FIPI

Federation of Indian Petroleum Industry

PRE-BUDGET MEMORANDUM
UNION BUDGET 2024-25

Table of Contents

A. Direct Tax

I) Income Tax

Upstream

1 **Tax Holiday u/s 80IB (9)**

Background
Restoration of provision of Tax holiday for new blocks awarded under OALP.

In the past, the government has incentivized the high risk and capital-intensive Oil and gas industry through tax holiday granted for 7 years. This benefit was available for undertaking which started commercial production till 1st April, 2017.

Recently, government has brought Open Acreage Licensing Policy (OALP) on revenue sharing contract basis, wherein total 105 blocks have been awarded till date.

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

2 Deduction for EOR expenditure

Background
Weighted deduction of 150% of Enhanced Oil Recovery (EOR) expenditure

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

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

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

3 Extension of time period for Lower corporate tax rate for new manufacturing companies having significant construction period

As per section 115BAB, domestic company will be entitled to the benefit of lower corporate tax rate i.e. base rate of 15% (effective tax rate @ 17.16%), if the company has been set up and registered on or after 1 October 2019 and has commenced manufacturing on or before 31 March 2024.

It is suggested that the sunset clause may be extended upto 31st March 2028., at least in respect of companies who have committed the investments and commenced project activities before the specified timeline.

4 Investment allowance (Section 32AC)

Background
Restoration of Investment allowance. In the past, the government has incentivized the oil and gas industry with the allowance under section 32AC on capital expenditure made on Plant & Machinery. Section 32 AC provided for a deduction of 15% of the actual cost of new assets acquired and installed by a company, if the amount of investment exceeded Rs.25 crores. Investment allowance has been discontinued on such investments made after 31.03.2017. No deduction under this section shall be allowed for any Assessment Year commencing on or after the 1st day of April, 2018.

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

5 Deduction for Exploration and Development expenditure u/s 42

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

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

Downstream

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

Background

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

Public sector undertakings (PSUs) particularly those in Oil and Gas sector have very high value transactions of purchase / sale of petroleum crude oil, petroleum products and natural gases. Accordingly, Oil Marketing Companies have sought for exemption/clarification for the following transactions:

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

The primary purpose of introducing the section is to expand the scope of tax net, to ensure greater tax compliance and to prevent tax revenue leakages. It would be desirable that

section 194Q may please be exempted for all sale transactions of OMCs as the same is no way furthering the object of the section since OMCs fully comply by tax laws and this change will lead to avoidable compliance burden of mammoth proportion.

b) Calculation of Base Value for TDS deduction:

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

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

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

d) Unintended consequence of Rule 31AA:

Rule 31AA of the Income tax Rules, 1962 have been amended with effect from 01.10.2020 which provides for incorporating the details of TCS not collected on sale of goods on which TDS is liable to be deducted under other provisions of the Act. However, an unintended fallout of amendment in the Rules, is that in case of purchase of goods on which the purchaser is obliged to deduct TDS u/s 194Q, the seller would still be required to incorporate details of such sale along with the details of TDS deducted by the purchaser. The seller has to collect the related information about TDS deducted by the purchaser and then incorporate the same in his TCS Return u/s 31AA even when he is not responsible for collection of TCS on sale of goods covered under Section 206C(1H) in the first place.

e) Section 194Q is not applicable if TDS is deducted under any other provisions or TCS is collectible except u/s 206C(1H). Provision of Section 206C(1H) is not applicable if buyer is liable to deduct tax at source under any other provision of Act and has deducted such amount. If the buyer who is liable to deduct tax has not deducted tax, then liability to collect tax will fall on seller. It would be very difficult to comply with provisions of Section 206C(1H) specially where the buyer has given the declaration of applying TDS u/s 194Q and does not comply.

This leads to huge compliance burden on the seller and consequential interest and penalty

Suggestion

a) Section 194Q may please be exempted for all sales transactions of OMCs as the same is in no way furthering the object of the section since OMCs fully comply by tax laws and this change will lead to avoidable compliance burden of mammoth proportion.

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

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

2 **Reassessment period extend to 10 years –**

Time limit for reopening of cases after the expiry of 10 years from relevant assessment year in cases where tax authority is in possession of evidence that income (represented in the form of asset) of more than Rs. 50 lacs have escaped assessment, provided, assessing Officer is in possession of information suggesting that income has escaped assessment. Such information would be:

a. Information flagged in line with the risk management strategy formulated by CBDT
b. Any final audit objection raised by CAG

This amendment made in Budget 2021 has been a huge damper as it would now enable reopening assessment for 10 years (subject to Rs. 50 lacs threshold) as against 4 year under the existing law even where the assessee has made full and true disclosure of material facts during the course of regular assessment. Take for instance a case where all factual cases have been disclosed during the regular assessment and due to interpretation of law, Government Audit has taken a different view from that of the Department. In such a situation, inspite of such disclosure, there could perhaps be possibility to reopen reassessment proceedings upto 10 year (subject to monetary threshold), effectively giving the assessing officer a 10-year timeframe to reopen and there is no end to it.

Hence, it is requested to restrict the reopening timeframe to 6 years and categorically make it clear that the audit objection raised by CAG should be out of fresh facts and not due to any interpretation of law.

3 Issue: TDS on income by way of interest from Indian Company and income by way of certain bonds and government securities is deductible @ 5% u/s 194LC and 194LD.

Section 194LC and 194LD provides sunset clause which expires on 30/06/2023. Therefore, the benefit of lower TDS rates will not be applicable and TDS to be applied @ 20% plus surcharge and cess or as per DTAA whichever is lower.

Suggestion: It is requested to extend the date of applicability of 5% TDS rate.

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

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

Memorandum explaining the Finance Bill 2018 also mentioned that "The scope of existing provisions of clause (i) of sub-section (1) of section 9 is restrictive as it essentially provides for physical presence-based nexus rule for taxation of business income of the non-resident in India. Explanation 2 to the said section which defines 'business connection' is also narrow in its scope since it limits the taxability of certain activities or transactions of non-resident to

those carried out through a dependent agent. Therefore, emerging business models such as digitized businesses, which do not require physical presence of itself or any agent in India, is not covered within the scope of clause (i) of sub-section (1) of section 9 of the Act. In view of the above, it is proposed to amend clause (i) of sub-section (1) of section 9 of the Act to provide that 'significant economic presence' in India shall also constitute 'business connection'.

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

- Revenue-linked condition: Any transaction in respect of any goods, services or property carried out by a nonresident with any person in India, including the provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed.
- User-linked condition: Systematic and continuous soliciting of its business activities or engaging in interaction with such number of users in India, as may be prescribed.

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

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

The above transactions or activities shall constitute SEP, whether the agreement for such transactions or activities is entered in India or the non-resident has a residence or place of business in India or the non-resident renders services in India. Further, once the nonresident triggers SEP in India, only so much of the income attributable to the transactions or activities referred above will be taxable in India. The language of the SEP provisions is broad and is likely to impact conventional transactions and activities even if they are not carried out in a digital form. The assessing officer may take a view that the SEP of the non-resident is constituted in India, the income attributable to the transactions or activities as indicated above (i.e. purchase of goods, services, download of data etc.) would be deemed to be income accruing and arising in India and will be liable to tax in India.

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

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

Suggestion:

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

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

Justification

A plain reading of the SEP provisions, as stated above, could cover within its ambit even normal import of goods or services, causing undue hardships. The Supreme Court's decision in the case of Ishikawajma Harima heavy Industries Ltd. v. DIT, 288 ITR 408 will not be applicable with this amendment in the provision. Moreover, this may defeat the basic intent behind introducing these provisions, i.e., to tap digital transactions. Thus, express exclusion of normal import from the definition of SEP could be provided. The transactions with non-DTAA countries/jurisdictions will be hit by this insertion of Significant Economic Presence (SEP).

Accordingly, TDS needs to be deducted at maximum marginal rate in cases where transaction of import with a country where no DTAA exists or where transaction with a country where DTAA exist but the following documents are either not provided or are deficient

- TRC,
- Form 10F,
- No PE declaration

Natural Gas

1 Exemption of storage income on natural gas

Background

Income of a foreign company on account of storage of crude oil in India and sale of crude oil there from to any person resident in India is exempt.

Suggestion

It is recommended to extend this exemption to Indian Companies which are engaged in the business of storage of natural gas in India. This will assist Indian Companies to expand their LNG storage facilities and will promote Natural Gas usage in the Country. It will also bring tax equilibrium among the Indian counterparts as compared to the foreign counterparts.

2 Transfer pricing for safe harbor allowances for LNG import

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

Background

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

potential counterparties, negotiation for logistics services, re-gasification and trading prices; wherein determining safe harbour ad hoc can be extremely challenging.

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

3 Secret comparable from corporates under Sec 133(6) of Income Tax Act should not be applicable for non-commodities like LNG. [Transfer Pricing]

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

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

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

General

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

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

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

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

As per the safety norms and the current practice in industry, abandonment activities which inter-alia includes site restoration, removal of all equipment and installations are being carried out regularly which in practice may or may not be coupled with the condition of expiry or termination of the agreement or relinquishment of part of the contract area.

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

Suggestion

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

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

Justification

The basic intent of bringing the provision of section 33ABA was to make arrangement/cater to the need of proper abandonment of oil wells after their economic life. As per the intent explained in the memorandum to Finance Bill (No. 2) 1998, the amount transferred to the reserve account is to be utilized only for Site Restoration purposes after cessation of commercial production of oil from a particular well. However, the condition as mentioned in para 8 of the scheme i.e. expiry or termination of the agreement or relinquishment of part of the contract area, was not put in for abstaining the withdrawal of funds for incurring the genuine expenditure being incurred by the member in industry.

2 Special exemption to Refineries for waiver of penal interest for deferment of advance tax:

The profits of the oil industry is integrally linked to:

(a) International Crude Oil and product prices
(b) Government policy on duty structure, Pricing of products, subsidy –sharing etc.

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

Therefore, it is suggested that, the waiver of penal interest for deferment of advance tax, which is now given as a discretionary power to the Chief Commissioners of Income tax by CBDT circular No.F No 400/234/95 dated 23.05.1996, may be allowed as a specific exemption for the oil industry.

In case of the others, a time limit for the disposal of waiver petitions may also be fixed since it is experienced that the genuine waiver petitions of assessee are kept pending for a very long period of time.

3 Tax Loss Carry back

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

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

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

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

4 Removal of requirement of Inventory valuation

The Finance Act 2023 substituted Section 142(2A) to empower the Assessing Officer to appoint a cost accountant for the valuation of inventory.

The Assessing Officer can issue the direction for the valuation of inventory if he is of the opinion that it is necessary in the interest of the revenue to do so.

It can be noticed that some of the information requested in Form 6C appears to be repetitive for companies that are already subjected to cost audits. To streamline processes and reduce duplication and promote ease of doing business, it is suggested that such companies who are subjected to Cost Audit be exempted from Form 6C, or such clauses be relaxed as they are already covered under the cost audit framework.

5 Treatment of Profit from Derivative Transactions

The Finance Act, 2006 amended the definition of speculative transaction u/s. 43(5) to treat the transactions of derivatives (including commodity derivatives used as hedging contract as per proviso (a) of section 43(5)) on the recognized stock exchange as normal business transaction. However, there is no clarity as to whether the profit/loss made from the derivatives transactions should be treated as Capital Gain or a Business Income. This creates number of issues and invites litigations.

It is therefore suggested that the clarification should be issued to the effect that the profit/loss from the Derivative Transactions should be treated in the same manner as any other securities and accordingly would be chargeable to Capital Gain Tax or Business Income based on the well-accepted principles.

6 Allow Payment of Premium of Leasehold Land as a Revenue Expenditure

Background

Under the Ind AS 16, the upfront premium paid on leasehold land held under operating lease are being treated as prepaid expenses and would need to be charged

to the Profit and Loss statement under the head "rentals" on a proportionate basis over the life of the lease period. These upfront lump sum premium lease payments for leasehold land are essential business expenditure and do not generate any capital asset and hence are purely revenue in nature. These are just like payments made under any operating lease to utilise the leased property for the purposes of the business of the lessee and hence should be allowed just like any business expenditure for tax purposes.

Suggestion

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

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

Background

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

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

Suggestion

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

Justification

Most of the payment made to the nominees of the employees are gratuitous in nature and are being provided to support the nominees of the employees. Accordingly, needs to be exempted from Tax or suitable clarification/provisions needs to be brought in to reduce the hardship being faced by nominees in absence of clear law on such payments.

To settle such different practice being followed in case of pension paid to the widow of the employees, CBDT, relying on the decision of Calcutta High Court's in the case of David Mitchell v. CIT [1956] 30 ITR 701, vide its letter No 45/118/66-ITJ dated 21st August 1967 has clarified that the pension paid to the employee himself will taxed be under section 15 read with section 17 but not the pension paid to the widow.

Attention is also invited to the decision in the case of Smt L K Thangammal Vs Third ITO [(1 ITD 762 (Mad.)] wherein similar view has been taken as regard gratuity payment made to the widow of the employee as per the term of the gratuity scheme of the company.

However, as regard other payments, such clarification or amendments in the Act are still awaited.

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

Background

Section 36 of the Income-tax Act, 1961, provides for deduction in respect of contribution made by an employer towards certain funds/schemes set up for employees' welfare as specified therein. Further, section 40A(9) disallows any deduction in respect of any sum paid by an employer towards setting up or formation of any fund, trust, company etc., except to the extent provided by section 36 of the Act. Further, as per the pay revision guidelines for Public Sector Undertakings (PSU), issued by Department of Public Enterprises, PSU's are allowed to contribute to certain superannuation benefits to their employees and to make their own schemes to manage these funds. One of such superannuation benefit is Post-Retirement Medical Benefits (PRMB). To provide better security as regards PRMB, Companies in industry are creating Trust and funds allocated for PRMB is being managed by these Trusts. However, Assessing Officers, applying the provision of the section 40A(9) are disallowing the same being funds/scheme not mentioned u/s 36 of the Act.

Suggestion: -

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

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

Justification: -

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

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

It further states that, with a view to discourage creation of such trusts, the Finance Bill seeks to make the amendments (i.e., to insert section 40A(9)]. Thus, going by the aforesaid rationale, deduction in respect of contribution to a Fund/Trust should be disallowed only if such Fund/Trust has been created as a measure for tax evasion. Consequently, if a Fund/Trust is formed with a bona fide intention for welfare of employees or in order to comply with the government guidelines, there ought not to be any bar on deduction in respect of contribution made towards such Fund, Trust, etc. Registration/ recognition/ approval of a Fund/ Trust/

Scheme under the provisions of the Income-tax Act, 1961 ought to be sufficient to establish the bona fides of creation of such Fund/Trust/Scheme for the benefit of employees

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

Background

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

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

Suggestion: -

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

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

Justification

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

10 Rationalizing the provisions of TDS under section 193 on Securities.

Background

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

Explanation to section 193 further provides that for the purposes of this section, where any income by way of interest on securities is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

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

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

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

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

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

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

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

11 Exemption Threshold for certain allowances to employees:
Sec. 10(14) of the Act r.w.r. 2BB of the Rules prescribe threshold for exemption on certain allowances etc. paid to employees, has not been revised over so many years.

Suggestion
It is suggested to suitably increase the exemption threshold provided under sec. 10(14) of the Act r.w.r. 2BB of the Rules for allowances such as children education allowance, Hostel Education allowance etc in line with inflation.

The cost of living and inflation have been steadily increasing every year; however, the limit of exemption of the allowances to employees have not been revised for so long. Being sought as Employee Welfare measure which in turn boom the economy.

12 TDS credit to be allowed irrespective of the Assessment Year

Background
Credit for TDS deducted is available to the deductee in the year in which the corresponding income is offered to tax. If, for any reason, credit for TDS is not claimed in the relevant year, the same would get lapsed and would not be available against tax payable by the deductee on

income of any subsequent year. The aforesaid leads to undue hardship to the deductees from whom TDS was rightfully deducted and is also reflected in Form no. 26AS.

Suggestion

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

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

Background

i) Section 195A of the Income-tax Act, 1961 requires multi-stage grossing up of income for TDS purposes if tax on the income of the payee is to be borne by the payer.

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

Suggestion

In order to remove the aforesaid dichotomy in the methods of grossing up for TDS and for assessment purposes, suitable amendment may be made in section 195A of the Act so as to provide that, where income of the non-resident is taxable u/s. 44BB of the Act, the same would be subject to single stage grossing-up for TDS purposes also.

