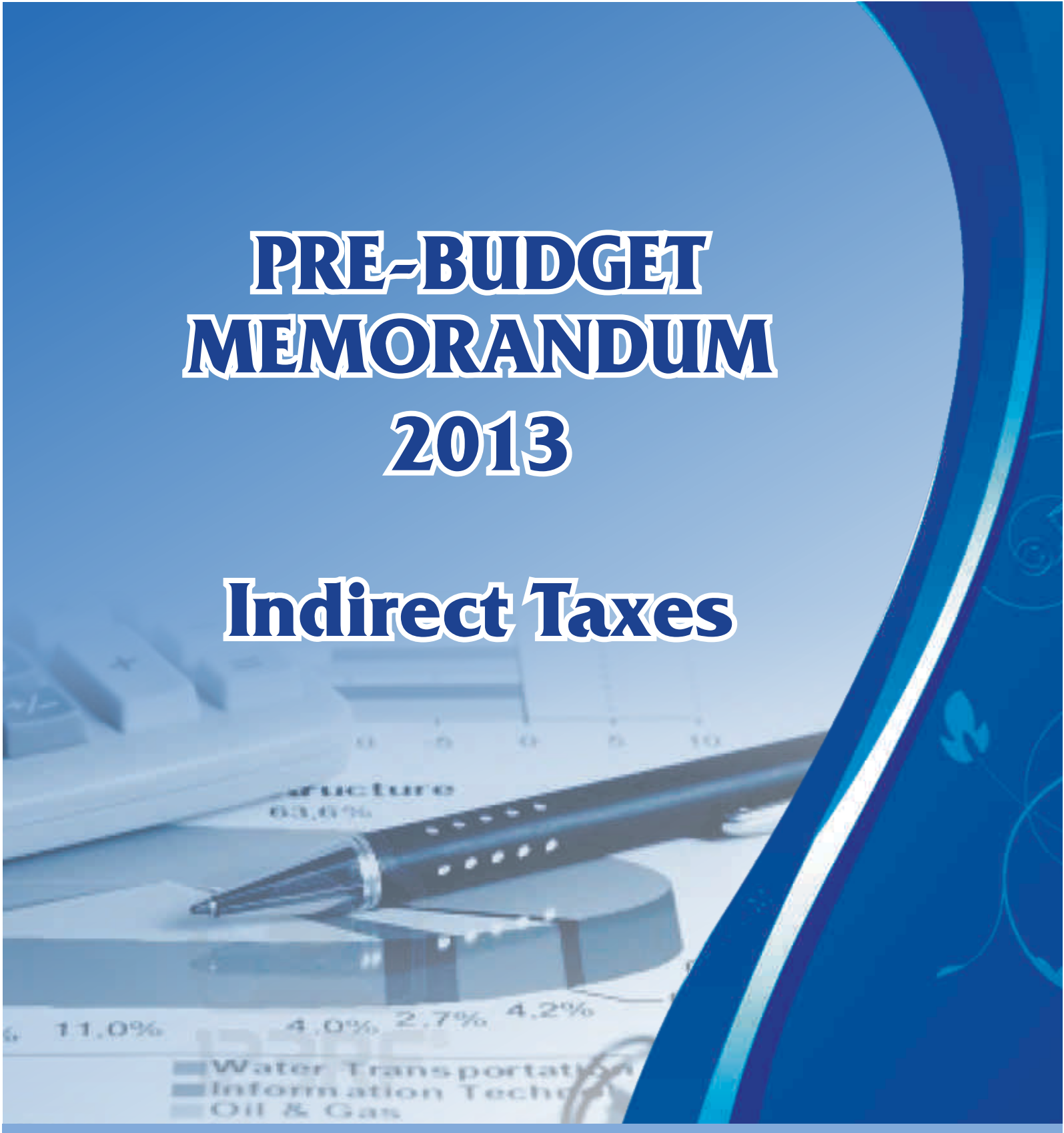
PRE-BUDGET MEMORANDUM 2013

Indirect Taxes



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI

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CONTENTS

I. INTRODUCTION

The Institute of Chartered Accountants of India (ICAI) considers it a privilege to submit the Pre-Budget Memorandum, 2013 on Indirect Taxes to the Government of India.

The Memorandum contains suggestions on issues relating to Service Tax, CENVAT Credit Rules, 2004, Excise Duty, and Customs Duty for the consideration of the Government while formulating the tax proposals for the year 2013-14. We believe that addressing the said issues would make tax laws simple, fair and transparent and avoid litigation.

II. EXECUTIVE SUMMARY

A. SERVICE TAX

S. No.	Topic(s)	Suggestion(s)
Substantive Law		
1.	Definitions of various terms as contained in Section 65B	
(a)	Service	➢ *The scope of service be restricted to a transaction of supply of service in the course of business, trade, commerce or profession or industry or furtherance of business, trade, commerce or profession or industry.* ➢ *The word 'activity' used in the definition of service be defined in the Finance Act, 1994 as common understanding of the term activity may differ from the legislative view. It is a term with very vide connotation, which may create unnecessary litigation or demand.* ➢ *An explanation be inserted in the definition to clarify that the services rendered by the firm to the partner or by the partner to the firm is not a service.* ➢ *The exclusion for services rendered by employee to employer be extended to services provided by employer to*

S. No.	Topic(s)	Suggestion(s)
		employee as well. This would reduce the hardship caused in determining the taxable value and reduce the administrative hassle in collecting the same. Further, the amount of tax sought to be collected on such transactions may not be substantial.
(b)	Agricultural Extension	➢ *The agriculture extension may also include the operations carried on by other persons, on any produce of agriculture, which are generally undertaken by the cultivator or producer, but would not cover the operations which transform the goods beyond agricultural produce.* ➢ *Alternatively, the same may be included in the Mega Exemption Notification No. 26/2012 ST.*
(c)	Agricultural Produce	➢ *The old definition of agriculture as provided in Notification No. 13/2003 ST dated 20.06.2003 be incorporated in the Finance Act, 1994 in place of new definition of agriculture.*
(d)	Goods Transport Agency	➢ *The definition of Good Transport Agency be amended to include the following words:* *"but does not include a person undertaking transport of goods under a contract directly with customer as truck*

S. No.	Topic(s)	Suggestion(s)
		owner or operator and does not require to issue consignment note in the normal course of business".
(e)	Intellectual Property Right	➢ *Intellectual Property Right be defined by borrowing the meaning assigned to in erstwhile Section 65(55a) of the Finance Act, 1994.*
(f)	Process amounting to manufacture or production of goods	➢ *The definition be amended to include the process of manufacture of products liable to excise duty under Medicinal and Toilet Preparation (Excise Duties) Act, 1955. This will bring the job work done for manufacture of medicinal and toilet preparation products under negative list of services.*
(g)	Works Contract	➢ *In order to have parity between CST Act, 1956 and Finance Act, 1994, the definition of works contract under Finance Act, 1994 be amended according to the definition of works contract under CST Act, 1956.* ➢ *Alternatively, a Notification be issued on the lines of Notification No. 12/2003-ST dated 20.06.2003 to provide for the deduction of value of goods and materials sold during the provision of service.*
2.	Capital contributed by a partner/	➢ *To avoid any ambiguity and maintain certainty and clarity, an explanation be*

S. No.	Topic(s)	Suggestion(s)
	drawings by the partner and remuneration paid or payable to the partner	*inserted to clarify that the services rendered by the firm to the partner or by the partner to the firm is not a service.*
3.	Outbound transaction provided by Branch to overseas Head Office and *vice-versa*	➢ *No service tax be levied on outbound transaction provided by an office located in taxable territory to another office located in non-taxable territory of the same legal entity.* ➢ *Alternatively, export status be accorded to services rendered by Head Office/Branch to overseas Branch /Head Office so as to treat them at par with import of service.*
4.	Selling of space or time for advertisement on internet	➢ *Selling of space or time for advertisement on internet be made liable to service tax by bringing it under the purview of declared services. The exemption be made applicable only if VAT under the State VAT law is charged in respect of the same. This will maintain a clear distinction between state and central taxes.* ➢ *Further, to ensure clarity the term 'sale of space or time slot for advertisement' be defined in the Act.*
5.	Betting, gambling or lottery and allied	➢ *Section 66D(j) of Finance Act, 1994 which covers services of betting,*

S. No.	Topic(s)	Suggestion(s)
	services	*gambling or lottery be suitably amended to clearly indicate that auxiliary services used for organizing or promoting betting or gambling events are subject to service tax.*
6.	Charges/ recoveries towards electricity supplies	➢ *It be clarified that charges/ recoveries for supply of electricity by developers would not get covered under the purview of service tax. This should cover electricity supplied either through captive diesel generation sets or through a State electricity board where the developer recovers the costs with regard to such supply from the tenants.*
7.	Trading of goods	➢ *Appropriate amendment be made to rectify the anomaly which has crept in by placing trading of goods in negative list when the same has been specifically excluded from the definition of service.*
8.	Declared service	➢ *Clause (e) of section 66E viz., "Agreeing to the obligation to refrain from an Act or tolerate an Act or a situation to do an Act" be suitably modified to exclude personal, social and religious activities.*
9.	Principles of interpretation	➢ *It be clarified that when the sub-contractor does the same activity as that of main contractor, whether they would be eligible for exemption or coverage under negative list.*

S. No.	Topic(s)	Suggestion(s)
10.	Exchange rate for determination of value of services	➢ *The exchange rate applied to record transactions in the books of accounts of companies be the basis for determining the value of services.*
11.	Questions on which advance ruling can be sought	➢ *Since classification of services has been dispensed with effect from 01.07.2012, clause (a) of section 96C(2) be amended as under:* *Section 96C(2) - ……..* *(a) principles of interpretation of specified description of services or bundled services*
Valuation of Taxable Service		
12.	Valuation of actual value of food/ beverages sold in a restaurant or as outdoor catering	➢ *An option to reduce the actual value of food/beverages on which VAT is paid/ payable from total amount charged be also made available to compute the value of restaurant services and outdoor catering.* ➢ *Further, the term 'outdoor caterer' be defined in the Valuation Rules to avoid any litigation.*
13.	Works contract for completion and finishing services	➢ *Stand-alone works contracts in respect of completion and finishing services be brought at par with the contracts for execution of original works. This would be simpler and also in line with reality as in some tile laying or glass fixing*

S. No.	Topic(s)	Suggestion(s)
		contracts the material cost would be in excess of 85%. Further, this would also solve the issue relating to valuation of on-going completion and finishing services contracts.
14.	Fair market value in case of free issue of material and services	➢ *Method for determining the fair market value be also incorporated in the valuation rules to avoid litigation and confusion.*
15.	Availment of credit by manufacturer in case of LSTK contracts	➢ *Appropriate amendment be made to enable the availment of credit in respect of the goods which are actually sold and transferred by the service provider to the manufacturer.*
16.	Valuation of construction of complex service (existing before 01.07.2012 and continuing thereafter)	➢ *The existing contracts entered prior to 01.07.2012 be allowed to continue with the abatement of 67%.* ➢ *Alternatively, an option to pay service tax as per composition scheme be provided in such cases to ensure equity.*
17.	Reimbursable expenditure	➢ *The definition of pure agent be simplified and modified to exclude the lines pertaining to "title of goods" and similar other requirements which are difficult to satisfy in practice.* ➢ *Appropriate mechanism be worked out/clarification be provided so that the benefit of input tax credit is not lost*

S. No.	Topic(s)	Suggestion(s)
		when the service provider seeks reimbursement of expenses incurred on account of the service recipient. ➢ *The valuation of reimbursable expenditures be reviewed/revisited particularly in the light of High Court's decision in the case of Intercontinental Consultants and Technorats Pvt Ltd Vs Union of India & ANR 2012-TIOL-966-HC-DEL-ST wherein the High Court has held rule 5(1) to be ultra vires section 66 and 67 of the Finance Act, 1994.*
18.	Sharing of expenses between two companies/ sister concerns	➢ *An appropriate Notification be issued to provide exemption from service tax on 'sharing of expenses' between two associated companies/ sister concerns where there is no margin.*
Exemptions/Abatements/Rebates		
19.	Construction services and renting of immovable property service rendered to NGOs	➢ *Construction services and renting of immovable property services be made taxable only if the construction related work is going to be used predominantly for commerce or industry and exemption be granted to construction services rendered to NGOs for construction of school/hospital etc.* ➢ *Exemption be provided in respect of renting of immovable property to such*

S. No.	Topic(s)	Suggestion(s)
		organizations.
20.	Government support services	➢ *Support services in relation to administration of all statutory obligations and collections from business entity be exempted from payment of service tax.*
21.	Short-Term Accommodation	➢ *The exemption limit be increased to accommodation with actual amount of receipt exceeding Rs.3,000 per day so that small hotels which are yet finding their way to survival do not do not face difficulties.* ➢ *Abatement be increased to 75% instead of 60% in the initial years.* ➢ *Further, a clarification be provided in respect of taxability of lump sum amount received by Hotels from customers for blocking rooms exclusively for them irrespective of whether they occupy it or not.*
22.	Renting of precincts of a religious place meant for general public	➢ *The phrase 'meant for general public' be deleted as the same leads to a confusion as to whether it should be read in conjunction with the word 'renting' or a 'religious place.'*
23.	Definition of charitable activity	➢ *Definition of charitable activity at Sl. No. (9) of the Mega Exemption Notification 25/2012 ST may include 'relief to poor' to bring in line with the*

S. No.	Topic(s)	Suggestion(s)
		definition under Income Tax.
24.	Exemption for services provided by a unincorporated body etc. in a housing society	➢ *An Explanation be added in clause 28(c) of the Mega Exemption Notification to provide that the said amount of Rs.5000/- shall not include municipal taxes, electricity and water charges.*
25.	Exemption for taxable service received by an exporter	➢ *Suitable clarification/ amendments be issued/made in Notification 31/2012 ST to enable an exporter to avail the CENVAT credit of service tax paid on the services mentioned therein instead of mandatorily going in for exemption route.*
26.	Conditional abatement for goods transport agency	➢ *Notification No. 26/2012 be amended to provide unconditional abatement of 75% in case of transport of goods by road by GTA. Simultaneously, the GTA service be continue to be outside the purview of output taxable service as per CENVAT Credit Rules.*
27.	Rebate for export of services post July 1, 2012	➢ *Notification No. 11/2005-ST dated 19.04.2005 for granting rebate of service tax and cess paid on exported services be restored so that export of service is treated at par with export of goods.* ➢ *Alternatively, refund be granted of accumulated CENVAT credit as at 30th June 2012 within three months of the*

S. No.	Topic(s)	Suggestion(s)
		claim so that exporters predicament of losing the accumulated CENVAT credit and incurring a huge cost is mitigated.
28.	Up front exemption from payment of service tax on any services provided to a SEZ unit/Developer	➢ *In view of the challenges faced by SEZ unit/ developers in respect of tax liability on recoveries made from employees, SEZ unit/ Developer be kept out of the purview of tax on such deemed services.* ➢ *Up front exemption from levy of service tax be provided to a SEZ unit/developer for all the services procured within SEZ from DTA without obtaining specific approval for a particular service provider.*
Procedural Law		
29.	Basic exemption limit for small service providers	➢ *Small service providers exemption limit be raised to Rs.25, 00,000.*
30.	Additional 2% service tax consequent to issuance of *Circular 158/9/2012-ST dated 8.5.2012*	➢ *The burden of additional 2% of service tax be reviewed and necessary clarification be issued to avoid unnecessary financial burden to the service provider as service providers are not able to recover the same from the service recipient.*
31.	Payment of service tax in cases of new services	➢ *Service providers whose service is taxed for the first time be also permitted to raise their invoice within 30 days from*

S. No.	Topic(s)	Suggestion(s)
		the date of completion of service, at par with existing service providers.
32.	Provision for bad debts	➢ *Rule 6(3) of the Service Tax Rules, 1994 be suitably amended to allow excess payment of service tax in the event of bad debts with a view to mitigate the genuine financial hardships of the service provider as the assesses is required to deposit service tax from his own pocket even though he is unable to recover the value of his taxable services and also forego the CENVAT credit of the service tax paid on such amount.*
33.	Service tax collection based on accounting codes notification	➢ *Circular No. 165/16/2012-ST dated 20.11.2012 be withdrawn and different methodologies be explored to determine the service tax collections in the respective sectors rather than requiring individual assesses to provide this information.*
34.	Carry forward of excess service tax actually paid in Form ST-3	➢ *A worksheet for computing the excess service tax paid which can be adjusted in the subsequent period be incorporated in Form ST-3 itself. This proposal seeks to correct anomaly and will lead to simplification of data gathering for the tax department.*
35.	Treatment of transfer pricing	➢ *Appropriate provisions be made for transfer pricing adjustments. Provision*

S. No.	Topic(s)	Suggestion(s)
	adjustments	*of mechanism to deal with transfer pricing adjustments will bring about clarity and avoid litigation.*
36.	Practical difficulty in complying with section 80(2) of Finance Act, 1994	➢ *It is suggested to exclude the period till the matters are disposed off by the High Courts and to reduce the payment liability to the extent already made by the tenants as per the direction of Hon'ble Supreme Court.*
37.	Reverse charge mechanism	➢ *Appropriate mechanism be developed whereby the benefit of basic exemption limit available to the small service providers is also available to the service recipient paying service tax under reverse charge.* ➢ *The concept of casual registration on the lines of VAT laws at State level be introduced in service tax law for service recipient paying service tax under reverse charge in one-off transactions.* ➢ *An option be provided to the service provider to pay service tax.*
38.	Partial reverse charge	➢ *The scheme of partial recovery of service tax on reverse charge basis be withdrawn. In such cases, the entire service tax liability should be discharged by the service provider.*
39.	Partnership firm *vis a vis* limited liability	➢ *The definition of partnership firm as*

S. No.	Topic(s)	Suggestion(s)
	partnership	*contained in Rule 2(1)(cd) be deleted.*
40.	Delay in grant of registration - risk of levy of penalty and interest	➢ *No interest under section 75 be levied and no penalty u/s 76 be imposed on the assessee, in case the assessee has not been able to deposit the tax due to delayed allotment of registration number by the department.* ➢ *Alternatively, an appropriate mechanism [on the lines of VAT Law] be provided through which assessee can make payment of service tax till the time he doesn't receive the service tax registration certificate (ST-2) from the department.* ➢ *Further, in case of non-registration, a suitable cap be provided on the amount of penalty to be levied. The amount of penalty be either restricted to the amount of service tax or Rs.20,000, whichever is less.*
41.	Exemption of R&D Cess from service tax – Difficulty in filling return	➢ *Format of ST-3 return be modified to provide a field for entering amount of exemption claimed for R & D Cess.*
42.	Time limit for adjudication	➢ *A time limit of 3 year for completion of adjudication be prescribed in the provisions of section 73.* ➢ *The adjudication be not handled by the Officer who has issued the Show Cause*

S. No.	Topic(s)	Suggestion(s)
		Notice.
43.	Issue of show cause notice for recovery of service tax	➢ *A minimum limit of Rs.1,00,000 for service tax escaping assessment be prescribed for the purpose of proviso to section 73(1).*
44.	Penalty for delay in filing returns	➢ *The provisions be modified to grant relief when delay is due to justifiable reasons.* ➢ *The maximum penalty be levied when there is delay in both payment of tax and submission of returns. In other cases, the existing penal provisions be continued.* ➢ *The penalty/late fee be restricted to the amount of tax involved.*
45.	Recording of statement	➢ *As far as possible, recording of statements be avoided and assesses be asked to submit specific responses to the specific questions of the Department.* ➢ *In case, the statement is required to be recorded, a copy of the same, duly signed by both the tax payer and the Officer recording the statement be provided to the tax payer immediately after the recording the statement. Very often, the statements are written in hand and then typed. The use of computer systems can speed up the process. The statement recorded can be immediately printed, signed and handed over to the assessee.*

