



**Pre-budget Memorandum
for Union Budget 2012-13**

Sl. No.	Subjects of Suggestions
1.	Income Tax
	(A) Corporate Taxation
	(B) Personal Taxation
	(C) Miscellaneous
2.	Central Excise
3.	Customs Law
4.	Service Tax
5.	Central Sales Tax
6.	Others

1. INCOME TAX

(A) Corporate Taxation

i) Deduction for expenditure on Corporate Social Responsibility (CSR)

Corporate sector needs encouragement to progressively integrate the activities on the social front for the development of the society, with the business purpose and business plan of the company.

Suggestion:

It is suggested that a new section may be introduced in the Income Tax Act to recognize the expenditure which is incurred by a company and which is certified by a Practicing Company Secretary (after conducting CSR audit) as expenditure incurred for discharging the corporate responsibility towards the society.

Companies Bill, 2011 contains a provision which requires specified category of companies to incur a prescribed percentage of their profit on CSR Activities during the financial year. Therefore, now a need arises to encourage companies towards CSR, by allowing them a weighted deduction of 150% of the amount expended on CSR activities.

ii) Corporate Tax Rate

Corporate tax rate of 30% plus surcharge of 5% plus cess of 3%, results in effective tax rate of 32.45 per cent for domestic companies and tax rate of 40% plus surcharge of 2% plus cess of 3%, results in effective tax rate of 42.024 for foreign companies which is significantly higher than in other developing / developed countries.

In addition to this, dividend distribution tax and lowered depreciation rates impose a further strain on companies leading to increased outgo towards income taxes thus leaving inadequate funds for generation of internal resources for ploughing back for expansion, modernization, technology up-gradation, R&D etc.

Considering the current economic challenges, Indian economy needs infusion of foreign capital in the form of FDI and FII inflows. Huge capital is required for the crucial infrastructure building in railways, airports, ports, roads and power generation etc.

Suggestion

The surcharge and cess on corporate tax may be abolished. Further, corporate tax rate may be brought down to 25% and tax rate applicable to foreign companies may also be relooked to provide level playing field and to facilitate better tax compliance and bring down cost of doing business in India.

iii) Minimum Alternate Tax (MAT) Rate

The Finance Act, 2011 increased the rate under MAT provisions from 18 per cent to 18.5 per cent. The rate of 18.5% is high as it adversely affects the MAT paying companies particularly the infrastructure companies.

Suggestion:

The MAT rate may be brought down to 15 % from 18.5%.

iv) Dividend Distribution Tax (DDT):

Finance Act 2008 amended the provisions of Section 115-O of the Income-tax Act, 1961 (the Act), to mitigate the cascading effect of DDT in a single tier structure, by inserting sub-section (1A) which reads as follows:

“1A: The amount referred to in sub-section (1) shall be reduced by:

(i) The amount of the dividend, if any, received by the domestic company, during the Financial Year, if:

- (a) Such dividend is received from its subsidiary;*
- (b) The subsidiary has paid tax under this section on such dividend; and*
- (c) The domestic company is not the subsidiary of any other company”*

The amendment to section 115-O mitigates the cascading effect of taxation of dividend, only upto one level. However, cascading effect of DDT still continues to be felt in case of second level and the further step-down subsidiaries. Deletion of clause (c) of the newly inserted subsection (1A) will extend the benefit to a multi-tier structure and hence multiple incidence of DDT on up-flow of dividend from subsidiary company to holding company can be prevented in all cases.

Suggestions:

- It is suggested that the clause (c) of the newly inserted subsection (1A) may be deleted so that the cascading effect of DDT can also be avoided in a multi-tier structure.*

• *Further, investment companies which do not necessarily have subsidiaries and invest in various companies in the open market should also be eligible for such deduction on further distribution of dividend on which DDT has been paid.*

v) Depreciation

The rate of depreciation for general machinery and plant has been reduced from 25% to 15%, along with the enhancement of initial depreciation rate from 15% to 20%. The increase in the initial depreciation has not gone far enough to neutralize the impact of decrease in normal depreciation.

Suggestion:

With a view to allow industry to keep pace with rapidly improving technology, it is suggested that the depreciation rate on plant & machinery may be enhanced from 15% to 25%. Further, in case of plant and machineries used for double / triple shift basis, permit assesses to claim depreciation at least at the rate as permissible under the Companies Act.

(B) Personal Taxation

'Middle Class' is the back bone of the Indian economy. Salaried class, small entrepreneurs and professionals have been reeling under the high cost of living. Any increase in the income level has been neutralized by 'static exemptions / deductions' under the Income Tax Act and inflation. There is urgent need to provide significant relief to this 'back bone' to sustain and promote the growth of the economy:

i) Children Education Allowance

The exemption limit for Children Education allowance may be raised **from Rs. 100 per month to Rs. 1000 per month** per child for maximum 2 children or actual expenses, whichever is less.

ii) Transport Allowance

The exemption limit for transport allowance to meet expenditures of commuting from residence to the place of work may be raised from **Rs. 800 to Rs. 3200 per month**. This is considering huge fluctuation/increase in fuel cost in relevant past.

iii) Revision of Leave Encashment Exemption limit

The maximum exemption limit of Leave encashment for non-government employees may be revised from **Rs. 3 lacs to Rs. 10 lacs** in view of the lack of social security support to the retiring non-government tax payers.

iv) Reimbursement of Medical Expenses

The exemption limit of medical expenses reimbursement under section 17(2)(viii) was raised from Rs. 10,000 to Rs. 15,000 by Finance (No.2) Act, 1998. In view of the rising cost of medical facilities and medicines, it is suggested to increase the exemption limit from Rs.15,000 to Rs.50,000.

v) Limit of deduction under section 80C

The overall limit of Rs 1,00,000 is inadequate as compared to the investments which are covered under the section. Moreover, in recent time, the limit of PPF investment has also been raised from Rs. 70,000 to Rs.1,00,000.