Justification

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

14 Rationalizing the provisions of section 239A of the Act

Background

As per the provisions of section 239A of the Income-tax Act, 1961, inserted by the Finance Act, 2022, where under an agreement or arrangement, TDS applicable on any income (other than interest) payable to a non-resident is borne by the payer and, the payer claims that no TDS is required to be deducted from the income so payable, then, the payer may, within a period of 30 days from the date of payment of such TDS, file an application before the Assessing Officer for refund of such TDS in such form and such manner as may be prescribed.

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

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

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

There could be instances where TDS is deposited @10% on gross sums payable to the non-resident considering the receipts of the non-resident to be taxable as "fees for technical services" u/s 115A of the Act and the payer is of the view that the income is covered under the deeming provisions of section 44BB of the Act, and, hence, only 10% of total income of the non-resident is subject to income-tax at the rate of 40% (plus applicable surcharge and health and education cess) thereby arriving at an effective rate of 4% (plus applicable surcharge and health and education cess).

In such a case, it is apprehended that, given the coverage of section 239A of the Act and the language employed therein, the application for refund of excess TDS deposited may not be entertained by the Assessing Officer.

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

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

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

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

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

Suggestion
Sub-section (8) of section 154 may be amended to provide that, if the income-tax authority does not dispose of the application made to it within six months, the application shall be deemed to have been allowed.

Justification
The aforesaid amendment would ensure promptness in disposal of applications under section 154 and would avoid undue harassment to the taxpayers.

17 Exemption of Interest U/S 234B and 234C to Oil Companies

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

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

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

Suggestion
Relaxation is provided from levy of interest u/s 234C in case of capital gains, winning from lottery, etc. Similarly, the Government is requested to provide the specific exemption to Oil Companies from applicability of provisions of these Sections or provide some other relaxation in payment of Advance tax so that undue hardship which the Oil Companies are facing now can be reduced to some extent.

18 Consideration of interest for granting refunds u/s. 244A

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

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

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

Justification and Suggestion

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

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

Background

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

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

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

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

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

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

Suggestion

The provisions of sections 206AB and 206CCA may be suitably amended to exclude the non-resident payees/payers from the ambit thereof.

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

Justification

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

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

20 Rationalizing the provisions of section 194-O dealing with TDS by e-commerce operators

Background

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

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

Suggestions

Following is suggested in this regard-

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

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

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

It is, therefore, submitted that, the provisions of section 194-O may be appropriately amended to provide specific dispensation from TDS in respect of the cases where payment of

sale consideration is made directly by the buyer to the seller without any intervention of the e-commerce operator.

Justification

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

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

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

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

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

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

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

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

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

Section 195 (3) states that - Subject to rules made under sub-section (5), any person entitled to receive any interest or other sum on which income-tax has to be deducted under sub-section (1) may make an application in the prescribed form to the Assessing Officer for the grant of a certificate authorizing him to receive such interest or other sum without deduction

of tax under that sub-section, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).

22 Benefit of Section 115BAB to companies bottling gas into cylinder

With effect from 1ST April 2020, government has introduced new section 115BAB for new manufacturing companies and exclude the 'bottling of gas into Cylinder" from it. In order to promote Aatmanirbhar Bharat , benefits of this section should also be extended to companies bottling gas into cylinder.

Suggestion: Please also extend the benefits of Sec 115BAB to new companies which are bottling gas into cylinder.

23 Section 80 M

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

Justification:

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

Even under normal tax provision where the company has business loss, instead of claiming the deduction under Sec 80 M dividend income has to first set off against with business loss which results in tax loss to the company as same can be set off in future years with business income. Thus, whole purpose of non-taxing the dividend income in case used to distribute it further is defeated.

24 Requirement of TDS certificates:

Issue:

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

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

Suggestion:

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

25 Time limit to file revised return:

As per section 139(5) of the income tax Act, The time limit for furnishing of the revised return is 31.12.2XXX. The normal due date for companies covered under transfer pricing is

30.11.2XXX, thus giving only one month time for the assessee to file a revised return. Considering that large corporates conducts a process of review, there is a requirement for the companies to have sufficient time for the same. Hence the time limit for filing of revised return shall be restored to earlier time lines ie. Before one year from the end of the relevant AY or before completion of assessment which ever is earlier.

26 PAN in 26AS:

Issue:
In form 26AS only the TAN of the deductor appears. As deductors are allowed to have multiple TANs, it creates lot of difficulties in reconciliation for large corporates. As the data is not available against which TAN the deductor is deducting and depositing TDS.

Suggestion:
To include a column of the PAN of the deductee in 26AS. This can help in faster and simpler reconciliation of TDS credit.

27 Section 194- TDS on Pass Through Dividend

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

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

Suggestion

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

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

28 Section 194R- FAQ

Background

1. FAQ 1 states that section 194R applies to a benefit or perquisite irrespective of whether such benefit is chargeable to tax and irrespective of the provision under which it is chargeable to tax.
   FAQ 1 may be reconsidered and it may be clarified that TDS under section 194R is applicable only to payment of benefit or perquisite which is taxable under section 28(iv). Appropriate consequential amendments/clarifications are also required to provide that deductor is required to check if the benefit or perquisite is taxable in the hands of recipient.
2. Waiver/write off/one time loan settlement by banks/financial institutions whether or not under insolvency resolution process may be clarified to be outside the scope of TDS under section 194R. It may be specifically clarified that any write off of debt

whether unilateral or through negotiated settlement or under IBC is not a benefit or perquisite arising from business or exercise of profession and hence not liable to TDS under section 194R.

3. Reimbursement of out-of-pocket expenses to service providers for expenses incurred in rendering of services is not a benefit or perquisite. Inconsistencies created in this regard needs to be clarified.

Suggestion

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

29 Electronic filing of Form 10F

Background

Section 90 of the Act allows a non-resident payee to claim the benefits of a DTAA if such provisions are more beneficial than those under the Act.

The notification mandating filing of Form 10F ultra vires and beyond Rule 37BC which provides relaxation from higher withholding tax rate while making payment to non-resident deductees in the absence of PAN, subject to fulfillment of prescribed conditions namely, name, email id, phone number, address, TRC and Tax identification number.

Mandating a non-resident payee to obtain a PAN in India creates an unnecessary compliance burden, especially in situations where, after tax deduction at source under section 195 by the resident payer, there is no further compliance required to be undertaken by the such payee.

Suggestion

- Do away with the mandatory electronic furnishing of Form 10F - for non-residents who do not have PAN.
- Alternatively, such form should be allowed to be undertaken electronically without creating a PAN-based login id on the Income tax portal; or resident payer should be allowed to file form 10F online on behalf of the non-resident
- Clarify that e-filing of Form 10F is required only for remittances to non-residents and not for claiming relief during the filing of tax returns by the non-residents.

30 Section 42 - Deduction in case of business of prospecting of mineral oil

Background

Under section 42(1)(a) of the Income Tax Act, deduction for expenditure by way of infructuous or abortive exploration expenses is available in respect of any area surrendered prior to the beginning of commercial production.

As a result of requirement of surrender of the area prior to the beginning of commercial production, the taxpayer is not able to avail deduction from taxable income, of expenses on account of abortive exploration expenses until the certificate of area surrender is obtained from the appropriate authority. Further, even after giving intimation of area surrender to appropriate authority, getting certificate of area surrender from the authority takes very long time.

Further, on reading of section 42 along with the Model Production Sharing Contract, it is not clear whether taxpayer is eligible to claim deduction for exploration expenses (including

survey expenditure) and drilling expense in the year of incurrence against other business income even though no commercial production has been started.

Furthermore, the deduction of infructuous or abortive exploration expenses, drilling or exploration activities and depletion of mineral oil in the mining area are available only under the agreement of Central Government or any person authorized by it in such business (which agreement has been laid on the Table of each House of Parliament) are allowed.

Suggestion

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

31 **Faceless Assessments:** Steps should be taken to mitigate following difficulties:

a. Number of Attachments and size per attachment (only 5MB per attachment is allowed) is the major constraint while uploading details. Number of errors are thrown by system, which includes error in file name, repeat document (some reply needs repetitive attachments).

b. The attachments accepted are only in pdf, excel, csv format.

c. There are some cases when Assessment made by CPC is not correct and mistake is apparent from records for example not giving TDS credit though reflected in 26AS and hence Assessee files rectification Returns. But most of time such rectification applications are processed based on algorithm and no application of mind is done. As such even after filing number of rectifications returns and registering grievance on online portal, corrections in assessment order are not made. All such cases where 2 rectification returns are filed & disposed of and assessee still files third rectification returns then such rectification returns may be sent to the concerned ward for the consideration. This will help in settling the outstanding demand quickly and will give peace of mind to honest tax payer.

Suggestion:

a. Size per attachment may be increased to atleast 50MB.

b. Zip files and videos should also be accepted, to enable better explanation of queries.

c. Third and onward rectification returns be handled by field office of the concerned wards.

32 Faceless Hearings before Income Tax Appellate Tribunal (ITAT) (Section 255)

Background:

The Finance Act 2021 introduced faceless assessment for Income Tax Appellate Tribunal (ITAT). Currently, assessment proceedings before the Assessing Officer & hearings before the Commissioner of Income Tax (Appeals) both are in Faceless Mode.

Suggestion: -

Considering the fact that ITAT is a final fact-finding authority, it is more desirable that physical hearing/debating the issue before the Hon'ble members of ITAT be continued.

33 Weighted deduction for R&D Expenditure

The weighted deduction for R&D Expenditure under Sec. 35(2AB) not available in case Section 115BAA is opted. The expenditure on R&D was allowed as weighted deduction with a vision to the strengthen R&D Activities in India which directly related to"Make in India" drive of government.

Background

R&D is the backbone for industrialization of any country and linked to development and growth of the economy. Further India's expenditure on R&D as a percentage of GDP is very dismal as compared to World Average. Reinstating of R&D weighted deduction, would help in further development of new technology and avoiding continuous dependence on foreign technology.

Suggestion

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

34 Extension of time for Section 32AD

Issue: Section 32AD provides for additional depreciation of 15 %for new projects in backward areas .The benefit was available till 2020 . Section 32AD was applicable for notified backward region.

Suggestion

Benefit under Section 32AD may be extended to 2024-25 and also include substantial expansion. We suggest to extend benefit to corporates opting for 115BAA/ 115BAB also. Same will help to boost investment in backward areas.

35 Section 43B

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

Suggestion:

To mitigate the hardship, it is suggested that an Explanation be inserted in Section 43B to the effect that payment to the fund would be equivalent to payment to employees. It is suggested that suitable provision be inserted in the Act whereby prior period expenses are allowed as deduction in the current year under section 37(1) of the Income Tax Act, 1961. A limit (say not exceeding 1% of the turnover) can be prescribed for such expenditure. It will obviate administrative difficulties in claiming the deduction in respect of previous years and rectifications proceedings etc. There will not be any revenue loss to the government from this clarification, since corporate tax rates over a period of years have remained more or less the same.

36 Abolition of Fringe Benefit Tax vide Finance (No.2) Act 2009

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

Suggestion

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

37 Allowance of Deduction under section 80G for the purpose of Section 115BAA and 115BAB

Background

The Taxation Laws (Ordinance), 2019 introduced two new corporate tax rates, i.e., at 15% (Section 115BAB) and 25% (Section 115 BAA) for the domestic companies. However, the benefit of reduced tax rate is available only when total income of the company is computed without claiming specified deductions, incentives, exemptions and additional depreciation available under the Income-tax Act.

Under both the sections, it is mentioned that total income of the company will be computed without any deduction Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA.

- Chapter VI-A under the heading C mainly covers the profit linked deductions. Deduction under chapter VI-A under the heading "A" and "B" such as deduction under section 80G i.e. donations to charitable trust, institutions etc was allowed under both the sections.

However, by the Act no 20 of 2020, effective from AY 2021-22, Chapter VI-A under the heading "C shall be substituted by Chapter VI-A other than the provisions of section 80JJAA or section 80M".

As per the amendment, no deduction will be allowed under section 115BAA and 115BAB for entire Chapter VI-A except Section 80M and 80JJAA. It may be worthwhile to note that deduction under section 80G even for contribution made to charitable trust and institutions, which are of national importance such as Prime Minister National Relief Fund, Prime Minister Drought Relief fund etc. will not be allowed as deduction u/s 115BAA and 115BAB.

Suggestion

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

38 Proviso to section 115BAA – Adding of Unabsorbed additional Deprecation to the Block of Assets:

Issue:

As per proviso to section 115BAA in case an assessee opts for new regime, they are eligible to add the unabsorbed depreciation pertaining to additional depreciation to block of assets in AY 2020-21 only. The additional depreciation is in nature of accelerated depreciation which is reduced from the block of assets. It is not in nature of any additional incentive like investment allowance, etc. Therefore, it is a genuine cost incurred by the assessee for purchase of capital assets.

Suggestion:
The same may be extended to the assessee who opts for new regime in any FY. The Proviso to Section 115BAA allowing the assessee to add the unabsorbed depreciation pertaining to additional depreciation should be allowed to be added to the block of assets to the assessee who opts for the new regime in any financial year.

39 Corporate Social Responsibility Expenditure [Explanation 2 to Section 37(1)]

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

Suggestion
Some Companies are spending even more than the statutory limit of 2% of last 3 years' average net profit towards CSR in order to promote social welfare. Deduction should be allowed at least for amount spent in excess of statutory limit of 2% under the company's Act as normal business expenditure by making suitable amendment in the Income Tax Act,1961. Further amounts spent on awareness programmes and public outreach campaigns regarding the covid-19 vaccination drive are also permitted by MCA to be classified as CSR activity. It is expected that deduction for such expenditure may be allowed regardless of whether it is for employees or for public at large.

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

40 Depreciation provisions (Section 32)

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

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

41 Revised return u/s 139(5)

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

Suggestion
There is a need to retain the time limit for filing of revised tax return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier. The due date for filing of return u/s 139(1) for a company who is required to furnish a Report u/s 92E for international transactions with Associated Enterprises or specified domestic transactions, is 30th November of the relevant Assessment

year. Thus the existing provision allows such assessees only 1 month time to file revised return after filing of the original return, which is practically not adequate.

42 Rectification of mistake u/s 154 of the Income Tax Act, 1961

Background

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

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

Suggestion

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

43 Increase in Limits for employer contribution to NPS Account of Employees from 10% to 14%

Background

As per Section 36(1)(iv), amount contributed by employer to recognised provident fund or an approved superannuation fund is allowed as a deduction to the employer. Rule 87 of Income-tax Rules prescribes the upper limit for employer contribution to approved superannuation fund as 27% of salary reduced by employer contribution to provident fund. As per Section 36(1)(iva), amount contributed by employer to NPS Account of employee to the extent it does not exceed ten per cent of the salary; is allowed as a deduction to the employer.

As per Section 80CCD(2), employee is allowed a deduction for employer's contribution to his NPS Account up-to —

a. 14% of salary, where contribution is made by the Central Government;
b. 10% of salary, where contribution is made by any other employer,

With respect to employer's contribution to NPS Account, deduction to both employer [Section 36(1)(iva)] and employee [Section 80CCD2)] is restricted to 10% of salary. In case contribution exceeds the said threshold, it results in double taxation, i.e., the excess amount is neither available as a business expenditure to the employer nor is it allowed as a deduction from Gross Total Income to the employee. In case employer contribution towards pension fund of employees is above 10%, contribution up-to 10% is contributed to NPS Account and balance contribution has to be contributed to the SABF Trust to avoid double taxation.

For Central Government employees, employer's Contribution to their NPS Account is deductible up-to 14% percent of salary under Section 80CCD(2). Vide GOI Press Release dated 25th August 2021, proposal to increase employer's contribution under the New Pension Scheme to 14% from the existing 10% has also been approved for employees of PSU Banks.

Suggestion

It is requested that Section 36(1)(iva) be amended to increase the limit for employer contribution to pension scheme, as referred to in section 80CCD, from the current 10% per cent of the salary of the employee to 14% percent of salary. Also, the amount of deduction admissible under Section 80CCD(2)(b) for employer's contribution to NPS Account be enhanced from the current 10% per cent of the salary of the employee to 14% percent of salary.