S. No.	Topic(s)	Suggestion(s)
46.	Search of premises	➢ *In order to avoid vexatious searches, the reasons for conducting the search be recorded in writing. This will also be in line with income-tax provisions.*
47.	Prosecution	➢ *Prosecution provisions ought to apply only in exceptional cases and must include mens rea as also have a minimum threshold over which only such proceedings would be taken. Also, provisions for compounding as is available under other laws be introduced.* ➢ *Power to issue search warrant under section 82 be given to Joint Commissioner with the prior approval of Commissioner/Chief Commissioner with the reasons in writing.* ➢ *It is suggested that severe imprisonment provisions as provided under section 89 of the Finance Act for taking CENVAT credit without actual receipt of services be revised in line with the CENVAT Credit Rules, 2004 & the Point of Taxation Rules, 2011.*
48.	Audit report for the assessee/ Introduction of assessment procedures	➢ *The audit report under Excise Audit 2000 or any other scheme be a complete speaking report which may be provided to the assessee to :* ➢ *Take corrective actions* ➢ *To ensure that audit is done upto a*

S. No.	Topic(s)	Suggestion(s)
		particular period. ➢ *A time limit may be provided for completion of order of audit.* ➢ *Further, the books of the assessee can be called for scrutiny at the Central Excise Office itself instead of doing the audit at assessee's premises as such a system creates interference with the normal business of the assessee.* ➢ *On a broader note, assessment procedures may be introduced in service tax law as they prevail in other tax laws, like VAT, Income-tax.*
49.	Applicability of Advance Rulings to all assesses	➢ *The benefit of advance ruling provisions be extended to all new ventures whether by residents or non-residents.*
50.	Review of Advance Ruling order	➢ *Provisions of review of advance ruling orders be introduced for applications made by the aggrieved person.*
51.	Certification of refund by statutory or any other auditor	➢ *Refund be allowed to be certified by a practicing Chartered Accountant (not only Statutory Auditor or any other auditor).*
52.	Compliance with negative list based taxation of services	➢ *Lapses of non-remittance of tax, especially on reverse charge mechanism be viewed leniently and no penalty be imposed where the assessee realizes the mistake by himself and remits the tax*

S. No.	Topic(s)	Suggestion(s)
		with interest or remits tax at the instance of Central Excise and Service Tax Officers. A suitable period be declared within which the assessees are given time to rectify their mistakes and remit tax.
53.	Tax Audit Report in service tax	➢ *In order to streamline the process with all VAT laws, it is suggested that the submission of audit report be made mandatory in service tax also along with audited annual accounts.*
Place of Provision of Services Rules, 2012		
54.	Section 66C(2) vis a vis section 66B of the Finance Act	➢ *Section 66C(2) gives ground to make rule even when both service provider and service receiver are located at a place being outside the taxable territory which is contradictory to basic principle & provisions of charging section 66B of the Finance Act. Appropriate amendment be made to rectify this anomaly.* ➢ *Further, a separate charging section [on the lines of erstwhile section 66A] be introduced for taxing services provided from outside India and received in India.*
55.	Place of provision of 'intermediary services'	➢ *Intermediary services be brought within the ambit of Rule 3 [instead of Rule 9] of Place of Provision of Services Rules, 2012 to bring parity between intermediary services in respect of goods*

S. No.	Topic(s)	Suggestion(s)
		and intermediary services in respect of services and to provide the benefit of export of services to intermediary services in respect of services.
56.	Testing and analysis services with reference to goods like clinical testing	➢ *Testing and analysis services be specifically provided the status of exports if the same is being carried out for recipient outside India. It will maintain the status quo in order to encourage exports.*
57.	Place of provision of service when service provider and service reviver both are located in taxable territory	➢ *Rule 8 of Place of Provision of Services Rules, 2012 is against the charging Section 66B as well as against the well-established principle of service tax being a destination based consumption tax. It is, therefore, suggested that this Rule be either omitted or suitable changes be made therein.*
58.	Place of provision of goods transportation service	➢ *Place of provision of GTA service should be on the basis of destination of goods transported as provided in the main part of Rule 10.*
59.	Certification under Place of Provision Rules, 2012 in line with income tax – overseas payments	➢ *A declaration and certification by a Chartered Accountant with respect to liability of service tax on payment made outside India be prescribed in service tax law in line with income-tax provisions. This could be verified by the bankers while effecting payment to overseas service provider.*

B. CENVAT CREDIT RULES, 2004

S. No.	Topic(s)	Suggestion(s)
1.	Definition of input service	➢ *With the introduction of the new service tax regime based on the concept of a negative list, service tax is leviable on the broad spectrum of all the services except those specified in the negative list. When the taxation of services has become universal, the credit for input services should also follow the same principle and be made available across the board.* ➢ *It is suggested that definition of 'input services' be redrafted as "credit of all services procured by assessee for whom service charges are paid / payable by the assessee except those services for which assessee recovers amount from any other person in such a way that it is not part of assessable value of any taxable goods/services supplied.*
2.	Definition of input	
(a)	CENVAT credit on capital structures	➢ *It is suggested that definition of input be amended to provide CENVAT credit on capital structures etc.*
(b)	CENVAT credit on High Speed Diesel (HSD) and Light Diesel Oil (LDO	➢ *As the guiding principle of the CENVAT credit is that all inputs used in the course of business, directly or indirectly, for the purpose of business be made eligible to CENVAT credit so as to*

S. No.	Topic(s)	Suggestion(s)
		avoid cascading effect of taxes, it is suggested that CENVAT credit be also allowed in respect of HSD and LDO.
(c)	Input used for generation of electricity or steam for captive use	➢ *The following explanation be added in the definition of input:-* ➢ *Explanation:- "captive use" also includes cases where part of the electricity generated is given by a principal manufacturer to an input supplier i.e. a vendor who use the electricity so procured in or in relation to manufacture of goods which are again supplied to the principal manufacturer for further use in manufacturing of excisable goods.*
3.	Definition of capital goods	
(a)	CENVAT credit on motor vehicles	➢ *Definition of "capital goods" may include all kinds of motor vehicles which are essential for providing services with certain negative list of services to which motor vehicles can be ineligible.*
(b)	CENVAT credit on the pipes and fittings installed outside the factory premises	➢ *The pipes and fittings which are inter connected with the factory premises & used for the procurement & transport of the utilities from outside sources like pumping station etc. be also classified as capital goods in line with the pipes & fittings installed within the factory.*

S. No.	Topic(s)	Suggestion(s)
4.	Definition of exempted service	➢ *Definition of exempted service under Rule 2(e) unintentionally includes manufacturing activities, interest on deposit, loans or advances, which result in reversal of CENVAT credit as per Rule 6. It is suggested that this anomaly be corrected beforehand by making an appropriate amendment to avoid litigation.*
5.	Definition of exempted goods	➢ *The definition of "exempted goods" in rule 2(d) be amended to clarify that goods produced or manufactured on job work basis where the principal manufacturer is under the obligation to pay duty on such goods will not be construed as 'exempted goods'. This would avoid multiple incidence of duty on the same goods and avoid unnecessary litigation. Recently, the Karnataka High Court in the case of CCE v. Bharat Fritz Werner Limited, 2007 (218) ELT 177 (Kar.) upheld the above contention.* ➢ *On the same lines, definition of "exempted service" be amended to provide for exclusion of job-work provided to principal manufacturer exempted vide Sl. No. 30(c) of Notification No. 25/2012 ST dated 20.6.2012 which would be in line with*

S. No.	Topic(s)	Suggestion(s)
		job-work manufactured goods supra. ➢ *Alternatively, rule 6(6) and rule 6(7) be amended to include excisable goods removed without payment of duty by a job-worker and taxable services provided without payment of service tax by a job-worker respectively.*
6.	Capital goods cleared as waste and scrap	➢ *Amount to be paid on clearing capital goods (on which CENVAT credit has been availed) as waste and scrap may continue to be the amount equivalent to the duty liable on transaction value. This is logical as a normal commercial person would scrap any plant and machinery only after fully utilizing the asset. It means that the cost of asset has been fully built in the assessable value of the final product.*
7.	Inputs/capital goods procured from EOU/EHTP/STP not paying duty in terms of Sl No. 2 of the *Notification No.23/2003 CE dated 31.3.2003*	➢ *Rule 3(7) be amended to clarify that CENVAT credit will also be available in respect of clearances made by an EOU/EHTP/STP paying excise duty in terms of proviso to section 3(1) of the Central Excise Act, 1944. This will be in line with the overall objective of Foreign Trade Policy.*
8.	Availment of CENVAT credit on capital goods	➢ *100% CENVAT credit on capital goods in the year of purchase itself be allowed.*

S. No.	Topic(s)	Suggestion(s)
9.	Realization of invoice within three months for availment of credit	➢ *The time limit of three months for realization of invoice for availing the credit be commenced from the date of CENVAT credit taken rather than from the date of invoice.*
10.	Partial payment of service tax in respect of an input service under reverse charge	➢ *An appropriate clarification be issued with regard to availability of CENVAT credit when the payment of the invoice is made in installments and service tax is paid under reverse charge.*
11.	Pending refund claims under rule 5	➢ *A suitable mechanism be introduced for expediting the sanctioning of all pending refund claims. This will also minimize the litigation.*
12.	CENVAT credit on inputs/input services in case of export of services	➢ *Rule 5 be amended suitably to allow the facility of utilizing the credit taken on inputs or input services that are used by a manufacturer for manufacture and clearance of final goods for export, or a service provider who provides an exported service against the service tax payable on domestic output services/goods cleared for home consumption and refunding the surplus, if any, in accordance with certain notified procedures.*

S. No.	Topic(s)	Suggestion(s)
13.	Refund of credit of service tax under rule 5B	➢ *The definition of output service be amended to provide that services where the entire liability to pay service tax is on the service recipient would not qualify as output services for service recipient but would qualify as output service for the service provider.* ➢ *Alternatively, it be clearly specified that refund of service tax under rule 5B would be available only to those service providers who are discharging service tax liability under partial/ joint reverse charge.*
14.	Scope of rule 6(6)	➢ *It is suggested that the provisions of rule 6(6) be amended to include clearances of goods without payment of duty to defense, public research institutions, infrastructural projects etc.*
15.	Scope of rule 6(7)	➢ *It suggested that services provided without payment of service tax to United Nations Organizations, defense organizations and services exempt vide Sl. Nos.1, 12, 13, 14 & 25 of Notification No. 25/2012 ST dated 20.6.2012 etc. be also included within the scope of rule 6(7).*

S. No.	Topic(s)	Suggestion(s)
16.	Time period under rule 6(8) for realization and repatriation of export proceeds	➢ *Rule 6(8) be amended to increase the time limit from six months to one year. This amendment would be in line with the intention behind providing such benefits and the exporter will not suffer any disentitlement of CENVAT credits on account of delay in realization of export proceeds.*
17.	Input service distribution mechanism	➢ *Considering the intention of the Government, the distribution of input service credit be allowed as per provisions that existed prior to 2012 Budget.*
18.	Documentation for inputs/capital goods removed as such or after putting to use by the manufacturer/service provider	➢ *Rule 9(1)(a)(i)(II) be amended to specify that an invoice issued by the manufacturer for clearance of used inputs or capital goods will be a valid document for taking credit.* ➢ *Further, a new clause (ff) be inserted in sub-rule 1 of rule 9 to provide that an invoice, bill or challan issued by a provider of output service on or after 10.9.2004 for clearance of inputs or capital goods as such or used will be a valid document for taking credit.*
19.	CENVAT credit on self certified bill of entry in case of import of goods through courier	➢ *As duty has been paid, an appropriate provision be inserted in the CENVAT Credit Rules to avail the CENVAT credit based on certified copies of such*

S. No.	Topic(s)	Suggestion(s)
	agency	*Bill of Entry.* ➢ *Alternatively, a mechanism of casual registration be introduced in the excise law so that the courier agent may register as first stage dealer and get entitled to pass on the credit.*
20.	Customs endorsement of bill of entry for availment of CENVAT credit	➢ *The procedure of Customs endorsement of the Bill of Entry (EDI copy) for availment of CENVAT credit by the end user unit be restored.* ➢ *Alternatively, a provision be made in the Bill of Entry format for indicating the details of the consignee (end user receiver) of the goods in addition to the details of the importer as is being done in the case of excise invoices where the invoice is made on the buyer with the consignee indicated as the end user.*
21.	CENVAT credit of input services to the job-worker	➢ *An appropriate amendment be made to allow the CENVAT credit on account of input services to the principal manufacturer where the manufacture is undertaken by the job worker*
22.	Recovery of CENVAT credit wrongly taken or erroneously refunded	➢ *Amendment made in Rule 14 (effective from 17.03.2012) be given retrospective effect and a similar amendment be made in Rule 15 of the CENVAT Credit Rules, 2004 as well.*

S. No.	Topic(s)	Suggestion(s)
23.	Exemption and reversal of CENVAT	➢ *Instead of granting full exemption, excise duty at reduced rate (say 4%) be levied on goods for operational convenience.* ➢ *Alternatively, CENVAT credit on inputs/ services used in these supplies be allowed for utilization towards other domestic clearances.*

C. CENTRAL EXCISE DUTY

S. No.	Topic(s)	Suggestion(s)
1.	Excise duty on notional mark up	➢ *Appropriate clarification /amendment be issued under section 4 of Central Excise Act, 1944 to avoid consequences of Hon'ble Supreme Court decision in the case of CCE, Mumbai vs. Fiat India (P) Ltd [AIT-2012-354-SC, at least for the past.*
2.	Removal of goods from the factory	➢ *To introduce clarity, it is suggested that a deeming provision be introduced to treat captive consumption as "deemed removal" as it was provided in terms of Explanation to rule 9 of the Central Excise Rules, 1944.*
3.	Exemption to certain class of persons from obtaining registration under the Central Excise Rules, 2002	➢ *Job workers paying duty under rule 4(3) of Central Excise Rules, 2002 are exempt from obtaining registration vide Notification No.36/2001-CE(NT) dated 26.6.2001.* *However, provisions of rule 4(3) have been deleted vide Notification No. 24/2003-CE(NT) dated 25.3.2003. Therefore, Notification No. 36/2001-CE(NT) dated 26.6.2001 be amended to remove the exemption granted to such job workers which has become redundant.*

S. No.	Topic(s)	Suggestion(s)
4.	Interest on differential excise duty paid due to price increase subsequent to removal of goods	➢ *An explanation be added to Section 11AB of the Central Excise Act 1944 to the effect that no interest would be payable on account of differential duty paid/ payable because of any price revision subsequent to the removal of goods.*
5.	Powers of the Commissioner (Appeals) under the Central Excise Act and the Customs Act to condone the delay in filing the appeal	➢ *The Commissioner (Appeals) be empowered to increase the condonable period appropriately (from present 30 days) subject to assessee showing sufficient cause.*
6.	Power of the Commissioner (Appeals) to remand the appeal	➢ *A suitable amendment be made to address the issue as to whether the Commissioner (Appeals) has power to remand the case or not.*
7.	Revision application for matters relating to baggage, drawback, rebate of duty on export of goods etc.	➢ *It is suggested to allow filing of appeals before CESTAT against the orders passed by the Commissioner (Appeals) in relation to the matters covered under proviso to section 35B(1) of the Central Excise Act, 1944 and proviso to section 129A of Customs Act, 1962 as well i.e., orders relating to loss of goods where the loss occurs in transit from a factory to a warehouse, etc. or rebate of excise duty on export of goods or goods exported without payment of duty,*

S. No.	Topic(s)	Suggestion(s)
		baggage, drawback.
8.	Stay by CESTAT in case of excise and customs duty	➢ *The limitation period of 180 days for grant of stay be removed from central excise and customs provisions.*
9.	Memorandum of Cross-objections before the Commissioner (Appeals) – No prescribed format	➢ *The Central Excise (Appeals) Rules, 2001 and Customs (Appeals) Rules, 1982 be amended to provide for a prescribed format of memorandum of cross-objections to be filed before the Commissioner (Appeals).*
10.	Revision orders passed under section 35EE of the Central Excise Act, 1944 or section 129DD of the Customs Act, 1962	➢ *Provisions be made for appeal against the orders passed by the Revisionary Authority under section 35EE of the CE Act or section 129DD of the Customs Act, directly to the High Court by amending the provisions of section 35G of the Central Excise Act, 1944 and section 130 of the Customs Act, 1962 respectively.*
11.	Benefit of Excise *Notification Nos.29/2012 to 33/2012* relating to FMS, FPS Licences	➢ *An amendment be made in Rule 6(6) of the CENVAT Credit Rules to provide that Rule 6 will not apply for excisable goods cleared without payment of duty against duty credit scrips. Similar provision already exists for cases like goods cleared for export under bond without payment of duty.*
12.	Abolition of requirement of	➢ *The requirement of obtaining the installation certificate from the*

S. No.	Topic(s)	Suggestion(s)
	installation certificate for EPCG	*Range/Division of Central Excise be dispensed with and in its place the installation certificate be obtained from a Chartered Engineer.*

D. CUSTOMS DUTY

S. No.	Topic(s)	Suggestion(s)
1.	Relinquishment of imported/warehoused goods	➢ *It is suggested to amend the proviso of section 23(2) and proviso of section 68 to clarify as to when an offence appears to have been committed. Probably, the expression could read as "in respect of which a show cause notice has been issued".*
2.	Interest free warehousing period for imported goods	➢ *Warehoused goods be allowed to be kept in-bond for a period of at least 6 months without payment of interest.*
3.	Relevant date for determination of rate of duty and value of goods in case of improper removal of warehoused goods	➢ *Provisions of section 15 be amended to provide for relevant date in the case of improper removal of warehoused goods as envisaged in section 72 of the Act.*
4.	Education Cess (EC) and Secondary and Higher Education Cess (SHEC) on CVD/ Customs	➢ *A clarification be issued to confirm that proportionate credit of EC and SHEC to the extent charged on the CVD amount will be available.*
5.	Exemption of Additional duty of customs (ADC) under section 3(5) of the Customs Tariff Act, 1975 on goods imported for further resale	➢ *Since, the process of obtaining refunds is time-consuming (both for the department as well as the assessee), goods imported for resale, which anyway are chargeable to VAT, be exempted from additional duty of customs.*

E. OTHERS

S. No.	Topic(s)	Suggestion(s)
1.	Disparity between interest payable by assessee and Department under central excise, service tax and customs	➢ *The interest rates for both the demand of the duty/tax and the refund of the duty/tax be made uniform. There is need for fairness and equity in the rates at which interest is paid by the department and that is charged from tax payer.* ➢ *Further, uniformity be also ensured in respect of date of charging of interest on duty/tax demands vis-à-vis date of paying interest on refund of duty/tax. Interest on delayed refunds be paid by the Department from the date on which duty was actually paid.*
2.	Audit by CAG	➢ *Audit of excise be introduced at par with Income Tax or Sales Tax Department.*
3.	Personal Penalty	➢ *It is suggested that the provisions relating to personal penalty under Rule 26 (earlier rule 209A) be removed from the statute.*
4.	Powers under section 14 of the Central Excise Act, 1944	➢ *Section 14 of the Central Excise Act be suitably amended so as to stop the misuse of the powers provided therein. Summons be not issued unless information has been sought in writing [served to correct address] and the same*

