Memorandum
to the Forum chaired by Dr Shome
by Petroleum Federation of India

November 2013

Oil & Gas Sector

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1 Introduction

The significant growth of India's economy over the past decade has led to increase in domestic energy consumption. A strong growth in automobiles sector and increase in industrial activity has led to a sustained increase in energy consumption. Oil & gas constitutes approx. 45 percent of primary commercial energy mix. Energy security remains a challenge for India as India is significantly dependent on imports to meet its oil & gas requirement. This underscores the need for supporting the growth of Oil & Gas sector to fuel economic growth of country. Additionally, Oil & Gas sector has a potential to contribute to the economy by emerging as refining and Oil & Gas technology & services providers' hub for rest of the world.

Fiscal policies can be catalyst in growth of Oil & Gas sector in India.

Dr Shome in the report on General Anti Avoidance Rules had stated that "*It is crucial for India to balance, on the one hand, the concerns of revenue by protecting the tax base from erosion with, on the other, high compliance costs of taxpayers as well as the uncertainty in the overall investment environment that instability in tax legislation and practice create.*"

A recent report by Ministry of Corporate Affairs on Reforming the Regulatory Environment for doing business in India commented on approach of tax authorities by stating that "*Despite protestations of an improvement in mindset, the needless adversary relationship between assessing authorities and the taxpayers continues to be a fact of life.*"

Several fiscal (direct & indirect tax) aspects relating specifically to Oil & Gas sector (Exploration & Production of Oil & Natural Gas, expatriate employees working in the sector, technology & oilfield services providers, refining & marketing) have been litigated and in some cases even retrospective amendments have been made in the Income Tax Act.

Recently, Ministry of Finance has constituted a Forum Chaired by Dr. Shome, Adviser to the Finance Minister for Exchange of views between Industry groups and Government on tax related issues or tax related disputes. It is stated that exchange of views between industry groups and Government on tax related issues or tax related disputes would give an opportunity to Government to hear the arguments of the industry groups. It will also give the Government an opportunity to explain its stand on tax related matters. Thus, this exercise is intended to be mutually beneficial.

Dr. Shome is supported by officers of the Tax Policy and Legislation wing of the Central Board of Direct Taxes and the Tax Research Unit of the Central Board of Excise and Customs. Chambers of Commerce, industry associations and industry groups are advised to first submit a memorandum to the Forum and then seek an appointment to discuss the issues.

In the light of the aforesaid background, The Petroleum Federation of India (PetroFed) proposes to submit Memorandum to the Forum chaired by Dr Shome to be followed by discussions on suggested date by the Forum.

PetroFed is a Registered Society of Indian and International Companies / Associations in the hydrocarbon sector to promote the interests of members in line with Public / National Policies through a self regulatory environment with consumer interest in sight. It acts as an oil industry interface with Government, regulatory authorities, public and representative bodies of traders. It helps in resolution of issues and facilitates evolution of hydrocarbons related policies and regulations and their implementation. It represents the industry on Government bodies, committees & task forces.

PetroFed is assisted by its member and other companies in preparation of the Memorandum which included soliciting views of industry, conducting discussions and researching the issues associated with the Oil & Gas industry.

The issues in the Memorandum are categorized for the purpose of the discussions as follows:

- Issues requiring amendment under the respective Act; and

- Issues requiring clarification through Circular/Notification/Instruction.

We wish to highlight that in this Memorandum we have not commented on issues related to Direct Taxes Code and Fiscal aspects related to draft note on Uniform Licensing Policy for award of hydrocarbon acreages with new contractual system and fiscal model, since we understand that the Forum will not be covering future/proposed policies & legislations.

2 Issues requiring amendment under the respective Act

We have listed issues below requiring amendment under the respective Act.

2.1 Income Tax – Retrospective amendment to define the term "Undertaking"

1.	Issue	Retrospective amendment to define the term "Undertaking" from 1 April 2000, thereby largely denying benefits to oil wells/fields going on production at different time period
2.	Industry / Sector involved	Mineral Oil Exploration and Production companies
3.	Tax involved (IT / WT / Customs / Excise etc.)	Income-tax Act, 1961
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• Deduction under section 80 IB(9) is available for seven years starting from the year in which the undertaking starts commercial production of mineral oil; • As held by Supreme Court, the 'undertaking' has been understood to mean any business unit which is capable to independent commercial existence. • Earlier, each independent oil well / cluster of oil wells capable of independent commercial existence were treated as separate undertaking and deduction under section 80 IB(9) was claimed on them; • The above position was upheld by Ahemedabad Tribunal in India; • The Finance Act, 2009 amended section 80 IB(9) with retrospective effect from 1 April 2000 to clarify that all blocks licensed under a single contract shall be treated as single 'Undertaking'; and

		• It is practically impossible to start commercial production from all wells in one contract area and hence the explanation has substantially reduced the quantum of the tax holiday from the exploration and production activities in India.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• The Explanation should be amended to clarify that the undertaking means each independent oil well / cluster of oil wells capable of independent commercial existence
8.	Whether represented earlier	

2.2 Income Tax – Tax holiday to industrial undertaking engaged in refining of mineral oil

1.	Issue	Extension of tax holiday under section 80IB (9) to industrial undertaking engaged in refining of mineral oil
2.	Industry / Sector involved	Companies in the process of setting up refineries in India
3.	Tax involved (IT / WT / Customs / Excise etc.)	Income-tax Act, 1961
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• Section 80IB of the Act provides tax holiday to industrial undertakings engaged in refining of mineral oil. However, the benefit is available only to those undertakings, which begin such refining by 31 March 2012; and • Some companies are in process of setting up mega refinery projects and the projects could

		not be completed before 31 March 2012 due to factors beyond their control. In the absence of the Tax holiday, the economic viability of these projects is impacted.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• The refining business is a capital intensive sector requiring significant investment in the infrastructure facility. It also needs substantial working capital. With the slowdown in the economy, meeting the financial objectives is becoming challenging for the crude oil refinery business; and • Hence, to provide the impetus for the development and growth of refining business in India, benefits of section 80IB, to be extended to new undertakings commissioning refining operations after 31 March 2012.
8.	Whether represented earlier	

2.3 Income Tax – Define 'mineral oil' to include natural gas for the purpose of section 80-IB (9)

1.	Issue	Ambiguity with respect to the term 'mineral oil' includes natural gas for the purpose of section 80 IB(9)
2.	Industry / Sector involved	Oil & Gas Exploration and Production companies
3.	Tax involved (IT / WT / Customs / Excise etc.)	Income-tax Act, 1961
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• Under the Income Tax Act, Sections 42, 44BB, 293A defines 'mineral oil' to include natural gas; • Further, various Acts governing oil and gas sector such as Oil field regulations and development Act,1948; Mines Act, 1952 and Petroleum and Natural gas rules also states that mineral oil includes natural gas; • However, tax Holiday benefit is denied on production of natural gas due to absence of definition of the term "mineral oil" under Section 80 IB (9); • It may be noted that the Ahemedabad Tribunal have ruled that mineral oil includes natural gas; • Subsequently, amendments were made to specifically provide benefit of 80 IB (9) from the production of natural gas from NELP VIII blocks and CBM IV blocks; and • The amendment has further accentuated the issue whether natural gas is included in mineral oil or not.