44 Section 80JJAA – Deduction of additional employee cost for 3 years – Relaxation of upper cap on total emoluments which is Rs 25000 p.m. currently

Background

Currently, Section 80JJAA of the Income-tax Act, 1961 allows for a deduction of 30% of additional employee cost incurred for 3 assessment years each in respect of the total emoluments paid to additional employees employed during a previous year. However, additional employees only cover new employees whose total emoluments are up to Rs 25000 p.m.

Suggestion

The government has practically exempted individuals with NTI up to Rs.7 lakhs from paying any tax as small taxpayers or new earners. To bring consistency the upper cap of Rs. 25000 p.m. should change to those whose Net Total Income does not exceed Rs.7 lakhs. This will allow a meaningful deduction for industry which will incentivize creation of additional jobs especially for young skilled youth.

45 Suggestion on improvement in Income Tax Audit Report-GST Related Reporting:

Vide Notification No. GSR 666(E) [No. 33/2018 (F. No. 370142/9/2018-TPL)], dated 20.07.2018, the CBDT notified revised Form 3CD (Statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961) with effect from 20.08.2018. The said revised Form 3CD contains clause 44 seeking 'Break-up of total expenditure under the GST '. There is extensive reporting and compliance mechanism with respect to GST framework in place, and GST being an Indirect Tax administered by CBIC under the same Ministry as the CBDT, reporting again the GST data in Tax Audit Report in Form 3CD overburdens the assesses with duplicity of compliance work resulting in higher cost of products.

Suggestion

As Government Companies/PSU's are subject to CAG and other audit this requirement of GST related reporting in Income Tax Audit Report may not be called for in their case. Since the GST Registration is PAN based, requisite data for the same can be made available from the GSTN

Server to the concerned Statutory Authorities as required.

46 Relaxation from ICDS

Background

ICDS introduces a significant element of complexity and, more importantly, it is inconsistent with the concept of real income. For example: Concept of capitalizing borrowing costs irrespective of whether the funds utilized or not for the capital project, concept of materiality not recognized by ICDS by which small amounts have to be reconciled and taxed accordingly.

Various assesses are mandatorily required to follow method of accounting as per the Indian Accounting Standards (IndAS) applicable in India, which is prescribed by the ICAI. However, in order to comply with ICDS, assessee may need to again prepare its profit & loss accounts which is simply duplication of effort.

Suggestion
Companies who are following IndAS and are getting their books audited as required under Companies Act, 2013 and rules may there under, may be exempted from following ICDS.

47 Ambiguity in definition of professional services and technical services leading to ambiguity in TDS rates

Background
Rate of TDS under section 194J in case of fees for technical services (other than professional services) is 2 per cent while the rate of TDS on professional services is 10 per cent.

Suggestion
It is recommended that rate of TDS w.r.t professional services may also be reduced to 2 per cent. This will reduce ambiguity in interpretation w.r.t to classification and will reduce litigations on the TDS matter.

48 Extension of sunset clause under Sec115BAB on concessional tax rate option for new manufacturing Companies.

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

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

49 Issue: Section 194 prescribed deduction of Tax on dividend payments @ 10%.
It also provides an exception that if the aggregate of the amount of such dividend distributed or paid or likely to be distributed or paid during the financial year does not exceed Rs 5000, no deduction is required. Since the companies distributes interim and final dividends or more than one dividend or there can be change in shareholding during the financial year, the limit of Rs 5000 may exceed in the next dividend payment or the situation may arise that dividend amount so distributed is not sufficient to cover the tax deduction on whole of the dividend distributed during the year. In such cases it would be difficult to comply with Section 194.

Suggestion: The limit of Rs 5000 should be applied to each dividend distributed or TDS to applied on incremental amount above Rs 5000.

50 Timelines for disposal of CIT(A) level
Currently there is no timeline prescribed for disposal of appeals at CIT(A) forum

Suggestion

It is proposed to prescribe timelines at the CIT(A) forum. It will clear backlogs of pending cases at the respective forum of CIT(A).

51 Explanation 2A to Section 9

Section 9 provides that any income earned through business connection in India shall be treated as income deemed to accrue in India. Finance Act 2018 amendment added explanation 2A which stated that Significant Economic Presence (SEP) in India of a non-resident entity shall constitute its business connection in India thus bringing a Non-Resident having SEP in India into the ambit of Indian income tax. Further, minor changes done though finance act 2020, SEP is defined as "transaction in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed". The amount has been prescribed as Rs. 2 crore vide CBDT's circular dated 3rd May 2021. The wordings of explanation 2A are not limited to digital transactions. As mentioned above, the explanation covers any transaction of goods, service or property carried out by a NR with any person in India if the aggregate payment is more than Rs. 2 crore in a year. It is not distinguishing between conventional transactions and technology driven digital transactions, which the memorandum had focussed upon. Therefore, on a literal reading, it appears that the explanation also covers even those transactions which are not a product of digital evolvement in last few years.

Suggestion

In view of the unintentional coverage of SEP on conventional import transactions and its huge impact, the representing companies request for the following reliefs:

In line with objective explained in the memorandum to the finance bill, suitable amendment may be carried out in explanation 2A to section 9 to ensure that scope of SEP is limited to only digital transactions / technology enabled new business models; and

Ad-interim, issue clarification regarding non-applicability of SEP on the conventional import transactions.

Justification

The un-intentional coverage is expected to have following significant implications on the representing companies:

i) With attraction of withholding provision, the cost of raw materials such as crude oil will increase substantially. With crude oil being the major input material for the refineries and nearly 80% crude requirement being met through imports, applicability of SEP on crude import transaction shall render refining operations unviable.

ii) Similarly, the cost of other imported raw material, finished products, capital goods and services shall increase substantially thereby impacting the profitability of representing companies severely.

iii) In case of withholding, the supplier NR shall be required to file return of Income in India which will be added compliance burden to the NR and thus, making exports to India less attractive to them. This, in long term, may result into constraints in procurement of goods and services by these companies.

iv) Non-compliance with the withholding requirements shall have the implication of being treated as assessee in default, levy of interest/ penalty and disallowance of expenses.

52 No disallowance for the domestic company, for charges paid to a Permanent Establishment (PE) in India of a foreign company

Background

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

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

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

Thus, there is no tax loss to the exchequer.

Suggestion

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

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

Bakground

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

Suggestion

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

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

54 Reduction of Period of Holding for Units of InvIT to 12 months from 36 months

Background

The definition of "business trust" has been provided in clause (13A) of section 2 of the Act, which includes a trust registered as an Infrastructure Investment Trust (InvIT) or a Real Estate Investment Trust (REIT) under the relevant regulations made under the Securities and Exchange Board of India (SEBI) Act, 1992 and the units of which are required to be listed on a recognized stock exchange in accordance with the relevant regulations. Later, referring the

notification no. SEBI/LAD- NRO/GN/2019/10 of Securities and Exchange Board of India (Infrastructure Investment Trusts) (Amendment) (Regulations), 2019 the section was suitably amended through Finance Bill, 2020 after considering non-requirement of mandatory listing requirement for InvITs. However, no distinction was made in respect of period of holding defining the category of capital asset.

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

Suggestion

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

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

Background

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

Suggestion

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

56 Creation of PAN sub user login in case of big corporates

Background

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

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

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

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

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

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

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

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

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

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

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

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

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

Suggestion

The objective of the section of safeguarding the interest of the revenue against any fraudulent charge. It is therefore suggested to provide some relaxation by fixing some quantum of default/pending demands/blanket demand (in absolute or percentage term with respect to total asset) and amount exceeding the quantum fixed would require assessee to pay off or clear the pending demands. Such amendment will streamline the process for Bonafide assessee and provide ease of business.

59 Certificate u/s. 281

Background

Obtaining a no objection certificate or prior permission under section 281 of the Act (Section 281 Certificate) is a mandatory 'condition precedent' in a merger, acquisition, loan or other finance transactions. The IT Department portal displays the tax demand status of relevant entity as on that day. However, the application and issue of the certificate is still a manual process. Generally, it takes a long time to obtain the 281 certificate, which delays the transaction.

Suggestion

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

60 An option of Nil deduction of TDS u/s 197 for Large Tax Payers

Background

In case of large corporates especially for Public Sector undertakings (PSUs), reconciliation of TDS deducted by various customers with the tax credit appearing in Form 26AS is cumbersome and consuming many man hours due to large volume of transactions and many customers spread across India. For some instances, due to mismatch of TDS deducted with form 26AS, assessee may not avail tax credit for the same in ITR which results in loss of benefit.

Further, at present, application for nil rate of TDS certificate u/s 197 is allowed only for specified circumstances like Loss making company, nil tax liability etc.

Suggestion

Considering the above, suitable provisions may be inserted u/s 197 for PSUs or any other large taxpayer by providing an option to apply of Nil rate of TDS certificate by depositing lumpsum

amount based on previous TDS liability. This will provide ease to the assessee from TDS reconciliation and generate upfront revenue to the department.

61 Prescription of exemption from deeming of fair market value of shares for certain transactions

Background

The existing provisions of the section 56(2)(x) of the Income-tax Act, inter alia, provide for chargeability of income in case of receipt of money or specified property for no or inadequate consideration. For determining the amount of income for receipt of certain shares, the fair market value of the shares is taken into account. Similarly, section 50CA provides for deeming of fair market value of unquoted shares for computing the capital gains from the transfer of such shares. For both these provisions, the fair market value is determined based on the prescribed method.

Determination of fair market value based on the prescribed rules may result into genuine hardship in certain cases where the consideration for transfer of shares is approved by certain authorities and the person transferring the share has no control over such determination.

In order to provide relief to such types of transactions from the applicability of sections 56(2)(x) and 50CA, it was proposed in Finance Bill 2019 to amend these sections to empower the Board to prescribe transactions undertaken by certain class of persons to which the provisions of section 56(2)(x) and 50CA shall not be applicable.

Suggestion

It is suggested that in order to enable the benefit of the amendment introduced in Finance Bill 2019, CBDT should prescribe such transactions undertaken by certain class of persons where the consideration for transfer of shares is approved by certain authorities and the person transferring the share has no control over such determination, to which the provisions of section 56(2)(x) and 50CA shall not be applicable. Transaction such as (a) Assets acquired through bidding process, (b) Transaction of Government companies or PSUs may be kept outside of its purview.

62 Deduction of Interest on Certain loans from Employers to Salaried Person, which otherwise is deductible if taken from Bank/financial Institution

Tax Deduction on interest affordable housing u/s 80EEA for Loan from Employer

Background

In order to provide an impetus to the 'Housing for all' objective of the Government and to enable the home buyer to have low-cost funds at his disposal, a new section 80EEA in the Act was inserted in Finance Bill, 2019 so as to provide a deduction in respect of interest up to **One Lakh Fifty Thousand** rupees on loan taken for residential house property from **any financial institution** subject to the following conditions:

- Loan has been sanctioned by a financial institution during the period beginning on the 1st April, 2019 to 31st March 2022. (Extended)
- The stamp duty value of house property does not exceed forty-five lakh rupees;
- Assessee does not own any residential house property on the date of sanction of loan.

Suggestion

For the sustenance of the Government's objective, it is proposed to normalize the conditions as imposed for availing the benefit of the said section by inserting loan from Employers also as

the valid source along with the financial institution. Housing for all is the great mission that our government is focusing on and therefore providing another source of loan to the assessee will outspread the zeal towards the mission of the government.

63 Tax incentive for electric vehicles u/s 80EEB for Loan for Employer

Background
With a view to improve environment and to reduce vehicular pollution, a new section 80EEB was inserted in the Act so as to provide for a deduction in respect of interest on loan taken for purchase of an electric vehicle from any financial institution up to one lakh fifty thousand rupees subject to the following conditions:

- The loan has been sanctioned by a financial institution including a non-banking financial company during the period beginning on the 1st April, 2019 to 31st March, 2023;

- The assessee does not own any other electric vehicle on the date of sanction of loan.

Suggestion
Condition as inserted by the section that the loan from financial institution and NBFC would only qualify for the deduction narrows down the sources of fund available to the assessee. The said section has failed to appreciate the other sources which are available to assessee for financing the Vehicle. It is therefore suggested to open up the other source of fund i.e. Loan from Employer also, such will provide ease to the assesses in making the investment and such will be conducive to rapidity of the intend of the government to improve environment and reducing vehicular pollution.

64 Interest on Education Loan from Employer to be covered u/s 80E

Background
As per section 80E, in computing the total income of an assessee, being an individual, there shall be deducted, in accordance with and subject to the provisions of this section, any amount paid by him in the previous year, out of his income chargeable to tax, by way of interest on loan taken by him from **any financial institution or any approved charitable institution** for the purpose of pursuing his higher education

Suggestion
Condition as inserted by the section that the loan from financial institution and approved charitable institution would only qualify for the deduction narrows down the sources of fund available to the assessee. The said section has failed to appreciate the other sources which are available to assessee for sourcing Education Loan. It is therefore suggested to open up the other source of fund i.e. Loan from Employer also as this will provide ease to the assesses in availing loan for the education purposes.

65 Valuation of Housing Perquisite:

Issue:
Valuation rule 3 has been amended wef 01.09.2023 vide notification no 65/2023. As per the newly inserted proviso, the base year (denominator) for CII is the year in which it was first allocated to the employee, The value to be considered is the first previous year (ie. 2023-24). So in case the employee is allocated the house in say 2010. Then the denominator will be the CII of 2010, which will not be beneficial to the employee.

Suggestion:
Suitable clarification to be issued to amend the denominator. The denominator to be considered for the first previous year and not the year in which the house was first allotted to the employee.

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

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

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

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

Issues

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

Suggestion
The concept of Exempt-Exempt-Exempt (EEE) for social security schemes such as PF, SAF and NPS is being diluted for the high-income group. This may discourage long term investment and may even be contradictory to the principles of good tax governance. It is therefore requested to review section 17(2)(vii) i.e. on taxing Employer contribution beyond Rs 7.5 Lakhs and interest accretion thereon u/s 17(2) (viia). It is submitted that contributions to approved superannuation fund and NPS be kept out of the scope of the provision considering that they are already under EET regime (partially).
The employer should be relieved of the obligation to do salary TDS on the interest portion in view of the difficulties for the employer to get the information in timely manner. The employee may be cast responsibility to pay self-assessment tax thereon.

67 Standard **Deduction :**

Issue:

Considering the fact that salaried individuals do not get any deductions for medical and transport subsidy/allowances in lieu of which standard deduction was introduced subsuming these deductions. In the recent past there is a burgeoning rise in the transportation cost due to unprecedented rise in fuel prices and the medical expenses have also seen astronomical rise. Considering this the deduction of ₹ 50,000/- is very less.

Suggestion:

Salaried Employees standard Deduction limit should be increased to Rs 1 Lakh from present Rs 50,000. The proposed increase in standard deduction is reasonable to compensate and give relief to a certain extent. Moreover salaried tax-payer are honest tax payers, relief should be provided to them for these basic expenses for which standard deduction was instituted.

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

Background

The Finance Act 2021 inserted Proviso to Sections 10(11) and 10(12) providing that the provisions of these clauses shall not apply to the interest income accrued during the previous year in the account of the person to the extent it relates to the amount or the aggregate of amounts of the contribution made by the person exceeding Rs. 2,50,000 in a previous year. Such income shall be taxed at the prevailing income tax rates.

Suggestion

There are only a few investment opportunities which operate in a complete Exempt-Exempt-Exempt Category (EEE) and PF was one of them. The removal of exemption from interest income earned on PF contribution PF will adversely affect the retirement corpus of individuals.

Since, the contribution by the employee should match with contribution of the employer i.e., 12%. The employee has no option but to mandatorily contribute to the Provident Fund, it is therefore the Limit of Rs. 2.5 lakhs may be increased to

a. upto Rs. 5 lakhs or
b. 12% of salary

whichever is higher.

69 Rationalization of the deduction limit for perquisites in respect of motor car

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

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

B. Indirect Tax

I) GST Tax

Upstream

1 Inclusion of Petroleum Products under GST

Background

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

Suggestion

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

Justification

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

This would enable some relief to Petroleum companies through some reduction of under recovery on account of non-inclusion of such petroleum products under GST. At the same time this move would benefit the Airline industry (which is just recovering from the pandemic effect but is adversely hit by the abnormal rise in prices of Aviation Turbine Fuel due to the geo political facts) and the various User industries where Natural Gas is being used as India progresses towards a Gas based economy.

