

Shri P.K. Jain
Chief Commissioner (AR)
CESTAT, West Block 2
Sector 1, R.K. Puram
New Delhi

Dear Sir,

Sub: Constitution of GST Working Group to address the concerns of the Trade and Industry

Dear Sir,

We thank you for the opportunity given to us present the concerns of the Oil and Gas Industry in your office on 30th March 2017 with regard to Goods and Services Tax (GST) proposed to be implemented by Government shortly.

As you are kindly aware, the non-inclusion of Crude oil, Natural Gas, MS, HSD and ATF in GST at the time of introduction of GST will have huge adverse impact on the Oil and Gas Sector. Non-inclusion of these goods in GST regime means various goods and services procured by this industry will be subject to GST, whereas the sale/ supply of output will largely continue under the existing regime **without any credits on input GST**. Thus, this industry will be subjected to a huge additional indirect tax burden with stranded costs of about Rs. 22,000 crores. (Refer below for details) This is going to adversely affect each and every company operating in the oil & gas sector in India, which we certainly believe is not the intention of Government of India.

Particulars	Rs/Crore
	Tax Stranding Post GST
CST On Crude	611
VAT on Crude (without ITC)	1653
CST on MS,HSD, ATF	1600
IGST on Imported goods used in Upstream	1721
Tax on Indigenous goods used in Upstream	1487
Tax on services (both in imported and indigenous) used in Upstream	7601
Duties & Tax on goods and services used in refinery for manufacture of MS,HSD & ATF	5372
Duties & Tax on goods and services used in marketing of MS,HSD & ATF	2183
TOTAL	22228

Federation of Indian Petroleum Industry

This is the biggest concern of the Oil and Gas industry and It is therefore absolutely essential that a suitable mechanism is instituted by the Government to compensate the industry for the stranded taxes. We urge you that until the 5 products are covered under GST, the additional burden post-GST as above, is minimised by the following measures:

Recommendation	Implication (Rs Crore)
Zero Rate in GST Act all goods and services consumed by E&P	10808
Zero rate supply of MS, HSD, ATF, Crude and Natural Gas until all 5 products are brought under GST. Alternatively allow utilization of SGST/CGST credit for payment of Excise Duty / VAT / CST since the taxes go to the same government.	9820
Removal of CST in line with all other GST products to eliminate a major handicap for domestic producers vis-à-vis imports	1600
	22228

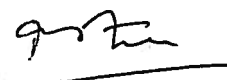
In case the Govt. is unable to accept the above suggestion at present, we urge that the industry is suitably compensated for the stranded costs through direct budgetary allocations or some other suitable mechanism as considered fit by the Govt. We would like to highlight that what we are merely asking for is that the Oil & Gas industry should not be in 'worse off' position with the introduction of GST as compared with the existing regime, which you would kindly appreciate is logical and a fair demand.

In addition to above, we are enclosing in a separate note some of the *other major issues* that will be faced by the industry with the implementation of GST. The issues are stated separately for Upstream, Downstream and Natural Gas along with our recommendation/suggestions. We request that the same please be considered favourably.

We shall be glad to provide any further clarification.

Thanking you,

Yours faithfully,



Dr. R.K. Malhotra
Director General

cc. Secretary, MoP&NG

Encl. as above

Upstream

1. **Present exemptions on import or domestic purchase of Goods for petroleum operation.**
 - 1.1 Presently, import of specified goods/equipment required for petroleum operation is exempted from whole of Customs Duty (*i.e. Basic Customs Duty (BCD) and Countervailing Duty*) under Sl. No 357A of Notification No 12/2012-Cus dated 17.03.2012. Further, Para (d) of condition No 40A of S.I No 357A of Notification No 12/2012-Cus dated 17th March 2012 also allows transfer of such imported goods from one eligible block to another for petroleum operation without payment of duty.
 - 1.2 Further, as per para 7.02(f) of FTP-2015-20, domestic purchase of such goods under ICB is treated as deemed export and benefit as specified under para 7.03 of FTP is available. Accordingly, under Sl. No. 336 of Central Excise Notification No. 12/2012-CE dated 17.03.2012, domestic purchase of such goods is exempted from whole of central excise duty and other benefit like duty drawback, advance authorisation etc.
 - 1.3 These benefits are also provided under the NELP policy and the Production Sharing Contract (PSC) signed with the Government under which fiscal stability has been promised.
 - 1.4 **Impact of GST:**
 - (a) Under GST regime, we understand that IGST would be leviable on import of such specified goods required for petroleum operations. On domestic purchase of such goods under ICB also, the IGST or CGST & SGST/UTGST would be leviable.
 - (b) Further, since it is not economical as well as safe to create storage facilities in Offshore (*i.e. in EEZ, CS*), the specified goods/equipment purchased by availing exemption from custom duty/excise duty are initially stored at Onshore Supply Base located at nearest Coastal State/Union Territory and subsequently transported to offshore location as and when required for petroleum operations. At present, the movement of specified goods/equipment from Onshore Supply Base to Offshore and vice-versa does not attract any tax.

