential Commodity Act, various control orders issued by Central Government, such as:

1. Petroleum Act, 1934, Rule 2002;
2. Essential Commodity Act 1955
3. HSD & LDO (Restriction on use) Order, 1974
4. LPG (Restriction on use), Order 1974
5. LPG (Regulation of supply and Distribution) Order, 2000
6. Motor Spirit & HSD (Regulation of supply and Distribution) Order 1998
7. Petroleum Product (Supply & Distribution Order 1972
8. Explosive Act, 1884

To enforce such orders, penalties are levied which in no way are consideration for an activity.

Suggestion

It is suggested that to amend definition of service to include following in exclusion list.

(d) Amount collected towards fine or penalty for violation of all Control orders issued by Central Government relating to petroleum products.

(e) Amount collected towards fine or penalty for (Liquidated damages recovered for delay in completion or price reduction on account of delay in delivery of goods / service)

13. **Applicability of service tax on penalties recovered by the Oil Marketing Companies -**
    - a. **From various dealers for violation of Marketing Discipline Guidelines (MDG) formulated by Oil Marketing Companies and approved by Govt. of India**
    - b. **Liquidated damages recovered from vendors for violation of terms and conditions of contract.**
    - c. **Other recoveries in the nature of penalties.**

Section 66E of the Finance Act, 2012 effective 01.07.2012 provides a list of services included in the category of declared services. Clause (e) of the aforesaid Section reads as "…. agreeing to the obligation to refrain from an act or to tolerate an act or situation, or to do an act".

In order to enforce such Act/ Rules governed by Sec 3 of Essential Commodity Act, besides various powers like search & seizure to curb / control malpractice, there is MDG in vogue which interlia penalize the erring distributor not only in terms of money but also cancellation/termination of distributorship to ensure compliance of Statutory laws of Essential Commodity / Explosive Act in the interest of general public. Various control orders have been put in place for regulating marketing of petroleum products to check the irregularities in marketing of petroleum products, Government has approved Marketing Discipline Guidelines (MDG), 2001 to ensure uniformity in providing various services and punitive actions against the erring dealers and distributors of the oil companies. MDG lay down the parameters for operation of Retail Outlets, LPG distributorships and SKO Dealerships to ensure supply of right quality and quantity of MS/HSD/SKO/LPG and also ensure provision of services the customers are entitled to. These Guidelines are part of educative measures to Dealers / Distributors, and also incorporate punitive measures if such parameters are not adhered to by the oil companies' distribution network. Stringent penalties right up to termination of Dealerships / Distributorships in the even of continued malpractices is also included in these Guidelines. Oil Marketing companies recover penal charges from the dealers/distributors for non-compliance with the marketing guidelines.

OMCs also recover liquidated damages from the vendors for non-compliance with the terms and conditions of the contract. Such recover is in line with terms of the contract which states that liquidated damages shall be recovered for delay in performance of service.

There is no clarity on the applicability of service tax on the aforesaid recoveries in view of Section 66E of the Finance Act, 2012. Education guide released along with the Finance Act, 2012 also does not cover much of the text in respect of the said entry.

Suggestion

Clarification may be given on applicability of service tax on MDG penalty and liquidated damages recovered from vendors. Further, clarification may also be given citing the situations to which the aforesaid entry is applicable and hence chargeable to service tax to avoid litigation.

14. **Service under corporate social responsibility (csr) projects of the company to be incorporated under negative list for levy of service tax.**

India is a Socialist Republic and one of the functions of Govt. is to carry out welfare activities. Therefore, Govt. collects various taxes for implementation of such welfare measures. Under CSR Project, PSU also implements/ carries out various welfare activities on behalf of GoI. As per the directives of Department of Public Enterprises, Government of India, large public sector undertakings are required to spend 2% of its net profit towards various welfare measures under the Corporate Social Responsibility project. Accordingly, all PSUs are making contribution for welfare activities which is primarily the function of Govt. It can be seen that, such welfare activities are also being funded by Govt.. Therefore the contribution made by PSUs to welfare activities is on behalf of Govt. of India.

The service tax on the service taken by the PSU under corporate social responsibility (csr) projects of the company are not included in the negative list . The additional burden of levy of service tax @14% on the contribution made to CSR Projects results in reduction of the CSR fund to the extent of service tax thus dilutes the basic purpose of funding of critical CSR projects.

