



Bangalore Chamber of Industry and Commerce

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T S Sampath Kumar
Secretary General

April 9, 2011

Mr. Sunil Mitra
Secretary, Department of Revenue
Ministry of Finance
Room No. 128-A
North Block
New Delhi- 110 049

Dear Sir,

**Sub: Supplementary Memorandum on the proposals of the Union
Budget 2011-12 relating to Indirect Taxes**

This is in continuation with the discussions we had with your goodself on April 9, 2011 in Bangalore wherein the participants brought out several issues of concern to the Industry relating to Indirect Taxes based on the recent Union Budget proposals.

Sir, during the discussions, you had responded to most of the queries and you had requested the Chamber to submit a fresh note on some of the issues which could not be taken up in the form of a Memorandum. Accordingly, we are pleased to enclose herewith a copy of our **Supplementary Memorandum** for your kind consideration and doing the needful.

As suggested, we are also submitting the Memorandum to the local Commissionerate of Customs, Central Excise and Service Tax respectively.

I am sure you will address all our concerns and issues brought out in the Memorandum.

Thanking you once again,

Yours faithfully,

T S Sampath Kumar

Encl: Supplementary Memorandum



**SUPPLEMENTARY MEMORANDUM
2011-2012**

INDIRECT TAXES

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Contents

1.	Cenvat Credit Rules, 2004	4
2.	Trading	5
3.	Credit of service tax.....	5
4.	Outward transportation.....	6
5.	Refunds	7
6.	SEZ.....	7
7.	Taxability of Packaged Software	8
8.	Jobwork	8

MEMORANDUM

1. Cenvat Credit Rules, 2004

Concern:

Pursuant to the amendments made in the Budget 2011-12, the meaning of input services has been narrowed, w.e.f. 01-Apr-2011, to exclude:

- Services in relation to **setting-up** of office or factory
- Services in relation to construction, works contract, architects, etc., if used in relation to **construction of building or civil structure**
- Services in relation to **rent-a-cab**
- Services in relation to outdoor catering, health, etc., if for **personal use or consumption of any employee**

Recommendation:

- Services in relation to setting-up of office or factory shall be allowed
- Since services in relation to modernization, repair of factory are entitled for credit in terms of inclusive clause, the exclusion clause of construction service will pose problem in taking credit. Therefore the exclusion clause shall be removed.
- Industries are required to provide cab service and canteen to their employees and it is provided to run the business. Therefore the meaning of personal use or consumption of employee may be clarified by circular
- There are many services which are used in the depots or after the clearance of goods from the depot but before delivery of goods to the customers. Therefore it is requested that credit shall be allowed for all services which are related to business or at least related to sale of goods

2. *Trading*

Concern:

Pursuant to the amendments made in the Budget 2011-12, in the Cenvat Credit Rules, 2004, trading has been covered as exempted services:

- In calculating the turnover attributable to trading, it is unclear on whether the margins are to be excluded at transaction level or based on a month or annualized
- Activity of Trading has been included as an 'exempted services' by way of an explanation

Recommendation:

Practical problem that could arise is whether the calculation has to be done on turnover basis or at part level. When industries are trading large number of parts of various part number (running in lakhs) this provision will pose serious problem. Therefore it is requested that simple explanation i.e. 10% of the cost of the goods shall be inserted in the place of existing explanation.

3. *Credit of service tax*

Concern:

Rule 4(7) of Cenvat Credit Rules, 2004 has been amended to provide that credit can be availed on receipt of the invoice of the service provider. It is also required that the payment of the value of input service and the service tax needs to be paid within three months of the date of invoice failing which an amount equal to the Cenvat credit has to be reversed

Recommendation:

The rule specifies that if payment is not made within 3 months, the credit taken has to be reversed. It is requested that instead of 3 months, a period of 6 months shall be considered because it will help to align the same with point of taxation rules.

4. *Outward transportation*

Concern:

Input service definition allows credit of service tax paid on outward transportation upto the place of removal.

Recommendation:

It is requested to clarify what is the place of removal for goods which are cleared to customers on different contracts viz.,

- Ex-works
- FOR destination

Where the contract is on Ex-works, the risk in the goods as well as property in goods passes immediately the goods leaves the factory gate of the seller.

Where the contract is on FOR destination, the risk in the goods as well as property in goods remains with seller until it is delivered in good and acceptable condition to the buyer at his door step.

Section 4 (3) (c) (iii) defines that a depot, premises of consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory. The Board vide its circular No. 97 has also clarified that in respect of FOR contracts, the service tax credit on outward transportation is available until the goods are delivered to buyer. Therefore it is requested to clarify the position to field formation and direct them to drop pending show cause notices.