Under GST regime, the Onshore Supply base in Coastal State and the establishments in Offshore area would be treated as distinct persons. Accordingly, the movement of such goods between these two locations would attract IGST. It is pertinent to mention that even the inter-movement of such goods between the NELP Blocks having separate GST Registration in Offshore, would also attract CGST & UTGST to the extent of 18%.

- (c) Since Crude Oil & Natural gas are outside GST, the Credit of taxes paid on inputs would not be available.

1.5 Submission:

- (a) Existing exemption from payment of whole of Customs duty on import of specified goods for petroleum operation should continue under GST i.e. on import of such goods for petroleum operation, there should be exemption from whole of BCD and IGST.

If it is not possible, to provide this exemption for such imports due to possible resistance of the States, the exemption should atleast be considered for the offshore blocks which are located beyond 12nm where the revenue implications are only for Central Government.

- (b) Existing deemed export benefit as specified at para 7.03 read with para 7.02(f) of FTP-2015-20 should continue under GST on domestic sourcing of such goods under procedure of ICB i.e. exemption from whole of IGST or CGST & SGST on supply of such goods. Alternatively, deemed export benefit may be considered for the Crude Oil and Natural Gas Sector to enable refund of the input stranded taxes by way of a notification.
- (c) Exemption on transfer of such imported goods from Onshore Supply Base (storage location) to Offshore or inter-movement of such goods in Offshore should also be exempted from levy of IGST or CGST & UTGST.

2. Relief from addition burden of tax on procurement of services for petroleum operations.

- 2.1 At present, the procurement of services for petroleum operations attract service tax @ 15%. The Offshore original works contracts attract service tax on only 40% of gross contract value i.e. effectively 6% Service Tax with NIL VAT/Sales Tax.

2.2 Impact of GST:

- (a) The Hon'ble Prime Minister has set the target for reduction in import of Crude Oil to the extent of 10% by 2022, therefore, ONGC has recently committed an investment to the extent of USD 6 billion in Deep Sea KG Basin for exploration and production of hydrocarbon. The major expenditure is towards creation of facilities (Offshore Works Contract) which presently attracts effectively 6% Tax (i.e. 40% x 15% service tax with NIL VAT).

(b) Under GST regime, the procurement of all services are likely to attract higher rate of GST of 18%.

(c) Further, offshore original works which is presently attracting effectively only 6% Service Tax with NIL VAT are likely to attract 18% GST (CGST & UTGST). Hence, there would be substantial increase in tax liability under GST regime.

2.3 Submission:

Hence, to promote investment and protect the sector from adverse tax implication under GST, it is requested to provide exemption from levy of GST on services exclusively required in connection with petroleum operation such as offshore works contract, mining services, and survey & exploration services.

Alternatively, these services may be taxed at a reduced rate of 5% so that there is no adverse impact on the industry.