S. No.	Topic(s)	Suggestion(s)
		has not been provided.
5.	Appeal from CESTAT in valuation and classification matters	➢ *Necessary amendments be made to file appeal in High Court in valuation and classification matters as well.*
6.	Exemption from payment of duty by way of refund mechanism	➢ *It is suggested that the present system of granting exemption through refund route be reviewed and be made simple to comply.*
7.	Suggestions for Reduction of Litigation	
(a)	Streamlining of Circulars/Trade Notices	➢ *Issue of circulars be examined and if at all they need to be issued, the Board should issue circulars by exercising utmost caution and design the circular meticulously to avoid any interpretational issues by the industry or the field formations at the lower level.* ➢ *Further, a practice of issuing a Master Circular on 1st April every year in Excise/Custom/Service tax compiling all related circulars issued during the year be adopted on an annual basis. This would ensure better compliance as assessees will be aware of necessary procedural steps and exemptions as available. A comprehensive circular makes easy to review all updates in an indexed manner.* ➢ *Also, it be made mandatory for the*

S. No.	Topic(s)	Suggestion(s)
		Officers to only use the current circulars.
(b)	Training of Departmental Personnel	➢ *A comprehensive training covering all the substantive, procedural aspects of the law and understanding of financial statements be scheduled for the officers at all levels.*
(c)	Accountability of tax collectors	➢ *In order to project a sense of even-handedness in dealing with tax payers, provisions relating to accountability be introduced and not be formulated independently. The Tribunal or Commissionerate (Appeal) may impose reasonable cost for the same.* ➢ *If there are rewards awarded to the departmental officers for anti-evasion cases then there ought to be penalty also for frivolous litigations.*
(d)	Timely information and guidance	➢ *It is suggested that all the orders passed by CESTAT and Adjudicating Authority/ Commissioner (Appeals) be made available on websites for ready reference of the industry. The CBEC may play a proactive role and issue clarifications on problems / issues of industry which are similar in nature to avoid such problems resulting in litigation at a later stage.*

S. No.	Topic(s)	Suggestion(s)
(e)	Vacancies in Tribunal	➢ *The vacancies in Tribunal be filled and additional benches in metro and non-metro cities be constituted to expedite the disposal of long pending cases. A fast track system of disposal of cases be introduced to deal with high revenue cases and settled issues.*
(f)	E-filing	➢ *E-filing of appeals be introduced to encourage paperless society as an environment friendly measure.*
(g)	Independent adjudication	➢ *Retired officers of Central Excise, Customs and Service Tax department be not allowed to appear in adjudication, first appellate authority or any other proceedings before the departmental authorities for a period of 1 year after their demitting office.*
(h)	Members of CESTAT	➢ *Practicing Chartered Accountants be made eligible for being appointed as Members of the CESTAT as in case of ITAT.*

III. SUGGESTIONS IN DETAIL

A. SERVICE TAX

Substantive Law

1. Definitions of various terms as contained in Section 65B

(a) Service

The definition of term 'service' as provided under section 65B (44) of Finance Act, 1994, is very wide in its scope because of the absence of the words 'industry', 'commerce', 'business' or 'profession'.

The term 'activity' has not been defined in the Act, which has a significant meaning in the definition of 'service'. The term may cover activities which are of personal nature. The intention of the legislature should be confined to tax activities in relation to business. This is also in consonance with international practice such as the UK VAT law.

As per the Draft Circular issued by the Department on leviability of service tax on staff benefits and employment related transactions, services rendered by the employer to employee will be liable to service tax. It is felt that this would be too harsh a provision for salaried class employees as the employer would ultimately recover such taxes from the employee.

Suggestions

- *The scope of service be restricted to a transaction of supply of service in the course of business, trade, commerce or profession or industry or furtherance of business, trade, commerce or profession or industry.*
- *The word 'activity' used in the definition of service be defined in the Finance Act, 1994 as common understanding of the term activity may differ from the legislative view. It is a term with very vide connotation, which may create unnecessary litigation or demand.*

- *An explanation be inserted in the definition to clarify that the services rendered by the firm to the partner or by the partner to the firm is not a service [Dealt in detail in point no. 2 below].*

- *The exclusion for services rendered by employee to employer be extended to services provided by employer to employee as well. This would reduce the hardship caused in determining the taxable value and reduce the administrative hassle in collecting the same. Further, the amount of tax sought to be collected on such transactions may not be substantial.*

(b) Agricultural Extension

With modernisation of agriculture, basic operations like paddy hulling to rice, cleaning of wheat, etc., may not all the time be undertaken by the farmers within the farm, they may get it done outside. If tax is collected on the same, the basic food costs would go up and would affect the common public, including the poor.

Suggestions

- *The agriculture extension may also include the operations carried on by other persons, on any produce of agriculture, which are generally undertaken by the cultivator or producer, but would not cover the operations which transform the goods beyond agricultural produce.*

- *Alternatively, the same may be included in the Mega Exemption Notification No. 26/2012 ST.*

(c) Agricultural Produce

The old definition of agriculture as provided in the *Notification No. 13/2003 ST dated 20.06.2003* meant "any produce resulting from cultivation or plantation, on which either no further processing is done or such processing is done by the cultivator like tending, pruning, cutting, harvesting, drying which does not alter its essential characteristics but make it only marketable and includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery,

raw vegetable fibres such as cotton, flax, jute, etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food, processed tobacco."

Many items in the old definition like, cereals, pulses, copra, jaggery etc. do not fit into the new definition of agricultural produce, whereas those goods are all considered as so, in common parlance as well as under State Laws. Further, these goods are essential commodities for common public including people below poverty line as well. With the amendment, the cost of these goods would go up resulting in increase in cost of these essential commodities.

Suggestion

The old definition of agriculture as provided in Notification No. 13/2003 ST dated 20.06.2003 be incorporated in the Finance Act, 1994 in place of new definition of agriculture.

(d) Goods Transport Agency

To bring in the clarity with respect to difference between a truck owner/operator and a Goods Transport Agency, the definition of goods transport agency be modified. This suggestion is in line with the recommendation made by the Committee formed to study and suggest the implementation of tax on GTA services in 2004-05.

Suggestion

The definition be amended to include the following words:

"but does not include a person undertaking transport of goods under a contract directly with customer as truck owner or operator and does not require to issue consignment note in the normal course of business".

(e) Intellectual Property Right

Suggestion

Intellectual Property Right be defined by borrowing the meaning assigned to in erstwhile Section 65(55a) of the Finance Act, 1994.

(f) Process amounting to manufacture or production of goods

The process amounting to manufacture or production of goods is covered in negative list of services vide section 66D(f). Consequently, the same is not liable to service tax.

Term "process amounting to manufacture or production of goods" is defined under Section 65B(40) to mean a process on which duties of excise are leviable under Section 3 of Central Excise Act, 1944 or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotics drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force.

Excise duty is also leviable on manufacture of products specified in the schedule to Medicinal and Toilet Preparation (Excise Duties) Act, 1955.

The definition of "process amounting to manufacture of production of goods" under Section 65B(40) does not include manufacturing process for manufacture of products liable to excise duty under Medicinal and Toilet Preparation (Excise Duties) Act, 1955.

In view of non-inclusion of above referred activity in statutory definition of "process amounting to manufacture of production of goods", the said job work is not covered under the negative list as specified in Section 66D(f) of the Act.

The possibility of dispute as to levy of service tax on such job workers cannot be ruled out.

Suggestion

Section 65B(40) of the Act defining "process amounting to manufacture of production of goods" be amended to include the process of manufacture of products liable to excise duty under Medicinal and Toilet Preparation (Excise Duties) Act, 1955. This will bring the job work done for manufacture of medicinal and toilet preparation products under negative list of services.

(g) Works Contract

The definition of service under section 65B(44) specifically excludes deemed sales transaction one of them is transfer of property in goods involved in the execution of works contract. The word 'merely' has been used in the definition of service in sub-clause (a) as *"an activity which constitutes merely……..."*.

Section 63B(54) defines "works contract" to mean a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

Whereas under Central Sales Tax Act, 1956 works contract has been defined under section 2(ja) to mean a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property.

The comparison of both the definitions of works contract under Finance Act, 1994 and CST Act, 1956 shows that a contract for manufacturing, processing etc. of movable property is not covered

under the definition of works contract under Finance Act, 1994. Therefore, the transactions like, processing of photographs, tyre retreading, processing of any material such as coating, electroplating etc. are not covered under works contract service whereas the same are considered as works contract under CST Act, 1956. Thus, service tax is leviable on the whole value of such contracts without any deduction of value of goods and material transferred in such works contracts and are also liable to VAT/sales tax on the entire contract value.

Suggestions

- *It is, therefore, suggested that in order to have parity between both the Central Acts, the definition of works contract under Finance Act, 1994 be amended according to the definition of works contract under CST Act, 1956.*
- *Alternatively, a Notification be issued on the lines of Notification No. 12/2003 ST dated 20.06.2003 to provide for the deduction of value of goods and materials sold during the provision of service.*

2. Capital contributed by a partner/ drawings by the partner and remuneration paid or payable to the partner

Partnership transactions (*viz.*, transactions between firm and its partners) were not liable to service tax under the law existing prior to 1-7-2012, as the same were not specified taxable services under section 65(105) of the Finance Act, 1994. However, clarity is required under the present law with respect to the taxation of such transactions.

Service tax is not leviable on capital contributed by a partner and remuneration/interest paid or payable to the partner on account of following reasons:

(i) Section 5 of the Indian Partnership Act, 1932 provides that the relationship of partnership arises from a contract. Thus, the entry of a new partner in a partnership is the result of a contract between the existing partners and the new partners. Admission into

partnership is not an 'act/work done' or 'facility provided'; neither by the firm nor by the partners. The sacrifice, if any, is made by the existing partners, however, the sacrifice/admission is not for the benefit of any existing/new partner but is for the benefit of the objectives of the partnership. Thus, by admitting a new partner in the firm, no "service" is provided to the "new partner". The new partner is merely acquiring a financial holding/interest in the firm.

(ii) The capital contributed by the new partner in the firm is not a 'consideration' because 'consideration' flows from the 'service receiver' to the 'service provider' and belongs to the service provider. The capital contribution of the new partner continues to belong to him and is returned to him whenever he retires. The capital contribution never belongs to the 'firm'. Thus, capital contribution cannot be regarded as a "consideration" for any service. A similar view was held under the European VAT law in the judgment rendered by the European Court of Justice in *KapHag Renditefonds 35 Spreecenter Berlin-Hellersdorf 3. Tranche GbR*v. *Finanzamt Charlottenburg* [2012] 36 STT 125/22 taxmann.com 173.

(iii) The question of charge of service tax arises when there is service provided by one person to another. The partners act according to the objectives of the partnership and work together to achieve common good. The remuneration, interest on capital, etc., are methods of sharing of profits earned by the firm and are not for provision of any service by the partner to the firm. The same arises by virtue of ownership of share in the firm by the partner.

(iv) The *Explanation* 3(*a*) to section 65B(44) provides that an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons. Section 65B(37) defines "person" to include 'a firm' in sub-clause (*vi*) thereof and 'an association of persons or body of individuals, whether incorporated or not' in sub-clause (*vii*) thereof. Therefore, 'firm' and 'association of persons or body of individuals' are different persons under the service tax law.

(v) It follows, therefore, that *Explanation* 3(*a*) to section 65B(44) applies only to unincorporated association or a body of persons and not to 'a firm' and partners thereof. Thus, even if the activities carried out by a partner for the benefit of the firm are services provided to the firm, then also, these are 'SELF-SERVICES', as firm and partners are not regarded as 'distinct person' under *Explanation* 3(*a*) to section 65B(44).

(vi) As per the Indian Partnership Act, 1932, 'firm' is a collective name given to the 'partners'. Therefore, even under the partnership law, firm and its partners are not separate persons.

Suggestion

To avoid any ambiguity and maintain certainty and clarity, an explanation be inserted to clarify that the services rendered by the firm to the partner or by the partner to the firm is not a service. Otherwise, this would lead to widespread disputes.

3. Outbound transaction provided by Branch to overseas Head Office and *vice-versa*

As per Explanation 3(b) to section 65B(44) of the Finance Act, 1944, an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory would be treated as establishments of distinct persons.

In a scenario where an offshore entity enters into a contract for setting up an infrastructure project with a customer in India but the actual work is performed through the Branch office located in taxable territory, the transaction would lead to duplicity of taxes on the same turnover, without any credit eligibility i.e.,

- Branch office would be held liable to service tax on the money received from the Head Office for execution of the work.

- Branch office would also be held liable to service tax on the contract between Head Office and the India customer, since the Indian office (i.e. Branch Office) of the service provider (i.e. offshore entity) is directly concerned with provision of services.

Hence, on the same transaction the Branch Office would be held liable to pay service tax twice.

However, a different approach is adopted in case of services rendered by the Head Office/Branch to overseas Branch /Head Office whereby export status is denied vide rule 6A of the Service Tax Rules, 1994.

Suggestions

- *No service tax be levied on outbound transaction provided by an office located in taxable territory to another office located in non-taxable territory of the same legal entity.*

- *Alternatively, export status be accorded to services rendered by Head Office/Branch to overseas Branch /Head Office so as to treat them at par with import of service.*

4. Selling of space or time for advertisement on internet

Services provided in relation to sale of space or time for advertisement on internet were liable to service tax in the pre-negative list regime. However, the same have been brought under the negative list with effect from 01.07.2012.

Suggestions

- *It is suggested that the same be made liable to service tax by bringing them under the purview of declared services. The exemption be made applicable only if VAT under the State VAT law is charged in respect of the same. This will maintain a clear distinction between state and central taxes.*

- *Further, to ensure clarity the term 'sale of space or time slot for advertisement' be defined in the Act.*

5. Betting, gambling or lottery and allied services

Clause (j) of section 66D of Finance Act, 1994 covers services of betting, gambling or lottery. Therefore, foregoing services are not liable to service tax. Section 66D(j) gives an impression that any activity in relation to betting, gambling or lottery is not subject to service tax.

However, clause 29(e) of *Notification No. 25/2012-ST dated 20-06-2012* exempts services provided by a selling or marketing agent of lottery tickets to a distributer or a selling agent.

Suggestion

It is suggested that section 66D(j) be suitably amended to clearly indicate that auxiliary services used for organizing or promoting betting or gambling events are subject to service tax.

6. Charges/ recoveries towards electricity supplies

Section 66D lists transmission or distribution of electricity by an electricity transmission or distribution utility. Section 66B(23) defines 'electricity transmission or distribution utility' as 'the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003; or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government. The definition of services excludes 'transfer of property in goods'.

Various developers of real estate parks supply electricity to their tenants/owners of the respective property in the real estate park (either generated through the DG sets or obtained from the state electricity board). However, only electricity transmitted or distributed by an

electricity transmission or distribution utility is specifically exempted under service tax and there is no specific exemption for electricity supplied by developers to its tenants. Consequently, the controversy at the ground level is whether, electricity is "goods" and hence its supply should attract service tax at all. Electricity constitutes "goods" under VAT and central excise laws and judicial precedents have upheld this view.

Suggestion

It be clarified that charges/ recoveries for supply of electricity by developers would not get covered under the purview of service tax. This should cover electricity supplied either through captive diesel generation sets or through a State electricity board where the developer recovers the costs with regard to such supply from the tenants.

7. Trading of goods

It is interesting to note that section 66D starts with the words, namely, 'The negative list 'shall comprise of the following **services…**'. Thus, negative list pre-supposes that all activities covered therein are services. However, the same are not charged to service tax by virtue of their specific exclusion in the charging section 66B.

The definition of service as provided under clause (44) of section 65B excludes *inter alia 'an activity which constitutes merely a transfer of title of title in goods or immovable property, by way of sale, gift or in any other manner'.* Thus, by virtue of the said exclusion pure sale of goods and immovable property gets excluded from the very definition of service and cannot be termed as service.

However, trading of goods is covered under clause (e) of negative list of services though the same is not service at all. This could lead to interpretational issues in future.

Suggestion

Appropriate amendment be made to rectify the said anomaly.

8. Declared services

"Agreeing to the obligation to refrain from an Act or tolerate an Act or a situation to do an Act."

If the clause is given its literal meaning, then it will cover very wide number of transactions [including many personal and social transactions] which may not be intention of the law-makers. The purpose of this clause is to tax non-compete fee.

Suggestion

Therefore, it is suggested that this clause be suitably modified. The entry should exclude personal, social and religious activities.

9. Principles of interpretation

As per Section 66F(1), reference to the main services shall not include, unless otherwise specified, services used for providing main service. More clarity is required in this regard. For example, can exclusion be claimed under negative list, where education services covered by negative list are provided by some other person on behalf of institution,

Suggestion

There is a need to clarify as to when the sub-contractor does the same activity [whether as works contract or as labour charges] as that of main contractor, whether they would be eligible for exemption or coverage under negative list.

10. Exchange rate for determination of value of services

Explanation to section 67A of the Finance Act provides that for determination of value of services, custom notified exchange rate will be the basis to arrive at the value of service and calculate the tax. However, companies maintain their books of accounts by applying exchange rates which are consistent for meeting the requirements of

mandatory accounting standards. Further, the method followed is regularly employed. To re-state the transactions by adopting the custom notified exchange rate will significantly enhance the cost of compliance.

Suggestion

It is suggested that the exchange rate applied to record transactions in the books of accounts of companies be the basis for determining the value of services.

11. Questions on which advance ruling can be sought

Section 96C deals with procedure of making an application for advance ruling. According to section 96C(2)(a) an advance ruling can be sought in respect of classification of any service as a taxable service under Chapter V.

However, with effect from 01.07.2012, the provisions relating to classification of taxable services as contained in section 65A have ceased to have effect and a new section 66F has been inserted, which explains the principles of interpretation of specified descriptions of services or bundled services.

Suggestion

Since classification of services has been dispensed with effect from 01.07.2012, the above clause be amended as under:

Section 96C(2) - ……..

(a) principles of interpretation of specified description of services or bundled services

Valuation of Taxable Service

12. Valuation of actual value of food/beverages sold in a restaurant or as outdoor catering

Rule 2C of Service Tax (Determination of Value) Rules, 2006 provides that the value of service portion in an activity wherein food or any beverages is supplied in any manner as a part of the activity at a restaurant or as outdoor catering is to be computed as percentage of total amount as follows:

Sl. No.	Description	Percentage of the total amount
(1)	(2)	(3)
1.	Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant	40
2.	Service portion in outdoor catering wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of such outdoor catering	60

At present, no option is available to pay service tax on actual value of services involved in supply of food/beverages. The activity of supply of food/beverages is suffering double taxation to the extent of 40% to 60% as the State Governments are levying VAT on full amount of contract for supply of food/beverages without granting any deduction for service.

However, in case of works contract service an option is available under rule 2A to pay service tax on value of services by reducing actual value of goods in which property is transferred during execution of works contract on which VAT is paid/payable.