Suggestion

It is proposed that Service under corporate social responsibility (csr) projects of the company to be incorporated under negative list for levy of service tax.

15. **Clarification that Liquidated Damage [LD] (a pre-estimated loss) recoverable from supplier/ provider of service is not a consideration for levy of service tax**

(i) In case of delay in execution of work or provision of service, Contract provides recovery of LD from contractor which is pre-estimated loss. Accordingly, ONGC deducts LD from the invoice/bill of the contractor/ supplier if the contractor/supplier is unable to mobilize / deploy and commence the services or supply material within the specified period or not as per the terms of the contract / supply order leading to delay in project. Such deductions are quantified on the basis of pre-estimated loss of ONGC. Such compensation to ONGC cannot be regarded as a consideration for any service.

(ii) It is pertinent to mention that the expression 'to tolerate an act' included u/s 66E (e) should be understood to cover instances where the consideration is being charged in order to allow a person to undertake any particular activity. The loss owing to delay in mobilization and deployment of resources is neither the desired outcome of the contract nor a beneficial position for either of the parties to the contract. Thus, there is no agreement to tolerate the situation. Here also, it cannot be said that agreeing to tolerate the act of transgression on the part of the Bidder, was at the request of the Bidder himself. Therefore, no service tax is attracted on forfeiture of LD etc. for transgression on the part of Bidder.

(iii) It is also pertinent to mention here that as per present practice, there is no reduction in service tax amount due to LD-Recovery from the contractor's invoice. This can be explained with the help of following example:

Suppose, the invoice value of contractor is for Rs.1,00,000/-, service tax component of Rs. 15,000/- (i.e. at the rate of 15%) and LD amount is Rs.10,000/-. In this case, ONGC remits to the contractor an amount of Rs.1,05,000/- (Rs.90,000/- towards invoice value net of LD and reimbursement of entire Service Tax i.e. Rs.15,000/-). Hence, while making payment to the contractor after deduction of LD, there is no change in service tax component i.e. service tax has also been paid on LD component.

Suggestion

A clarification, may please be issued that the Liquidated damages deducted from bill of contractor without reducing the gross taxable value as shown in Invoice, would not be subject to levy of service tax. Also, on implementation of GST, these recommendations may please be incorporated mutatis-mutandis.

16. **Exemption/Clarification that Mandatory Deputation of ONGC personnel in Directorate General of Hydrocarbons (DGH), a Technical arm of MoP&NG, Govt of India or any Govt. Department is not a taxable Service.**

(i) Government of India (the Ministry of Petroleum and Natural Gas), vide Resolution No. O-20013/2/92-ONG, D-III, and dated April 8, 1993 (hereinafter referred to as 'the Resolution' has set up an independent regulatory body namely the DGH under the administrative control of the Ministry of Petroleum and Natural Gas.

(ii) DGH is a technical arm of the Ministry of Petroleum & Natural Gas and its expenditure is funded by the grants from the Oil Industry Development Board which is nodal agency for the development of the Oil Industry, which, in turn, is provided by the Central Government by way of levy of Oil Industry Development Cess from Upstream Oil Companies like ONGC, OIL etc.

(iii) The Para 6, Page 2 of the Resolution dated April 8, 1993, indicates that the Directorate General will be manned by such staff as the Ministry in consultation with the Director General decides and shall also be drawn from the oil industry on deputation/tenure basis. The Director General will be appointed by Government on tenure/deputation basis and drawn from the Oil Industry/Government.

(iv) The manpower of DGH consists of personnel from the MoP&NG and also from Oil Industry on deputation/tenure basis. The employees deputed by ONGC to DGH are paid salary and allowances by ONGC, which are subsequently recovered from DGH.

(v) Further, Ministry of Petroleum and Natural Gas, from time to time, lays down the guidelines mandating the deputation of personnel to DGH. It is submitted that DGH selects/ retains/ relieves officers, on the basis of their suitability for work requirement. The deputation of employees by ONGC is made in pursuance to the specific requirement of personnel in various Technical/ Administrative/ Financial disciplines.

(vi) Based on the above, it can be seen that, deputation of manpower to DGH is based on specific directive of the Government of India to fulfill certain security, safety and regulatory objectives that are part of the sovereign function of the Government and, there being no intention to provide or receive service on both sides, either as a provider on the part of ONGC or as a recipient on the part of the Government of India.