6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• It should be clarified in section 80IB(9) of the Act that the term 'mineral oil' includes natural gas as defined in Sections 42, 44BB & 293A of the Income Tax Act.
8.	Whether represented earlier	

2.4 Income Tax – Extension of Section 35AD to crude oil pipelines on common carrier

1.	Issue	Extension of the benefit of 100% deduction in respect of whole of any expenditure of capital nature incurred for laying and operating a cross country natural gas or crude or petroleum oil pipeline network to be extended to crude oil pipelines and dedicated pipelines under section 35AD of the Act.
2.	Industry / Sector involved	Oil and gas companies
3.	Tax involved (IT / WT / Customs / Excise etc.)	Income-tax Act, 1961
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• The benefit of 100% deduction in respect of whole of any expenditure of capital nature incurred is available for laying and operating a cross country natural gas or crude or petroleum oil pipeline network subject to the conditions; • One of the condition is that such pipeline network needs to be approved by Petroleum and

		Natural Gas Regulatory Board ('PNGRB') and has common carrier capacity as per PNGRB regulations; • However, since crude oil pipelines on common carrier are excluded from the ambit of PNGRB approval under Section 2(j)(ii) of the PNGRB Act, 2006, Indian companies are unable to avail the above benefit on the laying & operation of crude oil pipelines; and • Similarly, Oil & Gas pipelines dedicated for specific customer are outside the ambit of PNGRB and hence the benefit of Section 35 AD is not available to such pipelines.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• An amendment in section 35AD of the Act is required to remove the requirement of approval of PNGRB for crude oil Pipelines and other Oil & Gas pipelines.
8.	Whether represented earlier	

2.5 Income Tax – Extension of Section 42 to some pre NELP blocks

1.	Issue	Denial of Section 42 benefits on exploration and drilling costs for some Pre-NELP blocks
2.	Industry / Sector involved	Mineral Oil Exploration and Production companies
3.	Tax involved (IT / WT / Customs / Excise etc.)	Income-tax Act, 1961
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• Section 42 is special provision for deductions in the case of business for prospecting for or extraction or production of mineral oils in relation to which Central government has entered into an agreement; • Further, it requires that agreement to be laid on the Table of each House of Parliament; • It is observed that some Pre-NELP contacts were not laid on the Table of each House of Parliament and on this account benefit of Section 42 is denied to select such contracts despite President of India signing these Contracts.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• It is suggested that clarificatory amendment may be made in Section 42 to extend the benefit/applicability to all Contracts which are signed by President of India
8.	Whether represented earlier	

2.6 Income Tax - Delay in processing Income-tax refunds and passing Order giving effect to the Appellate Orders

1.	Issue	Delay in processing Income-tax refunds and passing Order giving effect to the Appellate Orders
2.	Industry / Sector involved	Indian Oil companies
3.	Tax involved (IT / WT / Customs / Excise etc.)	Income-tax Act, 1961
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• In the absence of any specific time limit, refunds are seldom processed timely and always been held up. • Also, the Assessing Officer delays in passing Order giving effect to the Order of the Appellate Authorities. • While there might not be any official reason for the delay, the Assessing Officer is constrained by Revenue/Collection targets and the whole process is less transparent and hugely discretionary.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• Holding up of Income Tax Refunds leads to drain of liquidity resulting in huge borrowing costs. It is but natural that no sooner a refund is determined as payable to the assessee, it should be processed instantly. Being so, the law doesn't have any provision specifying

		time limit for issuance of refund. It is imperative to have a time-limit prescribed by Statute. • It is imperative to have a statutory dead- line for passing of Order Giving Effect to Appellate Orders by the Assessing Officers.
8.	Whether represented earlier	

2.7 Income Tax - Incentivizing Corporate Social Responsibility Activities

1.	Issue	Providing weighted deduction to the expenditure incurred on Corporate Social Responsibility
2.	Industry / Sector involved	All Industries
3.	Tax involved (IT / WT / Customs / Excise etc.)	Income-tax Act, 1961
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• The Ministry of Heavy Industries and Public Enterprises has mandated incurrence of expenditure by Public Sector Undertakings ('PSUs') on Corporate Social Responsibility ('CSR') activities. For this purpose, a percentage of the net profit of every PSU has been earmarked for spending by it on CSR activities every year. • The Companies Act, 2013, requires incurrence of CSR expenditure equivalent to 2% of average net profits of last 3 years by specified companies. • Rule 3(g) of Part I of the draft Corporate Social Responsibility Rules, 2013, specify that "Tax treatment of CSR spend will be in accordance with the IT Act as may be notified by CBDT".

6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• The law does not, presently, provide for any specific incentive for incurrence of expenditure on CSR activities undertaken in the national interest whereas incurrence of expenditure on scientific research activities is incentivized by providing a 200% deduction for the same u/s. 35(2AB) of the Income-tax Act, 1961. • Considering that CSR activities are equally important for the nation, the Income- tax Act should be amended to provide for a weighted deduction upto 200% of expenditure incurred on CSR activities.
8.	Whether represented earlier	

2.8 Income Tax - Withholding tax at higher rate for non-submission of the Permanent Account Number

1.	Issue	Withholding tax at higher rate for non-submission of the Permanent Account Number (‘PAN’) under section 206AA of the Income Tax Act, 1961.
2.	Industry / Sector involved	Oil Marketing Companies
3.	Tax involved (IT / WT / Customs / Excise etc.)	Income-tax Act, 1961
4.	Revenue impact, if estimated	

5.	Genesis of the issue	• Under section 206AA of the Act, on non-submission of the PAN by the recipient, tax is required to be deducted at higher of the following: - Rates specified in the Act; - Rate of rates in force; or - Rate of 20% • Consequently, section 206AA has an overriding effect on normal Income tax provisions as well as treaty agreements with other countries, according to which in absence of PAN the deductee needs to deduct tax at a higher rate of tax. • Section 206AA further states that without PAN the deductee will not be able to make an application for lower deduction of tax under section 197 of the Act. • Most of the agreements with the Non-residents and foreign companies have provision by which the tax needs to be borne by the Indian Companies. Accordingly, these provision leads to financial burden on Indian companies, specifically engaged in Oil and Gas centre.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• It is suggested that the provision of section 206AA may be amended to exclude for the recovery of TDS amount under section 195A of the Act or a suitable clarification may be issued for the purpose so that the incidence of tax on the deductor can be eliminated
8.	Whether represented earlier	

3 Issues requiring clarification through circular/notification/instruction

We have listed issues below requiring clarification through issue of circular/notification/instruction and withdrawal of circular.

3.1 Income Tax - Waiver of interest levied under section 234B and 234C of the Act in the absence of ability to estimate the profits

1.	Issue	Waiver of interest levied under Section 234B and 234C of the Income-tax Act, 1961 in the absence of ability to estimate the profits
2.	Industry / Sector involved	Indian Oil Marketing companies
3.	Tax involved (IT / WT / Customs / Excise, etc.)	Income-tax Act, 1961
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• Interest under Section 234B is levied for delay in payment of self-assessment tax and interest under Section 234C is levied for shortage in payment of advance tax. • Oil Companies have not been able to estimate their profits with any accuracy due to pricing mechanism currently in vogue and sensitivity of pricing of petroleum products. • However, the Industry has been subjected to 234B/234C like any other Assessee without a special dispensation. • The statute provides powers to Chief Commissioner of Income Tax for waiver of interest. However, the waiver applications are currently not disposed off.

6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• There is a genuine hardship of the Oil marketing companies in estimating their profits in view of no clear and specific guidelines issued by the Government in this regard. • It is imperative to pass on necessary administrative instructions by the Central Board of Direct Taxes ('CBDT') for disposal of waiver applications in a time bound manner.
8.	Whether represented earlier	

3.2 Income Tax – Classification of Oil/Gas Wells under 'Plant & Machinery'

1.	Issue	Oil/Gas wells being classified as "Building" instead of "Plant and Machinery" for calculating depreciation under section 32 of the Income Tax Act
2.	Industry / Sector involved	Mineral Oil Exploration and Production companies
3.	Tax involved (IT / WT / Customs / Excise etc.)	Income-tax Act, 1961
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• One of the significant activity for exploration & exploitation of hydrocarbons is oil/gas well, which requires substantial investment and definitely is a key 'plant and machinery' for E&P sector; • However, tax department, relying on definition given in the notes forming part of

		Appendix 1 in Income Tax Act, which reads as *'Building' includes roads, bridges, culverts, wells and tubewells"*, is considering oil/gas well as building and allowed depreciation at the rate of 10% only though it can be inferred from the said definition that the reference to 'well' in definition of 'building' refers to water wells and this also gets support from the said definition itself as 'tubewells' is also included in that definition; • There are some Pre-NELP contracts that are denied benefit of Section 42 (Refer para 2.5 supra) • Alternatively, companies have categorized cost of Oil & Gas Wells as 'Plant & Machinery' since they are used to produce Oil & Gas • The Tax Authorities have denied the categorization and instead categorized as 'Building' for the purpose of computing depreciation under the income Tax Act • The above treatment has resulted in reduced claim of depreciation due to incorrect categorization by Tax Authorities
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• Schedule II of the Companies Act 2013 classifies Oil & Gas Wells as Plant & machinery; and • Hence, it should be clarified that Oil & Gas Wells should be treated as Plant & Machinery for the purposes of Income Tax Act as well to have uniform treatment across different legislations.
8.	Whether represented earlier	