Suggestions

- *It is, therefore, suggested that an option to reduce the actual value of food/beverages on which VAT is paid/payable from total amount charged be also made available to compute the value of restaurant services and outdoor catering.*
- *Further, the term 'outdoor caterer' be defined in the Valuation Rules to avoid any litigation.*

13. Works contract for completion and finishing services

According to clause (ii) of Rule 2A of Service Tax (Determination of Value) Rules, 2006 service tax shall be payable on

- 40% of the total amount charged in case of works contracts entered into for execution of original works
- 70% of the total amount charged in case of works contracts entered into for maintenance or repair or reconditioning or restoration or servicing of any goods and
- 60% of the total amount charged in case of other contracts not covered under above two clauses including completion and finishing services.

As far as works contracts for completion and finishing services are concerned, service tax is required to be paid @ 60% of the total amount charged, as mentioned above. If a composite contract is awarded for execution of original works and completion and finishing services, then service tax will be attracted @ 40% of the total amount charged. However, if a stand-alone works contract is given for completion and finishing services, then service tax is required to be paid @ 60% of the total amount charged.

Further, up to 30.06.2012, completion and finishing services were chargeable to service tax @ 4.944% after availing Composition Scheme. However, w.e.f 01.07.2012, by virtue of Rule 2A(ii) of Valuation Rules, service tax liability for such contracts has increased to 7.416% [60% X 12.36%].

No clarification has been provided in respect of contracts which have not been completed till 01.07.2012.

Suggestion

Therefore, it is suggested that stand-alone works contracts in respect of completion and finishing services be brought at par with the contracts for execution of original works. This would be simpler and also in line with reality as in some tile laying or glass fixing contracts the material cost would be in excess of 85%. Further, this would also solve the issue relating to valuation of on-going completion and finishing services contracts.

14. Fair market value in case of free issue of material and services

Rule 2A of Service Tax (Determination of Value) Rules, 2006 prescribing valuation mechanism for works contracts provides that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

However there is no method prescribed in the law for determination of fair market value. Since, general accepted accounting principle has 2 or 3 methods for determining fair market value, departmental officer may not consider the value, which is determined by the assessee.

Suggestion

Therefore, it is suggested that method for determining the fair market value be also incorporated in the rules to avoid litigation and confusion.

15. Availment of credit by manufacturer in case of LSTK contracts

As per explanation to 2 to rule 2A of the Service Tax Valuation Rules, CENVAT credit on inputs is not available to a works contractor. However, he is entitled to credit of capital goods and input services.

Under the CENVAT Credit Rules, CENVAT credit on inputs and capital goods received in the factory of the manufacturer is available to the manufacturer.

In case of lump sum turnkey (LSTK) contracts when goods are received by manufacturer through the contractor as a part of sale under works contract and transferred (sold) during the execution of works contract, credit is being denied to the manufacturer on the ground that since the goods are used by LSTK contractor, only he is entitled/not entitled to claim credit on them and the manufacturer cannot claim credit thereon as a matter of law.

However, this is incorrect in law because having sold those goods, the service provider cannot take any position to take credit with respect to those goods. Just because the value of goods sold forms part of the lumpsum value of the contract under composition/abatement scheme, a view cannot be taken that the goods belongs to the service provider.

If such interpretation is adopted, manufacturer will be denied the most eligible CENVAT credit on the goods purchased by them through LSTK contractor defeating the fundamentals of the CENVAT law.

Suggestion

Appropriate amendment be made to enable the availment of credit in respect of the goods which are actually sold and transferred by the service provider to the manufacturer.

16. Valuation of construction of complex service (existing before 01.07.2012 and continuing thereafter)

Abatements of 67 % and 25% respectively were available for the above category under the erstwhile *Notification No. 1/2006 ST* as amended. Post 01.07.2012, in the case of existing construction contracts where abatement of 67% has been claimed due to no land value being realized from the buyers of the complex, the contractors are left with no alternative to work out the tax liability.

Suggestion

- *The existing contracts entered prior to 01.07.2012 be allowed to continue with the abatement of 67%.*
- *Alternatively, an option to pay service tax as per composition scheme be provided in such cases to ensure equity.*

17. Reimbursable expenditure

Valuation Rules are extremely difficult to apply in practice, especially in those cases where there is clear reimbursement of expenses. Also, there is no provision for passing on the benefit of CENVAT credit where a party seeks reimbursement. Field formations take very narrow view and do not allow CENVAT credit in respect of various services (e.g. air travel) for which reimbursement is claimed since in such cases, the invoice is in the name of the person seeking reimbursement.

Amendments/clarifications and procedures are required to avoid double taxation as not allowing input tax credit when service provider incurs expenditure for and on account of the recipient, leads to double taxation and also cascading of taxes.

Suggestions

- *The definition of pure agent be simplified and modified to exclude the lines pertaining to "title of goods" and similar other requirements which are difficult to satisfy in practice.*

- *Appropriate mechanism be worked out/clarification be provided so that the benefit of input tax credit is not lost when the service provider seeks reimbursement of expenses incurred on account of the service recipient.*
- *The valuation of reimbursable expenditures be reviewed/revisited particularly in the light of High Court's decision in the case of Intercontinental Consultants and Technorats Pvt Ltd Vs Union of India & ANR 2012-TIOL-966-HC-DEL-ST wherein the High Court has held rule 5(1) to be ultra vires section 66 and 67 of the Finance Act, 1994.*

18. Sharing of expenses between two companies/ sister concerns

Suggestion

It is suggested that an appropriate Notification be issued with a view to provide exemption from service tax on 'sharing of expenses' between two associated companies/ sister concerns where there is no margin.

Exemptions/ Abatements/ Rebates

19. Construction services and renting of immovable property service rendered to NGOs

Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment is exempt only if such services are provided to the Government or local authority or a governmental authority.

As a result, similar services provided to business entities other than government or local authority such as charitable trust, NGO etc. becomes liable to service tax which work mainly or are formed primarily for the purpose of welfare of the society. For instance, construction of school/hospital belonging to NGOs has become taxable. However, up to June, 2012, erstwhile provisions specifically exempted

the levy of service tax on construction services provided to Trust/NGO, if used for non-commercial purposes.

Up to 30.06.2012, renting of immovable property which was used for any purpose other than furtherance of business or commerce was kept out of the purview of service tax. However, w.e.f from 01.07.2012, renting for educational and religious purposes only have been specifically exempted vide *Notification No. 25/2012 dated 20.06.2012.* No exemption has been provided in respect of renting of immovable property to any NGO, Trusts or Government or Local Authority or a Governmental Authority. As a consequence, the foregoing organisations have to bear the burden of service tax because their own services are not subject to service tax. Thus, working of said organisations which are working for the welfare of the society may be affected seriously.

Suggestions

- *It is suggested that such services be made taxable only if the construction related work is going to be used predominantly for commerce or industry and exemption be granted to construction services rendered to NGOs for construction of school/hospital etc.*
- *Exemption be provided in respect of renting of immovable property to such organisations.*

20. Government support services

Sub clause (iv) of clause (I) of *Notification No. 30/2012 ST dated 20.06.2012* provides that service receiver is liable to pay tax on the services provided or agreed to be provided by a Government or local authority by way of support services excluding:

(1) Renting of immovable property and

(2) Services specifies in sub clause (i), (ii) and (iii) of clause (a) of section 66D of Finance Act 1994,

to any business entity located in the taxable territory.

In the above case, support services in relation to administration of all statutory obligations and collection will be under the ambit of service tax reverse charge provision and receiver of the service is liable to pay tax on these services.

Suggestion

It is suggested that support services in relation to administration of all statutory obligations and collections from business entity be exempted from payment of service tax.

21. Short-Term Accommodation

Short term accommodation provided by hotels, inns, guest houses, clubs or camp-sites or any other similar establishment for a continuous period of less than three months with a declared tariff of Rs.1,000 or more per day is exempt from service tax.

Suggestions

- *It is suggested that the exemption limit be increased to accommodation with actual amount of receipt exceeding Rs.3,000 per day so that small hotels which are yet finding their way to survival do not do not face difficulties.*
- *Abatement be increased to 75% instead of 60% in the initial years.*
- *Further, a clarification be provided in respect of taxability of lump sum amount received by Hotels from customers for blocking rooms exclusively for them irrespective of whether they occupy it or not.*

The suggestions are being made as service tax on this service adversely affects the tourism industry as most of the State Governments already impose luxury tax on room tariff and this is an additional levy substantially increasing the cost of the services.

22. Renting of precincts of a religious place meant for general public

As per *Notification No. 25/2012 ST dated 20.06.2012*, exemption for payment of service tax has been given for the services of renting of precincts of a religious place meant for general public.

Suggestion

The phrase 'meant for general public' be deleted as the same leads to a confusion as to whether it should be read in conjunction with the word 'renting' or a 'religious place'.

23. Definition of charitable activity

Suggestion

It is suggested that the definition of charitable activity at Sl. No. (9) of the Mega Exemption Notification 25/2012 ST may include 'relief to poor' to bring in line with the definition under Income Tax.

24. Exemption for services provided by a unincorporated body etc. in a housing society

Suggestion

An Explanation be added in clause 28(c) of the Mega Exemption Notification to provide that the said amount of Rs.5000/- shall not include municipal taxes, electricity and water charges which are statutory taxes and goods and therefore not at all liable to tax as per the definition of service.

25. Exemption for taxable service received by an exporter

Notification 31/2012 ST exempts the taxable service received by an exporter of goods in relation to transport of the export goods by goods transport agency in a goods carriage directly from their place of removal, to an inland container depot, a container freight station, a

port or airport, as the case may be, from where the goods are exported OR service received by an exporter for transport of the said goods by goods transport agency in a goods carriage from any container freight station or inland container depot to the port or airport, as the case may be, from where the goods are exported from the whole of the service tax leviable thereon under section 66B of the said Act, subject to the conditions stipulated.

- The exemption recognizes the fact that the taxes ought not to be exported and simultaneously does not debar an exporter to avail CENVAT credit of the service tax payable instead of going in for the exemption.

- However, certain Commissionerates are disputing the availment of credits and insisting on opting for the exemption. The conditions laid down are cumbersome and time consuming.

Suggestion

It is suggested that suitable clarification/ amendment be issued/made to enable an exporter to avail the CENVAT credit of service tax paid on the above referred services instead of mandatorily going in for exemption route.

26. Conditional abatement for goods transport agency

Service tax on transport of goods by road by Goods Transport Agency (GTA) has been exempt to the extent of 75%. However, the abatement is on the condition that CENVAT credit on inputs, capital goods and input services, used for providing the taxable services, has not been taken under the provisions of CENVAT Credit Rules, 2004 [*Sl.No.7 to Notification No.26/2012*]

At times it is difficult to prove the condition of non-availment of CENVAT credit by the service provider, when the service tax is liable to be paid by the service recipient under the reverse charge method. In fact, under the service tax law prior to 01.07.2012 also, considering this difficulty, unconditional abatement of 75% was allowed. Also, the

definition of "output service" under the CENVAT Credit Rules was amended to exclude goods transport service from its purview. Consequently, the goods transport agency could not avail CENVAT credit in first place and thus automatically, the abatement became unconditional. This ensured no revenue loss to the Government.

In the amended CENVAT Credit Rules also, a GTA cannot avail CENVAT credit on motor vehicles purchased by it. Diesel, which is a key input for GTA, is also non-cenvatable. Thus, a GTA cannot avail credit of its major inputs or capital goods.

Suggestion

The notification be amended to provide unconditional abatement of 75% in case of transport of goods by road by GTA. Simultaneously, the GTA service be continue to be outside the purview of output taxable service as per CENVAT Credit Rules.

27. Rebate for export of services post July 1, 2012

Rule 5 of the Export of Service Rules, 2005 allowed a rebate of service tax paid on taxable services which are exported. Pursuant to the said rule, the Central Government issued *Notification No. 11/2005-ST dated 19.04.2005* to enable sanction of rebate of the whole of service tax and cess paid on taxable services exported in terms of Rule 3 of Export of Service Rules.

With *Notification No. 11/2005* in force, exporters had accumulated the CENVAT credit without claiming a refund of the input tax since it was possible to claim a rebate of the service tax and cess paid on the taxable services which are exported by using the CENVAT credit so accumulated.

With the implementation of Place of Provision of Services Rules, 2012, *Notification No. 11/2005-ST dated 19.04.2005* for granting of rebate of service tax and cess on export of taxable services stands rescinded. In the absence of a rebate of service tax and cess on taxable services

which are exported, CENVAT credit accumulated over the years cannot be used by an exporter of services. There is also no possibility of claiming a refund of such accumulated CENVAT credit as per Rule 5 of the CENVAT Credit Rules, 2004. Thus, the exporters are required to incur huge costs on account of the inability to realize the CENVAT credit.

Rule 6A(2) of the Service Tax Rules, 1994 provides for granting of rebate of only the service tax or duty paid on input services or inputs used in any service which is exported. The service tax rebate notification which stands rescinded is similar to excise rebate notification whereby an exporter of goods is permitted to export excisable goods against payment of excise duty and claim of rebate. While exporters of goods continue to claim rebate of excise duty, exporters of services are now precluded from July 1, 2012.

Suggestions

- *The notification for granting rebate of service tax and cess paid on exported services be restored so that export of service is treated at par with export of goods.*
- *Alternatively, refund be granted of accumulated CENVAT credit as at 30th June 2012 within three months of the claim so that exporters predicament of losing the accumulated CENVAT credit and incurring a huge cost is mitigated.*

28. Up front exemption from payment of service tax on any services provided to a SEZ unit/Developer

(a) Services wholly consumed within the SEZ

As per *Notification no 40/2012 ST dated 20.06.2012* and SEZ legislation, any service provided to a SEZ is exempt from payment of service tax subject to condition that services are "wholly consumed" within the SEZ. In order to claim such up front exemption the SEZ unit/Developer are required to issue Form A-1 to service provider duly

authenticated by competent authority as prescribed under said notification.

The term 'wholly consumed within SEZ' has been linked with newly introduced Place of Provision of Service Rules, 2012 (PPSR). However, on reading of the Notification with PPSR, certain input services appear to be not qualifying as 'wholly consumed within SEZ' viz. accommodation service, rent-a-cab services, authorized service station service, courier agency services etc. Thus, even the entities operating solely as SEZ unit/ developer are facing difficulties in obtaining Form A-1 for such service providers. If this position continues then even the entities that do not have any operations other than SEZ might lose the up-front exemption on few services. Accordingly, the term 'wholly consumed within SEZ' needs further clarification in light of PPSR.

As the coverage of service tax has widened with effect from 1 July 2012, even certain recoveries from employees have been covered under service tax net such as telephone recovery, transport recovery etc. Accordingly, even the SEZ units could probably get covered under such wide definition of provision of service. This dichotomy has been created merely because the deeming definition of services under the new section 65B(44) is very wide which eventually also puts an employee in the shoes of a service receiver which has never been the intention in the SEZ Act when one looks at the concept of authorized operations.

This position could possibly pose many challenges to SEZ unit as under:

(i) The list of authorized operations as approved by the Development Commissioner may have to be amended. Further whether such an operation would be allowed to be done or not *vis a vis* the SEZ Act, would itself be an issue.

(ii) In case of few recoveries from employees such as telephone, accommodation recovery, reimbursements of expenses can SEZ

unit/ developer take a stand that the services are wholly consumed within SEZ and hence claim upfront exemption? If answer to this is in affirmative, the next issue would be, who will issue Form A- 1?

(iii) The recoveries from employees could amount to provision of domestic services by SEZ unit/ developer. This would adversely impact the service tax refund claim of SEZ unit/ developer, if any.

(iv) This would also mean that stand alone SEZ units may lose their ab initio exemption and would have to move to the refund route for many services.

Suggestion

In view of the challenges faced by SEZ unit/ developers in respect of tax liability on recoveries made from employees, SEZ unit/ Developer be kept out of the purview of tax on such deemed services.

(b) Reimbursements of expenses of employees

Further, in many instances, SEZ units/ Developers are required to reimburse certain expenses to their employees which are incurred during the course of their employment. In such case, the service provider levies service tax on the invoice raised to a SEZ unit/developer and it becomes difficult to identify such service provider & get approval from SEZ development commissioner before the service is really been provided as they are one time service providers.

Suggestion

Therefore, up front exemption from levy of service tax be provided to a SEZ unit/developer for all the services procured within SEZ from DTA without obtaining specific approval for a particular service.

Procedural Law

29. Basic exemption limit for small service providers

The service tax exemption limit for small service providers in terms of *Notification No. 33/2012 ST dated 20.06.2012* is currently limited to Rs.10,00,000. Presently, in India services are viewed in the same manner as that of goods for taxing the same. If services are viewed at par with goods, the limit for exemption of small service provider ought to be similar to that of goods. It is relevant that small service providers are uneducated and mainly in the unorganized sector.

Suggestion

It is proposed to extend the exemption limit to Rs.25,00,000.

30. Additional 2% service tax consequent to issuance of *Circular 158/9/2012-ST dated 8.5.2012*

With effect from 01.04.2012 rate of service tax has been increased from 10% to 12%. Subsequently, *Circular 158/9/2012 dated 08.05.2012* clarified that service tax has to be @12% by the service providers, who were required to pay service tax on receipt basis as per Point of Taxation Rules, 2011. The circular also clarifies that even if the rate charged in the bill issued till 31.03.2012 was @10%, service tax has to be paid @12% on or after the receipt of services by 05.04.2012. This has created unnecessary financial burden on many assessees who may not be able to recover the additional 2% from the receiver of the service due to the contract of service or any other reason.

Hon'ble Delhi High Court has given a stay on the operation of this circular on an appeal filed by Association of Chartered Accountants in this regard.

Suggestion

It is suggested that the matter be reviewed and appropriate clarification be issued to avoid unnecessary financial burden to the service provider as service providers are not able to recover the same from the service recipient.

31. Payment of service tax in cases of new services

As per amended Rule 5 of Point of Taxation Rules, 2011 (POT Rules), where a service is taxed for the first time, then, no tax is payable if the payment has been received before the service becomes taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time."

Rule 4A of the Service Tax Rules 2012 has been amended by the Budget 2012 so as to increase the time to issue an invoice from 14 days to 30 days from the date of completion of service. Therefore, there seems no justification to reduce the same to service providers (for the purpose of Rule 5 (b) of POT Rules), whose service get taxed for the first time. There is no rationale to start the count from the day one of taxing for the first time too.

Suggestion

Service providers whose service is taxed for the first time be also permitted to raise their invoice within 30 days from the date of completion of service, at par with the scenario present for existing service providers.

32. Provision for bad debts

W.e.f 01.04.2011, payment of service tax has been shifted from receipt basis to accrual basis in case receipts of the service provider exceed Rs.

50 Lakh in the preceding financial year vide Point of Taxation Rules, 2011. In this system, there are no provisions for bad debt adjustments and the service providers are forced to pay service tax out of their own pockets if they fail to realize the consideration from the clients. For example, if the service is already provided and the invoice has also been issued, service tax would have been paid on the same, at the time when the service is provided or at the time when the invoice is raised, whichever is earlier. But if the payment is not at all received subsequently, there is no provision to claim adjustment / refund of the service tax already paid.

Such service tax could not be covered under Rule 6(3) of the Service Tax Rules, 1994 as the service has been provided. It cannot be covered under Rules 6 (4A) / (4B), as it is not a case of any excess payment of service tax. The service has been provided and hence the taxable event has happened. As the point of taxation has also occurred, service tax has also been paid. So, it is immaterial, whether the payment is received or not.