2 Suggestion to include Aviation Turbine Fuel (ATF) and Natural Gas (NG) under GST

Background

We have been requesting to Govt. to include all the petroleum products under GST to have a seamless credit chain providing relief for mitigating the impact of loss of Input Tax Credit and avoid multiple compliances of law. However, if due to any reason our request for inclusion of all petroleum products under GST is not feasible, it is suggested that at least include Aviation Turbine Fuel (ATF)and Natural Gas under GST.

I. ATF is chargeable at 11% (2% under Regional Connectivity Scheme) ad-valorem rate of excise duty.VAT/Sales tax rate on ATF varies from State to State and is mainly in the range of 20% to 30%.

II. Liquefied Natural Gas and Natural Gas (Other than compressed natural @ 14% excise duty) is chargeable at Nil excise Duty. VAT/Sales tax rate on NG varies from State to State and is mainly in the range of 10% to 25%.

III. Out of excluded petroleum products ATF & Natural Gas is contributing only around 2% of Central Excise revenue to Central Govt.and less than 6% Sales tax revenue to State Govts.

3 Reversal of Input Tax Credit on Capital Goods.

Currently the provision entails proportionate monthly reversal in the ratio of turnover of GST and Non-GST goods over a period of 60 months from the month of availing credit along with interest @18%.

Suggestion

This provision of reversal over a period of 60 months is highly impractical for capital intensive projects where it takes anywhere between 12-36 months to get even projects started. It is suggested Capital goods credit be allowed in full at par with the time tested erstwhile Excise regime. If the same is not possible, the input tax credit of capital goods be determined as per turnover ratio on monthly basis and reversal be effected accordingly on monthly basis and not over a period of 60 months. Further provisions be made in the CGST Act so that the input tax credit on capital goods is not restricted in the case of sale of MS, HSD and ATF which are not presently covered under GST.

4 IGST on goods required for petroleum operation-

The New Exploration and Licensing Policy (NELP) was announced in February 1999 by Government of India to promote the domestic production of Oil & Gas and reduce import dependence. As per Notice Inviting Offer (NIO) for the NELP round, companies are exempted from payment of import duty on goods imported for petroleum operations. Similarly, the Production Sharing Contracts (PSC) signed by the Government of India provides for exemption from customs duty. The PSC also provides for fiscal stability as it secures the basis on which investment decisions are originally made and boost investor confidence in government policy.

Providing import duty exemptions has, therefore, been a consistent policy of the Government of India in the pre-GST period. In spite of the assurances / commitment made by GOI, 5% IGST was levied on goods required for Exploration & Production E&P operation vide notification No.50/2017-Cus dated 30.06.2017 Sl-404 & Notification 03/2017 CGST dated 20.06.2017. Further IGST rate of 5% was increased to 12% vide Notification No. 40/2022 Custom dated 13.07.2022.

Similarly, the GST rate on local procurement of goods for petroleum operation has been increased from 5% to 12% vide IGST & CGST notification 08/2017 dated 13.07.2022.

It is important to highlight that E&P companies have evaluated and committed investments to the projects in the light of NELP/HELP/OALP policy which guaranteed duty free imports of goods.

Needless to mention, both Natural Gas and Crude Oil are outside GST. Inputs are taxed under GST whereas output products (Natural Gas and Crude Oil) are outside GST and therefore not eligible for input tax credit and consequently resulted in stranded cost for the E&P companies. Since the cascading effect of GST for E&P companies has already gone up post implementation of GST this industry is in no position to absorb further increase in cost.

Suggestion-

a) In order to do away with the cascading effect of taxes and to incentivise the investment in Upstream Sector Government may provide IGST exemption to goods required for E&P operation under serial No. 404 of the Customs Notification No. 50/2017-Cus dated 30.06.2017 as amended.

b) Rescind the Custom / GST rate notifications by which IGST rate on imported goods & GST rate on Local goods increased to 12% and restore the lower rate of GST of 5% to mitigate the additional burden caused to the sector.

c) Bring Natural Gas and Crude Oil under GST as ZERO rated supply so that upstream can be allowed refund of GST paid on Goods and services used for petroleum operation.

5 Clarification required on non –applicability of Service Tax/GST on Royalty payments to Government

Background

Royalty is a statutory levy on the mining activity and is payable on production of crude oil and natural gas u/s 6A of the Oil Field (Regulation and Development) Act, 1948 (ORD Act) read with Rules 13 and 14 of the Petroleum & Natural Gas Rules, 1959 (PNG Rules). Royalties are payable on commencement of production as per the provisions of ORD Act, 1948. It is not a consideration for assignment of the right of extraction of mineral oil or natural gas but is itself in the nature of a tax.

Suggestion

A clarification may be issued by the CBIC that, since there is no rendition of services involved by the State or Central Govt., the Service Tax/GST should not be applicable on royalty being paid in terms of Sec 6A of the Oil Field (Regulation and Development) Act, 1948.

Justification

A statutory levy should not be treated as 'consideration' for the 'supply of services' as there is no rendition of service involved in it. Further, unlike other industries, in case of Oil and Gas Industry, there is no input tax credit available for GST paid on such Royalty. Royalty is a part of overall economic share of Government. Hence, such a statutory levy should not be made liable to Service Tax/GST.

6 Continuance of concessional rate of GST for goods used in upstream petroleum operations

Background

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

Petroleum products are a direct input into many economic activities (e g, transportation, and electricity generation and fertilizer production) as well as several indirect uses. Therefore, increase in the taxes on the inputs used in the petroleum products would have a significant impact on the economy both through direct as well as indirect or cascading routes. The cascading overall impact on the other core sectors which are critical will be such that it would seriously impact the competitiveness of India.

Thus, increase in tax incidence will not only increase the capital costs of the Oil and Gas Sector but will also have an inflationary impact on the economy. The cascading of GST for E&P companies has already gone up post implementation of GST and any further cost absorption will be detrimental for the industry.

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

Suggestion
GST exemptions originally provided to Oil & Gas companies for all the goods specified in list mentioned in Notification no. 3/2017-Central Tax Rate dated 28 June 2017 required in connection with Petroleum operations undertaken under specified contracts or New Exploration Licensing Policy or Marginal Field Policy ('MFP') or Coal bed methane policy or Petroleum operations or coal bed methane operations undertaken under specified contracts under the Hydrocarbon Exploration Licensing Policy (HELP) or Open Acreage Licensing Policy (OALP) should be reinstated at 5%.

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

Background
The upstream service providers (i.e., service contractors of E&P companies) provide services for petroleum operations through imported vessels and rigs for a temporary contractual period. At the time of import of such vessels and rigs required for petroleum operations, the importer (buying such vessels & rigs) has to pay GST @ 5% on full value of vessels/rigs. Further, in case of import on lease/rental basis, GST@5% is payable on such periodical lease/rental charges. Subsequently, on domestic provision of services through such vessels and rigs, upstream service providers charge GST on their services as per GST Law.

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

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

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

8 Applicability of payment of GST on Reverse Charge Mechanism (RCM) in respect of SEZs.

Suggestion
SEZs are entitled for zero rated supplies under GST, however, various services like Advocate fees, Goods transport by truck etc get liable to payment of GST basis Reverse Charge Mechanism of GST provisions.
In view of SEZs entitled for zero rated supplies, there should be exemption to SEZs from payment of GST under Reverse Charge.

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

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

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

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

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

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

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

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

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

Background

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

Justification

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

Suggestions

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

12 Works Contract

Background

GST rate applicable to on shore and off shore works contract initially was 18%. The GST council has decided in its 22nd meeting held on 6th October,2017 to reduce the GST on works contract services to 12% in respect of offshore works contract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles

Suggestions

It is requested that GST on on-shore works contracts relating to oil and gas exploration and production (E&P) should also be reduced to 12%, in line with Offshore works contract. This will help in minimising the impact of stranding of taxes on Onshore E&P operations.

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

Background

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

1. Transferee is not defined in the Notification or Customs Law, Hence, it's open for interpretation.
2. For Transaction Value referred in the Proviso, Customs is referring to the definition from section 14 of customs law 1962 which says price paid or payable at the time of import. However, the intention of the amended Proviso is to collect duty on scrap value of non-serviceable goods at the time of disposal of goods (cut-off and removed from installations) and not on the original value at the time of import. This needs to be made clearer and unambiguous.

3. The Proviso mentions rate of duty of 7.5%.
   However, it is not clear whether 7.5% is only the Basic Duty OR inclusive of other duties of customs e.g. IGST, Social Welfare Charges (SWC), etc.
   It is also not clear whether the rate of IGST should be 5% or 18%.
4. The Proviso mentions DGH to certify that said goods have been mutilated before disposal.

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

Suggestion

1. Issue a notification with appropriate changes in the wordings to reflect the actual intention of the amended proviso to address these issues/challenges.
2. Also, in the Tax Research Unit (TRU) notes to Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners may include an example of duty levy (including IGST and other applicable Customs duties) to avoid any misinterpretation.
3. Update the Electronic Data Interchange (EDI) so that it automatically calculates the duty as soon as the Notification no. is entered so as to avoid any ambiguity.
4. DGH to only certify that the goods are non-serviceable and would be cut-off and removed from original installations for disposal as scrap at the time of assessment of custom duty.
5. Against Condition No. 48, in clause (e), the following proviso shall be inserted at the end, namely: -

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

14 Uniformity in merit rates between Onshore and Offshore Rigs

Background

Offshore Rigs are classified under HSN 8905 which is chargeable to merit rate of GST at 5%. Whereas Onshore rigs are classified under HSN 8430 which is presently chargeable to merit rate of GST at 18%.

Suggestion

To avoid such wide disparity of rate it is requested that both may be brought under the uniform rate of GST at 5% to maintain uniformity in the Offshore and onshore Drilling Rigs.

15 E Way Bill requirement

Background

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

E&P companies are required to move Rigs, Casings & Tubings, pipes and other stores and capital items from one well/drilling site to another for the purpose E&P operations on a regular basis. It is therefore, requested that exemption may be given to E&P Companies from generation of e-way bill on movement of goods from one location to another location of the same entity within the same state for E&P operational purpose on the ground of ease of doing business.

16 The Oilfield (Regulation& Development) Act, 1948

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

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

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

17 Relaxation from Condition of ICB under Para-7.02(f)(i) of Foreign Trade Policy

Background:
The Deemed Export Benefit is available on supply of specified goods by a domestic manufacturer to E&P companies for petroleum operations in terms of Para-7.02(f)(i) of Foreign Trade Policy- 2015-20 (FTP) which states as under:

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

In terms of said provisions at Para-7.02(f)(i) of FTP, the domestic manufacturer avails the benefit of deemed export under Para-7.03 read with Para-7.04 on supply of specified goods to E&P companies for petroleum operations undertaken under PEL/ML/under specified contracts/NELP/MFP/CBM, where contract has been awarded under procedure of ICB.

However, the Govt. of India, Ministry of Finance (Dept. of Expenditure) vide F.No. 12/17/2019-PPD dated 15.05.2020 has amended the General Financial Rules, 2017, inter-alia, that no Global Tender Enquiry (GTE) shall be invited for tender upto Rs. 200 crore. Further, it has also been advised to mandatorily procure specified goods through Government e-Marketplace (GeM) Portal even in cases where tender value is above Rs. 200 Crore.

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

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

deemed export on supply with tender value upto Rs. 200 Cr. as well as for procurements through GeM Portal.

Justification

Here, it is pertinent to mention that, there is relaxation from condition of procurement of goods under procedure of ICB for setting up of Mega Power Projects and for Nuclear Power Project at Para-7.02(f)(iii) & 7.02(h)(iv) respectively of extant FTP. Thus, there is basis to consider the instant proposal for Oil & Gas Projects / Petroleum operations also.

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

Existing Law

OID Cess is levied on crude oil in terms of "The Oil Industries (Development) Act, 1974. Till February 2016, OID Cess was levied at specific rate (Rs. / MT) and revised from time to time keeping in view prevailing crude oil prices. Considering unprecedented reduction in crude prices, OID Cess was reviewed and revised from Rs. 4,500/MT to ad-valorem 20% w.e.f. 01 March 2016.

Background

Though, in the Budget, introduction of ad-valorem OID Cess rate was envisaged by the Government as relief for the industry, its unduly high rate at 20% has impacted industry adversely. OID Cess is levied @ 20% only on crude oil produced from nominated blocks and Pre-NELP Exploratory Blocks. Most of the Fields of the Pre-NELP and nomination regime are already in the decline stage and need more initiatives and expenditure to maintain/enhance the existing production level. Further OID Cess is levied only on crude oil produced domestically. Thus, it places domestic crude oil producers at a significant disadvantage vis-à-vis imported crude oil. This levy, thus, is against the very spirit of "Make in India" and needs an amendment. Besides OID Cess, other statutory levies viz. royalty (@ 10% and 20% on offshore & onshore production respectively) and VAT (@ 5%) are also paid. Recently, w.e.f. 01.07.2022, Special Additional Excise Duty (SAED) of Rs.23,250/- per MT (revised to Rs.17,000/- per MT w.e.f. 20.07.2022 and to Rs.17,750/- per MT w.e.f. 03.08.2022) has also been imposed on domestically produced crude oil. Royalty, OID Cess and SAED are production levies and not pass through to Buyers and form part of cost of production. It makes many new development projects economically unviable. During low crude oil price regime, it also results into significant amount of impairment loss of upstream assets.

Recommendation

It is requested that OID Cess be abolished in respect of nomination/pre-NELP blocks.

Justification

Exemption of Cess will improve the techno-economics of these Fields for further production. The increased liquidity will encourage the contractor for continuous investment in these fields for maintaining/enhancing the production. This would make more projects viable and with increased production, any balance revenue gap will be compensated. In case, Cess is not abolished, considering the minimum price required to meet its cost of production and to sustain the operations, it is recommended to levy OID Cess based on a fair graded system linked to crude oil prices to calibrate volatility in prices:

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

Downstream

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

Background

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

India has approximately 7,500 km long coastline, 14,500 km of potentially navigable waterways and strategic location on key international maritime trade routes. There are about 32,000 nos. of Foreign vessels come across these routes and procure Bunker Fuel. The charge of GST on supply of Bunker Fuel, has led the Foreign vessels to avoid refueling in India and to opt out to other countries located en-route like Sri Lanka, Singapore or Fujairah (UAE) etc. diminishing the bunker fuels demand at Indian ports.

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

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

Suggestion

Therefore, a timely action would not only help in restoring the Bunker fuel sales and improved collection of foreign exchange but also bring back the India's position amongst International Ship owners and traders. In view of this, it is suggested that necessary amendments may be introduced in GST Act for treating the supply of Bunker Fuel zero rated.

2 Excise Duty (SAED) levied on Export of HSD, MS and ATF wef 01.07.2022 (Windfall Tax on Exports)

Excise duty levied on the export of the MS, HSD and ATF (including supplies to SEZs) which was not applicable till 30.06.2022. This has resulted in even payment of SAED even on transfer of these products from one unit (in DTA) to its another unit (in SEZ) of same entity, even though there is no Sale or realization in the transaction. This leads to unwarranted increased costs for the industry.

Suggestion

It is requested to review this levy. The justification of the levy as per the Official Press Release of the GOI is the non-availability of MS/HSD/ATF to domestic markets. Infact, to ensure that, separate DGFT notification has already been issued making it compulsory to supply to the domestic market of the specified %age of production.

Further to ensure the above requirement of domestic supplies provision be complied, provision be made that any export upto, say 50%, of the monthly production be subject to duty of exports, and exports beyond this 50% of monthly production be exempt from any export duty.

It may be noted that this levy of duty on export tantamount to an unequal levy which is affecting the standalone refineries only as the refineries with wide network of retail outlets always enjoy the retail margins which the standalone refineries are denied. Further standalone refineries are balancing refineries and after the offtake by the OMCs the balance have to be necessarily exported for continuation of manufacturing operations.

The exemption from SAED on transfer from DTA to SEZ merits consideration as it will not only bring parity of cost of operations but also encourage investments.

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

Background

a) The weight and volume of petroleum products by its inherent nature is dependent upon the temperature and density.
b) The transmission process of the petroleum products, either by direct pipeline, vessel, tank wagon, tank lorry etc. the company incur loss due to variation in temperature and / or density. This loss 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.
c) In the Excise law, there were various Government notifications in this regard.
d) The current GST law does not provide any dispensation on account of loss of petroleum products which occurred either during transit or during storage.
e) Under GST law, tax is payable based on the supply from the refineries on the basis of quantities dispatched, OMCs will not be able to take the ITC of GST for quantities lost as the receiving location will not have such quantity of physical stock.

