PRE-BUDGET MEMORANDUM 2011

Indirect Taxes

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, NEW DELHI

PRE-BUDGET MEMORANDUM - 2011

INDIRECT TAXES

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NEW DELHI

CONTENTS

INTRODUCTION

1.1 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Pre-Budget Memorandum – 2011 on Indirect Taxes to the Government. The memorandum contains suggestions for the consideration of the Government while formulating the tax proposals for the year 2011-12.

1.2 The worldwide financial crisis which started in 2007 took into its grip almost all the countries including India. The country which had been performing remarkably well since 2003 with 9% growth rate started decelerating in 2008-09 especially in the second half. In response to the emergent situation the macroeconomic policies were geared up. The focus of macroeconomic policies was on recovery and its management. The expansionary fiscal policy was adopted and monetary policy was made accommodative. As a result, not only the impact of sluggish private consumption and investment demand on economic growth was offset but an overall liquidity and interest rate condition was maintained that was conducive for growth. The stable financial system of India had a favourable impact on the overall business confidence and the economy began to pick up again in 2009-10.

1.3 India achieved 7.4 per cent growth in GDP in 2009-10. This was not only better than the 6.7 per cent growth achieved during the previous year but also was one of the highest in the world. Insufficient monsoons and gloomy global financial outlook were more than offset by a strong recovery in industrial sector and a resilient services sector.

1.4 Overall, the macro-financial developments during 2009-10 indicated the resilience of the economy to shocks, both external and internal, as well as the capacity to recover fast from an economic slowdown. Domestic policy stimulus, both monetary and fiscal, contributed to spur the recovery impulses. The rising generalised inflation, almost stagnant agriculture and slow growth of infrastructure remain the major challenges facing the Indian economy.

1.5 In this macro-economic scenario, the Institute submits its Pre-Budget Memorandum for the kind consideration of the Government before finalizing the Budget Proposals for the year 2011-12.

PRE-BUDGET MEMORANDUM – 2011

Indirect Taxes

EXECUTIVE SUMMARY

I. SERVICE TAX

S. No.	Issue(s)	Justification(s)
1.	*Import and Export of services*	
1.1	Import of Services – [Service received outside India and paid for by Indian Company]	➢ *The language of Section 66A of the Finance Act, 1994 may be modified to reflect the intention of the Statute and simultaneously a Circular clarifying the position may be issued.*
1.2	Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (Import Rules)	➢ *It is suggested that Section 66A may be amended appropriately to provide a reference to the Rules to determine the circumstances when services will be deemed to be taxable in India.*
1.3	Categorisation for determining import and export of services	➢ *Considering the fact that mandap keeper's services are services relating to immoveable property, it is suggested that mandap keeper's services may be included in rule 3(1)(i) of Export of Services Rules, 2005 along with other services relating to immoveable property. Similar approach may also be adopted in case of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.*
2.	*Taxable services*	
2.1	Man power recruitment and supply agency's service and	➢ *It is suggested that appropriate amendment be made to provide for abatement so that the*

	security agency's service	*burden for small and medium sized enterprises is not disproportionate.*
2.2	Segregation of manpower recruitment services and supply of manpower services	➢ *The taxable services of manpower recruitment and manpower supply may be segregated in two separate categories as it is more appropriate to classify manpower recruitment in rule 3(iii) and manpower supply in rule 3(ii) of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. Similar approach may also be adopted in case of Export of Services Rules, 2005.*
2.3	Service tax on renting of immovable property	➢ *It is suggested that to avoid multiplicity of levy and reduce the tax burden, appropriate abatement be granted in determining taxable value in relation to this category of service.*
2.4	Service tax on health services	➢ *It is suggested that appropriate modification be made in the law to remove taxation in selective basis with reference to the person making the payment rather than the specific service and also, to reduce burden on employees for availing health related services.* ➢ *It is also suggested that appropriate clarification be provided to avoid litigation in regard to availment of input tax credit.*
2.5	Works contract services may be expanded to include all works contract	➢ *It is suggested that all types of contracts which are taxed as works contracts under VAT be brought in the category of "works contract service".* ➢ *Alternatively, benefit of composition scheme be made available to all works contracts classified as such under VAT laws irrespective of its classification under service tax law.*
2.6	Works Contract Composition	➢ *Rate of service tax under WCC Scheme be*

	(WCC) scheme	*reduced from 4% to 3%.*
2.7	Membership of club or association services	➢ *It be clearly provided in the law that Chambers of Commerce, Trade and Industry associations are not liable to pay service tax on subscription amount, membership fees and all other services of general nature (other than commercial activities or letting out of premises) that they provide and that the Cooperative Housing Societies formed under the State's Cooperative Societies Act are not liable to pay service tax on the common use facilities for which amounts are recovered from members.* ➢ *If the co-operative societies engage in any other activities like letting out of premises and like, service tax could be applied as it would apply to any other such service provider.*
2.8	Commercial and industrial construction services / Works contract services / Management, maintenance or repairs services	➢ *Instead of specifically listing few infrastructure projects which are exempted for the purpose of levy of service tax, it could be provided that the notified categories of infrastructure projects would be excluded from the purview of service tax.* ➢ *Alternatively, infrastructure projects may be treated in the similar manner like that of exports, i.e., they may be nil rated and tax on input services may be refunded.* ➢ *Power sector needs to be included in the list of specified infrastructure projects that are not liable to service tax.* ➢ *Maintenance and repair of infrastructure also needs to be excluded from the scope of service tax levy.* ➢ *There is need to clarify as to whether "Metro" is covered in the meaning of the term "railway".*

2.9	Practising Chartered Accountants/ Practising Cost Accountants/ Practising Company Secretaries and other Professional services	➢ *It is suggested that in line with the legal services, individual service providers be exempted in case of other professional services as well.*
2.10	Double taxation vis-a vis sales tax/VAT	➢ *Section 67 of the Finance Act, 1944 be amended to provide that "value of taxable service for the purpose of service tax" shall exclude value of "sales"/"deemed sales" which has been subjected to sales Tax/VAT under law of any State Government/Union Territory.* ➢ *State VAT Legislations may specifically provide that, value on which VAT is payable, should exclude that part of the value on which service tax is paid under the Finance Act, 1994.*
3.	*Service Tax (Determination of Value) Rules, 2006 [Valuation Rules]*	
3.1	Exclusion of statutory taxes / levies	➢ *It be clearly provided in the Valuation Rules that, all statutory taxes / levies charged in terms of any local / State / Central or other Statutes, be excluded from the value of taxable services subject to the condition that the same is shown separately in the invoice issued by a service provider.*
3.2	Reimbursable expenditure /common expenses– Practical difficulties	➢ *The definition of pure agent be simplified and modified to exclude the lines pertaining to "title of goods" and similar other requirements which are difficult to satisfy in practice.* ➢ *Appropriate mechanism be worked out/clarification be provided so that the benefit of input tax credit is not lost when the service provider seeks reimbursement of expenses incurred on account of the service recipient.* ➢ *In relation to sharing of common expenses, it needs to be clarified as to whether and if so,*

		how, service tax is to be applied.
4.	*Procedural and other matters*	
4.1	Service tax payable under reverse charge by service recipient	➢ *Option be provided to the service provider to pay service tax.* ➢ *Alternatively, appropriate mechanism be developed whereby the benefit of basic exemption limit is available to the small service provider under reverse charge basis.* ➢ *It be clarified that the insurance company / recipient of the service is required to discharge service tax on its own and the same is not required to be deducted while making payment of commission to the service provider.*
4.2	Registration – Practical difficulties	➢ *Registration requirements be specified in the Rules itself. Alternatively Department may issue detailed guidelines for the sake of uniformity.* ➢ *If grant of centralised registration is delayed, provisional registration may be granted, to facilitate payment of service tax, pending grant of final registration.*
4.3	Registration as a service receiver, even for single transaction	➢ *The concept of casual registration on the lines of VAT laws at State level be introduced in service tax law.*
4.4	Self-adjustment of excess service tax	➢ *In view of the fact that chances of errors or omissions have increased manifold in e-payment of service tax, it is suggested that suo moto adjustments of excess amount paid towards service tax liability be allowed without any limit in case of assesses not*

		having centralized registration also.
4.5	GAR - 7	➢ *It is suggested that GAR-7 may also include the details relating to category of service, period for which service tax is deposited and name of the assessee so as to make it more useful and user-friendly.*
4.6	Carry forward of excess service tax actually paid in Form ST-3	➢ *It is suggested to incorporate a worksheet for computing the excess service tax paid which can be adjusted in the subsequent period in Form ST-3 itself.*
4.7	Revision of returns	➢ *The time limit for revision of returns may be extended to 7 months from the end of the financial year as accounts under the Companies Act are required to be audited and finalized within 6 months from the end of the year and period of additional one month would thus be available for revision of returns.*
4.8	Service tax refunds to service providers	➢ *In lines with new refund procedures introduced for manufacturers / merchant exporters vide Notification No. 17/2009 ST dated 07.07.2009, simplified refund procedure be extended to service providers as well.*
4.9	Issue of show cause notice for recovery of service tax	➢ *It is suggested that a minimum limit of Rs.1,00,000 for service tax escaping assessment be prescribed for the purpose of proviso to section 73(1).*
4.10	Time limit for adjudication	➢ *It is suggested that a time limit for completion of adjudication be prescribed in the provisions of section 73.*
4.11	Recording of statement	➢ *As far as possible, recording of statements should be avoided and assesses should be asked to submit specific responses to the*

		specific questions of the Department. ➢ *In case, the statement is required to be recorded, a copy of the same, duly signed by both the tax payer and the Officer recording the statement, may be provided to the tax payer immediately after the recording the statement. Very often, the statements are written in hand and then typed. The use of computer systems can speed up the process. The statement recorded can be immediately printed, signed and handed over to the assessee.*
4.12	Search of premises	➢ *It is suggested that in order to avoid vexatious searches, the reasons for conducting the search may be recorded in writing. This will also be in line with income-tax provisions.*
4.13	Stay by CESTAT	➢ *Though CESTAT has power to extend the stay again, it is a cumbersome and taxing process, on part of the assessee as the department presses for recovery. Further the delay may not be due to the fault of assessee. Hence the limitation period either be removed or at least extended to one year.*
4.14	Settlement Commission for service tax	➢ *Provisions for Settlement Commission be introduced in the service tax law.*
4.15	Powers under section 14 of the Central Excise Act, 1944	➢ *It is suggested that Section 14 be suitably amended to so as to stop the misuse of the powers provided therein.*
4.16	Audit report for the assessee/Introduction of assessment procedures	➢ *The audit report under Excise Audit 2000 or any other scheme be a complete speaking report which may be provided to the assessee to :* • *take corrective actions*