Unlike goods, which can be taken back in the event of non-payment of the consideration thereof, services, being intangible in nature, cannot be reclaimed from the service receivers. Further, service providers do not have a lien on the service provided by them the way a seller has a lien on the goods sold by him. There are no documents of title to services which can be put through the bank to make the recoverability certain. The rights of an unpaid seller of goods [Sections 45 to 54 of Sales of Goods Act, 1930] are well guarded and recognized in law as against the rights of an unpaid service provider.

It is worthwhile to mention here that Shri S. D. Majumder, Chairman, CBEC, while addressing the members at the Post-budget Workshop organized by the ICAI on 17th March, 2011 at its Head office, New Delhi, assured to resolve the said issue. Further, Shri S. K. Goel, Chairman, CBEC also indicated that the issue will be duly considered

when he addressed the members of the Indirect Taxes Committee of ICAI on 1st May, 2012.

Suggestion

Rule 6(3) of the Service Tax Rules, 1994 be suitably amended to allow excess payment of service tax in the event of bad debts with a view to mitigate the genuine financial hardships of the service provider as the assessee is required to deposit service tax from his own pocket even though he is unable to recover the value of his taxable services and also forego the CENVAT credit of the service tax paid on such amount.

33. Service tax collection based on accounting codes notification

Circular No. 165/16/2012 ST dated November 20, 2012 read with *Notification No. 48/2012 ST dated November 30, 2012* providing for payment of service tax in the erstwhile accounting codes has created hardship to the assessee in determining the classification, particularly in the absence of the relevant definitions in the new regime. As per the objective of introduction of the negative list, the classification created disputes. This may also lead to avoidable litigation and cause possible confusion in the minds of the assessee/ administrator with additional burden of compliance.

Suggestion

The Circular be withdrawn and different methodologies be explored to determine the service tax collections in the respective sectors rather than requiring individual assessees to provide this information.

34. Carry forward of excess service tax actually paid in Form ST-3

There is no space to display carry forward of amount paid by cheque or cash in excess of service tax payable. Service tax payable is shown in Table 3F(1)(g) and the service tax paid is shown in Table 4A1 of Form ST-3. Thus, the liability and payment are shown in different

tables and its reconciliation is not available anywhere. Excess amount of service tax paid can be adjusted under Rule 6(4A). Hence, for understanding of the department, a separate worksheet has to be attached every time the ST-3 return is filed.

Suggestion

It is suggested to incorporate a worksheet for computing the excess service tax paid which can be adjusted in the subsequent period in Form ST-3 itself. This proposal seeks to correct anomaly and will lead to simplification of data gathering for the tax department.

35. Treatment of transfer pricing adjustments

There is provision for transfer pricing in the income tax law. On transfer pricing audit, adjustments are often required to be made based on the specified principles. There is no clarity today as to how to deal with such adjustments in relation to service tax.

Suggestion

It is suggested that appropriate provisions be made in this regard. Provision of mechanism to deal with transfer pricing adjustments will bring about clarity and avoid litigation.

36. Practical difficulty in complying with section 80(2) of Finance Act, 1994

The Finance Act, 2012 has inserted Section 80(2), wherein the penalty would be waived if the payment of service tax along with interest is made within six months from the date of the receipt of assent of the President to the Finance Bill, 2012. However, it is known fact that in most of the cases the tenants had filed writ and further appeal and the matter is pending before Hon'ble Supreme Court. Further as per the direction of Hon'ble Supreme Court, the tenants have deposited

certain amounts (either in their own account or on account of tenant). Further in some cases the matters are still pending before High Courts.

Suggestion

It is suggested to exclude the period till the matters are disposed off by the High Courts and to reduce the payment liability to the extent already made by the tenants as per the direction of Hon'ble Supreme Court.

37. Reverse charge mechanism

There are various categories where service tax is payable by the recipient of service. However, considering the fact that many of the service providers would be below the threshold, the incidence of service tax becomes quite substantial as the benefit of threshold is not available when service tax is computed by the recipient.

Further, in many cases, the service recipient pays service tax under reverse charge for a single transaction as it is not usual for him to receive that services on a regular basis. For e.g., if a trader in Indore purchases furniture from Godrej, New Delhi and makes payment of freight, he is liable to register itself for this one off transaction and has to comply with procedures like regular filing of returns, etc. Similar situations also arise when a person is liable to pay tax under reverse charge mechanism for overseas service provider payments.

Also, the procedure for de-registration is quite cumbersome and take lot of time as the department is very hesitant to deregister any assessee.

Suggestions

- *Appropriate mechanism be developed whereby the benefit of basic exemption limit available to the small service providers is also available to the service recipient paying service tax under reverse charge.*

- *The concept of casual registration on the lines of VAT laws at State level be introduced in service tax law for service recipient paying service tax under reverse charge in one-off transactions.*

- *An option be provided to the service provider to pay service tax.*

The suggestions will give the benefit of basic exemption to the small service providers who loose the benefit as the payment of tax is on reverse charge basis and there is no provision for the person paying tax on reverse charge basis to consider basic exemption. This will place all the service providers where the service provider has to pay tax or service recipient has to pay tax under reverse charge mechanism at the same tax burden and will bring about equity in taxation.

38. Partial reverse charge

Partial reverse charge has been introduced with effect from 01.07.2012. This is a new system wherein the service tax liability has been apportioned between the service provider and the service receiver.

The concept of partial reverse charge has created hardship on the industry at large, predominantly due to compliance which becomes a major hurdle. Lack of clarity on the terminology adopted for implementing the reverse charge and also valuation for purpose of service tax computation by both service provider and receiver, if different, could be prone for litigation

Further, reading of the condition of *Notification No.33/2012 ST* suggests non-availability of exemption to services covered under reverse charge mechanism. However, exemption is available to service provider in terms of para 10.1.3 of the Education Guide issued by the CBEC.

Suggestion

It is suggested that the scheme of partial recovery of service tax on reverse charge basis be withdrawn. In such cases, the entire service tax liability should be discharged by the service provider.

39. Partnership firm *vis a vis* limited liability partnership

Rule 2(1)(cd) of Service Tax Rules, 1994 provides that "partnership firm" includes a limited liability partnership.

As per section 2(1)(d) of The Limited Liability Partnership Act, 2008 "body corporate" includes a limited liability partnership registered under the said Act.

Notification No. 30/2012 dated 20.06.2012 casts the liability for the payment of service tax under reverse charge mechanism. When a service is provided by way of renting of motor vehicle, supply of manpower or works contract by any individual, HUF or partnership firm to a business entity which is registered as a body corporate the body corporate is liable to discharge the service tax liability though they are receiving the said taxable service.

A view is being floated around that LLP will be "partnership firm" only for the limited purpose of payment of service tax and when it comes to reverse charge mechanism it will be a "body corporate".

Suggestion

To set at rest all doubts the definition contained in Rule 2(1)(cd) be deleted.

40. Delay in grant of registration - risk of levy of penalty and interest

As per Rule 4(1) of Service Tax Rules, 1994 every person liable for paying the service tax is required to file an application in Form ST-1 for registration with in a period of 30 days from the date on which the service tax under section 66B is levied.

As per sub rule 5 of the said rules, if the registration certificate is not granted within seven days from the receipt of application, it shall be deemed to have been granted. However, as per rule 6(1), the assessee shall be liable to make payment of service tax before the 5th/6th day of month /quarter, as the case may be immediately following the calendar month/quarter in which service is deemed to be provided.

Further, As per section 75 of the Finance Act, 1994 in case of delayed payment of service tax, assessee shall be liable to pay interest on delayed payment @ 18% p.a and penalty for failure of service tax under section 76 of the said Act, which shall not be less than Rs.100 per day or 1% of such tax per month, whichever is higher.

In case registration is not granted within seven days, assessee is not able to pay service tax because of the requirement of specifying Registration Number in GAR-7 Challan. In case of centralized registration, allotment of registration certificate usually takes 4-5 months, which makes assessee unintentional defaulter of section 75 and 76 of Finance Act, 1994 and consequently he is liable for interest and penalty.

Further Section 77(1) of the Finance Act, 1994 provides that a person who is required to take registration, fails to take registration shall be liable to pay a penalty which may extend to Rs.10,000 or Rs.200 per day till the failure continues whichever is higher.

In many cases, assessee is liable to make payment of service tax of a negligible amount under reverse charge [for instance receipt of legal services from an individual advocate], for which he is legally required to register himself with the Department in accordance with rule 4(1). However, the assessee may not be aware of the requirement of Registration because of lack of necessary legal knowledge.

Suggestions

- *It is suggested that no interest under section 75 be levied and no penalty u/s 76 be imposed on the assessee, in case the assessee has not been able to deposit the tax due to delayed allotment of registration number by the department.*
- *Alternatively, an appropriate mechanism [on the lines of VAT Law] be provided through which assessee can make payment of service tax till the time he doesn't receive the service tax registration certificate (ST-2) from the department.*

- *Further, in case of non-registration, a suitable cap be provided on the amount of penalty to be levied. The amount of penalty be either restricted to the amount of service tax or Rs.20,000, whichever is less.*

41. Exemption of R&D Cess from service tax – Difficulty in filling return

Notification No. 14/2012 ST dated 14.03.2012 provides exemption from service tax leviable on services involving import of technology to the extent of R&D Cess paid on such import of technology.

This notification is different from the other abatement notifications which provide abatement from value of taxable service. Under this notification, service tax is calculated at full 12% and then R&D cess paid is reduced therefrom to determine final service tax liability. Then on this balance service tax amount, education cess and secondary and higher education cess is calculated.

The present service tax return Form ST-3 does not support this type of presentation since there is no column wherein R&D cess amount can be shown.

Suggestion

Format of ST-3 return be modified to provide a field for entering amount of exemption claimed for R & D Cess.

42. Time limit for adjudication

Under Section 73(2) of the Act, the Central Excise Officer shall after considering the representation, if any, made by a person on whom a show cause notice is served for recovery of service tax not levied / paid or short levied / paid or erroneously refunded determine the amount of service tax due from such person and thereupon the person shall pay the amount so determined. It is to note here that the sub-section does not categorically provide for passing of an order nor does it

provide for time limit within which such determination of the amount to be recovered from the noticee is to be made.

Suggestions

- *It is suggested that a time limit of 3 year for completion of adjudication be prescribed in the provisions of section 73.*

- *Further, the adjudication be not handled by the Officer who has issued the Show Cause Notice as at times it appears to be an empty formality.*

43. Issue of show cause notice for recovery of service tax

The show cause notice under proviso to section 73(1) can be issued by a central excise officer up to five years where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax.

No minimum limit of the service tax escaping assessment has been prescribed for the purpose of issuance of show cause notice under proviso to section 73(1). It is often seen in practice that this extended period is applied routinely in all cases even where the tax payer has, on its own, paid tax on noticing error.

Suggestion

It is suggested that a minimum limit of Rs.1,00,000 for service tax escaping assessment be prescribed for the purpose of proviso to section 73(1).

Providing for minimum tax amount limit will reduce the litigation costs and administrative burden for the tax payer and department in case of proceedings not involving significant revenue.

44. Penalty for delay in filing returns

Maximum penalty for delay in filing of return under section 70 has been increased from Rs.2,000/- to Rs.20,000/- by the Finance Act, 2011.

The increase in maximum penalty is very harsh particularly when late payment of tax attracts interest and penalty under section 76. Further, the penalty has no relation to tax amount.

Suggestions

- *Penalty is levied only when the defaulter of tax is a repetitive defaulter. However, a person is liable to pay the penalty for delayed filing of returns even when there are just and sufficient reasons for the delay penalty. The provisions be modified to grant relief when delay is due to justifiable reasons.*
- *The maximum penalty be levied when there is delay in both payment of tax and submission of returns. In other cases, the existing penal provisions be continued.*
- *The penalty/late fee be restricted to the amount of tax involved.*

45. Recording of statement

It has been practically experienced that whenever the Officers record statements, a copy of the same is not provided to the person whose statement is recorded. Further, very often, statements are recorded in respect of routine matters for which a declaration or even a signed statement could be provided by the concerned person.

Suggestions

- *As far as possible, recording of statements be avoided and assessees be asked to submit specific responses to the specific questions of the Department.*

- *In case, the statement is required to be recorded, a copy of the same, duly signed by both the tax payer and the Officer recording the statement, be provided to the tax payer immediately after the recording the statement.*

- *Very often, the statements are written in hand and then typed. The use of computer systems can speed up the process. The statement recorded can be immediately printed, signed and handed over to the assessee. This will simplify the processes and will bring about greater discipline and reduce the anxiety of all concerned.*

46. Search of premises

The Commissioner of Central Excise may, if he has reason to believe that any documents or books or things which in his opinion will be useful for or relevant to any proceeding under the Act, are secreted in any place, may authorise the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise as the case may be, to search for or seize or himself search for or seize such documents or books or things. Section 82 provides for search when there is reason to believe.

Suggestion

It is suggested that in order to avoid vexatious searches, the reasons for conducting the search may be recorded in writing. This will also be in line with income-tax provisions. The suggestion seeks to bring about greater transparency in the processes and will enable the tax payer to effectively respond to the queries of the tax department. It will also bring about discipline within the department.

47. Prosecution

Joint Commissioner is empowered to issue search warrant under section 82 and the same is executed by the Superintendent. Provisions relating to prosecution contained in section 89 have been re-introduced by the Finance Act, 2011 to apply in the following situations:

(i) Provision of service without issue of invoice;

(ii) Availment and utilization of CENVAT credit without actual receipt of inputs or input services;

(iii) Maintaining false books of accounts or failure to supply any information or submitting false information;

(iv) Non-payment of amount collected as service tax for a period of more than six months.

Further, section 89(1) inter alia provides that whoever avails and utilizes credit of taxes or duty without actual receipt of taxable service either fully or partially in, shall be liable for punishment as provided therein.

This implies that assessee cannot avail and utilize CENVAT credit till the time, services are actually received. However, rule 4(7) of the CENVAT Credit Rules allows "CENVAT credit in respect of input service on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received.

Suggestions

- *Prosecution provisions ought to apply only in exceptional cases and must include mens rea as also have a minimum threshold over which only such proceedings would be taken. Also, provisions for compounding as is available under other laws be introduced.*

- *Power to issue search warrant under section 82 be given to Joint Commissioner with the prior approval of Commissioner/Chief Commissioner with the reasons in writing.*

As there is no mention of mens rea, proceedings may be initiated even in case of genuine and honest or inadvertent errors. Issuance of SCN with prior approval of Joint Commissioner will ensure application of mind to the issue at a higher level.

- *It is suggested that severe imprisonment provisions as provided under section 89 of the Finance Act for taking CENVAT credit without actual receipt of services be revised in line with the CENVAT Credit Rules, 2004 & the Point of Taxation Rules, 2011.*

48. Audit report for the assessee/Introduction of assessment procedures

Since, the report of the audit conducted by the Department is not given to the assessee, he is unable to prove that his accounts are audited till a particular period and is sometimes subjected to re-audit as there is no mechanism in the department to take care of such situations.

Suggestions

- *The audit report under Excise Audit 2000 or any other scheme be a complete speaking report which may be provided to the assessee to :*
  - *take corrective actions*
  - *to ensure that audit is done upto a particular period.*
- *A time limit may be provided for completion of order of audit.*
- *Further, the books of the assessee can be called for scrutiny at the Central Excise Office itself instead of doing the audit at assessee's premises as such a system creates interference with the normal business of the assessee. This would also stop the corruption and undesired nexus between few taxmen and unscrupulous tax payers.*
- *On a broader note, assessment procedures be introduced in service tax law as they prevail in other tax laws, like VAT, Income-tax. This would ensure that returns attain finality as also would fix accountability on the department side.*

The mechanism of audit by the department at the premises of tax payers is an excellent mechanism but, it needs to be carried to its logical conclusion. The suggestion will lead to closure of audits and bring certainty and clarity for the tax payers and discipline within the tax department.

49. Applicability of Advance Rulings to all assesses

There is lot of uncertainty in the business due to changing position of law and due to lack of understanding of law by the business community. The nature of indirect taxes is such that it is collected and paid to the Government at the time of transaction. If there is uncertainty and the same is not collected at the time of occurrence of transaction, then it has to be borne by the manufacturer/service provider, which can completely ruin the business prospects. Therefore, to ensure certainty in business, it would be ideal that they should know about the legal implications and tax incidence in advance.

Suggestion

The benefit of advance ruling provisions be extended to all new ventures whether by residents or non-residents.

50. Review of Advance Ruling order

Presently, there is no power of revision or review of orders passed by the Authority of Advance Ruling (AAR). If the order passed by the AAR has not appreciated the facts or legal position properly, then there is no appellate remedy for the applicant and he is bound by the order. This leads to a situation where wrong orders have to be followed.

Suggestion

It is suggested to introduce provisions of review for applications made by the aggrieved person.

51. Certification of refund by statutory or any other auditor

Notification No. 27/ 2012 CE (NT) provides that refund of CENVAT credit will be allowed subject to the procedure, safeguards, conditions and limitations as provided in the said notification. As per Para No. 3(e) of the said Notification, the refund claim has to be accompanied by a certificate in Annexure A-I, duly signed by the auditor (statutory or any other) certifying the correctness of refund claimed in respect of export of services.

Suggestion

It is suggested that the refund be allowed to be certified by a practicing Chartered Accountant (not only Statutory Auditor or any other auditor).

52. Compliance with negative list based taxation of services

As the concept of negative list of services and the law introduced for the implementation of the same is very new and entirely different from the existing law, the same is not yet fully understood by the common tax payer.

Suggestion

It is suggested that the lapses of non-remittance of tax, especially on reverse charge mechanism be viewed leniently and no penalty be imposed where the assessee realizes the mistake by himself and remits the tax with interest or remits tax at the instance of Central Excise and Service Tax Officers. A suitable period be declared within which the assessees are given time to rectify their mistakes and remit tax.

53. Tax Audit Report in service tax

Service tax liability cannot be calculated readily from the final accounts of the service providers. Adjustment and reconciliations are must in order to comply with the provisions of service. It is an admitted fact that administering authorities are not accounting experts and have

been dealing with stock records and physical goods in the past to administer excise and custom laws. Whereas services are intangible in nature and service tax liability can be calculated with reference to financial records only.

Tax audit report is one document which is required by income tax department as well as many VAT departments in various states. Certain states have prescribed specific audit by CA over a specified turnover. However, under service tax, no audited balance sheet is submitted by large number of tax payers, especially the smaller service providers and same is called for only at the time of EA audit.

Suggestion

In order to streamline the process with all VAT laws, it is suggested that the submission of audit report be made mandatory in service tax also along with audited annual accounts.

This measure will assist the department as it is difficult for the department to take up each and every case for full audit. Tax audit would ensure that the financial statements and the accounts on the basis of which return is prepared are prepared in accordance with the applicable accounting principles and they are duly scrutinized by a person specially trained for that purpose and who is also subjected to strict disciplinary mechanism. Chartered accountants also have to keep them updated and have to go through continuing education programs.

Place of Provision of Services Rules, 2012

54. Section 66C(2) *vis a vis* section 66B of the Finance Act

Section 66C(2) of the Finance Act states that "Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being **outside the taxable territory**" whereas the charging Section 66B states that "there shall be levied a tax (hereinafter referred to as the

service tax) at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided **in the taxable territory** by one person to another and collected in such manner as may be prescribed."