Suggestion:

The deduction limit may be revised to Rs.1,50,000 from the existing limit of Rs.1,00,000 to provide different options of investment to the assessee.

vi) New section for deduction of interest on bank deposits

With the inflationary market trends, there is a need to promote saving among the public and also to mobilize funds for the industry at the cheaper rate.

Suggestion

A new section may be introduced to provide for the deduction upto Rs. 20,000 of interest income on bank deposits.

(vi) Deduction of interest expenditure under the Income under the head House Property

The property prices have increased many folds in last 10years. The existing deduction of interest expenditure of Rs.1,50,000, charged against the loan raised for self-occupied property is insufficient.

Suggestion

The limit of deduction on interest paid against self-occupied property may be increased to Rs, 3, 50,000/-.

(vii) Leave Travel Concession for Foreign Travel

Section 10(5) allows exemption for assistance or concession received from employer for employee and his family on leave to any place in India. There is no provision in the Act which covers the travel outside India.

Suggestion:

Section 10(5) may be amended to exempt the concession/assistance received from the employer for foreign travel.

(viii) Securities Transaction Tax

At present, the STT paid on transaction of sale /purchase of shares is not allowed as deduction under the head capital gains. The deduction of STT is allowed only under the head profit and Gains from Business or profession only if the assessee is engaged in the trading of shares.

Suggestion

The STT paid may be allowed as deduction by including it in the cost of acquisition and selling expenses under the Capital Gains. It will help in strengthen the capital market.

(C) Miscellaneous:

(i) Alternate Minimum Tax (AMT) on LLP:

The Finance Act, 2011 introduced Alternate Minimum Tax on Limited Liability Partnerships which challenges the main advantage of formation of LLP over the companies.

The deduction under section 80H to 80RRB and deduction under section 10AA shall be added to the Regular total income for calculating the adjusted total income. This addition will defeat the very purpose of deduction under the Act.

Suggestion:

In order to encourage the formation of LLPs, the provisions of Alternate Minimum tax may be abolished.

(ii) TDS for non-quoting of Permanent Account Number (PAN)

Finance (No. 2) Act 2009 inserted section 206AA w.e.f. from 1.4.2010. The new section provides that in the event of non- submission of PAN by the payee, tax will be deducted at the higher of the following rates, namely;

- Rate specified in the relevant provisions of the Act.
- Rates in force.
- @ 20%

The rate of 20% for non-quoting PAN no. will not serve the purpose for which this section was introduced as the persons who falls in the tax slab of 30% is ready to pay tax @20% if he has the chance to hide his income. Further, Section 115A(5) specifically exempt foreign companies from the requirement of furnishing return if the income is derived from certain specified receipts. Therefore, there is reluctance on part of the foreign entities to comply with the requirement of obtaining PAN.

Suggestions:

- *From revenue prospective, the rate of 20% may be increased to 30%.*
- *Section 206AA may suitably be amended to bring out the non-residents from its purview.*

(ii) Rate of Interest on Tax Refunds – Sec 244A

Under section 244A interest is computed @ 6% per annum on tax refunds payable by the Government however in cases of interest payable by the assessee to the Government, such as in section 234B, rate is 12% p.a.

Suggestion:

A uniform rate of interest of either 6% or 12% p.a. both for refunds and tax dues payable by the Government and assesses respectively may be prescribed.

(iii) Relief for Export of Services

India has started witnessing an opening up for the services sector. It has created opportunities for Indian practicing professionals like, Company Secretaries in practice etc. to export professional services. Indian professionals need to launch frontal attack in order to capture professional service markets in other parts of the world while Indian market is getting opened to multi-national firms. India possesses an avalanche of professional services talent. But it is necessary to provide financial boost to Indian professional services' market and market penetration abilities. Therefore, various Income tax concessions are a call of the day for export of Indian professional services.

Suggestion:

It is suggested to allow 100 per cent deduction on export of professional services to the extent of convertible foreign currency brought in through such exports.

(iv) 100 per cent EOU for professionals

100 per cent EOU concept would enable professionals to form partnerships or open proprietary EOUs with a thrust on export market.

Suggestion:

100 per cent EOU concept may be brought in the arena of professional services. 100 per cent EOUs for Company Secretarial Services etc., may be created with relevant Income tax and Indirect tax benefits to such EOUs.

(v) Taxation of Stock-options/Sweat Equity

U/S 17(2) the value of any specified security or sweat equity shares allotted/transferred to an Employee free of cost or at a concessional price is taxed as a perquisite at the time of allotment or transfer. This situation is inequitable as the Assessee is taxed on notional income. Further there is a lot of ambiguity about the deductibility of the ESOP cost in the hands of the employers in absence of any specific provisions in the Act. Companies have been placing reliance on various judicial precedents to claim these expenses.

Suggestion:

The incidence of tax should be shifted to the time when the assessee disposes off the shares and earns capital gains. Further, some provision may be brought in the Act to clarify the deductibility of the ESOP cost in the hands of the employers.

(vi) Company Secretary may be included in the Definition of “Accountant” given under Explanation to Section 288(2) of Income-Tax Act, 1961.