		• *to ensure that audit is done upto a particular period.* ➢ *A time limit may be provided for completion of order of audit.* ➢ *Further, the books of the assessee can be called for scrutiny at the Central Excise Office itself instead of doing the audit at assessee's premises as such a system creates interference with the normal business of the assessee. This would also stop the corruption and undesired nexus between taxman and tax payer.* ➢ *On a broader note, assessment procedures may be introduced in service tax law as they prevail in other tax laws, like VAT, Income-tax. This would ensure that returns attain finality as also would fix accountability on the department side.*
4.17	Tax Audit Report in service tax	➢ *In order to streamline the process with all VAT laws, it is suggested that the submission of audit report be made mandatory in service tax also along with audited annual accounts.*
4.18	Treatment of transfer pricing adjustments	➢ *It is suggested that appropriate provisions be made to deal with transfer pricing in relation to service tax.*
4.19	Certification under Section 66A in line with income tax – overseas payments	➢ *It is suggested that a declaration and certification by a Chartered Accountant with respect to liability of service tax on payment made outside India be prescribed in service tax law in line with income-tax provisions. This could be verified by the bankers while effecting payment to overseas service provider.*

II. CENVAT CREDIT RULES, 2004 (CCR, 2004)

<table>
<tr><th>S. No.</th><th>Issue(s)</th><th>Justification(s)</th></tr>
<tr><td>1.</td><td>Definitions of Capital Goods and Inputs</td><td>

The list of “capital goods” and “inputs” eligible for input tax credit be redefined to include all the goods used for the purpose of business other than specified items on which CENVAT credit is not desired to be allowed.
Alternatively, capital goods credit for motor vehicles in respect of at least the following services may be allowed under Rule 2(a)(B):

<table>
<tr><th>Service category</th><th>Clause of section 65(105)</th><th>Justification</th></tr>
<tr><td>Carrying and forwarding services</td><td>(j)</td><td>Distribution main part of job</td></tr>
<tr><td>Broadcasting</td><td>(zk)</td><td>Mobile Vans</td></tr>
<tr><td>Construction related</td><td>(zzq), (zzzh), (zzzza), (zzza)</td><td>Already available for commercial construction</td></tr>
<tr><td>Erection</td><td>(zzza)</td><td>Available for construction- major cost is moving materials</td></tr>
<tr><td>Dredging</td><td>(zzzb)</td><td>Vehicles required to move the dredged material – major cost</td></tr>
</table>
</td></tr>
</table>

		Supply of tangible goods (zzzz) The same asset provided along with driver
2.	CENVAT credit on High Speed Diesel (HSD) and Light Diesel Oil (LDO)	➢ *It is suggested that HSD and LDO should also be made as eligible inputs for the purpose of availing CENVAT credit.*
3.	Inputs removed as such to EOUs and SEZs	➢ *It is suggested that appropriate amendment be made to exempt manufacturers clearing inputs/capital goods as such to EOUs and SEZs from the requirement of reversal of such credit.*
4.	Disallowance of credit on cement, angles, channels etc.	➢ *The exclusion given in explanation to rule 2(k) be amended appropriately so as to allow CENVAT Credit on cement, angles, channels, centrally twisted deform bar (CTD) or thermo mechanically treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods.*
5.	CENVAT credit against Renting of Immovable Property	➢ *Definition of input service covers the input services in relation to setting up, modernization, renovation, repairs of premises of a service provider and accordingly, it may be clarified that service tax and CENVAT paid for such services is available as input service.* ➢ *Further, the fact that significant amount of CENVAT and service tax is incurred in constructing the property, a suitable abatement may also be provided in respect of rental service.* ➢ *Alternatively, deemed credit towards service tax and CENVAT actually paid or at a specified percentage be allowed against rental service.*

6.	CENVAT credit of service tax paid on advance payment received	➢ *It is suggested that on principle of equity and natural justice, credit may be allowed in respect of service tax paid on advance payments received for provision of services and the issue be appropriately clarified by the Department at the earliest to avoid litigation in this regard.*
7.	CENVAT credit of 4% additional duty levied u/s 3(5) of the Customs Tariff Act, 1985 (CTA) for service providers	➢ *Service providers also be permitted to avail the benefit of CENVAT credit in respect of 4% additional duty levied under section 3(5) of Customs Tariff Act, 1985.*
8.	100% CENVAT credit on capital goods in the year of receipt	➢ *Therefore, the CENVAT Credit Rules be suitably amended to extend 100% CENVAT credit on capital goods as well at par with inputs.*
9.	Availability of CENVAT credit in case of part payment of the input services	➢ *A clarification be issued providing clear cut guidelines for availing credit where payment for input services is made in installments or the bill for the same is settled for a lesser amount.*
10.	Availment of CENVAT credit in cases where manufacturer/ service provider is also engaged in trading activity	➢ *Scope of rule 6 be modified to appropriately deal with other activities and in particular trading activities.*
11.	Coverage of services under Rule 6(5)	➢ *The following services may be added to the list of 16 services mentioned in rule 6(5):* *Service* — *Sub-clause of section 65(105)* *Courier* — *(f)* *Warehousing* — *(zza)*

		Travels *(zzx)* *Telecom* *(zzzx)* *Renting* *(zzzz)* *Business Support – Infrastructural services* *(zzzq)* *Works contract* *(zzzza)* *Legal Service* *(zzzzm)* *CA/CS/ICWA* *(s)/(t)/(u)*
12.	Transfer of CENVAT credit from one unit to other unit	➢ *The Rules be amended appropriately to provide for the transfer of credit from one unit to another unit of the same assessee.*
13.	CENVAT credit on sale-in-transit transaction	➢ *It is suggested that the CENVAT Credit Rules, 2004 be amended to the effect that credit can be availed on endorsed documents of title to goods in case of sale-in-transit transactions. Alternatively, appropriate mechanism to allow credit be worked out to address this issue.*
14.	CENVAT credit on imports through courier	➢ *As duty has been paid an appropriate provision may be inserted in the CENVAT Credit Rules to avail the CENVAT credit based on certified copies of such Bill of Entry. Alternatively, a mechanism of casual registration may be introduced in the excise law so that the courier agent may register as first stage dealer and get entitled to pass on the credit.*
15.	CENVAT credit on endorsed Bill of Entry	➢ *It is suggested that Bill of Entry duly endorsed by non-registered traders also be considered as an eligible document for the purpose of*

		availing CENVAT credit when the material is sent to the registered manufacturer for the purpose of conversion of material on job work basis. Alternatively, a simplified mechanism for registration of such casual persons be worked out.
16.	CENVAT credit of service tax in case of pass through transactions	➢ *It is suggested that where service tax is paid on reimbursable expenses or on pass through transactions credit be allowed to the person who bears such expenses on the basis of a debit note provided by the agent mentioning the value of input service and the service tax paid thereon by the agent on behalf of the principal.*
17.	Penalty on wrongful availment of CENVAT credit	➢ *It is suggested that the rules be amended so as to do away with the interest liability on wrongful availment of credit. Interest be only levied when such credit is utilized.*
18.	CENVAT credit for job worker	➢ *It is suggested that appropriate clarification may be issued for extending credit to the job workers.*
19.	Filing of separate CENVAT credit return	➢ *It is suggested that the requirement of filing the service tax credit return under CENVAT Credit Rules, 2004 may be dispensed with.*

III. CENTRAL EXCISE DUTY

S. No.	Issue(s)	Justification(s)
1.	Online E-filing of weekly information by major duty paying unit	➢ *When the assessees are submitting monthly return regularly, filing weekly information does not serve any purpose and has no duty implications. Many times the assessees are compelled to establish a separate department for this purpose at a cost. It is suggested that such a system be done away with.*
2.	Audit Procedures	➢ *It is suggested that such demands be not made from the assessees. The audit parties be instructed to verify the data at the assessee's premises and seek hard copies of only very relevant data which is required for their records.*
3.	Exemption / CENVAT credit to all excisable goods used for research & development (R& D)	➢ *Considering the potential in earning foreign exchange, to reduce research cost, CENVAT credit on capital goods deployed for R & D activity installed within the factory premises or outside factory premises be allowed.* ➢ *Mechanism be prescribed for availment of CENVAT credit in cases where R&D units are located outside the factory of a manufacturer.*

IV. CUSTOMS DUTY

S. No.	Issue(s)	Justification(s)
1.	Complete self sealing in export to be allowed for Star Trade Houses	➢ *Self sealing be allowed for such exporters having clean track record.*
2.	Provisional assessment for duty free exports	➢ *It is suggested that provisional assessment be allowed on duty free exports also.*
3.	Amendment in provisions relating to Safeguard Duty	➢ *Provisions relating to safeguard duty be re-examined and amended to incorporate the views of users of products and a mechanism be established to take views of domestic users and exporters of such products.*
4.	Penalties	➢ *It is suggested that penalties be substantially reduced.*
5.	Interest free warehousing period for imported goods	➢ *Warehoused goods may be allowed to be kept in-bond for a period of at least 6 months without payment of interest.*

V. CENTRAL SALES TAX

S. No.	Issue(s)	Suggestion
1.	'C' Form for construction activities	➢ *The definition of the goods given in section 8(3) of CST Act be amended to include the goods purchased by the dealer for construction of plant & machinery to manufacture goods as also goods purchased for construction activities which itself constitutes works contract and attracts CST.*

