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181(PBM)/ 325 /2015 30th October, 2015

Shri Arun Jaitley,
Hon'ble Finance Minister,
Government of India
North Block,
New Delhi 110 001

Respected Sir,

Sub: Pre-Budget Memorandum – 2016-17
- Cement Industry

The Cement Manufacturers' Association (CMA), an apex body of Indian Cement Industry, compliments you on the policy decision of the Government to give push to the development infrastructure, Housing for all, creation of smart cities, industrial corridors, port developments, mega power projects, strengthening rural economy through increased irrigated area, development of Eastern and North Eastern Regions on par with the rest of the country etc. which inter-alia announced in your Budget for the year 2015-16 which would certainly increase cement consumption in the country. The decision of Shri Nitin Gadkari, Hon'ble Minister of Road Transport & Highways, spelling the Government's clear preference for Cement Concrete Roads in the National Highways and increase in outlays in the FY 16 budget for highways and the railways sector has given whiff of fresh air for the Indian cement industry. We are sanguine that the key decisions taken by the Government including Smart Cities, construction of Roads, liberalizing the foreign direct investment regime and changes in labour reforms would put the country back to a high growth trajectory in the coming months.

2. India's potential in Infrastructure is vast and Cement plays a crucial role in the growth and development of the nation through its contribution in the construction and development of infrastructure. Completing its 100 years of journey in October 2014 with enviable growth the Indian Cement Industry has become second largest producer of cement in the world after China with a state-of- the-art capacity of more than 380 million tonnes accounting for about 8% of

the total global production. The per capita consumption of cement in the country is about 195 kg., which is substantially lower, when compared with the world average of 520 kg. Due to low demand of cement in the country around 116 million tons of capacity is lying idle. This underlines the tremendous scope for growth in Indian Cement Industry.

3. In the last few years, the country and the economy have seen a lot of turmoil on these fronts. The stability the new Government enjoys, coupled with its passionate commitment for all-round growth and development, had generated positive sentiments in the economy and has given rise to high expectations in the manufacturing sector, which however has received a setback with slowdown of growth in the current financial year. However, with the active guidance of Government and encouragement, the Cement Industry, is sanguine that this sector can also look forward to a period of steady and sustained growth, which in turn would redound to the credit of the Government, the economy and the Nation.

4. While the global economic scenario remained challenging with economic growth at 3.4% the Indian economy has bucked the global trend and shown clear sign of uptick in growth of 7.3% in 2014-15 due to improvement in the performance of both services and manufacturing sectors As per performance data released by Office of the Economic Advisor, Government of India, the growth of the cement industry during 2014-15 was a 5.6%. During the current year (April-Aug 2015) the cumulative cement production has registered a meagre 1.8% growth over the corresponding period of previous year of 10.98%. We may mention that this growth in cement demand is just a correction of the low growth witnessed by the cement industry in the last few years. However, the Industry is now hopeful that the cement demand is poised to get further momentum in the coming quarters owing to Government's business-friendly policies and plans for heavy investment on infrastructure projects, creation of Smart Cities etc. under the able leadership and guidance of Hon'ble Prime Minister. However, right policies framed are not implemented in its right perspective on war footing basis, it may adversely affect the envisaged growth of Indian Cement Industry.

5. Sir, it is pertinent to mention here that on the one side domestic cement industry is bleeding with more than 116 million tonnes of idle capacity and on the other side Government is allowing import of cement without levy of import duty. Due to the impact of lower rate of growth of all global economies in recent times, Cement Clinker, key raw material for manufacturing Cement, is being dumped in India by imports from countries like China, Indonesia and Thailand. Recently to save the Steel Industry the Government has enhanced the import duty on steel as well as imposed Safeguard duty on import of Steel. To save the domestic cement industry, which is already reeling under extreme adverse conditions due to low demand, from further adverse impact we urge you to take immediate and appropriate steps, on the lines of the reliefs provided to the domestic Steel Industry, by imposing import duty on cement and enhancing import duty on Clinker besides imposing Safeguard Duty on Cement and Clinker.

6. CMA brings to the kind notice of the Hon'ble Finance Minister every year, through its Pre-Budget Memorandum, major concerns of the cement industry impacting its growth along with the submissions for their redressal. Cement is as much as essential item required for construction activities as steel but both products are treated differently when it comes to the taxation. Cement, a high-volume low-value product, is highly taxed, even more than the luxury items at 60% of ex-factory price in India. It is pertinent to mention here that average tax on cement in the Asia Pacific Region is just 11.4% with the highest levy of 20% being in Sri Lanka. This has even been acknowledged and recorded in the Report of the Working Group on Cement Industry for XII Plan.

7. In this backdrop, we would like to submit that while considering our following submissions, Cement Industry's current taxation burden be kindly lowered by at least 20% to 25% from the present level of 60% ex-factory price in the overall interest and growth of both Industry and economy:

I. A. Excise Duty Rationalization and Simplification

Excise duty on Cement is levied @12.5% + Rs.125 per MT. The Duty Rates are one of the highest and next only to those on luxury goods such as cars. Other core industries such as coal, steel attract duty at around 6%. Cement is one of the core infrastructure industries and it requires large-scale investments and capacity additions in view of the expected GDP growth and projected demand for cement over the medium to long term.

Further, the excise duty structure for both cement as well as cement clinker has become quite complicated in the last few years. Earlier, it was at a specific rate per MT. Now, it has attracted ad-valorem cum specific duty and is further also related to the declared MRP of the product. For example, if MRP of cement is printed, then excise duty is 12.5% advalorem plus Rs.125 per MT. This Excise structure is causing a lot of avoidable confusions.

Hence, to encourage Cement Industry and bring it at par with other core and infrastructure industries, the Excise Duty rate may kindly be rationalized & reduced from the current 12.5% plus specific duty to 6-8% without addition of Specific Duty.

Also, the duty structure be simplified to be either on specific rate per MT or on advalorem basis and without relating to MRP etc.

B. Increase of abatement percentage

As per Section 4 of Central Excise Act, Excise duty on Cement is levied on transaction value. In case of bags on which Maximum Retail Price (MRP) is printed, MRP is considered as transaction value. Since MRP consists of excise duty, VAT, freight component, post sales expenses and discount etc. MRP works out very high as compared to transaction value. Moreover in cement industry, billing is done at a higher price and subsequently credit note is issued for all types of discounts/incentives viz. Rate difference, Cash discounts, annual incentives etc. which ultimately results in reduction of net realization of the company whereas excise duty is paid at a higher value which is 70% of MRP.

In view of the above, ***it is suggested that the existing rate of abatement of 30% may kindly be increased to 55% as the expense to the cement industry is more than the benefits availed of on account of abatement. Abatement of 55% was also recommended by NCAER. Even for other sectors, like Readymade garments and made up articles which are covered in Chapter 61, 62 and some specified under 63, abatement is applicable at 70%.***

II. Levy of Customs Duty on Cement Imports

Since 2007-08 import of cement into India is freely allowed without having to pay basic customs duty whereas all the major inputs for manufacturing cement such as Limestone, Gypsum, Coal, Pet coke, Packing Bags etc. attract customs duty. Presently due to low demand of cement in the country more than 116 million tonnes of domestic cement capacity is lying idle and duty free import of cement causes further undue hardship to the Indian cement industry already reeling under low capacity utilization apart from the security concerns inherent in the import of cement from Pakistan.

Therefore, it is requested that to provide a level-playing field, basic customs duty be levied on cement imports into India.

Alternatively,

Import duties on goods – Coal, Petcoke, Tyre Chips, Limestone, Packing Materials & Bags, Gypsum, Refractories etc. - required for manufacture of cement be abolished and freely allowed without levy of duty.

III. Customs Duty on coal to be scrapped

Coal is one of the important fuels used by cement Industry. Cement Industry has been subject to perennial shortages of coal, the main fuel. Approximately, only 26 % of linked coal is received by the member companies against their total fuel requirement for kiln under the Coal Linkage Scheme. This adversely impacts the Cement Industry through increased fuel cost, as the balance requirement of fuel has to be necessarily procured from open market/e-auction, import of coal and use of alternative fuel like Pet coke at a substantially higher rate than linked coal.

In the last Budget (2015-16) the basic custom duty on both steam coal and bituminous coal was increased from 2% to 2.5% while the basic customs duty of coking coal was increased from Nil to 2.5%, whereas on final product 'Cement', there is no basic customs duty. This leads to an anomalous situation of "Import Duty on inputs being higher than on finished product". It is the policy *of the Government that Customs duty on Raw Materials and Intermediate goods should be less than that on Finished Goods to encourage manufacturing and value addition in the country.*

It is urged that Government may kindly scrap import duty on coal and other input materials used in production of cement. This would remove the aberration in the structure of duties existing in cement imports vis-à-vis its inputs.

IV. Project Import

As the industries in India are on a major expansion drive, to reduce the project cost ***it is suggested that Basic Custom Duty rate in the case of Project import may be brought down to 2.5% from the existing rate of 5%.***

V. CENVAT Credit on Clean Energy Cess on Coal

The Govt. has levied this new cess on coal peat and lignite w.e.f. 1.7.2010. Energy Cess is one of the major cost drivers for production of cement. Though levied as a duty of excise, no cenvat credit is being allowed against this. Further, now even Excise Duty has been levied on coal. This cess, along with state VAT etc. is putting further pressure on an industry faced with surplus capacity, falling realizations and increasing costs.

It is requested that Cenvat credit be allowed on Clean Energy Cess so as to mitigate the impact on costs.

VI. Withdrawal of Excise Duty on Fly Ash

Excise duty has been levied on fly ash, which is a waste product generated on burning of coal in the boiler of power plant, vide notification no. 1/2011 – CE & 2/2011 – CE.

In this regard the decision of the Hon'ble Supreme Court in case of **Union of India Vs. Ahmadabad Electricity Co. Ltd., in 2003 (158) ELT 3 (SC)** has settled the issue that use of coal as fuel to produce steam resulting in fly ash as a byproduct cannot amount to manufacture. The relevant headnote of the judgment is reproduced below for clarity:

"MANUFACTURE – BURNING OF COAL NOT AS RAW MATERIAL BUT AS FUEL TO PRODUCE STEAM – NO TEMPERING WITH IT, MANIPULATION OR TRANSFORMATION INTO END PRODUCT WITH NEW IDENTITY OCCURRING – HELD: SUCH ACTIVITY CANNOT AMOUNT TO MANUFACTURE AND NEITHER THE UNBURNT COAL VIZ. CINDER NOR ASH EMERGING THEREFROM CAN BE SAID TO BE MANUFACTURED PRODUCTS – AT BEST, THEY COULD CALLED AS BY-PRODUCT OF FINAL PRODUCT – APPEAL

DISMISSED – SECTION 2(F) OF CENTRAL EXCISE ACT, 1944. [PARA 6, 24, 25, 26]

MANUFACTURE – FUEL IS NOT RAW MATERIAL FOR END PRODUCT AND WOULD NOT BE PRESENT IN IT EITHER VISIBLY OR INVISIBLY – QUESTION OF IT GETTING NEW IDENTITY AS END PRODUCT DUE TO MANUFACTURING PROCESS DOES NOT ARISE, EVEN IF SOME CHANGE IN ITS CHARACTER TAKES PLACES DURING THE PROCESS – USE OF ITEM AS FUELS CANNOT BE PART OF MANUFACTURING ACTIVITY IN RELATION TO THE END PRODUCT – SECTION 2 (F) OF CENTRAL EXCISE ACT, 1944. [PARA 24, 25]"

There is no change in the process generation of fly ash viz. a waste generated on burning coal in the boiler. Therefore, the above judgment still holds good & hence fly ash generation is not to be treated as manufacture and no Excise Duty on fly ash be levied.

VII. Treatment of Waste Heat Recovery as Renewable Energy Source

Energy cost is a very substantial part of the cost of producing cement in India, as indeed, it is for many other industries. The prices of conventional energy resources are rising higher and higher and further, greater use of these is adversely affecting the environment. Also, various Governments are imposing Renewable Energy Obligations on the industry.

