CALCUTTA CHAMBER OF COMMERCE

PRE-BUDGET MEMORANDUM

ON

CENTRAL BUDGET

2021-2022

PRE BUDGET MEMORANDUM ON UNION BUDGET: 2021-2022

The Calcutta Chamber of Commerce is pleased to submit a Memorandum on Central Budget 2021-22 highlighting the points and suggestions for your kind consideration.

A. SUGGESTIONS ON DIRECT TAX LAW

1. Disallowance of cash expenses and expenses with withholding tax default for charities (S.10(23C) and s.11)

Blanket disallowance of application of income will lead to dilute the basic objective of '*charity*'. It is hence recommended that the present proposal of withholding tax default disallowance be dropped as it has adverse impact on many of the genuine charitable entities.

A specific and self-contained provision may be introduced in s. 11 of the ITA which can align with smooth working of the provision for charitable trust. Once there is default in compliance of withholding provision, application of income for that year with reference to 30% defaulted amount may be de-recognised. However, once there is compliance with proviso to s. 40(a)(ia) of the ITA, it would relate back to the year of default and recognition of application of income may be restored in Year 1.

2. Clubbing of Income of Minor Sec 10(32)

It is suggested that this should be raised to at least Rs. 5,000/- from Rs. 1500/- for each minor child

3. Withdrawal of registration u/s. 12AA

S. 12AA is amended by Finance (No.2) Act 2019 to provide that registration of charitable trust can be cancelled in case of non-compliance of '*material*' conditions of other applicable laws.

There are adequate provisions under the Act to cancel registration of non-genuine charitable trusts or where activities are not in line with the objects of the trust. Where the Trust is not complying with other laws as may apply to it, the latter regulations have appropriate procedures to address the same and the same need not be addressed through the Act.

Accordingly, the above amendment should be deleted since determination of '*material*' non-compliance is subjective and increases scope of litigation

4. Disallowance u/s. 14A

Rule 8D may be amended to scale down the artificial disallowance under second limb from 1% of average value of investments to 0.5% of average value of investments. It may be clarified that the average value needs to be computed by ignoring revaluation as was the position prior to amendment of Rule 8D in 2016

It may also be clarified preferably through a Circular that computation as per Rule 8D cannot be applied to 'book profit' computation u/s. 115JB which has to be based on actual expenses debited to P&L A/c.

CBDT Circular No. 5/2014 dated 11.2.2014 stating that the disallowance can apply even if there is no exempt income may be withdrawn on retrospective basis .

Conversion of Current Asset into Stock In Trade is taxable as Business Income (FMV-Cost of Inventory on date of conversion).

It is suggested to provide deferment of payment of tax on business income from conversion of stock in-trade to capital asset till the final disposal of such capital asset to avoid hardship of payment of tax on unrealized gain and bring parity with the method adopted on conversion of capital asset into stock-in-trade.

5. Fee on Incorporation of a Company is allowed as deduction u/s 35D as per specified limits in 5 Instalments

However amount paid for increase in authorized capital is not allowed as deduction at all, though the amount is paid to government as a fee.

It is suggested that fee paid to Registrar of companies for increase in authorized capital may be allowed as revenue expenditure in 5 equal instalments u/s 35D.

6. Due date defined under Explanation to Section 36(1)(va) should be amended

Due date shall mean the due date for filing return of income under section 139(1), thereby bringing it at par with the due date specified for the Employer's contribution under Section 43B of the Act.

Allowable remuneration for each of the working partner be changed at the rate of Rs. 1,80,000 per annum per partner or 90 percent of book profits whichever is more for first Rs. 10,00,000 of book profits and 75 percent of the remaining book profits.

Section 44AA, 44ADA and 194J relating to presumptive taxation applies only to businesses run by residents Individual, HUF and Firms excluding LLP.

For the purpose of Sec 44AA of Income Tax Act, 1961, only some legal, medical, engineering, architectural, accountancy, technical consultancy, interior decoration, or any other notified profession (i.e., authorised representative, film artist, company secretary and information technology) are specified professions.

For this purpose, Authorised representative means a person who represents any other person, on payment of any fee or remuneration, before any Tribunal or authority constituted or appointed by or under any law for the time being in force, but does not include an employee of the person so represented or a person carrying on legal profession or a person carrying on the profession of accountancy.

We suggest that all professions (including management consultancy, financial consultancy, economic consultancy, media and PR consultancy should be covered within the meaning of section 44AA as the same is also applicable for the purpose of section 44ADA and 194J.

7. Section 54EC: Time limit for investment in specified bonds to increase

It is suggested to amend section 54EC so that time limit for investment in specified bonds may be allowed up to the due date of filing of ITR instead of 06 months

Further, considering the inflationary conditions in the economy, it is further suggested that the said limit of Rs.50 Lakhs may be raised to Rs. 1 crore.

8. Section 71(3A) – Loss from House Property:

Section 71 of the Act provides for set off of any loss arising under the head "Income from House Property" against any other head of income.

As per section 71, it is restricted to set off the losses to the extent of Rs 2,00,000 against any other head of income and the unabsorbed loss to be carried forward up to subsequent 8 assessment years.

It is suggested to withdraw the said amendment and alternatively, the limit of Rs 2 lakhs may be raised to at least Rs 5 lakhs

9. Section 80C - Increase threshold limit

Over the years, investments made in various avenues available under Section 80C of the Income Tax Act have been helping the Government to raise funds as well as the individuals to save tax.