The Institute of Company Secretaries of India is a premier professional body established under an Act of Parliament, i.e., the Company Secretaries Act, 1980. Company Secretary, a competent professional comes in existence after exhaustive exposure provided by the Institute through compulsory coaching, examinations, rigorous training and continuing education programmes, and is governed by the Code of Conduct contained in the Company Secretaries Act, 1980.

We wish to apprise that the curriculum of Company Secretaryship Course includes, *inter-alia*, detailed study of Direct Taxation, Indirect Taxation and Financial Accounting. Thus, vast exposure is provided to the Company Secretaries in the areas of taxation and accounts, enabling them to acquire proficiency in taxation and other related subjects.

Secretary of a company has been recognized as a principal officer of the company responsible for its affairs under a host of legislations including Companies Act, 1956, Customs Act, 1962, Central Excise Act, 1944, etc. Secretary of a company is also required to sign the balance sheet and profit & loss account of the company by virtue of Section 215 of the Companies Act 1956.

Company Secretaries in Practice have been recognized to act as Authorized Representative before -

- a) The Customs, Excise and Service Tax Appellate Tribunal under the Customs Act, 1962 [Section 146A(2)(d)] read with Customs (Appeals) Rules, 1982 [Rule 9(c)] and The Central Excise Act, 1944 [Section 35Q (2)(c)] read with Central Excise (Appeals) Rules, 2001[Rule12(c)].
- b) Service Tax vide Authority for Advance Ruling (Procedures) Rules, 2003- Rule 2(d)(i)
- c) Income-Tax Act, 1961 vide Section 288(2)(v) read with Rule 50(2A) of the Income Tax Rules,1962
- d) Securities Appellate Tribunal vide Section 15V of the SEBI Act, 1992
- e) Central Electricity Regulatory Commission vide the Central Electricity Regulatory Commission (Miscellaneous Provisions) Order, 1999- Explanation to Order No.6(i)
- f) Telecom Regulatory Appellate Tribunal vide the Telecom Regulatory Authority of India Act, 1997- Section 17
- g) National Company Law Tribunal vide Section 10GD of Companies Act 1956
- h) Competition Commission of India Competition Act, 2002 – Section 35(b)
- i) Wealth Tax Authorities vide Wealth Tax Rules – Rule 8A(7)
- j) State VAT Legislations.
- k) Reserve Bank of India – Diligence Report for Banks Vide Circular DBOD No. BP.PC. 46/08.12.001/2008-09
- l) SEBI – Internal Audit of Stock Brokers / Trading Members / Clearing members Vide Circular No. MRD/DMS/CIR/-29/2008

Company secretaries are also authorized to conduct VAT Audit under the Jharkhand VAT Act, 2005.

When the Income-tax Act was enacted in 1961, the Company Secretaries Act was not in existence. It came into existence in the year 1980. It appears that due to this reason company secretaries are not included in the definition of the term, "Accountant". Company Secretaries are allowed to appear before authorities under Income-tax Act only if they make an application in this regard to the Chief Commissioner for entry of their name in the register to act as an authorized Income-tax practitioner. This is causing hindrances in their reaching greater heights in the profession.

The three Institutes, namely, the Institute of Company Secretaries of India (ICSI), the Institute of Chartered Accountants of India (ICAI) and the Institute of Cost and Works Accountants of India (ICWAI) have been constituted under the statutes of Parliament, i.e., the Companies Secretaries Act, 1980, the Chartered Accountants Act, 1949, and The Cost and Works Accountants Act, 1959 to develop and regulate the profession of Company Secretaries, Chartered Accountants and Cost and Works Accountants, respectively. Further, these three Institutes function under the administrative control of the Ministry of Corporate Affairs, Government of India and thus stand on equal footing.

We, therefore, request for inclusion of –

- A) *“Company Secretary within the meaning of the Company Secretaries Act, 1980 (Central Act 56 of 1980)” in the definition of “Accountant” of Income Tax Act, 1961.*

The proposed amendment will provide the entrepreneurs, specially the SMEs, a wider and cost effective scope for selection of professionals and will be an important initiative towards simplified tax compliance regime.

(vii) Authorisation of Company Secretaries for appearance before National Tax Tribunal (NTT)

Section 13 of NTT Act, 2005 authorizes only Chartered Accountant or legal practitioner to act as authorized representative. It seems that the intention of the Government was to restrict the appearance before NTT only to the members of the regulated profession. We wish to bring to your notice that the members of our Institute will not be able to appear this seems to an inadvertent and unintended omission.

Submission

It is requested to include the profession of Company Secretary within the meaning of the Company Secretaries Act, 1980 (Central Act 56 of 1980)” in the definition of “Accountant” of Income Tax Act, 1961.

2. CENTRAL EXCISE

(A) Recognition of Company Secretary Profession for conducting Special Audit under section 14A and 14AA of Central Excise Act, 1944

A Company Secretary in Practice is allowed to act as an authorized representative before the various authorities like, Company Law Board, Customs, Excise, Service Tax Appellate Tribunal, Securities Appellate Tribunal etc. Company Secretaries have been recognized by Reserve Bank of India (RBI) for Diligence Report for Banks. SEBI has authorized the Practising Company Secretaries to carry out complete internal audit of Stock Brokers / Trading Members / Clearing Members and Portfolio Managers. National Securities Depository Ltd (NSDL) and Central Depository Services (India) Ltd (CDSL) has recognized Companies Secretaries for Internal / Concurrent Audit of the Depository Participants.

We wish to apprise that the curriculum of Company Secretaryship Course includes, *inter-alia*, a detailed study of Financial Accounting, Cost Accounting and both Indirect and Direct taxation. Thus vast exposure is provided to Company Secretaries in accounts and taxation.