3.3 Income Tax – Classification of Offshore Platforms under ‘Plant & Machinery’

1.	Issue	Oil/Gas wells & Offshore platforms being classified as “Building” instead of “Plant and Machinery” for calculating depreciation under section 32 of the Income Tax Act
2.	Industry / Sector involved	Mineral Oil Exploration and Production companies
3.	Tax involved (IT / WT / Customs / Excise etc.)	Income-tax Act, 1961
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• The companies have categorized cost of Offshore Platforms used for drilling, production and process of oil as ‘Plant & Machinery’. • The Tax Authorities have denied the categorization and instead categorized as ‘Building’ for the purpose of computing depreciation under the Income Tax Act • The above treatment has resulted in reduced claim of depreciation due to incorrect categorization by Tax Authorities
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• Schedule II of the Companies Act 2013 classifies Oil & Gas processing plants and facilities as Plant & machinery; and • Hence, it should be clarified that offshore plants should be treated as Plant & Machinery for the purposes of Income Tax Act as well to have uniform treatment across different legislations.
8.	Whether represented earlier	

3.4 Income Tax – Additional depreciation on new plant and machinery

1.	Issue	Additional depreciation u/s 32 (1) (iia) of the Income-tax Act, 1961 on acquisition and installation of new plant & machinery
2.	Industry / Sector involved	All companies
3.	Tax involved (IT / WT / Customs / Excise etc.)	Income-tax Act, 1961
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• As per the section 32(1) (iia), any new plant and machinery which has been acquired and installed after 31 March 2005 by an assessee engaged in the business of manufacturing or production of any article or things is eligible for additional depreciation @ 20% in the initial year. • However, the Income-tax authorities are disallowing the additional depreciation on the ground that both acquisition and installation should be done in the same financial year to claim additional depreciation. • The section does not specify that both acquisition and installation should be done in the same financial year. The Income-tax authorities are misinterpreting the section and denying the benefit of the additional depreciation.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• The matter may be clarified by the CBDT and the Income-tax authorities should be instructed to allow the benefit of the additional depreciation in order to avoid unnecessary litigation.
8.	Whether represented earlier	

3.5 Service Tax – Applicability of service tax on cash calls by the Operator from its Joint Venture Partner(s)

1.	Issue	Applicability of service tax on cash calls by the Operator from its Joint Venture Partner(s)
2.	Industry/sector involved	Oil and Gas Industry
3.	Tax involved (IT/WT/Customs Excise etc.)	Service Tax
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• Exploration & Production (E&P) activities are high risk and capital intensive operations. Hence, to share the risk, resources, technology, etc. Joint Ventures (JVs) are formed. • It is quite common in the E&P sector, for companies to collaborate in participating in E&P ventures. The purpose of such association/collaboration is to leverage from the experience of each other and to share the overall risk of the project. • The working of Unincorporated JVs for E&P of Hydrocarbons under a Production Sharing Contract (PSC) involves formation of a Management Committee and Operating Committee. These consist of members from the JV partners will finalize the work plan and obtain necessary the approvals, modalities of mobilizing resources, share experience and firm up the Joint Operating Agreement. • Normally, one of the participants is designated as the Operator. However, work for petroleum operation is executed based on the approval of the Management Committee and Operating Committee. Based on the approved work plan, resources are mobilized/ contributed by participants based on participating interest in the oil field and the funds are made available to the Operator for carrying out the petroleum operations. • Thus, the specified shares of expenses are contributed by the JV Partner to the Operator on

		account of their share of expenses towards development of the respective oil field. • The above transaction of remittance of contribution by a JV Partner to the Operator is purely an amount paid towards the share of cost of joint development of the oil field from which all the JV parties will derive economic benefits. However, at this juncture, the Operator does not provide any services to the JV Partner and the amount paid by respective JV Partner is in nature of a pure allocation of development cost only. • The Negative list based taxation of services is introduced under the Service Tax w.e.f. 1st July 2013. Explanation 3 to Section 65B(44) of the Finance Act, 1994 states that, an unincorporated association or a body of persons, as the case may be, and a member thereof, shall be treated as distinct persons. • Given the above specifics of the business, under the Income Tax Act, the Government of India (GOI) issued Notification No. GSR 117(E) dated 8-3-1996 under Section 293A of the Income Tax Act, wherein constituent members of a PSC are not taxed as an Association of Persons but taxed in their individual capacity. By implication, each PSC participant is assessed in respect of their share of income with the same status in which that participant entered into the Contract with the GOI. • The above Explanation 3 to Section 65B (44) of the Finance Act, 1994 may lead to different interpretations by Field Formation by construing that the JV Partners and Operator are two different persons and thus, the contribution made by the JV Partner towards the development cost may be brought within the sweep of service tax.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• In line of the clarification issued by the Income Tax authority, the Central Board of Excise and Customs (CBEC) may also issue a Circular clarifying that contribution towards the development cost of the oil field made by the Joint Venture Partner to the Operator does

		not involve any provision of services and thus, the same transaction will not be subject to service tax.
8.	Whether represented earlier	-

3.6 Customs duty & Excise Duty – Exemption to the supply of goods under International Competitive Bidding contracts

1.	Issue	Exemption to the supply of goods under International Competitive Bidding contracts
2.	Industry/sector involved	All industry
3.	Tax involved (IT/WT/Customs/Excise etc.)	Customs duty and Excise duty
4.	Revenue impact, if estimated	-
5.	Genesis of the issue	• Customs Notification No. 12/ 2012 and Excise Notification No 12/2012 provide an exemption from the supply of goods effected under International Competitive Bidding (ICB) for specified purposes, subject to the fulfillment of specified conditions. • The term ICB is not defined under the Customs or Excise Notifications, Act, Rules. Thus, it is a very subjective area of interpretation as to whether the supplies of goods are made under ICB or not? • Generally, when international players are permitted to bid on a contract and a suitable advertisement is issued to this regard in a national/international newspaper etc, this should be sufficient to construe that the supply of goods is effected under the ICB.

<table>
<tr><td></td><td></td><td>However, in the absence of any guidelines on this matter, Field Formation are denying the benefit of exemption of supply of goods under ICB stating various reasons such as:
- A proper advertisement was not issued in a national or international newspaper etc or even if the advertisement is issued, the term ICB is not mentioned in advertisement
- Proper procedure of Request for Proposal and Bidding was not followed
- Selection of respective participants was not done in the specified manner
- Contract was issued to local vendor even though the foreign vendors were only eliminated at the bidding stage
- Extension of contract awarded in continuance of an earlier contract issued under ICB cannot be construed as supply of goods made under ICB
The intention of the legislature seems to allow the benefit when the foreign players are competing with Indian players. Thus, the bid inviting/permitting to tender/bid by a foreign and Indian player should be construed as ICB and thus, the benefit of exemption should be extended to all such contracts.</td></tr>
<tr><td>6.</td><td>Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)</td><td>-</td></tr>
<tr><td>7.</td><td>Suggestions</td><td>It is requested that a Circular is issued by the CBEC to clarify the necessary conditions to be fulfilled for a contract to be construed as ICB compliant contract.</td></tr>
<tr><td>8.</td><td>Whether represented earlier</td><td>-</td></tr>
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3.7 Excise Duty – Exemption from excise duty to the supply of goods to a deemed export project