The Government may look at increasing the overall deduction limit to at least Rs 250,000 to boost further investment and increase tax savings for the individual and HUFs.

10. Section 80DDB

COVID should be included in Rule 11DD as specified decease for giving benefit to the assesses under section 80 DDB of Income Tax Act.

11. <u>Section 80TTA</u>

It provides deduction of up to Rs.10,000 in the hands of individuals and HUFs in respect of interest on savings account with banks, post offices and cooperative societies carrying on business of banking.

Interest on all types of deposits (eg FDRs) may also be included within the scope of section 80TTA.

12. <u>Section 80TTB</u>

It allows a deduction upto Rs 50,000/- in respect of interest income on deposits made by senior citizens.

It is suggested that income by way of interest on National Savings Certificate also be included within the ambit of provisions of section 80TTB, so that senior citizens who have purchased NSCs from post offices are also able to avail the benefit of enhanced deduction under section 80TTB.

It is suggested that section 194J be amended to provide an independent limit of Rs.30,000, above which remuneration or fees or commission to director may be subject to tax deduction at source.

13. <u>Payments to related parties covered u/s. 40A(2)(b)</u>

S.40A(2) should be amended to carve out exceptions for transactions between related parties where none of them are loss making or availing any tax incentive. This will improve 'ease of doing business' and remove uncertainty for taxpayers.

14. <u>Cash payments by business segment availing presumptive taxation scheme</u>

Since there is no specific disallowance being triggered in terms of section 40A(3) of ITA in case of presumptive tax provisions, it leads to scope for such taxpayer to indulge in cash payments without fear of disallowance.

Since it may not be feasible to provide for specific disallowance under the presumptive taxation scheme, as an alternative, some incentive may be provided to taxpayers for encouraging them

to use banking channel for making payment for business purchases as also other general expenses such as salary, wages, labour, rent, electricity etc.

One such mode to incentives could be the reduced rate of presumptive taxation along the lines of proposal for acceptance of digital payments by the traders. The incentive of 2% reduction in presumptive income rate may be split in the form of 1% each for receipt and payment through banking / digital modes.

15. Relief from compliance burden and onerous consequences of TDS default for payers / payees

TDS provisions need to be rationalized and there should be a common minimal rate of 1% or 2% across all the payments to avoid disputes on characterization of payment for TDS purposes.

There should be explicit provision in the ITA which clarifies that if income is exempt in the hands of the payee, then there is no TDS requirement which is merely an empty formality in such cases where payees have to ultimately claim refund.

16. Form 26AS to include PAN of deductor and the Unique TDS Certificate Number

Form 26AS should also incorporate the PAN of the deductor and the unique certificate number so that the same can be reviewed and matched with the books of accounts of the company

17. Tax on notional income (S. 22)

It is suggested to restrict taxation of house property income to rent income actually received / receivable and remove taxation of notional income based on annual letting value.

18. Tax under sec. 115BBE

Earlier the assessee was not concerned whether the department is treating it as deemed income or business income as the income was taxable maximum at the rate of thirty percent. But after amendment in section 115BBE from assessment year 2017-18 this matter has become very important and if the department treats surrendered income as deemed income it will be subject to tax at the rate of 60 per cent plus 25 per cent surcharge and education cess. The effective aggregate rate u/s 115BBE now 78 per cent. If the A.O. makes addition penalty under section 271AAC may also be levied @ 10 per cent of tax, which will make the overall burden @84 per cent on assessee. It is prohibitive and needs urgent review.

It is desirable that tax under sec. 115BBE should be at best 30 per cent or the maximum marginal rate. The rate was basically increased drastically due to demonetisation. It should be brought back to pre asst. year 2017 -18 level.

19. Levy of additional tax on cash holding & cash expenditure

With a view to discourage cash holdings, additional tax (akin to wealth tax) may be levied on holding cash over specified threshold limit as on the last day (i.e. 31st March) of financial year:
For taxpayers engaged in business or profession,
a) who are liable to tax audit under the ITA - Rs. 10 lakhs;
b) other taxpayers - Rs. 5 lakhs

For individuals and HUFs not in business or profession - Rs. 5 lakhs

With a view to discourage cash expenses, there should be levy of some tax on expenses in cash beyond the specified limit as under:

For taxpayer engaged in business or profession:

a) who are liable to tax audit under the ITA - if aggregate expenditure exceeds Rs. 25 lakhs
b) other taxpayers – if aggregate expenditure exceeds Rs. 10 lakhs

For individuals and HUFs, in relation to personal expenses, if aggregate expenditure exceeds Rs. 10 lakhs

20. Exposure of penalty levy u/s 270A even when entire tax amount is deposited by way of advance payment of taxes (no credit for taxes withheld, advance taxes paid, self-assessment tax, etc.)

With an intent to bring in objectivity, certainty and clarity in penalty provisions, Finance Act 2016, w.e.f. AY 2017-18, introduced s. 270A to provide for levy of penalty in lieu of s. 271(1)(c) of the ITA. The scheme of new penalty provision seems to be comprehensive and provides for detailed mechanism for the manner of computation of under-reported income, exclusions therefrom, cases of misreporting of income, the rate of penalty levy, computation of tax payable for determining quantum of penalty, etc. It also provides window to the taxpayer for applying for immunity after fulfilling conditions specified in s. 270AA of the ITA.

Hence it is recommended for insertion of separate provision similar to Explanation 3 to s. 271(1) to avoid genuine hardship to the taxpayer in cases where there is no loss to the revenue.