3. Clarification in respect to the following is also requested:

- a) **Service Tax on Royalty:** Royalty levied under Section 6A of ORD Act, 1948 on production of Crude Oil and Natural Gas is nature of tax i.e. nature of compulsory exaction and not a consideration for providing any service by Govt. Hence, service tax/GST is not applicable on Royalty amount. Further, Royalty is a share of the Government in the production and is success based i.e. not payable on exploration failure. This is part of overall economic return of the Government under the PSC or otherwise.
- b) **Cost Petroleum:** The term "Cost Petroleum" is nothing but recovery of investment made for exploration and production of hydrocarbon in terms of PSC. In case there being no production, there would not be any such recovery. Hence, the cost recovery cannot be term as consideration for provision of any service. The underlying services from service providers have already suffered service tax.
- c) **Profit Petroleum:** PSC is an economic sharing agreement and not a service contract. Government is a partner in the venture and if revenue is generated, it will receive a share of any profit petroleum either in cash or in kind. As per PSC, the Govt. is eligible to get the specified percentage of revenue net of cost petroleum, known as profit petroleum. The profit petroleum is the share of Govt. in the mineral deposit which otherwise belongs to the Govt. Therefore, the profit petroleum cannot be construed as payment towards provision of any service by the Govt. Thus, there should not be any service tax/GST levy on payment of Profit Petroleum to the Govt.

- d) **Service Tax on Cash Call under UJV Transactions:** In terms of PSC, one of the consortium members is designated as an operator who has to carry out E&P activity on behalf of other partners based on work plans and budget duly approved by Management Committee which includes Government nominee as well. The Operator is incurring expenditures from the contribution received by way of cash call from the partners. The operator and the consortium partners are not distinct persons and thus operator is not providing any service to the partners, instead the operator is carrying out exploration & production of hydrocarbons in terms of PSC.

In this context, the CBEC Circular dated 24.09.2014 at para 3 has clarified that *cash calls are capital contributions made by the members of JV to the JV. If cash calls are merely a transaction in money, they are excluded from the definition of service provided in section 65B(44) of the Finance Act, 1994. Whether a 'cash call' is 'merely... a transaction in money' [in terms of section 65B(44) of the Finance Act, 1994] and hence not in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement.....*

Accordingly, the service tax would not be levied on cash call which is in the nature of capital contribution under PSC.

To avoid any litigation under the GST regime, it is requested that these are clarified upfront.

In view of above, exemption/clarification is requested under GST Law.

Downstream

1. GST rate for supply of Domestic LPG

Supply of domestic LPG is covered within the ambit of GST. Further, in terms of rates, GST Council has agreed and recommended a rate structure for taxation of GST supplies (NIL / 5%/12% / 18% / 28%).

Suggestions / recommendations

In order to provide protection from cascading effect of taxes it is recommended that Domestic LPG should be charged to GST @5%.

2. Lower GST rate for supply of Superior Kerosene Oil through Public Distribution System (SKO PDS)

Supply of SKO PDS is covered within the ambit of GST. Further, in terms of rates, GST Council has agreed and recommended a five rate structure for taxation of GST supplies (NIL / 5%/12% / 18% / 28%).

Suggestions / recommendations

In order to provide protection from cascading effect of taxes it is recommended that Domestic LPG should be charged to GST @5%.

3. Zero-rating of bunkers supplied to foreign run vessels from indigenous refining

Bunker sale to the foreign run vessels is exempted from excise and customs duties. Still, such foreign run vessels were opting to take bunkers at other ports en-route as bunker prices at Indian Ports were uncompetitive due to substantially higher VAT rates. Of-late, bunkering demand from foreign run vessels has started growing at Indian ports in the recent years subsequent to reduction in VAT rates by states like Kerala, Andhra Pradesh, Bengal, Maharashtra and Karnataka to the range of 0 - 1.5%.

FO/ Lubricant contributes to over 70% of the total bunkering demand at Indian ports. As FO and Lubricants would be under GST, a uniform higher GST rate for domestic sales as well as foreign run vessels will result in increased bunker prices at Indian ports. Foreign run vessels may opt to take bunkers at in other countries located enroute, viz. Singapore & Fujairah (UAE) thus diminishing the marine bunker fuels demand at Indian ports.

Suggestions / recommendations

It is recommended that supply of FO and Lubricants to foreign going vessel should either be Zero rated in GST or the same should be considered as deemed export under section 147 of the GST Bill.

4. Determination and measurement of petroleum products at 15 degree/ 29.5 degree

Petroleum products are highly volatile in nature. Historically, petroleum products are accounted at 15 degree or at 29.5 degree to neutralize the impact of fluctuations in temperature.