5. ***Refunds***

Concern:

Despite various notifications under Central Excise and Service Tax for refund/rebate of taxes paid on inputs, significant time and efforts is being lost in seeking refunds.

- In many cases, small procedural lapses are taken as ground to reject refund claims
- Despite binding circulars and tribunal decisions, the department seeks to ignore the same
- Many refund claims are not being accepted if Statutory auditor delays in issuing the certificate

Recommendation:

Instruction may be given to department to sanction the claims in time bound manner and to ignore small procedural lapses. Instruct to accept the refund claim without statutory auditors certificate and sanction the refund after the receipt of statutory auditors certificate.

6. ***SEZ***

Concern:

Notification No.17/2011-St, dated 1.3.11 provides for mechanism to claim exemption on Services rendered to SEZ units. In this regard, clause 2 (ii) provides that services listed in clause 3 (1)(ii) of Export of services Rules, would be exempted if the services are performed wholly within SEZ. Similarly, clause 2 (iii) provides that the unit does not carry any business other than the operations in the SEZ.

Recommendation:

- Suitable amendment may be made in Clause 2(ii) to read as 'wholly or partly performed within SEZ' as these Rules are based on Export of Service rules.
- It may be clarified that the term 'does not carry any business other than the operations in the SEZ shall mean that SEZ unit does not have DTA sales.

7. *Taxability of Packaged Software*

Concern:

Notification No. 14/2011-CE, dated 01-Mar-2011 has been issued to provide that in case of packaged software, which is not liable for affixation of MRP (retail sale price), the right to use portion will be exempt and the said portion will be accordingly liable under service tax as corresponding exemption under service tax is removed in such cases.

Recommendation:

- Ordinarily, under central excise, a transaction which is not liable for affixation of MRP would be assessed under central excise based on transaction value under section 4 of the said Act. In the instant case, in the absence of MRP, the assessment is shifted from Central Excise to Service Tax.
- It is recommended that assessment of the goods in such cases be under Central Excise and in the absence of MRP, be assessed based on transaction value.

8. *Jobwork*

Concern:

As per the provisions of Cenvat Credit Rules, 2004 cenvat credit on inputs and capital goods may be availed by a manufacturer as long as such inputs / capital goods are physically received in his factory premises under cover of a valid Central Excise Invoice and are used by him in or in relation to manufacture. However, under the same Rules, credit of service tax may be availed by an assessee on payment of the same to any input service provider, as long as the input service is received in or in relation to manufacture. The credit is, thus, only available on the basis of Invoice payments.

In the case of Brand Owners (Principal Manufacturers) who employ job-workers exclusively for manufacture of goods, the benefit of cenvat credit on inputs is available since the job-worker can claim the cenvat credit and offset his central excise liabilities against the said credit. However, as far as service tax is concerned, since the payments for taxable input services are generally effected by the Principal Manufacturer instead of the job-worker, the benefit of service tax credit is not available. This is due to the fact that the Principal Manufacturer cannot avail the credit since he is not the manufacturer and the manufacturer, i.e., the job-worker, cannot avail the credit since he does not pay for the taxable input service. Consequently, under the Rules the Principal Manufacturer employing job-workers exclusively is discriminated against in relation to Principal Manufacturers having their own manufacturing facilities, in so far as credit of service tax is concerned.

The Cenvat Credit Rules also provide for an Input Service Distributor (ISD) mechanism whereby the credit of service tax can be distributed by an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under Rule 4A of the

Service Tax Rules 1994 towards purchase of input services. Hence, by definition, the ISD cannot distribute credit of service tax to job-workers in case the input services are paid for by the Principal Manufacturer.

Accordingly, the provisions of the Cenvat Credit Rules, 2004 create an inequitable situation, in that, the benefit of cenvat credit pertaining to inputs and capital goods is available to the assessee irrespective of whether manufacture is in-house or at job worker premises whereas the benefit of service tax credit is available only if the manufacture is at the assessee's own unit. This inequity dilutes the cost competitiveness of assessee's who own brands and use job-workers exclusively for manufacture of goods - more so since, over the long term an increasing number of services are proposed to be brought under the service tax net.

Recommendation:

- The Cenvat Credit Rules be amended to provide a mechanism that enables availment and distribution of credit of service tax by brand owners to job-workers. This will ensure cost competitiveness of the brand owners and protect the long-term interests of job-workers.
- In the alternative, the Principal Manufacturer should be permitted to use the credit of service tax to off-set any Central Excise or Service Tax liability in respect of his own manufacture or services provided.

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