Against this backdrop, the Cement Industry has been putting up Waste Heat Recovery plants so as to derive more energy from the same energy resource. In a way, this is akin to green energy. All of this requires further substantial capital investments.

To help the industry & incentivise its endeavour to produce more such environment-friendly energy, it is requested that such energy generation be treated as Renewable Energy Source.

VIII. Classifying Cement as "Declared Goods"

Cement industry is one of the basic and core infrastructure industries. However, unlike other similar industries/goods, cement is subject to higher rates of taxation.

It is requested that Cement be stipulated as "Declared Goods" under Section 14 of Central Sales Tax Act, so that it is put on an equal footing with other core sector goods like coal & steel.

IX. Tax exemption to Certified Emission Reduction (CER) credits under Clean Development Mechanism

The Clean Development Mechanism (CDM) allows industrialised countries to meet their emission reduction commitments under the Kyoto Protocol by purchasing carbon credits from developing countries.

India does not have any carbon emission obligations under Kyoto Protocol. However, Indian enterprises are entitled to earn carbon credits.

As per proviso (ii) to Sec-28(va) of Income Tax Act, any sum received as compensation, from the multilateral fund of Montreal Protocol on substances that deplete the Ozone Layer under United Nations Environment Program, in accordance with the terms of agreement entered into with the Government of India, is not taxable.

To motivate the corporate sector for reduction in carbon emission, receipt from CER credit be exempted from tax.

X. Parity of Interest Rates between Sections 11AA, 11AB and 11BB

Interest for any delayed payment is charged @18% p.a. under Sections 11AA and 11AB, while the rate of interest on any delayed refund under Section 11BB is only @6%. There is no logic for this disparity and is, in fact, unfair.

There is a need to restore parity between the interest rates and the rates be fixed @10% p.a. for both delayed payments and refunds.

XI. Mandatory pre-deposit of specified percentages of duty / penalty for filing appeals

Section 35 F of the central Excise Act cast responsibility for mandatory pre-deposit of specified percentages of duty / penalty for filing appeals. An appellant, as a Rule of thumb, has to make a pre deposit of 7.5% or 10% of duty /penalty, or both, as the case may be, for his appeal to be entertained irrespective of how strong the matter is in favour of appellant. In a majority of cases at Tribunal's stage, demands are invariably quashed or amounts drastically reduced and appeals against such orders by the Revenue mostly end in dismissal with consequential benefit of refund of pre deposits.

Further, in case of small assessee where amount involved in particular case is less than Rs.50 lakhs, then assessee has to file two stage of appeal and needs to pay 7.5% Commissioner Appeals and 10 % with CESTAT; whereas for big assessee where amount involved is more than RS.50 lakhs needs to file Appeal with CESTAT with 7.5% of pre-deposit. This creates discrimination in that smaller taxpayer is unduly subjected to higher pre-deposit.

It is suggested that –

There should not be mandatory pre-deposit. The earlier provision permitting application of wavier of pre-deposit is to be reinstated;

Alternatively,

Option be given to the assesse to file for pre-deposit waiver application to CESTAT. If the assesse does not succeed in aforesaid application, then in such cases, pre-deposit be fixed at a rate higher than 7.5% or 10%.

XII. Reduction in rate of CST in line with GST

Present rate of 2% CST is effective from 01.06.2008 and the same was expected to be reduced to 1% w.e.f. 01.04.2009 and to nil w.e.f. 01.04.2010. However, the CST rate continues to be 2%.

Since Input Tax Credit is not available in respect of CST paid by the industry and Government is seriously considering to introduce GST from 1.4.2016 ***it is suggested that CST rate may be brought down to Zero to bring the cost of interstate purchased goods at par with the local purchases.***

XIII. Goods & Service Tax (GST)

As the Government is considering seriously the introduction of GST w.e.f. 01.04.2016. The following suggestions may kindly be considered before introduction of the new tax regime:

i) **Single Rate of Tax:** Central Government has made proposal to State Government for dual rate under GST which would be brought to single rate over a period of 3 years. ***However, it is suggested that single rate is to be introduced from the first year itself,*** so that all disputes/litigation towards classification can be avoided from first year itself.

ii) **Input Tax Credit :** Lack of sufficient clarity in the statutory provisions of the law leads to denial of Cenvat Credit benefits for exempted goods and exempted services resulting in avoidable litigations.

There may be set off of CGST and SGST paid on all of Goods and Services received against taxable output tax on goods/ services, irrespective of input / capital goods etc.

iii) **Common Law & Enforcement: -** The basic purpose behind introduction of GST is simplicity and uniformity of tax law throughout India. Though Empowered committee of State Finance Ministers (EC) has agreed to introduce Dual GST with separate Act for SGST to be levied by each state, it should be ensured that there is uniformity in the law to be enacted by various states and process/procedures of different states are similar, otherwise the basic purpose behind introduction of GST would get defeated.

It is suggested that any changes in statute of any state, after introduction of GST, should be made with concurrence of all states. For this purpose, a Council of all State Finance Ministers with Union Finance Minister as Chairman may be established to approve any amendment in State Acts.

iv) **Audit Procedures:** An assessee has to undergo various audits and submit reports of the same within stipulated time. The provisions of the Income Tax Act, require an assessee to report on various transactions. Similarly there are provisions of VAT audit in almost all the states.

One single assessing authority for both CGST and SCST will help in smooth assessment process.

v) **Incentives under Industrial Policies:** Various States are granting fiscal incentives by way of exemption, deferment or remission etc. for boosting investment and generating employment in the states resulting in overall growth and development of the state.

It is suggested that suitable provision may be incorporated in the regime of GST, so that these incentives will continue to be available to the dealers/manufacturers operating in the state.

vi) **Declaration forms for Export/Import :** Under the present VAT system, the States have prescribed import and export declaration forms. There has been a catena of cases pending before the Assessing Authority, Tribunal, and even High Courts in regard to certain minor incompleteness found on such declaration forms with a plea to condone penalties levied by the enforcement department.

Under the dual GST system, such declaration forms be abolished so that movement of trucks from one state to another takes place without hindrances. Even the `transit form' prescribed for movement of goods vehicle through a state must be transparent, simple and such that they do not result in the consignor or the consignee being dragged into the penal provisions for the mistake of the transporter.

Also the Border Check Posts and Waybills may kindly be abolished.

vii) **Other Suggestions :** There should be single advance ruling authority for all States under SGCT and CGST.

8. In addition, the Cement Industry has been facing several other issues not included above. Such issues requiring urgent attention are at **Annexure-I**.

9. Suggestions regarding Direct Taxes are included in **Annexure-II, Annexure-III** contains issues relating to Tax Administration, and **Annexure IV** is related to Policy Matters.

10. We strongly urge and request that our submissions above, be duly considered by the Government to help the core sector Cement Industry sustain a healthy growth.

Thanking you,

Yours faithfully,
for Cement Manufacturers' Association

(N.A. Viswanathan)
Secretary General

Encls: As above.

Copy to : **Shri Alok Shukla,** Jt. Secretary (TRU-I), Min. of Finance
Shri Amitabh Kumar, Jt. Secretary (TRU-II), CBEC, Min. of Finance
Ms. Pragya S. Saksena, Jt. Secretary (TPL-I), CBTD, Min. of Finance

Shri Amitabh Kant, Secretary (DIPP) } with a request to make due recommendations to the Finance Ministry

Copy for information to :
- President, CMA
- Vice President, CMA
- Members of the Managing Committee
- Top Executives of Cement Cos.
- Chiefs of Cement Plants
- CMA Committees
- Local Offices, and
- CMA Mumbai & Hyderabad Offices

Annexure-I
to Letter No.181 (PBM)/325 /2015
dated 30th October 2015

OTHER ISSUES OF CEMENT INDUSTRY
REQUIRING URGENT ATTENTION

1. Steps for Promotion of Exports

With capacity additions, the country is facing a surplus capacity situation of above 116 million tonnes. However, cement exports are negligible and are further going down. In the present economic scenario of the country, it is utmost necessary to maximize the export of country's products. It is, therefore, necessary to hold on to the export markets already developed by the Cement Industry and also develop more export opportunities. Towards this end, it is necessary that the Government provides incentives to sustain and promote exports of the cement industry.

Export benefits such as Merchandise Exports from India Scheme(MEIS) are not allowed to Cement Industry. ***It is suggested that MEIS benefits be allowed to the Cement Industry also.***

2. Royalty as part of Drawback

Royalty is one of the levies for which credit is not allowed at present. This results in cascading effect as various taxes get levied on this element also at every stage and as a result, the ultimate burden of taxes is increased. The Government has already acknowledged that levies and duties should not be exported.

In line with this principle, ***it is requested that the element of royalty be included in the calculation of Drawback rates***. It may be pointed out that royalty on limestone alone constitutes around **3.5% of cement value and 5% of clinker value**. Inclusion of the same in Drawback rates would go a long way in encouraging international competitiveness for the country's cement industry.

Alternatively,

Exemption from royalty may be allowed on limestone which is used in manufacturing exported goods.

3. Reversal of Credit on Inputs and Capital Goods when written of partially or provision of partial written off made in the books of accounts

Notification No. 3/2011-CE(NT), Sub Rule 5B of Rule 3 of Cenvat Credit Rules, 2004 was amended to provide for reversal of Cenvat Credit in respect of Inputs or capital goods, before being put to use, which are written off fully or partially or where any provision to write off fully or partially has been made in the books of accounts.

In case of partial provision, to follow the provisions of Accounting Standards issued by ICAI, some part of value of goods are being charged to provision account. However, the goods are capable of being used in manufacturing of final product and remain within the factory. Hence, it is recommended that in such cases reversal of Cenvat Credit should be not required.

4. Written off provision in case of natural calamities

Sometimes, in spite of all precautions taken by the assessee for proper safeguard of the capital goods and the inputs on which Cenvat Credit is taken, loss of inputs/capital goods takes place before they are put to use on account of natural calamities, fire etc.

Necessary provisions in the above Rules may kindly be made so that reversal is not required in such events which are beyond the control of the assessee.

5. Facilitation scheme as 'Large Tax Payer Unit (LTPU) under Central Excise: Option to avail the Procedures and facilities, as applicable to a LTPU

Government of India has been framing a number of schemes to simplify the tax laws in the Country and make them payer-friendly. Amongst these several schemes and the measures, one of the most pioneering schemes as introduced was LTUs i.e. Large Tax payer Units under Rule 12bb of the Central Excise Rules, 2002/under Rule 12a of the Cenvat Credit Rules, 2004.

However, the above scheme is limited to only those Units, whose Registered office is located at any places at Bangalore, Chennai, Delhi, Kolkata or Mumbai. Hence, if any unit fulfills all other conditions, but its registered office is not located at any of these places mentioned above, it cannot apply for LTU facility.

It is suggested that to simplify the procedures and compliance of law, the LTU facility made available to all Large Taxpayers.

6. Cenvat Credit Issues

The Country has moved to the value Added Tax(VAT) system and is now working towards Goods and Services Tax (GST). Both the above taxation systems work on the principle that all taxes paid in the input stage, whether in the form of materials, machineries or services, must be allowed credit while determining the tax at the output stage. This principle of set-off prevents cascading effect of taxes.

As we move towards the GST regime, it is necessary to re-adopt the above principle and to allow all input stage taxes in full without making artificial disallowances. This would ensure that there is no break in the Cenvat chain. Moreover, it would help in making the taxation system simpler for the business and encourage greater voluntary compliance. A simple taxation system goes a long way in nurturing the ease of doing Business.

i. Definition of Input Service

In the Budget for the year 2011-12, definition of Input Service was changed and the words **"activities relating to business such as"** were deleted which resulted into narrowing down the scope of the Input Service significantly. After the aforesaid change in definition, various Input Services are not eligible for Cenvat Credit any more, causing undue hardship to the assessees as substantial amount of Cenvat Credit, which was earlier available, is not available any more.