Suggestions

It is recommended that considering the inherent nature of petroleum products covered within GST, GST paid on loss should be allowed as ITC or a mechanism to be put in place to compensate Oil companies on such stranded taxes.

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

Background

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

Suggestion

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

5 Removal of tax on Freight Charges for LNG import

Background

With effect from 22nd January 2017, the new Notification on service tax imply that Prepaid Ocean Freight (OFR) at Origin on Imports into India by way of Vessel is subject to Service Tax (now GST). This law applies to all Cargo that arrives in India on Vessels. Therefore, Tax is payable on import freight for Container Cargo, Bulk Cargo, RORO and even LNG.

This additional tax on import freight of LNG cargo has resulted in increase in cost of LNG for the importer.

Suggestion

The GST on import freight for all LNG cargoes should be withdrawn to promote the usage of environmentally clean fuel in the country. This will result in higher penetration of gas as an energy option would also mean lesser pollution, reduced oil dependency.

6 LNG loaning and borrowing of in-tank quantity, at LNG terminals handling co-mingled goods with virtual segregation of title stocks, should be specifically kept out of purview of taxable transactions

Background

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

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

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

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

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

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

Suggestion
In order to reduce environment pollution, oil industry is undertaking major capital investment to introduce cleaner fuels in the Country. Major Capital Goods, input and input services are used in setting up of process units required for Refining of crude oil that produces Intermediate streams. In order to leverage the refinery capabilities which are located in different States, inter unit transfer of Intermediate streams for manufacture of MS/HSD will result in optimum utilization of the refineries which is in the best interest of the oil industry as well as the Country. Providing exemption on transfer of intermediate products from one refinery to another would without any loss to the exchequer will result in optimum refinery utilization and which would also result in better resource mobilization to both Central and State Governments.

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

Background
In the previous budget Central Government has reduced Basic Customs Duty (BCD) from 5% to 2.5% on the heavy feedstock falling under Customs Tariff sub heading 2710 19 (viz. Fuel Oil, Straight Run Fuel Oil, Low Sulphur Wax Residue, Vacuum Residue, Slurry and Vacuum Gasoil). While reducing BCD, Central Government kept IGST intact which is 18%. Therefore, it is still not lucrative to refiners to import Feedstock after reducing BCD. The main reason is that refiners can not avail input tax credit due to finished products falls under ambit of Central Excise and not in GST.

Presently various feedstock used in the petroleum refinery as alternative input to Crude Oil. The Indian Refineries have made substantial investment for installing units in the refinery which are technically capable to process these feedstock. It is challenging to source heavy Crude Oil in the global market smoothly due to current geopolitical situation. The use of these feedstock will reduce dependability of India on Crude Oil and this will enable refineries optimal utilization of internal units. Thus it is highly strategic for India to move for heavy feedstock as alternate to Crude Oil. Therefore, considering alternate option to Crude Oil and economic feasibility of these heavy feedstock for processing in refineries critically requires Government support by treating them at par with Crude Oil. Currently, Crude Oil import attract very minimal CVD of Rs. 1/MT.

Suggestion
To remove disparity, with reference to the feedstock procured for "processing in the refinery", it is recommended for import of heavy feedstock (HS Classification 2710 19) should be exempted from IGST levy.

9 Availability of Input Tax Credit on Inputs for construction of cross-country petroleum and gas pipeline/ Rationalization of GST rates on Inputs used for construction of cross-country petroleum and gas pipeline

Background

The goods and services purchased for construction of cross-country petroleum and natural Gas pipeline such as pipes, pipe fittings, gas compressors, metering instruments, works contract services, etc are not eligible for (input tax credit)ITC (under GST regime and attract GST up to 28%) on Gas compressors.

Applicability of high GST rate on goods and services required for laying the pipeline without benefit of ITC substantially increase the cost of such projects .

Suggestion

Pipeline transfer is a very important means of environmentalist protection as it saves major fuel consumption in logistics.

Since the goods and services purchased for construction of cross-country petroleum and gas pipeline such as pipes, pipe fittings, gas compressors, metering instruments, works contract services etc. are not eligible for input tax credit (ITC), GST on such goods will increase the cost of pipeline projects .Therefore, it is requested that input credit of applicable GST on such goods and services should be permitted, alternatively they should be exempted or considered at lower rate of 5%.

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

Background

Under the present form of GST, even though major petroleum products have been kept out of GST ambit, however, exports of such goods are considered 'Zero Rated' (u/s 16 of IGST Act) to enable them to avail Input Tax Credit on such exports to avoid exporting taxes.

While going through the GST provisions relating to Zero Rated supply, an ambiguity has arisen regarding supply of ATF to foreign going airlines. Under the GST provisions, the term 'exports of goods' have been defined, as taking goods out of India to a place outside India. Though, the ATF is supplied to a foreign going aircraft for the purpose of "consumption outside India" but may not get covered directly within the definition of export of goods to treat them as zero-rated supply as it is being "supplied within India".

Suggestion

Till the time ATF is included under the GST, it is requested for insertion of suitable explanation as per following alternatives to amend the definition of export of goods or zero-rated goods under the IGST Act to enable us to avail ITC treating the supply as export:

Amendment sought in export of goods definition u/s 2(5) of IGST Act:
"Export of goods", with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes supply of Aviation Turbine Fuel to a foreign going aircraft"

Alternatively, the definition of Zero-Rated supply, explained under Section 16 of IGST Act, may be amended to include the following supplies:

- export of goods or services or both, or

- supply of goods or services or both to a Special Economic Zone developer in SEZ unit
- supply of Aviation Turbine Fuel to a foreign going aircraft.

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

Background

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

- Petroleum products manufactured in oil refineries are stock transferred out of the State to other States in order to cater the demand in those States and to maintain un-interrupted supply of these essential commodities across the Country. In some cases, goods are further stock transferred to another State due to change in mode of transportation like pipeline to railway/road and other logistic requirement. Since, GST is a State specific levy, every State has to apply its reversal ratio based on taxable & exempted turnover of that State.
  The above provision is resulting into reversal of ITC on account of same goods in multiple States.

- Currently for the purpose of Common Input Tax reversal the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A] of List I of the Seventh Schedule to the Constitution. Entry 84 includes " Duties of excise on the following goods manufactured or produced in India, namely:— (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel; and (f) tobacco and tobacco products"

  This Entry covers excise duty on manufacture of petroleum products in India, which are paid when petroleum products are removed from the place of removal. This entry does not include duties, which the product suffers as Customs Duty [Entry No. 83 of List I of the Seventh Schedule to the Constitution.] on Import, which is equivalent to the amount of total excise duty which would have been levied if the same product was manufactured in India.

  View above the exempt turnover for the purpose of Rule 42 & 43 will include the amount of excise duty paid as Customs duty on Import and subsequently sold in India. This will adversely affect the common credit available on GST products.

Suggestion:

For a) Since, the product has already suffered ITC reversal in the manufacturing State, the same should not be included in turnover of the subsequent States.

It is worth mentioning here that under Cenvat Credit Rules, 2004 also, the value of traded goods was considered at only 10% value of traded goods for calculating reversal ratio for common input services.

For b) Entry No. 83 (excluding BCD) of List I of the Seventh Schedule to the Constitution to be included by amending the explanation under Chapter V- Input Tax Credit of CGST Rules, 2017 to determine the value of non-GST supply excluding such duties.

12 Exempt GST on sale of lubricants to foreign bound vessels

Background

Before the implementation of GST, lubricants supplied to foreign -bound vessels were exempt from tax as the sales was a "deemed export" and hence, no tax was attracted on the sale. However, under the GST regime, the "place of supply" for sale of lubricants is the location where the goods are onboarded on the vessel. As the goods are on-boarded at Indian ports, the destination of the vessel become immaterial and the transaction is subject to GST as the place of supply is India. The change in tax treatment of such transaction has hugely impacted the Oil and Gas Industry, making bunkering at Indian ports a less-preferred option in comparison to other ports where the supply is tax free. After considerable representations made by the industry bodies, GST rate was reduced from 18% to 5% for bunker fuel supplied at Indian ports. This concession, however, is not applicable to lubricants and lubricants supplied to vessels at Indian ports continue to attract GST at 18%, making the Indian market uncompetitive for refueling.

Suggestion

It is requested that supply of lubricants to foreign bound vessels be treated as exports and exempt from tax as the recipient of the goods is situated outside India , the destination of the vessel is outside India and the revenue for such supplies results in a positive NFE. If not exempt, it is requested that lubricants be treated on par with bunker fuel and be given the same benefit of lower GST rate as bunker fuel to boost exports.

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

Background

As per CGST Rules, in case Input service distributor (ISD) wants to take RCM supplies, a separate normal registration is required. Further, rule 54 (1A) provides that such common RCM supplies can be transferred to ISD by raising an invoice.

Accordingly, following three documents are prepared for a common RCM inward supply received by ISD:

- Payment of tax under RCM by normal registration and generation of tax invoice as recipient in case of unregistered supplier.
- raising an invoice under rule 54(1A) of CGST Rules, 2017 from normal registration for such common RCM on ISD registration.
- raising an ISD invoice on respective recipient from ISD registration.

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

Suggestion

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

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

- In order to meet the LPG Demand and improve the logistics efficiency PSU OMCs procure LPG from other PSU OMCs, Stand Alone Refineries (SARs) like Reliance Industries Ltd (RIL), Nayara Energy etc. and fractionators like ONGC and GAIL.
- Based on the GST notifications issued by CBIC, LPG procured from SARs, fractionators like ONGC/GAIL and OMC's for onward intended supply of same by PSU OMCs to

household domestic consumers/NDEC customers though their distributors are being levied at concessional rate of 5% GST. Further, OMC distributors are also charging 5% GST on supply to household domestic consumers/NDEC customers.

- CBIC issued Circular No. 80/54 /2018-GST dated 31st December, 2018, where it is clarified that LPG supplied in bulk, whether by a refiner/fractionator to an OMC or by one OMC to another for bottling and further supply for domestic use will fall under the S. No. 165A of the notification No. 1/2017- Central Tax (Rate) dated 28.06.2017 and shall, accordingly, attract a GST rate of 5%, with effect from 25.1.2018.
- The above circular has raised concerns on the GST rate of LPG supplied in bulk, whether by a refiner/fractionator to an OMC or by one OMC to another for bottling and further supply for domestic use for the period 1.7.17 to 24.1.2018 (prior to 25.1.2018) .
- Subsequent to issue of the aforesaid clarification Show cause notices have been issued during November 2018 by Commissioner of GST, Gujarat on M/s Nayara Energy, Reliance Industries Limited, Gujarat, GAIL and ONGC demanding differential GST of 13% for sales effected by it during the period 01.07.2017 to 24.01.2018 on the ground that supplies of LPG by these companies to PSU OMCs for onward supply to household domestic customers/NDEC customers is not entitled for concessional rate of tax of 5%. Also GST Audit Cell of Madhya Pradesh has issued Audit Memo observing short payment of GST of 13% for the said period on GAIL .
- The clarification has resulted in an unintended consequence as the LPG so purchased is always used for domestic purposes only, omitting only a period from 01.07.2017 to 24.01.2018 appears unintended and is not justified.

Suggestion

In view of the above it is submitted that suitable clarification may be issued so that transactions between PSU OMCs, SARs/Fractionators with PSU OMCs, inter-state stock transfers of PSU OMCs, and PSU OMCs to the retailers for specific end use for LPG are covered under entry no. 165 & 165A of the Schedule I for the levy of 5% GST right from 1st July 2017 and disputes raised by the field formation are avoided.

15 Amendment in GST Rate for Inputs and Services related to Domestic LPG

Supply of LPG domestic to domestic household consumers /Non Domestic Exempted Categories (NDEC) customers, is taxable at 5% GST in terms of entry 165A/165 of Schedule I of GST notification no. 1/2017-CT(rate) dt. 28.06.2017. Supply chain of LPG Domestic involves regular procurement of certain capital goods and services of which mainly consist of empty cylinders, blending services, bottling services and transportation services. Prevailing rate of tax on almost all of these supplies is 18%. There exists an anomaly in tax structure for the business of marketing LPG Domestic (supply to household domestic consumers / NDEC customers) as tax rate on finished product is 5% whereas related capital/inputs are taxable at higher rate of tax. Though, Input tax credit (ITC) for the aforesaid items is admissible to OMCs, however, there has been considerable increase in ITC due to anomaly in rate structure i.e. higher tax structure for inward supplies and lower tax structure for its related outward supplies resulting in accumulation. This has also been increased due to spending by OMCs for increased demand and new connection under Govt. of India's flagship programme of Pradhan Mantri Ujjawala Yojana (PMUY) which is likely to continue for few more years.

Accordingly, there is an urgent requirement to re-align the rate structure for major inward supplies related to LPG Domestic supply chain at par or at least closer to the rate of tax applicable for LPG Domestic product. In this regards, suggested rate of tax for the aforesaid major regular inward supplies being used for marketing of LPG Domestic for supply to household domestic consumers / NDEC customers, is appended as under-

Particulars	HSN/SAC	Prevailing rate of GST	Suggested rate of GST	Justification
14.2 KG Empty LPG Cylinders for supply of LPG Domestic	7311	18%	12%	Major constituent for LPG Cylinders manufacturing are taxable at 18%, therefore, 5% GST rate may result into inverted structure for cylinder manufacturer. Accordingly, 12% GST is suggested which would be revenue neutral rate.
Services of LPG Domestic Blending (i.e. Propane and Butane blending)	9988	12%	5%	Blending activity does not involve much inputs, therefore, it suggested to reduce the rate of tax at par with LPG (Dom i.e. 5%.
Services of LPG Domestic Bottling (Bulk LPG to cylinders)	9985	18%	5%	Bottling activity does not involve much inputs, therefore, it suggested to reduce the rate of tax at par with LPG (Dom i.e. 5%.
Services of LPG Domestic Transportation thru Pipeline	9965	18%	5%	The rate of tax on other mode of transportation such as rail, vessel and road are taxable at 5% in terms of sr. 9(i), 9(ii) & 9(iii). Therefore, it suggested to reduce the rate for transportation of LPG Domestic by pipeline at par with other mode of transportation i.e. 5%.

Accordingly, it is submitted that the rate of tax on aforesaid major regular capital / input services for LPG supply chain may be reduced, as suggested, which would further add values to the supply chain of LPG Domestic. This on the one hand is revenue neutral in nature and on the other hand would provide greater synergies to the entire supply chain of LPG (Dom) in the country by eradicating the prevailing anomaly including disproportionate ITC accumulation.

Natural Gas

1 **Rationalization of GST rate on services of transportation of Natural Gas through pipeline**
It may be observed that presently GST rate on the services of 'transportation of Natural gas through pipeline' is applicable @12% (with ITC benefit) and @5% (without ITC benefit).

Further, Natural gas is a much cleaner source of energy than other alternative available and is primarily used in priority sectors like Power, CNG and fertilizer sector. The high rate of GST on the services of transportation of goods by pipeline will make Natural Gas costlier for power

and CNG sector where Input Tax Credit of GST paid on transportation of Natural Gas is not available as the output product is not covered / exempted under GST. Further, this will also enable Natural Gas to compete with other alternative polluting fuels like Furnace Oil, Naphtha, etc.

Suggestion
It is proposed that GST @ 5% applicable on the services of transportation of goods by pipeline may be provided with ITC Benefit.

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

Background
Government is promoting production and use of Bio Gas and CBG which is presently attracting GST @ 5% unlike Natural Gas/CNG which attracts VAT/Excise duty. With a view to make the sale of Bio Gas/CBG commercially viable, it will have to be blended with Natural Gas /CNG for further sale. However, after its blending with Natural Gas/CNG, it will attract VAT/Excise duty as applicable to Natural Gas/CNG and Input Tax credit of GST paid on procurement of Bio gas/CBG will also not be available.

This results in significant increase in tax incidence of quantity of bio gas/CBG and make it difficult to market the same. In the Budget 2023, exemption from payment of Central Excise duty was provided on Compressed Natural Gas (CNG) blended with biogas or Compressed biogas (CBG) to the extent of GST paid on Bio-Gas /Compressed Bio Gas contained in such blended CNG. Though a marginal relief has been provided by way of exemption to the extent of GST paid, still there will be substantial impact on account of remaining Excise Duty and VAT on the blended CNG.