Union Budget for the year 2009-10 provided that special audit under section 14A and 14AA of the Central Excise Act, 1944 can be conducted by Chartered Accountants also. Prior to the proposed changes only Cost Accountants were authorized to conduct special audit.

We request to recognize Company Secretaries in Practice also for conducting the special audit under section 14A and 14AA of Central Excise Act, 1944 and accordingly the sections may kindly be amended.

(B) Valuation of Excisable Goods

Under rule 9 of Central Excise (DOPEG) Valuation Rules, 2000, where the assessee so arranges that the excisable goods are not sold by an assessee except through a person who is related person, the value shall be the normal transaction value at which these are sold by the related person to unrelated buyers. This leads to litigation as it is difficult to determine the price at which these goods are sold by related person to unrelated buyers.

Suggestion:

The value of goods may be determined on the basis cost of production (COP) plus a specified percentage of COP in order to remove the complication in determining the value.

(C) Pre- Deposit of duty demanded, penalty levied etc. while filing the Appeal:

There is no provision in Central Excise Act, 1944 which allows interest on pre-deposit if the matter is decided in favour of the appellant. If the matter is decided against the assessee the amount of pre-deposit is adjusted against the demand. In case demand is confirmed, assessee is liable for the interest under Section 11AB for interest on duty demanded. Thus, the appellants who makes pre-deposit of duty/penalty lose interest on pre-deposit when eventually appeal are allowed/ decided in their favour **(Annexure A)**

Suggestion:

Amendment may be brought to provide for interest on pre-deposit, if the appeal is allowed fully. If the same is allowed partly the interest be paid on the amount of pre-deposit as in excess of confirmed demand.

(D) Automatic expiry of Stay order if appeal is not disposed of within the period of 180 days:

Commissioner (Appeals) / Tribunal grants full or partial waiver of pre-deposit of duty demanded, penalty levied etc. on the stay application made by the applicant. However, if the appeal is not disposed of within a period of 180 days the stay order stand vacated and the appellant has to make fresh application in every six month till the disposal of appeal. These provisions are not in favour of industry **(Annexure B)**.

Suggestion:

Second proviso to Section 129B(2A) of Customs Act, 1962 / Sub Section (2A) of Section 35C of the Central Excise Act, 1944 may be deleted from the respective Acts as those provisions creates financial and compliance burden on the appellant.

(E) Time limit for disposal of appeal with CESTAT:

At present, section 129B(2A) specifies a recommendatory time limit of three years from the date on which such appeal is filed. It leads to piling of huge no. cases at Tribunal level **(Annexure C)**.

Suggestion:

There has to be statutory deadline for disposal of Appeals and not only recommendatory deadline as given in Section 129B(2A) of Customs Act, 1962.

Once the dead line is statutorily fixed there would pressure on the Appellate Authorities to dispose of the appeals in statutory time.

(F) Protection of action taken under the Act:

Section 40 (1) of Central Excise Act, 1944 provides that no suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Central Government or a State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act or any rule made there under.

It has been noticed that there is no protection available with the assessee against the frivolous cases formed by the officers with malafide intention.
(Annexure D)

Suggestion

A proviso may be introduced providing that the protection given under sub section (1) shall not apply if it is proved that the actions referred in the said sub-section were taken under the disguise of this Act to harass the complainant for personal motives and not in good faith.

(G) Cenvat Credit Rules, 2004:

(i) Definition of Input Service:

As per rule 2(1), input service include only the services which are provided upto the place of removal while there are other so many services such as Goods Transport Agency , cargo handling services, clearing and Forwarding Agent's Services etc. which are provide post removal hence credit is not available on these services **(Annexure E)**.

Suggestion:

The definition of Input services may be amended so as include the services which are used by reason of or in connection with the sale.

(ii) Capital goods:

Motor vehicles, dumpers & tippers are eligible capital goods under Cenvat credit scheme only for a few service providers. Manufacturers are not entitled to avail Cenvat credit of duty paid such capital goods **(Annexure F)**.

Suggestion:

The duty on such capital goods may also be allowed as Cenvat Credit to Manufacturer where these capital goods are utilized for the purposes of manufacturing.

(iii) Refund of CENVAT Credit under Rule 5 of the CENVAT Credit Rules, 2004

Rule 5 of the CENVAT Credit Rules, 2004 provides for refund of CENVAT credit in respect of:

- a. input or input service used in the manufacture of final product which is cleared for export under bond or letter of undertaking;
- b. input or input service used in providing output service which has been exported without payment of service tax, subject to the prescribed safeguards, conditions and limitations.

Notification No. 05/2006 – Central Excise (N.T.) dated 14th March, 2006 prescribes the procedure for refund of the CENVAT credit under Rule 5. The said Notification also prescribes the Form and documents to be submitted by the claimant for the refund of the CENVAT credit.

We wish to submit that Company Secretaries in Practice, being competent and expert professional subject to strict code of conduct of the Institute of Company Secretaries of India, can verify and certify the correctness of the above mentioned Form and Documents before submission by the claimant to the concerned authority for refund of the CENVAT. This will help the claimant in submitting the correct and complete documents. This will also help the excise authorities to expedite the settlement of refunds as the validity of the claim will be ensured through certification of an independent professional Company Secretary in Practice. The whole process of refund of CENVAT under Rule 5 of CENVAT Rules, 2004 will become safe, expedient, efficient and hassle free.

Suggestion

Therefore, we request your good self to allow the “Company Secretary in Practice within the meaning of Company Secretaries Act, 1980 (Central Act 56 of 1980)” to certify the Form and Documents to be submitted by the claimants for refund of CENVAT credit under Rule 5 of the CENVAT Credit Rules, 2004 read with Notification No. 05/2006 – Central Excise (N.T.) dated 14th March, 2006.