1.	Issue	Exemption from excise duty to the supply of goods to a deemed export project
2.	Industry/sector involved	All industries including Oil & Gas industry
3.	Tax involved (IT/WT/Customs/Excise etc.)	Excise duty
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• The Foreign Trade Policy (FTP) specifies that supply of goods to specified project/customer will be construed as "deemed export" of goods and thus, will enjoy the indirect tax benefits as available to the physical export of goods from India. • Paragraph 8.2 of the FTP lists the specified categories of supply that will be construed as deemed export. Sub clause (f) of Paragraph 8.2 of FTP states that "supply of goods to any project or purpose in respect of which the exemption from customs duty is granted under Notification No. 12/ 2012', will be construed as deemed export of goods". • The supply of various goods required for petroleum operation is exempted from customs duty vides Notification No. 12/ 2012. Thus, the supply of goods for petroleum operation qualifies as deemed export of goods. • The FTP states that supply of goods to deemed export project would be eligible for the either of the following three benefits: • Advance authorization, deemed export drawback, and exemption from terminal excise duty where supplies are made against ICB. • The Supplier of goods, to a deemed export project, can obtain an Advance authorization since the Supplier will be supplying the goods to deemed export project. Furthermore,

		the supply of goods by the Sub – Supplier of the Supplier to the Supplier will also be construed as deemed export of goods since the same supply of goods is effected under the Advance authorization. Thus, the goods which are designed and manufactured for the deemed export project get the excise duty exemption and competes with the foreign players. • To operatonalise the above deemed export benefits; a Notification No. 44/2011 – Excise was issued under the Central Excise Act. The proviso to the above Notification deals with deemed export and states as follows: • "Provided that this procedure shall also be available for the supplies made by an Advance authorization holder to a manufacturer holding another Advance authorization, if such manufacturer, in turn, supplies the resultant products to an ultimate exporter in terms of para 8.3(c) of the Foreign Trade Policy, and the procedure, safeguards and conditions as prescribed in this Notification shall apply mutatis-mutandis." • The above proviso permits a manufacturer to procure goods under the Advance authorization (licence) for supply of the resultant product to an ultimate exporter. • Field Formation is taking a view that the term "to an ultimate exporter" should be construed when the goods are physically exported from India and the benefit of the above proviso will not be applicable when the supply of goods is made to a project which qualifies for deemed export. • It should be noted that refund of terminal excise duty is also eligible to the Supplier / Deemed export project. Thus, in any way, the same is revenue neutral as the Supplier / Customer will get the refund of excise duty paid on the same supply of goods. • However, since the exemption is sought to be denied at the later point of time (say after a year so) and the time period of filing of refund claim is limited for the one year. Hence, any disallowance of the benefit after the specified period for filing of refund leads to denial of the refund as well as exemption as well.

6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	-
7.	Suggestions	• The interpretation canvassed by Field Formation will nullify the benefit clearly extended by the FTP to the Trade. Thus, it is requested that this be clarified by issuing a Circular or expressly providing in the Notification that the Supplier of goods to a project/person falling under the definition of deemed export, will also be eligible to procure the goods under an Advance license. Furthermore, it may also be clarified that the 'Sub – Supplier of the Supplier' supplying goods to Supplier will also be eligible for advance authorization since the same supply of goods take place to a person (Supplier has the advance authorization) who is holding an advance authorization.
8.	Whether represented earlier	-

3.8 Customs Duty – Refund of Terminal Excise duty for supply of goods to deemed export project

1.	Issue	Refund of Terminal Excise duty for supply of goods to deemed export project
2.	Industry/sector involved	Oil and Gas
3.	Tax involved (IT/WT/Customs/Excise etc.)	Customs duty
4.	Revenue impact, if estimated	-
5.	Genesis of the issue	• As stated above, the Supply of goods for petroleum operation to the Oil filed operator is exempt from customs duty and thus, the supply of goods for petroleum operation enjoys the status of the deemed exports. • The FTP provides that supply of goods to "deemed export project" will get the benefit of the terminal excise duty and thus, the excise duty paid on the same transaction will be refunded by the DGFT. • Recently, it was observed that DGFT is insisting that refund claim of terminal excise

		duty should be supported by the Essentiality Certificate issued by the Director General of Hydrocarbon. • The 'Essentiality Certificate' is issued by the Director General of Hydrocarbons only for the procurement of goods from outside India (i.e. for import of goods) and the Essentiality Certificates are not issued by the Director General of Hydrocarbons for the local procurement of the goods. • The FTP nowhere states / provides that to claim the refund of terminal excise duty, the Supplier / Project Owner should submit the 'Essentiality Certificate' duly obtained from the Director General of Hydrocarbons. • The refund claims are supported with the Project Authority Certificate (PAC) and all the respective documents to prove that the respective supply of goods has been made to the project eligible for deemed export benefit and the payments against the same supply of goods has been made the Project Authority. • Despite the fact that the refund claim is submitted along with the all the specified documents, the DGFT is not processing the refund claim and insisting for the Essentiality Certificate, which is not applicable for the local supply of goods.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	-
7.	Suggestions	• A suitable clarification may be issued clarifying that to claim the refund of terminal excise duty, the Essentiality Certificate is not required to be submitted by the Supplier / Project Authority.
8.	Whether represented earlier	-

3.9 Excise Duty – To prescribe a specified percentage of storage losses for various petroleum products

1.	Issue	To prescribe a specified percentage of storage losses for various petroleum products
2.	Industry/sector involved	Oil companies
3.	Tax involved (IT/WT/Customs/Excise etc.)	Excise duty
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• Petroleum products are highly volatile and very susceptible to variation in temperature at different stages, whether at the time of decantation or lifting or exposure in storage etc. • The CBEC from time to time has issued various guidelines in this regard for permissible storage losses. Currently based on CBEC Circular/instruction, 0.5% storage loss is permitted under Central excise for products such as motor spirit (MS) and high-speed diesel (HSD) etc. • However for products such as Naphtha, Bitumen, JBO and ATF, there is no prescribed norm for permissible storage losses even though these goods are subject to similar storage losses.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• A specified percentage of permissible storage losses may be prescribed for all petroleum products such as Naphtha, Bitumen, JBO, ATF may be advised to avoid unnecessary litigation.
8.	Whether represented earlier	

3.10 Service tax – Denial of whole CENVAT credit of service tax on the LKTK contract, on the ground that the part of the CENVAT Credit relates to civil construction activities

1.	Issue	Denial of whole CENVAT credit of service tax on the LSTK contract on the ground that the part of the CENVAT Credit relates to civil construction activities
2.	Industry/sector involved	All sectors
3.	Tax involved (IT/WT/Customs/Excise etc.)	Service tax
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• Typically, an EPC contract is awarded for construction of a major project by the Employer to the EPC contractor. • Under the capacity expansion projects which are undertaken at the Refinery, lump sum or LSTK contracts are awarded which includes both mechanical and civil construction. • It is practically difficult to determine the portion of mechanical and civil jobs involved in such works contract. • Considering the fact, out of the total contract value, a part of the work relates to the civil construction activities and CENVAT credit of service tax pertaining to civil construction activities is specifically denied under the CENVAT Credit Rules, the Field Formation is denying whole Cenvat credit of service tax paid on entire value of LSTK contract on the ground that it is composite contract and fully attributable to civil construction.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• It is requested that CBEC may specify that in case of LSTK contact, where the value of civil construction is not specified in a LSTK contract, an adhoc specified ratio of the total contract value will be construed towards civil construction services and only proportionately CENVAT credit pertaining to adhoc ratio will be only disallowed.

8.	Whether represented earlier	

3.11 Clarification on the interpretation of the term 'Naphtha' under Central Excise law

1.	Issue	Definition and Classification of 'Naphtha' under Central Excise
2.	Industry / Sector involved	Petroleum- Natural Gas Processing
3.	Tax involved (IT / WT / Customs / Excise etc.	Excise duty
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• As per the Central Excise Tariff, product 'Naphtha' falls under Sub-Heading 2710.12.90 (Others) and tariff rate is 14% (16% till 06.07.2009) ad valorem plus Rs.15 per litre. • However, Naphtha falling under Chapter heading 2710 has been exempted *BY NAME* from payment of excise duty in excess of 14% (16% till 06.07.2009) by way of exemption notifications issued from time to time. (Exemption Notification No. 23/2006- CE dt. 01.3.2006; 18/2009 CE dt. 07.07.2009 and ; 21/2012 CE dt. 30.03.2012) • The Central Excise Department is issuing Show–cause Notices (Rs. 837 crores) stating that 'Naphtha' manufactured was in fact '*Natural Gasoline Liquid* (NGL)' that attracted excise duty of Rs. 15/- per litre (till 16.03.2012) in addition to ad valorem excise duty of 14% (16% till 06.07.2009) under Central Excise Tariff. • It is understood that the Central excise department had earlier raised demand on M/s ONGC Ltd. stating that the Naphtha manufactured by them was SBPS and was liable to excise duty @ 32% as against excise duty of 16% paid by them. Additional duty is not