Section 66C(2) gives ground to make rule even when both service provider and service receiver are located at a place being **outside the taxable territory** which is contradictory to basic principle and provisions of charging section 66B of the Finance Act. Though this is possibly legally arguable, there is a lack of clarity

Suggestions

- *Appropriate amendment be made to rectify the anomaly.*
- *Further, a separate charging section [on the lines of erstwhile section 66A] be introduced for taxing services provided from outside India and received in India.*

55. Place of provision of 'intermediary services'

The activities performed by an intermediary service provider tantamount to export under the erstwhile Export of Services Rules. Under the old rules, the export condition was that the service recipient should be located outside India or part performance of the service was outside India.

Under the new rules, an iintermediary has been defined to mean "a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of service between two or more persons". Such services qualify as export under the EU Place of Supply Rules also. The fact also remains that the contractual recipient of the service as well as the beneficial enjoyment of the service, is outside India.

However, these services would become liable to tax under the new service tax regime, since as per Place of Provision Rules, 2012 the place

of provision of such services is the location of service provider. It implies that anyone who provides intermediary services (for instance, tour operator) can never export services in accordance with this Rule.

It may be noted that rule 9 is not applicable in case of intermediary services provided in relation to goods. There ought not to be any discrimination between the intermediary services for goods and for services.

Suggestion

Intermediary services be brought within the ambit of Rule 3 [instead of Rule 9] of Place of Provision of Services Rules, 2012. This change will help in achieving following two objectives:

(i) Bringing parity between intermediary services in respect of goods and intermediary services in respect of services.

(ii) To provide the benefit of export of services to intermediary services in respect of services.

56. Testing and analysis services with reference to goods like clinical testing

With effect from 01.04.2011, technical testing and analysis services have been treated as exported if the service recipient of such services were located outside India. However, with effect from 01.07.2012, under the new Place of Provision of Services Rules, 2012, the same will be not be treated as exports if the service recipient is located in non taxable territory. The place of provision of such service is being governed by rule 4 of the said rules.

As per rule 4, the place of provision of services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service would be the location where the services are actually performed.

Thus, under the new dispensation, it would be practically impossible for the testing and analysis services to be ever treated as exported.

Suggestion

It is, therefore, suggested that the testing and analysis services be specifically provided the status of exports if the same is being carried out for recipient outside India. It will maintain the status quo in order to encourage exports.

57. Place of provision of service when service provider and service reviver both are located in taxable territory

Rule 8 of Place of Provision of Services Rules, 2012 is applicable in a case where the place of provision of a service may be determinable to be outside the taxable territory by applying any of the rule from rule Rule 4 to 6 but the service recipient and service provider are located within the taxable territory. Thus, this rule is against the charging Section 66B as well as against the well-established principle of service tax being a destination based consumption tax.

Suggestion

This Rule be either omitted or suitable changes be made therein.

58. Place of provision of goods transportation service

As per Rule 10 of the said rules, in case of services provided by GTA, place of provision shall be determined on the basis of location of person liable to pay tax. The problem arises when the destination of goods is in non taxable territory but the person liable to pay tax is in taxable territory. This shall again be against the principle of destination based consumption taxation.

Suggestion

It is suggested that place of provision of such services should be on the basis of destination of goods transported as provided in the main part of the said Rule 10.

59. Certification under Place of Provision Rules, 2012 in line with income tax – overseas payments

For the purpose of Income Tax Act, 1961, every payment made outside India requires declaration and CA certification in Form 15CA and 15CB respectively. This is done to ensure that tax has been deducted at source in the applicable cases. In case of import of services, the service receiver is liable to pay service tax but the service tax law does not provide any mechanism to verify that applicable service tax has been paid on transactions when payment is made for services provided from outside India.

Suggestion

It is suggested that a declaration and certification by a Chartered Accountant with respect to liability of service tax on payment made outside India be prescribed in service tax law in line with income-tax provisions. This could be verified by the bankers while effecting payment to overseas service provider

The introduction of such a mechanism will safeguard the interest of revenue as also would simplify the procedural compliance for the assessee with regard to Section Place of Provision Rules, 2012 which is generally quite complex and may be missed out of ignorance or oversight.

B. CENVAT CREDIT RULES, 2004

1. Definition of input service

Rule 2(l) defines input service to mean any service:

"(i)….

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

and includes services used in relation to modernisation.....and outward transportation of inputs or capital goods and outward transportation upto the place of removal but excludes .....are used primarily for personal use or consumption of any employee."

It will be practically very difficult to prove that each input service has been used in or in relation to manufacture of final products and clearance of final products upto place of removal more so by the Department.

In the Budget of year 2011, various important services which are necessary for any manufacturing activity or rendering of taxable service have been excluded from the definition of input service. The services which have been excluded include services like setting up of a factory, etc. The exclusion of services relating to setting up of new factory run contrary to the Government's objective of boosting manufacture in the country.

Further, the definition of input services restricts availment of CENVAT credit on certain services which *inter-alia* include:

- Services related to civil construction
- Services related to motor vehicle i.e. cab services
- Services which are used for consumption of any employee

These restrictions cause multiple problems in practical situations. In case of composite contracts which includes mechanical, civil & other various works where majority portion is of mechanical works say 85% mechanical works & 15% civil works (which is not separable), it becomes difficult to avail CENVAT credit as it is not clear that whether 100% credit is available or only 85% related to mechanical works would be the eligible credit.

Service tax credit on expenditure incurred for workers / staff colony and other expenditure in connection with employees including mediclaim, canteen expenditure is not eligible for input credit. As long as the facilities and perks are allowed under the Income-tax Act, service tax credit on the same may be allowed. It is practically impossible to manufacture and subsequently sell the goods without providing canteen to the employees ("common to several employees") or incurring costs for employees such as health insurance etc.

Suggestion

With the introduction of the new service tax regime based on the concept of a negative list, service tax is leviable on the broad spectrum of all the services except those specified in the negative list. When the taxation of services has become universal, the credit for input services should also follow the same principle and be made available across the board

It is suggested that definition of 'input services' be redrafted as "credit of all services procured by assessee for whom service charges are paid / payable by the assessee except those services for which assessee recovers amount from any other person in such a way that it is not part of assessable value of any taxable goods/services supplied."

2. Definition of input

(a) CENVAT credit on capital structures

Definition of "input" specifically excludes any goods used *inter alia* for laying of foundation or making of structures for support of capital

goods, except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Finance Act, 1994.

Companies setting up new factories are thus not permitted to avail CENVAT credit on cement, iron, steel, plates etc either as part of civil structure or supporting capital goods (machines etc). It results in increased cost of construction. This provision goes against the very spirit of CENVAT.

Suggestion

It is suggested that definition of input be amended to provide CENVAT credit on capital structures etc.

(b) CENVAT credit on High Speed Diesel (HSD) and Light Diesel Oil (LDO)

The Government has been liberalizing the CENVAT credit norms on all the inputs and also input service used directly or indirectly in or in relation to manufacture of final goods. However, under the CENVAT Credit Rules, 2004 there is specific bar on availing CENVAT credit on High Speed diesel and Light diesel oil. In other words, CENVAT credit on High Speed diesel and Light diesel oil is denied to the manufacturer although they are also inputs, as these are used in or in relation to manufacture of dutiable goods or for a service provider providing taxable services.

HSD and LDO are widely used by all the industries as fuel for the purpose of generation of electricity and the electricity so generated is in turn, used in or in relation to manufacture of dutiable final products as also for providing taxable serivces. As the Government has been encouraging captive generation of power to tackle growing energy needs of the country, allowing CENVAT credit on this essential input would be a step in the right direction. Further, when CENVAT credit is allowed on other fuels such as furnace oil, lubricants etc., inclusion

of HSD and LDO within the scope of cenvatable inputs makes a strong case.

Suggestion

As the guiding principle of the CENVAT credit is that all inputs used in the course of business, directly or indirectly, for the purpose of business be made eligible to CENVAT credit so as to avoid cascading effect of taxes, it is suggested that CENVAT credit be also allowed in respect of HSD and LDO.

(c) Input used for generation of electricity or steam for captive use

As per Rule 2(k) of CENVAT Credit Rules, the definition of input includes all goods used for generation of electricity or steam for captive use.

Suggestion

The following explanation be added in the definition:-

Explanation:- "captive use" also includes cases where part of the electricity generated is given by a principal manufacturer to an input supplier i.e. a vendor who use the electricity so procured in or in relation to manufacture of goods which are again supplied to the principal manufacturer for further use in manufacturing of excisable goods.

3. Definition of capital goods

(a) CENVAT credit on motor vehicles

Effective from 1.7.2012, rule 2(a)(A)(viii), motor vehicles other than those falling under 8702, 8703, 8704, 8711 and their chassis are eligible 'capital goods' for both manufacturer and output service provider. Hence, in effect only tractors, dumpers and tippers are generally eligible for credit in case of both manufacturer and output service provider though rule 2(a)(B) and rule 2(a)(C) do allow credit on certain motor vehicles designed for either transportation of goods or to carry passengers in case of certain specified output service providers.

However, considering the very wide definition of definition of "service" provided under section 65B(44), definition of "capital goods" vis-à-vis motor vehicles is quite restrictive.

Suggestion

Hence, it is suggested that the definition of "capital goods" may include all kinds of motor vehicles which are essential for providing services with certain negative list of services to which motor vehicles can be ineligible.

(b) CENVAT credit on the pipes and fittings installed outside the factory premises

The CENVAT credit on pipes and fittings thereof are allowed when these are installed within the factory premises only. There are pipes and fittings laid outside the factory premises also in order to procure & transport the utilities like water, gas etc. from the pumping station / other sources to the factory premises. The Rules do not permit CENVAT credit on these capital goods since they are located outside factory. However, a similar benefit is granted for capital goods used outside the factory of the manufacturer for generation of electricity for captive use within the factory.

Suggestion

The pipes and fittings which are inter connected with the factory premises & used for the procurement & transport of the utilities from outside sources like pumping station etc. be also classified as capital goods in line with the pipes & fittings installed within the factory.

4. Definition of exempted service

Rule 2(e) defines exempted service to mean a

(1) taxable service which is exempt from the whole of service tax leviable thereon; or

(2) service, on which no service tax is leviable under section 66B of the Finance Act; or

(3) taxable service whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken;

but shall not include a service which is exported in terms of rule 6A of the Service Tax Rules, 1994.

By virtue of the said definition, exempted service unintentionally includes 'any process amounting to manufacture or production of goods', which results in reversal of CENVAT credit on exempted service as per Rule 6. Similarly, services by way of interest or discount on deposits, loan or advances also get covered under the definition of exempted service resulting in reversal of credit under rule 6.

Above activities inadvertently get covered under the definition of exempted service, which may not be the intention of the law maker.

Suggestion

It is suggested that this anomaly be corrected beforehand by making an appropriate amendment to avoid litigation.

5. Definition of exempted goods

Goods manufactured by a job worker are exempt from payment of whole of the duty of excise under *Notification No. 214/86 CE* subject to the condition that the Principal Manufacturer (supplier of raw materials or semi-finished goods) uses the job worked goods in or in relation to the manufacture of the final products in his factory or removes from his factory without payment of duty in specified cases. Under these circumstances, it is obvious that the appropriate duty of excise on such job worked goods gets discharged at the end of the principal manufacturer. Accordingly, the job worker should not be liable to pay any amount under Rule 6(3) of CENVAT Credit Rules,

2004. However, because such job worked can be treated as exempted goods under the definition of 'exempted goods' as given in rule 2(d) of CENVAT Credit Rules, 2004 (CCR), there are instances of department demanding payment of duty or amount under rule 6(3) of CCR which is unwarranted.

There are series of Tribunal and High Court decisions namely *CCE v. Bharat Fritz Werner 2007 (218) ELT 177 (Kar.) and CCE v. Sterlite Industries Ltd. 2009 (244) ELT A89 (BBY HC]* holding that such goods are not to be treated as 'exempted goods' in the hands of a job worker as the duty liability, if any, ultimately gets discharged by the principal manufacturer including the value of job worked goods.

Suggestion

- *It is suggested that the definition of "exempted goods" in rule 2(d) be amended to clarify that goods produced or manufactured on job work basis where the principal manufacturer is under the obligation to pay duty on such goods will not be construed as 'exempted goods'. This would avoid multiple incidence of duty on the same goods and avoid unnecessary litigation. Recently, the Karnataka High Court in the case of CCE v. Bharat Fritz Werner Limited, 2007 (218) ELT 177 (Kar.) upheld the above contention.*

- *On the same lines, definition of "exempted service" be amended to provide for exclusion of job-work provided to principal manufacturer exempted vide Sl. No. 30(c) of Notification No. 25/2012 ST dated 20.6.2012 which would be in line with job-work manufactured goods supra.*

- *Alternatively, rule 6(6) and rule 6(7) be amended to include excisable goods removed without payment of duty by a job-worker and taxable services provided without payment of service tax by a job-worker respectively.*

6. Capital goods cleared as waste and scrap

Prior to Budget 2012, when capital goods (on which CENVAT credit has been claimed) were cleared as waste and scrap, an amount equal to the transaction value of such waste and scrap was to be paid by the manufacturer.

In the Budget 2012, the said provision has been amended to provide that If the capital goods are cleared as waste and scrap, the manufacturer has to pay an amount equal to:-

CENVAT credit taken on the said capital goods reduced by the specified percentage points calculated by straight line method for each quarter of a year or part thereof from the date of taking the CENVAT credit or duty leviable on transaction value, whichever is higher.

In case of plant and machineries, it is common that certain spares and parts of machine need replacement at periodical intervals. The old worn out parts are cleared as waste and scrap.

Suggestion

It is suggested that amount to be paid on clearing capital goods (on which CENVAT credit has been availed) as waste and scrap may continue to be the amount equivalent to the duty liable on transaction value. This is logical as a normal commercial person would scrap any plant and machinery only after fully utilizing the asset. It means that the cost of asset has been fully built in the assessable value of the final product.

7. Inputs/capital goods procured from EOU/EHTP/STP not paying duty in terms of Sl No. 2 of the *Notification No.23/2003 CE dated 31.3.2003*

In terms of rule 3(7)(a), the manufacturer or service provider is allowed the benefit of taking CENVAT credit of duty paid on inputs or capital goods if the same are manufactured by an EOU/EHTP/STP in case the said unit pays excise duty under section 3 of the Central Excise Act, 1944 read with Sl.No.2 of the *Notification No. 23/2003 CE*

dated 31.3.2003. This credit is given on the basis of aggregation as specified in 2nd proviso to rule 3(7)(a) which is effective from 7.9.2009.

An EOU/EHTP/STP is liable to pay duty of excise in terms of proviso to section 3(1) of the Central Excise Act, 1944. However, the said unit is entitled to claim concessional duty or exemption from payment of duty in terms of *Notification No. 23/2003-CE dated 31.3.2003* issued under section 5A of the Act. The said concession/exemption is conditional and is available on fulfillment of certain prescribed conditions. Therefore, if a unit does not satisfy or fulfill the conditions, it is not entitled to pay concessional duty under the above notification. Alternatively, since the above notification is conditional, there is an option to EOU units not to avail the benefit of above notification.

In both the above situations, an EOU pays duty of excise in accordance with proviso to section 3(1). In such a case, the procurer of inputs or capital goods which are in-turn manufactured by EOU/EHTP/STP, which do not pay duty as per *Notification No. 23/03* but in terms of proviso to section 3(1), face difficulties in availment of credit.

This is a serious lacuna in the CENVAT Credit Rules, 2004 and there is a possibility of the department denying the CENVAT credit since the provisions of rule 3(7)(a) of the CENVAT Credit Rules, 2004 may not be applicable in this case.

Suggestion

It is suggested that rule 3(7) be amended to clarify that CENVAT credit will also be available in respect of clearances made by an EOU/EHTP/STP paying excise duty in terms of proviso to section 3(1) of the Central Excise Act, 1944. This will be in line with the overall objective of Foreign Trade Policy.

8. Availment of CENVAT credit on capital goods

As per Rule 4(2) only 50% CENVAT credit is allowed on capital goods in year of purchase and balance 50% in subsequent years. This results in cash flow problems. Moreover, elaborate accounts need to be

maintained to keep track of the credit availed. In case of manufacturing industries, investment planning is a regular feature & purchase of capital goods is made on an ongoing basis. The postponement of CENVAT beyond the first year does not give any real benefit to the Government as well.

Suggestion

CENVAT Credit Rules be amended to allow 100% CENVAT credit on capital goods in the year of purchase itself.

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

As per 2nd proviso to rule 4(7), in order to avail the credit of service tax, the payment for the services and service tax thereon has to be made within three months from the date of invoice. However, it is a very difficult position as in normal trade practice the invoices for services provided are received / passed after one or two months.

Suggestion

Therefore, it is suggested that the time limit of three months be commenced from the date of CENVAT credit taken rather than from the date of invoice.

10. Partial payment of service tax in respect of an input service under reverse charge

According to first proviso to rule 4(7) where the service tax is paid on reverse charge by the recipient of the service, the CENVAT credit in respect of such an input service will be allowed on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in the invoice, bill or as the case may be, challan referred to in Rule 9.

In many practical situations, payment of input service is made in installments. In such a situation, following two alternative views may be taken:

(i) CENVAT credit may be allowed to service recipient only after making payment of the entire amount of value of input service and service tax thereon.

(ii) CENVAT credit may be allowed on proportionate basis.

Suggestion

It is suggested that an appropriate clarification be issued with regard to availability of CENVAT credit when the payment of the invoice is made in installments and service tax is paid under reverse charge.

11. Pending refund claims under rule 5

There have been many issues involved with refund of credit of service tax under rule 5 since the year 2006 when the same was allowed vide *Notification 5/2006 CE(NT)*. There have been issues with regard to eligibility of input services for the purpose of refund as the terms used in the notification and the rules were different. The notification narrowed the scope of input services eligible for refund by emphasizing on a nexus between the input services and the services exported. *Circular No. 120/1/2010 dated 19.01.2010* issued by the Department clarified many issues in this regard.

Though with effect from April 1, 2012 rule 5 has been substituted in entirety to address all such issues and facilitate fast processing of refunds without any hassle, yet there are huge backlogs of refund claims pending with the various filed formations.

Suggestion

It is suggested that a suitable mechanism with time limits be introduced for expediting the sanctioning of all such pending refund claims. This will also minimize the litigation.

12. CENVAT credit on inputs/input services in case of export of services

Rule 5 allowed the CENVAT credits to be taken in respect of inputs or input services that are used for exports and utilise the credit against the tax/duty payable on domestic output services/goods cleared for home consumption and thereafter if there is any credit still left, refund of the unutilised credit in accordance with certain notified procedures can be claimed.

The substituted rule 5 allows refund of credit but does not seem to allow credit taken in respect of inputs or input services that are used for exports to be utilised against the service tax/duty payable on domestic output services/goods cleared for home consumption.

Suggestion

Rule 5 be amended suitably to allow the facility of utilizing the credit taken on inputs or input services that are used by a manufacturer for manufacture and clearance of final goods for export, or a service provider who provides an exported service against the service tax payable on domestic output services/goods cleared for home consumption and refunding the surplus, if any, in accordance with certain notified procedures.

13. Refund of credit of service tax under rule 5B

Rule 2(p) *inter alia* provides that output service means any service provided by a provider of service located in the taxable territory but will not include a service where the whole of service tax is liable to be paid by the recipient of service.

An output service provider providing services taxable under reverse charge mechanism is not able to utilize the CENVAT credit taken on input services, since he is not liable to pay tax on such services. Rule 5B allows such service provider to claim refund of such input tax credits.