(iv) Modalities for transfer of Cenvat credit under rule 10 of Cenvat Credit Rules, 2004

Central Excise Act/Cenvat Credit Rules does not contain any provision requiring prior approval / permission of Central Excise officer for transfer of Cenvat credit, when a manufacturer or provider of output service shifts his factory or transfers his business on account of sale, merger, amalgamation, lease or transfer to joint venture, with a specific provision for transfer of liabilities of such business. The rule only requires that the inputs and / or

capital goods transferred are duly accounted for at the new location to the satisfaction of the Deputy / Assistant Commissioner of Central Excise.

However, Central Excise Range officers having jurisdiction over factory / premises of transferor unit insist that their approval be obtained before stock of inputs and / or capital goods is transferred to the new location / owner and also threaten to initiate legal action.

Even if prior approval is requested by the transferor unit, there is delay in giving the same and as a result of it, assessee have to pay duty in cash even if the transferred Cenvat credit is legitimately available for utilization.

Suggestion:

A provision may be introduced to clarify the above ambiguity, mentioning the time limit for the grant of permission/ approval.

(v) 100% CENVAT credit on capital goods in the year of receipt

50% of CENVAT credit is allowed in case of capital goods in the year of receipt and the balance 50% in the next financial year. At the time of procurement assessee have to pay 100% excise duty on both inputs and capital goods. Non allowance of full credit in the year of purchase itself will lead to blocking of funds for tax payers.

Suggestion:

CENVAT Credit Rules may suitably be amended to extend 100% CENVAT credit on capital goods as well at par with inputs.

(vi) The credit Additional Duty of Customs (SAD) against output service tax liability

Under section 3(5) of Custom Tax Act, 1975, Additional duty of Customs is levied in order to counter balance various internal taxes like sales tax or value added tax. This duty can be availed as credit against the excise duty paid on the manufacture of the finished product. However, the fourth proviso to rule 3(4) Cenvat Credit Rule, 2004, provides that no credit of SAD shall be utilized for payment of service tax levied on any output service. Consequently, this additional duty of customs is an added cost to the service providers. This provision is not consistent with the legislative intention of SAD, which is to provide a level playing field, which is why the facility of set-off has been provided.

Suggestion:

Fourth proviso to Rule 3(4), Cenvat Credit Rule, 2004 may be amended to allow credit of SAD against the Service tax liability.

3. CUSTOM LAWS

(A) Amendment of regulation 6(a) of the Customs House Agents Licensing Regulations, 2004

Company Secretaries are well versed academically as well as practically in Customs Law. They have been taught detailed procedures viz., definitions, prohibition on illegal imports and exports, levy of and exemptions from customs duties, conveyances carrying imported/ export goods, clearance of import and export cargo, goods in transit, warehousing, customs duty drawback, baggage, search, seizure, adjudication, appeals, offences & prosecution etc. They are well equipped in carrying on the business as Customs House Agents and are contributing with their valuable expertise in the areas of Customs like, appearing before CESTAT, Commissionerates etc.

Thus, there is an earnest request that they should be allowed to be an applicant for the purposes of the said Regulations and are recognized in this area like other professionals namely, Chartered Accountants, MBAs, Advocates etc.

Suggestion:

It is therefore requested that Clause (a) to regulation 6 be amended by inserting the word, "CS" after the word, "CA" and before the word "MBA".

(B) Simplification of import procedure between related parties

The valuation of import transaction where related parties are involved creates contradiction as Custom Officer does not accept the value declared by the assessee.

Suggestion

Customs procedure may allow the entity to provide a Valuation Certificate mentioning the Arm length Price of the import transaction, certified by the Practicing Company Secretary. Such certificate may be part of other import documents which can be taken cognizance by the Custom Officer while clearing the goods for home consumption.

4. SERVICE TAX

(A) Service Tax Compliance Certificate

The Finance Act, 1994, introduced the statutory provisions for Service Tax levy. Service tax is payable on about 109 taxable services as defined in Section

65(105) of the Finance Act, 1994 and the threshold limit for payment of service tax is Rs. 10 lacs. Therefore, there are large number of SMEs who provide taxable services but may not be well versed with the provisions of the Finance Act, 1994 and rules made thereunder.

Service Tax Compliance Certificate by a practicing Company Secretary will assure the revenue authorities that assesses responsible for collection and payment of service tax have complied with all the legal provisions and that there is no avoidance of service tax liability. This would protect the service tax revenues due to the government on one hand and on the other hand will save assessee from unintentional defaults.

Suggestion

Therefore, we request to amend the statutory provisions of the Finance Act, 1994 by inserting a new section providing for issuance, by Practicing Company Secretaries, of Service Tax Compliance Certificate on behalf of the taxable service providers to Service Tax Authorities.

(B) Transactions/ Services subject to VAT and Service Tax

There are a number of transactions, which are deemed to be sale and subject to levy of VAT, whereas same transactions are being treated as a taxable service and subject to service tax. For instance, comprehensive repair and maintenance services, construction services, intellectual property services, catering services, etc. This leads to double taxation in respect of the same transaction and it needs to be addressed in order to avoid the cascading effect of tax and reduce the transaction cost, as at present these two taxes cannot be set off against each other.

Suggestion

Pending introduction of GST, Government may discuss issues with States so that double taxation at Central and State levels may be avoided for all such transactions.