		applicable on NGL w.e.f. 17.03.2012 and on SBPS w.e.f. 07.07.2009. • It is observed that 'Naphtha' is not defined under the Central Excise Tariff Act and this is the primary reason for emergence of this dispute. In absence of any definition under excise law, the benefit of exemption genuinely available to products meeting the specification/definition followed by industry/ various government agencies is being denied to the manufacturers by the department. • The term 'Naphtha' is defined by Ministry of Petroleum and Natural Gas (MoP&NG) under "Naphtha (Acquisition, sale, storage and prevention of use in automobile), order 2000' dated 05.06.2000" as: • " a light hydrocarbon liquid with 90% volume distillation, by ASTM D86 distillation method, 190 degrees centigrade or less." • 'Naphtha' is defined under the Glossary of Petroleum Terms of Bureau of Indian Standard (IS: 4639-68) as: *"A generic term applied to refined, partly refined or unrefined, petroleum products and liquid products of natural gas, not less than 10 percent of which distills below 175°C and not less than 95 percent of which distills below 240°C when subjected to a standard method test."* • The above BIS definition of Naphtha was accepted by the Central Excise Department before the Hon'ble Central Excise and Service Tax Appellate Tribunal (CESTAT), Mumbai in the matter of Indian Petrochemical Corporation vs. Commissioner of Central Excise, Vadodara [2005 (186) ELT 81 (Tri.-Mumbai)]. This case was maintained by the Hon'ble Supreme Court as reported at 2006 (198) ELT A68 (SC). The issue before the Hon'ble court was whether 'return stream naphtha' having distillation rage of 70°C to 150°C would be classifiable as Naphtha. • The Chief Chemist of the Central Excise Department had considered the definition of Naphtha as provided in the Indian Standard. • Specifications of Naphtha are also prescribed in 'Industrial Quality control Manual

		(IQCM) for non-aviation fuels' which has been prepared by the working group of oil industry under the aegis of MoPNG and is followed by entire Indian Oil & Gas industry producing Naphtha. • In view of the disputes raised by the department, GAIL had taken up the matter with CBEC with a request to adopt any of the above definitions of 'Naphtha' for the purpose of Central Excise classification. Copies of the letters written to CBEC dated 10.07.2012 & 27.06.2013 are enclosed as Annexure 1A & Annexure 1B. • Subsequently, GAIL submitted a detailed report to MOP&NG in response to ministry's D.O. letter No. L-11011/5/2013-GP.II dated 14.02.2013 and furnished a legal opinion from renowned legal firm M/s Lakshmikumaran & Sridharan on the issue. Copies of GAIL's letters dated 19.02.2013 and 01.04.2012 to MOP&NG are enclosed as Annexure 2A & 2B. It is understood that MOP&NG, after obtaining the views of Centre for High Technology on technical aspects, has written to MOF supporting GAIL's view with request to suitably clarify the issue. • As exemption is extended to 'Naphtha' (BY NAME) falling under Chapter Heading 2710. Thus, the benefit of the exemption notifications should be available to every manufacturer provided product meets the definitions/specifications of 'Naphtha' prevailing in the industry and is well recognized in the trade as Naphtha.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	• Department is of the view that the product manufactured from Natural Gas is Natural Gasoline liquid (NGL) and cannot be Naphtha. Hence it would attract excise duty Rs. 15/- per litre in addition to ad-valorem duty of 14%/16%. • In the present case, the product manufactured from Natural Gas namely Naphtha is eligible for exemption given to Naphtha by NAME as: - BIS definition clearly stipulates that Naphtha is generic terms applied to refined, partly refined and unrefined, petroleum products and liquid products of natural gas, - Characteristics of Naphtha manufactured by GAIL/ONGC from Natural gas are in line with the specification of Naphtha manufactured by other companies manufacturing Naphtha (e.g. MRPL, BPCL, IOCL, etc.) - Naphtha manufactured by GAIL/ONGC from Natural gas is also in conformity with

		the specification prescribed in 'Industrial Quality Control Manual (IQCM) for non-aviation fuels' adopted by entire oil industry and as defined under Glossary of Petroleum Terms of Bureau of Indian Standard and Naphtha (Acquisition, sale, storage and prevention of use in automobile), Order 2000 issued by MOP&NG which are being followed by the entire petroleum industry. - In case, the view taken by the department in the show cause is accepted, it will mean that Naphtha can-not be manufactured from natural Gas. It may be observed from the definition of 'Naphtha' provided in the Glossary of Petroleum Terms of the Bureau of Indian Standards that 'Naphtha' is a liquid petroleum product and can be obtained from Natural Gas. This definition has been accepted in various case laws by the departmental authorities.
7.	Suggestions	• It should be clarified by CBEC by way of a circular that: The definition of 'Naphtha' as given by MoP&NG under Naphtha (Acquisition, sale, storage and prevention of use in automobile), Order 2000 or by BIS under Glossary of Petroleum Terms shall be adopted under the Central Excise Law for the purpose of classification and payment of excise duty.
8.	Whether represented earlier	• Yes, as stated above representations were made to CBEC & MoP&NG.

3.12 Customs Duty – Manner of determination of valuation of leftover / excess goods for the purpose of customs duty

1.	Issue	Manner of determination of valuation of leftover / excess goods for the purpose of customs duty
2.	Industry/sector involved	Oil and Gas
3.	Tax involved (IT/WT/Customs/Excise etc.)	Customs duty
4.	Revenue impact, if estimated	-
5.	Genesis of the issue	• Oil and Exploration Companies import various oil field equipment, spares, consumables, drill pipes, etc for petroleum operation in the oil field allotted on a nomination basis, as well as in NELP Blocks. • Material such as line pipes, line/marine pipes etc is imported against the contract/purchase order on an estimated basis. • Occasionally, after actual utilization of the goods, a small percentage (say 10%) of the imported consignment remains unused. The leftover / excessive goods are utilized in any other eligible project to the extent possible. However, sometime these pipes being of a particular specification cannot be utilized and remain unused. Hence, such goods need to be disposed of as a scrap. • Due to ambiguity in the applicability of customs duty, the rate of customs duty etc, old materials lie in store and occupy valuable space.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	-
7.	Suggestions	• Request for clarification to the effect that up to 10% of goods imported and cleared for home consumption for petroleum operation (Exploration & Exploitation of Hydrocarbons) on payment of a Nil or concessional rate of customs duty, but remain

		unused and declared scrap shall be allowed to be disposed of on payment of customs duty on the sale value of scrap.
8.	Whether represented earlier	-

3.13 CENVAT – Dispute on eligibility of Cenvat credit on goods used in factory / premise of service provider (e.g. steel plates used for storage tanks in refinery)

1.	Issue	Dispute on eligibility of Cenvat credit on goods used in factory / premise of service provider (e.g. steel plates used for storage tanks in refinery)
2.	Industry/sector involved	All manufacturing sectors and specifically petroleum refinery
3.	Tax involved (IT/WT/Customs/Excise etc.)	CENVAT credit
4.	Revenue impact, if estimated	-
5.	Genesis of the issue	• A 'storage tank' used in a factory falls under the definition of capital goods under Rule 2(a) of CENVAT Credit Rules 2004 as the same is specifically covered under the definition of capital goods. • Once a storage tank is regarded as capital goods, duty paid on any raw material purchased for construction of capital goods should be eligible for CENVAT credit. The above view is also accepted by the Tax authority and was also endorsed in various decisions by CESTAT. • However, recently, the tax authority has taken a view that since after incorporation/ affixing the goods, the resultant goods is in nature of immoveable goods, and hence, the CENVAT credit of excise duty paid on the respective goods should not be eligible to the assessee. The same view was also upheld recently by CESTAT in some cases. • The CENVAT Credit Rules does not provide any such restriction. Furthermore, the principal of CENVAT credit states that a cascading effect of taxes should be avoided.