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

3 GST Schedule Entry for LPG

Background
Entry 165 & 165 A of Schedule I to notification ref. 1/2017-CT (rate) dt. 28.06.2017 provide HSN '2711 19 00' for Liquified Petroleum Gas (LPG) Domestic

Similar entry also exists in sr. 165 and 165A of Schedule I to notification ref. 1/2017-IT (rate) dt. 28.06.2017 and notification ref. 1/2017-UTT (rate) dt. 28.06.2017

Explanation (iii) to the said notification provide that the "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

Customs tariff entry for LPG Domestic was amended vide the Finance (No. 2), Act 2019 (notified effective 01.01.2020) as under-

2711 19 10 - LPG (for non-automotive purposes) conforming to standard IS 4576

Accordingly, effective 01.01.2020, the tariff entry in Customs Tariff is '2711 19 10' however, under GST rate Schedules, the erstwhile entry i.e. '2711 19 00' is still continued, which is not available in amended Customs Tariff, leading to anomaly in two tariff entries for same product.

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

4 To allow storing of GST ITC invoices electronically

Background
Currently, as per Section 16 of CGST Act, 2017 all the invoices on which GST Input Tax Credit is availed are required to be stored physically. It is very difficult to manage movement of approx. 10,000 documents a month from one department to another department till the time ITC is availed and further to store the same in safe custody and preserve it for a minimum of 7 years.

Suggestion
The government has made e-invoice compulsory for the assesses having turnover of more than 5 crores. Apart from GST Tax Invoice, e-invoice details are being uploaded by all vendors which is available on GST Network. It is suggested that physical copy of Tax Invoice should not be insisted upon and the same can be dispensed with

5 Requirement of state-wise trial balance

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

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

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

6 Formula for reversal of Input Tax Credit

Background
Under GST law, the formula for reversal of credit is on the basis of turnover of the GST and Non-GST transactions. The formula prescribed under GST in case of reversal of input credit tax credit takes into account taxable as well as exempt supplies which includes non-GST supplies. Currently, since LNG is outside the purview of GST, the proportion of exempt supplies is larger than the non-exempt supplies due to which there is a huge loss of credit to LNG sector.

Suggestion
It is proposed that formulae for reversal should be based on volume or any other method which is justifiable for natural gas.

General

1 C-Form eligibility of petroleum refinery against purchase of Natural Gas and Crude Oil

In the Union Budget 2021, the Govt. by amending Section 8 (3) (b) of the CST Act has restricted the eligibility to purchase Natural Gas and Crude Oil against C-Form for use in the manufacture or processing of non-GST goods (MS, HSD, ATF) for sale. However, the process of production in any oil refinery involves production of both non-GST goods i.e. (HSD, MS and ATF) and GST goods i.e. (LPG, Naphtha, Fuel Oil, Pet-coke, Sulphur and Kerosene) out of the common input i.e. Crude Oil. Although the prime object of setting up of a refinery is to produce transport fuels (HSD, MS & ATF); production of other products is incidental.

Given the above process requirement of a refinery, it is a common understanding of the industry that refineries are eligible to obtain C-Form for the entire quantity of crude oil/natural gas sourced from outside the State. However, the ambiguity surrounding the issue is an area of great concern and shouldn't result in a situation of hefty demands and consequent litigations.

It is also pertinent to note that the import of Crude in the country attracts Customs Duty @ Rs. 57.2 / tonne and import of LNG [a substitute of domestic natural gas] attracts a total customs duty of 2.75% on ad valorem basis.

Thus, imposition of additional taxes (by way of denying concessional CST) on procurement of Crude or Natural Gas from domestic sources makes the import of Crude and LNG more competitive at the cost of domestic producers. The burden of additional tax has to be borne effectively by the domestic producers of Crude Oil and Natural Gas.

Suggestion-

In view of the high impact of CST, it is requested that GOI may make suitable amendment in Central Sales Tax (Registration & Turnover) Rules, 1957, that if Petroleum Crude/Natural Gas is purchased by a Petroleum Refinery in the course of inter-state trade or commerce, such procurement shall continue to be eligible against C-Form for all quantities purchased on such basis.

2 Concessional rate of GST for Research & Development

Recommendation:

GST COUNCIL in its 47th meeting held in June 2022 has proposed to withdraw the benefit of concessional rate of GST @5% applicable to various Research Institutions. As per the press release of the said meeting, normal applicable rates of GST (5%, 12%, 18% & 28%) shall be applicable for all such institutions w.e.f. 18.07.2022. R&D spending helps in developing unique products for the economy and particularly for defence purposes. It is suggested that the concessional rate of 5% for R&D can be considered.

3 Reversal of Input Tax Credit on Inputs and Input Services in proportion to Sales Turnover of Non-GST output.

The amount of the input tax credit is reversed on account of effecting non- GST supplies namely MS, HSD and ATF mainly.

Suggestion

Provisions be made in the CGST Act so that the input tax credit is not restricted in the case of sale of MS, HSD or ATF. Currently a major part of the input tax credit gets reversed on account of the sales of MS, HSD and ATF being non- GST product which affects the profitability/survival of the business.

4 CST levied on the Inter State movement (Sale) of the MS and HSD in course of Sale.

Presently Inter State Sale of the MS and HSD entails levy of CST of 2% against form 'C'. Over and above local sale of the product entails the Local Sales tax of the Respective states.

Suggestion

It is suggested that the Inter State Sale of MS and HSD between Inter Oil companies be levied 0% CST against Form C to avoid the price disparities on the Inter State movement of Motor Fuel. It may be noted that there is no revenue loss to the states concerned as the respective states enjoy the Local Sales Tax on the actual consumption in the state irrespective of where it is produced.

5 **Inter State movement of MS and HSD otherwise than by way Sale.**

Submission of Form F is subject to satisfaction of the assessing Authority thus discourages the ease of doing business.

Suggestion

Provision be made for the Oil Producing companies/Refineries for transfer of MS and HSD from Refinery to Branch/Depot on interstate basis against Form F as final and binding on the Assessing Authorities. This provision will not only enable the stand-alone Refineries to expand the market but also result in import reduction of petroleum products into the country for the needy locations and help in maintaining continuous supply in Domestic market.

6 Permit Oil Marketing Companies (OMC) to pass on the benefit of GST charged on throughput fees for fuelling the aircraft for domestic operation

Background

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

As per the current provisions of the VAT/sales tax laws for the purpose of valuation both the components (i.e. through put charges and into plane charges and GST thereon) shall be considered, which is resulting in double taxation of the same transaction twice once under the GST and second time under the relevant state VAT/sales tax laws.

Suggestion

OMCs should be permitted to pass on the benefit of GST charged on throughput fees for fuelling the aircraft for domestic operation as this would eliminate the cascading effect of tax and facilitate availment of the input tax credit (ITC) for the Carrier. Upfront exemption to GST on throughput fees pertaining to supply of ATF to foreign bound aircrafts may be notified.

Another option is Government may also consider issuing a notification for exclusion of through put charges and storage charges component for the purpose of valuation under the state VAT/sales tax laws.

7 Provide ITC benefits for non-GST exports/deemed exports as well

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

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

8 CSR projects gets treated as Sponsorship.

Background
Person executing the Project (CSR Project) charges GST thereon. Additionally same being treated as sponsorship, all sponsorship activities are subject to payment of GST under reverse charge once again.

Suggestion
Corporates are mandated to undertake projects under CSR. Such projects amount to sponsorship, additionally GST has to be discharged on reverse charge on the same. It is requested to exempt GST on all the CER projects on reverse charge basis.

9 Corporate Environment Responsibility (CER) projects gets treated as Sponsorship.

Background
Person executing the Project (CER Project) charges GST thereon. Additionally same being treated as sponsorship, all sponsorship activities are subject to payment of GST under reverse charge once again.

Suggestion
Corporates are mandated to undertake projects under Corporate Environment. Responsibility. Such projects amount to sponsorship, additionally GST has to be discharged on reverse charge on the same. It is requested to exempt GST on all the CER projects on reverse charge basis.

10 Restriction in availment of input tax credit because of additional requirement of GSTR 2B reconciliation.
The input tax credit is required to match in respect of invoices/debit notes whose details are uploaded by supplier in GSTR-1 return under section 37(1) and the same should be reflected in GSTR2B. However as the ITC as is not taken in the same month but subsequently hence the ITC availed will not match with GSTR 2B. However the same is reflected in GSTR2A. Further if amount is not deposited by the vendor while filing GSTR3B but deposited through DRC01, there is no mechanism to reconcile and avail the credit. Further the SEZ BOE's are not automatically reflected in GSTR2B/GSTR2A.

Suggestion
The credit be allowed to be taken basis the GSTR2A. Further mechanism to be incorporated to avail the credit deposited vide DRC01. Also proper mechanism be ensured so that the SEZ BOE's are automatically populated in GSTR2A/2B.

11 Non-availability of filling of GST Return without payment of Tax

Suggestion
Currently last day of payment of tax is 20th of succeeding month and filling of return is also on the same day of 20th of succeeding month.

Payment of tax and return filling on the same day leads to overload of the system. It is suggested that payment be made by 20th of the month and return filling be relaxed by day or two say upto on or before 22nd. This legal compulsion of payment by 20th will help in collection of tax dues by 20th and its remittance. And, relaxation on filling of Return, will result in easy way of filling return on 22nd.

12 One time settlement / Amnesty scheme under VAT and CST for Union territories

Background
After the transition to GST, taxpayers intend to settle the past litigations and assessments under the erstwhile VAT and CST Law.

Various State Governments have initiated various tax/administrative measures to ensure a seamless transition to the GST regime. One such measure is that several States like Rajasthan, West Bengal, Uttar Pradesh, Bihar, Maharashtra, Kerala, Himachal Pradesh, Gujarat & Haryana have rolled out Amnesty Schemes for tax payers to close past period litigations.

These schemes have helped the States in collecting additional tax revenue and in reducing the cost of litigations by clearing backlog of cases which would otherwise have consumed administrative time and cost.

This will enable the revenue authorities in the union territories to focus on robust GST administration and related compliances including revenue audit work etc.

The Central Government had announced Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 for the erstwhile Service Tax and Excise matters which shows the intent of the Government in enabling the resolution of past litigations of the tax payers in the best possible manner.

Further, it would be financially and operationally beneficial for the tax payers and help in overcoming practical challenges; especially since there has been a transition from the erstwhile Laws to GST.

Suggestion
In line with the amnesty schemes of the States as well as the Centre for the erstwhile Laws, it is requested that roll out of an Amnesty Scheme/One time settlement scheme for the Union Territories also should be considered under VAT and CST Laws.

13 Introduce **Amnesty scheme in Customs related issue**

Background
Various issues are pending with Customs Authority for long period due to disputes in imports / exports, unavailability of clarifications under Customs Law, procedural lapse due to wrong interpretation. Demands with penalty and interest were levied from departments. Industries are suffering from these litigations and have adverse impact on financials. Further it increases transaction cost.

Suggestion
The Government of India announced the new foreign trade policy (FTP) on March, 31, 2023. It included an amnesty scheme for exporters for one-time settlement of default in export obligation by the holders of Advance and EPCG (Export Promotion for Capital Goods) Authorisations, it will be prudent to allow voluntarily payment to close / settle issues from industries to reduce litigations and further tax burdens in the form of interest cost till outcome of decisions from CESTAT or Courts, it is recommended to introduce Amnesty scheme in Customs related issues.

14 Levy of interest in case of delayed payment of custom duty

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

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

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

15 Filing of Bill of Entry as per Section 46 of Customs Act 1962

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

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

16 Mechanism of Special Valuation Branch ('SVB') in Customs

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

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

17 Expand the scope of Dispute Resolution Committee ("DRC")

Background

Finance Act, 2021 introduced a New dispute resolution scheme ("DRS") for resolving specified disputes in relation to specified Taxpayers and New Dispute resolution committee (DRC) to be set up to undertake dispute resolution in a faceless manner involving dynamic jurisdiction. Constitution of DRC and the overall scheme will be notified.

The DRC will have powers to reduce or waive any penalty or grant immunity from prosecution where dispute is resolved through this forum.

The scheme is limited to small taxpayers where the returned income is less than Rs. 50 lakhs and disputed addition is less than Rs. 10 lakhs. The rationale for keeping out mid-sized and large sized taxpayers outside the proposed scheme is not clear.

Suggestion

It is recommended that the current threshold limits of returned income of Rs. 50 lakhs and disputed amount of Rs. 10 Lakhs should be eliminated to cover mid-sized and large sized taxpayers as well. It should also be clarified whether DRC can settle the pending litigation cases.

18 Set Off of Refunds against Tax remaining Payable

Background

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

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

Suggestion

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

19 Interest liability under rule 37 to be done away with

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

Sometimes in the event of dispute w.r.t. quality of products or services payment is kept on hold beyond 180 days and later payment is made on resolution of the dispute. The above provision regarding reversal with interest creates unnecessary burden on taxpayer, even when tax would have been rightfully paid by supplier to government and same is getting reflected in GSTR 2B as well. Also, there is no loss to revenue in the subject case.

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

20 Allowance of ITC on pipeline laid outside factory

Background

Section 17 of CGST Act, 2017 restricts the input tax credit on pipeline outside factory premise. Pipeline being the transport mode for transportation of GST products such as LPG, SKO, and disallowance of on the same is an additional financial burden on oil companies.

Suggestion

Notification may be issued amending the explanation provided in section 17 to provide that input tax credit on pipeline laid outside factory for transportation of GST petroleum product shall be admissible.

II) Excise Duty

Upstream

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

Background

SAED has been introduced by Ministry of Finance @ Rs.23,250 per MT on production of Crude Oil with effect from 1st July, 2022. As per media reports, SAED has been imposed by the Govt. due to extraordinary increase in prices of Crude Oil and that the levy is to be reviewed on fortnightly basis. Accordingly, it was reduced to Rs. 8,000 per MT and presently stands at Rs. 12,100 per tonne Such levy in addition to all other existing levies, is significant considering that the Crude Oil prices are quite volatile averaging only USD 60/bbl in last five years.

Suggestion

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

Justification

The levy is over and above heavy burden of royalty (20% onshore/10% offshore) and OID Cess (20% ad valorem). Further, the levy is calculated on per tonne of production rather than as a percentage of realized price, thereby causing hardship to oil producers when the prices get reduced. The levy has an adverse impact on exploration and development capex proposals.

2 Removal of levy of Basic Excise Duty (BED) and National Calamity Contingent Duty (NCCD) on Domestic Production of Petroleum Crude

Background

NCCD was introduced by Ministry of Finance @ Rs 50 per MT on indigenous crude oil. This duty was to be valid for one year i.e., up to 29.02.2004 so as to replenish the National Calamity Contingency Fund, but it is still continuing. Accordingly, Oil Industry has been representing from time to time for removal of NCCD. Further, Basic Excise Duty (BED) @ Rs. 1 per MT was introduced through Finance Bill, 2019, and Special Additional Excise Duty (SAED) was introduced from 1st July, 2022 leading to avoidable hardship of compliance of Excise Law.

Suggestion

The NCCD along with BED on production of domestic crude oil may be removed with immediate effect which would facilitate the compliance as well as ease of doing business.

Justification

The levy adds to the complexity of dual compliance under the E&P Industry and hence removal of BED & NCCD would be a step towards ease of doing business.

3 Supplementary Note to Chapter 27- Customs Tariff Act

Background

Vide Finance Act, 2019, Supplementary Note to Chapter 27 has been substituted as under:
"(17) in Chapter 27, —
(i) for the Supplementary Note, the following Supplementary Note shall be substituted, namely: —
'Supplementary Note:
In this Chapter, reference to any standard of the Bureau of Indian standards refers to the last published version of that standard.

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

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

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

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

> (iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

Suggestion

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

4 Removal of Customs duty on RLNG

Use of Natural Gas as fuel is being encouraged and promoted for cleaner fuels and to reduce carbon emissions. However, the customs duty on RLNG (Liquified Natural Gas) imports is being maintained at 2.75 %, whereas the customs duty on crude is NIL. Exemption of RLNG from customs duty would reduce the procurement cost and encourage import of RLNG.

Downstream

1 Upfront Exemption of Duties of Excise on HSD

Background

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

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

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

Suggestion

Upfront exemption on procurement of HSD required for petroleum operation may be provided without any condition.