The present definition of input service is not in consonance with the avowed taxation principle of allowing set-off of input stage taxes against the output stage tax liability.

It is requested that the definition of "input service" be amended to allow Cenvat Credit on "all services used for taxable business" and include the words "activities relating to business" in the definition so that there is no cascading effect of taxes.

ii. **Cenvat Credit on Capital goods used outside factory for handling of Raw Material in relation to manufacture of final product**

Fly ash, waste product of power plants, present a major challenge in their safe environmental disposal. Cement plants by using this waste product as a raw material in the manufacture of Cement greatly contribute crucially in preventing environmental damage. However, for handling of Fly Ash, Cement plants have to install "Handling System" at the premises of power plants by investing huge amount in the purchase of various Capital goods. As the Capital goods are used outside factory of the manufacturer – Cement producer -, these do not qualify as Capital goods under Rule 2(a) of the Cenvat Credit Rules, 2004.

It is pertinent to point out that the definition of capital goods has been amended from time to time considering the industry requirements. Therefore, by the amendments effected by Budget 2011-12 Capital goods installed outside the factory for generation of electricity for captive use within the factory have been specifically included in the purview of capital goods and Cenvat credit of the duty so levied by the manufacturer has been allowed. Similarly, Capital goods used for Fly Ash handling system installed at supplier (Power Plants) premises also equally play a key role in manufacturing of Cement. Therefore, Cenvat Credit on the excise duty paid on Capital Goods should also be allowed.

In view of the above facts, *it is requested that for the purpose of availing Cenvet Credit the definition of the term Capital Goods be amended to include "Capital Goods" used outside factory* and used *in relation to manufacturing of final products or for handling & transportation of raw materials, intermediate products and final products are allowed.* This would help in improving the competitiveness of the industry.

iii. **Cenvat Credit on key inputs such as steel, cement, gases etc.**

The objective of Cenvat scheme is to allow credit of input tax so as to remove the cascading effect of taxes. Hence, the input credit provision has to be wide. This is more pertinent, on account of the fact that it is the endeavour of the Government to move towards a Goods and Services Tax regime. In such a scenario, restricting input tax credit on key inputs, such as, steel and cement defeats the purpose and principle of Input Credit Scheme particularly when the excise duty is being levied on the sale price of the goods taking into account all expenses.

It is, therefore, urged that suitable amendments are made in the provision of Cenvat Credit Rules whereby Cenvat Credit is eligible on all inputs, capital goods and input services used in relation to business activity if the same is liable to either excise duty or service tax.

iv. **Cenvat Credit be allowed on "Input" used in wheeling of power to other manufacturing unit within the same company/other legal entity**

In Finance Bill, 2011-12, the definition of "Capital goods" has been amended and Cenvat Credit has been allowed on installation of captive power plant outside the factory. This has facilitated the optimum utilization of recourses.

It is suggested that similar amendment in definition of "Input" and "Input services" be inserted to allow Cenvat Credit on input and input services used in generation and wheeling of power to other plants of same company / other legal entities, for manufacturing of dutiable products. This will facilitate in more production of excisable goods and increased revenue generation.

v. **Cenvat Credit on Wagon rakes used for material handling from one plant to another plant of the same company**

Cement industry operates in huge volumes and therefore uses wagon rakes for material handling and transporting the cement/raw material in bulk from its mother manufacturing plant to its packing plant.

Since Wagon is classified under chapter Heading 86 of the Central Excise Tariff Act (CETA), it does not qualify as capital goods, as defined, as per Rule 2(a) of the Cenvat Credit Rules, 2004. Therefore, although wagons aid in material handling and transportation of raw materials in bulk within its manufacturing plants, on account of the said restriction the industry is denied the benefit of considerable amount of Cenvat Credit of excise duty levied by the manufacturers of this goods.

Considering the industry and the role of Wagons rake in material handling, it is pertinent to note that the definition of capital goods has been amended from time to time considering the nature of industry and the role they play in the same. In the Union Budget 2012-13, Dumpers and Tipplers have been specifically included in the purview of capital goods by amending Cenvat Credit Rules and Cenvat Credit of the duty so levied by the manufacturer on Dumpers and Tipplers have been allowed. Like, dumpers and tipplers, Wagon rakes also aid in material handling system. They play a key role in transportation of raw material and finished goods within the manufacturing plants. Therefore, Cenvat Credit of the excise duty may also be allowed on the same.

India is facing a severe shortage of good quality and modern wagons, due to which there are considerable losses faced in the movement of goods. Also, handling time is increased. Indian Railways alone is not in a position to make the huge investments required. Private sector can chip in with the investment in modern high capacity and efficient wagons/rakes provided they get good incentive / attractive investment scheme. Allowing Cenvat Credit on the railway wagons, rakes, locomotives and related equipments would be quite helpful in furthering the cause.

In view of the foregoing, it is suggested that the definition of the term Capital Goods may be amended to include Wagon Rakes and Parts thereof without any condition of its being used within the factory of production.

vi. **Cenvat Credit on Service used for Work Contract Services, Civil Work related Services in setting up of Factory**

W.e.f 1.4.2011, Cenvat Credit on services used for work contract and civil work-related services for setting up a factory has been withdrawn. These services are utmost essential for the purpose of establishment of plant and are at par with the capital goods required as these have a direct nexus with putting the manufacturing process in operation. Hence credit may be allowed on such services for reducing the overall project cost.

Disallowing the Cenvat Credit is increasing the fixed costs, whereby the viability of the project is adversely affected and break-even feasibility gets delayed. All these disencourage entrepreneurs to put up plants which in effect would adversely affect realizing the "Make in India" vision.

It is necessary that appropriate amendment is made in the definition of input services, so that Cenvat Credit on services used for work contract and civil work-related services in setting up a factory is allowed.

vii. **Cenvat Credit of services used for construction**

In the budget for the year 2012-13, the definition of Input Service was amended so as to exclude availability of Cenvat Credit in respect of services used in construction of buildings or civil structures and goods used for laying of foundation or making of structures for support of capital goods. This amendment is causing lot of hardship to the industry as the services in the nature of construction etc. are essential for enhancing capacity as also for setting up the infrastructure projects and the non-availability of Cenvat Credit of Service Tax paid on such services would escalate cost of projects and would have negative impact on upcoming projects.

It is suggested that Cenvat Credit of Input Services used for setting up of factory may be allowed as per earlier definition.

viii. **Cenvat Credit on Rent-A-Cab Services, Catering Services and Insurance Related to Employees**

W.e.f 1.4.2011, Cenvat Credit on 'rent-a-cab' services and catering services has been withdrawn. These services are utilized for availing the service of bus providers for transportation of employees from their residence to factory and vice-versa, as well as various services availed in the employee township maintained by the factory adjacent to the factory. It is needless to say that such services are taken and are mandatory to run a factory of large scale and accordingly such services have to be treated as being used for activity relating to business having direct nexus with manufacture.

These services are undertaken to provide the employees safety, security and also to ensure efficient running of factory through reduction in absenteeism.

As per Factory Act, 1948, it is mandatory for employer to provide canteen services to staff. Hence it is an activity integrally connected with the running of factory and manufacturing of goods. Hence Credit is to be allowed on the same.

Insurance of employees/labours is taken to provide them social security. These expenditures are clearly in the course of business activities covering possible risks involved which may result in payment of huge sum. Many a time these issues are mandatory either due to law or customary practice of industries.

Further, expenses incurred towards canteen, rent-a-cab & Insurance of employees are also allowed as business expenditure under the Income Tax Act, 1956. Therefore, putting such a restriction is a hurdle in implementation of Goods and Services Tax (GST).

The denial of Cenvat Credit on these services goes against the Government's focus on improving the condition of workers and employees.

Cenvat Credit of services such as rent-a-cab, outdoor catering services, employees' insurance which are mandatory and absolutely essential in efficient running of business, may be allowed.

ix. **Cenvat Credit on Input and Input Services used in generation of electricity, which in turn are transferred to sister units for manufacturing of dutiable final product**

In the modern competitive world, it is economical for the company to have large power plant catering to the requirements of various units of the same company rather than having small power plants for each units. In view of this Cenvat Credit on inputs used in power generation can be available under job work route where the receiving units send inputs to power generated units under Rule 4(5(a) of Cenvat Credit Rules and take Cenvat Credit accordingly. This revenue neutral exercise is cumbersome and involved transaction cost.

In view of the amended definition of Input, Cenvat Credit is allowed on inputs used in generation of power for captive use.

It is suggested that, the term captive use is to be defined, so as to include the consumption by sister units belonging to the same legal entity, under the term of captive use and Cenvat Credit on inputs may be allowed accordingly.

x. **Service tax on railway Freight- Issuing Extra Copy of Railway Receipt or an Invoice for service tax purpose**

The exemption from Service Tax on Railway Freight has been withdrawn w.e.f 1st October 2012 and Indian Railways have been charging service tax on railway freight. As per Railway Board circular no. 27 of 2012 dated 26.09.12 each zone will issue monthly certificates of service tax collected to enable the industry to avail of Cenvat Credit. It has been observed that different zones are issuing certificates in different formats and there is a time lag (delay) in issuance of certificate and often without any serial number. This has exposed the industry to the risk of credit being disallowed by Central Excise officers for amounts running into a few hundred crores.

It is suggested instead of issuing monthly Certificates, the Railways should issue one additional copy of R/R marked "Non-Negotiable Extra Copy – Only for Cenvat purpose". **This Extra copy can be either system generated or where R/R is not system generated, it can be carbon-copy.** This practically does not involve any extra effort/burden on the Railways authorities although it avoids duplicity and unproductive work by railway employee in preparing certificates. It also gives much relief to all the businesses/industry as a whole.

xi. **Cenvat Credit for Service Tax paid on Outward Transportation.**

Meaning of 'Input Service' in the Cenvat Credit Rules, 2004 has been amended vide Notification No. 10/2008-CE (NT) dt. 01.03.08 so as to cover services availed for clearance of final products up to the place of removal which is said to include outward transportation up to the place of removal. As per the business practice, the final products are sometimes delivered to the buyer at his place from the factory/depot of the manufacturer and the freight cost for transportation is borne by the manufacturer. In a number of cases, the said definition is being read restrictively by the Dept. to confine transportation of goods only up to the factory/or depot of the manufacturer. Consequently, the availability of Cenvat Credit on Service Tax on transportation service availed by the manufacturer beyond the place of removal and up to the place of the buyer is not being considered as 'Input Service' and the same has become a contentious issue. Various High Courts and Tribunals have given conflicting judgements on the issue and there is no clarity as on date about the availability of Cenvat Credit of Service Tax on Outward Transportation beyond factory/depot.

In order to remove the ambiguity in this regard, ***proper explanation/clarification may be provided in the relevant Rules so as to allow credit of Service Tax on transportation of goods which is delivered at the buyers' place from the factory/depot of the manufacturer.***

xii. **Payment of Cenvat Duty on removal of Clinker for Own Consumption**

The benefit of Notification No. 67/95 as amended is to be extended for Removal of Clinker for Own Consumption by other units of same Organization. Now-a-days most of the Cement Manufacturing units are expanding its capacity by installing Grinding Units in different locations to minimize their logistic cost and remove the Clinker from their parent unit to Grinding units on payment of duty, which needs extra fund. No doubt the tax paid by parent unit is eligible for availment of credit of the same by grinding units.

It is suggested that self-certification against removal by parent unit and receipt by grinding units of Clinker may be introduced under Notification No. 67/95 to avoid this payment of Excise Duty on Removal of Clinker to grinding units of the parent unit.

xiii. **Royalty on Limestone**

Limestone is the basic raw material in manufacture of cement. Around 1.5 tonnes of Limestone is needed to produce one tonne of cement and is excavated from mines leased out to cement manufacturing companies on which Royalty is charged.