(C) Services rendered by Company Secretaries in Individual capacity liable to Service Tax:

Individual assessee rendering legal services are not liable to service tax as they have been specifically excluded from the scope of the definition of Taxable Services. However, other professionals are charged to service tax even when they provide the services in individual capacity. This is unfair on the part of company secretaries and all other professionals.

Moreover, representational services provided by the Company Secretaries to individuals are made taxable due to the withdrawal of notification No.25/2006 dt. 13/07/2006 vide Notification No.32/2011 dt.25/04/2011.

Suggestion:

In line with the individual legal service providers, Company Secretaries and other individual service providers may also be exempted.

Further, representational services provided to individuals may also be exempted by issue of notification.

(D) Registration as a service receiver, even for single transaction

Under reverse charge mechanism, service tax is payable by service receiver and no exemption limit is applicable for such assesses for registration thus they have to go through the cumbersome process of registration even for a single transaction and therefore, they have to comply with procedures like regular filing of returns, etc.. Moreover, the procedure for de-registration is quite difficult and takes lot of time as the department is very hesitant to deregister any assessee.

Suggestion:

The concept of casual registration as in VAT laws at State level may be introduced in service tax law. This proposal will reduce the burden of compliance for tax payers and also ease the burden of monitoring for tax department.

(E) Reverse Charge Mechanism

Reverse charge mechanism imposes burden of transaction costs and compliance issues.

Suggestion:

In case of reverse charge the option for payment of service tax may be provided with the service provider also. Further, the list of service receivers under the reverse charge mechanism may not be expanded.

(F) Self-adjustment of excess service tax

Under Rule 6(4A) of the Service Tax Rules, 1994, self adjustment of excess amount paid by the assessee towards his service tax liability may be adjusted against his service tax liability for the succeeding period. However, in case of assesses not having centralized registration, the excess amount paid and proposed to be adjusted cannot exceed Rs.2,00,000 for the relevant period. Seeking refund is quite a cumbersome and time consuming process. Moreover, the chances of errors or omissions have increased in e-payment of service tax.

Suggestion:

Adjustments of excess amount paid towards service tax liability may be allowed without any limit in case of assesses not having centralized registration. This will simplify the procedure and reduce the burden for tax payers and the department as well.

(G) Time of Tax Payment

All assesseees under service tax have been allowed only 5 days to make the service tax payment and moreover for the month of March, the payment of service tax required to be made on 31st March itself.

Suggestion:

These provisions are very harsh especially for the small tax-payers, who are not having computerized systems as well as not enough manpower. At least for the tax-payers whose tax liability is not more than a certain amount say Rs.10 lacs in a year, the relaxation should be given for making the payment from 5 days to 10 days at least.

(H) Grant of service tax exemption to Software Technology Park of India (STPI) / Export Oriented Unit (EOUs)

Customs / Excise duty is exempt in the hands of STPI's / EOU's and SEZs. However, the service tax exemption is available only to SEZ vide Notification No. 4/2004. This cause undue compliance burden on the STPI/EOUs as they need to file refund application with the Revenue consequently, it leads to blockage of working capital.

Suggestion

It is suggested that exemption of service tax may also be provided to EOUs on similar lines as Custom/Excise duty exempted.

(I) Substitute the words “interest on loans” with “any interest or discount income earned by a banking company”

The Service Tax (Determination of Value) Rules, 2006 exclude “interest on loans” from the valuation of taxable services for charging service tax. Further, the Government of India vide Notification No. 29/2004 and Notification No. 4/2006 has exempted interest on cash credit, overdraft and discount arising on discounting of bills, bills of exchange or cheques and 90% of the interest element in financial leasing services respectively.

Thus, income from funding i.e. any form of interest or discount income is not chargeable to service tax. This is also in line with international practices of not levying any service tax or VAT to such interest or discount.

Suggestion

It is suggested that Rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006 may be amended to substitute the words “interest on loans” with “any interest or discount income earned by a banking company”.

5. CENTRAL SALES TAX

(A) Rate of Central Sales Tax

Central Sales Tax rate of 2 per cent is effective from 1st June, 2008. The rate was expected to be reduced to 1 per cent w.e.f. 1st April, 2009 and to Nil on 1.4.2010 on implementation of Goods and Services Tax. However, the CST rate continues to be 2 per cent.

Suggestion

It is suggested to reduce the CST rate to 1 per cent.

(B) Include Natural Gas/Liquefied Natural gas under declared goods

Natural gas is a primary energy source and has emerged as the most preferred fuel due to its inherent environmentally benign nature and greater efficiency. Its importance in the primary energy basket is likely to increase due to increased availability in times to come, which besides meeting energy need would also significantly reduce greenhouse gas emission.

Suggestion

It is suggested that suitable tax relief should be extended to natural gas / LNG. As the other primary energy sources like coal and crude oil being of special importance to the nation fall under the category of declared goods.

6. OTHERS

(A) CESTAT benches are not sufficient to dispose of the pending cases:

For the Appellants in an around Hyderabad, Ahmedabad, Kanpur and Pune and cost of defending demands is becoming prohibitive due to unaffordable fees at existing cities where the Benches are located and even cost of travel and stay further makes it costlier. Constitution of Bench at Hyderabad, Ahmedabad, Kanpur and Pune will help to develop trade and industry and

other stakeholders immensely. With decentralization, pendency at different Benches and the cost of litigation will come down **(Annexure G)**.

Suggestion:

ICSI earnestly request constitution of Tribunal Bench (CESTAT) at Hyderabad, Ahmedabad, Kanpur and Pune for the reasons mentioned above. If for the time being it is not possible to have permanent Bench in Hyderabad, Pune, periodical visiting Bench may be constituted.