S. 270A(10) be suitably amended to provide for credit for pre-paid taxes (TDS, advance tax and self-assessment tax) along the lines of erstwhile Explanation 3 to s. 271(1)(c), in computing amount of tax payable on under-reported income

21. Misreporting covered cases of deliberate misconduct: s. 270A(9)

In order to avoid above mentioned unintended consequences of covering even bonafide / innocent mistakes within the ambit of s. 270A(9), it is recommended that a suitable clarification

by way of an Explanation or proviso be provided under s. 270A(9) suggesting that the cases intended to be covered by s. 270A(9) is of deliberate / wilful misconduct on the part of taxpayer.

22. Denial of benefit of immunity even if one of the items of under-reported income is arising as a consequence of misreporting of income (s. 270AA)

Since the provisions for immunity are introduced to avoid litigation, it is advised to make immunity provision qua addition / disallowance and not qua assessment order. Hence the taxpayer should be allowed to apply for immunity for all such additions / disallowance for which initiation of penalty is not as 'misreporting of income'.

23. Refund to be granted in timely manner

The issue of manual refund requires approvals from various higher authorities, which is a time consuming process and delays the refund to the assessee as compared to e-refunds. It is recommended that a simple time bound process should be set up to ensure timey refunds to the assessee wherever there is no mechanism to issue e-refunds.

24. Interest on income tax refund u/s. 244A

In the event the demand is reversed by higher appellate authority, the interest on refund to the tune of 1% for every month or part of the month should be provided from the date of the assessment order till the date of credit of refund to the account of the tax payer.

25. E-assessment scheme (S.143(3A) w.e.f 1 April 2018)

The Notice u/s 148 should be accompanied by: (a) the reasons recorded in writing by the AO and (b) The approval u/s 151 if obtained, and if not the reasons for the same. The litigation on the validity of the proceedings and technicalities regarding the recording of the reasons and the necessary approvals will be put to an end. The transparency and minimal interaction between the officer and assessees will be minimised and the goal of simplicity will be achieved.

Further it may be provided that the assessee has the right to object to the reasons recorded and if so done, the same are to be disposed off by the AO by an order in writing, before completion of the assessment.

It is recommended that cases which are covered within the purview of s. 144C of the ITA be continued to be covered by existing scheme of DRP. Further, the existing process of TP assessment and extended time limit may be appropriately incorporated in e-assessment scheme.

Taxpayer should be allowed to present its case through video conferencing at all levels during the course of assessment under the E-assessment Scheme

26. Requirement to issue TDS Certificates be abolished

The requirement of issuance of TDS certificates should be abolished with immediate effect.

27. Higher Surcharge on individuals, AOP, BOI and AJPs (A.Y. 2020-21)

The higher surcharge should be applied on incomes chargeable to tax at regular slab rates. Capital gains income on all assets (& not merely listed securities) can be excluded for the purposes of computing total income of Rs. 2 Cr / Rs. 5 Cr.

28. Clarification required with respect to one-time option introduced u/s. 54 for availing exemption by re-investment in two residential houses

Provisions of s. 54 provides for an exemption from capital gains tax where the assessee makes investment in a specified asset. The proviso to s. 54(1) substitutes the term "new asset" by "two residential houses" to extend the benefit to the taxpayer investing in two residential houses instead of one. However, the present language is not clear in terms of the following aspects:

- The exact timing of exercise of option.
- Where taxpayer with the anticipation to buy two houses deposits the amount in capital gains account scheme, thus exercising the one-time option but subsequently is able to purchase only one house, whether the deduction u/s 54 be denied because it mandates acquisition of two houses.

It is recommended that to enable the taxpayer avail the benefit of this provision, suitable clarification be provided either by way of legislative amendment and/or through a Circular.

29. Incentives to National Pension System (NPS) subscribers (A.Y. 2020-21)

The higher deduction for employer's contribution to NPS of 14% may be extended to employees in private sector as well. If required, the ceiling cap on employer's contribution to approved superannuation fund can be clubbed with extra 4% deduction.

30. Allow deduction for corporate social responsibility expenditure

At present the Income Tax Act provides that the expenses incurred by the taxpayer on the activities relating to CSR referred to in Section 135 of the Companies Act, 2013 shall not be deemed to be incurred for the purpose of business and hence, shall not be allowed as a

deduction for computation of income. The corporate sector spend is for laudable purpose and effectively assisting the Government in undertaking social projects for the country. Therefore, making such an express provision for not allowing a deduction for the purpose of Income tax is unfair.

B. SUGGESTIONS ON GST LAW FOR PRE-BUDGET MEMORANDUM

1. Restriction on availment of ITC:

As per Rule 36(4) ITC has been restricted to 10%[1]/5% of that reflecting in GSTR-2A. As per the clarification issued by CBIC vide 123/2019 dated 11th November, 2019, the board has shouldered the responsibility on the tax payer to ascertain the ITC being auto populated as on the due date of filing GSTR-1. This matching of GSTR-2A which is so dynamic, shall be made available on the GST portal as it is not possible for all the tax payers to download the GSTR-2A that on the due date of filing GSTR-1.

