



Indian Chamber of Commerce

**Pre-Budget Suggestions on the  
Central Budget 2009-10**

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The sudden and sharp deceleration of growth in the Indian economy due to the global financial crisis has necessitated two-pronged approach in the ensuing Central Budget for 2009-10. The first being that inclusive growth needs to be re-ignited and second, the growth process needs to be made more resilient to external shocks. To this end, the Indian Chamber of Commerce suggests a four point agenda for the new Budget :

- **To stimulate growth**
- **To promote social development**
- **To re-configure fiscal and monetary policies**
- **To complete pending reforms and initiate new ones**

## **Stimulating Growth**

In order to boost growth and poverty reduction, it is crucial that agriculture, infrastructure and exports all become areas of renewed focus.

### ➤ **Agriculture**

The development of rural farm and non-farm activities will expand domestic demand, bring about inclusive growth and make economic growth less reliant on global events. To achieve this transformation the ICC recommends:

- Ushering in a second Green Revolution. For this, essential measures would include crop insurance, improved irrigation and water harvesting facilities, quality inputs, credit availability, research and extension services, co-operative farming, as well as improvement of farm to market networks.
- Providing opportunities for the development of a thriving private sector in rural farm and non-farm allied activities. A cluster approach should be pursued to facilitate diversification from farming to other higher value-added products, as well as SME development.

### ➤ **Infrastructure**

For any growth strategy to succeed it is critical to develop supporting infrastructure, as this reduces costs and increases the inducement to invest. In this context ICC suggests the following policy interventions:

- Strengthening the Bharat Nirman Programme for development of rural infrastructure.
- Rejuvenating urban infrastructure under the Jawaharlal Nehru National Urban Renewal Mission.
- Expediting the railway's Dedicated Freight Corridor project and providing incentives to counteract the slowdown in container traffic.
- Completing the Golden Quadrilateral project and reenergizing the 33,000 km National Highway Development Programme.
- Reducing inland logistics costs which are amongst the highest in the world.
- Developing capacity in power (renewable and non-renewable) and reducing transmission losses.
- Improving telecommunications development through a transparent and appropriate 3G auction policy.
- Improving the cargo handling capacity of ports.
- Exploring financing alternatives such as deployment of foreign exchange reserves and the provident fund corpus for infrastructure development.

## ➤ **Exports**

The global slowdown has severely impacted exports and related manufacturing. To counteract these effects, the Chamber suggests :

- Extending tax and interest sops to export oriented units such as increasing the DEPB rate, reducing the interest rate on pre and post shipment credit, as well as working capital and rescinding the retrospective amendment of section 80 HHC.
- Providing special incentives to small and medium export units.
- Providing incentives to exporters of new products and for exports to new developing country markets.
- Providing incentives to encourage value addition within the country and discourage exports of raw materials.

- Taking measures (such as imposition of safeguard duty) for protection of domestic industry by discouraging dumping.
- Managing volatile swings in the exchange rate to mitigate adverse impacts on exporters and importers at least on a no-profit-no-loss basis through mechanism of hedging.

## **Promoting Social Development**

Concerted public policy interventions are required to ensure that the benefits of growth accrue to the entire population. Given the socio-political importance of broad-based growth, ICC suggests the following policies to promote social development:

- It has become important to stem the rising prices of essential commodities like dal, rice and wheat.
- Growth of SMEs must be promoted because these firms are labour intensive with large employment potential.
- Basic healthcare services especially in rural areas should be improved by strengthening the National Rural Health Mission.
- To have benefit of a vast young employable workforce, it is important that every child gets a sound primary and secondary education.
- Government should develop education hubs in every region of the country by creating more world-class academic and vocational training institutes.
- Promoting academia and industry linkages through public private partnerships will be critical for efficient industrial development and employment generation.

## **Re-configuring Fiscal and Monetary Policies**

Monetary and fiscal policy instruments should be re-configured to be supportive of equitable growth and employment creation.

### **❖ Fiscal Policy**

Declining fiscal discipline reflected in the very high deficit/GDP ratios has become a cause for concern; as such high deficits are unsustainable in the long term. Inefficient public spending deprives the intended beneficiaries. To ameliorate the fiscal situation, ICC suggests:

- Partial disinvestment of PSUs to bridge the fiscal gap.
- Plugging the leaky bucket by improving the targeting, monitoring and implementation of subsidies, as they tend to disproportionately benefit the better off.
- Addressing the issue of subsidies for petroleum and related products, which have proved to be a major strain on government finances, by gradually decontrolling their prices.
- Expanding the tax base by identifying and locating new taxpayers, outside the income tax net. This would also permit increasing of the income tax exemption limit, as well as lowering of income tax rates.
- Abolition of Wealth Tax and fringe benefit tax, which have proved to be inefficient levies, as costs of collection do not justify revenue raised.
- Expediting the implementation of the GST to promote the development of the Indian common market and avoid multiplicity of taxes.

#### ❖ **Monetary Policy**

Monetary policy can be a powerful tool for infusing more liquidity into the economy so as to boost entrepreneurial spirits and spur growth. The Chamber suggest, the following policy changes:

- Reducing lending rates further, given the current environment of low inflationary pressures.
- Encouraging banks to provide credit to SMEs and export oriented units at below-market rates.

#### **Completing Pending Reforms and Initiating New Ones**

The ICC feels that the new government with its overwhelming mandate, should complete pending reforms and implement new reforms particularly in the insurance, banking and retail sectors. Reform is also awaited for Pension Funds and Pension System. The Chamber also suggests that because of the substantial growth and employment potential of the retail sector, the government should allow increased FDI in this sector. Moreover, socio-political impact of

acquiring land for industry has necessitated reform in this area. The grave unrest that land acquisition for industrial use has caused has necessitated the introduction of a fair and transparent Land Acquisition Policy with provision for Rehabilitation and Resettlement of the displaced or affected.

## **Need for introduction of Goods and Service Tax (GST)**

Government has been planning to introduce a Goods & Service Tax (GST) from 1<sup>st</sup> April, 2010. While a GST is generally welcome in place of a multiplicity of taxes, the Chamber feels that being a comparatively unfamiliar concept, it would be desirable if a detailed road-map is first issued for public debate. This would help people to prepare for the new system.

## **Single or Dual GST**

While a national GST across the entire supply chain and across all States under Common Tax Administration would be an ideal situation to significantly enhance India's competitiveness through unified common market, an unified tax on goods and services administered by the Central Government and sharing the revenues with States may perhaps be not a viable proposition right now. For States may be reluctant to forego their powers of taxation and leave the entire authority to the Center.

Hence, to begin with, the Chamber would feel that a two-tier GST model – a Central GST and a State GST, should be adopted to replace the CENVAT and the State VAT respectively. A Draft GST bill needs to be readied soon and Constitutional amendment to empower States to tax services should be gone through quickly.

## **Taxability**

Internationally, GST is charged on supplies of goods or services, instead of on manufacture and sales. For the dual GST in India also it is felt that supply should be the taxable event.

On the services front, it is necessary to clarify that the Central and the State GST will not be levied on the same set of services and they will operate on a mutually exclusive tax bases.

## **Benefits**

1. Among many expected benefits of a single, low GST throughout the country, would be the economic unification of India through a common market and common price structure, ending unhealthy competition among States to attract industry through competitive tax reduction.
2. Introduction of GST would give a powerful stimulus to economy and reduce total incidence of various goods and services taxes from high level of 30% now to about 20%.
3. According to Dr. Kelkar, Chairman of the 13<sup>th</sup> Finance Commission the Goods and Services Tax, would benefit the economy by at least \$ 15 billion (about Rs.73,000 crore) per year as the effective tax rate is expected to drop significantly.

The Chamber therefore suggests that Government may start taking steps for eventual introduction of a single, unified GST for the entire country.

Subject to the above general observation, the Chamber would like to make the following specific suggestions as received from members :

## **SECTOR SPECIFIC PROPOSALS**

### **Mining**

#### **Export of Chrome Ore & Concentrates**

Chrome Ore & Chrome Concentrates are vital natural raw material required for production for value addition into Stainless Steel. Reserves of Chrome Ore in India are extremely small and need to be conserved for value addition within the country.

The Chamber understands that the Ministry of Steel has already recommended to the Ministry of Commerce to Phase-out export of chrome ore & chrome concentrates progressively by reducing the ceiling such that it leads to complete ban by 2009-10. This Policy will go a long way to promote development of ferro chrome and stainless steel industry in India & export of value added products from India and also enable the country conserve its fast depleting mineral resources. Impositions of Export Tax on Chrome ore and concentrates is also a step in this right direction.

