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181(PBM)/312 /2014 25th November 2014

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

Respected Sir,

Sub: Pre-Budget Memorandum – 2015-16
- Cement Industry

The Cement Manufacturers' Association (CMA) an apex body of Indian Cement industry compliments you for emphasizing on the development of infrastructure, affordable housing, creation of smart cities, industrial corridors, and port developments, inter alia, in your Budget for the year 2014-15 which would certainly increase cement consumption. The recent statement of Shri Nitin Gadkari, Hon'ble Minister of Road Transport & Highways, indicating the Government's clear preference for Cement Concrete Roads in the National Highways has also come as a whiff of fresh air for the Indian cement industry. The Budget 2014-15 had focussed on an action agenda with a long term vision plan for the Indian economy. We are sanguine that the key reforms rolled out by the Government including diesel deregulation, allowing private participation in coal mining, liberalizing the foreign direct investment regime and changes in labour laws would put the country back to a high growth trajectory.

2. The Cement Industry plays a crucial role in national development growth through its contribution in the construction and development of infrastructure. The Indian Cement Industry is the Second largest cement producer in the world after China with a state-of- the-art capacity of more than 360 million tonnes. However, due to low demand more than 100 million tonnes of capacity is lying idle.

3. The last few years have also witnessed a declining trend in India's manufacturing sector. After growing at a promising rate of 10.1% during 2005-06 to 2009-10 the sector has slowed down sharply, growing at just 4.2% in the last four years. As a result, its share in GDP has declined to 14.9% in 2013-14

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from a peak level of 16.2% in 2009-10. Government's emphasis on increasing the share of manufacturing sector in GDP through various initiatives including its 'Make in India' programme, should give a fillip and help achieve a handsome growth of these sectors and thereby increase the share of manufacturing in GDP.

4. 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, has already generated positive sentiments in the economy and has given rise to high expectations in the manufacturing sector. In this backdrop, the Cement Industry now is sanguine that this sector can also look forward to a period of vibrant and sustained growth, which in turn would redound to the credit of the Government, the economy and the Nation.

5. As per performance data released by Office of the Economic Advisor, Government of India, the growth of the cement industry during 2013-14 was a meagre 3%, the lowest in the last 20 years. During the current year (April-Sept 2014) the cumulative cement production has registered 9.65% growth over the corresponding period of previous year. 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 under the able leadership and guidance of Hon'ble Prime Minister.

6. CMA brings to the 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 for your kind consideration, on behalf of the Cement industry, 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.

1. A. Excise Duty Rationalization and Simplification:

Excise duty on Cement is levied @12% + Rs.120 per MT. Duty rates are one of the highest and next only to luxury goods such as cars. Other core industries such as coal, steel attract duty at around 5%. 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 advalorem 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% advalorem plus Rs.120 per MT. These are 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% 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 consist 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 result 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 facts, 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 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%.

2. Levy of Customs Duty on Cement Imports

Presently, import of cement into India is freely allowed without having to pay basic customs duty. However, all the major inputs for manufacturing cement such as Limestone, Gypsum, Pet coke, Packing Bags etc. attract customs duty. In this situation duty-free imports cause further undue hardship to the Indian cement industry 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 required for manufacture of cement be abolished and freely allowed without levy of duty.

3. Customs Duty on Pet Coke, Gypsum, Limestone & Other Inputs

Cement Industry has been subject to perennial shortages of coal, the main fuel. Approximately, only 35% 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.

Pet coke is an important material as fuel, which is used in the cement industry. In view of the reducing availability of coal, the cement industry has been resorting to increased usage of pet coke. The indigenous availability of pet coke being short, more and more pet coke is imported to make up shortage of coal.

Pet Coke is expensive and the situation is further compounded & skewed by the fact that the import duty on pet coke is 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 a 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 scrap import duty on pet coke, 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.

4. Abolition of Import Duty on Tyre Chips

Cement industry is an energy-intensive industry and requires huge quantity of energy resources. However, it does not get adequate supplies of domestic coal and hence has to resort to expensive imported coal.

To meet its requirements, the industry has been developing alternative energy sources like tyre chips etc. However, tyre-chips are presently put under the "Negative list" of imports, whereby the same cannot be imported into India.

It is suggested that tyre chips be allowed to be imported by removing it from the Negative list and the import duty on the same be reduced to zero. This will result in dual benefit of increasing supply of energy sources as well as conserving the domestic energy sources. This is also expected to have some moderation effect on other energy sources.

5. 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.

6. 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.

7. 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.

8. 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 Cement Industry.***

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

9. 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.

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

Cement Plants use raw materials such as Fly Ash, a waste product of power plants, in huge quantity for manufacture of Cement. For this purpose various Capital goods for handling of Fly Ash is required to be installed at Power Plants. As the Capital goods are used outside factory of the manufacturer, these do not qualify as Capital goods under Rule 2(a) of the Cenvat Credit Rules, 2004.

Fly ash, waste product of power plants, presents 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 purchase of various Capital goods.

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 played by the same. 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. Capital goods used for Fly Ash handling system installed at supplier (Power Plants) premises also play an equally 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 suggested that for the purpose of availing Cenvet Credit the definition of the term Capital Goods may be amended to include "Capital Goods" used outside factory for handling of Raw material in relation to manufacture of finished goods.

11. Capital goods having useful life of less than a year should be re-classified as Inputs

There are many goods which are used in manufacture of cement such as Refractory bricks which have a useful life of less than one year. However, these goods are classified under 'Capital Goods' as per the provision of Cenvat Credit Rules, 2004 and hence the Cenvat Credit is available in instalments over two years resulting in deferment of credit and delay in claiming the same beyond the useful life of the goods.

It is suggested that such goods which have useful life of around one year only or which are consumed may be classified as Inputs rather than Capital goods and cenvat credit on the same be allowed in the year of purchase and receipt in the factory. Also necessary Clarification / Notification may be issued for the purpose.

12. Issue on liability of VAT as well as CST on inter-state movement of material

When the material is moved from one state to another on stock transfer, a company makes payment of VAT at the normal prevailing rate of respective state at the time of Sales.

In the following scenarios, CST department sometimes consider this transaction as pre-determined transactions:

1) If material is not unloaded in the warehouse of the receiving state ;

2) If material is directly diverted to the customer.