Issues

One of the basic premises for introduction of GST was providing seamless flow of credit on all goods and services across the entire supply chain with some exception for composition scheme and supply of exempted goods/services. But Rule 36(4) is against this basic premise of seamless credit. Also, there are several reasons due to which it is practically difficult to reconcile the ITC claimed vis-a vis that appearing in Form GSTR 2A like

- **Quarterly filing of returns (GSTR-1) by the supplier: Mismatch due to time difference in filing of return**
- **Reconciliation of GSTR-2A/2B with ITC as per books is a time consuming process as every month reconciliation is also required to be done for previous months ITC.**
- **Blockage of working capital as tax already paid by recipient but ITC delayed due to non-filing of return by supplier.**

Suggestion:

It is suggested to dispense off Rule 36 (4) of the CGST Rules, as this will give a big relief to honest taxpayers, who are otherwise punished for mistake of some other person. Removal of this sub- rule will help in reducing financial and compliance burden and will promote ease of doing business.

2. Amending the Last Date for claiming ITC :

Section 16 (4) of the CGST Act, 2017 states that Input Tax Credit in respect of any invoice or debit note cannot be taken after the due date of the return for September following the Financial Year to which such document relates or before filing the annual return for the FY to which the document relates to, whichever is earlier. Ideally, it provides hardly 6 months from the end of FY to avail any left-out ITC which is significantly low time period. Taxpayers are facing difficulties due to this time limit. They are losing the credit as the reconciliation of the

[1]20% till December 2019 and 10% w.e.f. 01st January, 2020 of that reflecting in GSTR-2A and 5% w.e.f 01st Jan'21 of that reflecting in GSTR-2B.

credit with GSTR 2A can correctly be done only at the time of finalization of GST Audit and Annual return.

It is suggested to extend the last date to claim input tax credit on invoices/credit notes as envisaged in Section 16(4) by substituting the words "whichever is earlier" to "whichever is later" in section 16(4) of the CGST Act i.e. later of due date of furnishing of the return under section 39 for the month of September following the end of financial year or furnishing of annual return. Only annual return is active for the purpose of reconciliation against GSTR-2A. Hence it is not practically possible to avail the whole ITC up to the date of Sept of following FY. It is therefore required to map the time limit for availment of ITC with the date of filing of annual.

3. Restriction on eligibility of ITC:

Section 16(2) (c) states that the recipient of supply shall not be entitled to take input tax credit if the tax charged in respect of such supply has not been actually paid to the Government by the supplier.
A genuine buyer who avails ITC for the amounts paid to his seller will be denied credit with a reason that the seller has not remitted tax with the appropriate State / Central Government authorities and disclosed in his GST return**.**

It is suggested that the Revenue to take necessary action against the supplier, who had not remitted tax collected by them to the appropriate State / Central Government authorities. Without taking recourse to that, the Revenue could not deny the claim of the recipient. It is unfair to penalise a genuine buyer with both tax and interest for no fault.

4. Blocked Input Tax Credit

As per Section 17(5) of the CGST/SGST Act 'Input tax credit shall not be available in respect of the:
(*c*) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
(*d*) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Issue - Input Tax Credit on works contract and construction services are blocked Credits except in case where used for providing similar service. This can cause a genuine hardship to the persons who shall be using such goods/services for construction of their factory, or those persons who shall be constructing a property for letting it out. In such cases the rentals would be charged with full rate of GST, but there won't be any allowability of credit of GST paid on construction services/goods.

It is suggested that credit of goods/services acquired in the construction of immovable property should be extended when used for factory/office buildings which are used for business or further letting out.

5. Blocking of Input Tax Credit (ITC) suo- moto by GST Department

Issue

Currently, State GST authorities has started blocking the Input Tax Credit (ITC) without giving the opportunity of being heard in cases where there is mismatch between the ITC availed and appearing in GSTR-2A. The Department has been sending notices for difference between GSTR-2A and GSTR-3B for the period before 9.10.2019 and also in case where threshold band of 10/20% as per Rule 36(4) of the CGST Rules has not been contravened.

It is suggested that suitable directions be issued to the authorities to take necessary action only on the basis of Rule 36(4) which has been notified from 9th October, 2019*.*

6. Increasing time limit provided in 2nd proviso to section 16

Issue

As per 2nd proviso to section 16, the ITC is required to be reversed for the cases where there is no payment of value along with tax to the supplier within 180 days. This proviso is causing genuine hardship to the business and serious financial crisis particularly during the tough times.

This proviso needs serious attention by law makers. The same should be suitably amended to ensure ease of doing business. The fact cannot be denied that law cannot be a hindrance to normal business practices.

7. Compulsory Registration under RCM

The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Issue:

An unregistered recipient of specified categories of goods or services or both, shall beliable to pay tax on such goods and services, as if he is the person liable to pay tax. For the purpose of paying the tax, he shall be liable to get registered under the Act. And once he gets registered under the Act, he shall be liable to comply all the provisions of the Act, which are applicable to a registered person.

Suggestion:

Up to a certain threshold of tax liability, the recipient should be given a facility of paying tax through a challan cum return mode as is available to a deductee under the Income Tax Act,

1961. Whenever a person purchases an immovable property exceeding 50 lakhs, he is liable to deduct 1% of the total consideration paid to the seller. After deducting the tax, he has to pay the tax to the credit of the Central Government.
Similar facility can be provided in the GST law, so that any person liable to pay tax under section 9(3) of the Act, can do the same without being liable to comply with several provisions of the Act which have been mentioned above.

8. Capping the maximum late fees charged under section 47 to Rs 500
Issue

The law has fixed a maximum late fee of Rs 5,000 per return under Section 47 CGST Act for late filing of return. This fee is too high as it sums up to Rs 10,000 per return for both the Acts. Many a times, it is even more than the amount of tax. Taxpayers are not filing the returns due to burden of such huge amount charged per return. They wait for amnesty scheme and Government revenue is blocked.