Royalty on limestone has increased sharply over the years. As no credit is presently available for the royalty payment, the same results in cascading effect of tax which ultimately results in increasing the tax burden. In order to avoid such cascading effect of tax, **the industry may be allowed to take Cenvat/VAT credit for the royalty payment.**

xiv. **Manner of distribution of Cenvat Credit**

With the clarification given vide circular No 178/4/2014 dated 11.07.2014 about the manner of distribution of Cenvat Credit through ISD channel, assessees are under confusion about the applicability of provision of Rule 6 of Cenvat Ccredit Rule simultaneously with the distribution of credit to exempted credit. Meaning thereby, as per circular, we need to distribute the Cenvat Credit of common services through ISD to all the units including exempted units. As per Rule 6 of Cenvat Credit Rules, we cannot avail the Cenvat Credit of those services which are used for exempted goods or services. It means first we need to reverse the Cenvat Credit as per the provision of Rule 6 to arrive at the eligible credit for distribution and then to follow the procedure of circular, we need to distribute the eligible credit to all units including exempted unit, which leads to double reduction of Cenvat Credit, once at the level of Rule 6 and another by distributing Cenvat Credit to exempted unit.

Further, to simplify the procedure of distribution of Cenvat Credit, an attempt was made by the Government by allowing distribution of credit to all the units including exempted units, irrespective of whether such services relate to those units or not. With this simplification, Government has unintentionally, reduced the claim of Cenvat Credit by allowing distribution to exempted unit even if services relate to dutiable units only.

These are certainly not the intention of the Government nor is it the very purpose or objective of Cenvat Credit Rules. ***Therefore, proper clarification may be given to avoid any litigation or dispute in this regard and which in a true sense can be called as simplified manner of distribution of Cenvat Credit.***

xv. **Credit distribution by Input Service Distributor**

In the Budget for the year 2012-13 changes were made in Rule 7 of Cenvat Credit Rules, 2004 relating to distribution of credit of input services by an Input Service Distributor to ensure their scientific allocation on the basis of turnover. This system of allowing credit is defeating the very purpose of Input Service Distributor concept which is intended to allow Cenvat Credit on input service invoices received by the office of the manufacturer of the final product for distribution of same to the manufacturing units of the assessee.

Cenvat scheme is a beneficial scheme the benefit of which should not be restricted for technical reason.

It is suggested that credit may be allowed to be taken based on overall eligibility as per Cenvat Credit Rules and turnover criterion should not be used to restrict the distribution of Cenvat Credit.

xvi. **Reversal of Credit on Inputs and Capital Goods when written off**

Notification No. 27/2007-CE (NT), Sub-Rule 5B was inserted in Rule 3 of Cenvat Credit Rules, 2004, to provide for reversal of Cenvat Credit in respect of Inputs or capital goods, before being put to use, which are written off fully. Sometimes inspite of all precautions taken by the assesse for proper safeguard of the capital goods and the inputs on which Cenvat Credit is taken, loss of inputs/capital goods takes place before they are put to use on account of natural calamities, fire etc.

It is suggested that necessary provisions in the above Rules are to be made so that reversal is not required in such events which are beyond the control of the assesse.

xvii. **Abatement on various Services**

There are various services which are used by the Cement Industry on day- to-day basis and are vital for business. However, the present high rate of service tax of 14% increases the operating cost of companies significantly and has negative impact on business. ***It is suggested that proper abatement may be allowed on services given below:-***

Name of Service	Indicative rate of abatement
a) Renting of Immovable Property	50%
b) Renting of Hotel	40%
c) Services by Director	40%

7. Central Sales Tax

i) Time Limit for issuing forms

As per Rule 12(7) of CST (Registration & Turnover) Rules 1957, declaration in Form C & F are required to be furnished within 3 months from the end of the quarter which causes great hardship to the dealer as, for goods dispatched at the end of the period, considerable time elapses in transport, testing & approval of goods at factory etc. Further, considerable time is wasted in procuring forms from Department by the purchasing dealer; further, the selling dealer also needs some time for producing the forms collected from various parties.

It is suggested that aforesaid time limit for producing the forms may be raised to at least one year from the end of the relevant period.

Earlier, various Declaration Forms under CST Act were required to be procured and issued on an annual basis. However, the frequency of issuing the same has been changed to quarterly basis, which involves duplication of work, and causes undue hardship to the dealer.

It is suggested that the earlier system of issuing declaration forms on annual basis may be restored.

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Annexure-II
to Letter No.181 (PBM)/325 /2015
dated 30th October 2015

DIRECT TAXES

1. Disallowance under Section 14-A read with Rule 8D

The principle of disallowing the expenditure incurred by the assessee in relation to exempt income is acceptable. But the mode of its implementation and inclusion of indirect expenditure into the scope of disallowance is contrary to the main principle for which this provision was enacted and is very harsh. The Central Board of Direct Taxes had provided Rule 8D in exercise of its power given U/s 14A (2) of the Act.

Presently, corporate expansion requires huge Capex which is built up through Domestic as well as Overseas Investment which results in huge interest outgo. As per Rule 8D, the average interest paid is considered which also includes interest on this Capex. Moreover, as prescribed under the Rule, disallowance of an amount equal to one-half per cent of the average value of investment, income from which does not or shall not form part of the total income, results in an artificial disallowance. In case of an assessee who has invested in quoted equity shares not yielding any dividend and carries on the same investment without any change from year to year for say 10 years will have to bear with an artificial disallowance of one-half per cent of the average value of investment in each year, in spite of the fact, that the assessee, has neither incurred any expenditure year after year on the said investment nor has earned any exempt income.

Rule 8D determines the notional cost of holding investments which may or may not yield an exempt income. Such notional cost for holding the investment has no relationship with actual expenditure incurred and claimed by the assessee.

The corporates which have a huge net worth in their books also raise debts to align the "Weighted Average Cost of Capital" & also to part finance ongoing Capex and working capital. The strategic investments are made by Corporates out of accumulated profits included in net worth. ***Hence Rule 8D may either suitably be modified or may be scrapped.***

This section is hampering growth of Corporates at a time when Corporate India has (i) big plan of expansion and (ii) severe competition from MNCs.

It is necessary that the provision should explicity state that Assessing Officer should not apply Rule 8D without giving cogent reasons <u>and</u> there should be no artificial disallowance by applying Rule 8D, when there is no Exempt income.

2. Exemption to Cement Industry u/s 80-1A

As per provision of Sec. 80-IA(4), deduction is allowed on income earned by any enterprise carrying on the business of (i) developing, or (ii) operating and maintaining or, (iii) developing, operating and maintaining any infrastructure facility.

Since in developing infrastructure facility, cement Industry plays a major role by providing basic material i.e. cement, **80-IA benefits and lower tax deduction at source u/s 194LC for Infrastructure Companies may also be extended to the Cement Industry.**

It is also justifiable for the survival of cement sector which is adversely affected due to increase in cost of production coupled with huge surplus capacity as compared to demand, resulting in prices being under pressure.

3. Benefit U/S 80-IA should continue to the Resulting/ Amalgamated in case of Company of Demerger / Amalgamation

Section 80-IA of the Income Tax Act provides exemption from Income Tax on infrastructure projects subject to specified conditions in order to encourage investment in these areas. Sub-section (12) of the Act provides that in case of demerger or amalgamation, the benefits to the undertaking under Section 80-IA will continue in the hands of the transferee company and will cease in the hands of the transferor company.

However, a new sub-section (12A) was inserted by the Finance Act 2007 as per which the benefits will cease, if there is a transfer in a scheme of amalgamation or demerger, on or after 1st April, 2007. The unfortunate result of this amendment is, that neither the transferor nor the transferee company, will enjoy the benefit of 80-IA, in case there is an amalgamation or demerger.

The original position, under which the transferee company will enjoy the benefit in case of a demerger or amalgamation, needs to be reinstated based on the following reasons:

a) Incentives of this nature have been traditionally linked to a unit/undertaking/ investment, and not to an entity. We would submit that it is logically so, because the objective is to incentivize an investment regardless of which entity houses that investment.

b) Amalgamations or demergers are restricted forms of transfer which are also subject to (i) stringent guidelines as prescribed in the Income Tax Act and (ii) Court supervision and approval. The benefits under 80IA used to be allowed in the hands of the transferee companies in such restricted forms of transfer. Such rationale remains valid even now and the benefits under Section 80IA may therefore continue to be available in the hands of the transferee, like in the past, prior to insertion of Sub-section 12A in the Finance Act 2007.

c) The benefits of this section, rightly, covers a long span of 15/20 years as infrastructure projects, by their very nature, take a long time to give economic returns corresponding to their risks. In such a long span of time, the dynamic and ever-changing market place, especially in a growing economy like India, will necessitate a company to undergo many changes (amalgamation or demerger being some of these) in order to continue to operate efficiently. Removal of benefits like that of 80IA would lead to economic inefficiencies by preventing necessary amalgamations or demergers.

d) The amendment, therefore, is an undue constraint and may even defeat the original purpose of encouraging infrastructure projects (especially given the long span of time), which are the necessary building blocks of our economy.

e) The concept of an amalgamation or demerger deserving appropriate treatment is well-recognized under the Income Tax Act, which rightly provides for several benefits for such transactions, including exemption from capital gains tax. Further, fiscal benefits similar to 80IA like those under Sections 80IB, 80IC or 10A of the Income Tax Act continue to be available, rightly, even after any amalgamations or demergers, and these have not been deleted. Extending the timelines for some of these benefits years, in the Finance Act of 2011 clearly underscores and reiterates their importance.

The Benefit of deduction u/s 80-IA is undertaking specific and hence on any genuine business restructuring, the benefit should not be denied to the resulting entity.

4. Extension of 80-IA Benefit to Power Plants

Power is the critical infrastructure on which the socio-economic development of the country depends. In view of scarcity of power & to promote the power plants & transmission lines, ***it is suggested to continue exemption from tax extending the eligibility period for commissioning of same from 31st March 2017 to 31st March, 2020.***

5. Phased reduction of Corporate Tax Rate from 30% to 25% should be with appropriate grandfathering

It was announced in the Budget speech for the year 2014-15 that the Corporate Tax Rate shall be reduced to 25% in a phased manner in next four years. The corollary to such a reduction would be removal of fiscal incentives presently available in the form of tax holiday / deduction in taxable income.

It is obvious that the reduction in tax rate in phased manner will provide only marginal relief year on year. As against this, if the fiscal incentive available to the tax payer e.g. tax holiday under section 80-IA, is removed altogether in the first year itself it will have a negative impact on the taxable income and hence will prove to be disincentive.

It is, therefore, required that the withdrawal of tax incentives are rationally made in a phased manner or with an appropriate grandfathering clause introduced. This is necessary to avoid any major impact on a particular nature of industry/investment.

6. Surcharge on Corporate Tax Rate to be reduced from 10% to 5%

Tax rate on companies is already very high and the rate of 10% surcharge results in additional in additional burden of tax.

Government may kindly consider reducing the surcharge from 10% to 5%.

7. Dividend distribution tax rate u/s 115-o to be reduced from 15% to 10%

Presently effective tax rate of dividend distribution is 20.47% (after grossing up) including surcharge & cess. If it is reduced to 10%+ Surcharge & Cess, corporate may declare higher dividend, resulting increase in Dividend Distribution Tax.

8. Investment Allowance u/s 32AC

The allowance for investments in new plant & machinery is extended up to 31-03-2017. However the provisions of Investment allowance for FY2016 & FY2017 is applicable for each 'Financial year' instead of adding into the Block as 4 consecutive assessment years.

In certain industries (viz. Cement, Petroleum, etc.) the construction period of plant or machinery is as high as 3-4 years and it is not possible for these industries to complete both 'Acquisition' and 'installation' of Plant & machinery within the same year.

To reduce the undue hardship faced by large industries with higher construction periods, it is suggested that this incentive in the form of 'investment allowance' be made applicable for the block period of consecutive 4 years.

Alternatively

The allowance could be on the plant or machinery "Acquired or Installed" rather than "Acquired and Installed" during the aforesaid period.

9. Investment allowance in notified backward areas

Section 32AD was introduced in the Act by Finance Act, 2015 to provide for an incentive by way of deduction of a sum equal to 15% of the investment in new plant or machinery in notified backward area of four States.