**In the meantime, the Chamber suggests the following :**

**Increase the Export Tax on chrome ore and concentrates from the prevailing Rs. 3,000/- per ton to Rs. 6,000/- per ton with immediate effect.**

**Imposition of ceiling of 2,50,000 MT on export of Chrome Concentrates.**

**Reduction in ceiling on exports of Chrome Ore by 50% to eventually ban it from next year.**

#### **Export of Iron Ore**

India has large deposits of Iron Ore, mainly in the Eastern and Southern Regions. However, there are some issues faced in the utilization of these deposits, for example :-

- (i) A significant portion of the Iron Ore deposits can not be excavated due to reserve forests/wild life conservation /habitation.
- (ii) A large number of prospecting/ mining leases are involved in legal disputes and therefore remain unexploited.
- (iii) A large number of deposits have also been taken away by the public sector companies like NMDC & OMC Limited etc. who are

developing the deposits largely for their commercial interest rather than for promoting any value addition within the country.

- (iv) During the last 15 years a large number of Mega Steel Projects including those through FDI have been announced in different parts of Orissa & Jharkhand. For reasons whatsoever, none of these projects are coming up but the promoters are still trying to hold on the prospecting/mining continuing to recommend leases in favour of other companies falling in the same category.
- (v) A few very large and old companies hold mining leases over large areas having huge deposits, some of which have not been exploited for ever 50 to 70 years.

As a result of the above factors, the Government cannot allot several Iron Ore deposits for development of captive mines by companies who have actually progressed in development of their Steel Projects.

2. In the absence of timely allocation of captive Iron Ore mining leases to Steel Plants, they are left with no option but to source Iron Ore from merchant miners. However, during the last 3 years, due to lack of advance planning and haphazard procurement policy of the Chinese companies, the price of Iron Ore in the international market has soared. As a result, the Indian merchant mining companies prefer to export Iron Ore. Under the pretext of liberalized economic regime, the mining companies are demanding international price of Iron Ore even from the domestic Steel Industry.

If this approach was to be encouraged, the growth of Steel industry in India will suffer a tremendous setback and except a couple of very large deposits, no new entrepreneurs will be encouraged to set up steel industry in India. As a result, the Steel Ministry's vision for ramping up the production of steel in Indian economy would be slowed down as the much needed development of infrastructure in India can not be dependent on imported steel.

**Therefore, the Chamber feels that Government needs to take urgent action to regulate and taper down the export of Iron Ore in Order to:-**

- (i) **Promote value addition of the Indian natural resource (Iron Ore) within the country, leading to generation of direct and indirect employment.**
- (ii) **Conserve minerals for long term usage within the country and prevent illegal mining for short-term gains.**

- (iii) **Enhance industrial development for sustainable GDP Growth.**
- (iv) **Enhance revenue generation for the Govt. to be able to pursue all round development in the country.**

**3. In the circumstances, the Chamber suggests:-**

- (i) **All existing and upcoming integrated Steel Plants in India having a capacity of 0.5 million tpa and above should be granted captive Iron Ore mining lease after they have actually invested at least 25% of the committed capital physically on the ground.**
- (ii) **All steel Plants having captive mines and Steel Plant Capacity of 0.5 million tpa and above capacity should be obliged to set up their own Sinter Plant/Pellet Plant.**
- (iii) **Export in high grade Iron Ore Lumps (size above 10 mm) and “Fe” content of 60% and above should be discontinued immediately.**
- (iv) **Export of high grade Iron Ore Fines (size below 10mm) and “Fe” content of 60% above should be reduced progressively at a rate of 25-33% per annum compared to 2008-09 export volume.**
- (v) **In the meantime, increase the Levy/Export Tax on Iron Ore with Fe above 52% from NIL currently (having been 15% in mid 2008) to 25% *ad valorem* on FOB price for both Lumps and Fines.**

**The revenue so collected by the Government should be used for development of infrastructure in the Iron Ore mining areas and to improve the rail connectivity between the Iron Ore Mines and the upcoming Steel Plants in the Country.**

## **Food Processing**

India has a tremendous potential for development of food processing industry considering the fact that it has emerged as the world's largest producer of Milk, the second largest producer of Fruits and Vegetables, the largest producer of Spices, Groundnut and Rapeseed and the fourth largest producer of Wheat.

Despite all these advantages, India is nowhere on the world map in terms of

Food Processing when compared with other countries like Brazil, Philippines, Thailand and Malaysia which are processing 70 percent, 78 percent, 30 percent and 83 percent respectively, of their total Horticultural produce.

In fact, in India the position is reverse. In India, less than 2 per cent of the Fruits and Vegetables are processed in the country and a large percentage of the balance quantity is wasted or inefficiently used.

One of the reasons for the above is the High incidence of taxation for processed foods in India. High Incidence of taxation in processed agricultural products not only acts as a disincentive for investment in the sector but also adversely affects the competitiveness of the food products in the country. Though the primary agricultural commodities are mostly exempted, processed food commodities are subject to a Central Sales Tax of 2 %, and for majority of the processed foods, respective State Governments levy VAT @ 12.5 %. Apart from VAT other taxes such as Entry Tax, Octroi etc are also levied on the food products.

### **Removal of Excise Duty on Food Products :**

In the previous years Budget, Excise Duty on various food products has been made Nil providing the much needed impetus for the development of food processing industry in India. However, few items of food are still subject to Excise Duty such as :

Vegetable Saps and Extracts – Chapter 13.02

Vegetable Waxes – Chapter 15.21

Sugar Confectionery – Chapter 17.04

Cocoa and Cocoa Preparations – Chapter 18

Prepared foods obtained from the swelling or roasting of cereals – Chapter 19.04

Biscuits in excess of MRP of Rs. 100 per Kg – Chapter 19.05

Instant Coffee – Chapter 21.01

Mixed Condiments and Seasonings – Chapter 21.03

The revenue collection from the above food products would be very insignificant as compared to the total revenue collections of Excise Duty.

**It is therefore suggested that the Excise Duty on the above food products may be made Nil so that there is uniformity across the entire food industry which will help the organized food processing industry to achieve its objectives of generating rural employment, enable the farmers to get a fair price for their products, reduce wastages and to spread the benefits of economic growth to rural areas.**

### **Confectionery :**

Organised Confectionery Industry is the second largest category in the processed food industry with a turnover of nearly 1600 crores providing significant sustainable rural / semi urban employment. Confectionery is primarily targeted towards children. Confectionery is basically made out of Sugar, Milk and Milk Products, Glucose etc which are agricultural produce.

Sugar Boiled Confectionery in India is defined by rigid price points, predominantly 50 paise per unit. In the recent past, there has been a substantial increase in the input costs such as sugar, packaging costs, power, fuel etc coupled with manifold increase in the transportation costs. Levy of VAT at 12.5% on confectionery in most of the States (which was hitherto at 8%) coupled with high marketing and distribution costs involved in reaching the product to urban and rural child consumers in the remote markets has also resulted in causing enormous hardship on Indian Confectionery Manufacturers.

Due to rigidity in the price points, the increased costs cannot be passed on to the consumers. This is significantly impacting the sustainability of this category.

**The consumption of sugar for this sector is much larger than sugar consumed in other areas like carbonated beverages, Biscuits etc. Removal of Excise Duty is likely to boost consumption and therefore demand for sugar, as well as promoting healthy growth of the industry.**

**It is therefore requested that Sugar Confectionery upto and equal to MRP of Re 1/- falling under Chapter Heading 1704 90 20 / 1704 90 30 / 1704 90 90 / 1806 90 20 be exempted from payment of Excise Duty.**

### **Excise Duty on Packing Materials :**

Packaging Cost constitutes a large proportion of the cost of food products. Food Industry uses packing materials such as Printed Laminates, Pet Jars, Corrugated Cartons etc all of which currently attract 14% excise duty. In the recent past, due to uncertainties in the oil imports the input costs have increased tremendously resulting in increase in prices of the end packaging products mentioned above. Processed Food Industry is not in a position to pass on the additional cost burden to the consumers due to fixed price points.

**It is therefore suggested that the excise duty on Printed Laminates (falling under Chapter Heading 3920 / 3921 / 3922 / 3923 ), Pet Jars ( falling under Chapter Heading 3923 ), Corrugated Cartons ( falling under Chapter Heading 4819 ) which are used in Food Processing Industry may be reduced to 8%. A scheme similar to CT3 Certification may be introduced to avoid any possible of mis use of this facility.**

## Horticulture

Horticulture today accounts for about 28% of value added in the Agriculture sector and 52% of India's agri exports but takes up barely 9% of arable land. The government has rightly identified the National Horticulture Mission as a key driver of growth and value addition.

This sector is also characterised by high wastages – upto 30% in the case of certain fruits and vegetables. Large scale investments are required in cold chain infrastructure to minimise waste and improve farmer realisations.