Consequently, a company may be penalized to pay CST which is equivalent to Local VAT additionally, which is an added burden on the Company.

Therefore, in these cases, it is suggested that CST department may consider the genuineness of the transactions and should not consider these as pre-determined transactions.

8. In addition, the Cement Industry has been facing several other problems not included above. Such problems 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 M. Vinod 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

Annexure-I to Letter No.181 (PBM)/312/2014
dated 25th November 2014

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 around 100 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.

With a view to promoting export of cement, ***it is suggested that the following changes may be incorporated in the Foreign Trade Policy:***

i) ***Export benefits such as Focus Product Scheme (FPS) be also allowed to the Cement Industry.***

ii) ***Cement may be included in the list of products eligible for Focus Product Scheme, Status Holder Incentive Scheme etc.***

iii) ***The Status holder Incentive Scheme which was discontinued from the year 2013-14, may be revived.***

iv) ***The provision regarding the discharge of export obligation by way of alternative products as well as by way of export of group companies may be reinstated.***

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. 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.

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.

4. Amend in Rule 6(3)(D) of Cenvat Credit Rules, 2004

Rule 2(e) of the Cenvat Credit Rules defines 'exempted services' and the words "Explanation: For the removal of doubts, it is hereby clarified that "exempted services" includes trading' have been omitted by the amendment made in notification no. 28/2012-CX (NT) dated 20/06/2012.

Explanation 1 to Rule 6(3D) of the Cenvat Credit Rules defines value for the purpose of reversal of cenvat credit of inputs and input services used on exempted goods and services. Sub-clause (c) reads as follows: -

> " Value …….
>
> *(c) in case of trading, shall be the difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or ten per cent of the cost of goods sold, whichever is more.*

While trading activity is no longer considered as an exempted service and does not require reversal of cenvat credit the definition of value under rule 6(3D) brings in confusion and is incongruous to the definition of exempted service.

In view of the above it is suggested that the definition of "value for trading" in Explanation 1 to rule 6(3D) be also omitted for avoiding disputes as it is also incongruous to the definition.

5. Clarification for explanation to rule 2(k) of Cenvat Credit Rules, 2004

The explanation (2) to rule 2(k) of the Cenvat Credit Rules was amended vide Notification no.16/2009-CE (NT) dated 07/07/2009 by inserting the following words:

> *"but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods"*

The said notification was made effective from the date of publication in the Official Gazette. In spite of the fact that the amendment can only be made effective from the 07/07/2009 and the amendment is not substitution of words but insertion of new words / conditions, the Department is taking a stand that the amendment has retrospective effect and is denying credit availed on angles, channels, CTD, TMT, cement and other items received and consumed *prior* to 07/07/2009.

A proper clarification need to be issued by the CBEC stating that the amendment is only prospective keeping in mind that industry had availed and enjoyed cenvat benefit on such items from September 2004 and only those who have availed the benefit in 2007 onwards are being denied the benefit by way of show cause cum demand notices. The law being uniform cannot deny benefit to some while others are allowed to enjoy the benefit during the same period. Arbitrarily giving retrospection effect to an amendment is bad in law.

Extract of the para 1 of notification is given below:

"

1. (1) These rules may be called the CENVAT Credit (Amendment) Rules, 2009.
   (2) They shall come into force on the date of their publication in the Official Gazette

"

It is suggested that a notification be issued to clarify that the amendment is to be made effective prospectively.

6. Six Months Validity for Cenvatable Invoices

With effect from 1st September, 2014 Proviso 6 of sub-rule (7) of Rule 4 of the Cenvat Credit Rules, 2004 specifies that a manufacturer or provider of output service shall not take cenvat credit after six months of the date of issue of any of the documents specified in sub-rule (1) of Rule 9.

It is suggested that Clarification may be given so that the proviso is applicable to invoices dated 01st September 2014 onwards by way of amendment in the 6th proviso.

7. Provision for Cenvat claim of increased Excise Duty being charged from retrospective date.

Excise duty was earlier being charged only on some of the coal cost component like Basic Price, Royalty etc. Later SECL issued a notification stating that the Excise Duty would be chargeable on all the different coal cost components with retrospective date. The coal consumers are not able get the credit on the increased ED for the retrospective period.

It is suggested that the coal consumers may be allowed to claim the cenvat credit of the additional Excise Duty being charged from them for the retrospective period.

8. CENVAT Credit on Clean Energy Cess on Coal

The Government has levied this new cess on coal peat and lignite w.e.f. 1.7.2010. Energy 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.

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

Cement industry operates in huge volume 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 or Inputs, as defined, as per Rule 2(a) and 2(k) 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 wagon rakes.

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 material handling system 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 within the manufacturing plants. Therefore, Cenvat Credit of the excise duty may also be allowed on Wagon Rakes.

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 restriction of its being used within the factory of production

10. 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 setting up of factory and civil work 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 which will reduce the overall project cost.

It is suggested that appropriate amendment be 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 be allowed.

11. 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 (the phrase business-related activities as such has been removed) has been withdrawn. These services are utilized for availing 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 should 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).

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.

12. Cenvat Credit on service tax paid on Hiring of Motor Vehicle.

As per the exclusion clause "B" of definition of Input Services – service tax credit is not available on Services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods.

Hence, as per the above clause, service tax credit on hiring of those Motor Vehicles which are not covered under the definition of capital goods. In a cement Industry, Motor Vehicle such as Tractors, Trucks, Loading vans are taken on hiring basis as a material handling equipment, which is an essential activity in the course of manufacturing of Final Product. Non availability of cenvat credit on such hiring charges creates cascading effect and additional cost to the industry.

It is, therefore, suggested that Cenvat Credit on Such Motor Vehicles may be allowed irrespective whether covered under capital goods or not.

13. CENVAT Credit on Services of Truck Hiring

The provision regarding availability of CENVAT credit on input services in relation to renting of a motor vehicle is as under:

I As per the present definition of "Input Service" w.e.f. 01.07.2012 under Rule 2(l) of Cenvat Credit Rules, 2004:

"(i) ***"input service"*** *means any service,-*

(ii) used by a provider of output service for providing an output service; or

(iii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final product and clearance of final products up-to the place of removal.

and includes……

*……**but excludes,*** -

(A)……

(B) ***<u>services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods</u>****; or*

(BA) …….