(vii) As brought out above, the salary of officers, deputed to DGH are recovered from OIDB Fund (generated from OID Cess) and service tax, if paid has to be recovered from same fund means service tax is paid out of the revenue of another tax (OID Cess).

(viii) Hence, Deputation of Manpower to DGH as per the directive of Govt. of India is not a service and should be exempted from payment of service tax by way of granting specific exemption.

Suggestion

Request to issue exemption/clarification that Mandatory Deputation of personnel from PSU in Directorate General of Hydrocarbons (a Technical arm of MoP&NG, Govt of India) or any Govt Departments, is not a Taxable Service. Also, on implementation of GST, these recommendations may please be incorporated mutatis-mutandis.

17. **Clarification on non-applicability of service tax and GST on cash calls under existing regime and GST regime respectively**

A Circular No. 179/5/2014-ST dated 24 September 2014 was issued regarding applicability of service tax on cash calls. However, the said circular has kept the issue open for interpretation of service tax authorities. Given this, recently, oil and gas companies are burdened with demand of service tax on cash calls.

Suggestion

Hence, clarification should be issued under existing regime as well as GST regime that consortium and parties to consortium (which has executed a sharing agreement with Government of India) are not distinct entities and the cash calls are not consideration for services but only a contribution made by contractors.

18. **Clarification on non-applicability of service tax and GST on cost petroleum under existing regime and GST regime**

Recently, E&P companies have received correspondence from departmental authorities with regard to service tax demand on cost petroleum treating the cost petroleum as consideration paid by government to exploration companies for mining services undertaken by them.

The arrangement of PSC is such that it invites exploration companies to undertake exploration for itself in conjunction with Government of India. The authorities are demanding service tax on the activity of exploration without appreciating the rationale of PSC.

Suggestion

Given the above, clarification should be issued under existing regime as well as under GST regime that Profit Petroleum/ Cost Petroleum is not consideration for service; these are formulas to determine the Government's share in the production (tax paid sales revenue). There is no activity carried out by the Government/ Contractors and these are not consideration for a service but simply a share of the government in the production.

Internationally, Profit Petroleum/ Cost Petroleum are not considered as 'service' by the Governments to O&G companies or vice versa and nowhere in the world are indirect taxes applied on such transactions.

19. **Duty credit scrip under Service Export from India Scheme**

As per Foreign Trade policy 2015-20 Supply of an eligible service from India to any other country is covered for duty credit scrip under Service Export from India Scheme. However, some projects involve services from India as well as supervisory site services at overseas location making it ineligible for the above benefit.

We request to make projects involving services from India as well as supervisory site services at overseas location eligible for duty credit scrip under Service Export from India Scheme.

Implication will be that Service Exports will be more competitive.

INDIRECT TAX

CENTRAL SALES TAX

Upstream

1. **Exemption from levy of Value Added Tax/ Central Sales Tax**

   The import of goods required for petroleum operation is exempt from customs duties. Furthermore, the import of goods into India is also not subject to Value Added Tax (VAT) / Central Sales Taxes (CST). However, if similar goods are procured indigenously from the local vendor, the supplier of goods is required to charge Central Sales Tax on inter-state sale transaction.

   Suggestion

   Considering the fact that levy of CST on the sale of goods by indigenous supplier would render the local industry uncompetitive and incentivizes the foreign player, it is recommended that government may issue a notification granting exemption to goods required for petroleum operations, under VAT/ CST.

Downstream

2. **Removal of CST**

   Effective 01.04.2003, there is no mechanism for reimbursing the irrecoverable levies suffered by the marketing companies. Consequently, CST on interstate sales by Refineries to OMCs is absorbed by Refining Companies. In view of the above, it is suggested that CST may be made 'Nil' for inter-state sales.

   Petroleum products have to be brought within the ambit of GST. Only if petroleum products are included, Oil refining companies can claim tax credit, without breaking the input credit chain.

Natural Gas

3. **Amendment in CST Act to consider inter-state Stock Transfer of Natural Gas on deemed movement basis in line with amendment in Section 3.**

a. As per Section 6A of the Central Sales Tax Act 1956, in case of inter-state stock transfer of goods, the burden of proving movement of goods is on the dealer.

b. Section 6A of the Central Sales Tax Act 1956 provides that in case any dealer claims that he is not liable to pay tax under this Act on the ground that the movement of such goods from one state to another was occasioned by reason of transfer of goods to any other place of his business (or to his agent or principal) and not sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer.