In this connection, it would be useful to refer to the precedence in Central Excise legislation. In central excise regime, vide Circular No. 367/83/97 - C.X. dated 19 December 1997, it has been clarified that representations were received from the field formations regarding the problems being faced by them in computation of storage and transit losses with regard to mineral oil products as to whether the same has to be computed at 15 degree centigrade or Natural Atmospheric Temperature (NAT). Field formations were following divergent practices in this regard leading to a spate of litigation. The matter was examined by the Board in consultation with the Chief Chemist, CRCL. In the international trade, measurement of petroleum products is computed at 15 degree centigrade or 60 Degree F. with a view to have uniform measurement in relation to the weight and volume. In case the computation is done at Natural Atmospheric Temperature, it will lead to variation in volume between dispatch and re-warehousing points.

Accordingly, it has been clarified that the computation of storage and transit losses with regard to mineral oil products should be done at 15 degree centigrade instead of the same being calculated at Natural Atmospheric Temperature.

Suggestions / recommendations

It is recommended that for mineral oil / petroleum products which are covered within the GST regime, a similar clarification should be issued under the GST law for measurement and computation of storage and transit losses for the purpose of remission of GST.

It may further be clarified that oil companies are not be required to reverse input tax credit availed on the quantity of petroleum products lost due to change in atmospheric temperature during transit/storage.

5. Clarification of classification of Ethanol Blended Petrol (EBP) (EPB-Motor Spirit)

As per the guidelines of MoP&NG, petroleum companies are expected to blend ethanol with MS. This blending happens only after the product is removed from the refinery after payment of excise duty. Such blending of ethanol with MS is not considered as activity of 'manufacture' under the central excise law and no new product emerges. Vide central excise circular No. 83/94-CX dated 13-12-1994, it has been clarified that mixing of duty paid methanol with MS does not amount to manufacture.

Suggestions / recommendations

It is recommended that similar clarification should be issued by the GST authorities essentially to reiterate the existing clarification thereby stating that Ethanol Blended MS shall be regarded as MS / HSD respectively (as non-GST product).

It may further be clarified that there is no supply of SKO used as interface quantity by input tax availed on Ethanol need not be reversed by petroleum companies as a number of states are permitting such credit in the current regime. Denial of credit would adversely impact the cost of production of ethanol blended petrol and would discourage its consumption in the market.

6. Clarifications on Return Streams of products like Kerosene, LPG

Refineries currently make clearances of Kerosene intended for use in manufacture of Linear Alkyl Benzene (or) Heavy Alkylate (or) N-Paraffin arising in the course of manufacture of Linear Alkyl Benzene or heavy Alkylate and post use in such manufacture, the balance quantity of Kerosene is returned to the refineries. The current notifications envisage payment of excise duty only on that part of kerosene retained by the manufacturer of LAB / Heavy Alkylate / N Paraffin. Commercially also the oil company receives consideration only for that part of kerosene retained by their customers.

In the understanding of industry, under the GST regime, since no consideration is contractually due to the oil companies in respect of that quantity of Kerosene to be returned to the refinery, in terms of Sec 7 (1) (a) of the CGST Bill, there is no supply of the above quantity of Kerosene by oil companies to its customers and hence the levy to GST is also not attracted. Similarly, the subsequent return of kerosene to the refinery is also not a supply under GST by the customer of oil companies.

The above would equally apply to clearances of Liquefied petroleum gases (LPG) by refineries for use in the manufacture of Propylene or Di-butyl Para Cresol (DBPC).

Since an arrangement of the above nature is very common in many other industries, the Oil Industry requests that the understanding of the industry could be confirmed by means of a suitable clarification.

7. Carry Forward of existing CENVAT Credit / State VAT Credit on GST products

As per the transitional provisions under the Model GST Act 2016, taxable person can take credit of the amount of CENVAT Credit/VAT Credit as shown in the last return furnished under the earlier law. Taxable person shall not be allowed to take credit unless such credit was admissible under the earlier law and is also admissible as input tax credit under this Act.

As MS, HSD, ATF and Natural Gas are proposed to be kept outside the GST from its initial date of introduction, there will be two categories of finished products i.e. GST and non-GST products.