However, definition of 'output service' excludes the services on which whole of the service tax is payable by the service recipient. Hence, the

services received by the service provider providing such services would not qualify as input services and would not be eligible for CENVAT credit

Unless the services qualify as input service and be eligible for CENVAT credit, no refund would be available to the service provider.

Suggestion

- *The definition of output service be amended to provide that services where the entire liability to pay service tax is on the service recipient would not qualify as output services for service recipient but would qualify as output service for the service provider.*
- *Alternatively, it be clearly specified that refund of service tax under rule 5B would be available only to those service providers who are discharging service tax liability under partial/ joint reverse charge.*

14. Scope of rule 6(6)

Under sub-clauses (i) to (viii) of rule 6(6) are enlisted certain clearances of excisable goods removed without payment of duty in respect of which mischief of rule 6(1) to rule 6(4) is not attracted and the manufacturer is allowed to take CENVAT credit on inputs or input services, as the case may be.

Under the Central Excise Act, 1944, by virtue of section 5A of the said Act there are exemptions given from the whole of duty to goods cleared to defense purposes, public research institutions, infrastructural projects such as Metro railway, etc. However, the same are not covered under rule 6(6). This is creating lot of problems and the public interest is being seriously impaired enhancing the cost of goods, which is not the intention.

Suggestion

It is suggested that the provisions of rule 6(6) be amended to include clearances of goods without payment of duty to defense, public research institutions, infrastructural projects etc.

15. Scope of rule 6(7)

Rule 6(7), inserted with effect from 1.7.2012, lays down that provisions of rules 6(1) to (4) do not apply when any taxable service is provided without payment of service tax either to SEZ developer or to a unit in SEZ or when a service is exported.

Suggestion

It suggested that services provided without payment of service tax to United Nations Organizations, defense organizations and services exempt vide Sl.Nos.1, 12, 13, 14 & 25 of Notification No.25/2012 ST dated 20.6.2012 etc. be also included within the scope of rule 6(7).

16. Time period under rule 6(8) for realization and repatriation of export proceeds

Rule 6(8) inter alia provides that export of service will not be an exempted service if the payment (in foreign exchange) thereof has not been received for a period of six months or such extended period as maybe allowed from time-to-time by the Reserve Bank of India, from the date of provision.

However, at present the RBI has specified that the period of realization and repatriation to India of the amount representing the full export value will be twelve months from the date of export.

Suggestion

Rule 6(8) be amended to increase the time limit from six months to one year. This amendment would be in line with the intention behind providing such benefits and the exporter will not suffer any disentitlement of CENVAT credits on account of delay in realization of export proceeds.

17. Input service distribution mechanism

The amended rule 7 of the CENVAT Credit Rules provide that the credit of input services related to a particular unit should be availed only by that unit. In case of common input services which relate to more than one unit, the same should be distributed *pro rata* on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period. Explanation 3(a) to Rule 7 provides that the relevant period shall be the month previous to the month during which the CENVAT credit is distributed.

The above amendment has created many practical difficulties and may even lead to continuous litigation. Computation of turnover on month to month basis is extremely difficult for industries which have factories located in multi-locations. Such turnover can only be provisional and are therefore prone for litigation.

Further, linking input service credit to particular units and doing proportionate distribution for common services will increase the administrative work. Also, this exercise is revenue neutral so long as the units are registered under PAN based registration and are producing excisable goods only. In fact, the law itself allows seamless credit to Large Taxpayer Units. In the 2012 budget also, inter unit transfer of unutilized SAD credit has been allowed to all units.

Suggestion

Considering the intention of the Government, the distribution of input service credit be allowed as per provisions that existed prior to 2012 Budget. The rule already takes care that input service credit of unit producing exempted goods is not distributed.

18. Documentation for inputs/capital goods removed as such or after putting to use by the manufacturer/service provider

Rule 9 does not specify the document on the basis of which CENVAT credit can be taken when inputs or capital goods are cleared after being used for some time by the manufacturer. Similarly, the rule does not prescribe a specific document on the basis of which CENVAT credit can be taken when inputs or capital goods are cleared as such and after being used for some time by the output service providers.

Suggestion

Rule 9(1)(a)(i)(II) be amended as under:

"(II) inputs or capital goods as such or used;"

Further, a new clause (ff) be inserted in sub-rule 1 of rule 9 as under:

"(ff) an invoice, bill or challan issued by a provider of output service on or after 10.9.2004 for clearance of inputs or capital goods as such or used;".

19. CENVAT credit on self certified bill of entry in case of import of goods through courier agency

At present there is no specific provision for availing CENVAT credit based on courier receipts or package receipts though countervailing duty is paid on such imports through a common Bill of Entry prepared for all imports by Courier Agency belonging to different importers. The courier agent forwards a photocopy of such Bill of Entry to each importer. However, CENVAT is not allowed to be taken on such copy.

Suggestion

- *As duty has been paid, an appropriate provision be inserted in the CENVAT Credit Rules to avail the CENVAT credit based on certified copies of such Bill of Entry.*

- *Alternatively, a mechanism of casual registration be introduced in the excise law so that the courier agent may register as first stage dealer and get entitled to pass on the credit.*

This will address the difficulty of obtaining registrations and surrendering it time and again/filing Nil returns and face penal consequences even though there is no liability to tax. This will go to reduce cost of doing business and will not lead to leakage of credit due to non-availability of the appropriate procedure for the same.

20. Customs endorsement of bill of entry for availment of CENVAT credit

The erstwhile procedure of customs endorsement of Bill of Entry for availment of CENVAT credit by the end user unit has been dispensed with vide *Customs Public Notice No. 16/2006 dated 22-03-2006*. This is causing hardships to the manufacturers since they are unable to avail CENVAT credit on the imported [free issue] material received by them from their customers.

Suggestion

- *The procedure of Customs endorsement of the Bill of Entry (EDI copy) for availment of CENVAT credit by the end user unit be restored.*

- *Alternatively, a provision be made in the Bill of Entry format for indicating the details of the consignee (end user receiver) of the goods in addition to the details of the importer as is being done in the case of excise invoices where the invoice is made on the buyer with the consignee indicated as the end user.*

21. CENVAT credit of input services to the job-worker

In case of Brand Owners (Principal manufacturers) who employ job-workers exclusively for manufacture of goods, the job worker is eligible to claim credit on inputs and capital goods (purchased by the

Principal manufacturer) by receiving the same in its factory. However, the credit on input services received by the Principal manufacturer is not available to the job worker, since the payment for such services is made by the Principal manufacturer instead of job worker.

However, the Principal manufacturer also cannot avail the credit on input services since he is not the manufacturer and the manufacturer, i.e., the job-worker, cannot avail the credit since he has not paid for the taxable input service.

Accordingly, the Principal Manufacturer employing job-workers exclusively is discriminated against the Principal Manufacturers having their own manufacturing facilities, in so far as credit of service tax is concerned.

The CENVAT Credit Rules provide for an Input Service Distributor (ISD) mechanism whereby the credit of service tax can be distributed by an office of the manufacturer/ service provider to its manufacturing unit or unit providing taxable services. However, there is no provision under law to allow the Principal Manufacturer to distribute the credit to the job-worker.

Suggestion

It is suggested that an appropriate amendment be made to allow the CENVAT credit on account of input services to the principal manufacturer where the manufacture is undertaken by the job worker.

22. Recovery of CENVAT credit wrongly taken or erroneously refunded

With effect from 17.03.2012, rule 14 of the CENVAT Credit Rules 2004 has been amended to provide *inter alia* that if the CENVAT credit has been taken **and** utilised wrongly (as against the earlier position of taken **or** utilized wrongly), the same along with interest will be recovered from the manufacturer/output service provider.

This is indeed a welcome amendment but it does not give relief to the positions before 17-03-2012, which unnecessarily create issues between the assessee and department and involve lot of wastage of time/resources etc.

Suggestion

It is suggested that the amendment be given retrospective effect and a similar amendment be made in Rule 15 of the CENVAT Credit Rules, 2004 as well.

23. Exemption and reversal of CENVAT

A number of exemption notifications mandate that the manufacturer supplying goods without payment of duty have to reverse actual CENVAT or pay an amount of 6% of price in lieu of CENVAT claimed in terms of CENVAT Credit Rule 6. The procedure for reversal of actual CENVAT is cumbersome. Further, this amount is not recoverable from customer as duty. This results in increased cost of products and negates the objective of giving exemption.

Suggestion

- *Instead of granting full exemption, excise duty at reduced rate (say 4%) be levied on such goods for operational convenience.*
- *Alternatively, CENVAT credit on inputs/ services used in these supplies be allowed for utilization towards other domestic clearances.*

C. CENTRAL EXCISE DUTY

1. Excise duty on notional mark up

Recently, in the case of *CCE, Mumbai vs. Fiat India (P) Ltd [AIT-2012-354-SC*, Supreme Court has given a very controversial decision. In this case, Fiat India manufactured Uno cars using CKD/ SKD kits, which were sold to distributors below its cost of production, as the company desired to penetrate the market. Excise duty was paid on the sale price charged from the distributors, which was challenged by the department. The Apex Court finally held that excise duty was required to be paid on the basis of cost of production plus a notional mark-up. Further, the Apex Court also held that even under the current 'transaction value' regime, such a price was not acceptable, as price is not the 'sole consideration'.

While the ruling was in context of automobiles, clearly it can impact all manufacturing companies which sell their product below cost because of varying reasons (new product/ markets/ trials, etc.). The various issues that may arise in this regard are as under:

a) Profitability of each product being manufactured may be scrutinized to ascertain whether transaction value is less than cost plus profit (in which case, differential duty can be demanded on the basis of cost of production plus notional profit).

b) Inquiries may be conducted for clearances over past years

c) The percentage of profit being earned vis-à-vis competition/ different classes of buyers may be questioned.

d) If the intent to 'penetrate the market' constitutes extra commercial consideration, what about other objectives such as 'utilization of idle capacity'

Suggestion

It is suggested that appropriate clarification /amendment be issued under section 4 of Central Excise Act, 1944 to avoid consequences of this decision at least for the past.

2. Removal of goods from the factory

Under the erstwhile provisions of rule 9 of the Central Excise Rules, 1944, there was a deeming fiction wherein it was provided that goods used within the factory of manufacture viz., captive consumption, are deemed to have been removed from the factory. This deeming fiction was introduced by way of Explanation below rule 9 of the erstwhile Central Excise Rules, 1944 and the said amendment was with retrospective effect from 28.2.1944. This retrospective amendment resulted in the decision of the Supreme Court in *J.K. Spinning & Weaving Mills Ltd. v. UOI*, 1987 (32) ELT 234 (SC) which upheld the retrospective amendment. The above Explanation inserted below erstwhile rule 9 is extracted below:

"Explanation. – For the purposes of this rule, excisable goods produced, cured or manufactured in any place and consumed, utilised –

(i) as such or after subjection to any process or processes; or

(ii) for the manufacture of any other commodity;

whether in a continuous process or otherwise, in such place or any premises appurtenant thereto, specified by the Commissioner under sub-rule (1), shall be deemed to have been removed from such place or premises immediately before such consumption or utilization."

In the present Central Excise Rules, 2002, rules 4 and 8 are pari materia with erstwhile rule 9 of the Central Excise Rules, 1944. However, there is no such specific deeming fiction as it was provided in the above Explanation, though Explanation below rule 5(2) of the Central Excise Rules, 2002 provides that if any excisable goods are used within the factory, the date of removal of such goods shall mean the date on which the goods are issued for such use.

Suggestion

To introduce clarity it is suggested that a deeming provision be introduced to treat captive consumption as "deemed removal" as it was provided in terms of Explanation to rule 9 of the Central Excise Rules, 1944. This suggestion will have more clarity and avoid any litigation in future.

3. Exemption to certain class of persons from obtaining registration under the Central Excise Rules, 2002

In terms of rule 9(2) of the Central Excise Rules, 2002, (CER) the Board has exempted certain categories of persons or class of persons vide *Notification no.36/2001-CE(NT) dated 26.6.2001* from obtaining registration. In terms of paragraph-1(vi), every job worker who undertakes job work in respect of final products falling under Chapter 61 & 62 on behalf of any other person who shall pay duty on the said goods under rule 4(3) of the CER is a person exempted from obtaining registration. It may be noted that the provisions of rule 4(3) of the Central Excise Rules, 2002 have since been deleted vide *Notification No.24/2003-CE(NT) dated 25.3.2003*.

Suggestion

In the light of the above deletion, the provisions of paragraph-1(vi) of Notification No. 36/2001-CE (NT) dated 26.6.2001 have become redundant and need to be deleted/omitted.

4. Interest on differential excise duty paid due to price increase subsequent to removal of goods

The Supreme Court in the case of *CCE vs. SKF India Ltd. (2009 (239) ELT 385)* has held that the interest is payable on payment of differential duty on account of revision of prices subsequent to removal of goods.

Demand of interest is not justified as at the time of removal there is no short payment or non-payment and differential duty is not determined by the CE Department but the same is being paid by the manufacturers at their own.

Therefore, manufacturers are adversely affected if there is a levy of interest on the duty payable on the supplementary invoices raised due to revision of price subsequent to the removal of goods. Further, the aforesaid interest so paid on supplementary invoice is not eligible for CENVAT credit and hence adds to the cost of the product

Suggestion

It is suggested that an explanation be added to Section 11AB of the Central Excise Act 1944 to the effect that no interest would be payable on account of differential duty paid/payable because of any price revision subsequent to the removal of goods.

5. Powers of the Commissioner (Appeals) under the Central Excise Act and the Customs Act to condone the delay in filing the appeal

Under section 35 of the Central Excise Act, 1944 or section 128 of the Customs Act, 1962, an appeal before the Commissioner (Appeals) is required to be filed within 60 days from the date of receipt of the order of the lower authorities. The Commissioner (Appeals) is empowered to condone the delay upto 30 days beyond 60 days provided sufficient cause is shown. It has been observed that the said condonable period of 30 days is very short and requires to be increased to either 60 days or 90 days. Further, there are many instances where meritorious cases

cannot be pursued because of the above technicality. The Courts have held that an appeal filed beyond the condonable period cannot be admitted contrary to the statutory provisions, since the Commissioner (Appeals) has no power to condone beyond 30 days.

Suggestion

It is, therefore, that Commissioner (Appeals) be empowered to increase the condonable period appropriately (from present 30 days) subject to assessee showing sufficient cause.

6. Power of the Commissioner (Appeals) to remand the appeal

There have been divergent views of the Tribunal as to whether the Commissioner (Appeals) has power to remand the case back to the adjudicating authority pursuant to amendment to section 35A of the Central Excise Act, 1944 and section 128A of the Customs Act, 1962 vide Finance Act, 2001. Some decisions have been rendered to the effect that even after amendment vide the Finance Act, 2001, the Commissioner (Appeals) still enjoys the power to remand the case back to the adjudicating authority but there are contra decisions also in this respect. The divergent views of the Tribunal and Courts have confused assesses causing delay in the administration of justice.

Suggestion

A suitable amendment be made to specifically address the issue as to whether the Commissioner (Appeals) has power to remand the case or not.

7. Revision application for matters relating to baggage, drawback, rebate of duty on export of goods etc

As per proviso to section 35B(1) of the Central Excise Act, 1944 no appeal shall lie to the Appellate Tribunal if the order passed by the Commissioner (Appeals) relates to loss of goods where the loss occurs in transit from a factory to a warehouse, etc. or rebate of duty on

export of goods or goods exported without payment of duty. In such cases, there is a provision to file revision application under section 35EE of the Central Excise Act, 1944 before the Central Government. Similarly, as per section 129A of the Customs Act, 1962 appeal shall not lies to the CESTAT if the order passed by the Commissioner (Appeals) relates to baggage etc and revision application will have to be filed. This causes undue hardship to the assessee as approaching Revisionary Authority at New Delhi results in substantial increase in the litigation cost of the assessee.

Suggestion

It is suggested to allow filing of appeals before CESTAT against the orders passed by the Commissioner (Appeals) in relation to the matters covered under proviso to section 35B(1) of the Central Excise Act, 1944 and proviso to section 129A of the Customs Act, 1962 as well i.e., orders relating to loss of goods where the loss occurs in transit from a factory to a warehouse, etc. or rebate of excise duty on export of goods or goods exported without payment of duty, baggage, drawback.

8. Stay by CESTAT in case of excise and customs duty

In terms of 2nd Proviso to section 35C(2A) of the CEA, 1944 or section 129B(2A) of the Customs Act, 1962, if the Tribunal does not dispose of the appeal within a period 180 days as envisaged in first proviso to the said sections, the stay order shall stand vacated on the expiry of 180days. The Supreme Court in the case of *CCE v. Kumar Cotton Mills*, 2005 (180) ELT 434 (SC) held that Tribunal can extend stay when there is good cause and there is fault of Tribunal in not deciding the appeal within 180 days and not attributable to the assessee. Also the Gujarat High Court in *Poly Fill Sacks v. UOI*, 2005 (183) ELT 344 (Guj.) held that there is no requirement to pass any order extending stay of recovery already ordered and that stay order passed shall remain valid till final disposal of the appeal. Recently, the Karnataka High Court in *CCE v. Indian Oil Corporation*, 2010 (258) ELT 504 (Kar.) observed that the Tribunal is empowered to grant extension of stay after the expiry of

180days but the same is not automatic and extension of stay requires application by assessee.

Such provisions need to be removed for more than one reason. Firstly, the CESTAT is flooded with innumerable number of appeals and also stay applications and invariably the CESTAT is unable to decide the appeals within the prescribed period of 180 days for various reasons which are beyond the control of both the assessee and the CESTAT. Hence, prescribing a mandate on the CESTAT to dispose of the appeals within the prescribed period of 180 days is unworkable. In the light of Karnataka High Court decision if the assessees are required to file applications seeking extension of stay order, then it would result in innumerable applications, listing, hearing and passing orders on the said applications and various other added administration work on the Registry of the CESTAT. Also, there is no such parallel provision under the Finance Act, 1994 and hence the above contingency arises only under the Central Excise and Customs provisions which does not serve any effective purpose but on the contrary results in wastage of time of the Tribunal and High Courts.

Suggestion

It is, therefore, suggested that the limitation period of 180 days for grant of stay be removed from central excise and customs provisions.

9. Memorandum of Cross-objections before the Commissioner (Appeals) – No prescribed format

In terms of section 35E(4) of the Central Excise Act, 1944 and section 129D(4) of the Customs Act, 1962, if the Department files an appeal/application pursuant to review of adjudication order before the Commissioner (Appeals), such application/appeal filed by the Department shall be heard by the Commissioner (Appeals) as if it is an appeal against the adjudication order and the provisions of filing cross-objections by the other party as envisaged in section 35B(4) of CEA, 1944 or section 129A(4) of the Customs Act, 1962 respectively

shall apply. However, under the Central Excise (Appeals) Rules, 2001 and Customs (Appeals) Rules, 1982, there is no prescribed format in which the assessee is required to file memorandum of cross-objections before the Commissioner (Appeals).

Suggestion

It is suggested that the Central Excise (Appeals) Rules, 2001 and Customs (Appeals) Rules, 1982 be amended to provide for a prescribed format of memorandum of cross-objections to be filed before the Commissioner (Appeals).