		Thus, the manufacturer should be allowed to avail CENVAT credit of excise duty paid on various goods which were used as a factor in the development of the facility irrespective of the fact that the resultant product is moveable or immoveable.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	-
7.	Suggestions	• It may be clarified by way of circular or by amending the CENVAT Credit Rules that CENVAT Credit of excise duty paid on goods used in manufacture of goods/provision of services will be allowed to the manufacturer of goods / provider of services irrespective to the fact that the respective goods are in the form of moveable or immoveable goods.
8.	Whether represented earlier	No

3.14 Customs Duty – Registration of contract with the Custom office under Project Import Regulation, 1986

1.	Issue	Problem in registration of contract with the Custom office under Project Import Regulation, 1986 due to the requirement of an original deed of contract
2.	Industry/sector involved	All major Project/refinery expansions.
3.	Tax involved (IT/WT/Customs/Excise etc.)	Customs duty
4.	Revenue impact, if estimated	-
5.	Genesis of the issue	• Clause 5(4) of the Project Import Regulation, 1986 for registration of contract specifies that ‘the application shall be accompanied by the original deed of contract together with a true copy thereof, the import trade control licence, wherever required, and an approved list

		of items from the concerned sponsoring authority'. • In a recent experience, the Department insisted on submission of the original deed of contract in the form of an agreement incorporating all the terms and conditions in the stamp paper instead of a Purchase Order (PO) signed by both the parties to the contract. The term 'original deed of contract' is not defined in the above Regulation. • Section 2(h) of the Indian Contract Act, 1872 defines a contract as an agreement enforceable by law. Section 2(e) defines an agreement as "every promise and every set of promises forming consideration for each other". Section 2(b) defines a promise in these words: "When the person to whom the proposal is made signifies his or her assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise". On the other hand a PO is a commercial document issued by a buyer to a seller, indicating the types, quantities of products and agreed prices for products or services the seller will provide to the buyer. Sending a PO to a supplier constitutes a legal offer to buy products or services. Acceptance of a PO by a seller usually forms a contract between the buyer and seller, so a contract exists on acceptance of the PO. Thus the PO is a contract agreement. • The Department has narrowly construed the expression "deed of contract" and considers this only the formal document in the Stamp Paper. The contractual documents in the form of a PO exchanged between buyer and seller, which is the general form in commerce with the order and acceptance containing sufficient particulars of the transaction, should be treated as a deed of contract. These principles are also accepted in Advance Ruling No. AAR/01(Cus)/2007 in Application No. AAR/17(Cus)/2006 in the case of M/s Enercon (India) Limited vs Commissioner of Customs (Import) Raigad.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	-
7.	Suggestions	• It may be clarified that for registration of the contract under the Project Import Regulations, any form of contractually binding document (i.e. purchase order etc) will be

		suffice for registration of the contract under the Project Import Regulations.
8.	Whether represented earlier	No

3.15 Service Tax – Service tax on transportation charges and marketing margin where natural gas is sold and delivered at the customer's premises

1.	Issue	Applicability of service tax on transportation charges and marketing margin where natural gas is sold and delivered at the customer's premises
2.	Industry/sector involved	Transportation of goods through pipeline other than water (i.e. transmission of gas)
3.	Tax involved (IT/WT/Customs/Excise etc.)	Service tax
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• GAIL purchases Natural Gas from ONGC/Petronet LNG Ltd. The gas so purchased is transmitted through a pipeline network owned and operated by GAIL for sale to various consumers. GAIL enters into contract for sale of natural gas with the customers. Under the terms of contract for sale of gas, GAIL transports gas up to the delivery point located at the customer's premises, where ownership of natural gas is transferred to the customer. Gas transmission charges are shown separately on the invoices raised by GAIL in addition to other price components. • Considering the entire transaction as a sale transaction, GAIL pays sales tax/VAT on the total price including transmission charges under VAT/sales tax law of the State where ownership of gas is transferred. • In addition to the transportation charges, GAIL also charges gas consumers a marketing margin on the sale of natural gas on which appropriate VAT/CST is being paid by GAIL as a component of the sale price. • Natural Gas transmission charges as fixed by Petroleum and Natural Gas Regulatory

		Board (PNGRB) are being charged and shown in the invoice by GAIL. Considering the entire transaction as 'sale' transaction, GAIL is paying sales tax/VAT on the 'total price' including transmission charges under VAT/sales tax law of the State where ownership of gas is transferred. • Besides above, GAIL also transport the natural gas of other gas suppliers/sellers such as RIL, IOCL, and BPCL through it's pipeline networks. GAIL enters into contract for transportation of gas (GTA) which belongs to the shippers (owner of gas). GAIL charges natural gas transportation charges as fixed by PNGRB from such shippers. It is pertinent to note that transmission charges under both the above methods are non-discriminatory and hence transmission charges are same under GSA and GTA. • Service Tax was made applicable on the category of 'transportation of goods through pipeline' w.e.f. 16.06.2005. At that time, it was felt that Service tax may not be leviable on such 'gas sales contracts' where transmission of own gas is done by GAIL through its own pipeline. Accordingly, a clarification was sought by GAIL from the Commissioner of Service Tax, New Delhi. The Commissioner of Service Tax, New Delhi vide letter dated 26.08.2005 had clarified service tax is payable by GAIL. • Accordingly, various units of GAIL had sought registration with the Service Tax Department under the category of 'transportation of goods through pipeline' and started payment of service tax on transportation charges claimed on sale of its own Natural Gas. • Subsequently, GAIL represented to the Central Board of Excise & Customs to re-examine the matter and issue a clarification on applicability of Service tax on transportation involved on sale of own Natural Gas. • The Service Tax Department recently raised a demand of service tax on the marketing margin stating that it is an additional consideration for the service of transportation of natural gas on which service tax was being paid by GAIL. This demand has now been confirmed by the Commissioner, Central Excise & Service Tax, LTU, New Delhi. It is pertinent to note that other traders of natural gas who are not transporters are also

		charging marketing margin on the sale of natural gas. • CBDT vide Circular No. 9/2012 Dated 17 October 2012 has also clarified that in the case the seller of the gas sells as well as transports the gas up to the point of delivery of the buyer where the ownership of gas is simultaneously transferred, the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately) does not alter the basic nature of such contract, which remains essentially a contract for sale. • The Gujarat High Court in the decision of M/s Krishak Bharti Cooperative Limited held that such agreement essentially is for purchase and sale of gas. It was also observed by the Court that there is no contract between GAIL and the assessee for carriage of goods and transportation of gas by GAIL is only in furtherance of the contract of sale of gas. • Now, in view of the judgment of the Gujarat High Court and the CBDT Circular dated 17 October 2012, the contracts for sale and transportation of natural gas entered into by GAIL, where ownership of gas is transferred by GAIL at customer's premises, are essentially contracts for sale and the manner of raising sales invoice does not alter the basic natural of the sale contracts. • After CBDT circular, GAIL again took up the matter with CBEC and other senior authorities for clarification. Senior officers from GAIL also met with the concerned authorities for appropriate clarification so that unnecessary litigation on the issue could be avoided and the following anomalies in existing tax treatment could be cured. - Service tax and VAT are both being levied on the same transaction. - Cascading effect of tax (i.e. tax on tax is being levied).
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	• The Department is of the view that service tax is applicable on the component of transportation charges and marketing margin charged to customers under a gas sale and transmission agreement for sale and delivery of gas at the customer's door-point.
7.	Suggestions	It may be clarified by the CBEC by way of a Circular that:

		• Service tax is not applicable on transportation of natural gas where the seller of the gas sells as well as transports the gas up to the point of delivery of the buyer and where the ownership of gas is simultaneously transferred,. • The manner of raising the sale bill (*whether the transportation charges or any other component are embedded in the price of gas or shown separately*) does not alter the basic nature of such contract which remains essentially a contract for sale.
8.	Whether represented earlier	• Yes, as stated above representations were made to CBEC & Commissioners- Service Tax Delhi, Commissioner- LTU.

3.16 Custom Duty – LPG used for non-domestic purposes

1.	Issue	Customs duty for LPG used for non-domestic purposes
2.	Industry/sector involved	Oil companies
3.	Tax involved (IT/WT/Customs/Excise etc.)	Custom duty
4.	Revenue impact, if estimated	
5.	Genesis of the issue	• With effect from 02/05/2005, the applicable customs duty on import of LPG/butane/propane for domestic PDS purposes is 'Nil' vide Notification No. 37/2005 dtd. 02/05/2005. • LPG is also manufactured by various refineries in India. • At port locations LPG is indigenously produced as well as imported and is stored in common storage tanks in commingled condition, since irrespective of the source, the BIS specification of the product is the same. • Though LPG is primarily used only for domestic PDS purposes, some minor quantity of LPG is also required for non-domestic purposes. Differential excise duty is duly paid

		by the refineries to the extent the LPG is used for the non domestic purposes. • LPG plants are duty paid locations and there is no mandatory requirement of maintaining stock records on a FIFO basis for receipts and dispatches. • Customs authorities, however have initiated proceedings under the Customs Act on the basis that by applying the FIFO system, some portion of the Imported LPG was used for non-domestic purposes and the exemption extended for imports is not applicable, and therefore appropriate customs duty should also be paid for such use, in spite of excise duty having been deposited. • It should be noted that excise duty is already paid by the refineries to the extent the LPG is used for non domestic purposes.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	
7.	Suggestions	• Appropriate clarification should be issued to confirm that since the excise duty is already paid on LPG used for non domestic purposes, hence, the benefit of customs duty exemption should not be denied.
8.	Whether represented earlier	