There are other States in India with equally backward areas, if not more.

To boost overall development in these regions, it is suggested that the incentive provided in section 32AD be extended to cover other States as well.

10. Allowability of Expenses to meet Social Obligations

If the expenditure is incurred wholly & exclusively for the purpose of business, the same is allowable as deduction u/s 37(1) of IT Act.

For smooth & hurdle-free operation of business, an assessee has to incur expenses for surrounding social development.

Apart from above, an industry has to fulfill the responsibility of social obligations of the society who support the growth of the industry. Further expenses towards Corporate Social Responsibility (CSR) has now been made mandatory by Companies Act, 2013.

In view of above, and the mandatory provisions for CSR expenses under Companies Act, 2013, it is suggested that such expenses incurred be allowed & treated as expenses for the purpose of business and allowed as deduction in computing the taxable income.

11. Inclusion of Mining Land in block of assets under Rule 5

Mining land has limited useful life resulting in diminution of value in future. Still it is not included in block of assets under Rule 5 for depreciation purpose.

Since, mining land is useful till operation of plant & machinery, depreciation rate under Rule 5 may be equivalent to plant & machinery.

12. Valuation of Inventories U/S 145A

Corporate Assessees are valuing their purchases and inventory on the "exclusive method" by claiming CENVAT and VAT credit.

However, the Finance Act 1999 introduced section 145A, which requires the valuation to be done by adopting the 'inclusive method' (i.e., by including CENVAT and VAT for which assessee claim credits).

As per guidelines of The Institute of Chartered Accountants of India, the profits derived under both the 'inclusive method' and the 'exclusive method' remains the same.

In view of neutral impact under both the methods, it is suggested that provision of section 145A may kindly be deleted.

13. Specified Domestic Transfer Pricing (Sec. 92BA)

Applicability of Transfer pricing regulations to Specified Domestic Transaction is a step towards creating undue hardship to the Assessee. The assessment of Domestic transactions are already getting covered under provisions of Sec. 40A(2)(b). Hence there was no need to link it with the Transfer pricing provisions under Chapter X. This will <u>result into a lot of procedural compliance requirements and in future there may be protracted litigation</u>.

Further, this will lead to double taxation in case AO makes adjustment in the Assessment of payer. ***There is a need to provide relief of co-relative adjustment to avoid the aforesaid situation of double taxation.***

Also in the case of Domestic TP the applicability of Rule 10D is not justifiable since both the parties to the transactions have similar geographic conditions and are related to India. In domestic business different States give different fiscal incentives due to which the cost of production may vary which may lead to litigation for determining Arms Length Price. Also, considering the vast differences across the states in the country, comparability of the transactions becomes difficult in view of differences in levy of state taxes, economic environment, competitiveness, logistics etc.

14. Corporate Guarantee Transactions

Indian Companies are looking for assets outside India for which they provide Corporate Guarantee for raising resources. The levy of arbitrary Corporate Guarantee commission is a big dampener as Companies can raise cheaper resources in overseas markets than borrowing in India. The levy of income tax on Corporate Guarantee will discourage Mergers & Acquisitions (M&A) as the required resources are not available in the domestic market. The object of guarantee is to provide security / surety for borrowings and is in the nature of Shareholders function of the Assessee.

The corporate guarantees are incidental to the assessee business and are mere assurance to the Bankers providing loan facility to the AEs, and hence should definitely not fall within the definition of the International Transaction. Also Corporate Guarantees are necessary to be provided to the bankers of a 100% subsidiary / SPV created for overseas acquisitions. Otherwise, Banks do not provide finances to the 100% subsidiary / SPV.

Further, Corporate guarantee provided by the Corporate houses, does not involve any cost to the Assessee or its AE, and does not have a bearing on profits, incomes, losses or assets of the Assessee and hence the transaction does not fall within the definition of "international transaction" as provided in the Indian Tax Laws.

The method of arriving at Arms' Length Price for Guarantee Commission should not be linked to Interest Savings of Target Company, which ignores various other economic parameters.

15. Provision of Sec 206AA (Mandatory Requirement of PAN)

Insertion of Sec. 206AA by Finance Act 2009 (applicable w.e.f. 1.4.2010), creates undue hardship on the Indian payers/Domestic companies since in most of the cases of payments to Non-Residents, the withholding Tax is borne by the Indian company/payer by grossing up the payments. Normally, Non-residents are reluctant to take PAN in India since they do not have any establishment in India. The higher rate of WHT is leading to steep increase in Cost of transaction and ultimately leading to increase in Inflation for general public.

16. No TDS on services to Residents by Non Residents outside India

As per explanation to Sec 9(2), income of non-resident shall be deemed to accrue or arise in India even if the non-resident provides services from outside India to the resident in India.

Indian domestic companies are exploring opportunities globally and in the process, avail services of non-residents outside India. Hence, subjecting the same to tax in India is a hardship to Indian domestic industries.

Non-residents never agree to such withholding tax deduction, since they take the plea that they have never visited India for providing any service and hence their income may not be subjected to tax in India. Since nonresidents do not have PAN, the Indian companies are required to pay tax on this transaction at a higher rate of 20%.

TDS on such services, has to be borne by Indian companies which creates undue litigation and hardship ultimately leading to increase in cost.

Hence TDS on services provided by non-resident from outside India may be exempted from tax.

17. Provision for Leave Encashment under section 43B

Section 43B of the I.T. Act was introduced in order to curb the practice of tax payers claiming deduction in respect of statutory liabilities on provision basis, and not discharging these liabilities for long period of time.

Provision for leave encashment is not a statutory liability.

As such, Clause (f) in section 43B, dealing with provision for leave encashment may kindly be deleted.

Alternatively,

Contribution to Leave Encashment Fund – Section 40A(9):

Section 40A(9) provides for disallowance of any contributions or funds by an employer for any purpose other than the prescribed purposes. The contribution to leave encashment is not a prescribed purpose u/s. 36(1). The tax payer is required to contribute Leave Encashment liability to a separate trust or to a trust with LIC as per the accounting principles and also to meet the employees' obligations. Section 43(B) provides for allowability of payment of leave encashment to employees. However, there are no specific provisions for allowability of leave encashment contribution to a trust or a fund.

It is suggested that similar to Gratuity liability u/s. 40A(7), the section may be introduced to provide for allowability of leave encashment contribution to a recognized trust or a fund. The requirement of approval under Schedule IV similar to Gratuity may also be introduced for Leave Encashment Funds.

18. Tax Exemption to Incentives based on Investments

State/Central Government provide grants to promote investment/develop backward areas and to generate new employment.

Since these incentives are specifically granted for making investments and are not directly related to any specific assets, these are clearly Capital in nature.

It is suggested that Act may provide clear guidelines of treating such incentives as Capital Receipt for the purpose of normal tax as well as MAT.

19. Credit of Cess & Surcharge payable on MAT

As per provision of section 115 JAA (2A), tax credit is to be allowed for difference of tax paid under section 115JB (1) and the amount of tax payable on total income. The tax u/s 115JB is payable @ 18.5%. MAT credit is not allowed for surcharge and cess payable on tax u/s 115AA (2A).

Since surcharge and cess is leviable on MAT, ***it is suggested that the same may be considered for allowing credit also.***

20. Introduction of Technological Upgradation Allowance

In the era of fast changing technology, corporates have to upgrade their technologies to minimize their manufacturing cost with a view to achieving competitive edge, which is absolutely necessary for the survival. Sectors such as drugs and biotechnology, identified as having strong potential for growth and other strategic sectors like capital goods, engineering, electronics etc require huge amount of money for research and development.

In the above context it is suggested that Technological upgradation allowance is also to be introduced whereby a Company is permitted to set apart a certain percentage, say, 5-7 percent of their profits, by way of deduction in the computation of taxable profits, to be exclusively used for upgrading their technologies.

21. Interest on Income Tax Refunds U/S 244A

Presently interest on refunds is granted @ 6% p.a. from 1^{st} day of relevant assessment year whereas bank lending rates varies from 11% to 13%. Interest on refund gradually reduced from 15% in 1991 to 6% in 2003.

Looking at the present scenario of bank lending rates, ***interest on refunds may be increased from 6% p.a. to 12% and it may be granted from the date of deposit instead of 1^{st} day of relevant assessment year.***

22. Minimum Alternative Tax (MAT)

a) Exclusion of profit generated from Power undertaking : Till April 2001, profit derived by an industrial undertaking from the business of generation or generation & distribution of power was allowed as deduction from Profit & Loss Account under Sec 115JA (1) (iv).

Similar provisions may be continued u/s 115JB while computing book profit to encourage the power plant & transmission line to cope-up with shortage of power.

b) **Exclusion of Capital Profits :** The following income credited to P&L, being in the nature of Capital Receipts, ***may be excluded while computing Book Profit u/s 115JB of Income Tax Act.:***

- ***Profit on sale of investments;***
- ***Profit on sale of Fixed Assets.***

23. Rate of MAT

The Basic idea to introduce MAT was minimum tax to be deposited in absence of taxable profit in the hands of assessee.

Tax under MAT was 7.5% in assessment year 2006-07 which was gradually increased and is now 18.5% plus Surcharge and Cess for the year 2014-15 i.e. increased by 147%; whereas normal income tax rate for domestic company has been reduced from 36.6% in assessment year 2006-07 to 32.45% in 2013-14.

Therefore, MAT may also be reduced to 7.50% to commensurate with percentage of decrease in normal income tax rate.

24. Exclusion of Subsidy under Normal Tax and MAT Provisions.

Finance Act 2015 has brought an amendment in the definition of income to include subsidy in taxable income. This provision has nullified the positive effect of subsidy as government is giving benefits from one hand and taking away part of the benefit in the form of taxes.

Hence, specific provision may kindly be inserted to exclude subsidy (capital or revenue) under the normal tax and MAT provisions.

25. Exclusion of MAT provisions on exempted Capital Gains

Currently, sale of listed securities on which securities transaction tax is paid does not attract Capital Gains Tax. However the book profits are subject to the levy of MAT.

MAT provisions may kindly be amended to provide that profits which are exempt from levy of capital gains under normal tax should not form part of book profits for the purposes of MAT.

26. Indefinite carry forward of MAT credit

Currently, MAT credit can be carried forward for a period of 10 years from the year in which such credit becomes available for carrying forward.

MAT credit may kindly be allowed to be carried forward and set-off without any time limit.

27. Deduction of Investment Allowance under MAT

Currently, investment allowance is allowed as a deduction while computing taxable income under the normal tax provisions only. However, there is no provision for deduction of investment allowance while computing book profits which offsets investment allowance benefit for MAT paying companies.

MAT provisions are may kindly be amended to specifically allow for deduction of investment allowance under MAT.

28. Weighted deduction under SECTION 35(2AB) under MAT

Currently, weighted deduction under Section 35(2AB) of the Act is allowed only while computing taxable income under normal tax provisions. The benefit of investment linked deductions is getting diluted as MAT applies on book profits.

Therefore, weighted deduction under section 35(2AB) may also be allowed while computing the book profit.

29. Amendments to the provisions of the Act should be Prospective and not Retrospective

Any Rule/Notification or amendment to the Act by CBDT should be "Prospective" rather than retrospective as it causes undue hardship to the assessee for revision of previous years assessment for applying the amendments. It also results in creation of unknown liabilities and impacts the business.

30. No penalty proceedings for difference in interpretation of Law

Assessing officers initiate penalty proceedings in each and every assessment irrespective of whether there is any actual concealment of income or fact by the assessee. It has been noticed that even in cases where there is difference in interpretation of provisions or wherever there are two views arising, penalty proceedings are initiated.

It is suggested that no penalty proceedings be initiated when there are different views on interpretation.

31. Option to insert explanatory notes in the Return

Under the Income-Tax form notified by the Income-Tax Department, there is no provision in the e-format for giving explanatory notes in respect of any adjustments in the return of income.