(C)…….”

Thus the <u>exclusion of clause (B) debars the service recipient</u> <u>to take cenvat credit</u> of motor vehicle renting services <u>unless the service recipient is</u> otherwise <u>eligible for cenvat credit on motor vehicle as capital goods</u>.

II As per the amended definition of capital goods w.e.f. 01.07.2012 under Rule 2(a) of Cenvat Credit Rules, 2004:

(a) ***<u>"capital goods"</u>*** *means :-*

(A)the following goods namely :-

(i)……

…..

(Viii) motor vehicle other than those falling under tariff heading 8702, 8703, 8704, 8711 and their chassis [but including dumpers and tippers],……..

(B) motor vehicle designed for transportation of goods including their chassis <u>registered in the name of the service provider</u>, when used for

(i) ***<u>providing an output service of renting of such motor vehicle; or</u>***

(ii) transportation of inputs and capital goods used for providing an output service; or

(iii) providing an output service of courier agency

Therefore, **motor vehicle will be capital goods only when it is registered in the name of service provider** and is used in providing output service of renting of such motor vehicle, transportation of inputs and capital goods of service provider for proving an output service and for providing an output service of courier agency.

II The **definitions of Input service and capital goods, when read together**, would **inter-alia show that cenvat credit of input service provided by way of renting of a motor vehicle (which is registered in the name of the service provider) will not be eligible to the service receiver since the motor vehicle is not a capital good for the service receiver business**.

III Therefore, the exclusion clause in the definition of input service is causing undue hardship to the assessee who is taking the motor vehicle on rent and also paying service tax on such services received but at the same time is denied the benefit of cenvat credit by way of the exclusion clause (B) in the definition of Input service. The same thus debars availing of the total Cenvat Credit chain on such input services.

It is suggested that the exclusion of clause (B) in the definition of input service may suitably be amended or withdrawn.

14. 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 in the Budget 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.

To simplify the procedures and compliance of law, it is suggested that the LTU facility be available to all Large Taxpayers.

15. 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 all the rates be @ 10% p.a.

16. Abolish Separate levy of 2% Education Cess (EC) and 1% Secondary & Higher Education Cess (SHEC)

These levies are causing innumerable complications in documentation, credit availment and accounting. To overcome such hardships, **it is suggested that the rates of the main duty be rationalized to the extent of EC and SHEC and levy of these cesses separately be abolished.** For example, instead of the present excise duty structure of BED 12% + EC 2% + SHEC 1% = Total 12.36% duty, it can be simplified as single Basic Excise Duty rate of 12.36%.

17. Reversal of Credit on Inputs and Capital Goods when written off partially or provision of partial write 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 remains within the factory.

It is requested that necessary clarification be issued that in such cases reversal of Cenvat Credit may not be required.

18. 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 on account of natural calamities, fire etc. before they are put to use

It is suggested that necessary provisions in the Cenvat Credit Rules may be made so that reversal is not required in such events which are beyond the control of the assessee.

19. Cenvat Credit on Input and Input Services used in generation of electricity, which in turn transfer 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 may 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.

20. Service tax on railway Freight- Issuing Extra Copy of 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 receipts. 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 duplication and unproductive work by railway employee in preparing certificates. It also gives much relief to all the businesses/industry as a whole.

21. Service Tax on Railway Freight

Service Tax on Railway Freight is applicable w.e.f. 01.10.2012.

This levy of Service Tax has put extra tax burden on the cement industry and it is suggested that the exemption as was available earlier, may be continued.

In any case, the abatement on the value of Railway Freight may be allowed @75% in order to bring the same at par with the abatement available in respect of the goods moved through road transport.

22. 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.

23. 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 to 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.***

24. 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.

25. Cenvat Credit on Dumper/Tippers etc.

Vide notification no. 28/2012- CE (NT) dt. 20.06.2012, Cenvat credit has been allowed on Dumpers & Tippers w.e.f.01.07.2012, which is a welcome measure. As per one of the criteria for availing Cenvat credit is that Capital Goods as above must be used in the factory. It is common knowledge that dumpers and tippers are used in mines and by restricting the use in the factory, the whole purpose of amendment is defeated.

It is suggested that a clarification in this regard is issued so that Cenvat credit can be availed without any restriction with respect to place of use.

26. 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.

27. Cenvat Credit time limit – Six Months

Vide Notification No. 21/2014 – CE(NT) dated 11.07.2014 in sub rule (1) of the rule 4 of the CENVAT credit Rules an additional proviso has been inserted w.e.f. 1st September, 2014 by which an assessee shall not be able to avail Cenvat credit after six months from the date of invoice. This Provision would prove to be a draconian one causing undue hardship to the assessee in the already cash-crunched economy, as in many cases, there is a time lag of more than six months for getting approval of services completion. Also, there may be a situation where transit time of imported goods is more than six months where BOE is filed and goods are not received in factory premises.

It is urged that the time limit may be removed or time limit of at least one year allowed as against the present prescribed time limit of six months. Further, time limit may be applicable from the date of receipt of goods or services instead of date of invoice.

28. Clarification on availability of Cenvat Credit

As per amended Rule 4(1) of Cenvat Credit Rules, manufacturer or provider of output services can avail the cenvat credit within six month from the date of issue of any prescribed documents. In Cenvat Credit Rules, cenvat credit on certain transactions are governed under separate rules and provisions like Rule 4(5)(a) of job work Provisions, and Rule 16 where goods are bought back to the factory for any reason. In such cases cenvat credit is allowed to be taken based on the condition given under said rules. List of such cases are as under –

- As per rule 16 of cenvat excise rules - "Where any goods on which duty had been paid at the time of removal, are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilize this credit according to the said rules."

  For instance, In case goods are returned back to the factory after six months from the date of invoice, then in compliance with aforesaid Rule 16 can an assessee avail the credit or restriction imposed under rule 4(1) of Cenvat Rules will apply ?