VI. MISCELLANEOUS

S. No.	Issue(s)	Justification(s)
1.	Disparity between interest payable by assessee and Department under central excise and customs	➢ *The rate for both be made uniform.*
2.	Chartered Accountancy Professionals in tax policy making body	➢ *It is suggested that the tax policy making body include a few professionals drawn from the Chartered Accountancy profession. Their contribution would be extremely useful when GST is implemented in India.*
3.	Training of Departmental Personnel	➢ *A comprehensive training covering all the substantive and procedural aspects of the law be scheduled for the officers at all levels.*
4.	De-linking of tax policymaking and tax administration	➢ *There is a urgent need to ensure that there is a clear divide between the tax policy making and the tax administration.*
5.	Retrospective amendments	➢ *It is suggested that retrospective amendments rectifying past drafting errors or adverse judicial decisions be avoided.*
6.	Accountability of tax collectors	➢ *In order to project a sense of even-handedness in dealing with tax payers, provisions relating to accountability need to introduced and not be formulated independently.*
7.	Appeals to High Court	➢ *The practice of going on appeal to the High Court quite routinely requires a review.*

I. SERVICE TAX

S. No.	Issue(s)	Justification(s)
1.	*Import and Export of services*	
1.1	<u>Import of Services – [Service received outside India and paid for by Indian Company]</u> Explanation 1 to Section 66A(2) of the Finance Act, 1994 ("Act") provides that a branch or agency outside India is to be regarded as "business establishment" (presumably, this term has been used interchangeably with permanent establishment). However, under reverse charge mechanism, there is lack of clarity in the field formations as to taxability in India, of the services procured from outside India for use in the projects/activities carried on outside India and for which payment is made by Indian Company from India. ➢ *The language of Section 66A of the Finance Act, 1994 may be modified to reflect the intention of the Statute and simultaneously a Circular clarifying the position may be issued.*	The intention of Legislature appears to apply service tax in India on the services received in India on the basis of the destination based consumption tax principle. Services received outside India for projects/activities carried on outside India would attract local tax (VAT, GST, as the case may be). Therefore, charging service tax on the same in India would result in double taxation which certainly would not be the intention of the statute. Therefore, clarity in provisions is required to the effect that services procured from outside India for use in the projects/activities carried on outside India and for which payment is made by Indian Company from India is not deemed to be taxable service in India in terms of reverse charge mechanism.

1.2	<u>Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (Import Rules)</u> It is a settled legal position that the rules are subordinate legislations and are legally valid and enforceable. Rules derive their power from the Act. However, in case of the Import Rules, Section 66A, charging section for levying service tax on import of services, does not make reference to the Rules to determine the circumstances when services will be deemed to be taxable in India. ➢ *It is suggested that Section 66A may be amended appropriately to remove this ambiguity.*	In the absence of clarity and on strict interpretation of the provisions of Section 66A, it would be held that all the services for which payment is made by a service recipient of India would be liable to tax in India irrespective of the place of location of property, performance or recipient of service.
1.3	<u>Categorisation for determining import and export of services</u> Mandap keeper's services [clause (m) of Section (105) of Section 65] has been included in ***Rule 3(1)(ii)*** of the Export of Services Rules, 2005 according to which services are considered as exported if the same are wholly or partly performed outside India. However, mandap keeper services involve letting out a "mandap" (immoveable property) for organizing an official, social or business function. ➢ *Considering the fact that mandap keeper's services are services relating to immoveable property, it is suggested that mandap keeper's services may be included in Rule 3(1)(i) of Export of Services Rules, 2005 along with other services relating to immoveable property. Similar approach may also be adopted in case of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.*	Mandap keeper services are related to immovable property and is unlikely to be partly performed in India and partly outside India and would be more appropriate to club it with location of immovable criteria for determining export and import of services.

2.	*Taxable services*	
2.1	<u>Man power recruitment and supply agency's service and security agency's service</u> The security agency/man power supply agency is not allowed deduction of any amount from the gross amount charged for rendering such services. Service tax is charged on the amount billed by the provider of the service. Such amount includes salary and charging service tax thereon, places heavy burden on enterprises which use outsourced services especially, the small and medium sized organizations, which cannot afford to have staff on their pay rolls. Service element in such cases is quite insignificant and usually, not more than 10 % of the salary cost. ➢ *It is suggested that appropriate amendment be made to provide for abatement so that the burden for small and medium sized enterprises is not disproportionate.*	Imposing tax on entire amount charged by the service provider for supply of manpower puts huge burden on the entities using outsourced manpower and also amounts to imposing tax on salaries and this needs to be addressed by way of appropriate abatement.
2.2	<u>Segregation of manpower recruitment services and supply of manpower services</u> Scope of taxable manpower recruitment and supply service includes any service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise in any manner. ➢ *The taxable services of manpower recruitment and manpower supply may be segregated in two separate categories as it is*	The nature of both services, as currently taxed is not same – in the first case, only fees is chargeable whereas in the second case, i.e. supply of manpower the whole of salary cost is charged to service tax. While it is appropriate to categorise, the first element, recruitment service on recipient basis, it would be appropriate to

	more appropriate to classify manpower recruitment in Rule 3(iii) and manpower supply in Rule 3(ii) of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. Similar approach may also be adopted in case of Export of Services Rules, 2005.	categorise the second element, on place of performance basis following the destination based consumption tax. principle.
2.3	<u>Service tax on renting of immovable property</u> The amendment made in this service category vide the Finance Act, 2010 aims to provide clarity and certainty in the tax liability in this regard. Rental charges also include various statutory levies and the agreement attracts stamp duty. Also, the construction of property involves service tax which is not available as input tax credit as per the clarification provided by the Ministry. ➢ *It is suggested that to avoid multiplicity of levy and reduce the tax burden, appropriate abatement be granted in determining taxable value in relation to this category of service.*	There is need for clarity as to exclusion of statutory levies to avoid double taxation. Similarly, non taxability of immovable property, by itself, under Excise law leads to breaking of chain of taxation leading to cascading effect. This needs to be removed by grant of appropriate abatement.
2.4	<u>Service tax on health services</u> Pursuant to the introduction of health services under service tax net, cost of medical services provided for the benefit of employees working in business establishments where payments are made directly by the same has increased. Business establishments not entitled to credit of the service tax so paid, find this to be additional burden leading to removal of such benefits provided to their employees. Further, there is no revenue gain for the Government to the extent credit is availed by the service recipient.	Taxing services based on the manner of payment in this category creates anomalous positions without much gain to Government but, adding significant burden for the taxpayers with possibility of litigation as to persons for whom such payments would be eligible for input tax credit e.g., whether input tax credit be available when such services are provided to retired employees. There is a need to bring about parity and clarity.

	➢ *It is suggested that appropriate modification be made in the law to remove taxation in selective basis with reference to the person making the payment rather than the specific service and also, to reduce burden on employees for availing health related services.* ➢ *It is also suggested that appropriate clarification be provided to avoid litigation in regard to availment of input tax credit.*	
2.5	<u>Works contract services may be expanded to include all works contract</u> Works contract service has been defined to include the following services: (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or (c) construction of a new residential complex or a part thereof; or	All contracts which involve goods and service elements need to be brought in the works contract service to provide parity of taxation and to avoid double taxation under both VAT and Service Tax.

	(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects; However, there are other types of works contracts which continue to be taxed under different categories and do not get the benefit of composition scheme e.g. repairs and maintenance service. ➢ *It is suggested that all types of contracts which are taxed as works contracts under VAT be brought in the category of "works contract service".* ➢ *Alternatively, benefit of composition scheme be made available to all works contracts classified as such under VAT laws irrespective of its classification under service tax law.*	
2.6	<u>Works Contract Composition (WCC) scheme</u> Despite the fact that service tax rate has been reduced from 12% to 10% in Feb. 2009, the rate of 4% in regard to WCC Scheme has not been consequently amended. ➢ *Rate of service tax under WCC Scheme be reduced from 4% to 3%.*	This will bring the rate of composition in line with the rate of service tax.
2.7	<u>Membership of club or association services</u> Chambers of Commerce & Trade and Industry Associations and Cooperative Housing Societies are liable to service tax as clubs under	This proposal seeks to bring about clarity in taxation and avoid taxing activities which are not in the nature of

	membership of club or association services. However, Chambers of Commerce, Trade and Industry Associations do not provide services which ordinarily, a club or association would provide. Such bodies collect fee/subscription and perform activities facilitating entire trade, commerce or industry; they act as a channel between the Government/Governmental bodies, industry and people at large. In general, their activities relate to the cause of trade and specific sectors which they represent, in particular. Further, majority of these chambers/industry associations are constituted under the law like Companies Act, Charitable Trusts Act and Societies Act. On that ground also, they cannot be regarded as clubs and associations sought to be covered under this category. Their activities are charitable in nature. Similarly, in the western part of the country, the property on which the building is constructed is owned by the Society which is required to be formed in terms of the local laws if there are 10 or more members and each member, as a result of his holding shares in the Society, is entitled to a specific residential area (referred to as flats) in the building. The property is maintained by the society and all the common expenses like electricity, water charges, etc. are paid by the society and, thereafter, recovered from the members. Such recovery is on the basis of per flat or specific area. The society is really a collective body of members, acting for and on behalf of the members who comprise it, as each one cannot individually make such payments. They are not providing services per se to the members. It is quite different from the resident welfare associations which are generally found in the northern part of the country. These housing societies are really not providing any service as such. ➢ *It be clearly provided in the law that Chambers of Commerce,*	services e.g., tax should not levied on a body acting on behalf of all – only for facilitation, as it is not possible for individual member to make payments by themselves.