It is suggested that the e-format of the Income-Tax Return form be redevised to provide the taxpayer the option to give explanatory notes which the taxpayer considers necessary in respect of any adjustments carried out. It will not only safeguard the taxpayer against penalty proceedings but also against reopening of completed assessments.

32. Collection of demand

Over-pitched assessments, huge demands and coercive methods without any accountability on the part of the AOs are a common phenomenon.

It is suggested that appropriate instructions be given to the AOs to consider applications for stay of demand favorably for payment of demand by taxpayers especially when the appellate orders are in favour of the taxpayer.

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Annexure-III
to Letter No.181 (PBM)/325 /2015
dated 30th October 2015

ISSUES RELATING TO TAX ADMINISTRATION

I. INDIRECT TAX

EXCISE DUTY, SERVICE TAX, CUSTOMS AND GST

1. Cenvat Credit on Capital Goods

Ceiling of 50% on capital goods cenvat (50 % to be deferred till next financial year) is to be removed

At present, Cenvat Credit in respect of Capital goods is available in two parts i.e. 50% of the credit is available in the first year and balance 50% in the subsequent financial year. The above system of taking credit causes a lot of inconvenience and complexity in maintaining records and also in availing of credit apart from financial hardship.

It is, therefore, suggested that full amount (100%) of Cenvat Credit on Capital Goods may be allowed in the year of receipt of goods, as it is also available in respect of inputs.

2. **Adjustment of Excess Duty paid**

If any payment of Excise is made in Excess by assessee, there is no provision under Excise to adjust the same and the assessee is left with only option of filing refund for the same.

It is suggested that adjustment of excess payment may be allowed in subsequent month/quarter, similar to provision under the Service tax. Filing of refund creates undue hardship for assessee.

3. **No provision for filing revised return in central excise**

As per Rule 12 of Central Excise Rules, 2002, every assessee shall submit to the jurisdictional Superintendent of Central Excise monthly, quarterly and yearly returns in the form specified by notification by the Board.

The provision does not allow for filing revised return/s in case of any incorrect information filed along with original return, which was detected subsequent to the filing of the original return. Presently, as a matter of practice, the assessee submits the errors/omissions returns filed to the concerned Range/Division office which sometimes assessees are apprehensive to file.

It is suggested that provision for filing of revised return may be introduced under the Central Excise Law in line with other prevailing indirect tax laws. This may provide an opportunity to an assessee to rectify any bonafide errors or omissions and also reduce reconciliation and non-compliance related issues during audit. This suggestion does not have any adverse implication on the Revenue.

4. **Permission for storage of goods outside factory**

Permission under Rule 8 of Cenvat Credit Rules, 2004 for permitting to store inputs outside Factory premises has to be obtained from the DC or AC of Central Excise.

Similar permission under Rule 20 of Excise Rules for permitting finished goods outside the factory has to be obtained from the DC or AC of Central Excise.

Granting of such permissions is discretionary and often it is experienced that such permissions are very difficult to obtain. Often units, having less storage or facing problem of storage during period when market is down, find it very difficult to store goods if such permission is not granted.

It is suggested that the Rules may be relaxed, and Units may be allowed the above facility on filing of intimation itself to Department instead of applying for permission.

5. **Credit Notes issued for price adjustments**

Customers are offered discounts and incentives to encourage volume sales and to encourage prompt payments for sale of goods under various schemes. Excise duty is paid under Section 4 of Central Excise Act i.e. transaction value of sales made at price agreed to at the time of removal. Credit Notes are passed subsequently to customers at later stage.

Excise duty is paid on the sale price and there is no further provision of adjustment of Excise duty on discounts offered at later stage vide credit notes.

Applying for refund or going for provisional assessment is a cumbersome exercise.

It is suggested that where unjust enrichment cannot be proved, adjustment of credit notes may be allowed while filing of returns in subsequent months, similar to provision under Rule 6 of Service Tax Rules.

6. **Issue of non-appearing scrap transaction in ER-1**

At present there is no arrangement in Monthly ER-1 for furnishing the details of duty payment on removal of Scrap either Inputs or Capital goods.

It is suggested that necessary amendments may be made in the ER-1 to disclose the transaction of Scrap.

7. Protective Show Cause Notice issued by the department in connection with the sale of cement to Industrial/Institutional Consumers.

The background of the issue is that against the decision of the CESTAT, the Commissioner, Central Excise, Trichy, filed a SLP before Supreme Court contending that the Legal Metrology (Packaged Commodity) Act is applicable on the sale made to these category of buyers and that it is mandatory that MRP as required is to be printed on such bags. The Board vide Circular No. F.124/02/2008/CX-3 dated 12.6.2008 has clarified that in certain factual situations mentioned therein, sale of goods even in packaged form shall not attract the provisions of the Standards of Weight & Measures Act, 1976 and the Rules made thereunder. The letter clarifies as under:

> ***"No RSP is required to be provided on the goods in respect of above mentioned categories of sale. Hence they will be covered under Sl. No.1C of Notification No.4/2006-CE by virtue of provision to Explanation II of the Notification No.4/2006 dated 1.3.2006 as amended."***

We submit that the clarification issued by the Board is applicable on the department and they cannot go beyond the interpretation as given by the Board on a particular provision. Cement Industry is not aware as to on what basis the Commissioner, Central Excise, Trichy, had filed SLP before Supreme Court. On this issue the Chief Commissioner, Central Excise & Customs, Jaipur Zone, Jaipur, sent a communication to the Board vide his letter No.CCO (IZ)/Legal/71/2009/4757 dated 21.6.2011 seeking clarification again on the issue, but simultaneously he mentioned that he is advising his Commissioners to issue protective Show Cause Notice in the meanwhile. It will kindly be appreciated that such type of actions unnecessarily create paper work, confusion, litigation and cost.

It is suggested that in the Rules it may be provided that on an issue, which has already been clarified by the Board, the Departmental Officers are not authorized to file any Appeal/Writ Petition or SLP without seeking prior permission of the Board and if a clarification is already issued by the Board and if the Departmental Officer have different opinion, instead of going through legal channel, they may approach the Board seeking further clarification of the Board, if it is required by them.

8. **Calculation of Custom Duty**

In the Budget for the year 2012-13, the system of calculation of Custom Duty has been simplified and calculation of Education Cess & HSEC on CVD portion has been done away with, which is a welcome measure.

In this regard, *it is further suggested that calculation of SAD may also be simplified and all duties viz. Basic Duty, CVD, SAD may be computed on Assessable Value only, so that cascading effect is avoided.*

SERVICE TAX

9. **Classification of Services**

With the introduction of Negative list all the categories of services were deleted from the Finance Act. However, the same has to be restated later while filing of returns, making payments and also for obtaining registration. Since the old definitions are deleted there is ambiguity regarding classification of the services provided like in case of works contract where the new definition is much wider than earlier.

Also introduction of the Negative List concept has not reduced the compliance burden of the service provider as the practice of category- wise Returns and payment filing is continued. Further, no clarity is provided in case the service provider defaults in filing Returns in the appropriate category.

It is suggested that steps may be taken to reduce the compliance burden of the service tax assessees.

10. Payment of Service tax under Reverse charge

Removing Partial Reverse charge on Works Contract Services – Presently under Works Contracts Services, 50% of the Service tax is to be deposited by Service Receiver and 50% by Service Provider. This creates operational difficulties in ensuring that correct tax is paid and is paid in time. This has to be tracked separately and becomes additional burden in doing business.

In line with other services, it is suggested that Partial Reverse charge be done away with for Works Contract Services also. The payment of entire 100% Service Tax be entrusted either to the Service Provider or only to Service Receiver.

11. Hiring of motor vehicles for transport of passengers

Value of taxable service for the purpose of payment of Service Tax by Service Received under Reverse Charge basis. Service tax is payable under Reverse Charge basis by Service Receiver on this service under two options:

- If Cenvat Credit is not availed by Service Provider – on 40% of value of service
- If Cenvat Credit is availed by Service Provider – then on 50% of value of service, the balance to be paid by Service Provider himself.

This creates lot of confusion at the end of the Service Provider – in which case to pay at 40% and in which case to pay at 50%.

To avoid confusion and bring clarity, it is suggested that under Reverse Charge, the Service Receiver in both the options be asked to pay tax on 40% of the value of service only.

12. Reversal under Rule 6 (3) of Cenvat Rule

Calculation of reversal of credit on monthly basis has become a very cumbersome exercise. Further, as per Explanation I to Rule 6(3A) of Cenvat Rules (which provides for determination of "value" under Rule 6(3) and (3A) of the Cenvat Credit Rules), has provided that value shall be as determined under section 3,4, 4A of the Excise Act which may also include trading turnover. Also, for trading, the method of determination of value is different.

Collating the information from multiple units for calculation of Rule 6 (3) based on value disclosed in returns and also including the trading turnover and further distribution of credit based on turnover in case of ISD is very difficult involving considerable time and man power.

On a monthly basis the working has to be carried out provisionally and at the end of year the working is required to be revised based on actual turnover of the year to which the working pertains.

In case of non-intimation under Rule 6(3A) the officers do not allow the reversal under the said Rule and often raise demand by calculating the reversal under Rule 6(3)(i) i.e. payment of 6% of exempted goods

The working under Rule 6(3) should be simplified and made logical. It is suggested the working should be allowed based on transaction value as disclosed in trial balance and also the provision for reversal should be made on quarterly basis instead of on monthly. Also the procedure prescribing prior intimation for availing Rule 6(3) should be done away with.

13. Service tax Recovery from employee

CBEC had issued a draft circular on leviability of service tax on staff benefits and employment-related transactions, in public domain for inviting suggestions, views and comments from Chambers, trade, and industry and field formations. In the draft Circular, it has been clarified that the services from employer to employee are liable to be taxed unless specifically exempted.

Companies provide many facilities to employees such as insurance, transportation, training, club membership, guest house, mediclaim premium etc. and get the cost reimbursed by recovering the same from the employees by adjusting it from their monthly salaries. To facilitate such services to employee they hire services from different vendors, who charge service tax on such services provided to company. Applicability of Service tax on such reimbursements received by employers from employee may not result in increase in substantial cost due to availability of Cenvat Credit. However, the same will lead to increase in additional compliances for the companies such as issue of invoices in the name of employees by charging service tax, disclosure in returns, identifying and availment of eligible credit etc.

Companies providing facilities and recovering the expense do not charge any markup and the vendors from whom such services are received have already paid service tax at the time of providing service. Since Cenvat Credit will be available and recovery is made on actual basis without any value addition, such exercise is revenue neutral. However, it will increase compliance requirements such as raising of invoice, maintenance of record and filing of Service Tax Return etc.

Employer providing service to employee in the company has to be considered as service to oneself. Even otherwise, Employer is just facilitating between service receiver and provider and as there is no markup and such recovery can also qualify as pure agent. Hence, it is suggested that the recovery of any expenditure from employee incurred by the employer should not be treated as service.

14. Service Tax on Declared Services

On various types of services such as works contract, restaurant service covered under "Declared Service", both service tax as well as VAT is payable. In cases where it is not possible to segregate material portion in total invoice, service tax and VAT both are paid on specified percentage of invoice which results into payment of tax on value exceeding total invoice value, which is not justified.

It is suggested that service tax may be levied only on that portion of total invoice value, which is not subject to VAT.

15. Audit at Input Service Distributor (ISD) but notice issued separately to each unit

Central Excise Audit Team conducts Audit of an ISD office and raises queries to ISD. Accordingly, the same is replied by ISD itself. However, after some time the Range office of the concerned units where credit had been distributed by ISD, start demanding details of such Service Tax Credit distributed based on the above audit and Show Cause Notices are issued by different jurisdictional officers of the same department. The assessee has to submit the reply to such notices to such different officers. This is a clear harassment to the assessees. Further, this also leads to increase in administrative cost and wastage of time of the assessee as well as of the departmental personnel.

It is suggested that necessary instructions / clarification are issued to prevent such practice and that for credits availed at ISD, demand notice, if any, must be issued to the said ISD office and not to the Units receiving such distributed Cenvat Credit.