This would result in ambiguity regarding admissibility of credit of capital goods used in production of GST and Non-GST products.

For example, we have accumulated VAT/CENVAT credit in respect of equipment installed in the refinery. Transferring entire credit balance to GST pool would not be permitted as GST regime prescribe a pro-ration method in respect of common inputs/services and capital goods. To the extent the credit balance in CENVAT/ VAT accounts are not carried forward into GST pool, the same should be allowed to be offset against Excise Duty/ VAT payable on MS, HSD, ATF etc.

Suggestions / recommendations

In view of this, it is suggested that clarification may be issued on the above lines.

8. GST input tax credit on storage tanks as “plant and machinery”

As per the provisions of Section 16 of the Model GST Act 2016, GST input tax credit is not available for immovable property other than plant and machinery. Large petroleum tanks, LPG Spheres and mounted bullets as well as bullets embedded underground in refining and marketing operations are no doubt Plant and Machinery.

There were many litigations in the past regarding eligibility of CENVAT credit on which was ultimately settled vide Circular dated 15/01/2002 declaring petroleum tanks as Plant and Machinery.

Suggestions / recommendations

It is suggested that GST input tax credit should be allowed on storage tanks either above ground or embedded into the earth. Suitable amendments in law may be incorporated.

9. Taxability of interface mix quantity of GST and non-GST products

In case of pipeline transfers, SKO (GST product) intermixes with MS / HSD (non-GST products). Such intermix quantity is also termed as "interface quantity" and presently, excise duty as applicable on MS/HSD is paid on such interface quantity.

As the taxability of SKO would be on supplies, there is a confusion on applicability of GST on SKO intermixed with MS/HSD

Suggestions / recommendations

It may be clarified that there is no supply of SKO used as inter face quantity on the condition that Duties of Excise/ VAT are paid on the resultant MS/HSD.

10. Taxability of advance:

Under the GST Law advances are subject to GST. An assessee where all the products will be under GST has to ascertain the rate at which GST is payable.

Product portfolio of OMCs include two type of goods one which are covered by GST and another which are not covered by GST. GST covered goods consist of around 25% of the turnover and non GST consist of around 75% of turnover.

All the payments received by OMCs from their dealers are automated through RTGS without any manual intervention. Dealers mainly buy MS and HSD being petroleum products falling under non-GST.

Suggestions / recommendations

View above it is recommended that OMCs may be permitted to treat. All advances from their dealers as advances received towards MS/HSD, and

hence not liable to GST. We want you to certify what we can do ourselves.

11. Remission of GST for storage loss, handling loss and transit loss for petroleum products covered under GST (GST products)

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

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

The current GST law does not provide any dispensation on account of loss of petroleum products which occurred either during transit or during storage. The GST Law further provides that any ITC on product lost should not be available.

Suggestions / recommendations

It is recommended that considering the inherent nature of petroleum products covered within GST, tolerance limit (percentage limit) for storage, handling and transit loss should be prescribed and any loss within the prescribed tolerance limit should be allowed for remission of GST. The tolerance percentage limit should be fixed as below for the products as follows:

- i. Heavy Distillate: [XX] %
- ii. Medium Distillate: [XX] %
- iii. Light Distillate: [XX] %

The above percentages of remissions is GST are in line with the rates of remissions from duty applicable where Excise bonded transactions were in vogue.

12. Exempting the requirement of issuing the consignment note/Lorry Receipt:

As per rule 5(3) of the draft invoice rules of MGL, where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing the prescribed details in addition to information as prescribed under rule 1 of the said rules.

At present for every consignment OMCs prepares the invoice and the driver of the TL signs the invoice as a representative of the Transporter. In case we need to collect LR/Consignment note for every load from the Transporter, the document recording and storage and retrieval activity at the location increases.

In case OMCs undertakes to generate Consignment note/LR on behalf of the transporter along with every invoice, then the number of documents generated doubles thereby increasing the stationery cost/document handling activity/storage space etc. Many transporters are not based at the location of loading especially the Dealer Transporters and transporters who are major fleet owners while many Dealer Transporters are single TL owners. Posting a representative at the loading location for the purpose of issuing LR/Consignment may not be feasible.