	Trade and Industry associations are not liable to pay service tax on subscription amount, membership fees and all other services of general nature (other than commercial activities or letting out of premises) that they provide and that the Cooperative Housing Societies formed under the State's Cooperative Societies Act are not liable to pay service tax on the common use facilities for which amounts are recovered from members. ➢ *If the co-operative societies engage in any other activities like letting out of premises and like, service tax could be applied as it would apply to any other such service provider.*	
2.8	<u>Commercial and industrial construction services / Works contract services / Management, maintenance or repairs services</u> Commercial or industrial construction and works contract provided in respect of road, airport, railways, transport terminals, bridges, tunnels and dams is specifically excluded from the purview of service tax. However, other infrastructure projects are not given this benefit. Further, no such exclusion of infrastructure projects is provided in respect of management, maintenance or repair services. Also, various terms are also not specifically defined. For example what meaning is to be assigned to "railways" and whether it includes "metro". This leads to different interpretations, uncertainties and increased costs of infrastructure. ➢ *Instead of specifically listing few infrastructure projects which*	There is need to bring about parity in taxation of all infrastructure projects. Also, the meaning assigned to infrastructure projects needs to be in line with the meaning assigned to it under other laws. The proposal also seeks treatment of activities which may not be regarded as new infrastructure but, maintenance of existing infrastructure on par the taxation of new infrastructure to avoid litigation and not to increase the cost of infrastructure in line with the Government's policy.

	are exempted for the purpose of levy of service tax, it could be provided that the notified categories of infrastructure projects would be excluded from the purview of service tax. ➢ *Alternatively, infrastructure projects may be treated in the similar manner like that of exports, i.e., they may be nil rated and tax on input services may be refunded.* ➢ *Power sector needs to be included in the list of specified infrastructure projects that are not liable to service tax.* ➢ *Maintenance and repair of infrastructure also needs to be excluded from the scope of service tax levy.* ➢ *There is need to clarify as to whether "Metro" is covered in the meaning of the term "railway".*	
2.9	<u>Practising Chartered Accountants/ Practising Cost Accountants/ Practising Company Secretaries and other Professional services</u> The services of professionals like chartered accountants, cost accountants, company secretaries, architects, consulting engineers etc. are liable to service tax. Lawyers are also under service tax net, however individuals rendering legal consultancy services have been specifically excluded from the scope of the definition of such service. Thus, individual assessees rendering legal services are not liable to service tax. However, other professionals are charged to service tax even when they provide the services in individual capacity. ➢ *It is suggested that in line with the legal services, individual*	This will bring taxation of professional services of all other professionals like chartered accountants, cost accountants, company secretaries and others who provide services in individual capacity in line with that of legal professionals and will bring in fairness and equity in taxation.

	service providers be exempted in case of other professional services as well.	
2.10	<u>Double taxation vis-a vis sales tax/VAT</u> The service tax law does not define what constitutes "service". As a result, same transactions which are taxed as sale transactions (in view of deemed fiction contained in Sales Tax/VAT law) are also sometimes subjected to service tax. It is, therefore, essential to define service as "other than goods and deemed goods/immovable property". The multiple levies result in cascading effect and increase the final cost to the consumer/user substantially. This has become a grave problem in the case of information technology software services, IPR, copyrights etc. where both service tax and VAT are charged at the same time on a single transaction. In practical situations, it is found that : (i) Mutual exclusiveness of service tax law vis a vis State VAT laws is not comprehensive enough to avoid double taxation. (ii) Due to inconsistencies in abatements under service tax vis-a-vis abatements under various State VAT laws, there are situations, where a transaction of Rs.100 is taxed at full value under both – glaring example is the banquet services provided by hotels which charge tax at 22.8% (VAT 12.5% + Service Tax 10.3%) on full value of bill. ➢ *Section 67 of the Finance Act, 1944 be amended to provide that "value of taxable service for the purpose of service tax" shall exclude value of "sales"/"deemed sales" which has been*	The proposal will lead to avoidance of double taxation of the same transaction value under both Central and state legislations which cannot be the intention of the government. This is necessary as current provisions for exclusion of value of materials/goods for determining value of taxable service do not include transactions which are deemed to be sales leading to double taxation.

	subjected to sales Tax/VAT under law of any State Government/Union Territory. ➢ *State VAT Legislations may specifically provide that, value on which VAT is payable, should exclude that part of the value on which service tax is paid under the Finance Act, 1994.*	
3.	*Service Tax (Determination of Value) Rules, 2006 [Valuation Rules]*	
3.1	<u>Exclusion of statutory taxes / levies</u> On the basis of practical experience, it is invariably found that gross value of taxable service includes amounts which represents statutory tax / levy charged / imposed under a local, State, Central and other Statutes. In the context of certain services, it was clarified through Department's Trade Notices that service tax is not payable on statutory levies if shown separately in the invoice by a service provider. ➢ *It be clearly provided in the Valuation Rules that, all statutory taxes / levies charged in terms of any local / State / Central or other Statutes, be excluded from the value of taxable services subject to the condition that the same is shown separately in the invoice issued by a service provider.*	This will lead to a uniform provision for the purposes of valuation and will avoid cascading effect of taxes which increases the costs.
3.2	<u>Reimbursable expenditure /common expenses– Practical difficulties</u> Valuation Rules are extremely difficult to apply in practice, especially in those cases where there is clear reimbursement of expenses. Also, there is no provision for passing on the benefit of CENVAT credit where a party seeks reimbursement. Field formations take very narrow view and do not	These amendments/clarifications and procedures are required to avoid double taxation as not allowing input tax credit when service provider incurs expenditure for and on account of the recipient, leads to double taxation

	allow CENVAT credit in respect of various services (e.g. air travel) for which reimbursement is claimed since in such cases, the invoice is in the name of the person seeking reimbursement. ➢ *The definition of pure agent be simplified and modified to exclude the lines pertaining to "title of goods" and similar other requirements which are difficult to satisfy in practice.* ➢ *Appropriate mechanism be worked out/clarification be provided so that the benefit of input tax credit is not lost when the service provider seeks reimbursement of expenses incurred on account of the service recipient.* ➢ *In relation to sharing of common expenses, it needs to be clarified as to whether and if so, how, service tax is to be applied.*	and also cascading of taxes. Often, in the absence of clarity, the service provider also charges service tax on the whole bill of the service provider, whose services it uses on account of the service recipient, which also includes service tax. The proposal will lead to avoidance of double taxation and cascading.
4.	*Procedural and other matters*	
4.1	<u>Service tax payable under reverse charge by service recipient</u> There are various categories especially, insurance auxiliary services where service tax is payable by the recipient of service, the insurance company. However, considering the fact that many of the service providers would be below the threshold, the incidence of service tax becomes quite substantial as the benefit of threshold is not available when service tax is computed by the recipient. Further, in many cases, insurance companies deduct service tax from the commission payable to the service provider. In fact, this amount is	The suggestion will give the benefit of basic exemption to the small service providers who loose the benefit as the payment of tax is on reverse charge basis and there is no provision for the person paying tax on reverse charge basis to consider basic exemption. This will place all the service providers where the service provider has to pay tax or service recipient has to pay tax under reverse charge mechanism at the same tax burden and will bring

	clearly not deductible as service tax has to be paid on the value of service that is provided by the service provider and is to be borne by the service recipient. ➢ *Option be provided to the service provider to pay service tax.* ➢ *Alternatively, appropriate mechanism be developed whereby the benefit of basic exemption limit is available to the small service provider under reverse charge basis.* ➢ *It be clarified that the insurance company / recipient of the service is required to discharge service tax on its own and the same is not required to be deducted while making payment of commission to the service provider.*	about equity in taxation.
4.2	<u>Registration – Practical difficulties</u> The current registration formalities pose practical difficulties as regards the powers which could be exercised by the Officers while granting registration under the Act. There are inconsistencies in requirements for registration insisted upon in different service tax commissionerates in the country. Further, as far as address proof is concerned, the Officers do not accept registration certificate issued by other departments (VAT, D.I.C) and even they do not take cognizance of excise registration certificate as a valid address proof. Similarly in case of Centralized Registration, the Department Officers intend to obtain the documents from the assessee which practically have	This will reduce administrative burden and cost of compliance and lead to simplification of processes.

	no bearing on the grant of any registration. For e.g. Audited Balance sheet of last year, sample copy of invoices of the branches. Inordinate delays are invariably observed in grant of registration, particularly in case of centralised registration. This results in delays in making the payment of service tax and avoidable interest for no fault of the assesseee. ➢ *Registration requirements be specified in the Rules itself. Alternatively Department may issue detailed guidelines for the sake of uniformity.* ➢ *If grant of centralised registration is delayed, provisional registration may be granted, to facilitate payment of service tax, pending grant of final registration.*	
4.3	<u>Registration as a service receiver, even for single transaction</u> Rule 2(1)(d) of the Service Tax Rules, read with *Notification 35/2004* stipulates that if the consignor or consignee falls under the specified seven categories (Ltd., Pvt. Ltd, factory…), then the person making payment of freight is liable to pay tax. Hence, if a person in Indore purchases furniture from Godrej, New Delhi and makes payment of freight, he is liable to register itself for this one off transaction and has to comply with procedures like regular filing of returns, etc. Similar situations also arise when a person is liable to pay tax under reverse charge mechanism for overseas service provider payments. Also, the procedure for de-registration is quite cumbersome and take lot	This proposal will reduce the burden of compliance for tax payers and also ease the burden of monitoring for tax department. It will lead to simplification too and reduce the number of taxpayers on government's register who have one off transactions.

	of time as the department is very hesitant to deregister any assessee. ➢ *The concept of casual registration on the lines of VAT laws at State level be introduced in service tax law.*	
4.4	<u>Self-adjustment of excess service tax</u> 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.1,00,000 for the relevant period. Seeking refund is quite a cumbersome and time consuming process. ➢ *In view of the fact that chances of errors or omissions have increased manifold in e-payment of service tax, it is suggested that suo moto adjustments of excess amount paid towards service tax liability be allowed without any limit in case of assesses not having centralized registration also.*	This will simplify the procedure and reduce the burden for tax payers and the department as well.
4.5	<u>GAR - 7</u> GAR-7 Form is used for deposit of service tax by assessees. However, it suffers from following deficiencies:- (i) There is no place for writing the category of service for which service tax is being deposited. The existing form only provides the space for writing eight-digit accounting code.	This will lead to procedural simplification as it seeks to remove anomalies that have cropped up as a result of providing electronic platform for tax payments.