Cold chain infrastructure is not confined to cold storages only, but extends to temperature handling across the value chain from farms to consumers. The cold chain thus includes Farm level pre-coolers, Small capacity chill cold storage Refrigerated trucks, Cold storages, Food processing plants, Refrigerated Display cabinets for retail shops and Deep freezers.

In order to encourage rapid investment and attract foreign direct investment towards minimising horticultural wastage and enhancing shelf-life, **it is recommended that customs duty rates on such equipment and their parts be pegged at 5% or below. Similarly, excise duty rates on cold chain equipment and parts need to be lowered to 5% or below to expand domestic manufacture, which is presently in its infancy.**

## PAPER

### Background

The per capita consumption of paper & paperboard in India is only 8 kgs compared to the world average of 55 kgs. With the spending of the Government increasing in Education Sector and with the growth of the economy the demand for paper & paperboard in the country is expected to be increased significantly. The paper & paperboard industry, unlike other industries, is highly capital intensive and typified by low rate of return on capital. But this is a core sector very essential to the overall development of the country. With the effective customs duty rates declining steadily (from 140% in 1990-91 to about 10% during 2007-2008) the domestic paper & paperboard industry is facing increasing competition from imports which is expected to increase further in the coming years.

The major constraints to growth of the Indian paper & paperboard sector are high production cost (raw material and energy account for over 60% of the cost of production) and shortage of raw material. The declining availability of bamboo and wood because of the shrinking forest cover, ecological concerns, and other

priority uses of forest based raw materials have forced the paper & paperboard industry to consider waste paper and agricultural residues, such as bagasse and rice/wheat straw, as alternative raw materials. Even these raw materials are not available in adequate quantities because of the poor recovery of waste paper and the seasonal shortages of bagasse and straw. The Indian industry remains highly dependant on imports of wood pulp.

Domestic industry is also plagued with under invoicing of imports and dumping from neighbouring countries. In the Budget 2007 the customs duty on finished paper/paperboard was brought down from 12.5% to 10% which is being exploited to the detriment of domestic industry.

### **Tax Related Proposals**

Increase of the customs duty for import of finished goods i.e., Paper/Paperboard to 12%).

New Mega Projects/ Substantial expansion in this strategic core sector (viz., paper/paperboard) involving investment of more than Rs.500 crores should be supported through tax holiday under Income Tax & Excise for a period of 5 years within a time band of 10 years from commencement of operations.

To enable assimilation of modern technologies, the customs duty on Plant and Machineries be pegged at 5% net for a period of 10 years.

Paper is power intensive and continuous process industry. Today, paper mills suffer due to high power cost and erratic/inadequate supply of coal. Bereft of 'core sector' status, industry is now unsure of getting un-interrupted supply of quality coal from collieries. On the other hand, price of imported coal is sky rocketing; in the past 30 months it has increased by 200%, from USD 40 per MT (C & F price) in February, 2006 to about USD 125 per MT in September, 08. Imported coal attracts 5% basic customs duty on the C & F value and in addition, 3% Education Cess is also levied on the duty. The effective duty works out to 5.15%. Therefore, our submission is to allow import of coal at Zero% duty to meeting impending shortage.

Today, technology stands out as the most critical factor in achieving sustained competitiveness and industry performance. Paper Industry is a signatory to the Government of India's Charter on Corporate Responsibility for Environmental Protection (CREP). The indigenous mills are consciously focusing on clean technologies which are cost effective with quality benefits. Mills are also endeavoring to brace up to assimilate global trend in the area of paper making which favors high-speed machines with new configuration for delivering large-scale productions for improved productivity and quality. But Indian Paper Industry being a traditional industry suffers from inadequate economy of scale and obsolescence of process technology. Import of capital goods required for

Environmental Up-gradation and CREP compliance should be considered at Zero percent customs duty.

Units in the paper/paperboard industry, invest large amounts in “Environmental Friendly Technologies” such as introduction of ECF or better (Elemental Chlorine Free) Pulp, should be encouraged and given support. This will align the domestic industry to international quality and promote preservation of the ecology.

### **Support required by way of the following:**

Duty free import of all the raw materials including chemicals that may be required for the manufacture of ECF or better pulp. Duty free import of capital goods used for manufacture of pulp. Exemption for the final product manufactured using ECF or better pulp from excise duty. Provide for higher income tax depreciation for the ECF or better pulp plants

### **Waste Paper imports**

Waste paper is a key input in the manufacture of recycled boards. Unfortunately, mobilization of waste paper in India is very low at 14% compared to 60% in developed countries. Therefore paper industries in India depend on import of waste paper for manufacture of paper/paperboards.

### **Recommendation**

The Government should permit duty free import of waste paper.

Normal rate of customs duty applicable for import of waste paper & paperboard is 10%. Notification no.21/2002 as amended from time to time, provides for levy of concessional rate of 5% customs duty for import of waste paper provided the importer fulfils the conditions specified in the notification viz., end use certification.

Import of mixed waste paper is allowed at concessional rate of duty (presently @ 5% subject to submission of end use certificate under notification 21/2002 dated 1.3.2002). Imported mixed waste paper contains certain non-fibre contraries like plastics, metal etc. The non-fibre contraries are necessarily required to be sorted out to enable usage of fibre in the paperboard making process. The process of sorting is integral to the manufacturing process in view of the fact that the non-fibre contraries present in the input raw material (viz., mixed waste paper) require sorting in order to prevent jamming of the pulp making plant. However, the Central Excise Department issues Show Cause Notices to assesses for denial of CENVAT credit alleging that the process of sorting is alien to the manufacturing process. This is causing financial hardship to the Industry and is also against the principles of avoidance of cascading effect of taxes. There are plethora of

decisions of various courts holding that the process of sorting etc are in or in relating to the manufacturing process and that the input materials need not be present in the final product.

## **Recommendations**

**Furnishing of end-use certificates should be dispensed with for the manufacturer importers.**

**The private records maintained by the assesseees (being relied upon by CEDA Audit Team), can be relied upon for verification of end use of imported waste paper.**

**Necessary instructions be issued clarifying that the processing of the input raw materials, like sorting of mixed waste paper etc to remove the contraries present therein, is in or in relation to the manufacturing process.**

## **Poly coated products covered under Central Excise Tariff No.4811.59.00**

Paper and paperboard, coated, impregnated or covered with plastics (falling under Tariff Item 4811.59.00) is basically paperboard/paper coated with a layer of Plastics on either one or both sides. This coating to the paperboard/paper imparts barrier properties and makes it suitable for manufacture of packaging/containers for foods and beverages. This type of board is bio-degradable, and a good substitute for plastics which do not match the hygiene and environmental standards of this type of paperboard/paper. Therefore, globally, the trend is to actively discourage the use of plastics and support its replacement with paper/paperboard material.

One of the major consumers of this type of paper/paperboard are the SSI/SME units engaged in the manufacture of paper cups for supply to Institutional consumers (such as Railways) and meeting the growing demand from FMCG and Household sectors who prefer such products for reasons stated above.

In the budget of 2008-09, the Government has reduced the Excise Duty across a large number of paper/paperboard Tariff Items (4802, 4804, 4805, 4807, 4808 and 4810) from 12% to 8%.

## **Recommendation**

**Reduction of excise duty be also extended to Chapter Item 4811.59.00, by reduction of excise duty from the present 14% to 8%, so that parity is achieved across the paper/paperboard classification and to encourage the domestic paper cup industry (largely SSI/SME Units) who are end users of**

**this board and therefore cannot avail the benefit of CENVAT.**

**Such a move will benefit the domestic units engaged in paper cup manufacturing, support environmental causes, become consumer friendly and align domestic consumption patterns with global trends.**

### **Items covered under Central Excise Tariff 4803 & 4818**

A similar issue is also faced by the domestic Toilet and Facial Tissue Industry falling under Tariff Item 4803. Here again, the effective rates of excise duty at 14% is much higher than that applicable for other Tariff Item 48 products. Considering that this segment has a potential for growth, as a hygiene and convenience product, for Indian consumers, is bio-degradable, etc, it warrants that here also the effective rate be brought to parity with other Chapter 48 rates to 8%.

The converted toilet and facial tissues falls under chapter 4818. Except for items falling under Central Excise Tariff 4818.50.00 (Articles of apparel and clothing accessories), for all other items MRP based levy is applicable under CTH 4818.

### **Recommendation**

**Considering the benefit mentioned above, and in line with the suggested reduction of excise duty levy for the base product from 14% to 8%, the abatement percentage also require enhancement from the present 38% to 50%.**

### **Products manufactured using unconventional raw materials**

Exemption Notification No. 6/2002 dated 1.3.2002 (G.E.52) Provides for “Nil” excise duty for the first clearances of 3500 tonnes of products manufactured using more than 75% by weight of pulp containing unconventional raw materials ie., other than bamboo, hard wood, soft woods, reeds or rags.