Suggestions / recommendations

GTA services should be subject to GST under RCM as it will be difficult for OMCs to follow up with every transporter for being tax compliant.

Transporter engaged by OMCs should be exempted from issue of Lorry Receipt / Consignment note rather the document issued by OMCs should suffice. The said document can contain details as specified in Rule 5(3) of the Draft Invoice Rules.

13. Accumulation of input GST credit on PDS SKO due to sales at Subsidized Prices

PDS SKO is procured at marketing locations from own refineries, Oil Marketing Companies (OMCs) and standalone refineries at the Refinery Transfer Prices (RTPs) fixed based on Import Parity principles.

However, PDS SKO is sold at subsidized prices from the marketing locations, which are fixed by the Govt. of India. This result in the under-recoveries of basic price to OMCs.

Since GST is payable at the time of supply from the refineries, GST will be paid at the prescribed % on the RTPs which will be much higher than the GST to be recovered from the customers on the subsidized prices.

The above will result in accumulation of GST input credit at the states, which OMCs may not be able to utilize against the GST liability of other products.

Suggestions / recommendations

GST law allows refund of taxes in case of inverted duty structure. The above case is similar with the only difference being inverted transaction value. It is requested to allow refund of GST paid in such cases of inverted value structure.

14. GST on loss recovered from Transporters

Whether OMCs will have to issue GST invoice for loss recovered from transporters. Whether this will be termed as tolerance and thus a service or will it be recovery of loss suffered and hence a penalty/ liquidated damages not liable as a service.

15. Transition Provisions:

GST Bill proposes to allow credit of various taxes paid inputs, semi-finished goods and finished goods. However the manner in which the same will be available will be prescribed. OMCs have a vast network for marketing and distribution together with multiple manufacturing locations. Looking at the size and spread time available at hand before GST is implemented looks very short added to it is the fact that manner in which such credits can be claimed has not been yet prescribed.

16. Requirement of issuing bills of supply.

Section 31(3)(c) of the CGST bill read with rule 4 of the Invoice rules require issuance of bill of supply for every supply of exempted goods or services.

For OMCs this provisions means additional document generated every month for supply of goods in addition to the existing invoices required under Central Excise and VAT laws. Issuing bills of supplies for MS, HSD, ATF and NG in addition to Excise and VAT invoice will lead to additional compliance burden for OMCs.

Above will lead to huge compliance and documentation requirement for OMCs. Hence it should be clarified that the documents issued under Excise/VAT laws would be in sufficient compliance with the requirements of Section 31(3)(c).

17. Self-supply of services viz. services supplied by one distinct person to another

Self-supply of services is a taxable event under GST. OMCs have cross country pipelines which are used for transportation of petroleum products across India. Being cross country pipelines portions of such pipelines is situated in various states.

We need clarity on account of whether such transportation of products by pipeline will emerge into taxable supply of services between distinct persons and GST liability will accrue.

We further wish to bring it to your notice that in case one uses such cross country pipeline for transportation of nontaxable supplies under GST viz. MS, HSD, ATF etc and such supply of service require payment of GST then such tax will become cost to the OMCs as no credit will be available for transportation of nontaxable goods.

18. Down gradation of non GST product leading to GST product:

Aviation Turbine fuel (ATF) is one of the products which is kept outside the preview of GST. ATF is used as fuel for aviation industry. Purity of the ATF is of foremost importance for airplanes to perform, thus adherence to standard specifications is very strict in case of ATF. Due to stringent quality norms of the aviation industry off spec ATF is not at all acceptable and often the same is downgraded by OMCs. Such downgraded product viz. ATF specification not meeting aviation industry standards, is technically classified as SKO. SKO is a product which is taxable under GST.

Now due to the above activity of down gradation of ATF into SKO, the law under which the same is taxable changes viz. ATF taxed under Central excise and VAT viz. a viz. SKO which is taxable under GST.

As an outcome of above when Excise duty or VAT (if any) paid ATF is downgraded as SKO and then sold/ supplied, the same attracts GST even without any credit of the taxes paid under Central Excise or VAT laws.

Since Excise Duties fall under Central Govt, it is suggested that automatic refund should be provided the government. This help us to get refund without litigation.