	(ii) There is no place for specifying the period for which service tax is being deposited. (iii) There is no place for specifying the name of the assessee in the counterfoil of the existing form. There is space for writing only the service tax registration number of the assessee. (iv) The contents of e-GAR 7 and non e-GAR 7 do not match. There is a need to match the e-GAR 7 and non e-GAR 7 forms. ➢ *It is suggested that GAR-7 may also include the details relating to category of service, period for which service tax is deposited and name of the assessee so as to make it more useful and user-friendly.*	
4.6	<u>Carry forward of excess service tax actually paid in Form ST-3</u> There is no space to display carry forward of amount paid by cheque or cash in excess of service tax payable. Service tax payable is shown in Table 3F(1)(g) and the service tax paid is shown in Table 4AI of Form ST-3. Thus, the liability and payment are shown in different tables and its reconciliation is not available anywhere. Excess amount of service tax paid can be adjusted under Rule 6(4A). Hence, for understanding of the department, a separate worksheet has to be attached every time the ST-3 return is filed. ➢ *It is suggested to incorporate a worksheet for computing the excess service tax paid which can be adjusted in the subsequent period in Form ST-3 itself.*	This proposal seeks to correct anomaly and will lead to simplification of data gathering for the tax department.

4.7	<u>Revision of returns</u> The time limit for revision of return provided in Rule 7B is little short, as often issues come up when the accounts are finalized for the purpose of Companies Act and audit is carried out. ➢ *The time limit for revision of returns may be extended to 7 months from the end of the financial year as accounts under the Companies Act are required to be audited and finalized within 6 months from the end of the year and period of additional one month would thus be available for revision of returns.*	The suggestion seeks to facilitate self compliance by the tax payers as they can correct any errors which are noticed during audit. This will lead to better compliance.
4.8	<u>Service tax refunds to service providers</u> Under *Notification Nos. 11/05 and 12/05 dated 19.4.2005* the service providers have to comply with cumbersome procedures. Simplified procedures need to be introduced for service providers as well. ➢ *In lines with new refund procedures introduced for manufacturers / merchant exporters vide Notification No. 17/2009 ST dated 07.07.2009, simplified refund procedure be extended to service providers as well.*	Service providers also avail services of overseas service providers for providing export services e.g. shipping companies engage services of brokers outside India to obtain contracts for work outside India. The benefit of *Notification No.17/2009* has remained to be extended inadvertently to service providers and this suggestion seeks to correct this anomaly.
4.9	<u>Issue of show cause notice for recovery of service tax</u> The show cause notice under proviso to section 73(1) can be issued by a central excise officer up to five years where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously	Providing for minimum tax amount limit will reduce the litigation costs and administrative burden for the tax payer and department in case of proceedings not

	refunded by reason of— (a) fraud; or (b) collusion; or (c) wilful mis-statement; or (d) suppression of facts; or (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax. No minimum limit of the service tax escaping assessment has been prescribed for the purpose of issuance of show cause notice under proviso to section 73(1). It is often seen in practice that this extended period is applied routinely in all cases even where the tax payer has, on its own, paid tax on noticing error. ➢ *It is suggested that a minimum limit of Rs.1,00,000 for service tax escaping assessment be prescribed for the purpose of proviso to section 73(1).*	involving significant revenue.
4.10	<u>Time limit for adjudication</u> Under Section 73(2) of the Act, the Central Excise Officer shall after considering the representation, if any, made by a person on whom a show cause notice is served for recovery of service tax not levied / paid or short levied / paid or erroneously refunded determine the amount of service tax due from such person and thereupon the person shall pay the	Specifying time limit brings in discipline and certainty as also clarity – such limits do exist under other laws.

	amount so determined. It is to note here that the sub-section does not categorically provide for passing of an order nor does it provide for time limit within which such determination of the amount to be recovered from the noticee is to be made. ➢ *It is suggested that a time limit for completion of adjudication be prescribed in the provisions of section 73.*	
4.11	<u>Recording of statement</u> It has been practically experienced that whenever the Officers record statements, a copy of the same is not provided to the person whose statement is recorded. Further, very often, statements are recorded in respect of routine matters for which a declaration or even a signed statement could be provided by the concerned person. ➢ *As far as possible, recording of statements should be avoided and assesses should be asked to submit specific responses to the specific questions of the Department.* ➢ *In case, the statement is required to be recorded, a copy of the same, duly signed by both the tax payer and the Officer recording the statement, may be provided to the tax payer immediately after the recording the statement. Very often, the statements are written in hand and then typed. The use of computer systems can speed up the process. The statement recorded can be immediately printed, signed and handed over to the assessee.*	This will simplify the processes and will bring about greater discipline and reduce the anxiety of all concerned.

4.12	<u>Search of premises</u> The Commissioner of Central Excise may, if he has reason to believe that any documents or books or things which in his opinion will be useful for or relevant to any proceeding under the Act, are secreted in any place, may authorise the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise as the case may be, to search for or seize or himself search for or seize such documents or books or things. Section 82 provides for search when there is reason to believe. ➢ *It is suggested that in order to avoid vexatious searches, the reasons for conducting the search may be recorded in writing. This will also be in line with income-tax provisions.*	The suggestion seeks bring about greater transparency in the processes and will enable the tax payer to effectively respond to the queries of the tax department. It will also bring about discipline within the department.
4.13	<u>Stay by CESTAT</u> Stay granted by CESTAT under section 35C of Central Excise Act, 1944 is automatically vacated after a period of 180 days if appeal is not decided during that period. ➢ *Though CESTAT has power to extend the stay again, it is a cumbersome and taxing process, on part of the assessee as the department presses for recovery. Further the delay may not be due to the fault of assessee. Hence the limitation period either be removed or at least extended to one year.*	This suggestion seeks to remove the avoidable cost and burden on the CESTAT as also need to meet technicalities, as it is found, in practice, that given the current burden of work, it is difficult for CESTAT to decide the matter in 180 days, though, that would be an ideal situation.
4.14	<u>Settlement Commission for service tax</u> At present, cases pertaining to excise duty and customs duty can be settled through Settlement Commission constituted for this purpose under	There is need to establish a mechanism to resolve pending disputes which are quite large in case of service

	the law as to have a quick resolution of disputes as also to safeguard the interest of both revenue and the assessee. However, there are no provisions in service tax law for the settlement of disputes in a Settlement Commission. ➢ *Provisions for Settlement Commission be introduced in the service tax law.*	tax due to evolving law.
4.15	<u>Powers under section 14 of the Central Excise Act, 1944</u> Section 14 of the Central Excise Act is applicable in case of service tax matters also. According to this section powers have been given to Central Excise Officers to issue summons to the assessee to give evidence and produce documents in enquiries conducted under the Act. These provisions are often misused as under: (i) Notices are issued to Managing Director/Director/Chairman despite the fact that they are not concerned with routine functioning of business. (ii) Notices are issued even for seeking that information what can be obtained by ordinary letters. (iii) The time mentioned in the notice is not rigidly followed. As a result, plenty of precious time of the assessee is wasted. (iv) Copy of the recorded statement is not provided immediately to the concerned assessee. (v) Summons are issued even in those cases where question of law is	Establishment of simplified procedure will reduce undue harassment and cost to assesses and will at the same time meet the needs of the department to obtain requisite information. This will also avoid high handedness of some officers in dealing with the tax payers and will create a more cordial attitude/approach.

	involved. ➢ *It is suggested that Section 14 be suitably amended to so as to stop the misuse of the powers provided therein.*	
4.16	<u>Audit report for the assessee/Introduction of assessment procedures</u> Since, the report of the audit conducted by the Department is not given to the assessee, he is unable to prove that his accounts are audited till a particular period and is sometimes subjected to re-audit as there is no mechanism in the department to take care of such situations. ➢ *The audit report under Excise Audit 2000 or any other scheme be a complete speaking report which may be provided to the assessee to :* • *take corrective actions* • *to ensure that audit is done upto a particular period.* ➢ *A time limit may be provided for completion of order of audit.* ➢ *Further, the books of the assessee can be called for scrutiny at the Central Excise Office itself instead of doing the audit at assessee's premises as such a system creates interference with the normal business of the assessee. This would also stop the corruption and undesired nexus between taxman and tax payer.* ➢ *On a broader note, assessment procedures may be introduced*	The mechanism of audit by the department at the premises of tax payers is an excellent mechanism but, it needs to be carried to its logical conclusion. The suggestion will lead to closure of audits and bring certainty and clarity for the tax payers and discipline within the tax department.

	in service tax law as they prevail in other tax laws, like VAT, Income-tax. This would ensure that returns attain finality as also would fix accountability on the department side.	
4.17	<u>Tax Audit Report in service tax</u> Service tax liability cannot be calculated readily from the final accounts of the service providers. Adjustment and reconciliations are must in order to comply with the provisions of service tax. It is an admitted fact that administering authorities are not accounting experts and have been dealing with stock records and physical goods in the past to administer excise and custom laws. Whereas services are intangible in nature and service tax liability can be calculated with reference to financial records only. Tax audit report is one document which is required by income tax department as well as many VAT departments in various states. Certain states have prescribed specific audit by CA over a specified turnover. However, under service tax, no such audited balance sheet is submitted by large number of tax payers, especially the smaller service providers and same is called for only at the time of EA audit. ➢ *In order to streamline the process with all VAT laws, it is suggested that the submission of audit report be made mandatory in service tax also along with audited annual accounts.*	This measure will assist the department as it is difficult for the department to take up each and every case for full scrutiny. Tax audit would ensure that the financial statements and the accounts on the basis of which return is prepared are prepared in accordance with the applicable accounting principles and they are duly scrutinized by a person specially trained for that purpose and who is also subjected to strict disciplinary mechanism. Chartered accountants also have to keep them updated and have to go through continuing education programs.
4.18	<u>Treatment of transfer pricing adjustments</u> There is provision for transfer pricing in the income tax law. On transfer	Provision of mechanism to deal with transfer pricing

	pricing audit, adjustments are often required to be made based on the specified principles. There is no clarity today as to how to deal with such adjustments in relation to service tax. ➢ *It is suggested that appropriate provisions be made in this regard.*	adjustments will bring about clarity and avoid litigation.
4.19	<u>Certification under Section 66A in line with income tax – overseas payments</u> For the purpose of Income Tax Act, 1961, every payment made outside India requires declaration and CA certification in Form 15CA and 15CB respectively. This is done to ensure that tax has been deducted at source in the applicable cases. In case of import of services, the service receiver is liable to pay service tax but the service tax law does not provide any mechanism to verify that applicable service tax has been paid on transactions when payment is made for services provided from outside India. ➢ *It is suggested that a declaration and certification by a Chartered Accountant with respect to liability of service tax on payment made outside India be prescribed in service tax law in line with income-tax provisions. This could be verified by the bankers while effecting payment to overseas service provider.*	The introduction of such a mechanism will safeguard the interest of revenue as also would simplify the procedural compliance for the assessee with regard to Section 66A which is generally quite complex and may be missed out of ignorance or oversight.