- If the goods are sent for Job work under rule 4(5)(a) for reconditioning, repairs or remade and goods are not received back within six months, then cenvat credit availed on such goods are needed to be reversed and on receiving back the said goods after six months, manufacturer can again avail the credit. Clarification is needed as to whether on availment of such credit the restriction of six months prescribed under Rule 4 of Cenvat Credit Rules will apply or not?

- Clarification is also needed on if the invoice got misplaced and found after six months. Whether cenvat credit can be availed?

- Further, whether restriction under Rule 4 of CCR will apply in case where it takes more than six months for receipt of goods in factory from the date of invoice. For example in case of imported bulk material the goods which are lying in port or depot for a quantity of say 50000 Tones and this material is received in the factory in truck-wise lots and takes more than six months for the whole consignment to reach the factory, whether cenvat credit can be taken based on the Bill of entry filed before six months.

Request for Clarification - Whether the time limit fixed in Rule 4 of Cenvat Credit Rules, will apply in aforesaid situations where there are separate provisions which govern the above situations. Hence the matter requires to be clarified that time limit of six months is prescribed for rule 4 of Cenvat Credit Rules and is not applicable in aforesaid cases.

29. Increase in the interest rate on delay in payment of service tax

There is an increase in the interest rates effective from October 1, 2014, vide Notification No.12/2014-ST, dated 11.07.2014 in terms of which, the interest rate for delayed payment of service tax which is already at a high rate of 18%, would go up further upto 30% depending on the delay.

There is no justification for this steep increase in interest rate while on delayed refunds, etc. interest rate continues to stand at a ridiculously low rate of 6% per annum, over the last 10 years or so. The whole purpose to charge interest is solely to safeguard the opportunity cost of use of funds. It is not purported to be a penalty. There are various others rules and sections for levying penalty under different types of contravention. This exorbitant increase in rate of interest tantamounts to imposing penalty indirectly and hence the assessee is subjected to double penalty.

It is urged that Interest rate be fixed at such level which safeguards the cost of the funds and not on such high rates.

30. Mandatory pre-deposit of specified percentages of duty / penalty for filing Appeals.

Section 35 F of the central Excise Act casts responsibility for mandatory pre-deposit of specified percentages of duty / penalty for filing appeals. An appellant, as a matter of the 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 in favor of appellant is. 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 50 lakhs, then assessee has to file two stages of appeal and needs to pay 7.5% with Commissioner appeal and 10 % with CESTAT, whereas for big assessee where amount involved is more than 50 lakhs and needs to file appeal with CESTAT with 7.5% of pre-deposit. This creates discrimination and 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 may be reinstated;

Alternatively,

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

31. Clean Energy Cess – 100% increase in rate of clean Energy Cess.

The Govt. has increased clean Energy Cess on coal peat and lignite from Rs. 50/- per tonne to Rs. 100/- per tonne. This increased Cess, along with state VAT etc. is putting further pressure on an industry faced with surplus capacity, falling realizations and increasing input costs. Energy 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.

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

32. Definition of place of removal – Under Cenvat Credit Rules

Introducing the definition of place of removal in the cenvat credit rules is a welcome step. The purpose of this amendment is to clarify the issues/litigation raised by the department in view of the absence of definition of place of removal in cenvat rules. This amendment is clarificatory in nature and thus needs to have retrospective effect.

It is recommended that, it be expressly clarified that the definition will have retrospective effect from 10th Sept 2004, to meet the very purpose of the amendment.

33. 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 credit 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 the facts 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 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.***

34. Definition of Input Service

In Budget for the year 2011-12, definition of Input Service was changed and the words "**activities relating to business such as**" were deleted, consequently "**illustrative list" of items eligible for Cenvat Credit of Input Service was converted into "exhaustive list**". This 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 definition of input service may be amended to include "activities relating to business" so that many important business-related activities not directly used in manufacturing are also covered.

35. 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 the 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 the Department.

36. Option of issuing the Service Tax certificate in favour of the consignor, in case of loading through Private Siding

Presently, if any material is loaded from a private siding and the railway freight is made through the mode of e-payment, the service tax certificate is not issued in the name of the consignor. It is issued in the name of the consignee.

It is suggested that provision be made for Service Tax certificate to be issued in the name of the consignee, in case of materials loaded from private siding.

37. Central Sales Tax – 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 end of the quarter which causes great hardship to the dealer as, for goods dispatched at the end of 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; and 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, 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.

38. 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 12.36% 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%

39. Calculation of Custom Duty:

In the last Budget, the system of calculation of Custom Duty has been simplified and calculation of Ed. 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 CVD & 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.

40. Project Import

As the industries in India are on a major expansion drive***, it is suggested that Basic Custom Duty rate in the case of Project import may be brought down to 3% from the current 5%, so that Capital Goods for projects can be imported at concessional duty and thereby reduce project cost.***

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Annexure-II to Letter No.181 (PBM)/312/2014
dated 25th November 2014

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 to huge interest outgo. As per Rule 8D, 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 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 suggested that Assessing Officer should not apply Rule 8D without giving cogent reasons and the artificial disallowance by applying Rule 8D, even when there is no Exempt income, may be suitably modified.

2. Corporate Tax Rate to be Reduced from 30% to 25%.

Presently the effective tax rate is **33.99%** including surcharge & Cess which is very high. The tax base is increasing in India.

Hence tax rate for corporate be liberalized reducing to 25% as demanded since long back.

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

Tax rate on companies is already very high and vide Finance Act, 2013 the rate of surcharge was further increased from 5% to 10% resulting in additional burden of tax. ***They may be reduced to 5%.***

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

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

5. Investment Allowance u/s 32AC

The allowance for investments in new plant & machinery which 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. This is because in certain industries (viz. Cement, Petroleum, etc.) the construction period is as high as 3-4 years. It is, therefore, not possible for these industries to complete both Acquisition and installation of Plant & machinery within the 2 year period.

Alternatively the allowance should be on the plant & machinery "Acquired or Installed" rather than "Acquired and Installed during the aforesaid periods."

It is suggested to make available the Investment allowance in a Block of consecutive 4 years and reduce the undue hardship faced by large industries with higher construction periods.

6. Allowability of Expenses to meet Social Obligations

If the expenditure is incurred wholly & exclusively for the purpose of business, then 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 also and expenses towards Corporate Social Responsibility (CSR) is made compulsory in Companies Act, 2013.