(B) KAR VIVAD SAMADHAN SCHEME 2012 (KVSS)

In view of the huge pendency of disputes at different levels, and considering the pressure on the adjudicating authorities and appellate authorities, High Courts and Supreme Courts an attractive Dispute Settlement Scheme be introduced on the line of KVSS 1998 which will result into WIN-WIN situation for the Government and the Assesseees (Custom, Central Excise and Service Tax) be introduced **(Annexure H)**.

Suggestion:

This will help the Government and the assesseees to settle the matter amicably and concentrate on the productive work.

Pre- Deposit of duty demanded, penalty levied etc. while fling the Appeal.	
Issue/ Explanation	<p>Pre- Deposit of duty demanded, penalty levied etc. while fling the Appeal. (Applicable to Central Excise, Service Tax and Customs duty Demands).</p> <p>As per Section 35 of the Central Excise Act, 1944 where in any appeal the decision or order appealed against relates to any duty demanded in respect of goods or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, <u>deposit with the adjudicating authority</u> the duty demanded or the penalty levied :</p> <p>Where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.</p>
Observation	<p>As per the above provision, the appellant has to make stay application to the Commissioner (Appeals) / tribunal and the Commissioner (Appeals) / tribunal depending upon the plea as to the undue hardship or the merits of the case may require the appellant by order to deposit total or part of the amount demanded. . In case the issue is decided in favour of the appellants the amount of pre deposit is refunded. <u>There is no provision in Central Excise Act, 1944 which allows interest on pre-deposit if the matter is decided in favour of the appellant. If the matter is decided against the assessee the amount of pre-deposit is adjusted against the demand. In case demand is confirmed, assessee is liable for the interest under Section 11AB for interest on duty demanded.</u></p> <p>Thus, the appellants who makes pre-deposit of duty/penalty lose interest on pre-deposit when eventually appeal are allowed/ decided in their favour. .</p>

Suggestion	Amendment be made to provide for interest on pre-deposit, if the appeal is allowed fully. If the same is allowed partly the interest be paid on the amount of pre-deposit as in excess of confirmed demand.
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Annexure B

Automatic expiry of Stay order such appeal is not disposed of within the period of 180 days.	
Issue/ Explanation.	<p>Section 129B(2A) of Customs Act, 1962 /Sub Section (2A) of Section 35 C of the Central Excise Act,1944 (which is also made applicable for service tax provisions) the Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed :</p> <p>Provided that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of section 35B, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order :</p> <p><u>Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated.</u></p>
Observations	<p>In view of the above proviso (see underlined portion specifically inserted in the year 2002 in the Act), the present practice followed is as under:</p> <ol style="list-style-type: none"> 1. Appellant makes stay application to the Commissioner (Appeals) / Tribunal; 2. In deserving cases Commissioner (Appeals) / Tribunal grants full or partial waiver of pre-deposit; 3. If the appeal is not disposed of within a period of 180 days, the appellants make application to Commissioner (Appeals) / Tribunal for extension of stay for further six months. 4. Step three will have to be followed every six months till the time of disposal of appeal (normal time required for disposal of appeal ranges between 3 to 5 years- it means appellants are required to make 6-10 applications for extension of stay. (Expenses-Fee per application is Rs.

	<p>500/- per application plus advocate fees per application).</p> <p>5. In case of failure by appellants Department initiates/ threaten to initiate coercive actions;</p> <p>In COMMISSIONER OF CUS. & C. EX., AHMEDABAD Versus KUMAR COTTON MILLS PVT. LTD. 2005 (180) E.L.T. 434 (S.C.) the Hon'ble Supreme Court held that amendment to Section 35C(2A) of Central Excise Act, 1944 introducing the validity period of the stay order as six months, where the Tribunal has failed to dispose-off the appeal within the stipulated period, the said amendment does not in any way curtail the power of the Tribunal to grant stay exceeding six months. Non-disposal of appeal within time specified and consequential vacation of stay order as per Section 35C(2A) of Central Excise Act, 1944 cannot be construed as punishing assessee for matters which may be completely beyond their control. Tribunal can extend period of stay on good cause and only on satisfaction that matter could not be heard and disposed of by reasons of fault of Tribunal for reasons not attributable to assessee. Larger Bench order of Tribunal holding that amendment did not curtail powers of Tribunal to grant stay exceeding six months, upheld. <i>[para 6]</i></p> <p>In 2009 (242) E.L.T. 523 (Bom.) NEDUMPARAMBIL P. GEORGE Versus UNION OF INDIA the Hon'ble Bombay High Court held that there is nothing on record to show that appeal could not be heard on account of any act on part of petitioners. Where appellant is not at fault and the failure is on account of the Tribunal to hear the appeal for whatever reason or on account of the acts of department, the second proviso of Section 129B(2A) of Customs Act, 1962 cannot be read to defeat the vested right of appeal of an appellant. <u>Tribunal itself at the hearing of the stay application considering its docket and or the Benches available grants stay till the hearing and final disposal of the appeal.</u> Once the Tribunal grants stay in the absence of either the appellant or Department applying for adjournments without justifiable cause with a view to delay the hearing, the Tribunal bound to hear and dispose of appeal within 180 days. Proviso to Section 129B(2A) of Customs Act, 1962 must be, to avoid being declared unconstitutional, be read to mean that it applies when the hearing of appeal within 180 days could not be taken up on account of persistent conduct or act of</p>
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	appellant.
Suggestion	<p>Section 129B(2A) of Customs Act, 1962 /Sub Section (2A) of Section 35 C of the Central Excise Act,1944 be deleted from the respective Acts as those provisions have failed to achieve anything that may be in the mind of the Government.</p> <p>In mean time an instruction be issued to the Tribunal and the Commissionerate that the stay once granted would remain in force till the disposal of the appeal and the appellants are not required to make applications every six months for extension of stay.</p>