It is suggested that maximum late fees should be capped at Rs 500 per return for all types of dealers including composition dealers. Taxpayers will be encouraged to file return and Government revenue will not be blocked because of non- filing of return by taxpayers.

9. GST on ocean freight under reverse charge be dispensed off

The Central Government *vide Notification No. 10/2017-Integrated Tax (Rate), dated 28-6-2017 inter-alia stipulated that:*

Sl. No.	***Category of Supply of Services***	***Supplier of service***	***Recipient of Service***
10	*Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.*	*A person located in non-taxable territory*	*Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.*

Further, *vide* Sl. No.9 of *Notification No. 8/2017-Integrated Tax (Rate), dated 28-6-2017*, the Central Government has notified that the IGST at the rate of 5% will be leviable on the service of transport of goods in a vessel including the services provided or agreed to be provided by a person located in a non-taxable territory to a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs stations of clearance in India.

Issue

In case of import of goods, customs duties are leviable on CIF (Cost, Insurance, and Freight) value of imports and accordingly IGST is also paid on the same. Levy of IGST on ocean freight tantamount to double taxation as IGST was already discharged once on the import of goods where such freight amount already formed a part of the valuation of goods. Services of foreign shipping lines is procured by the foreign exporter hence, importer of goods

cannot be said to be the "recipient" of services for the purpose of payment of IGST. The entire gamut of transaction occurred outside India. Supply of service of transportation of goods by a person in a non-taxable territory to another person in a non-taxable territory from a place outside India up to the Customs station of clearance in India is neither an inter-State supply nor an intra-State supply. Also, the Gujarat High Court in case of ***Mohit Minerals Pvt. Ltd. Vs Union of India, order dated 23.01.2020,*** held that the levy of IGST on ocean freight is not permissible and declares the relevant notifications as unconstitutional.

Suggestion

It is suggested that in view of the above- mentioned judgement given by the Hon'ble Gujarat High Court, GST on the ocean freight in case of CIF transaction be dispensed off.

10. Place of Supply

Section 12 of IGST Act, 2017 prescribes the determination of place of supply of services where both service provider and service recipient are located within India.

Issue - It has been observed that in many cases such as Accommodation services in Hotels, the place of supply has been specified to be the location of such hotel. Hence the service provider is charging CGST and SGST in such cases. However there are situations where the service recipient is registered in some other state outside the state where such hotel is located and hence such recipient is not getting the credit of such tax paid.

It is suggested that place of supply of services covered under Section 12 of IGST Act, 2017, should be specified to be the place of registration of the service recipient in case of registered persons and address on record in case of unregistered persons, and where no address is available for such unregistered recipients, then place of supply can be deemed to be location of service provider.

11. Place of supply provision needs to be amended for specified services

Issue

Many services and particularly tourism sector and intermediary services are affected due to services being provided not recognized as export of service consequent to GST provisions on 'place of supply'. These services earn their revenue in CFE but deemed as provision of service in India and thereby export is taxed indirectly. With every passing day, transactions between enterprises outside India are increasing.

It is suggested that place of supply provisions be made more liberal to allow qualification of all the services where convertible foreign exchange is earned and location of recipient is outside India as export of services.

12. Place of Supply of Intermediary services

Issue

As per section 13(8) of the Central Goods and Services Act, the place of supply for intermediary services is the location of the supplier of services. Therefore, such services become taxable

even though all other conditions of export of services as per section 2(6) of the IGST Act are complied with.

It is suggested that Place of supply in case of intermediary services should be considered as Place of recipient as per general rule so that no burden of tax is exported with export of goods/services.

13. Transfer of Land etc. by way of compulsory acquisition, inheritance, testament, gift etc.

Clause 5 of Schedule III of CGST Act, 2017 as specified in Section 7 provides that Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building would be treated as an activity or transactions which shall be treated neither as a supply of goods nor a supply of services.

Issue Sale does not include transfer of land by way of compulsory acquisition, will, inheritance, testament etc. Such transactions if kept out of the purview may create problems and confusion.

It is suggested that the word 'transfer' should also be included as an activity or transactions which shall be treated neither as a supply of goods nor a supply of services. Also it should be clarified that transfer of right in an immovable property by way of nomination by a person to another person will also be out of GST.

14. Refund in case of accumulated Credit where input tax credit amount is higher than tax liability.

Sec 54(3)(ii) of CGST Act provides that no refund of unutilised input tax credit shall be allowed in cases other than where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

Issue:

A manufacturer or a service provider may have accumulated credit balances for the reason that he is availing input services which attract at higher rate of GST (say, 18% or 28%) whereas the final product or output service attracts GST rate of 18% or 28%. However, this provision allows refund benefits only if the input is subject to higher rate of GST and not in case where the input service attracts higher rate of GST. If a strict interpretation is taken that refund would be allowed only if the GST rate of input is higher without considering the rate of input service, then the very object of the provision would stand defeated**.**

It is suggested that the word 'inputs' be replaced with the phrase 'inputs or input services' Also, the word 'Output Supply' be replaced with the word 'Outward Supply'

15. Definition of Exempt Supply

As per the definition given in Section 2(47) of CGST Act, "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Issue

Non-Taxable Supplies have been excluded from the scope of Aggregate Turnover in the CGST Act but still the term "Exempt Supply" covers the same. Thus, inclusion of non-taxable supply in the exempt supply would ultimately bring it within the scope of aggregate turnover.