19. ATF to Foreign going aircrafts:

Sec 25 (1) of the IGST Act empowers the Government, on recommendation of the council, by a general or special order published in the official gazette, to make such provisions not inconsistent with the provisions of the IGST Act or the rules or regulations made thereunder, to remove any difficulty that may arise in giving effect to the provisions of the IGST Act.

If clearances of non-duty paid ATF to export warehouse were held to be an "exempt supply" and not a "zero rated supply", there would be a denial of input credit used in manufacture of ATF. Such a cascading of

input taxes on exported goods is inconsistent with the provisions of IGST Act.

Suggestions / recommendations

In view above, the Government can issue a special order under IGST Act for treating the clearances of non-duty paid goods to export warehouses as “zero-rated supply” in the State where the said goods have been manufactured using taxable inputs.

Natural Gas

1. Ambit of term 'Natural Gas'

[Ref. Section 9(2) of CGST Law / Section 5(2) of IGST Law]

Issue involved:

Currently, the Government has excluded 'natural gas' from the levy of GST but there is no clarity as to whether this exclusion applies to compressed natural gas (CNG), LNG, piped natural gas (PNG) etc. This may lead to avoidable disputes from department at later stage.

Suggestion:

It is suggested that an appropriate clarification / definition of term 'Natural Gas' may be provided that it includes natural gas in all forms viz. CNG, LNG, PNG etc.

2. Location of service provider in case of pipelines-what will be the most directly concerned fixed establishment

[Ref. Section 2(15) r/w Section 2(7) of IGST Law]

Issue involved:

In case of transportation of goods through pipeline, more than one fixed establishments are involved in provision of service since both pipeline and compressor station qualify as fixed establishment. The fixed establishment which is most directly concerned with the provision of service shall be considered as the location of service provider. In such a situation, in case of cross country pipeline crossing from multiple states, the 'location of the supplier of service which is most directly concerned for transportation of gas through pipeline may be disputed by the department of different States.

Suggestion:

It is suggested that clarity may be provided vide appropriate Rules that in case of transportation of gas through pipeline, the location of supplier of services will be the location where gas is delivered to the recipient by the supplier of services of transportation of gas through pipeline.

3. Input Tax Credit (ITC) on Pipeline and Transitional credits

[Ref. Section 140(2) r/w Section 17(5)(c) & (d) of CGST Law]

Issue involved:

- i. ITC on pipeline was allowed under CENVAT Credit Rules and also under the Model GST Law issued in the month of November 2016. However in the CGST Bill 2017, ITC on pipeline is denied as the same is not included in the definition of "Plant and Machinery"

under Section 17. This will result in loss of ITC on pipeline and will in turn lead to increase of transportation tariff for gas based industries.

- ii. Unutilised / unavailed CENVAT Credit (under the existing regime) related to laying of pipelines should be allowed as credit under the existing regime.
- iii. Further, there is no provision which allows credit for capital goods on which tax has been paid under the earlier law but the goods have been received post 1 July 2017.

Suggestion:

- (i) It is suggested that clarification may be provided to allow carry forward of Deferred CENVAT Credit amount, related to pipelines, under GST regime.
- (ii) Alternatively, an appropriate amendment in Cenvat Credit Rules may be made to allow full Cenvat Credit on pipelines goods received before 30.06.2017.
- (iii) Further, clarity may be provided regarding availability of credit for capital goods on which tax has been paid under the earlier law but the goods have been received post 1 July 2017.

4. **'Bill to' - 'ship to' sales transactions**
 [Ref. Section 10(1)(b) of IGST Law]

Issue involved:

As per place of supply provisions where the goods are delivered by a supplier to a recipient on behalf of a third person, it shall be deemed that such third person has received the goods and place of supply shall be of such third person.

It is not clear whether the said provision is applicable only in case where there are more than two legal entities or the provision would also be applicable in a scenario wherein the billing is made to head office located in a state and shipped to branch office located in another state (i.e. bill to and ship to locations are of a same legal entities but are distinct persons under the GST law).

Suggestion:

It is requested that clarity may be provided to the effect that the above provision will not apply in case of 'Billed To' 'Shipped To' instances involving two units of the same entity (e.g. head office and branch office).