### **Recommendation**

**With a view to further encourage use of unconventional raw materials, the benefit of “Nil” rate of excise duty should be extended for clearances made any time during a financial year for all products manufactured using more than 50% by weight of pulp containing unconventional raw materials ie., other than bamboo, hard wood, soft woods, reeds or rags.**

## **Lifestyle & Retailing Business**

## **Background**

While India is rapidly emerging as a major hub for sourcing of textile and apparel globally, it needs to move up the 'Fibre to Fashion' value chain by creatively leveraging the country's rich design and textile heritage. This industry needs to be supported in view of the immense opportunities for employment generation and exports.

## **Tax Related Recommendations**

### **Central Excise**

#### **Chapter 50-63**

Notification no 30/2004 provides exemption from duties of central excise on textile products subject to the condition that CENVAT credit of duties paid on inputs or capital goods have not been availed. The benefit under this notification is being denied by field formations for imported articles citing the reason that non-availment of CENVAT credit is not capable of being verified.

#### **Recommendation**

**The notification may be amended suitably as follows -The line "Provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs has been taken under the provisions of the CENVAT Credit Rules, 2002" may be replaced with "Provided that nothing contained in this notification shall apply to the goods in respect of which credit of any duties paid in India on the inputs has been taken under the provisions of the CENVAT Credit Rules, 2002"**

#### **Chapter 61-62**

Tariff value has been fixed for readymade garments at 60% of the "Retail Sale Price" that is declared or required to be declared on the retail packages under the provisions of Standard of Weights & Measures Act or any other law for the time being in force.(notification no 20/2001). The objective for fixation of Tariff value under Customs Law and Excise Law are different.In respect of imported articles field formations are interpreting this in a manner similar to tariff value fixed under customs law or notification issued under section 4A of C.E. Act and seeking to levy additional duties of customs at assessable value determined at 60% of the retail sale price.

#### **Recommendation**

**Suitable explanation/clarification may be issued instructing that the**

**assessable value shall be determined as per Sec. 3(2) of the Customs Tariff Act, i.e. the aggregate of transaction value and basic customs duty.**

## **TEA**

North India accounts for about 75% of India's total tea production, of which the organized sector's contribution is around 80%. Indian Tea Industry had suffered from an unprecedented recession from 2000 to 2007. The year 2008, although enjoyed a reasonable buoyancy in the price realization front, tea producers could not reap its benefit owing to escalating costs of all the inputs, specially higher cost of employment resulting from steep revisions of wages etc.

In 2009, the entire tea growing areas of North India - Dooars & Terai in West Bengal, Brahmaputra Valley and Barak Valley in Assam are under the grip of a severe drought. For long five months, there has been practically no rainfall in these tea growing areas. The absence of rainfall has totally marred the first flush of tea, which is normally available in the months of March-April. The spectre of huge loss of crop is looming large on the tea producers in North India. In absence of rainfall, it warranted high-cost irrigation. Drought enhances pest build up in the tea plantations resulting further loss of crop. Red spider, looper caterpillar and red slug caterpillar have become active in varying degrees in the tea growing districts of West Bengal and Assam. The quality of tea is also being adversely affected. Consequently the tea prices are apprehended to remain under pressure in the days to come.

In the wake of global recession, India could not remain immuned to its adverse effects. Tea plantation industry so far has been protecting the livelihood of more than a million of workers, mostly women and tribal, while all the major industrial sectors have had to sacrifice for their survival, the employment of lakhs of their workers.

## **ISSUES**

### **1. North East Industrial and Investment Promotion Policy 2007**

The Union Government has granted a package of fiscal incentives and other concessions for the North East-Region under the NEIIP, 2007, which has become effective from 01.04.2007 in supersession of the earlier Scheme, the North-East Industrial Policy (NEIP) 1997.

Tea Industry in Assam has been a major beneficiary of the Capital Investment Subsidy and Interest Subsidy under the North East Promotion Policy.

## **A. Extension of NEIP 2007 to North Bengal**

In respect of backwardness, North Bengal can be favourably compared to North Eastern Region and therefore can justifiably deserve the similar incentives which are granted to the States of North East.

**The Chamber, therefore, suggests inclusion of North Bengal within the ambit of the North East Industrial & Investment Promotion Policy.**

## **B. Tea Industry to be made eligible for Transport Subsidy**

Under the NEIP 2007, the Transport Subsidy Scheme would continue beyond 31.3.2007 on the same terms and conditions. However, the Scheme which was originally introduced vide Notification No: 6/26/71-IC dated 23<sup>rd</sup> July, 1971, was extended vide different Notifications from time to time excluded tea plantations from being eligible for the Subsidy.

Tea Industry, alike the other industrial units in the NE regions, carries on manufacturing exercise in the form of processing green tea leaves and converting them into black tea with the aid of plant and machinery and various other inputs. The Industry incurs a large sum of money for inward carriage of various inputs from outside the State of Assam and at the same time for dispatching the finished goods i.e. tea to the Auction Centres at Siliguri and Kolkata in expectation of higher price realization. Moreover, owing to their remote location in the far flung areas with very poor road infrastructure, cost of transportation is much higher for the tea factories as compared to the other industries in the region.

**The Chamber feels that tea factories, by virtue of their operations, are well covered within the definition of 'Industrial Units' and in the back drop of the reasons cited hereinabove, should be made eligible for transport subsidy under the NEIP 2007.**

## **2. Incentive for Export of Tea to Russia**

In the year 2005-06 the Government of India announced a "Focus Market Scheme" wherein an incentive of 2.5% of F.O.B. value was provided as incentive to exporters if the export was made to the notified countries. During this year i.e. in 2007-08 a few CIS countries have been included in the list along with Latin American Countries and African countries but the

name of 'Russia' was not included in the eligibility list for getting this benefit.

**The Chamber suggests that those exporters who are exporting to Russia under the Government of India's Loan Repayment Scheme and not getting any incentive under the DEPB Scheme should also be made eligible under the "Focus Market Scheme".**

### **3. Financing for Plantations/Tea Industry**

#### **A. Enhancement of Agricultural Credit Limit**

Presently, a concessional rate of interest is being charged on agricultural loans upto a maximum limit of Rs. 2 Lacs only. Therefore, the organized sector of the Tea Industry cannot avail of the easy financing although the nature of activities both for the small growers and in the organized sector are identical and the only difference lies in the scale of operations. Moreover, with the rising cost of inputs, the existing limit of Rs. 2 Lacs is inadequate and too meagre a limit.

**In view of the above, the Chamber suggests upward revision of the limit for Agricultural Credit to a reasonable level to enable the organized sector of Tea Plantations to avail of low-cost financing.**

#### **B. Priority Sector Lending to Tea Industry**

Upto April 2007, 'tea' was considered under priority sector by banks and was eligible for concessional rate of interest on loans.

Now, Tea Industry has been removed from the list of the priority sector as a result of which rate of interest on loans has been increased substantially.

Considering the present position of the Tea Industry which is passing through hard days, increase in the rate of interest on loans leads to extra burden on them which will aggravate their hardship.

**The Chamber suggests that Tea Industry should again be brought within the ambit of Priority Sector.**

### **4. Waiver of damage under Employees Provident Fund Act**

In view of the continuing financial constraints, various units of Tea Industry were not able to deposit their Provident Fund dues in time and became defaulters.

Many of the tea companies became sick to the extent that their net worth was eroded in totality and are now going to be rehabilitated/revived either by the existing management or by new management. Those companies who are trying for revival are also agreeable to pay their Provident Fund dues along with interest u/s 7Q which is @ 12% p.a.

In addition to the above, Provident Fund Department is levying damages u/s 14B of the E.P.F. Act to the extent of 37% p.a.

Apart from Tea Industry all other industries for whom a Scheme of rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction are getting the waiver on account of damage u/s 14B but since Tea Industry is not covered under SICA it is not entitled for such concession.

**It is, therefore, suggested that a suitable amendment should be made so that the units of Tea Industry which have been rendered sick should also be eligible for waiver of damages as other companies enjoy.**

## **Tobacco Products**

For tobacco products the Chamber make the following suggestions:-

- 1. Retain the single-point Central, first-point specific excise duty structure on cigarettes.**
- 2. Introduce a new slab of excise duty @ Rs. 350/- per thousand sticks for filter cigarettes up to 60 mm in length. This will help combat the burgeoning illicit trade in this segment and bolster revenue from tobacco.**
- 3. Make licensing under the I(D&R) Act, 1951 compulsory for all Cigarette manufacture in the country, irrespective of the size and nature of the Units in which such manufacture is undertaken.**
- 4. Disallow cigarette manufacture in EOUs and SEZs.**
- 5. Keep cigarettes in the Negative List in all Trade Treaties, FTAs, etc.**

6. **Provide full duty exemption to cigarettes tested captively for quality purposes.**
7. **Keep cigarettes outside the ambit of GST proposed w.e.f. 01.04.2010 since it is likely that excise duty on cigarettes will continue even under the GST regime.**

If States wish to levy GST on cigarettes, it should be in lieu of all existing State and local levies like VAT, Entry Tax, Octroi, etc., and the rate of tax must not exceed the rate of VAT applicable on cigarettes currently. Moreover, all States must levy the tax at a uniform rate to avoid destabilisation in the market.