Interpretation of aforesaid definition appears that supply made to job worker covered under exempt supply.

Since a registered taxable person may send any inputs and/or capital goods without payment of tax, to a job worker for job-work and therefrom subsequently send to another job worker.

It is suggested that non-taxable supplies be kept outside the ambit of 'exempt supplies' as well as 'aggregate turnover'. Inclusion of non-taxable supplies in aggregate turnover results in an effectively lower limit for composition levy as well as for threshold exemption. Further, when a supply is non-taxable, it should not affect the taxability indirectly by affecting the threshold exemption and composition scheme.

An amendment may be required in said definition that ''Exempt supply means any supply of goods/services which are non-taxable under this act other than supply for job work in accordance with Section 143 of the Act and includes such supply of goods or services or both, which attract nil rate of tax or which may be exempt from tax under section 11.

16. Exclusion of 'Export turnover' from the definition of 'Aggregate Turnover'

Issue

The erstwhile SSI Exemption Notification No.8/2003-Central Excise dated 1st March 2003 in Central Excise did not provide for the inclusion of 'Export turnover'. Under GST, small exporters have to register compulsorily to export without payment of GST under LUT or claim refund of input tax credits. Threshold exemption and composition scheme are denied if the turnover exceeds the limit of Rs.40 lac and Rs.150 lac respectively.

It is suggested that the exporters who have only export turnover may be given a separate form of registration without need for filing elaborate returns and claim the export incentives to encourage exports. The definition of aggregate turnover may exclude 'Export turnover of goods and services' to claim the threshold exemption.

17. Risky Exporter under Customs and GST:

Exporters are deemed as 'risky exporter' on the basis of specific risk indicators based on the data analytics and Artificial Intelligence tools as specified in Circular No.131/1/2020-GST, dated 23rd January, 2020. Verification will be done as per the procedure specified in Circular No. 16/2019-Customs, dated 17th June 2019. Further, 100% examination of export consignments is made mandatory and IGST refund has been suspended till action taken by the Custom formations on the basis of verification report from GST formations

Issues:

•Many 'Star Exporters' have been categorized as 'risky exporters' on the basis of some unspecified risk parameter-based checks driven by data analytics and Artificial Intelligence tools

of the Customs authorities despite not being involved in any non-compliance or any untoward activity. They do not even know the reason for being classified as 'risky exporter'.

•The timelines as provided in the SOP are not followed by the field formations. Even thereafter, the tag of risky exporter will be removed only when the DGARM issues No Objection Certificate. For the same for 6 months – 12 months the tag of risky exporters is not untagged by the Customs & GST department. As such exporters are subject to the following hardship –

•The 100% consignments are subject to physical verification at the custom port. The packing and product get damaged.

•The IGST refund and other export benefits i.e. Duty Drawback, MEIS License kept in abeyance till verification, blocking working capital of the exporter.

•The GST field formations are taking time more than half year to complete the verification.

•The verification is nonetheless is like Audit of the accounts which is time taking activity.

•GST/ Custom field formations are not aware with the procedure to be followed to provide solutions to the Exporter.

Hence, the entire business of such exporters is ruined.

Suggestions:

•The SOP should be amended so as to make it mandatory to clearly inform about the reasons for declaring an exporter as "risky" because this tag has several consequences for the exporter.

•After categorization as risky exporter, the export consignments/shipments be subject to 100% examination at the customs port maximum for 3 consignments instead of such a long period.

18. Limiting Turnover to 1.5 times for refund under Zero rated supplies

Recently, Rule 89(4) of the CGST Rules, which provides for the refund of unutilized input tax credit on zero rated supplies, was amended, whereby the "turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under Rule 89(4A) or (4B) or both.

Issue

This amendment indicates that the Government intends to keep a tight rein on refund claimed by exporters. While this amendment might address the issue of overstated frivolous refund claims but it is posing significant challenge in computing refund claims and impacting genuine exporters by curbing their legitimate refund claims. In a distress marketing condition due to COVID, such a restriction is negatively impacting greater audience.

It is suggested that the restriction of turnover of zero- rated supply of goods to 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, to be removed keeping in view the Government mission of ease of doing business and promotion of exports.

19. Valuation of land

As per Notification no. 11/2017-Central Tax (rate), the value of land has been prescribed to be 1/3rd of the total amount charged

Issue – The value of land may have huge variations from one place to the other. In certain areas of the metro cities, the value of land may run upto 80% of the total amount charged while in the smaller developing areas, it can be as low as 15% of the total amount charged. So, there can be a huge under or overvaluation of the amount to be charged as GST.

Suggestion – A reasonable basis to determine the value of land should be prescribed. Land values may be prescribed by state authorities on the basis of pin code, area etc. and the same can be considered as a reliable measure of the same.

20. Tax liability on TDR, FSI (additional FSI), long term lease (Notification No. 4/2019, 5/2019, 6/2019 of Central tax (Rate):

Issue - Applicability of tax payable under RCM by promoter on un-booked flats will indirectly lead to levy of tax on sale of such flats post issuance of completion certificate (C/C). This in effect nullifies the fact that there is no GST on sale of flats post C/C (Schedule III activity).
Moreover such tax on transfer of development right, if applicable earlier, was a credit to promoters, but now the same has become cost to the extent of unsold flats.
In case of an RREP, even if the rate of tax for commercial apartment would be at 5%, the promoter would have to pay tax on RCM basis to the extent of proportion of commercial area. This has a big cost implication for commercial apartments and effectively would mean double taxation on commercial apartment in an RREP.