16. Functioning of Tribunals- Enhancement of jurisdiction of financial limit of Single Member for main hearingof appeal in all the matters

Presently the jurisdiction limit of Single Member of CESTAT is Rs. 50 Lacs to dispose of main appeals except cases involving dispute of classification, valuation and rate of duty which are dealt by division bench.

It is requested that for early disposal of cases pending before the various CESTAT, limit may be increased to Rs. 2 Crore for main appeal hearing. Further, the said limit be made applicable for all types of cases and should include issues of classification, valuation and rate of duty as at present.

17. Independence of adjudication wing

The Adjudicating authority, namely, Asst. Commissioner/Dy. Commissioner/ Commissioner has to play a dual role of tax collector as well as adjudicator of the disputes. There is always pressure of maximizing revenue since yearly targets for collection of duties are assigned to each such officer. Under the circumstances, when he is required to adjudicate excise duty disputes, it is practically impossible for him to remain impartial and do justice to the assessee even in deserving cases. This results in show cause notices/demands getting confirmed even when the same are legally untenable. Consequently, the assessees are required to carry the matter in appeal, thereby, increasing litigation.

It is, therefore, suggested that this issue of conflict of interest be addressed. It may be considered to establish the Adjudicating Wing separately in each Division and Commissionerate. The adjudicating officers be disengaged from the duties of revenue collection. If this suggestion is implemented, it is felt that the Adjudicating authorities will not have any revenue bias and will pass orders with a judicious mind and as per the law laid down by various Appellate authorities, thereby reducing needless litigation arising from high pitched assessments.

18. Multiple Notices/Enquiries from the Department pertaining to Service Tax and Excise

Inquiry letters / Notices demanding details of service tax paid on foreign Remittances for 5 years are being issued each time by different jurisdictional officers of the same department and the assessee has to submit the required details and reply to such notices for the same years each time to such different officers. For example, details of service tax paid on ECB borrowings are asked for by different Service Tax offices. This leads to increase in administrative cost and wastage of time of the assessee as well as of the departmental personnel as these details are already available with Department.

It is suggested that necessary instructions / clarification be issued to prevent such avoidable duplicities and wastage of resources.

19. Issue of separate notices for different items or multiple notices on same issue for different periods

This leads to multiplicity of notices and avoidable harassment of assessee. This also leads to wastage of Department resources.

It is suggested that a single combined Notice for all issues may be raised in a year to prevent wastage of precious resources of the assessee as well as of the Department.

20. Method of utilization of Cenvat Credit Rules under Rule 14 and interest impact

Rule 14 of the Cenvat Credit Rules has been amended w.e.f. 1.3.2015. Rule 14(2) of the amended Rules provides the manner of credit utilization in a month, which shall be as under:

- Opening balance of credit is utilized first
- Admissible credits taken during the month are utilized next
- In-admissible credits taken during the month are utilized thereafter.

The result of the above method is that if Cenvat Credit is taken but not actually utilized (by maintaining equal unutilized balance), even then this unutilized balance shall be deemed to be utilized in the next month, and the assessee be liable to pay interest.

It may be noted that there are instances where credit admissibility is not clear and subject to decisions of the CESTAT or other higher Courts. These decisions take time of around 5 years or more. At the same time, Cenvat Credit Rules prescribe a time limit of twelve months within which credit must be availed or else the same will be ineligible. Hence, it becomes imperative to avail the Cenvat Credit within prescribed time to protect the assessees' right to Cenvat Credit. At the same time, non-utilisation of credit protects Revenue's interests.

Hence, the amended provisions which call for payment of interest for mere availment of credit, without actual utilization thereof are very harsh.

It is requested that the provisions of Rule 14 be restored as they existed prior to 1.3.2105 and that interest be charged only if credit is actually utilized.

Alternatively,

The time limit of twelve months for availment of Cenvat Credit be done away with totally, so that in cases of ambiguity, the assessee can avail the credit after there is judicial clarity in the matter.

21. Relaxation in formalities of refund claim under export of goods and services

- **In case of Export of goods -**

  Notification No.41/2012 ST provides rebate of specified services used in export of goods, to the exporter. There are two options available to the exporter –

  i) File based on the actual payment of services tax on submission of documentary proof – Procedure prescribed under Para 3 of said Notification,

  or

  ii) On the basis of rates specified in the Schedule of rates annexed to this notification by making declaration in the shipping bill at the submitting the bills to custom authority - Procedure prescribed under Para 2 of said Notification

  If the Exporter wants to claim rebate based on actual payment of services tax under Option (i) , the needs to satisfy the provision of clause C –

  > "the rebate under the procedure specified in paragraph 3 shall not be claimed wherever the difference between the amount of rebate under the procedure specified in paragraph 2 and paragraph 3 is less than twenty per cent of the rebate available under the procedure specified in paragraph 2"

This requirement under clause 3 should be done away with, as at the time of filling of shipping bills, he may not be aware about the quantum of actual service tax paid on specified input services and hence may not be able to compare as per clause C. Hence the requirement of clause c should be done away with to avail the option as per the choice of exporter.

Further, to avail the option under fixed percentage of FOB value, there is a requirement to file declaration at the time of filling of shipping bills. This requirement of filling of declaration in shipping bills should be removed, so that fair time is available to exporter to choose his options of filing refund claim.

Also, the eligible services for the claim of rebate under said notification is only the service incurred beyond the place of removal. This condition also needs to be eliminated and the eligibility should cover all the services used in export of goods.

- **In case of export of services –**

Applicable Notification is 39/2012 ST Under this exporter of service can claim rebate of service tax paid on input services and excise duty paid on inputs, provided declaration as given under clause 3.1 of aforesaid Notification as produced below is filed before export of services.

> " 3.1 - **Filing of Declaration**. - The provider of service to be exported shall, prior to date of export of service, file a declaration with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, specifying the service intended to be exported with,-

a) description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing service to be exported;

b) description, value and the amount of service tax and cess payable on input services actually required to be used in providing service to be exported. "

When there is a time limit of one year from the date of export of services prescribed for filing rebate claim, this procedure under clause 3.1 is to be done away with as it causes restriction to the availability of refund which is otherwise available based on the records.

22. Cenvat of input and input services within 12 months of date of invoice

Rule 4 of Cenvat Credit Rules imposes the condition that Cenvat Credit of inputs and input service would not be admissible after 12 months from the date of invoice.

Imposing conditions on availment of genuine Cenvat Credit causes undue hardship to the assessee, hence such condition for availing Cenvat Credit is to be removed.

23. Condition for making payment for availing Cenvat Credit of input services

Second proviso to Rule 3 (7) of Cenvat Credit Rules stipulates reversal of Cenvat Credit availed if payment of value of service and service tax, as indicated on the invoice of service provider, is not made within 90 days of date of invoice.

The aforesaid proviso creates confusion as payment to service provider, as per business practice, may not be made within 90 days of the date of invoice due to various reasons.

To provide ease of doing business and simplicity, the condition of making payment within 90 days of invoice may kindly be done away with.

24. Allow credit on services used for activity related to business

Cenvat credit on service tax on the services related to business, setting of factory and civil work has been withdrawn W.e.f 1.4.2011. These services are utmost essential for the purpose of establishment of plant and at par with the capital goods required.

It is suggested that Cenvat credit on expenditure incurred in connection with business related Service may kindly be allowed.

25. Non-reply by CBEC on clarification sought

It has been the experience of industry that any clarification sought from the Central Board of Excise & Customs (CBEC) by an association or an individual assessee is generally not replied. The industry or the association of industries when they find an ambiguity in interpretation or a different interpretation than what the department is interpreting, write to the Board requesting for clarifying the position. It has been the practice of the Board that they maintain silence on the issue and the result is that the field formation in order to safeguard their own position issue show-cause notices, which become a matter of harassment entailing unnecessary cost and unfruitful litigation at different levels.

It is suggested that a suitable provision may be incorporated in the Rules making it mandatory for the CBEC to give clarification sought for by Association of the industries or an individual assessee on the point within 60 days from the date of such communication. It should also be provided in the Rules that if no communication is issued by the Board within the stipulated period, the interpretation understood by the Association of industry or assessee will prevail upon the department.

II. DIRECT TAXES

1. Parity of Interest Rates between Sections 234A/B/C & Section 244A

Interest for any delayed payment of Tax is charged @ 12% p.a. under Sections 234A, 234B, 234C & Section 220, while the interest on refund under Section 244A is only @ 6%. There is no logic for this disparity and is, in fact, unfair.

In view of the above, there is a need to restore parity between the interest rates. All such rates may be fixed at 8%-10% per annum.

In the transfer pricing assessment the Revenue authorities do not share Comparable data of other industries which they use as comparable to decide the ALP and making adjustment. Department should share the Comparable data used by it, so that proper justification can be given by the Assessee to avoid the unjustifiable adjustments made during assessments.

2. Details of all the payments / provisions made on which provisions of Chapter XVII B applies, in the Tax Audit Report is unjust and causes hardship for large companies where TDS is deposited under various TAN from all over India.

Descriptive detailed information of all the payments / provisions, which may or may not be covered under provisions of Chapter XVII B, is required to be given under the New Tax Audit Report requirements. These details are already submitted by the deductor Assessee while filing e-TDS Returns every quarter. The mandatory requirement of providing details in Tax Audit Report is duplication of work since, collating and providing such voluminous details by big sized Corporate Houses of TDS made under various TAN is causing undue hardship. The same can be submitted at the time of Assessment on demand from the Assessing Officer.

It is suggested to remove the mandatory requirement of such voluminous details in New Tax Audit Report to avoid duplication and unnecessary hardship on the Assessee.

3. Judgments of Higher Authorities should be binding on Assessing Officers & lower appellate authorities to avoid litigation on same issues every year

It has been observed that whenever any issue has been decided in favour of the Assessee pertaining to any earlier years, by any higher Authority (viz. CIT(A), ITAT), the **cognizance of the same is not taken by the Assessing officer while passing the Assessment orders for subsequent years.** This leads to undue hardship to the assessee in referring the same covered matters/issues to higher authorities every year, which increases the cost to the assessee, to the IT department and delays in legitimately refund due to the assessee.

Hence, when the facts and circumstances are the same in subsequent years the AO & the first Appellate Authority should adhere to the judgments of higher authorities.

4. Delay by Assessing Officer in giving Order giving effect to Orders of higher Appellate authorities, and also delay in issuing refunds arising out of such Order giving effects.

It has been experienced that when any order of higher appellate authorities is received, and, more so, even when the order is in favour of the assessee, the Assessing officer delays in issuing the Order giving effect to such appellate orders. Due to this delay, the refund arising from such appellate orders also gets delayed.

It is also observed that in most of the cases the issuing of Refund Cheques/Warrants are delayed and the interest on such refunds, as per the provisions of the Income-tax Act, is calculated only up to the date of issue of Assessment order / Order Giving effect to appellate orders and not upto the date of issue of Refund cheques. **This results in assessee being deprived of Interest on the delayed refunds and also assessee does not**

earn any interest on the delayed payment of Interest on Refunds for the period of such delay of issuing of refund warrants by the Assessing officers.

It is suggested that time limits for issuing the Order giving effect and Refund Orders should be stipulated in the Act and also the Interest on Refunds should be calculated up to the date of actual issuing of Refund warrants and not only up to the date of granting the refund/date of Order (as per the existing provisions of the Act).

5. Specific guidelines by IT Deptt. are to be provided on applicability of TDS / TCS on various nature transactions

Department may kindly provide extensive guidelines on interpretation of provisions relating to applicability of TDS on various transactions. This is required since there are different interpretations made by different assessees and even the IT department has its own interpretation which most of the time conflicts with that of Assessee. **These guidelines will reduce litigation with the department and help in reducing cost of Assessee as well as of department. It will also streamline the system of TDS/TCS collection procedure.**

6. Initiation of penalty proceedings in every assessment orders

Assessing Officers initiate penalty proceedings in each and every assessment order irrespective of whether there is any actual concealment of Income or facts by the assessee. It has been noticed that even in cases where there is a mere disallowance due to difference in interpretation of provisions or wherever there are two views arising, penalty proceedings are initiated. This causes undue hardship to the assessee who is unwarrantedly stretched for litigation with the department with the assessee having to file separate appeal for dropping of such penalty proceedings.