3.17 Excise Duty – Dispute on rate of excise duty on intermingling loss of SKO in pipeline transportation

1.	Issue	Dispute on excise duty on intermingling loss of superior kerosene oil (SKO) in pipeline transportation at higher rate under Board Circular No 637/27/2002-CX dated 22.04.2002 in contravention of Central Excise Rule.
2.	Industry/sector involved	Petroleum refinery transporting the products through pipeline.
3.	Tax involved (IT/WT/Customs/Excise etc.)	Excise duty
4.	Revenue impact, if estimated	-
5.	Genesis of the issue	• Oil Companies have been using the pipeline for transportation of multiple products i.e. MS, HSD and SKO from its Refinery to various pipeline head depots /installations. Each parcel of HSD, SKO and MS individually is called a batch. The sequence of the products is MS then SKO then HSD then SKO. Since all the products packed inside the pipeline move at very high velocity and pressure, some commingling/intermixing of batches is unavoidable at the boundary of the continuous batches and this intermixing of two adjoining product inside a pipeline is called an INTERFACE. The interfaces between MS-SKO or HSD–SKO are generally upgraded to MS or HSD respectively. Not very clear to me and no need to mention. • The SKO cleared through pipeline at a nil rate is for ultimate sale through PDS under Notification No 4/2006 CE dtd 01.03.2006 as amended. On receipt of SKO PDS at the receiving point, assessment of the quantity of actual loss of SKO PDS and loss in pipeline transportation and pay the duty on the quantity at the industrial SKO rate on the applicable assessable value as the exemption of duty at nil rate on SKO PDS is not available against the actual loss quantity of SKO PDS. • After removal of warehousing facility for petroleum products w.e.f. 06.09.2004, the Board Circular no 796/29/2004 CX dated 04.09.2004 states that the excise duty is liable to be paid by the refineries at the time of removal. Rule 4(1) of Central Excise Rule 2002

		states that no excisable goods on which any duty is payable, shall be removed without payment of duty from a place where they are produced or manufactured or from a warehouse. • Rule 5(1) of Central Excise Rules 2002 states that the rate of duty shall be the rate or value in force on the date when such goods are removed from a factory or warehouse. Section 3 of the Central Excise Act, 1944 specifies that duties are to be levied on the excisable goods manufactured. • Thus the applicable duty on MS, HSD, SKO–PDS manufactured by the Refinery needs to be discharged at the factory gate on clearance through the pipeline (here the applicable duty rate on SKO PDS is nil) after removal of the warehousing facility for petroleum products. • The Department however disputed the practice followed by Refineries based on Board Circular No 637/27/2002-CX dated 22.04.2002 and issued a Show Cause Notice demanding the higher of the two duties i.e. duty payable on SKO not used for the intended purpose and duty payable on surge/gain in MS or HSD against the loss quantity of SKO PDS. This Circular is no more valid as post removal of the warehousing provision with effect from 2.9.2004, duty is to be discharged at the point of removal. • The subject Board Circular states that: "*The problem of accountal of petroleum products resulting from intermingling of different products pumped through pipelines has been engaging the attention of the Board for quite some time. In a recent case, one of the oil companies has represented against the differential duty demanded by the Department on account of shortage of SKO imported under concessional rate of duty. It has been contented that the movement of petroleum products through pipelines is carried out by product with another is inevitable. The case of the oil company is that shortage of SKO imported under concessional rate of duty is accounted for in terms of the interface quantity i.e. the gain in Motor Spirit (MS)/High-Speed Diesel (HSD) and the duty paid by them on this interface quantity is more than the duty foregone on SKO on account of concessional*

		rate of duty. Therefore, as per the assessee, the question of additional duty liability does not arise. *2. The Board has examined the issue from the twin objectives of safeguarding revenue as well as avoiding unnecessary litigation. The existing instructions vide Board's letter F.No. 21/13/66-CX.III dated 20.3.67 and F.No. 11A/9/70-CX 9dated 27.3.1973 accept the off-setting of gain observed in one product against loss observed in another product. Though in the scheme of accountal of one product for the other, the duty payable on the interface SKO (co-mingled products) taken as MS or HSD is presently more than the duty liability on the shortage of imported SKO, however, the situation can be reverse also. Furthermore, it is a fact that the SKO imported under concessional duty is not fully utilized for the intended purpose and in such case, the concessional duty can not be extended. The Board is therefore, of the view that in the event of inter mixing of the products, the higher of the two duties i.e. duty payable on SKO not used for intended purpose and duty payable on surge/gain in MS or HSD shall be payable for the intermixed/interface quantity. In other words, the duty of inter mixed part of SKO and MS/HSD as the case may be, may be quantified and higher of the two values may be accepted. The existing instructions on the subject stand modified to the above extent.*" • Based on a reading of the Board Circular, it is clear that the benefit of nil duty/concessional duty cannot be extended against loss of SKO PDS as this is not utilized for the intended purpose. Accordingly, Refineries have been paying the applicable duty on SKO against the loss quantity of SKO PDS, which was also recognized in the first part of the Circular. The Board clarification on the second part on the payment of the higher of the two duties i.e. duty payable on SKO not used for intended purpose and duty payable on surge/gain in MS or HSD against the loss quantity of SKO PDS contradicts the Central Excise Provision after withdrawal of warehousing provision for petroleum products, which itself created the basis for litigation. • Furthermore, in a recent case, BPCL vs CCE Coimbatore 2013-TIOL-1215-CESTAT-

		MAD, CESTAT has criticized the approach of the Department on imposing duty liability based on a Circular issued by the CBEC, without explaining the legal provisions under which duty liability arose. • In view of the above, withdrawal of the Circular is required or appropriate clarification may be issued.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	-
7.	Suggestions	-
8.	Whether represented earlier	No

3.18 Service tax and CENVAT credit on Corporate Social Responsibility (CSR) activities

1.	Issue	Service tax and CENVAT credit on Corporate Social Responsibility (CSR) activities
2.	Industry/sector involved	All industries and service sectors
3.	Tax involved (IT/WT/Customs/Excise etc.)	Service tax
4.	Revenue impact, if estimated	-
5.	Genesis of the issue	• Under the directives of the Department of Public Enterprises, GOI, large public sector undertakings are required to spend 2% of their net profit towards various welfare measures under CSR projects. Accordingly, large PSUs (such as ONGC) are making contributions for welfare activities, which is primarily the function of the GOI. • In addition to this, the recent amendment in the Companies Act requires that private/public companies should spend a specified amount on various specified corporate social initiatives. Thus, the companies are mandatorily required to spend the

		specified amount on CSR initiatives. • The basic objective of undertaking CSR projects by CPSEs is to create value in innovative social investments in the community, ensure that the initiatives of CPSEs synergize with initiatives of Central and State Governments, District Administration, Local Administration, Central Government Departments/Agencies, ensure fulfillment of National Plan goals and objectives, as well as Millennium Development Goals adopted by our country. • It is submitted that when a particular project is funded by CPSEs, GOI Guidelines provide that, the implementation of the project create a positive image about the company in the public's perception. Accordingly, while taking up any CSR project it is ensured that the CPSE trade name or logo is properly displayed. • This display of trade name or logo at the CSR site for creating a positive image cannot be or should not construed as mileage for commercial advantage to CPSEs and therefore such CSR activities should not be a taxable service. • From the above it can be seen that: a. areas of activities under CSR as indentified by the GOI are ordinarily entrusted to the GOI including local authorities; b. Such activities are being funded by the GOI from the Consolidated Fund of India. c. Any tax on CSR activities will reduce the funds available for actual CSR works to the extent of the tax liability. d. Furthermore, services provided to the GOI, a local authority or a governmental authority by way of carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgrade are exempted from payment of service tax in Sl No 25 of Notification No 25/12-ST dated 20.06.2012. ii. However, Field Formation (departments) have expressed their the view that these transactions are covered under sponsorship, as ONGC is getting mileage from the CSR Project, and are subject to service tax. CSR projects, as identified by the GOI, are being implemented through specialized

		agencies i.e. either NGOs or GOI departments. However, no agency charges are being paid to either NGOs or GOI departments and the CSR budget for such project is fully utilized for CSR works. Some of the CSR activities carried out are as follows: a. LPG projects with Ministry of Petroleum and Natural Gas. b. MoU between ONGC and Himalayan School Society c. MoU between ONGC and the Energy and Research Institute d. MoU between ONGC and Society for Educational Welfare and Economic Development e. MoU between ONGC and Help Age India f. MoU between ONGC and Wild Life Trust of India g. MoU between ONGC and Paryavaran Evam Van Surakshasamiti h. MoU between ONGC and Tagore Academy, Delhi i. MoU between ONGC and Bhartiya Vidya Bhavan j. MoU between ONGC and National Culture Fund k. MoU between ONGC and Aurobindo Society In view of above, it is submitted that CPSEs are carrying out various CSR activities in terms of GOI Guidelines and there is no intention to get any commercial advantage by way of mileage. Hence a clarification to the effect that CSR activities being carried out by CPSEs in terms of GOI Guidelines are not a service leviable to service tax may kindly be issued.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	-
7.	Suggestions	• Request for issue of Clarification to the effect that Contributions made to CSR projects are not subject to service tax.
8.	Whether represented earlier	-