Suggestion – GST payable by Developers under RCM pertaining to unsold flats should be removed.
The GST exemption on supply of development rights be extended to the commercial apartments in RREP, since they have been treated at par with residential apartments.

21. Valuation of services in case respect of Joint Development Agreement (JDA) GST on Residential Real Estate Projects

When builder sell under construction property, it includes value of land. Since service portion of service provided by the builder and cost of land cannot be bifurcated. Hence a formulae under GST as given in Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 is provided as:
Total Amount charged for such supply
Less The Value of Transfer of Land or Undivided Share of Land
Where value of such transfer of land or undivided share of land shall be deemed to be one third of the total amount charged for such supply
Total Amount means the sum total of,- (a) consideration charged for aforesaid service; and (b) amount charged for transfer of land or undivided share of land, as the case may be including by way of lease or sublease.

Since, the sale of land is exempt by virtue of Schedule III of the CGST Act. Therefore, it is necessary that GST on value land as part of total value of under construction property is not tenable.

Issue

Value of transfer of land or undivided share of land deeming as one third of the total amount charged for such supply is abrupt, arbitrary as land charges change as per location and other factors.

Moreover, the present method puts severe hardship to the landowners as well as builders that too in the present slowdown of economy. So to avoid taxing twice, when the builder has already paid GST at the prescribed rates for the total project cost, relief should be given to the share of landowners as suggested.

Suggestion

Abatement existed in erstwhile indirect tax regime. Based on same analogy a proper calculation mechanism of under construction property be provided.

22. GST on Leasehold units (Commercial)

Issue - In several cases, Developer constructs a commercial building on a leasehold land (say for 999 years) and transfers units to the buyers with leasehold right in land. As per Explanation (b) to para 2 of Notification no.11/2017 – Central Tax (Rate) dated 28th June 2017, 1/3rd of the totalamount charged shall be available as deduction for transfer of such leasehold land before obtaining completion certificate**.**

Deduction of 1/3rd value from the total amount charged is available on supply of leasehold land involved in construction services before obtaining completion certificate, deeming it as a sale of land and effective rate is 12%. When the constructed units on such leasehold land are transferred after Completion certificate, how can the same be taxable considering it as a leasing activity at full rate of 18%?

Suggestion – Transfer of Constructed units on Leasehold land (on long term lease) after completion certificate is obtained where appropriate stamp duty is paid, should be included in Schedule II to CGST Act i.e. activities which are neither supply of goods nor supply of services.

23. Compliance of definition of supply as per Sec 7 read with schedule 1 for related persons

Issue: As per the definition of supply in section 7 read with Schedule 1 entry for related persons, it is seen that in hospitality sector and other similar sectors were food is being provided by the companies to their employees which is not a part of CTC of the employee and neither any reimbursement is being done from the employees, the companies have to pay GST on such supplies because of deeming fiction in schedule 1 treating the same as supply. Moreover, the valuation of the same is also stated to be done as per open market value as per Rule 28 of the

CGST Rules, 2017 as amended from time to time. This is creating unnecessary financial burden on the company and in turn on the employees also.

Suggestion: Schedule 1 may be suitable amended to provide that in case of supply of goods/services by employer to employee would not fall under the definition of related persons and thereby no such tax has to be paid on supply of food. Otherwise, it may be clarified that supply of food by the company would be treated as in course of employment and hence covered by Schedule 3 of the Act.

24. Sale of Fixed Assets/Capital goods and reversal thereof in case of leasing business

Issue: It has been observed that in case of rental/leasing of consumer electronics/computers/laptop etc. industry wherein the service provider is located in multiple states, If the service provider is transferring the said fixed asset from one location to another location in a different state having different GSTINs, then the application of section 18(6) of the CGST Act, 2017 has to be done which results in payment of GST among same entity. Moreover, the transferee GSTIN again gets a period of 5 years to treat the same as capital goods again, though at company level the asset may have NIL value, leading to incorrect disclosures in GST vis-à-vis financial books of accounts.

Suggestions: section 18(6) be suitably amended to provide that the same would not be applicable in case of transfer of asset within same entity/PAN.

25. Interplay of Section 129 and 130 of the CGST Act

Issue

Section 129 of the CGST Act deals with the detention, seizure, and release of goods and conveyances in transit. On the other hand, Section 130 deals with the confiscation of goods or conveyances and levy of tax, penalty, and fine thereon. Both the sections, therefore, appear to be mutually exclusive, empowering the authorities to levy penalty and also confiscation of goods and conveyances. Section 129 (6) provides that if the tax and penalty is not paid within 14 days of detention or seizure, then further proceedings would be initiated in accordance with the provisions of Section 130. Practically in all cases of detention and seizure of goods and conveyance, the authorities would straightway invoke Section 130 of the Act and thereby would issue a notice calling upon the owner of the goods or the owner of the conveyance to show-cause as to why the goods or the conveyance, as the case may be, should not be confiscated. Once such a notice under Section 130 of the Act is issued right at the inception, i.e., right at the time of detention and seizure, then the provisions of Section 129 of the Act pale into insignificance.

It is suggested that before detaining/confiscation, the authorities must ascertain the nature of the contravention of the provisions of the Act or the Rules and presence of an intent to evade the payment of tax.

Further, there be a provision that would absolve innocent transporters to get their vehicles released on payment of certain minimum penalty. This will help the transporters to avoid detention of vehicles for no fault of them.