It may be observed that section 3 of CST Act, 1956 was amended by the Budget 2016 by inserting the following explanation-3 to allow deemed movement of Gas for inter-state sale:

"Where the gas sold or purchased and transported through a common carrier pipeline or any other common transport or distribution system becomes co-mingled and fungible with other gas in the pipeline or system and such gas is introduced into the pipeline or system in one State and is taken out from the pipeline in another State, such sale or purchase of gas shall be deemed to be a movement of goods from one State to another."

c. It is understood that aforesaid amendment was brought considering the very nature of the gas as a product which becomes co-mingled and fungible in the common pipeline transportation system. Natural Gas available from different sources is transported through inter connected cross country pipeline and it is inevitably and invariably comingled and/or swapped for efficient and equitable distribution to various consumers in the different States.

d. As per section 6A of CST Act, a dealer has to establish actual physical movement of goods from one State to another in order to establish it as inter- state stock transfer of those goods. However, in case of Natural Gas, it is difficult to trace the molecules being transferred from one State to another as it commingles with other gas in the pipeline system. Further, in case of swapping, Gas is introduced in the pipeline distribution system in one State and taken out from the system in another State irrespective of actual physical movement and it is therefore not possible to claim a transaction as stock transfer transaction and may require multiple transactions of sale and purchase having tax implications in both States.

e. When the total quantity of Natural Gas is comingled, it will not be possible to segregate and treat sale & stock transfer differently. In fact, the Quantity for stock transfer has to be a balancing figure only after considering sale on deemed movement basis. Thus, it may be clear from the above that although it may not be possible to demonstrate physical movement for stock transfer, the treatment for stock transfer needs to be aligned with inter-state sale due to balancing requirement.

f. Thus, the aforesaid amendment brought in the Section 3 of the Central Sales Tax Act 1956 by the Union Budget 2016 cannot be effective in meeting its objective till a similar amendment is brought in Section 6A of the CST Act.

Suggestion

With a view to develop cost effective and tax efficient mechanism for Gas swapping as well as to resolve the issues emerging from comingling of gas, it is requested that an amendment in Section 6A of the Central Sales Tax Act, 1956 may be introduced to effectively implement the amendment brought in Section 3 of the CST Act vide Union Budget 2016.

A suggested draft of the proposed amendment is given below:

“The explanation 3 to section 3 will mutatis mutandis apply to inter-state transfer of Gas based on deemed movement.”

4. **Include Natural Gas as declared goods under CST act**

Under Chapter IV (Section 14) of Central Sales Tax (CST) Act, 1956 which deals with the 'Goods of special importance in inter-state trade or commerce', most of the fuels such as Coal, Crude Oil, Liquefied Petroleum Gas for domestic use (LPG) have been notified as "Declared Goods' on which Sales

Tax of more than 5% cannot be levied/charged in any State irrespective of where the product is sold.

However, Natural Gas which are clean fuels, have not been notified as "Declared Goods" under section 14 of the CST Act. As a result, there is no uniformity of VAT/ Sales Tax in the different states (e.g. Natural Gas is subjected to VAT in Gujarat 15.5%, Assam & Andhra Pradesh 15% and Tamil Nadu 5%). Many State Governments have levied very high rates of VAT/ Sales Tax on Natural Gas, thereby increasing the delivered price of Natural Gas to customers at unaffordable level. There is, therefore, an urgent need to bring down the Sales Tax/VAT rates to uniform and affordable levels.

Natural Gas is the feed-stock for power generation of many industries including Numaligarh Refinery Ltd.

Suggestion

It is proposed that Natural Gas should be included as declared goods under CST act.

General

5. **Changes in provision for submission of FORM C from quarterly basis to monthly basis**

    a. Rule 12 (1) and 12 (5) of Central Sales Tax (R&T) rules , 1957 provides for period of transaction to be covered in a single FORM C and Form F respectively. A single Form C covers all transaction of sale which takes place in a quarter and a single Form F covers declaration of value of transfer of goods affected during a period of one calendar month.

    b. Thus, there is apparent inconsistency in provisions relating to different forms under CST Rules. It will be prudent if necessary amendment is made for issuance of FORM C covering transaction in a month on monthly basis in line with provisions for issuance of FORM F.