10. Revision orders passed under section 35EE of the Central Excise Act, 1944 or section 129DD of the Customs Act, 1962

Under the provisions of the Central Excise Act, 1944 or the Customs Act, 1962, certain orders passed by the Commissioner (Appeals) are appealable before the Revisionary Authority viz., the Central Government under section 35EE or section 129DD. However, against the orders passed by the Revisionary Authority under the above provisions there is no specific appellate remedy provided. Presently, the persons are required to approach the High Court for writ remedy under Article 226 or 227 or approach the Supreme Court under Article 136 of the Constitution. This creates inconvenience to the assessee as well as to the Revenue. Further the jurisdiction of the Supreme Court and/or High Courts under Articles 136 or 226 or 227 are extra-ordinary jurisdiction and is discretionary. Hence, the above remedy is not an effective remedy apart from being time consuming and expensive.

Suggestion

It is therefore suggested to provide for appeal against the orders passed by the Revisionary Authority under section 35EE of the CE Act or section 129DD of the Customs Act, directly to the High Court by amending the provisions of section 35G of the Central Excise Act, 1944 and section 130 of the Customs Act, 1962 respectively.

11. Benefit of Excise *Notification Nos. 29/2012 to 33/2012* relating to FMS, FPS Licences

In the recent Annual Supplement to the Foreign Trade Policy 2009-14 released on 5th June, 2012, the duty credit scrips like Focus Market Scheme, Focus Product Scheme, etc. were allowed to be utilized for payment of excise duty on domestic procurement of permissible items.

To give effect to same, Excise *Notification Nos. 29/2012 to 33/2012 dated 09.07.2012* were issued. These notifications exempted the goods from whole of the excise duty when cleared against a duty credit scrip issued to an exporter.

All these excise notifications also provide that the holder of the scrip, to whom the goods were cleared, shall be entitled to avail CENVAT credit of the excise duty against the amount debited in the said scrip.

However, no corresponding amendment has been made in Rule 6 of the CENVAT Credit Rules which require a manufacturer to pay 6% of the value of exempted goods or reverse proportionate CENVAT credit. The goods cleared against duty credit scrip are exempted goods and thus will involve a cost of 6% due to this rule.

The intention of the Government appears to treat the goods cleared against duty credit scrip as equivalent to duty paid goods in asmuchas the Government has allowed CENVAT credit to the receiver of goods on the basis of excise duty debited in his duty credit scrip. With this benefit being allowed, the intention of the Government does not appear to demand 6% of value of goods or reversal of credit.

Suggestion

It is suggested that a suitable amendment be made in Rule 6(6) of the CENVAT Credit Rules to provide that Rule 6 will not apply for excisable goods cleared without payment of duty against duty credit scrips. Similar provision already exists for cases like goods cleared for export under bond without payment of duty.

12. Abolition of requirement of installation certificate for EPCG

Manufacturers importing machinery etc under EPCG scheme are required to obtain installation certificate from the jurisdictional Range/Division of the Central Exercise.

It has been observed that the Superintendents do not have technical knowledge and are generally not competent to inspect the machineries and spare parts.

Suggestion

The requirement of obtaining the installation certificate from the Range/Division of Central Excise be dispensed with and in its place the installation certificate be obtained from a Chartered Engineer.

D. CUSTOMS DUTY

1. Relinquishment of imported/warehoused goods

Section 23(2) provides that the imported goods can be abandoned before the proper officer has ordered clearance of goods for home consumption under section 48 or before an order for warehousing is made under section 60 of the Act. Similarly, section 68 provides that the warehoused goods can be abandoned before an order for clearance for home consumption has been made in respect of such goods. However, the provisos to both these sections lay down that the owner of any imported goods/warehoused gods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force."

The expression "an offence appears to have been committed" employed in the above provisos is not clear and would lead to interpretational issues and litigation.

Suggestion

It is suggested to suitably amend the above provisos to clarify as to when an offence appears to have been committed. Probably, the expression could read as "in respect of which a show cause notice has been issued".

2. Interest free warehousing period for imported goods

The Customs Act, 1962 provides for warehoused goods to be kept in-bond for a period of one year. However, interest on customs duty is chargeable on warehoused goods if the same are not ex-bonded within 3 months.

Suggestion

It is suggested that warehoused goods be allowed to be kept in-bond for a period of at least 6 months without payment of interest.

3. Relevant date for determination of rate of duty and value of goods in case of improper removal of warehoused goods

Under section 72(1)(b), the warehoused goods which remain in the warehouse beyond the period specified in section 61(1) of the Customs Act are deemed to have been improperly removed and the proper officer is entitled to demand duty on such improperly removed warehoused goods. This section has been examined by the Supreme Court in the case of *Kesoram Rayon v. CC*, 1996 (86) ELT 464 (SC) wherein it has been held that in case of improper removal of warehoused goods in terms of section 72(1)(b), the warehoused goods are deemed to have improperly removed on the expiry of warehousing period and the relevant date for determining the rate of duty and value of such goods shall be date of expiry of warehousing period. The above decision of the Supreme Court seems to be *per incuriam* since the same is contrary to specific provisions of section 15 of the Act. Hence, the same needs immediate rectification.

Suggestion

Since, the above decision is not in accordance with the specific provisions of section 15 of the Customs Act, it is suggested to amend the provisions of section 15 to provide for relevant date in the case of improper removal of warehoused goods as envisaged in section 72 of the Act.

4. Education Cess (EC) and Secondary and Higher Education Cess (SHEC) on CVD/ Customs

Prior to the 2012 budget amendment, EC and SHEC were first charged on CVD portion of customs duty and thereafter on the aggregate of customs duties (excluding SAD). This resulted in charging of EC and SHEC twice on the CVD portion. To remove this anomaly, EC and SHEC on CVD has been exempted. However, customs EC and SHEC continues to be levied on aggregate of Basic Customs Duty plus CVD.

After the amendment, EC and SHEC is being charged on total Customs Duty (aggregate of basic and CVD). However, Rule 3(1) of CENVAT Credit Rules, 2004 allows credit on CVD and related EC and SHEC.

Suggestion

A clarification be issued to confirm that proportionate credit of EC and SHEC to the extent charged on the CVD amount will be available.

5. Exemption of Additional duty of customs (ADC) under section 3(5) of the Customs Tariff Act, 1975 on goods imported for further resale

With effect from 14 September 2007, refund of ADC (charged @ 4% in lieu of local sales tax) is allowed to a person who imports goods into India for the purpose of subsequent sale subject to the conditions that the sale invoice issued by the importer clearly mentions that no credit of ADC is admissible on such goods, and applicable sales tax / VAT is paid on sale of such goods.

Suggestion

Since, the process of obtaining refunds is time-consuming (both for the department as well as the assessee), it is suggested that goods imported for resale, which anyway are chargeable to VAT, be exempted from ADC.

E. OTHERS

1. Disparity between interest payable by assessee and Department under central excise, service tax and customs

At present, interest @ 18% is payable by the assessee when duty is short levied /short paid or not levied /not paid. However, in case of delayed refunds, the Department is liable to pay interest @ 6%. Thus, there is a significant gap, between the rate of interest payable by the assessee and the Department. In fact, the disparity has become more than 50% after the interest on delayed payment of tax/duty was increased from 13% to 18% last year.

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

Suggestion

- *The interest rates for both the demand of the duty/tax and the refund of the duty/tax be made uniform. There is need for fairness and equity in the rates at which interest is paid by the department and that is charged from tax payer.*
- *Further, uniformity be also ensured in respect of date of charging interest on duty/tax demands vis-à-vis date of paying interest on refund of duty/tax. Interest on delayed refunds be also paid by the Department from the date on which duty was actually paid.*

2. Audit by CAG

Manufacturers have to undergo audit for broadly three taxation wings of Government i.e., Income Tax, Excise & Customs and Sales Tax. Out of these wings, only with respect to audit of Central of Excise, the

auditors from CAG visit assessees' premises/interact with assessees which leads to wastage of assessees' valuable time & resources as well as unnecessary litigation which normally does not yield any additional revenue for Government. In the present regime of simplification of excise laws, such visits/interactions with assessees are unwarranted. CAG should interact with concerned Government Departments like they do for Income Tax and Sales Tax.

Suggestion

It is suggested that the matter be discussed by the CBEC with CAG and audit of excise be introduced at par with Income Tax or Sales Tax Department.

3. Personal Penalty

It is observed that Central Excise Department sometimes issues notices for personal penalty to junior and middle level officers of the Corporates under Rule 26 (earlier rule 209A). These type of notices are mostly issued wherever allegation or suppressions are leveled. Though sales tax is also an indirect tax like excise duty, there is no practice of levying personal penalty under Sales Tax Law.

The employees in large Corporates are salaried employees and are professionals. Their jobs are transferable. However, issuance of personal penalty notices create unnecessary obstacles. The work is done for and on behalf of Corporates (assessees). Excise Department should deal with the Corporates and not with individual employees.

Suggestion

Therefore, it is suggested that the provisions relating to personal penalty be removed from the statute.

4. Powers under section 14 of the Central Excise Act, 1944

Section 14 of the Central Excise Act is applicable in case of service tax matters also. According to this section powers have been given to Central Excise Officers to issue summons to the assessee to give evidence and produce documents in enquiries conducted under the Act. These provisions are often misused as under:

(i) Notices are issued to Managing Director/Director/Chairman despite the fact that they are not concerned with routine functioning of business.

(ii) Notices are issued even for seeking that information what can be obtained by ordinary letters.

(iii) The time mentioned in the notice is not rigidly followed. As a result, plenty of precious time of the assessee is wasted.

(iv) Copy of the recorded statement is not provided immediately to the concerned assessee.

(v) Summons are issued even in those cases where question of law is involved.

Suggestion

It is suggested that section 14 be suitably amended to so as to stop the misuse of the powers provided therein. Summons be not issued unless information has been sought in writing [served to correct address] and the same has not been provided. Establishment of simplified procedure will reduce undue harassment and cost to assesses and will at the same time meet the needs of the department to obtain requisite information. This will also avoid high handedness of some officers in dealing with the tax payers and will create a more cordial attitude/approach.

5. Appeal from CESTAT in valuation and classification matters

Under the present law an appeal relating to valuation and classification matters directly goes to Supreme Court from the Tribunal by passing the High Court.

Suggestion

Necessary amendments be made to file appeal in High Court in such cases as well.

6. Exemption from payment of duty by way of refund mechanism

Section 5A of the Central Excise Act, 1944 or section 25 of the Customs Act, 1962 or section 93 of the Finance Act, 1994 empowers the Central Government to exempt from payment of excise duty/customs duty/service tax. However, off late, few exemption notifications have been issued under the above statutory provisions which are in effect a refund mechanism subject to fulfillment of conditions. For instance, *Notification No.102/2007 Cus dated 14.9.07* as amended which provides for refund of special additional duty of 4% leviable under section 3(5) of the Customs Tariff Act, 1975 or *Notification No. 40/2012 ST dated 20.06.12* which provides refund of service tax to SEZ developer/unit.

The above notifications have lot of conditions and procedures. Many a times the assessees face great difficulties in claiming the said exemption. The administration of these notifications is resulting in harassment of the assessee besides breeding heavy litigations.

Suggestion

It is suggested that the present system of granting exemption through refund route be reviewed and be made simple to comply.

7. Suggestions for Reduction of Litigation

(a) Streamlining of Circulars/Trade Notices

CBEC, as practice regularly issues notifications and circulars to make changes in the rules and procedures and to clarify the Department's stand in relation to a particular issue or provision. However, there is no system of issuing a comprehensive circular at the end of the year which will incorporate all the circulars issued during the year. It may be noted that RBI issues master circulars every year, replacing individual circulars issued during the year.

Suggestions

- *Issue of circulars be examined and if at all they need to be issued, the Board should issue circulars by exercising utmost caution and design the circular meticulously to avoid any interpretational issues by the industry or the field formations at the lower level.*
- *Further, a practice of issuing a Master Circular on 1st April every year in Excise/Custom/Service tax compiling all related circulars issued during the year be adopted on an annual basis. This would ensure better compliance as assessees will be aware of necessary procedural steps and exemptions as available. A comprehensive circular makes easy to review all updates in an indexed manner.*
- *Also, it be made mandatory for the Officers to only use the current circulars.*

(b) Training of Departmental Personnel

It has been observed that the understanding of this central law across the country is not the same. Different Commissionerates have different views on variety of issues particularly in case of real estate sector. Further, it is an admitted fact that administering authorities are not trained in accounting and thus, find it difficult to interpret and

analyze the financial statements. This causes difficulties for both the assessee and the Department.

Departmental officers undergo training but there is need for more comprehensive and interactive sessions where they can discuss and debate issues with their peers duly facilitated by experienced professionals. This will go a long way in enhancing quality of services of the Department.

Suggestion

A comprehensive training covering all the substantive, procedural aspects of the law and understanding of financial statements be scheduled for the officers at all levels.

(c) Accountability of tax collectors

In the present tax laws, there is no accountability on the part of tax collectors. This leads to the misuse of powers vested in them vide the respective legislations. For proper discharge of responsibilities, accountability is a necessary counter-balance and is very essential for effective discharge of the authority vested in a person

Suggestion

In order to project a sense of even-handedness in dealing with tax payers, provisions relating to accountability be introduced and not formulated independently. The Tribunal or Commissionerate (Appeal) may impose reasonable cost for the same.

If there are rewards awarded to the departmental officers for anti-evasion cases then there ought to be penalty also for frivolous litigations.

(d) Timely information and guidance

It has been observed that the order passed by CESTAT and Adjudicating Authority/ Commissioner (Appeals) does not reach to the industry timely, resulting non compliance or non timely compliance.

Further, it is felt that the time lag for the issuance of the clarifications on common problems/ issues of pertaining to industry.

Suggestion

It is suggested that all the orders passed by CESTAT and Adjudicating Authority/ Commissioner (Appeals) be made available on websites for ready reference of the industry. The CBEC may play a proactive role and issue clarifications on problems / issues of industry which are similar in nature to avoid such problems resulting in litigation at a later stage.

(e) Vacancies in Tribunal

Suggestion

The vacancies in Tribunal be filled and additional benches in metro and non-metro cities be constituted to expedite the disposal of long pending cases. A fast track system of disposal of cases be introduced to deal with high revenue cases and settled issues.

(f) *E-filing of appeals be introduced to encourage paperless society as an environment friendly measure.*

(g) *Retired officers of Central Excise, Customs and Service Tax department be not allowed to appear in adjudication, first appellate authority or any other proceedings before the departmental authorities for a period of 1 year after their demitting office.*

(h) *Practicing Chartered Accountants be made eligible for being appointed as Members of the CESTAT as in case of ITAT.*

F. MEASURES TO AUGMENT REVENUE OF CENTRAL INDIRECT TAXES

General Measures

1. Information in respect of assessees be shared between the Central Government and the State Governments on a reciprocal basis. This will facilitate reconciliation of returns and indicate areas / sectors of revenue leakage or areas requiring further investigation.

2. Excise/Service Tax Audit in line with the Income-Tax Audit be introduced for traders/ manufacturers/ service providers having a turnover of goods/services of more than 3 crores. The Tax-audit under section 44AB of the Income-tax Act, 1961 is a very powerful tool to unearth frauds, ensuring compliance and checking revenue leakage. A similar audit in the area of indirect taxes would capture a major portion of the businesses and check significant revenue leakage.

3. Attempt must be made to reduce the litigation time as pending and frivolous litigation reduces the confidence of the tax payer and increases the costs of doing business. Steps that can be taken in this direction include increasing the number of benches of CESTAT, examining the issues litigated often and issuing the clarifications early instead of issuing the same after the court verdict and introducing the system of obtaining advance rulings by resident assessees as prevalent in many State VAT in the form of Determination of Disputed Questions (DDQs).

4. The knowledge of the law [which is fast changing] among the majority of officers be it Inspectors, Superintendents or Assistant/Deputy Commissioner is surprisingly very limited. This helps conniving evaders/ non compliant assessees to continue their nefarious activities. Specialised training of the Government Officials, particularly the officers posted in the Audit wing, in the indirect tax laws as also in reading and interpreting Financial Statements would lead to better

results in enhancing the revenue. It will be a matter of privilege for the ICAI to offer its support in conducting such training sessions.

5. Considering that indirect tax laws are very dynamic and are continually exposed to frequent changes, apprising the assessees with the latest law is equally important to ensure better compliance leading to increased tax revenue. Board can achieve this by organising series of public awareness programmes on various aspects of indirect taxes at Tier II or III cities – in comparison to metros, assessees of these cities are less aware- with focus on specific needs of the city. ICAI will be happy to partner this initiative of the Board.

6. During the past few years, confidence of the tax payers in the tax administration has eroded substantially. At present tax compliant assessees are also seen with real/ put on suspicion. Tax reforms to build the trust of the registered / tax compliant assessees ought to be taken forward as had been done in the past.

7. Fixing the accountability of the revenue officers is the need of the hour. Most tax payers cite the example of being harassed / corruption by audit parties, visiting jurisdictional officers, preventive parties and frivolous demands as major impediments to register and pay the just taxes. There is a perception that it is better to be outside the tax net as they can and have been getting away from the system for years together.

Customs

The unholy nexus between some corrupt customs officers and unscrupulous importers leading to large revenue leakages needs to be broken. Entrusting the independent professionals with the responsibility of audits can help in achieving this objective. Audits of consignments of high to low value and volume can be allocated on random basis in varying percentages. The professionals need to be selected on the basis of their knowledge as well as experience in indirect taxes and they must report directly to the CBEC.

Central Excise

1. A study of all major products which are presently exempted or coverage is limited could be undertaken and exemption withdrawn as done in 2011.

2. The rates of the products covered under CENVAT credit be raised steadily. CENVAT ratios be also be examined industry-wise to identify the possible leakages.

3. The estimated consumption of highly taxed products [sin goods-tobacco, gutka etc.] be made and compared to actual collection. This data could indicate revenue leakages of Rs.10,000 crores or more. As mentioned in point (2) of Customs above, a separate team to investigate the matter, not linked to Jurisdictional Officers be constituted. This team can be made accountable by allocating Units and monitoring of the same ought to be done. Outsourcing could also be considered.

Service Tax

A study of the major activities where leakage exists as per experience of past be undertaken and also why the present system of monitoring has not worked be examined. The possible connivance with the Jurisdictional Officers/ Investigative officers be considered in the study. Here also, independent professionals can be entrusted with the responsibility of breaking this nexus. As long as the tax evader is able to get away scot free and the registered, tax compliant assessee bears the brunt of target based demand, the compliance in certain sectors would be low.

ABOUT ICAI AND INDIRECT TAXES COMMITTEE OF ICAI

The Institute of Chartered Accountants of India (ICAI) is a statutory body established under the Chartered Accountants Act, 1949 to regulate the profession of Chartered Accountants in India. During its more than six decades of existence, ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for its contribution in the fields of education, professional development, maintenance of high accounting, auditing and ethical standards. ICAI now is the second largest accounting body in the whole world.

The Council of ICAI functions through various Standing and Non-Standing Committees. Indirect Taxes Committee is one of the most important non-Standing Committees of ICAI. The main function of the Indirect Taxes Committee is to examine the indirect tax laws, rules, regulations, circulars, notifications, etc., which may be enacted or issued by the Government from time to time and to send suitable memoranda containing suggestions for improvements in the respective legislation. The Indirect Taxes Committee actively facilitates the process of formulation of budget by offering pre-budget and post-budget suggestions/comments to simplify tax laws and their administration for the purpose of making it more responsive to tax payers.

Another important function of the Committee is to enhance the awareness/ knowledge of the members of the ICAI relating to indirect taxes and the potential opportunities offered by this area by organising workshops, certificate courses, seminars, e-learnings and interactive programmes independently as also with trade and industry.

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