8. **Curb contraband cigarette trade to protect revenue collections. Suggested measures in this regard are as follows:**
  - a) Convert the ad-valorem Customs Duty to a 'specific' duty format.
  - b) Reinstate cigarette imports in the 'Restricted List' from the current positioning under OGL.
  - c) Ban cigarettes from Personal Baggage Allowance and Duty Free Trade.
9. Reduce the wide gap in rates of tax between cigarettes and other tobacco products.
10. Remove anomaly in rate of excise duty on cigarettes/bidis made with tobacco substitutes.
  - a) Match the excise duty slabs and rates for Cigarettes of tobacco substitutes to those on cigarettes containing tobacco.
  - b) Introduce a specific Tariff Heading for Bidis of tobacco substitutes with the same rate of duty as is applicable on 'Bidis – Other'.

These measures will also, effectively, stop the malpractice by some unscrupulous manufacturers of clearing products containing tobacco as products of tobacco substitute.

## INDIRECT TAXES

## **EXCISE DUTY**

### **Duty concession /Exemption on Waste Heat Recovery System (WHRS):**

In order to encourage generation of green power and also with a view to reduce GHG emission into the atmosphere, it is imperative that more emphasis is laid on generation of power through renewable and non-conventional sources. In pursuance of the above objective, the Cement Industry is in the process of undertaking an environment-friendly initiative by way of setting up Waste Heat Recovery System (WHRS) at the cement plants. Most of the waste hot flue gases generated from Boilers, Kilns and Furnaces are presently vented out the atmosphere. The WHRS will tap such hot gases and power would be generated after necessary treatment and processing in the boilers and turbines.

It is estimated that the Industry can generate 1000-1200 MW of power per annum through implementation of the WHRS. The system would result in several benefits to the industry such as:-

- a) Sufficient availability of power at the plants.
- b) Eco-Friendly power generation which will lead to reduction in pollution.
- c) Negligible transmission losses.
- d) Availability of CDM benefits.

The Ministry of New and Renewable Energy has given several incentives to producers of renewable energy, particularly in the field of Solar Power and Wind Power. In order to encourage the industry to go whole-heartedly for WHRS, suitable incentives in the form of duty concession/exemption need to be provided by the Government.

### **Recommendations :**

**The following duty concession/exemption may please be considered on the various plant and machineries and equipments required for installing WHRS:**

- \* **Full exemption from Customs Duty**
- \* **Full exemption from CVD**

- \* **Full exemption from SAD**
- \* **Full exemption from Excise Duty**
- \* **Full exemption from Service Tax incurred during the construction period of the project.**
- \* **Full exemption from the Central Sales Tax.**
- \* **State Government should be requested to give exemption /concession on VAT.**

## **Excise Exemption in North – Eastern States**

- a) The Government has granted excise exemption to new industries in North – Eastern States for 10 years. The relative notification for exemption requires industrial units first to pay duty from PLA and then to claim refund. This system creates blockage and delay in getting back refund besides creating political hassles. Considering this the Government has announced total exemption scheme to units in Himachal Pradesh & Uttarakhand etc.

**It is suggested that this scheme should also be applied to industries in North – Eastern States.**

- b) On 27<sup>th</sup> March 2008, Notification No. 17/2008-CE was issued amending the mother notification No. 32/99-CE dated 8.7.1999 restricting the quantum of refund of duty by fixing arbitrary rates of refund for various category of goods without having any consultation with the industry. In effect, the quantum of refund stood capped and reduced significantly to manufacturers in the North East.

Subsequently, based on various representations, a further amendment was made vide Notification No. 31/2008-CE dated 10.6.08, which, in substance, only provided a marginal relief by raising the eligibility limit for special rate from 25% to 15% and providing for refund based on value addition to be computed on annual basis.

The industry, as a consequence of the recent amendments is grappling with the issue of reduced refund. The amendments are discriminatory in nature when compared to those set up in the state of Uttarakhand and Himachal Pradesh. This discrimination has put the industry in North East in a serious competitive and cost disadvantage with a result that their manufacturing operations are now proving to be financially unviable. This would, in the near future, seriously affect the investment potential and employment opportunities in the North Eastern region thus defeating the policy on North East.

- c) Under rule of Central Excise rules, 2002, The Manufacturer exporting the goods to the countries other than Nepal and Bhutan is entitled to

grant of rebate of the whole of duty paid on the goods so exported subject to terms and conditions mentioned in the Notification no. 19/2004 C.E. (N.T.) dated 06.09.2004 as amended.

But this benefits has been withdrawn vide Notification no. 37/2007-C.E. (N.T.), dated 17.09.2007 by the government to the exporting manufacturer who is availing benefits of excise exemption under Notification no. 32/99 C.E., 33/99 C.E. both dated 08.07.1999. In view of competitive global market, the government should have encouraged exporters by giving them additional incentives instead of withdrawing the existing benefits. Therefore such withdrawal of benefits to the exporters in North East Regions is hindrance to the growth of export and industries.

**The following options are proposed, any of which if exercised would bring the much required relief to the manufacturers in the North East region :**

- i) Total withdrawal of Amending Notifications No. 17/2008-CE dated 27.3.2008 and 31/2008-CE dated 10.6.2008.
- ii) Provide for exemption scheme on par with that of Uttarakhand and Himachal Pradesh.
- iii) Provide option to manufacturers of North East to opt for refund scheme or exemption, as they may be convenient to them.
- iv) To withdraw the Notification no. 37/2007-C.E. (N.T.), dated 17.09.2007 and restore the rebate on duty paid on export of goods as earlier.

### **Duty under Medicinal & Toilet Preparations (Excise Duties) Act, 1955 (Rules, 1956)**

Cenvat credit on input material and services in Excise and VAT has been introduced in legislation to neutralize cascading effect of taxes and duties on manufactured goods. It is however to be noted that such a legal concept has not been provided for products manufactured under Medicinal and Toilet Preparation (Excise Duty) Act. Industries whose products are manufactured under the above Act are paying excise duty on input material and service tax on input services. There is no provision for set off of central excise duty paid on input material and service tax paid on input services against the payment of excise duty under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (Rules, 1956) on clearance of finished products.

Due to non-provision of Cenvat credit under the above Act, Cost of the products becomes higher in comparison with products manufactured under Central excise. Such Industries are unable to face Competition and survive in the market. These Industries are in disadvantageous position in comparison with others whose products are under Central excise regime.

**Government should therefore either allow Cenvat credit for central excise duty and service tax paid on input material and services used in the manufacturing of such excisable goods. Alternatively it should reduce the rate of excise duty payable under the above Act at least to fifty percent of present rate, so that industries under such Excise Act can face competition and survive in the market.**

### **Deemed Exports should be Exempted from Terminal Excise Duty**

Under the existing provisions, the Central Excise Duty is first paid to the Department of Revenue (Excise Range) and is then refunded by the Ministry of Commerce (Regional Licensing Authority). The procedure is cumbersome and of no advantage to the Government.

**It is therefore recommended that excise duty on deemed exports be exempted.**

### **Duty on Cement :**

- i) The earlier system of charging Excise Duty at specific rates may be re-introduced and the duty be fixed at reasonable and affordable rate.
- ii) Alternatively, if duty based on Retail Sale Price is to be continued, suitable abatement should be allowed so that the cascading effect of tax on trade margins and tax on tax can be avoided. It would be pertinent to mention here that such abatement is provided in respect of all the products where the levy is linked to Maximum Retail Price (MRP). Incidentally, we would like to point out that even the case of White Cement which attracts duty based on MRP, an abatement of 35% on MRP is allowed.
- iii) The Duty based on Retail Sale Price should be restricted to the suppliers in the trade/retail segment only. For the direct supplies made by the cement companies to the non-trade segment, such as Builders, Contractors, Industry, Government, Institutions, etc. specific rate of Excise Duty should be applicable. Alternatively, the present Excise Duty of Rs.230/- per Tonne or 8% of the assessable value, whichever is higher, as applicable to bulk supplies of cement may be applied to such sales. Though necessary clarification has

been issued by the Board vide its Notification Circular F No. 124/02/2008-6-3 dated 12.06.2008, it is suggested that necessary amendments should be made to the Standards of Weights & Measures (Packaged Commodities) Rules, 1977, so that all the disputes between the Industry and the Department on this issue may be put to rest.