Annexure C

Time Limit for disposal of appeal with CESTAT	
Issue and Explanation	Pendency In CESTAT due to the Recommendatory time limit
Observation	<p>Huge numbers of cases have been piled up at different Benches of CESTAT. Particularly in Western Region the pendency before CESTAT is about for 5 years. The CESTAT finding it difficult to constitute Division Benches. It is learnt that In Western Region about 16,000 Appeals are pending at CESTAT and every Year about 3000-4000 Appeals are filed. It also learnt that though the Government wants to appoint more members on the Bench, there are no applicants for the said post. Now days even stay applications are getting delayed and the field formations keep on threatening the appellants for taking coercive actions for recovery of demand if stay application remains indisposed for want of benches.</p>
Suggestion	<p>There has to be statutory deadline for disposal of Appeals and not only recommendatory deadline as given in Section 129B(2A) of Customs Act, 1962. Once the dead line is statutorily fixed there would pressure on the Appellate Authorities to dispose of the appeals in statutory time. There would be pressure on the Government to appoint enough members on the Tribunal. Ideally any Indirect tax dispute should be decided up to Tribunal level within in a period of two years from the date of show cause notice.</p>

Annexure D

Protection of action taken under the Act – Exception need to be provided	
Issue and Explanation	SECTION 40 (1) of Central Excise Act, 1944 provides that no suit, prosecution or other legal proceeding shall lie against the Central Government or any officer of the Central Government or a State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act or any rule made there under.
Observation	<p>Similar kind of protections is given under Customs, Service Tax, Income Tax and practically in all corporate and business laws. The ICSI appreciates the objectives behind the said provisions. However, in cases which are not very small in number the officers do initiate frivolous proceedings with ulterior motive and for unlawful personal purpose. The Government can consider to modify such provisions with a view to create deterrent in the minds of such elements.</p> <p>When we are moving to flawless GST such flaws in the system also need to be addressed and corrected.</p>
Suggestion	<p>The Government, for example, may consider to provide as under:</p> <p>“Provided further that protection given under sub section (1) shall not apply if it is proved that the actions referred in the said sub-section were taken under the disguise of this Act to harass the complainant for personal motives and not in good faith.”</p> <p>Another sub section also may be added, for example, on the following line:</p> <p>(**) When it is proved that the actions referred in the said sub-section (1) were taken under the disguise of this Act and not in good faith, then every officer, against whom the charges stated in the proviso are proved, shall be punishable with a fine not less than rupees 10,000/- but not more than rupees 1,00,000/- without prejudice to any action that may be taken under service rule applicable to the officer.</p>

‘Input service’ means any service-

- (i) used by a provider of taxable service for providing an output service; or
- (ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal,

and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal;

but excludes services,-

(A) specified in sub clauses (p), (zn), (zsl), (zsm), (zsq), (zzzh) and (zzzza) of clause (105) of Section 65 of the Finance Act (hereinafter referred as special services), in so far as they are used for-

- (a) construction of a building of a civil structure or a port thereof; or
- (b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) specified in sub clauses (d), (o), (zo) and (zzzj) of clause (105) of Section 65 of the Finance Act , in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation and such as leave or home travel concession, when such services are used primarily for personal use or consumption of any employee.

“Capital goods” means:

(A) the following goods, namely:

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.04 and sub-heading No. 6805.10 of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii) above;

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank,

used—

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(1A) outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory or

(2) for providing output service;

(B) motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act;

(C) dumpers or tippers, falling under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), registered in the name of provider of output service for providing taxable services as specified in sub-clauses (zzza) and (zzzy) of clause (105) of section 65 of the said Finance Act;” .

(D) components, spares and accessories of motor vehicles, dumpers or tippers, as the case may be, used to provide taxable services as specified in sub-clauses (B) and (C).

Annexure G

Tribunal Bench (CESTAT) in Hyderabad, Ahmedabad, Kanpur and Pune needs to be constituted	
Issue and Explanation	For the Appellants in an around Hyderabad, Ahmedabad, Pune, Kanpur cost of defending demands is becoming prohibitive due to unaffordable fees at existing cities where the Benches are located and even cost of travel and stay further makes it costlier.
Observation	Considering the number of Appellate matters coming from in and around are deserving cities for CESTAT Bench. Constitution of Bench at Hyderabad, Ahmedabad, Pune, and Kanpur will help to develop professional/departmental officers' talent in litigation matters. With decentralization, pendency at different Benches and the cost of litigation will come down.
Suggestion	ICSI earnestly request constitution of Tribunal Bench (CESTAT) at Hyderabad, Ahmedabad, Pune, Kanpur for the reasons mentioned above. If for the time being it is not possible to have permanent Bench in Hyderabad, Pune, and Kanpur periodical visiting Bench may be constituted.

Annexure H

KAR VIVAD SAMADHAN SCHEME 2012 (KVSS)	
Issue and Observation	In view of the huge pendency of disputes at different levels, and considering the pressure on the adjudicating authorities and appellate authorities, High Courts and Supreme Courts an attractive Dispute Settlement Scheme be introduced on the line of KVSS 1998 which will result into WIN-WIN situation for the Government and the Assesseees (Custom, Central Excise and Service Tax) be introduced.
Suggestion	This will help the Government and the assesseees to settle the matter amicably and concentrate of productive work.