In view of above, & being mandatory provisions for CSR expenses under Companies Act, 2013 it is suggested such expenses incurred be allowed & treated as expenses for the purpose of business.

7. 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.

8. Benefit U/S 80-IA shall be allowable to the Resulting/ Amalgamated Company in Case 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:

i) 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.

ii) 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.

iii) The benefits of this section, rightly, covers a long span of 15/20 years as infrastructure projects, by 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.

iv) 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.

v) 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 continues 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 80IA is undertaking specific and hence on any genuine business restructuring, the benefit should not be denied to the resulting entity.

9. 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 be deleted.

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

The Newly introduced Section on 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 Sec. 40A(2)(b). Hence there is no need to link it with the Transfer pricing provisions under Chapter X. This will <u>result into a lot of procedural documentation and litigation</u>. Further, this will lead to Double tax effect in case AO makes adjustment in the Assessment of payer. ***Deptt. should provide relief of co-relative adjustment to avoid the aforesaid Double taxation impact.***

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.

11. 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.

12. 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 With Holding 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 severe increase in Cost of transaction and ultimately leading to increase in Inflation for general public.

13. 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-resident 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 non-residents 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 create 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.

14. 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 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), a provision 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.

15. Tax Exemption to Incentives based on Investments

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

There are ambiguities in considering the grants / incentives as Capital Receipt.

It is suggested that there may be clear guidelines from competent authority to consider such incentives as Capital Receipt for the purpose of normal tax as well as MAT.

16. 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%. Therefore 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.***

17. MAT on infrastructure companies

Infrastructure Industry in India has been experiencing a rapid growth in its different sectors with the development of urbanization and increasing involvement of foreign investments. The Indian government has offered various tax incentives benefit under Section 80-IA of the Act to the infrastructure companies to boost infrastructure. The benefit available to the infrastructure companies gets neutralized since the companies are required to pay MAT on their book profits.

To attract more and more investment in infrastructure sector, it is suggested that MAT on infrastructure companies may be abolished.

18. 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 Technological upgradation allowance should also 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.

19. Depreciation

The rate of depreciation for general plant and machinery under the Income-tax Act, 1961('Act') is 15%.

With a view to allow industry to keep pace with rapidly improving technology, it is suggested that the deprecation rate on plant & machinery may be enhanced from 15% to 25%.

20. Section 40A(2)(a)

With the insertion of proviso to sub section (2)(a) of Section 40A by the Finance Act, 2012, no disallowance under this clause on account of expenditure being excessive or unreasonable having regard to the fair market value of goods, services or facilities shall be made in respect of Specified Domestic Transaction (SDT) referred to in section 92BA, if such transaction is at arm's length price ('ALP') as defined in clause (ii) of section 92F. Hence, with the insertion of this proviso, the section has extended the applicability of the specific concept of arm's length price instead of a fair market value to determine the value of domestic related party transactions.

The principles of ALP as propagated by OECD in the context of International Transfer Pricing are purely theoretical and far from reality. All the methods recommended for achieving results are based on the data base available in public domain, which does not exist and causes undue harassment to the taxpayers.

The limit of transaction of Rs. 5 crores in aggregate for exclusion is absolutely unrealistic and burdensome as such payment would include even purchase of goods.

The administration in India is not geared up even to handle such matters as the law requires reference to TPO, a specialized wing, which does not exist all over India. Finally, domestic transfer pricing provisions are introduced in various jurisdictions which are concerned with allocation of Income-tax between Federal and State Governments. India does not have such a system of taxation. In India, Income-tax is covered only under all India enactment, administered by Central Government alone and hence there is no allocation of taxing rights granted to various States. It is only after collection of taxes, such collections are distributed amongst the states based on the recommendations of Finance Commission and this has been working well. If at all Domestic Transfer Pricing provisions are required then the principle to be followed should be to ensure that payment made by one tax payer, to another should be subject to taxation at maximum marginal rate and there should not be any arbitrary apportionment to save taxes. If that is achieved, then the tax officer and tax payers should not be overburdened with compliance of documentation requirement.

It is therefore suggested that only the transactions of purchase and sale of goods and services should be subject to benchmarking in accordance with the arm's length methods prescribed under Indian Transfer Pricing regulations. However, the extension of these provisions to all expenditure incurred by tax-payer on payments to its relatives or associate concerns leads to absurdity. One cannot determine the arm's length which should have been paid on various transactions, since the payment may be based on various factors such as business market scenario, competition etc.

Alternatively,

The second proviso to section 92C (4) permits single track adjustment and prohibits consequential adjustment in the hands of the other party. This provision is made applicable to Specified Domestic Transaction ('SDT') as well. As a result, disallowance of expenditure in the hands of one related party does not mean that there would be co-relative reduction in the hands of recipient. Recipient will be assessed with reference to actual income as earned, even assuming entire expenditure is disallowed in hands of related party. This approach of revenue will lead to unjust enrichment of the State at the cost of the innocent taxpayer.

It is suggested that even if the above provisions are made applicable and deduction on account of payment to a related party is reduced by application of SDT provisions, the related party's income should also automatically stand reduced to that extent.

21. Disallowance of cash payments under Section 40A of the Act

Section 40A(3) of the Act broadly provides that where a taxpayer makes payment or payments to a person in a day in respect of an expenditure otherwise than by an account payee cheque or draft, and such payment or payments exceed INR 20,000 the said expense will be disallowed. In case the payment or payments are made for plying, hiring or leasing goods carriages the limit is Rs 35,000.

It is suggested that the limit of Rs 20,000 which was introduced a long time back may be suitably increased to Rs 50,000 per transaction per day.

22. Interest payable on mandatory pre-deposit

Notification 24/2014-CE (NT) dated 12/08/2014 issued by Government specifies an interest at the rate of 6% only on mandatory pre-deposit whereas in case of delay in payment of duty/tax the interest rates are high @ 18% for first 6 months, 24% from 6 to 12 months and 30% above one year.

It is suggested that the interest rate for mandatory pre-deposit may be made at par with the 6 months interest rate of 18% to debar frivolous demands being raised and deposits taken by lower tax authorities.