3.19 CENVAT – Availing of CENVAT credit for service receiver manufacturer or the service provider/works contractor

1.	Issue	LSTK/turnkey contracts: Availing of CENVAT credit for service receiver manufacturer or the service provider/works contractor
2.	Industry/sector involved	All manufacturing sectors awarding LSTK contracts
3.	Tax involved (IT/WT/Customs/Excise etc.)	CENVAT credit
4.	Revenue impact, if estimated	-
5.	Genesis of the issue	• With effect from 01.07.2012, the value of the works contract is determined in accordance with the Rule 2A of the Valuation Rules. • The clause (ii) provides that where contractor opts for composition method, the tax base would be reduced to 40% of the gross amount charged under the contract including the value of free issues. In such case, the tax base though includes the value of material transferred and the value of free issue material, the intent is to tax only service part thereof and hence the tax is charged at abated rate. • Given the law that a service provider in a works contract is not in a position to avail CENVAT credit on the goods transferred in a works contract or is restricted to avail such credit (input material), the point is whether the manufacturer can avail the credit on said goods. If the CENVAT Credit on the goods so transferred is denied to the manufacturer also, that would lead to a situation where CENVAT credit of the duty paid on such goods under the works contract is neither available to the service provider, nor to the manufacturer, which does not seems to be the intent of the law. • Further as under Rule 2A(ii) of the valuation rule under work contract service the service provider is entitled to excise duty credit on capital goods and service tax payment on input services. • In case the service provider opting for work contract service or composition method and do not avail any credit of excise duty on input material falling under the capital goods

		tariff heading and received by the manufacturer within the factory as consignee, the input credit should not be denied to the manufacturer." • Whether in a works contract service, the CENVAT credit on inputs and capital goods transferred by the service provider to the service recipient manufacturer (as deemed sales), is available to the service provider or the service recipient manufacturer under the following circumstances: - When a works contract service provider pays service tax at 12.36% on the identified service value of the service under Rule 2A/Clause (i) of Rule 2A of the Valuation Rules; • The CBEC has already clarified that the works contract service provider cannot claim CENVAT credit w.r.t. the goods sold under the contract vide Circular No.96/7/2007-ST, dated 23-08-2007, which in its para 097.02, says that "value for the purpose of service tax under works contract service does not include the value pertaining to transfer of property in goods involved in the execution of a works contract leviable to VAT/sales tax. Works contract service provider is, therefore, not eligible to take credit of excise duty paid on such goods involved in the execution of works contract." - When a works contract service provider opts for a composition scheme and pays service tax at 4.12% under the composition scheme; - Whether there is a possibility in the law (both prior to and post 01-07-2012) that a works contractor pays service tax at 10.3%/12.36% on the total value of the contract (including the value of material transferred/sold under the contract) and claim CENVAT credit on the goods transferred/sold under the works contract? • Whether the invoice issued by the manufacturer of goods in the name of a works contractor where the consignee is the service recipient/end user of goods, is a valid document to claim credit by the service recipient manufacturer? (*This issue has already been clarified vide CBEC Circular Nos. 96/7/95-CX, dated 13-05-1995 and 218/52/96, dated 04-06-1996, however, the Department has still been disputing this issue*)

6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	-
7.	Suggestions	-
8.	Whether represented earlier	No

3.20 CENVAT – Denial of CENVAT Credit distributed through Input Service Distributor Invoice (ISD)

1.	Issue	Denial of CENVAT Credit distributed through Input Service Distributor Invoice (ISD)
2.	Industry/sector involved	All Sector
3.	Tax involved (IT/WT/Customs/Excise etc.)	CENVAT credit
4.	Revenue impact, if estimated	-
5.	Genesis of the issue	• The CENVAT Credit Rules provides that an Input Service Distributor can distribute the CENVAT Credit of service tax received by it to its manufacturing unit/ locations of service provider. • The term ‘input service distributor’ is defined to mean an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be. • However, it was observed that Field Formation are disallowing CENVAT Credit of service tax availed based on ISD invoice issued by the Input Service Distributor and huge demand of tax is made against the Assessee.

6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	-
7.	Suggestions	• CBEC may clarify by way of Circular that CENVAT credit of service tax distributed by ISD would be eligible as CENVAT Credit to the manufacturing unit.
8.	Whether represented earlier	-

3.21 CENVAT – Seeking abatement of 50% on payment of service tax on time charter of vessel

1.	Issue	Seeking abatement of 50% from the taxable value in case of contract for time charter of vessel
2.	Industry/sector involved	All Sector
3.	Tax involved (IT/WT/Customs/Excise etc.)	Service tax
4.	Revenue impact, if estimated	-
5.	Genesis of the issue	• To transport the goods, generally, either a contract for transportation of goods is executed between the service provider and recipient of services or the recipient of services hires goods / vessel for transportation of goods from one place to another under a time charter contract. • The ultimate objective of both kind of contract is to transport the goods from one place to another. • The service tax law provides by way of Notification No. 26/2012 provides an abatement of 50% of the value of taxable services in case of transport of goods by vessel services provided by the service provider whereas the similar kind of exemption is not available to the time charter contract. • The ultimate objective of the contract for Time Charter of vessel is to transport goods

		from one place to another and thus, it is requested that the above exemption / abatement should also be extended to Time Charter contract of vessel.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	-
7.	Suggestions	• An abatement of 50% from the value of taxable services should also be provided from the value of taxable services received towards time charter of vessel as well.
8.	Whether represented earlier	-

3.22 Alignment of import duty and excise duty provisions on Furnace Oil (FO) to be used for manufacture of fertilizers

1.	Issue	• Alignment of import duty and excise duty provisions on Furnace Oil (FO) to be used for manufacture of fertilizers
2.	Industry/sector involved	• All Oil Marketing Companies selling Furnace Oil in domestic market.
3.	Tax involved (IT/WT/Customs/Excise etc.)	• Excise & Customs
4.	Revenue impact, if estimated	-
5.	Genesis of the issue	• As per Notification No. 12/2012- Customs dated 17.03.2012, customs duty & Addl Duty in case of import of FO is exempt provided such import of Furnace Oil is for the purpose of manufacture of fertilizers. However, Notification No.12/2012- Excise dated 17.03.2012, exempts excise duty on the furnace oil provided the following two conditions are satisfied:

		i. Such furnace oil is intended for use as feedstock in the manufacture of fertilizers. ii. The exemption shall be allowed if it has been proved to the satisfaction of an officer not below the rank of the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction that such goods are cleared for the intended use specified in column (3) of the Table. • On account of this an anomaly in the notification under customs & excise, the indigenous sale of this product has been adversely affected as the customers are able to import the product free of duty even if the product is not intended for use as feedstock in the manufacture of fertilizer. This result in imports and drain in foreign exchange when the product is available locally.
6.	Different views observed in application of law/regulation etc., if any (can illustrate with examples without specific names)	-
7.	Suggestions	• Consider aligning the import duties (BCD and CVD) on import of FO and excise duty on manufacture of FO for use in fertilizers by allowing same exemption to domestic manufacture as has been allowed in case of imports, or impose levy of BCD and CVD on import of FO for use other than in the feedstock in the manufacture of fertilizer so as to bring in price parity between imported and indigenously manufactured FO
8.	Whether represented earlier	• Representation made by BPCL to The Revenue Secretary, Department of Revenue, Ministry of Finance vide letter dated 05.09.2013