Procedural Changes suggested

26. Facility to revise the return

Issue

If any error or omission is discovered in the return then it can only be rectified in subsequent period's return. There is no facility to revise it in the same month's/quarter's return. Also, negative amount in the return is not allowed in Form GSTR-3B. There is no provision for revision of return which is demand of many taxpayers due to error made in report leading to mismatch in Form GSTR 3B and GSTR 1.

It is suggested to provide a facility for revising all the GST Returns. Further, following key changes in Form GSTR-3B are suggested:

- **There should be provision for negative data reporting in GSTR 3B.**
- **There should be provision of reporting of details of changes made in current GSTR- 3B for previous period.**
- **There should be provision of reporting of details of ITC availed in current GSTR-3B pertains to which month.**

27. Time Limit for making a fresh refund application after rectifying deficiencies

Issue

CBIC vide Circular No. 125/44/2019-GST, dated 18-11-2019 mentions that refund application filed after correction of deficiency is treated as a fresh refund application. Such a rectified refund application submitted after correction of deficiencies shall also have to be submitted within 2 years of the relevant date, as defined in the explanation after sub-section (14) of section 54 of the CGST Act. It may be noted that neither the Act nor the Rules have any such provision**.**

It is suggested that a clarification may be provided in the Rules itself that even in the case of a revised/fresh application, the time limit shall be considered with reference to the original application.

28. Amnesty Scheme for other returns link Form GSTR-1, Form GSTR-10 etc. be brought in/ introduced

Issue

The GST Council in their 40th Council Meeting had provided an opportunity to file GSTR-3B returns for period July 2017 to July 2020 with no late fees or Rs. 500 per return as a measure to clean up pendency in return filing. The due date for this scheme was 30th September, 2020.

This opportunity was not available in case of GSTR-1. The taxpayers may not have filed even GSTR-1 return, which could lead to huge penalties to them as the amnesty scheme was only limited to GSTR-3B returns. This may lead such business owners to avoid amnesty scheme altogether fearing penalties for GSTR-1

Further, aforesaid Amnesty scheme did not cover GSTR-10, the final return to be filed by the taxpayers who have cancelled their registration. The heavy penalty of Rs. 10,000 is severe burden to small taxpayers who may have cancelled their registration because of not reaching basic exemption limit.

It is suggested that Amnesty Scheme should also be brought for returns other than Form GSTR -3B like Form GSTR-1, Form GSTR-10, Form ITC-04

29. Mechanism to report recipients who have not paid value of supply within 180 days

In terms of second proviso to section 16(2) of the CGST Act, where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon.

Section 16 of the Micro, Small and Medium Enterprises Development (MSMED), Act 2006, read with rules made thereunder, provides that in case buyer fails to make payment of amount to the MSME supplier, then the buyer shall be liable to pay compound interest with monthly rest to such supplier on the amount from the appointed day or, on the date agreed on, at three times of the Bank Rate notified by Reserve Bank.

It is suggested that a mechanism to report recipients who have not paid value of supply within 180 days be provided (GSTN to the MSME Ministry). This will ensure funds are released in time by the recipients and compliance level of ITC will enhance with reference to Section 16, hence will boost the confidence of MSMEs and help for cash flow management.

30. Rectification of Mistake of incorrect tax paid due to incorrect determination of place of supply

In situations where an assessee has paid Central and State / Union territory tax/ Integrated tax on a transaction considered by him to be an intra-State/ inter-State supply but which is subsequently held to be an inter-State/ intra-State supply, he is required to make a fresh payment of integrated taxes/ Central and State / Union territory tax and the tax wrongly paid will be refunded.

Issue

Quite a number of registered persons face the issue of paying taxes in the wrong form (i.e. CGST/SGST instead of IGST or vice versa) or to the wrong State (declaring wrong place of supply). The law prescribes a long process of paying the correct taxes and opting for refund of the wrong taxes paid. Changing the form of tax or the place of supply is currently not provided as an option.

It is suggested that the option to change the form of tax or the place of supply should be provided so that the amount can be freely transferred. This will not result in reduction of tax revenue but simply an opportunity to seamlessly allocate taxes to the correct State in case of any mistake.

31. Cancellation and amendment in E-invoicing

Issue

E-invoicing issued through portal can be cancelled only within 24 hours. Further, Credit note can be issued only in 4 cases as stipulated in Section 34.

It is suggested that time period for cancellation should be extended alteastupto 72 hours. Further, it is suggested to allow amendment in E-invoicing alteastupto 72 hours.

32. Refund Mechanism still a pain for Exporters

Issue

There is a drastic fall in Exports post lockdown in March 2020. Consequent to outburst of Covid19 pandemic, most part of the world and imminent Global Recession Export needs major thrust. Since the introduction of GST, the liquidity crunch has affected the exporter mainly because of replacing exemption route to refund route. The time lag involved in obtaining refund is major cause of concern of exporter.

The new policy should immediately ease liquidity for exporters by dismantling the refund route and granting exemption directly.

33. Delay in registration due to mandatory Aadhaar Verification of all partners

Issue

As per Section 25 read with Rule 8 and 9 of the CGST Rules, Aadhaar verification is mandatory for all the authorized partners in case of a partnership firm in order to be eligible for registration under GST. Due to this, registration procedure takes time as registration is granted after verification of Aadhaar number of all the partners.

It is suggested that registration should be granted after verification of Aadhaar number of any one authorized / managing member and provide some time after granting of registration number for updation/verification of Aadhaar number of rest of the partners. This w

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