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

Presently interest on refunds is granted @ 6% p.a. from 1st 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 to 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 1st day of relevant assessment year.***

24. Minimum Alternative Tax (MAT)

i) 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.

ii) 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;***

iii) Exclusion of Dividend Distribution Tax & Deferred Tax

Till Assessment year 08-09, Dividend Distribution Tax and Deferred Tax were allowed as deduction while computing book.

After amending retrospectively w.e.f. 01.04.2001 by Finance Act, 2008 inserting Explanation 1(h) & 2(i) to Sec-115JB, **the** same is to be added in book profit.

Since Dividend Distribution Tax & Deferred Tax are neither payable nor to be paid as income tax, the same may be excluded while computing book profit as allowed till assessment year 2008-09.

iv) 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% for 2013-14 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 should also be reduced to 7.50% to commensurate with percentage of decrease in normal income tax rate.

25. Wealth Tax

- Exemption limit for taxability of residential accommodation provided to employees having gross annual salary of less than Rs. 10 Lac u/s 2(ea) (i) (1) should be increased to Rs. 25 Lac.

- At present, exemption limit of unused urban land purchased for industrial purpose is 2 years. It should be increased to 4 years as to start industry at new location, need substantial time due to various approvals &hurdles from local public.

- Exemption limit from wealth tax should be increased from Rs. 30 Lac to Rs. 1.00 Crore under section 3(2) of Wealth Tax Act, considering inflation and indices impact

26. Transfer pricing for undertakings u/s 801A - applicability of section 92

Prior to Finance Act, 2012, provisions of section 92 determining transfer price were applicable to international transactions only.

Finance Act, 2012 inserted section 92BA expanding scope of transfer pricing provision to eligible undertaking u/s 80IA also for determining transfer price for transactions between eligible undertaking and non-eligible undertakings.

Looking to the disputed issue and to avoid further litigation for determining transfer price, *it is suggested for deleting the word "or specified domestic transactions" referred in section 92 & 92BA (inserted by Finance Act, 2012).*

27. 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.

Therefore, there is a need to restore parity between the interest rates and all the rates may be at 8% - 10% p.a.

28. Major issues on International Taxation / Transfer pricing to be addressed are:

i) Department does not share Comparable data of other industries which it use as comparable to decide the ALP for the assessee and make adjustment on that basis. ***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.***

II) The Finance Act, 2012 amended section 139 of the Income Tax Act, 1961 to make it mandatory to give details of signing authority in any bank account located outside India in the Return of Income. This requirement puts avoidable compliance requirement on the individuals. ***This instead can be implemented for the returns of companies / firms only and not for Individuals.***

29. Details of immovable Property mandatory in Online Wealth-tax returns

Descriptive detailed information of immovable property required to be given in the New Wealth-tax Return form is of less significance at the time of filing of Return. Collating and providing such voluminous details by big size Corporate Houses is causing undue hardship for them since they may have various properties situated across India. The same can be submitted at the time of Assessment of Wealth-tax on demand from the Assessing Officer.

It is suggested to remove the mandatory requirement of such voluminous details at the time of filing of Returns.

30. 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 size 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.

31. 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 heard 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 to refer the same covered matters/issues to higher authorities every year, which increases the cost to the assessee, to the IT department and delays in refund due to the assessee.

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

32. 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).

33. Specific guidelines by IT Dept. should be provided on applicability of TDS / TCS on various nature transactions

Department may 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. This 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.

34. Initiation of penalty proceedings in every assessment orders

Assessing Officers initiate penalty proceedings in each and every assessment order irrespective 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, the penalty proceedings are initiated. This causes undue hardship to the assessee who is unwarrantedly stretched for litigation with the department & the assessee having to file separate appeal for dropping of such penalty proceedings.

35. 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.

36. No penalty proceedings for difference in interpretation of Law

Assessing officers initiate penalty proceedings in each and every assessment order 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. This causes undue hardship to the assessee and unwarrantedly invites litigation with the department.

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

37. Option to insert explanatory notes/ edit fields 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 re-devised to provide the taxpayer the option to edit fields and 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.

38. 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.

Annexure-III to Letter No.181 (PBM)/312/2014
dated 25th November 2014

ISSUES RELATING TO TAX ADMINISTRATION

Excise and Service Tax

1. Cenvat Credit on Capital Goods

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. 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.

4. Functioning of Tribunals- Enhancement of jurisdiction of financial limit of Single Member for main hearing of 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 to be applicable for all types cases and should not be excluded issues of classification, valuation and rate of duty as at present.

5. Limitation on validity of stay granted by CESTAT be withdrawn

Under the provisions of Sec. 35C of the C.E. Act, 1944, stay granted by the CEGAT shall automatically be vacated, if the appeal itself shall not be decided within 180 days from the date of stay order. Immediately on the expiry of the period of 180 days, the department attempts to make the recovery, in spite of the fact that the assessee is not responsible for the delay in decision on the appeal.

The above provisions are not in favour of justice and are arbitrary one-sided and in favour of Revenue. They need to be removed.

6. 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 result 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 the Adjudicating Wing be separately established 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.

7. 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 any other prevailing indirect tax laws. This may provide an opportunity to an assessee to rectify any errors or omissions and also may reduce reconciliation and non-compliance related issues during audit. This suggestion does not have any adverse implication on the Revenue.

8. 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.

9. 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 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.

10. Provision for Reflection of 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.

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

Calculation of reversal of credit on monthly basis is a 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 be made on quarterly basis instead of on monthly. Also the procedure prescribing prior intimation for availing Rule 6(3) be done away with.

12. 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 interpretation ambiguity or different interpretation then 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.

13. 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.

14. 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.

15 Non-inclusion of value of material provided by service recipient free of cost to the service provider for levying service

A. For setting up of a unit, construction of factory buildings, silos, bins & other civil structures are required for setting up plant and machinery. For executing the civil work, the basic drawings and design of the building are provided by the service recipient on the basis of various parameters, i.e. stratum of soil, load factor of plant and machinery etc. The size of the tor steel and thickness of concreting and all is decided by the civil consultants on the basis of load factor of plant and machinery and composition of soil etc.