Justification

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

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

Background

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

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

Suggestion

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

3 Custom circular 15/2002 -Cus dated 25.02.2002- Clarification as oil tankers covering more than one Indian port to a port outside India and vice-versa

Background

Custom circular 15/2002-Cus dated 25.02.2002, allows a Indian flag foreign going vessels operating in routes covering more than one Indian port to a port outside India and vice versa, to carry coastal containers along-with imported/export cargo between two Indian ports e.g. ships operating on route from Nhava Sheva-Cochin-Tuticorin to say Australia and vice-versa can be utilized to carry domestic containers from Nhava Sheva to Cochin and Tuticorin while en-route to foreign ports and similarly on return voyage, they can be utilized for carrying domestic containers from Tuticorin to Cochin and Nhava Sheva. The facility helps in better capacity utilization of ships and reduce the transaction cost of exports and imports. While the circular addresses the coastal container vessels, it is silent about similar voyage undertaken by an "Oil Tanker"

Issue

Oil Refining & Marketing Companies undertakes coastal movement of petroleum products for supplying to the length and breadth of the country. Beside these coastal movements, companies have also been engaged in exporting petroleum products to its neighboring countries like Sri Lanka and Bangladesh. The advantage of proximity to these countries is not being fully utilized because of higher cost of shipping due to engaging a separate vessel.

Suggestion

The circular 15/2002-Cus dated 25.02.2002 only talks about containerized vessels. The circular does not talk about bulk carrier vessels carrying petroleum products such as MS, HSD or ATF. The facility may please be extended to bulk carrier vessels carrying petroleum products. Bulk carrier vessels are having separate tanks for storage of both coastal and EXIM goods. This will reduce transaction cost of exports and imports.

4 Exemption to CNG from payment of excise duty/GST

Presently Excise duty in applicable on CNG. The process of compression of Natural Gas into CNG is also liable to GST. Thus, the conversion process is now suffering with double taxation i.e. Central Excise and GST.

The conversion of Natural Gas into CNG may be exempted either from levy of Central Excise Duty or GST. This will make CNG more economical and will promote use of this environment friendly fuel.

5 Ethanol from Captive Plants for MS blending

Background

Exemption for 10% EBMS from all duties of excise is subject to conditions i.e 10% of GST paid Ethanol is blended with 90% of Duty paid MS

OMCs are now putting up 2G plants for manufacturing ethanol to be used captively for blending with MS in order to produce EBMS.

Under GST law, goods supplied to itself for consumption within state, GST is not payable. Accordingly, Ethanol manufactured in 2G plants, if utilized for blending EBMS with in the same political state, GST is not payable

Exemption for EBMS would not be available, as the Ethanol manufactured by oil companies would not have suffered GST.

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

6 Ethanol Blending undertaken by Oil Marketing Companies (OMC)-Background
PSU OMCs are undertaking ethanol blending with MS (Motor Spirit Commonly known as Petrol) in terms of Central Govt guidelines for sale as Ethanol Blended Motor Spirit (EBMS). At present, ethanol blending is undertaken at 5% or 10%, as the case may be, by OMCs. Both EBMS as well normal MS are being sold at the same price to the end customers as MS.

Blending of ethanol with MS is considered as manufacturing activity under the Central Excise law. To avoid the dual duty implication on blending of GST paid Ethanol with Duty paid MS in the prescribed proportion namely 5% / 10%/12%/15%/20% ethanol with 95% / 90% /88%/85%/80% of MS, to produce EBMS, payment of duties of excise are exempt through the following notifications:

a. Basic Excise Duty (BED) vide notification 11/2017-CE dated 30.06.2017
b. Additional Excise Duty (Known as Road and Infrastructure cess – RIC) (Notification no 11/2018-CE, 12/2018-CE dated 02.02.2018)
c. Special Additional Duty of Excise (SAED) (Notification-28/2002-CE dated 13.05.2002.
d. Agriculture Infrastructure and Development Cess (AIDC) (Notification no. 03/2021 dated 01.02.2021.

EBMS is exempt from payment of excise duties only when duty paid MS and GST paid Ethanol are blended in the prescribed proportion only namely 5% / 10%/12%/15%/20% and blended MS meets the prescribed IS specifications. If it is decided to blend ethanol in any other ratio i.e. other than 5% / 10%/12%/15%/20%, then the excise duty exemptions as applicable will not be eligible for such blended MS. In such a situation, it would result in double duty implications which may make the entire EBMS program not feasible financially.

Suggestion
Condition for specific ratio of ethanol blending may be dispensed with and exemption similar to blended bio diesel product can be provided to ethanol blending where the exemption is applicable if the blending of bio-diesel is up to 20%.

7 Ethanol Blended Motor Spirit - Section 11D demand

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

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

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

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

Background
Presently the companies are classifying LSHF HSD and HFHSD under the category of Diesel and excise duty is being paid as applicable to Diesel.

It is understood that IS 16731 is the international standard for bunker fuel has two tables specifically for distillate fuel and residual marine fuel. The distillate would include HSD grade marine fuel.

The bunker fuel of HSD grade cleared from refinery would meet both IS 16861 & IS 16731 as both the IS have lot of parameters which are over lapping.

Suggestion
Entry prone to multiple interpretations as GST or Non-GST product. PSU oil companies are clearing HFHSD under the excisable goods.

Thus, classification of Distillate oil (under marine fuel) under non-excisable category may result in revenue loss to the Govt as well as business loss to PSU OMC.

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

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

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

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

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

Suggestion

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

10 Concessional Rate of Duty – ATF for RCS flights

Background

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

Also it is understood that Oil companies are required to supply concessional Excise duty ATF at RCS Airports only from their own refineries and cannot undertake procurement of the concessional duty paid ATF from other Oil Marketing Companies (OMC) / Stand Alone Refineries / Subsidiary etc. This is as per the settled judicial position by Hon'ble Supreme court in the case of Hindustan Petroleum Corp. Ltd v. Commissioner reported at 2015 (320) E.L.T. A344 (S.C.) wherein CESTAT Mumbai decision reported at 2014 (301) E.L.T. 554 (Tri. - Mumbai) was upheld . The Oil companies are interdependent on each other and Purchase/ Sale of petroleum products between Oil companies in various States cannot be avoided since none of the OMC has got their own refinery in all the States where they operate. It will be very difficult for the Oil Companies to meet the requirement of RCS flights at RCS Airports without such inter- Company sale/ Purchase of concessional duty paid ATF in view of the location of the Refineries and RCS Airports that need to be catered. The said condition is putting constraints on the logistics of the Oil Companies ultimately putting restriction on the quantities of ATF that are being supplied to RCS flights.

Suggestion

i. A uniform date can be provided for the validity of the exemption for all supplies under RCS category to avoid disputes w.r.t to validity dates due to possible different interpretations.
ii. Suitable amendment in notification is required stating that "Aviation Turbine Fuel procured by any Public Sector Oil Company from any other manufacturer of the said fuels and drawn by Operators or Cargo Operators from the Regional Connectivity Scheme (RCS) Airport" eligible for concessional excise duty @ 2%.

11 Changes in the rate of Basic Excise Duty on "Unblended MS/HSD for Retail sale w.e.f 01.10.2022 and HSD eff 01.04.2023

To remove difficulties being faced by OMCs and to clarify the mechanism for levy of Additional Basic Excise duty, CBIC has issued a circular no. 1085/06/2022-CX dated 31st October 2022. However, even post issuance of the circular, there are some operational, procedural and tax challenges for OMCs in smooth implementation of the same.

- **Running Bond:** It is submitted that bond need not be insisted upon from oil companies since similar clearances are being undertaken regularly like SKO (PDS). Further, the bond format to be executed is not specified in the circular. Therefore, the format of the bond may please be provided in case the same needs to be executed by oil companies along with other formalities to be complied with including bond register, if any in this regard.

- **Discharge of Differential Duty along with Interest:** It is provided that for the qty cleared as unblended from depots, different duty to be discharged by 6th of the following month. There may be considerable interest implication on manufacturer as the whole supply chain beginning from clearance ex- refinery till its ultimate disposal takes time due to stock being in-transit as well as stock held at depot. Further, compilation of data is extremely difficult as the product during storage and movement is co-mingled with product from other refineries, therefore, a record based accountable can be prepared based on reasonable estimation. The same is a time-consuming process as there is no such modalities available in ERP to track the product from the original source till its ultimate disposal, moving through one or more intermediate location/ multi-mode transportation. Interest implication would be higher for goods cleared during the last days of the month and sold by the depots/ terminals in the subsequent month(s) as unblended to retail.

- **End to End Tracking of the Product:** In case where product is removed with an intention of sale as blended fuel, the differential duty liability arises only when the actual sale of that product happens without blending to the retail outlet. In other words, the refineries cannot exactly trace if the product which is removed with the intention to be sold as blended is sold otherwise. In such cases it would be unjust if refineries are made to pay interest from the date of removal from refinery, given the fact that the incident of differential duty liability arose at a later stage i.e., actual clearances from depot which is a post-sale/ removal transaction

Further, the subject circular requires tracking of the product throughout the supply chain from refinery/place of import or purchase from other OMCs/ SARs/ Pvt refiners till its final disposal. Such physical tracking is not feasible due to crisscross movements of large volumes in multi-mode transportation. The intention of the Central Excise law is to levy excise duty on manufacturing of excisable goods. It is not envisaged in the Act that the manufacturer is responsible for tracking the product till its final disposal, which is extremely difficult. The liability of the manufacturer is accomplished once the goods are cleared as per indents/ Purchase orders from the refinery on discharge of applicable excise duty. Such end-to-end tracking of the product is beyond the intent of the Excise law.

- **Reconciliation Statement:** The circular referred above requires a reconciliation statement, certified by the statutory auditor to be submitted by refineries by 10th of next month for the preceding quarter. Being homogenous product, differentiation of the product received from own refinery or procured from OMCs/ SARs as well as import is not possible meticulously. The identification of the product with the source is a pre-requisite for reconciliation statement and differential duty thereon. Also, the possibility of marginal loss/ gain cannot be neglected, MS being highly volatile in nature.

- **Verification and Certification from Statutory Auditor:** It may not be feasible for statutory auditor of the manufacturer to certify the reconciliation statement for those qty which are sold to OMCs/ SARs as well as their own subsequent depots/ terminals for further sale due to absence of verification of end use by the buyer. Further, respective oil companies desire to have their own method of verifications, statements, etc. in order to comply with the given clause, reaching to a common consensus for the methodology is a challenge and prone to multiple questions regardless to the methodology decided. Considering the complexities involved in the sourcing and logistics involved in placing of the product from refinery to depot / terminals, certification being time/ cost consuming process and the fact that all the Books of Accounts of the OMCs are already subject to Statutory Audit and Government Audit, this requirement should be dispensed with.

- **Maintenance of Electronic Records:** The circular requires that detailed records to be maintained electronically at depots/ terminals for inspection by Central Excise officer. Considering the complex process of sourcing and placing the product from refinery to depot / terminals, tracking the products in ERP system as per origin source may not be feasible, however, all transactions are electronically recorded at locations.

- Term "Retail Sales": The term "***retail sales***" has not been defined, therefore, it may be prone to multiple interpretations by different authorities. In common parlance, it is understood that sale by OMCs to resellers network meant for retail consumer sale (like Retail outlets/ Petrol Pumps) should be considered as retail sale by OMCs. A clarification is desired that would avoid unwarranted disputes at the field level.

Suggestions/Relief Sought:
In view of the above, following suggestions/relief sought in order to facilitate the oil industry to meet their commitment for achieving ambitious biofuel blending program-

- Requirement of bond may be dispensed with. In case required, a specific format may be prescribed along with other related procedural aspects/ documentations concerning execution of running bond in order to have uniform practice across industry.

- In case of payment of differential duty arising on quantity sold as unblended fuel to retails from depots/ terminals, the liability of interest should be done away OR

Considering subsequent diversion taking place at depots/ terminals under exigency, liability for differential duty should be reckoned for the month when such diversion is taking place from depots/ terminals and accordingly, differential duty, if any needs to be discharged by such depots/ terminals by 6th of the following month in which the same has been diverted. Thus, interest may also be calculated from the due date of payment of duty for the month in which such diversion (sale as unblended MS for retail sale) take place till the date of its actual payment. Accordingly, modalities for payment of differential duty at depots/ terminals need to be provided without resorting to linkage with source of the product.

- Any differential duty should be based on self-assessment of the oil industry member, who ultimately sells MS to Retail outlet without blending and the same should be discharged by such oil industry member undertaking such sale, from their nominated refinery by 6th of the following month based on actual clearances of quantity of unblended MS to retails from the depots/ terminals.

- Considering various constraints like co-mingling of product at depots/ terminals losing the identity of the source refinery, loss/ gain, further stock transfers for multiple locations, etc.,

requirement of Reconciliation statement should be done away with. Because all the Books of Accounts of the OMCs are already subject to Statutory Audit and Government Audit, the requirement of certification by statutory auditor should be done away with. If at all certification is required, the same should be allowed based on self-certification.

- Term 'intended for retail sales' may please be defined for uniform understanding across industry/ authorities for the entire supply chain.

12 Allow EDI shipping Bill for ATF supplies

Background
Currently Non-EDI shipping bills (i.e., manual shipping bills) are filed for supply of ATF to foreign bound airlines, this results in additional work to the airport in charge at the locations. Further this data is not getting captured fully as the records are maintained manually. It is also increasing the burden to the customs officials to verify the data filled in the manual shipping bills.

Suggestion
It is suggested to allow the filing of EDI shipping bills based on the actual supply of the quantity of ATF and get away with the customs assessment for ATF supply to foreign bound airlines to bring more transparency and accuracy in data and ease of doing business.

General

1 Taxability of supply of Ethanol (E-100)

Background
Vide Order ref no. GSR 203(E) dated 22.03.2021 issued under Section 3 of the Essential Commodities Act, 1944, MoPNG has amended the Motor Spirit and High-Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 by inserting a new clause i.e. 6B, thereby allowing sale of Bioethanol (E100) by oil company for use as standalone fuel or blending with motor spirit, for compatible automobiles

As per explanation provided in the order, bioethanol (E100) means anhydrous alcohol recognized by BIS under "IS 15464: 2004" under the name "Anhydrous alcohol for automotive use.

BIS 15464:2004 provide specifications for Anhydrous Ethanol for use as automotive Fuel. The meaning of Anhydrous Ethanol under para 3.3 is provided as -"Anhydrous Ethanol is essentially ethyl alcohol, which is denatured and is meant for use as fuel in automobile engines."

Accordingly, E-100, would be sold as standalone or 93% Ethanol will be blended with 7% MS as denaturant and some additive to resolve safety issues.

Under the Customs Tariff, Anhydrous Ethanol (called Bioethanol or E-100) is covered under chapter heading 22072000 under the heading "Ethyl Alcohol and other spirits, denatured, of any strength. The present rate of GST on HSN 22072000 is 18%.

Further, in terms of Entry 84 of List I Union List to Seventh Schedule to the Constitution of India, Fourth Schedule of Central Excise, Tariff 22 of Custom Tariff and BIS 15464:2004 (subject to amendment), it may be inferred that bioethanol (E-100) sold as Standalone fuel or

blended with MS/Additives denaturant wherein Ethanol is more than 30%, would be classified as GST product under HSN 22072000.

However, States are having their own definition of MS/Petrol under respective State VAT/Sales Tax laws and it appears that bioethanol (E-100), is sold as Standalone fuel or blended with MS/Additives as denaturant, State Authorities may on their own wisdom classify the same as MS/Petrol.

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

2 Tariff 2710 12 90 Other in Central Excise Fourth Schedule

Background
As per notification ref. 8/2019-CE(T) dt. 31.12.2019, the tariff 2710 12 90 – Other, provide for tariff of 14% + Rs. 15.00 per litre. Though in terms of Sl. No. 10 of notification ref. 11/2017-CE dt. 30.06.2017 (amended vide notification ref. 9/2019-CE dt. 31.12.2019), the effective rate of tax is 'nil'.

Thus, this entry gives impression that there could be certain products which may fall in this entry and leviable to Central Excise and not GST. However, in terms of 101st Constitutional Amendment Act and Section 9 of CGST Act, 2017, only five petroleum products i.e. MS (Commonly known as petrol), HSD (High Speed Diesel), ATF (Aviation Turbine Fuel), Natural Gas and Crude Oil are subject to levy of Central Excise Duty.

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

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

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

However, the GST law does not define Motor Spirit (commonly known as petrol) and High-Speed Diesel. Various interpretations may be there what is covered under petrol and High-Speed Diesel (HSD) depending upon the sources. Accordingly, clarity is required as to which tariff would be covered under GST and which would be outside the ambit of GST.
Further the Fourth schedule to the Central Excise Act 1944 covers various goods which are covered under GST with blank against rate of duty column.