II. CENVAT CREDIT RULES, 2004 (CCR, 2004)

S. No.	Issue(s)	Justification(s)
1.	<u>Definitions of Capital Goods and Inputs</u> The definition of "capital goods" is primarily applicable to manufacturers and restricts the benefit of CENVAT credit to the plant, machinery, equipment, etc. used for manufacture or providing service and like as per the specific tariff entries. Capital goods like furniture, computers, etc. are not eligible for CENVAT credit. This leads to cascading of taxes. In fact, in a tax system where the tax is levied on goods and services, CENVAT credit ought to be broad based covering all items used by the assessee for the purpose of business with a specific negative list of items like petrol on which CENVAT credit may not be allowed. ➢ *The list of "capital goods" and "inputs" eligible for input tax credit be redefined to include all the goods used for the purpose of business other than specified items on which* CENVAT *credit is not desired to be allowed.* ➢ *Alternatively, capital goods credit for motor vehicles in respect of at least the following services may be allowed under Rule 2(a)(B):*	Allowing input tax credit in respect of tax paid on all goods used for the purpose of business will reduce cascading effect of taxes and will also provide neutrality between various modes of doing business as also between a manufacturer and service provider. This would also reduce litigation significantly as the tax department officials still are in the old mould of restricted credits and narrow approach.

	Service category	*Clause of section 65(105)*	*Justification*	
	Carrying and forwarding services	*(j)*	*Distribution main part of job*	
	Broadcasting	*(zk)*	*Mobile Vans*	
	Construction related	*(zzq), (zzzh), (zzzza), (zzza)*	*Already available for commercial construction*	
	Erection	*(zzza)*	*Available for construction- major cost is moving materials*	
	Dredging	*(zzzb)*	*Vehicles required to move the dredged material – major cost*	
	Supply of tangible goods	*(zzzz)*	*The same asset provided along with driver*	
2.	CENVAT credit on High Speed Diesel (HSD) and Light Diesel Oil (LDO) The Government has been liberalizing the CENVAT credit norms on all the inputs and also input service used directly or indirectly in or in			All the inputs used in the course of business, directly or

	relation to manufacture of final goods. However, under the CENVAT Credit Rules, 2004 there is specific bar on availing CENVAT credit on High Speed diesel and Light diesel oil. In other words, CENVAT credit on High Speed diesel and Light diesel oil is denied to the manufacturer although they are also inputs, as these are used in or in relation to manufacture of dutiable goods or for a service provider providing taxable services. ➢ *HSD and LDO are widely used by all the industries as fuel for the purpose of generation of electricity and the electricity so generated is in turn, used in or in relation to manufacture of dutiable final products as also for providing taxable serivces. As the Government has been encouraging captive generation of power to tackle growing energy needs of the country, allowing CENVAT credit on this essential input would be a step in the right direction. Further, when CENVAT credit is allowed on other fuels such as furnace oil, lubricants etc., inclusion of HSD and LDO within the scope of cenvatable inputs makes a strong case. Therefore, it is suggested that HSD and LDO should also be made as eligible inputs for the purpose of availing CENVAT credit.*	indirectly, for the purpose of business be made eligible to CENVAT credit so as to avoid cascading effect of taxes.
3.	<u>Inputs removed as such to EOUs and SEZs</u> Rule 3(5) states that if the inputs or capital goods on which CENVAT credit has been taken are removed as such from the factory or premises of the provider of output service, the manufacturer of the final products or provider of output service shall pay an amount equal to the credit availed in respect of such inputs or capital goods. The position of credit on	This suggestion is in line with the Government's policy of encouraging exports and making Indian products competitive.

	inputs and capital goods removed as such to 100% EOU or SEZ is not clear. ➢ *It is suggested that appropriate amendment be made to exempt manufacturers clearing inputs/capital goods as such to EOUs and SEZs from the requirement of reversal of such credit.*	
4.	<u>Disallowance of credit on cement, angles, channels etc.</u> Explanation to rule 2(k) provides that inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer but shall not include cement, angles, channels, centrally twisted deform bar (CTD) or thermo mechanically treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods. The said restriction does not facilitate CENVAT scheme. ➢ *The restriction with respect to the above items in the said explanation, being regressive in nature, may be done away with.*	This suggestion would ensure seamless and enabling credit.
5.	<u>CENVAT credit against Renting of Immovable Property</u> A person letting out property on rent often incurs huge CENVAT and service tax on the goods procured and services provided by the person undertaking the construction. However, the Department has clarified that credit thereon is not available since the construction results in to an immovable property which is not liable to CENVAT or service tax. This	There is significant blocking of taxes at various levels due to breaking of chain of taxation and this needs to be corrected to avoid cascading effect of taxes.

	leads to breaking of chain and cascading of taxes. ➢ *Definition of input service covers the input services in relation to setting up, modernization, renovation, repairs of a premises of a service provider and accordingly, it may be clarified that service tax and CENVAT paid for such services is available as input credit.* ➢ *Further, the fact that significant amount of CENVAT and service tax is incurred in constructing the property, a suitable abatement may also be provided in respect of rental service.* ➢ *Alternatively, deemed credit towards service tax and CENVAT actually paid or at a specified percentage be allowed against rental service.*	
6.	<u>CENVAT credit of service tax paid on advance payment received</u> As per provisions of Section 67 of Finance Act 1994, w.e.f. 13.05.2005, every service provider liable to pay service tax on advance received for service to be provided. Further as per Rule 4A of Service Tax Rules 1994, service provider is required to issue invoice within 14 days of receipt of such payment. The availability of credit on such advance payment of service tax has been a debatable issue as though Section 67 and rule 6 have been amended; the corresponding amendment has not been made in CENVAT Credit Rules, 2004. As per rule 2(l) of the CENVAT Credit Rules, 2004, input service means any service used by a provider of taxable service for providing an output service. In case of service tax paid on advance received for the services	This suggestion is to bring about equity and fair play in taxation whereby, the treatment that is applied for collection of taxes sought for grant of input tax credit as well. This seems to be inadvertently left out when the amendment was made and it is now realized when the tax officers strictly interpreting the law are seeking to deny the credit. Non allowance of credit (as, it is difficult to claim credit when amount is adjusted due to other provisions relating to timing) leads to unintended hardship and cascading of taxes leading to increase in costs to ultimate consumer.

	to be provided, the basic condition of input services being used for providing taxable service remains unsatisfied. Therefore, though service tax is being paid on such advance, the assessee finds it difficult to avail credit of the same. ➢ *It is suggested that on principle of equity and natural justice, credit may be allowed in respect of service tax paid on advance payments received for provision of services and the issue be appropriately clarified by the Department at the earliest to avoid litigation in this regard.*	
7.	<u>CENVAT credit of 4% additional duty levied u/s 3(5) of the Customs Tariff Act, 1985 (CTA) for service providers</u> In terms of third proviso to Rule 3(4) of CENVAT Credit Rules, 2004, CENVAT credit in respect of 4% additional duty levied under section 3(5) of Customs Tariff Act, can be availed only by a manufacturer of final products. Service providers and traders are not entitled to avail Credit. There appears to be no logical reason to deny the benefit of CENVAT credit to service providers. ➢ *Service providers also be permitted to avail the benefit of CENVAT credit in respect of 4% additional duty levied under section 3(5) of Customs Tariff Act, 1985.*	This appears to have been inadvertently left out as there should be no difference between manufacturer and service provider.
8.	<u>100% CENVAT credit on capital goods in the year of receipt</u> The CENVAT Credit Rules, 2004 provides for availment of CENVAT credit on inputs, input services and capital goods. Even though 100% CENVAT is allowed in respect of inputs at the time of receipt, only 50%	The discrimination with regard to availment of CENVAT credit on inputs and capital goods does not seem to be rational as the assesses, at the time of procurement,

	CENVAT credit is allowed in case of capital goods in the year of receipt and the manufacturer has to wait till the next financial year for availing the balance 50% CENVAT credit. ➢ *Therefore, the CENVAT Credit Rules be suitably amended to extend 100% CENVAT credit on capital goods as well at par with inputs.*	have to pay 100% excise duty on both inputs and capital goods. This amendment would meet with the principle that the tax be collected when the goods/services are sold and not when the goods go into the production stream. Allowing full credit of taxes paid will achieve this and also will not lead to blocking of funds for tax payers resulting in reduction in costs.
9.	<u>Availability of CENVAT credit in case of part payment of the input services</u> As per rule 4(7) of the CENVAT Credit Rules, 2004, CENVAT credit in respect of input services is allowed, on or after the day on which the output service provider makes payment of the value of input service and the service tax payable thereon. However, the law has not expressly provided for a case where the payment of the input services is made in installments or the bill is settled for a lesser amount. ➢ *A clarification be issued providing clear cut guidelines for availing credit where payment for input services is made in installments or the bill for the same is settled for a lesser amount.*	This clarity will reduce litigation.
10.	<u>Availment of CENVAT credit in cases where manufacturer/service provider is also engaged in trading activity</u> Under CENVAT Credit Rules, 2004 only two types of beneficiaries have been specified for availment of credit viz. manufacturers of final product and output service provider. There are no specific provisions under	In cases where the service provider is engaged in multiple activities and some of which are not liable to tax under Central Excise law as also service tax law, the

	CENVAT Credit Rules, 2004 to deal with situations where manufacturer / service provider is also engaged in other activities like trading. This causes severe hardships in availment of CENVAT Credit by assessees engaged in multiple activities which is very common in business. ➢ *Scope of rule 6 be modified to appropriately deal with other activities and in particular trading activities.*	issue as to eligibility to claim input tax credit creates difficulties in the absence of clear cut provision. The spelling out of the intention of Government in this regard will lead to reduction of litigation. In case, the decision is that a part of the input tax credit be attributed to such activities, a specific proportion say, 10 % of the value of the trading goods be taken into consideration as the sale and purchase of goods, by itself, cannot be equated with services and taking full value for determining proportion would be harsh and iniquitous.
11.	<u>Coverage of services under Rule 6(5)</u> Rule 6(5) under CENVAT Credit Rules, 2004 provides for a list of 16 specific services in respect of which 100% credit is allowed. Since the year 2004 many new services have been included in the service tax net. Thus, the list under rule 6(5) needs to be reviewed and enlarged as apart from the new services introduced since 2004 many existing services also make a strong case for inclusion in the said list. *The following services may be added to the list of 16 services mentioned in rule 6(5):* *Service* — *Sub-clause of section 65(105)* *Courier* — *(f)* *Warehousing* — *(zza)*	These services are used commonly and it is very difficult to work out proportion used for taxable and for exempt services.