B. The requisite quantity and quality of steel and cement to the contractors is as per the civil design and engineering and provided by the service recipient (awarder) to contractor from time to time. The same is known as Free of Cost (FOC) in common parlance. The civil contractors are awarded contract for civil construction for a consideration which includes following elements:

- Labour charges which consists of foundation work, steel fabrication, folding, plastering, finishing etc.

- Cost of other construction material used by the contractor like gitti, bajri (sand), boulders, bricks etc.

The services provided by the contractor for civil construction is "works contract" as the property in goods supplied by the service providers is also transferred along with the services. Further, cost of material is not separable and these services are classified under Rule 2A(ii) of the service tax valuation rules and abatement of 60% is also allowable vide notification no 24/2012-ST dated 06.06.2012.

C. The department is taking a view that while valuing the services provided by the service provider i.e. contractor for the purpose of charging service tax on civil construction, cost of steel and cement which is provided by the service recipient is required to be included in the value of services and cost of material charged by the service provider for the purpose of claiming abatement.

In this regard, it is submitted that:-

The steel and cement is negotiated and procured by the service recipient and no activity is performed by the service provider for planning, procurement, their use etc. Further, there is no obligation on the part of the service provider (contractor) to bring the steel and cement.

The steel and cement issued is self-consumption for the service recipient for civil construction. Cenvat credit on such steel and cement used in the execution of the works contract is not eligible.

The service charges / consideration consists of labour charges charged by the contractor for fabrication / moulding of tor steel etc., while performing the use of steel as per design and engineering. The billing schedule in the contract itself is inclusive of cost of material supplied by them and the service charges also includes the labour charges for various construction activities in which cement is used by them for execution of civil work, including the material supplied by them as per scope of contract.

The effective cost of cement and steel to the service recipient (awarder) becomes:

Material given by awarder	Excise duty	Service Tax	Cenvat	Duty cost (Excise duty + service tax)
Cement (assessable value assumed Rs.100)	12.36% (under Sr. No 52 of CE noti. 12/2012 dated 17.03.2012)	4.944% (under rule 2A (ii) (A) of service tax notification 24/2012 dated 06.06.2012)	Nil	17.30%
ToR steel (assessable value assumed Rs.100)	12.36% (Tariff heading 7214)	4.944% (under rule 2A (ii) (A) of service tax notification 24/2012 dated 06.06.2012)	Nil	17.30%

The cement and steel is procured after payment of applicable VAT / CST. Thus including the value of steel and cement of awarder for the purpose of levying service tax is double taxation upon the awarder.

The definition of service has four elements:
- ✓ There should be a person providing service
- ✓ There should be a person receiving service
- ✓ Service should be actually rendered
- ✓ There should be a consideration for service

In absence of any of the aforesaid elements, the activity would cease to be a service and no service tax shall be levied.

Further, for the purpose of levying of tax three conditions are required to be fulfilled:

i) It should be works contract
ii) Goods should have been involved in the execution of the works contract
iii) The property in those goods should be transferred to another party

Non-fulfilment of any of the above conditions would make the activity non-leviable to tax under works contract. In the present case, steel and cement is self-consumption and therefore there is no transfer of property in cement & steel from awarder to contractor and thus the said activity falls outside the purview of service tax.

Both excise duty and service tax cannot be charged from the awarder simultaneously on steel and cement:

Both excise duty and service tax cannot be charged simultaneously on steel and cement which are consumed in the execution of works contract. Further, cenvat credit of excise duty and service tax on procurement / consumption of steel and cement is not cenvatable to the service recipient in terms of Rule 2(k) and 2(l) of Cenvat Credit Rules, 2004.

As a result of above, the service recipient has to bear the cost of both excise duty and service tax which is detrimental to the interest of the industry and is undue hardship for the new projects.

It is suggested that a suitable amendment may please be inserted for non-inclusion of value of material given by awarder for charging service tax on which excise duty has already been paid and no cenvat credit is being taken / allowed to awarder.

16. Payment of Service tax under Reverse charge

In terms of Rule 2(1)(d) called the Service Tax Rules, 1994 and Notification No. 30/2012 various new services were included for payment under reverse charge which includes Manpower supply, Works contract, Rent- a- cab, Director fee etc.

The same has increased the compliance burden on companies and is applicable to everyone without any threshold limit. Certain services are also required to deduct partially which further adds to compliance and tracking burden in system. The entire exercise of calculation and disclosure and maintaining records is very cumbersome and time-consuming.

It is suggested that Reverse charge provisions has to be relooked and conditions of calculation and disclosure may be relaxed further.

Exemption from registration and filing returns may be provided or an alternate mechanism considered.

It is also suggested that the partial reverse charge has to be done away with and make it 100% in all cases.

17. 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 into 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 proving 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 such recovery can also qualify as pure agent. Hence, the recovery of any expenditure from employee incurred by the employer should not be treated as service.

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 are issued to prevent such avoidable duplication 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. 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.

21. Transfer of cenvat Credit under Large Tax Payer Scheme

In the budget 2014-15, the lucrative options for large tax payer unit of transferring the excess credit from one unit to another unit of the same company has been done away with. This makes the Scheme unattractive. Since Large Tax Payer units operate through multiple units and each unit is under the same legal entity, the utilization of cenvat credit by one unit or another is a revenue neutral exercise and entails no loss to government revenue.

It is requested that this change may be brought back and the transfer of credit between units of the large tax payer allowed.

22. 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 rebate claim based on the actual payment of services tax on submission of documentary proof – Procedure prescribed under Para 3 of said Notification,

  ii. Or, 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) , he 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 not 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 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.

Secondly, 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 may be done away with as it causes restriction to the availability of refund which is otherwise available based on the records.

23. CST – 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 end of the quarter which causes great hardship to the dealer as, for goods dispatched at the end of 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; and 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-IV to Letter No.181 (PBM)/312/2014
dated 25th November 2014

POLICY MATTERS

1. Coal Linkage

1.1 The supply of coal through linkage was as high as 75% of total procurement in 2002-03, which has now come down to 35 % in 2013-14.