### **Cenvat Credit on Capital Goods**

In terms of Rule 4(2) of the Cenvat Credit Rules, 2004 the credit of Cenvat in respect of capital goods has to be distributed over two years. In the year in which the capital goods are received in the factory credit equivalent to 50% of Cenvat can be availed. The balance 50% can be availed only during the next financial year. As a result of this a lot of time and effort is expended in tracking each capital goods in terms of year of entry, amount of credit available in each year, etc. Apart from the cost involved in such tracking, this also leads to errors and, consequently, long-drawn disputes/litigation with the Department.

**It is recommended that the Cenvat Credit Rules, 2004 be amended appropriately to enable credit of full Cenvat in respect of capital goods in the year of receipt in to the factory. This would be in line with the provisions on Cenvat credit in respect of inputs.**

### **Duty on Clearance of Waste generated**

Central Excise authorities insist on payment of excise duty on clearance of waste that arises during the course of manufacture in case the inputs are those on which cenvat credit has been availed by the assessee. The rationale for the duty demand seems to be that since cenvat credit has been availed on the inputs, clearance of waste arising out of usage of such inputs for manufacture are also liable to excise duty. As a result of the position taken by the Excise Authorities, mere generation of waste (e.g., paper scraps arising in the course of slitting paper bobbins, slag generated by usage of fuel oils, etc.) is being held to be 'manufacture' of a 'marketable product' and hence, dutiable.

The CBEC has already clarified that duty should not be demanded on waste packages / containers used for packaging cenvatable inputs when cleared from the factory of the assessee availing Cenvat credit. This clarification is based on the Hon'ble Supreme Court's judgment in M/s West Coast Industrial Gases Limited v. Commissioner of Central Excise.

There are instances where the Commissioner (Appeals) has set aside Orders of the Department demanding duty on clearances of waste generated during manufacture in respect of one particular Unit of an assessee, while, on an identical issue Show Cause Notices have been issued to sister Units of the same

assessee. It is submitted that clearance of scrap/waste generated by the use of cenvatable inputs in the manufacturing process is, conceptually, the same as clearance of waste packages and containers and should, therefore, be outside the scope of central excise levy.

**It is recommended that the provisions of the Central Excise statutes be amended to make clearance of scrap/waste arising out of the manufacture of finished / intermediate goods duty free.**

### **Cenvat Credit on Diesel**

In terms of Rule 2(k) of Cenvat Credit Rules, 2004 Light Diesel Oil and High Speed Diesel Oil are excluded from the definition of 'inputs' and hence, Cenvat Credit is not available in respect of duty paid on such LDO or HSD. Since most manufacturers use HSD regularly for captive power generation, non-availability of Cenvat Credit increases the cost of manufacture.

**In order to improve the cost competitiveness of Indian industry it is recommended that Cenvat Credit be allowed in respect of HSD used for captive generation of power by manufacturers of excisable goods.**

### **Transaction Value**

As per Rule 7 of the Central Excise Valuation Rules, 2000, duty is required to be discharged on the "normal transaction value" of such goods.

As per rule 2(b) "normal transaction value" means the transaction value at which the greatest aggregate quantity of goods are sold. The Board gave a clarification-dated 1.7.2002 on normal transaction value, as follows;

"the time period should be taken as the whole day and the transaction value of the "greatest aggregate quantity" would refer to the price at which the largest quantity of identical goods are sold on a particular day, irrespective of the number of buyers. In case the "normal transaction value" from the depot or other place is not ascertainable on the day identical goods are being removed from the factory/warehouse, the nearest day when clearances of the goods were affected from the depot or other place should be taken into consideration" (emphasis supplied).

### **Recommendation**

**It is worthwhile to examine adoption of transaction value as the basis for payment of duty only at the time of clearance from the Depots, as against**

**the present requirement of payment of duty at the time of clearance of goods from the factory.**

**It is not practically possible to apply normal transaction value on a daily basis. This is because the dispatches from the factory will have to wait till the end of the day to arrive at the normal transaction value based on that days dispatches from the Depots. This is causing considerable hardship in dispatch of goods from the factory to Depots. For a manufacturer who is having multiple depots, it is very difficult to comply with the above clarification of working out normal transaction value on a daily basis.**

### **Time limit for return of inputs or capital goods sent to job-workers**

Under the provisions of Rule 4(5)(a) of Cenvat Credit Rules, 2004, if the inputs or the capital goods (on which Cenvat Credit has been availed) are sent out of the factory premises for further processing, manufacture of intermediate goods necessary for manufacture of final products, etc., to a job-worker and are not returned within 180 days, the manufacturer has to pay an amount equal to CENVAT claimed on such inputs. The re-credit of such amount is allowed as and when the inputs / capital goods are returned.

It is submitted that return of capital goods from a job worker location with consequential disruption of manufacture at such location, merely to avail Cenvat Credit, is economically inefficient. Additionally, in the event of return of inputs / capital goods beyond 180 days due to reasons like strike / lockout / other disruptions at the job-workers premises also disentitles an assessee from availing the Cenvat Credit for reasons beyond his control.

**It is recommended that the jurisdictional authority be delegated the necessary powers to extend the time limit of 180 days for return of inputs from job worker for reasons beyond the control of the manufacturer, like strike/lockout at the premises of the job worker.**

**In respect of capital goods, it is recommended that the limit be extended for the duration of the contract with the job-worker based on which such capital goods are sent out.**

### **Inputs cleared 'As Such'**

Rule 3(5) of Cenvat Credit Rules, 2004 provides for payment of excise duty on inputs / capital goods equal to the credit availed on them in case they are cleared from the factory 'as such'. In order to comply with this provision, the manufacturer has to keep track of inputs, the rate of duty at the time of their entry into the factory and the value at which they were purchased – until such time that the inputs are in stock. Since maintenance of such voluminous data over long

periods is prone to human error, very often there are objections by Departmental officers, particularly Audit, and consequent litigation.

**It is recommended that Central Excise statutes be amended to allow removal of inputs 'as such' on payment of excise duty at the rate prevailing on the date of removal and the value for purpose of duty determination be the Weighted Average Cost of the inputs as on that date (as per the assessee's books of accounts).**

### **Transfer of inputs/intermediate products to other Units for captive consumption**

In an integrated pulp and paper mill the pulp manufactured gets captively consumed for manufacture of final product viz., paper/paperboards. At times the pulp manufactured at one Unit gets transferred to other Units for captive consumption depending on need.

Since pulp is not a dutiable final product, in terms of the provisions contained in Rule 6 of the Cenvat Credit Rules, for transfer of pulp to other Unit for captive consumption the assessee has to forgo Cenvat Credit attributable to the manufacture of such pulp or pay an amount equal to 10% of the value of such exempted goods at the time of clearance. This is adding to the cost of manufacture of final products, due to cascading effect of taxes, which is against the principles of the Cenvat Scheme.

However, the **Large Tax paying Units**, by virtue of the provisions contained in Central Excise/Cenvat Credit Rules as detailed below, are permitted to remove input materials or excisable goods, without reversal of Cenvat Credit or payment of excise duty, as the case may be, from one unit to other unit for use in further manufacture of dutiable final products.

**New Rule 12A was inserted in the Cenvat Credit Rules with effect from 30.9.2006 to facilitate removal of inputs without payment of amount specified in Rule 3(5) of the Cenvat Credit Rules, from any of the assessee's registered premises (sending premises) to his other registered premises for further use in the manufacture or production of final products in the recipient premises subject to the condition that the final products are manufactured or produced using the said inputs and cleared on payment of appropriate duties of excise leviable thereon within a period of six months, from the date of receipt of the inputs in the recipient premises.**

**New Rule 12 BB was inserted in the Central Excise Rules, 2002 with effect from 30.9.2006 to facilitate removal of excisable goods by Large Tax Payers without payment of excise duty from one registered premises to other registered premises, for further use in the manufacture or production of**

**excisable goods within a period of six months from the date of receipt of the intermediate goods in the recipient premises.**

### **Recommendation**

**The facility extended to the Large Tax Payers should be extended to other Large Tax Payers (remitting excise duty of more than Rs.10 crores per year) for removal of input/intermediate products (which may or may not be excisable) from one excise registered Unit of the Assessee to other excise registered Unit for captive consumption through necessary amendments, to the Central Excise Rules & Cenvat Credit Rules.**

### **Excise Duty on Cigarettes used captively for testing**

As per prevalent practice in the cigarette industry, captive testing of small quantities (ranging from 0.15% to 0.25% of total manufacture) of loose as well as packed cigarettes is carried out to ensure quality of the product. The tests involved include machine tests and testing through actual smoking. While there was never any dispute on the dutiability of cigarettes tested by means of actual smoking, the industry had always maintained that cigarettes tested captively by machines were not exigible to duty. The CESTAT also confirmed this view. However, in 2002-03 the Supreme Court held that even cigarettes tested captively in machines would be exigible to duty, provided the same are not destroyed during the process of testing. Pursuant to this judgment of the Supreme Court, innumerable disputes have arisen with the Department on what machine tests are destructive, whether such tests are essential, etc. Further, costs have also increased by way of duty paid on cigarettes used in non-destructive quality tests.