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Annexure-IV
to Letter No.181 (PBM)/325 /2015
dated 30th October 2015

POLICY MATTERS

1. Promoting investments in Railway wagons and similar modern material handling systems

India is facing a severe shortage of good quality and modern wagons, due to which there is considerable losses faced in the movement of goods besides increased handling time.

Indian Railways alone is not in a position to make the huge investments required. Private sector can chip in with the investment in modern high capacity and efficient wagons/rakes provided they get good incentive / attractive investment scheme.

The Government / Indian Railways should come out with attractive schemes for promoting investment by the private sector in modern wagons/rakes, locomotives, other such material handling systems. Similarly, the Govt may come out with schemes for improving the working at Railway Goods Sheds and material handling facilities thereat. This would help in improving the competitiveness of the nation and also in augmenting the resources for the Railways and the Govt. in the medium to long term.

2. Renewable Purchase Obligation (RPO)

Cement plants (having Thermal Power Plant/purchasing power through IEX) have to purchase /generate certain percentage of electricity through the renewable sources i.e. Solar Power and non Solar Power both.

Number of plants are buying power through IEX, Solar Power permission also through IEX be allowed for complying renewable purchase obligation.

3. COAL RELATED ISSUES:

a) Coal Supply by Coal India Ltd - Unilateral preconditions for renewal of Fuel Supply Agreement imposed by CIL, thereby, misusing of the dominant position

The CIL Board at its 300th meeting held on 3rd August 2013 unilaterally modified a clause as a pre-condition for renewal of FSA by including that "Notwithstanding the grades of coal agreed to be supplied by **the Seller under this agreement as per schedule II, the seller may supply domestic coal falling between G1 to G4 grades for 25% of ACQ quantity, wherever available, after adjustment of actual quantity from the ACQ."**

There is no taker for higher grades of 25% of coal falling between G1 to G4 grades. As a regular feature, there is extensive variation in the "declared GCV" of the coal supplies and the "actual GCV" realized at the cement plants. **It is, therefore, requested that the above conditions for modification and obligatory acceptance of higher grades falling between G1 to G4 grades, be made optional for the purchaser.**

b) Pricing

The Cement Sector is supplied coal at Non-Regulated price, which is 35% higher than the notified price of G5 to G17 grades supplied to the Power Utilities. Besides this, the quantity of coal supplied to member. **C*ement unit is already 25% less than the ACQ quantity offered in the*** FSA, in addition to loading/transit losses up to 7%. This disparity in price of coal needs to be removed.

c) Third Party Joint Sampling Facility for Cement Industry

Member Cement Companies have been consistently expressing serious concerns about the poor quality of coal being supplied by the coal companies (Coal India Ltd., as also by Singareni Colliery Co. Ltd)., and the extensive variation in the declared GCV and the actual GCV measured at the cement plant being observed as a regular feature and have been stressing the need for independent Third Party Sampling facility being extended to Cement Industry as well.

The mechanism of Third Party Sampling of coal has been put in place with effect from 1st October 2013 for the power utilities and for the other consumers having ACQ more than 4 lakh tonnes and above.

In order to have parity with power utilities, ***it is suggested that the authorities may kindly extend the proposed facility of engagement of independent third Party Sampling Agency for sampling and analysis of coal for Cement Sector consumers as well, subject to their option, for such facility without any embargo on the minimum quantity of 4 lakh tonnes.***

d) Spot E-Auction Scheme

Under E- auction any entity (irrespective of actual user, trader etc) can participate. It has been experienced that the traders are able to get substantial quantities of coal under E- auction which are then sold to actual consumers at higher margins. This unnecessarily increases the cost of coal for actual consumers.

It is suggested that only actual consumers are allowed to participate under E- auction with some mechanism for monitoring which may include self-declaration & stringent action on diversion of coal etc.

4. SUBSIDY SUPPORT FOR PROMOTING USAGE OF ALTERNATE FUEL (AF) USAGE

To overcome the genuine supply constraints of coal, the Industry seeks support from the Government to enable the Cement Plants to increase usage of Alternate Fuels.

Use of Alternate Fuel has substantial financial outgo, both in terms of Capital Investment for additional machinery and equipment, and retrofitting in the existing units in addition to recurring cost involving transportation, pre-processing, testing etc. Therefore, for the use of AF to take off on a sustainable and large-scale, enabling Government Policies including simplified Procedure for subsidies (capital and recurring) are necessary pre-conditions.

At present, only some of the waste generators pay a small tipping fee for disposal of hazardous wastes. The disposal of hazardous waste is significantly low in cement kilns in India due to cumbersome regulatory process to get the approval for each material from each source through trials. Under the circumstances, it is not viable for a cement plant to invest this huge capital and incur regular expenses at a higher rate than on the conventional fuel.

Government may kindly provide 90% of the capital subsidy based on the benchmark cost of establishing a complete AF pre-processing, storage, handling and feeding system. Interested cement plants could prepare a project report through an approved agency which can be scrutinized by Government to fix the benchmark cost for that cement plant. The capital subsidy may be disbursed on pro-rata basis during the project completion.

Government may formulate policy and procedures to allow cement plants to import alternative fuels hassle-free.

5. USE OF INDUSTRIAL WASTES

The cement industry in India has the potential to utilize the entire hazardous waste generation of the country, if suitable. For co-processing to be successfully implemented, the following policy supports are needed:

- ***A cement plant which fulfils the co-processing prequalification criteria should be issued a permit to co-process all types of waste, while remaining within maximum permissible emission norms.***
- ***Cement plants are to be permitted to move waste from other states with minimum restrictions if they are following standing guidelines.***
- ***Ministry of Environment and Forests (MoEF) may formulate guidelines for implementing the principle of 'Polluter to pay' for disposal of wastes and treatment, storage and disposal facilities for cost-effective co-processing of combustible industrial wastes in cement kilns, as an alternative to incineration.***

6. SUPPLY OF FREE OF COST FLY ASH TO CEMENT INDUSTRY

Cement Industry's initiative of popularizing PPC has helped thermal power plant in overcoming the menace of fly ash. However, what started off as a free offering has now been converted into a revenue stream by certain power plants. This is leading to a situation wherein an innovator is being penalized and a polluter is profiteering.

It is high time that cement industry is supplied fly ash 'free of cost' on long term basis on the worldwide principle of 'Polluter pays'.

7. HIGHER BUDGETARY ALLOCATION FOR CONCRETE ROAD, INFRA PROJECTS

The Indian cement industry with a capacity of around 380 million tonnes has started to witness demand-supply mismatch as cement capacities have started exceeding cement consumption. The widening demand-supply gap is expected to affect the capacity utilization levels of the cement companies. Unless and otherwise the Government comes up with new

Road projects, infrastructure project, the demand – supply mismatch will only widen.

It is suggested that a Higher Budgetary allocation for concrete roads and other infra projects may be earmarked in the ensuing Budget and such earmarked funds are also released expeditiously to the executing authorities.

8. CATEGORIZATION OF INDUSTRY

Cement Industries are categorized as highly polluting industry under Red Category. Given the technological improvements, waste utilization & WHRS adopted during the last three decades, **cement Industry may be considered for removal from the list of 'Highly Polluting Industries' i.e. Red Category to 'Orange Category'.**

Other associated activities of Cement Industry like **Grinding Unit, Bulk Terminals and RMC units may not be considered as Integrated Unit and be put in Green Category not requiring Environmental permissions.**

9. ISSUES RELATED TO MINING LEASE AND LEVIES

a) Maximum area for which a PL or ML may be granted

Under Section 6 1(b) of MM (D&R) Act 1957, Central Government grants relaxation to companies to acquire area more than prescribed maximum area i.e. 10 sq. km for ML and 25 sq.km for PL by a company. Under new MM (D&R) Amendment Act 2015, mineral concession will be auctioned and no clarity had been added regarding this relaxation. Hence it is necessary that a provision to the effect should be introduced that when Mineral concessions are auctioned, relaxation under section 6 to successful bidder should be deemed to be granted by Central Government.

Accordingly, we request you kindly to provide direction to state governments to levy lower DMF contribution as cited above; solicit clarification of Transfer of MLs and Deemed relaxation by central government under Section 6 for ML/ PL cum ML auction.

b) Transfer of Mining Leases

The provision relating to transfer of Mining Lease is not clear and creating confusion and apprehension for Cement Industry. In MM(D&R) Amendment Act, 2015, a new section 12A has been introduced dealing with transfer of Mines. The section 12A(6) of Amendment Act reads as under:

> **" (6) The Transfer of mineral concessions shall be allowed only for the concessions which are granted through auction."**

The above sub-section does not provide for a situation where mining leases are not granted through auction i.e. prior to MM(D&R) Amendment Act, 2015 but gets transferred along with the business through merger, demerger under scheme of arrangement as provided under Section 391-394 of the Companies Act, for which order is/ will be passes by respective High Courts.

On a reference from the Cement Industry for issuing clarification in respect of Transfer of Mining Rights through Lease prior to the Amendment of the MMDR Act, 2015, the Ministry of Mines have stated as under:

> "Department of Legal affairs (DLA) has clarified that concessions which are granted though action can only be transferred. The Ministry is in agreement with the views of DLS. The Amendment of Mineral Concession Rule (MCR), 1960 is under consideration in the Ministry to ensure its uniformity with the MMDR (Amendment) Act, 2015".

It is requested that an early Amendment to include Transfer of Mining Rights acquired prior to the Amendment of Act, may kindly be issued so that transfers of Mining Rights from One company to other and in case of Mergers & Acquisition, which are the essence of Business, do not come to a halt.

c) District Mineral Foundation Contribution – Levy of Lower of Contribution

Vide Notification of Ministry of Mines dated 17th September 2015, contribution to District Mineral Foundation (DMF) by every holder of a mining lease or a prospecting licence-cum-mining lease shall, in addition to the royalty, pay to the DMF of the district in which the mining operations are carried on, an amount at the rate of 10% of the royalty paid in respect of mining leases granted on or after 12th January 2015 and 30% of the royalty paid in respect of mining leases granted before 12th January 2015.

While the provision of contribution to DMF is for noble cause, the extent of quantum of contribution to DMF (i.e. 10% of the royalty in respect of mining leases or, as the case may be, prospecting license-cum-mining lease granted on or after 12th January, 2015 and 30% of the royalty in respect of mining leases granted before 12th January, 2015) notified by the Government vide GSR 715(E) dated 17th September 2015 are on very high sides. During the last few years, Cement Industry and its captive limestone mining has been adversely impacted owing to various regulatory and economic factors. In current depressed economic scenario, the capacity utilization has nose-dived leading to higher cost of production coupled with various taxes. Current Statutory payment cost is almost 55- 60% of Limestone mining cost and if component of DMF is added further it would become around 70-75% of limestone cost.

With a view to ensuring that the initiation of DMF is meaningful as well as modest and at the same time to give required impetus for growth of cement and limestone mining, it is submitted that the contribution by the miners should be kept at the maximum level of 10% of royalty for new grants and 15% of the royalty for the existing leases. This level of contribution to DMF will itself bring lot of revenue from the existing leases at current output level. The revenue will further increase with increase in production from current and new lease and with revision of royalty.

The provisions of the new Companies Act, 2013 already require companies to contribute certain percentage of their profits for CSR activities and the contribution to DMF provision will be in addition to the above burden on the profitability of the Companies.

In case of the Companies Act, in the event of companies not making profits, no contribution on CSR activity is required. However, in case of DMF, companies still will have to contribute to DMF as the same is linked with the payment of Royalty.

We request the Government to kindly review the provisions of the rate of DMF contribution and decide a uniform policy with the directives to all the States to keep Miner's contribution at the level of 10% of Royalty for new grants and 15% of the royalty for the existing leases in place of the current 10% and 30% respectively.

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