	Travels *(zzx)* *Telecom* *(zzzx)* *Renting* *(zzzz)* *Business Support – Infrastructural services* *(zzzq)* *Works contract* *(zzzza)* *Legal Service* *(zzzzm)* *CA/CS/ICWA* *(s)/(t)/(u)*	
12.	<u>Transfer of CENVAT credit from one unit to other unit</u> CENVAT Credit Rules, 2004 does not have a mechanism whereby accumulated CENVAT credit of one unit of a manufacturer can be availed by another unit of the same manufacturer. It may happen that the unit having accumulated credit cannot utilize the same, however the unit not having sufficient credit may need the same for discharging its duty liability. In case of service tax, the mechanism of input service distributor addresses this issue to a limited extent whereby the credit of services received and paid for at the head office/regional office, which are indirectly used in manufacture or provision of taxable output service at the factories or premises of output service provider, can be availed. ➢ *The Rules be amended appropriately to provide for the transfer*	Very often, products of one unit in the group are used by another unit within the group and often, taking centralized registration does not work – in fact, such facility is not available for manufacturers. Also, facility of large taxpayer unit is also not available in all commissionerates leading to anomalous situations and injustice to small and medium manufacturers/service providers. This will place all the manufacturers and service providers on par.

	of credit from one unit to another unit of the same assessee. In fact, such a move will pave way for the introduction of much sought after concept of Group Taxation in the country where even the credit of group companies may be used by each other.	
13.	<u>CENVAT credit on sale-in-transit transaction</u> Section 3(b) of the Central Sales Tax Act provides for the circumstances under which a sale or purchase of goods is said to take place in the course of interstate trade or commerce. According to the section, a sale or purchase of goods shall be deemed to take place in the course of interstate trade or commerce if the sale or purchase is effected by a transfer of documents of title to the goods during their movement from one state to another. Thus, where the property in the goods passes before or after the movement of the goods from one State to another, the sale will evidently not fall within section 3(b). Accordingly, the section provides for endorsement in the documents during the journey or movement of goods and not earlier to that. Under Central Excise, where a registered person places an order on a manufacturer for supply and delivery of goods directly to customer/assessee and the goods are also accordingly transported/despatched from the manufacturers' premises to the users' premises without being brought to the registered persons' premises, the manufacturer has to issue an invoice under Central Excise Rules, 2002. The prescribed invoice under central excise should also contain (in addition to specified details), the consignee's name and address for the purpose of availing CENVAT credit. Thus, before the goods move from	This is necessary to address practical difficulties being faced by trade and industry in complying with the provisions of Central Sales Tax and CENVAT Credit which are not in sync. The amendment will facilitate clarity in the procedure and will avoid litigation.

	one State to another or one place to another, the consignee's name (second buyer) also should be incorporated in the documents of title of goods to make him eligible to avail CENVAT. If this condition is satisfied in order to avail the CENVAT credit, then the transaction does not qualify as an E1 sale under the Central Sales Tax Act. A close comparison of mandatory requirement under the Central Sales Tax Act, 1956 and Central Excise Act, 1944/Rules, 2002 will lead us to find a contradiction between these two Acts as far as sale- in- transit is concerned. Both the Acts are Central legislations and as such there should not be any anomaly or contradiction on the same issue. When sale in transit is recognised or accepted under Central Sales Tax Act, the same should also have been allowed under Central Excise Act, 1944/Rules, 2002, as per Central Excise requirement. At present, the industry faces hardship in cases of sale in transit under Central Sales Tax Act as documents of title to goods are to be endorsed during the course of transit whereas the Central Excise Act requires such endorsement for sale in transit to be done before commencement of such movement. There is conflict between provisions of Central Sales Tax where the name of the ultimate party is often not known when the goods move and they get sold to the ultimate party when the goods are in transit. At the same time, under Cenvat Credit Rules credit is available only where the name of the recipient is mentioned in the invoice itself ➢ *It is suggested that the CENVAT Credit Rules, 2004 be amended to the effect that credit can be availed on endorsed documents of title to goods in case of sale-in-transit*	

	transactions. Alternatively, appropriate mechanism to allow credit be worked out to address this issue.	
14.	<u>CENVAT credit on imports through courier</u> At present there is no specific provision for availing CENVAT credit based on courier receipts or package receipts though countervailing duty is paid on such imports through a common Bill of entry prepared for all imports by Courier Agency belonging to different importers. The courier agent forwards a photocopy of such Bill of Entry to each importer. However, CENVAT is not allowed to be taken on such copy. ➢ *As duty has been paid an appropriate provision may be inserted in the CENVAT Credit Rules to avail the CENVAT credit based on certified copies of such Bill of Entry. Alternatively, a mechanism of casual registration may be introduced in the excise law so that the courier agent may register as first stage dealer and get entitled to pass on the credit.*	This will address the difficulty of obtaining registrations and surrendering it time and again/filing Nil returns and face penal consequences even though there is no liability tax. This will go to reduce cost of doing business and will not lead to leakage of credit due to non-availability of the appropriate procedure for the same.
15.	<u>CENVAT credit on endorsed Bill of Entry</u> At present CENVAT credit is allowed on Bill of Entry against import. Sometimes, there are many traders who are not registered under central excise, who import material and forward the goods to the registered manufacturers for the purpose of conversion of the material on job work basis. As the non-registered unit/trader cannot issue CENVATABLE invoice against such import, the situation forces such trader to get registered	This will reduce cost of doing business and availability of credit after following simple procedure. It will also obviate need for registrations and de registrations which is quite time consuming and requires significant efforts for both tax department and the tax payer.

	under central excise for issuing a CENVATABLE invoice. Consequently, such registration is only a procedural compliance under central excise and does not serve any other purpose except for issuing CENVATABLE invoice. This causes immense hardship to genuine small traders. ➢ *It is suggested that Bill of Entry duly endorsed by non-registered traders also be considered as an eligible document for the purpose of availing CENVAT credit when the material is sent to the registered manufacturer for the purpose of conversion of material on job work basis. Alternatively, a simplified mechanism for registration of such casual persons be worked out.*	
16.	<u>CENVAT credit of service tax in case of pass through transactions</u> Custom house agents, steamer agents, clearing and forwarding agents etc. pay port dues, cargo handling charges, storage and warehousing charges etc. on behalf of their principal / importer / exporter / shipper etc. and recover the same from such persons. In case of such agents the expenditure, being reimbursable in nature, is incurred as pure agent and is a pass through transaction. In such a case, when the agent avails credit, it becomes much more than the service tax liability on his commission. However, the principal may not be able to avail credit on the basis of the invoice raised on the agent as the principal may not be able to obtain the invoice of input service provider (say port). ➢ *It is suggested that where service tax is paid on reimbursable expenses or on pass through transactions credit be allowed to*	Reduction in cost of doing business and ensuring completion of tax chain – breaking of the chain leads to cascading effect.

	the person who bears such expenses on the basis of a debit note provided by the agent mentioning the value of input service and the service tax paid thereon by the agent on behalf of the principal.	
17.	<u>Penalty on wrongful availment of CENVAT credit</u> As per rule 14 of the CENVAT Credit Rules, 2004 penalty is being levied by the Department on the wrongful availment of credit, though there is no utilisation of such credit at all. It has been clarified vide *Circular No. 897/17/2009-CX. dated 03.09.2009* that interest shall be recoverable if the credit is wrongly taken even if it has not been utilised. The Circular has been issued considering the Punjab & Haryana High Court's decision in the Maruti Suzuki case. The point to consider here is that interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on due date. No liability of payment of any excise duty arises when the CENAVT credit is availed. The liability to pay duty arises only at the time of utilization. Even if CENVAT credit is wrongly taken, that does not lead to levy of interest as liability of payment of excise duty does not arise with such availment of CENVAT credit by an assessee. Availment and utilization of credit cannot be placed at equal footing for the purpose of charging interest. ➢ *It is suggested that the rules be amended so as to do away with the interest liability on wrongful availment of credit. Interest be only levied when such credit is utilized.*	Availment of credit is only a book entry and does not result in any gain for the tax payer. The use of the credit leads to the benefit and that is the time which is relevant for charging interest. This amendment would avoid litigation and bring about much needed simplification.

18.	<u>CENVAT credit for job worker</u> In cases where a job worker does processing of goods on behalf of principal manufacturer the Department has been denying the credit of the materials and consumables used by the job worker for the said processes. There does not seem any rational for denying credit to the job worker as ultimately excise duty is being paid by him on manufacture. ➢ *It is suggested that appropriate clarification may be issued for extending credit to the job workers.*	Denial of input tax credit leads to cascading of taxes. Also, all the procedure can be complied with by the job worker.
19.	<u>Filing of separate CENVAT credit return</u> Rule 9(9) of CENVAT Credit Rules 2004(read with *Notification No. 33/2005-NT dated 20-10-2005*) provides that the provider of output service availing CENVAT credit shall submit a half yearly return to the Superintendent of Central Excise by the end of the month following the particular half year. On the other hand, according to Rule 7(2) of Service Tax Rules 1994 every assessee shall submit the half-yearly return by the 25th of the month following the particular half year. There is a separate format of each of the above two returns. Whereas the format of service tax return has been revised many times, the format of CENVAT credit return has not been revised. Since service tax return format contains necessary information about the CENVAT credit availed, there appears to be no need of filing a separate CENVAT credit return. ➢ *It is suggested that the requirement of filing the service tax credit return under CENVAT Credit Rules, 2004 may be dispensed with.*	This will avoid duplication of information and reduce cost of compliance as the info is already contained in the Service Tax Return.