In order to avoid unnecessary litigation with the Department in this regard and considering the fact that these tests are conducted to ensure availability of a quality product for the consumer, it is recommended that the Central Excise laws be amended to render cigarettes used in captive, machine based quality testing duty-free. While the revenue impact will be insignificant, such an amendment will go a long way in removing pinpricks in operations and needless litigation. In the event any misuse of this facility is apprehended, a limit up to which such cigarettes remain duty-free could be incorporated in the provisions. For example, it could be provided that cigarettes used in captive, machine based quality testing will be exempt from excise duty up to 0.25% of the total production of that specific brand of cigarettes during the month or up to the actual quantum of cigarettes tested, whichever lower.

**Recommended that Excise laws be amended to provide full exemption from excise duty to cigarettes tested captively for quality purposes, subject to conditions stated above.**

## **Time Limit for Disposing off Applications for Destruction of Goods post RG1 Stage**

Occasionally, some inherent damage or manufacturing defect, rendering the goods unfit for consumption or marketing, are detected after the recording of manufacture in the RG1 (i.e., after recognising manufacture of a finished good exigible to excise duty). Under Rule 21 of the Central Excise Rules, 2002, destruction of such goods, on remission of excise duty, can only be done after obtaining permission from the jurisdictional Commissioner of Central Excise. The excise authorities normally give permission after getting the damaged/defective goods tested at notified laboratories to satisfy themselves on the condition of the goods. On many occasions, the authorities keep such applications pending for a long time, at times up to 5 years. Till such time the destruction is allowed by the authorities, the stocks of damaged/defective goods have to be stored by the assessee. This is not only hazardous in many cases (e.g., contaminated food products, infested tobacco products, etc.) but also economically inefficient since these goods block up valuable storage space.

As per CBEC's Excise Manual of Supplementary Instructions, in the normal course the Department should accept the assessee's views that the goods are rendered unfit for consumption or marketing and accord permission within a period of 21 days or earlier, if possible. Where samples are drawn, such permission should be accorded within 45 days. These instructions are, unfortunately, not adhered to in most of the cases.

**It is recommended that the provisions of Central Excise statutes be amended to bring in a time limit (say, 45 days) within which applications for remission of duty and destruction of goods are disposed off. Additionally, to hasten the process, assessees be allowed to get the goods tested (on the basis of samples collected and sealed by excise authorities) at any of the notified laboratories.**

## **Pre-Authentication of Invoices**

The Central Board of Excise and Customs had given a relaxation vide letter No.F.No.354/62/97-TRU dated 5<sup>th</sup> June, 1998 from pre-authentication of the invoices, to assessees having units which pay excise duty of Rs. 5 crore and above from PLA in a financial year. Simultaneously, Commissionerates had issued Trade Notices exempting such assessees from the requirement of intimation of serial number of invoices.

These were, however, withdrawn by insertion of Rule 11(5) and 11(6) in the Central Excise Rules, 2002. In cases of assessees having numerous invoices generated daily for clearance of goods, pre-authentication of each blank invoice

is a voluminous and time consuming exercise which adds no value, particularly since most of these assesseees have computerised invoicing systems that have been put in place after obtaining due permission from jurisdictional excise authorities. Likewise, intimation of invoice serial numbers also does not provide any real control over the movement of the goods. For purposes of crosschecking, the invoices can always be linked back to the RG1 where all details of clearances are recorded.

**It is recommended that the erstwhile provisions whereby the requirement of pre-authentication by authorised signatory and prior intimation of serial numbers of the invoices by assesseees paying duty in excess of Rs. 5 crore p.a. was relaxed, be reinstated.**

### **Amendment of the provisions related to Unjust Enrichment**

Section 11B of the Central Excise Act, 1944 provides for diversion of refund of excess excise duty paid by an assessee to the Consumer Welfare Fund in order to avoid unjust enrichment. This holds true even in cases where the excess duty has been paid erroneously or has been appropriated by the Department through coercive demands.

No doubt, the Hon'ble Supreme Court of India, in the case of Mafatlal Industries, has upheld the constitutional validity of the principle of unjust enrichment. However, the law as it stands today is draconian because the assesseees right to appeal has been rendered illusory since the Department invariably denies the return of pre-deposit / refund of duty on grounds of unjust enrichment – even in cases where the excess duty has been paid by mistake or under coercion. In view of the inequitable consequences of Section 11B, there is a strong case for its modification.

**It is recommended that Section 11B be amended to provide relief to assesseees in cases of erroneous collection of duty and further, not be made applicable to duty paid on captive consumption, return of pre-deposits made in the course of litigation and excess duty paid under provisional assessments, as determined at the time of finalisation.**

### **Power to Grant or Take away Exemption Retrospectively**

Sub-Section 2A of Section 5A of the Central Excise Act, empowers the Executive to clarify the applicability of a Notification by inserting an 'Explanation' in the Notification within one year of its issue and provides that such explanation shall have effect from the date of the original Notification.

The power to issue explanations beneficial to the assessee, with prospective effect, already exists per sub-section 1 of Sec. 5A. However, sub-section 2A

provides for retrospective effect of a Notification, merely by insertion of an 'Explanation' subsequently. To the extent such 'Explanations' are to the detriment of assessee, such a provision is unjustified and inequitable since it causes undue hardship.

**It is recommended that Section 5A be amended appropriately to prevent retrospective effect of changes in Notifications in case these are detrimental to the assessee.**

### **Pre-Deposit Requirement for Appeals**

Currently, the quasi-judicial process under the Central Excise law empowers Departmental officers to adjudicate assessments and appeals. Section 35F empowers Commissioner (Appeals) or the Appellate Tribunal to deal with the applications filed for dispensing with the deposit of duty demanded or penalty levied. The appellate authority uses this power with discretion, resulting often in undue hardship to the assessee.

Considering the Department's stated commitment to increase tax compliance voluntarily through objectivity, transparency and judiciousness, at least the first Appellate Authority should be free from constraints of the Department and, therefore, be from a Department other than Finance, ideally, belonging to the Ministry of Law and Justice. Since this may not be possible in the immediate future, at least the requirement for pre-deposit of duty and penalty arising out of Order-in-Original and the first Order-in-Appeal should be done away with or, at the very least, be restricted to a reasonable quantum, say, 5% of the disputed tax.

**It is recommended that the Central Excise statutes be amended to remove the requirement of pre-deposit of disputed duties, or, restrict it to not more than 5% of disputed taxes only. Further, the statutes are amended such that appellate authorities are not drawn from the Department.**

### **ARE 1 – Simplification**

For removal of goods from the factory for exports the manufacturer exporters are required to raise one ARE1 each day. When there are bulk orders and the cargo is moved from the factory to the premises of the CFS over a period of time (ie., rather than on a single day) multiple ARE1 gets raised for export to be made to a single customer.

**Large manufacturer exporters should be permitted to raise one single ARE1 for all the clearances made (ie., for the aggregate quantity of clearances made over say a week) for export of cargo to a single customer.**

**This would reduce the number of ARE1s being raised for clearances from the factory for a single customer order.**

**Also the process of submission of proof of exports should get simplified in view of the fact that the process of obtaining endorsements of the ARE1s post the exports is a highly time consuming process. The data relating to proof of exports should automatically flow between the customs and central excise department without the need for the exporters to get involved in the process.**

This would help the exporters and would also result in avoidance of demands being made from the exporters for non-submission of proof of exports for no fault of the assesseees.

### **Excise Duty on Jute Felt:**

All the Jute Goods are either chargeable to Nil rate of duty Tariff or wholly exempted from Excise duty vide Notification No. 30/2004-CE dated 09.07.04 as amended except the Jute Felt ( TH 56029000). Jute Felt may also be made exempt wholly from Excise Duty like all other jute goods by amending the said Notification.

### **Cenvat Credit for Welding Electrodes, Iron & Steel and Gases :**

Cenvat Credit of Excise Duty and Service Tax should be allowed on goods and services being used within the factory premises of manufacturers, directly or indirectly in the manufacture of final goods, without any restriction/condition. Central Excise Department is regularly denying the Cenvat Credit of Excise Duty paid on welding electrodes, Iron and Steel used in repair and maintenance of existing plant and machinery, oxygen, nitrogen gases etc.