1.2 The aforesaid steep reduction in percentage supply has taken place due to (a) Change in Coal Distribution Policy due to which only 75% of the normative requirement of Cement Industry is to be met through FSA/linkage instead of 80% earlier, (b) Delay in signing of FSA between LOA Holders (Cement Companies) and Coal companies, and (c) Not holding of Standing Linkage Committee (LT) meeting since November 2007 for sanctioning of linkage to new/enhanced cement capacities.

1.3 During this period a large number of Cement plants have submitted their applications for the cement Kilns and CPPs to MOC for sanction of new LT Linkages, which works out to be about 55 Million tonnes both for Cement Kilns and its CPPs.

1.4 ***It is requested that SLC (LT) meeting for cement kilns and CPPs are held at the earliest.***

2. Unilateral preconditions for renewal of Fuel Supply Agreement imposed by CIL, thereby, misusing of the dominant position

a. 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."

b. 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.

3. 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 our plants 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.

4. Third Party Joint Sampling Facility for Cement Industry

4.1 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 Collieries Company Ltd)., and the extensive variation in the declared GCV and the actual GCV measured at the cement plants 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.

4.2 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.

4.3 In order to have parity with power utilities, CMA requests 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.

5.0 Spot E-Auction Scheme

5.1 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.

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

6. Increase of Alternate Fuel (AF) Usage

6.1 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.

6.2 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.

6.3 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.

6.4 Government may 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.

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

7. Goods & Service Tax (GST)

Government is considering seriously the introduction of GST at the earliest possible. The following suggestions may kindly be considered before introduction of the new tax regime:

i) **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 any purchases of Goods and Services against output tax on sale/ service, irrespective of input / capital goods etc.

All Border check posts and waybills may be abolished.

ii) 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.

iii) GST on Transfer of Goods

GST is proposed to be levied on transfer of Goods. In case of Cement Industry, almost all the cement manufacturers are transferring their goods to other states for sale and it is done through transfer to their branches in other States. In case the proposal is implemented the stock transfer would be subjected to GST. This would result in increase in working capital and transaction cost.

It is suggested that the GST sale may be zero rated on stock transfer transactions.

iv) Tax / Sale Invoice mentioning price of Goods

Under the present system, most States do not allow `discounts' and stress the need to issue `Tax/ Sale Invoice' in the first instance with the consignment. It discloses the 'price of goods' of a particular manufacturer/seller to its other competitors affecting his sales. Thus, this stringent requirement under the VAT system hampers competitiveness of the business in the same industry. In the case of Cement, `price' is the prime determining factor amongst its competitors. Hence, each and every Cement Manufacturer likes to keep secrecy of the price negotiated with the dealers.

The `Delivery Challan' system for supplies without mentioning the value may be made available in the GST proposals.

Since all supplies are required to be accounted for by any Industry, the `Challan' system would not hamper or encourage tax avoidance. The cement industry under SAP/ ERP system does not enable computerization at all points of its dumps as to keep the system of invoice with every consignment at its movement.

All States may allow the discounts as prevalent in the normal trade practice and permit the deduction of the same from the sale price of the goods without making it mandatory to be reflected on the invoice at the time of billing to the suppliers.

This would enable the business to maintain price confidentiality from the competitors.

v) 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.

vi) Lack of clarity whether Electricity Duty & Water Cess can be subsumed in GST

Electricity duty is imposed on grid supply and captive power generation. The Cement Industry is energy-intensive and all operations, from raw material preparation to cement grinding, require electric power. Most of the cement units have installed captive power generation facilities due to erratic grid power supplies. Around 90 units of electric power are needed to produce one tonne of cement.

Credit for electricity duty and water cess may be considered against GST

vii) Continuance of Exemptions/Incentives

Exemptions are given in Excise Duty, Sales Tax and other Duties, for promoting industries in backward areas of NE states, Uttarakhand, Himachal Pradesh, J&K, Kutch region of Gujarat State after severe earthquake etc. for a certain time limit for encouraging Industrialization of the States.

These incentives/exemptions be continued (including other states also) after implementation of GST for development of the States.

viii) Transactions involving `Immovable Property':

The country has seen a lot of avoidable litigation relating to the Government's attempts to levy service tax on transactions related to immovable property. Further, the controversies related to the levy of sales tax on immovable property related transactions have been in existence for even longer.

The Government may spell out clear provisions to distinguish the tax on "Goods & Services" and "Property" which is under State Governments Jurisdiction.

Both aspects of sales of goods and service be made unambiguous and simple and there may be a clear law regarding right to use intangible property.

ix) Destination based tax

The present Central Sales tax which is now proposed to be merged with the GST has source based taxation. The tax is being collected by the state from which goods originate. In the GST, it is proposed that the state where the goods are delivered will be collecting tax. In the process, the States from which the goods are sourced would lose revenue. The losing states, in the absence of such an equity, would litigate on technical issues to mobilize revenue and put the tax paying assessee in great jeopardy.

The State Governments, who lose on account of this principle, may be adequately compensated.

There may be single body to settle inter-state disputes and suits of sale/service.

x) 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.

xi) Other Suggestions

There should be single advance ruling authority for all States under SGCT and CGST.

There should be meeting of representatives of all States to resolve differences, if any, regarding uniformity / clarity / amendments of provisions /Rate of tax / commodity description etc. and the outcome of such meeting must be circulated through website.

8. Higher Budgetary allocation for concrete road, Infra Projects

The Indian cement industry with a capacity of around 350 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.

9. 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. ***A cement plant which fulfils the co-processing prequalification criteria be issued a permit to co-process all types of waste, while remaining within maximum permissible emission norms.***

b. Cement plants be permitted to move waste from other states with minimum restrictions if they are following standing guidelines.

c. 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.

10. 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'.

11. Stimulus to the sectors which are major users of cement

a. ***Fiscal support to housing and roads*** - This could accelerate the demand for cement quite substantially. Given the housing shortages in rural and urban areas and given the increase in the cost of affordable house income tax relief for interest paid on the house building loans may be extended from Rs 1.5 lakh to Rs. 4 lakh per annum.

b. ***Using cement concrete technology for roads*** - All new expansions in the national and state highways may be made of cement concrete as a policy. To begin with, this could be 30% of total allocations. All existing city roads having bitumen surface be converted gradually to cement concrete and new ones should preferably be constructed with cement concrete technology. All connecting roads in villages must be done with cement concrete technology.

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