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

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

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

4 Processing of Excise Duty refund claims

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

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

III) Customs Duty

Upstream

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

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

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

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

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

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

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

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

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

Some of these goods do not get utilized during their lifecycle as they become obsolete, or the operations are closed down before the goods are put to use.
Since these involve high value investments, discharging Customs duty on original import value after the operations close down or after the goods become obsolete will have huge financial implications for the companies.

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

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

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

3 Restoration of pre-amended list 33 on goods imported for petroleum operations

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

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

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

- Recently, the erstwhile List-33 containing list of goods required for petroleum operations has been pruned and the concerned HSN Codes have been prescribed against the revised description of goods vide Notification No. 02/2022-Customs dated 01.02.2022.
- Pruning of the list is leading to increase in rate for essential goods required for petroleum products like oilfield chemicals, completion equipment's, consumables, etc is not in the best interest of the upstream sector.

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

Suggestion
It is requested to kindly consider restoration of pre-amended List-33 with validity at least till inclusion of the Crude Oil and Natural Gas for levy of GST.

It is also requested to decrease the GST rate to 5% on domestic goods /IGST rate on the Imported goods required for petroleum operations in upstream sector with immediate basis to prevent upstream sector form falling miserably and stop increasing the import dependencies on Oil & Gas

4 Insertion of HSN in List-33 of Customs Notification 50/22017 and Pruning of List-33

Background

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

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

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

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

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

- The revised list has been prepared considering availability of domestic goods in view of Make in India Policy of the Govt. However, in certain cases such goods are domestically not manufactured or there is capacity constraint of domestic suppliers to fulfil the requirement of E&P Industry. Also, several items not available in India are kept out of the New List.
- As a result, merit rate of duty is being charged (BCD, SWS & IGST) at the time of customs clearance on import of goods which have now been removed or there is inconsistency in the description and HSN code.

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

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

Further, it is requested that concessional rate of IGST at 5% be restored till Crude Oil and Natural Gas are brought under GST regime.

This would avoid the HSN classification issue enabling the ease of doing business with faster clearance. E&P activities require highly sophisticated and capital-intensive equipment. Reinstatement of goods in List-33 under Serial No. 404 of the Customs Notification No. 50/2017-Cus dated 30 June 2017 and restoration of IGST rate of 5% on such imports will have a favorable impact on the project economics and thereby investments in the domestic E&P sector.

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

Further, it is requested that concessional rate of IGST at 5% be restored till Crude Oil and Natural Gas are brought under GST regime.

Downstream

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

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

Total Aggregate Customs Duty on MS and HSD has a Counter Veiling Duty (CVD) component which is equivalent to excise duty (Rs 19.90 per litre for MS ad Rs 15.80 per litre for HSD). A 7% increase in custom duty due to withdrawal of the said exemption notification is amounting to an additional cost of around Rs. 1.40/Ltr. on MS and Rs.1.11/Ltr. on HSD on all MS/HSD imports.

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

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

Due to continuously growing economy and rebound in demand post COVID, MS and HSD demand is growing and is expected to grow further. According to M/s IHS Markit, MS is expected to grow at CAGR 5% for the period up to 2030 and HSD is expected to grow at CAGR of 3.1%.

Financial implication of the under recovery on above account though different for different Companies depending on their supply demand gaps, is significant and is not getting absorbed in market price.

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

2 Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020)

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

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

3 Clarification on applicable Import duty rate on Import of Propane and Butane.

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

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

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

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

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

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

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

Suggestion
It is recommended that the Social Welfare surcharge should be abolished and import of petroleum products, that is MS and HSD should be rationalized in line with excise duty as applicable on indigenous procurements in order to bring parity in the duty rates when procured indigenously or imported.

5 Zero-rating or levying nominal rate of CST on inter-state movement of petroleum products
Section 8(3)(b) of Central Sales Tax (CST) Act has been amended by Finance Act 2021. In view of this amendment, the benefit of concessional rate of 2% CST against Form-C on the procurement of Non-GST goods (Crude Oil, Natural Gas, and HSD, MS, ATF together referred as 'petroleum products') on inter-state basis, would not be available unless the buyer is a trader of same goods or manufactures/produces such Non-GST Goods.

Accordingly, the benefit of 2% CST against Form-C would not be available on inter-state sale of gas and petroleum products to the power generating companies, mining companies and manufacturing companies like fertilizers, Petrochemical, glass etc i.e., all GST goods. This would significantly increase the cost of gas and petroleum Products for customers.

This change will reduce the competitiveness of domestic gas vis-à-vis alternates sources as the domestic taxes on Natural Gas will become higher than the alternatives. Natural gas is outside of GST. As a result, tax rates (VAT /CST) on natural gas vary in different states across the country ranging from 3% to 26%. Currently issuance of C form was a key lever towards a uniform taxation for various gas customers and addresses the issue of tax distortion to an extent. This change would have a lasting and a far-reaching impact. Further, this would also affect adversely, interstate procurement of crude oil as refineries manufactures both GST and Non-GST goods. Also, industrial customers will not be able to procure HSD on concessional rate and their cost base will significantly increase.

Suggestion
It is recommended to restore issuance of C Form for inter-state gas sale even if it is for use in manufacture of GST goods till these products are included in the GST.

6 Rationalization of excise duty on premium diesel

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

Suggestion
It is recommended to significantly reduce the excise duty differential between branded and regular diesel, bringing it close to or at par with excise duty on regular diesel.

7 Custom duty on import of Hydrogen especially from SEZ unit to DTA.

Hydrogen produced by some Industry is not practicable to be either sold to small suppliers or exported. Thus becomes a national waste but can be used by other large industrial units, who will otherwise have to make huge capital investments for captive generation. Hydrogen is not technically tenable for extensive transportation except local pipeline transfers.

Suggestion
Hydrogen movements locally especially SEZ to DTA may be charged with ZERO Custom Duties to have Nationwide synergies.

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

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

increased cost of ATF for supply to foreign going airlines when inter-state purchases made for supply.

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

9 Removal of CST

Recommendation:
Removal of CST (Irrecoverable taxes in the hands of standalone refineries)

Justification:

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

Pending the inclusion of other petroleum product under GST, in the interim, the CST rate which was poised to be reduced from 4%, progressively to 0% within a span of 4 years before the implementation of VAT, continues to be 2% for more than 10 years. CST continues to be levied on Non- GST products, viz, Crude, Natural Gas, MS, HSD and ATF. This has the effect of inefficiencies in logistics, straining the infrastructure facilities and incurrence of unproductive avoidable costs.

Further, CST incidence is only on standalone refineries having little revenue implications but significantly impairs the financial ability as the standalone refineries are required to absorb the CST on interstate sale of petroleum products without any offsetting recovery mechanism.

Therefore, it is requested that the CST rate may be made 0%.

Credit for Central Sales Tax (CST) for inter-state trade could not be taken and hence is a cost that has been added to the value of goods. Further, on compliance angle we are faced with "C" Form collection and issue with various States which can be done away with, whereby minimum governance can be implemented, if IGST can be made applicable, whereby seamless credit mechanism can be in place.

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

Background
With the implementation of GST effective 01.07.2017 and consequent to the Constitutional (101st) Amendment Act, 2016, Entry 92A of Union List Seventh Schedule to Constitution of India provide for levy of tax on inter-state sale by Central Govt.

Quote- Entry 92A-
Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.

Further, Entry 54 of List II State List to Seventh Schedule to the Constitution of India provide for levy of taxes by State Govt. on intra-state sale of "motor spirit (commonly known as petrol)". The relevant entry after amendment vide the Constitution 101st Amendment Act, 2016 is produced as under-

Quote Entry 54-
"54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.";

Therefore, effective 01.07.2017, State are having power to levy tax on sale of high speed diesel, motor spirit (commonly known as petrol), within the state.

However, the term Motor Spirit (Commonly Known as Petrol) and High-Speed Diesel (HSD) has not been defined under the CST Act, 1956. Whereas certain State VAT/Sales Tax laws are having varied meaning of term 'Motor Spirit and HSD, classified into following broad categories-

'motor spirit', can be referred as-

- any inflammable hydrocarbon (including any mixture of hydrocarbons or any liquid containing hydrocarbons) which is capable of being used for providing reasonable efficient motive power for any form of motor vehicle.
- any liquid or admixture of liquids which is ordinarily used directly or indirectly as fuel for a motor vehicle or stationary internal combustion engine.
- power alcohol, that is, ethyl alcohol of any grade (including such alcohol when denatured or otherwise treated), which is either by itself or in admixture with any such hydro-carbon, is capable of being used for providing reasonable efficient motive power for any form of motor vehicle or vessel of any kind of aircraft

Further, the definition of 'petrol', it can be inferred that -

- any inflammable hydrocarbon oil (excluding crude oil) which either by itself or in admixture with any other substance, is suitable for use as fuel in spark ignition engines.
- Petrol means dangerous petroleum as defined in the Petroleum Act 1934 (Central Act XXX of 1934) and includes a mixture of power alcohol, as defined in the Indian Power Alcohol Act 1948 (Central Act XXII of 1948) and Petrol.

Definition of HSD should be considered as defined per the Central Acts (Custom Act/Excise/GST Act) i.e. High Speed Diesel (HSD) means any hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS 1460.

Considering the above and in order to avoid ambiguities in classification of products as at field formation level, it is felt necessary that term Motor Spirit (Commonly Known as Petrol) and High-Speed Diesel (HSD) defined under CST Act, 1956.

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

11 Extension of RoDTEP scheme to entities registered under MOOWR

Background

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

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

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

Suggestion

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

12 Job Work under Section 65

Background

CBIC vide Circular No. 34/2019-Customs dated 01st October 2019 had clarified that a unit operating under section 65 of the Customs Act, 1962 may remove inputs imported under MOOWR scheme for job work and receipt after job work, as part of the manufacture or other operations. Further, it has also been clarified that capital goods imported under MOOWR may be sent out of bonded premises for the purpose of Repairs.

Thus, removal for job work purpose has been allowed only for inputs. The capital goods cannot be sent outside the Section 65 unit for job work/fabrication purpose.

Suggestion

Circular may please be issued that Capital Goods can also be removed for Jobwork/Fabrication purpose, under intimation to Bond officer.

13 Continuation of IGST deferment under MOOWR scheme to petroleum refineries

Background

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

Suggestion
It is requested to exclude petroleum refinery from the new Section 65A. This will enable the petroleum refineries to get temporary relief of input tax credit losses on IGST due to dual tax system. This will encourage domestic production and boost "Make in India" mission. This will provide small relief to refineries by way of saving some stranding cost on import of capital goods.

Natural Gas

1 Exemption from Custom Duty on import of LNG

Background
Import of LNG is subject to Custom Duty at 2.50%.

Natural Gas being a clean fuel is mainly used by important sectors like City Gas Distribution, power, fertilizer, petrochemical, refineries etc. Import of Gas in the form of LNG is imperative to meet the target set for the use of gas considering the shortage of domestic gas exploration in the country.

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

2 Inordinate delay in Final Assessment of BoE's of Liquefied Natural Gas (LNG) resulting in undue financial hardship to LNG importers

Background
- Importers import Liquefied Natural Gas ('LNG') as classified under Custom tariff sub-heading 2711 1100 of the Customs Tariff Act, 1975 and pays basic customs duty ('BCD') at the rate of 2.5 percent as per Notification No. 12/2012-Customs, dated 17th March, 2012 at the time of clearance of LNG for home consumption.
- As per the provisions of Customs Law, the customs duty is payable on the actual quantity imported in India. However, in case of LNG, customs duty is paid provisionally, before actual discharge of LNG at port, on the quantity loaded in the vessel. Basis the provisional amount of customs duty paid before the actual discharge of LNG, the Bill of Entry is assessed provisionally.
- Under normal circumstances, actual custom duty payable remains lesser than the custom duty paid provisionally by LNG importer. Therefore, there remains an amount refundable to LNG importer on account of excess custom duty paid provisionally.
- As per the extant practice, the excess custom duty paid provisionally get refunded to other importers, only after the final assessment of Bill of Entry. However, inspite of rigorous follow up at respective jurisdictional custom office for final assessment of pending Bill of Entries, final assessment provisionally assessed Bill of Entries is pending for more than 5-6 years.
- Reference is also invited to Customs (Finalisation of Provisional Assessment) Regulations, 2018 issued vide Notification No.73/2018-Customs (N.T.) dated 14th August, 2018. The said regulation, inter-alia, provides the time-limit for finalization of provisional assessment by proper officer i.e. two months from the date of submission of the documents or information by importer. The regulation further provides that The Commissioner of Customs concerned may allow, for reasons to be recorded in writing, a

further time period of three months in case the proper officer is not able to finalise the provisional assessment within the period of two months.

- However, the field formations are not adhering to the time limit prescribed under Customs (Finalisation of Provisional Assessment) Regulations, 2018.
- The amount of legitimate refund is getting piled up on arrival of each LNG cargo and thereby increasing the burden of excess custom duty paid provisionally by LNG importers. Thus, LNG importers is getting out of pocket to the extent of excess custom duty paid provisionally, till the time it gets back the refund of excess amount.

Suggestion

It is suggested that suitable provision may be inserted under existing Custom Act prescribing time limit for completion of final assessment in line with similar provision under various statute like VAT/CST/Income Tax. Further, with regard to the pending final assessment, necessary instructions/ circular may be issued by CBIC to the field formations to complete the final assessment of provisionally assessed Bill of Entries of LNG, within the timeline prescribed under Customs (Finalisation of Provisional Assessment) Regulations, 2018.

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

Background

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

The usable form of LNG is its regasified state as NG. The process of regasification of LNG involves the passing of the liquid through heat exchangers, compressors and pipelines in a controlled manner.

Due to the intrinsic nature of losses of the product that is inherent to its handling and processing, it is a standard global practice to pre-agree on a percentage of such process losses of LNG / gas while contracting for the regasification of LNG. This loss is pre-agreed between the parties and not a consideration. This is done with a view to bring certainty to the contractually deliverable quantities and the ad valorem price per unit for the same. However, due to misunderstanding of the process there are claims on taxability on such pre-agreed process loss tolerance.

Suggestion

It is clarified that the Service Tax / GST charges for regassification of LNG being a volatile product are always on the net delivered quantity after considering the pre-estimated process losses during the regassification process.

4 Exemption/Concessional rate of Social Welfare Surcharge

Background

Social Welfare Surcharge ('SWS') has been made applicable on import of various goods (except few exemptions) after removal of Education Cess and Secondary & Higher Education Cess. The rate of such surcharge is as high as 10%. Under pre-GST regime, the rate of cess applicable on import of LNG was 3%. However, w.e.f. February 2018, on import of LNG, though the aforesaid cess was removed, however, the rate of SWS has impacted the sector as

the same is 10% on such imports. The same has increased the cost of procurement for LNG sector as such Surcharge is not adjustable with any other duty.

Suggestion
To lower the cost of LNG to the end users and promote cleaner fuel in India

5 PLI Scheme for OEMs manufacturing LNG vehicles and rationalization of tax on LNG fueled vehicles to be made comparable to Electric Vehicles

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

- LNG, is gas compressed 600 times, this high energy density makes long distance travel and transportation possible
- LNG is cleaner than other liquid fuels that it would replace; LNG fueled vehicles have comparably lower emissions for CO_2, and for SO_x and PM that affect local air quality. As such LNG should be promoted as a transport fuel for long distance travel and transportation

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

As LNG is a cleaner fuel, to support its prompt adoption, a tax rate equivalent to that of EVs should be applicable. GST rate on EVs' and EV chargers has been reduced to 5%, similarly customs duty on EV imports has been reduced to 15%.

Suggestion

- GST rate on LNG fueled vehicles, and import duty on components like LNG Fuel tank be reduced to 5% and 15% respectively in line with taxation on EVs.
- Developing a production linked incentive scheme for OEMs manufacturing LNG vehicles and accelerated depreciation on investments by both OEMs and RO developers in LNG infrastructure.
- The vehicle scrapping policy may be amended to provide incentives to vehicle owners for switching to LNG vehicles. Replacement of old Diesel vehicles by LNG vehicles can be encouraged by levying GST @ ZERO rate on new LNG vehicles against a scrapped Diesel vehicle under the 'voluntary vehicle fleet modernization plan,' which is expected to be launched shortly.

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