III. CENTRAL EXCISE DUTY

S. No.	Issue(s)	Justification(s)
1.	<u>Online E-filing of weekly information by major duty paying unit</u> Central Excise Department has issued Trade Notices for online e-filing of weekly and monthly returns. All the major duty paying units are required to opt for online e-filing and submit product wise i.e. CETSH-wise weekly information about production, clearance, value duty etc. within three days after end of the preceding week. The Trade and Industry is of the firm opinion that furnishing product wise information i.e. CETSH wise weekly information is consuming a lot of time and there is a cost involved in collecting information every week. ➢ *When the assessees are submitting monthly return regularly, filing weekly information does not serve any purpose and has no duty implications. Many times the assessees are compelled to establish a separate department for this purpose at a cost. It is suggested that such a system be done away with.*	This suggestion is made with a view to avoid duplicity/multiplicity of information that is sought from the tax payers and reduce cost of compliance.
2.	<u>Audit Procedures</u> The audit parties while examining documents insist that the assessee gives them the entire tally back up/ soft copy of his accounts. ➢ *It is suggested that such demands be not made from the*	Taking entire data of assessees is not appropriate and often leads to confidentiality issues. The officers of the department be trained in use of software so that they can verify the data at the tax payers premises rather than

	assessees. The audit parties be instructed to verify the data at the assessee's premises and seek hard copies of only very relevant data which is required for their records.	seeking copies of the entire accounts.
3.	<u>Exemption / CENVAT credit to all excisable goods used for research & development (R& D)</u> Capability of Indian Companies is recognized globally and cost of carrying R&D is substantially higher for global majors than Indian companies. India has emerged a hub for collaborative and outsourced R&D. Further there is fundamental shift in the business model of various Indian companies from business driven research to research driven business. Presently CENVAT credit benefit under CCR 04 is not available to capital goods used for R&D purposes which do not fall under specified Chapter Heading. Further, in regard to inputs/capital goods used in R & D units located outside the factory of manufacturer, the benefit of CENVAT credit is not available. ➢ *Considering the potential in earning foreign exchange, to reduce research cost, CENVAT credit on capital goods deployed for R & D activity installed within the factory premises or outside factory premises be allowed.* ➢ *Mechanism be prescribed for availment of CENVAT credit in cases where R&D units are located outside the factory of a manufacturer.*	These suggestions will lead to reduction in costs and make the research activities in India more competitive.

IV. CUSTOMS DUTY

S. No.	Issue(s)	Justification(s)
1.	<u>Complete self sealing in export to be allowed for Star Trade Houses</u> Presently exports are made under the sealing of Range Excise Superintendent. Star trade houses are accredited with the "Star Status" because of their high volume of exports. ➢ *Self sealing be allowed for such exporters having clean track record.*	This will expedite the process of exports and reduce the transaction time and cost involved in the exports.
2.	<u>Provisional assessment for duty free exports</u> Presently provisional assessment is applicable only on duty paid export. This facility is not available where the duty is NIL. In non ferrous industry prices are based on bench mark index like LME/LBMA etc., and therefore the price is not finally determined at the time of exports. ➢ *It is suggested that provisional assessment be allowed on duty free exports also.*	The suggestion will facilitate/expedite export consignments in majority of cases.
3.	<u>Amendment in provisions relating to Safeguard Duty</u> The safeguard duty is imposed by the Central Government if it considers that such imports are causing serious injury to domestic industry. However, the Central Government is imposing Safeguard Duty only on	This will safeguard public interest in general and will ensure examination of issue from all perspectives right upfront at the time of levy of the duty itself.

	the basis of injury to the domestic producers of that product and no consideration is being given to the "injury" that may be caused to the users of such products. The users of such products may use such items as primary inputs for "value addition" and making the final products available at a reasonable rate to the domestic consumers as well as allowing such domestic manufacturers for competing in the export market. In fact, many a time the Safeguard Duty provisions are being misused by the domestic manufacturers of such inputs to derive unreasonable profits at the cost of domestic consumers of their product. They pressurize the government to unreasonably impose Safeguard Duty by unfair means. This allows them to restrict imports so that they are able to increase their prices, which ultimately causes "serious injury" to the domestic manufacturers who are using these inputs. When the input cost is high, ultimately the actual consumers of the country suffer. ➢ *Therefore, provisions relating to safeguard duty be re-examined and amended to incorporate the views of users of such products and a mechanism be established to take views of domestic users and exporters of such products.*	
4.	Penalties In the Finance Act, 2008 there was a steep increase in the penalties as stated hereunder: Section 117 of Customs Act, 1962 — Earlier — Increased to	While penalty needs to be there, it ought not to be too harsh such that compliance with penal provisions is not achieved.

	Penalties for Contraventions not expressly mentioned under the Customs Act. 10,000 1,00,000 Section 158 of Customs Act, 1962 — Earlier — Increased to Penalties for contravention of provisions of any Rules or Regulations 200/ 500 50,000 The increase is too harsh and has its own consequential effects. ➢ *It is suggested that penalties be substantially reduced.*	
5.	Interest free warehousing period for imported goods Section 61(2)(ii) of the Customs Act presently provides for warehoused goods to be kept in-bond for a period of one year. However, interest on Customs duty is chargeable on warehoused goods if the same are not ex-bonded within 3 months. ➢ *Warehoused goods may be allowed to be kept in-bond for a period of at least 6 months without payment of interest.*	The extension of period will facilitate import in larger quantities which is quite cost effective and will help industry pick up goods when the prices and other factors are favourable, though the goods may not be required immediately for use by the importer.

V. CENTRAL SALES TAX

S. No.	Issue(s)	Suggestion
1.	<u>'C' Form for construction activities</u> To avail the benefit of concessional rate of tax in case of inter-state sale of such goods, submission of the statutory document, Form 'C' is mandatory. Section 8(3) of the Central Sales Tax Act, 1956 (CST Act) provides that Form 'C' can be issued for the purchase of goods intended for resale, for use in the manufacturer or processing of goods for sale or in the telecommunications network or in mining or in generation or distribution of electricity or any other form of power. The benefit is also extended to plant and machinery acquired for manufacture or processing of goods but, the benefit is not extended where material/goods are purchased for manufacture of such plant and machinery or for similar purposes. Also, the definition of goods does not cover the goods, which are purchased by the dealers (contractors) for use in construction services thereby not permitting issuance of Form 'C' in such cases, which increases the cost of the transaction. ➢ *The definition of the goods given in section 8(3) of CST Act be amended to include the goods purchased by the dealer for construction of plant & machinery to manufacture goods as also goods purchased for construction activities which itself constitutes works contract and attracts CST*	The suggestion seeks to bring about clarity in the provisions and will lead to avoiding cascading effect of taxes.

VI. MISCELLANEOUS

S. No.	Issue(s)	Justification(s)
1.	<u>Disparity between interest payable by assessee and Department under central excise and customs</u> At present, interest @ 13% is payable by the assessee when duty is short levied /short paid or not levied /not paid. However, in case of delayed refunds, the Department is liable to pay interest @ 6%. Thus, there is a significant gap between the rate of interest payable by the assessee and the Department. There is need for fairness and equity in the rates at which interest is paid by the department and that is charged from tax payer and this suggestion seeks to achieve that. ➢ *The rate for both be made uniform.*	
2.	<u>Chartered Accountancy Professionals in tax policy making body</u> Every year new services are being introduced in the service tax net and scope of existing services are increased. Further, on account of changing business models and advancement of technology, the department is frequently faced with many issues arising in the substantive and procedural part of the law. Chartered accountants have knowledge of business and undergo practical training for three years before qualifying. They will add significant value if they are part of the	There are many person from legal and other professional background in policymaking body but, few, almost negligible from chartered accountancy profession. Chartered Accountants have been and will significant value to the process of policy making due to their training, experience and exposure.

	policy body. ➢ *It is suggested that the tax policy making body include a few professionals drawn from the Chartered Accountancy profession. Their contribution would be extremely useful when GST is implemented in India.*	
3.	<u>Training of Departmental Personnel</u> It has been observed that the understanding of this central law across the country is not the same. Different Commissionerates have different views on variety of issues particularly in case of real estate sector. This causes difficulties for both the assessee and the Department. ➢ *A comprehensive training covering all the substantive and procedural aspects of the law be scheduled for the officers at all levels.*	Departmental officers of undergo training but, there is need for more comprehensive and interactive sessions where they can discuss and debate issues with their peers duly facilitated by experienced professionals. This will go a long way in enhancing quality of services of the Department..
4.	<u>De-linking of tax policymaking and tax administration</u> It has been observed that over a period of time the thin line between the tax policy making and tax administration has ceased to exist in indirect tax legislation of the country. ➢ *There is a urgent need to ensure that there is a clear divide between the tax policy making and the tax administration.*	In an efficient tax system, there is a clear divide between the tax policy making and tax administration. However, the same has collapsed in case of indirect tax system in India. The division of the policy making and administration would go a long way when GST is implemented.
5.	<u>Retrospective amendments</u> In the recent past, the practice of amending the law with retrospective	Retrospective amendment leads to confusion and

	effect has gained momentum. Good tax laws always have built in principle of anteriority, thus not requiring any retrospective amendment. ➢ *It is suggested that retrospective amendments rectifying past drafting errors or adverse judicial decisions be avoided.*	uncertainty amongst the tax payers. These amendments also shake the tax payers' confidence in the law making body. Therefore, there is an urgent need of avoiding retrospective amendments.
6.	<u>Accountability of tax collectors</u> In the present tax laws, there is no accountability on the part of tax collectors. This leads to the misuse of powers vested in them vide the respective legislations. ➢ *In order to project a sense of even-handedness in dealing with tax payers, provisions relating to accountability need to introduced and not be formulated independently.*	For proper discharge of responsibilities, accountability is a necessary counter-balance and is very essential for effective discharge of the authority vested in a person.
7.	<u>Appeals to High Court</u> It has been observed that practically all cases decided by the Tribunal end up being appealed against in the High Court and the matter decided by the Tribunal does not attain finality. ➢ *The practice of going on appeal to the High Court quite routinely requires a review.*	The matters decided at the Tribunal level need to attain finality, unless they involve substantial question of law.