### **Exemption of Duty on inputs used in a Jute Mill:**

Machinery, mechanical appliances and the parts thereof which are required by a Jute Mill for making jute textiles are wholly exempt from duty vide Notification No. 6/2006-CE dated 01.03.06. Such benefits is not available in case of inputs used by Jute mill for manufacture of jute goods. The jute goods are either chargeable to NTL rate of duty or wholly exempt from duty provided no Cenvat Credit on inputs are availed vide Note No. 30/2004-CE dated 09.07.04. The Jute Industry is availing the benefit of the said exemption Notification and not paying duty on their final products, i.e. jute goods, while no Cenvat Credit on inputs is being availed by them.

**It is therefore suggested that suitable notification allowing full duty exemption to the inputs which are used by a jute mill for manufacturing jute goods is also issued by the Government in line with the aforesaid Notification dated 01.03.06 which allows Cenvat Credit in respect of specified Capital goods.**

### **MRP Assessment for Ayurvedic Medicines**

The Government has specified drugs and medicines falling under chapter heading 3003.10, 3003.20 under section 4A but they have left out ayurvedic medicines covered under 3003.30.

**It is suggested that ayurvedic medicines falling under new sub heading 3004 90 11 to 15 should also be covered under Section 4A.**

This will avoid many problems of valuation and government will gain higher revenue.

### **Education Cess**

Education Cess is to be paid by units enjoying exemption also. Education Cess is payable at the rate of 2% and higher/secondary education cess is payable at the rate of 1% on excise duty . When excise duty is exempted education cess will automatically be exempted. Finance Act 2004 has specifically stated that provisions of exemption and refund applicable to excise shall also be applicable to education cess. The CESTAT have also confirmed refund of Education Cess in respect of Units located in Excise exempted areas of Jammu, etc. But in the absence of necessary clarification, industrial units exempt from paying excise duty in North – Eastern States have still to pay education cess and higher/secondary education cess.

**So necessary clarification should be issued so as such Units get refund of education cess. Huge amount of education cess remains refundable causing working capital constraints.**

## **CUSTOMS DUTY**

### **Import of capital goods under EPCG Scheme**

As per the EXIM policy import of Capital Goods is permitted at a concessional rate of duty of 3% (as against the normal duty of 7.5% for capital goods) subject to the importer undertaking to commit an export obligation of 8 times of the duty saved over a period of 8 years. For the purpose of the duty savings, in addition to the differential customs duty the CVD and SAD are also being taken into account.

For normal import of capital goods other than under EPCG, the importer can avail the benefit of CENVAT credit for the CVD/SAD paid on such imports.

### **Recommendation**

**In case of EPCG imports the manufacturer importers, who are already having operations and are availing the benefit of EPCG benefit for expansion may be permitted to pay the applicable CVD/SAD (which are eligible for Cenvat credit) and consequently for the purpose of computation of duty savings only the difference between the customs duty rate may be taken into consideration. This would result in export commitment only to the extent of differential customs duty, which in effect is the actual savings.**

### **Chapters 51 to 62**

Textile goods are required to be accompanied by a certificate from a laboratory accredited by the government of the exporting country confirming that the goods are free from Azo dyes and other harmful chemicals. If goods are not accompanied by such certificate, they are subjected to mandatory testing as required by public notice no 12 (RE-2001)/1997-2002 to ensure that the products imported are free from Azo dyes and other harmful chemicals. This leads to delay in clearances and resultant additional costs. Internationally, Institute of the International Association for Research and Testing in the Field of Textile Ecology accredits mills after carrying out certain controls to ensure that they do not use prohibited dyes/chemicals. Once accredited, the certification remains valid for a specific period and a specific group of products. It is an internationally accepted practice to accept the accreditations and not insist for consignment wise testing.

## **Recommendation**

**It is recommended that the international practice of accepting the accreditation certificate issued by Institute of the International Association for Research and Testing in the Field of Textile Ecology be followed.**

## **Duty on Import of Iron Products**

The Chamber suggests imposition of 15% import duty on pig iron; semi finished, flat and long steel products. Moreover, a 14% Countervailing Duty needs to be re imposed on such products immediately. Further, imposition of import duty of 25% is also requested for on steel scrap and melting scrap. The Chamber also requests for the imposition of either import duty on LAM Coke@ 15 to 25% ad valorem or ban the import of this item.

## **Duty on Cement Import**

On the perception of shortage of cement during the year 2007-08 the Government reduced Import Duty on cement to Zero and also abolished CVD and SAD to encourage imports, so as to increase the availability to Cement in the Country. Further, the Industry is also paying all taxes and duties applicable on its inputs like any other industry. With this inverted duty structure, the Industry is facing severe unhealthy competition from the imported goods which would in the long run make in domestic manufactures unviable. Further, Indian Cement Industry is implementing substantial capacity expansion and it is expected that the availability of cement in the country is likely to go up considerably from 2009 onwards.

**In order to encourage the industry to go ahead with the expansion drive and also for the healthy existence of the industry. It is requested that the basic Custom Duty, CVD and SAD should be reimposed on the import of cement for providing a level playing field.**

## **Exemption from Special C V Duty on Raw Jute:**

The Government vide TRU's letter dated 28.02.2006 has clarified that 4% Special CVD would not be applicable on goods exempt from VAT. Although the Raw Jute is exempt from VAT (vide Sl. No. 30 of Schedule A to the WB VAT Act, 2003) but the same has not been exempted from the Special CVD of 4% vide Notification No. 20/2006-Cess dated 01.03.2006.

**Therefore, Raw Jute should be included in the list of the items in the said Notification No. 20/2006-CUS dated 01.03.2006 for allowing exemption from Special CVD.**

## **Continuation of Customs Duty on Specified Tea machinery at concessional rate**

The Central Government, following representation by the Industry, reduced the Customs Duty to 5% for certain specified tea machinery vide Notification No: 175 and 176/ 2003 –Customs, both dated 10.12.2003 initially for a period of one year but subsequently extended the benefit on a yearly basis. The last extension was made vide Notification No: 20/2007-Customs dated 1<sup>st</sup> March 2007 and the duty concession remains valid till 30<sup>th</sup> April 2009.

**In order to upgrade quality, increase productivity and for value addition, the Chamber suggests continuation of the Import duty concession on the specified tea machinery for at least another three years.**

### **Inputs for Tea Bags:**

Use of Tea Bags has become quite popular among the tea consumers which help in increasing domestic consumption of tea. Tea producers as well as the marketers are gradually turning to tea bag manufacturing for value addition. However, most of the major inputs for tea bag manufacturing e.g. filter paper, kraft paper etc. are required to be imported since these items with requisite quality specifications are not manufactured domestically.

The inputs as mentioned below with their respective customs tariff item, attract high import duty :

- (i) Filter paper falling under tariff item 4823.20
- (ii) Nylon Cloth for Tea Bags falling under tariff item 5911.90
- (iii) Multi-Wall Paper Sacks falling under tariff item 4819.40
- (iv) Kraft Paper falling under tariff item 4810.39
- (v) Tissue Paper falling under tariff heading 48.02

**The Chamber suggests for full exemption from Customs Duty on the items mentioned above.**

## **SERVICE TAX**

### **Cascading of Service Tax for Brand Owners when Manufacture is by Job-Workers**

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 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 Brand Owner instead of the job-worker, the benefit of service tax credit is not available. This is due to the fact that the Brand Owner 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 Brand Owner employing job-workers exclusively is discriminated against Brand Owners 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, i.e., the Brand Owner.

Accordingly, the provisions of the Cenvat Credit Rules, 2004 creates 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.

**The Chamber suggests that the Cenvat Credit Rules be amended to provide a mechanism that enables 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.**

### **Deduction of goods and reimbursements from the value of service**

Under the Service Tax (Determination of Value) Rules, 2006 the taxable value of a service is to be computed inclusive of cost of any reimbursements made to the service provider. The only exception is in respect of reimbursements made to a pure agent. Prior to these Rules, cost of reimbursements could be deducted while computing the value of taxable services provided the invoice showed value of such reimbursements was shown separately on the invoice.

Consider a case where a consultant has been appointed and he, in turn, uses the services of a lawyer in connection with providing the consultancy service to his client. Under the Valuation Rules the value of the taxable service provided to the client by the consultant is inclusive of the charges paid by the consultant to the lawyer as legal fees. Accordingly, service tax is payable by the client even on the legal fees incurred by the consultant though, in terms of Service Tax laws legal fees are outside the scope of service tax.

**It is recommended that the Service Tax laws be amended such that cost of reimbursements in connection with input services are allowed to be deducted while computing value of taxable services.**

### **Credit for Input in case of composition scheme followed by the works contractor**

Rule 3(2) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 provides that the provider of taxable service opting to pay service tax under the composition scheme is not entitled to take CENVAT credit of duty on inputs, used in or in relation to the said works contract, under the provisions of the CENVAT Credit Rules, 2004.

There is no restriction under notification No.32/2007-Service Tax dated 22.05.07 to take CENVAT credit of duty paid on capital goods and/or service tax paid on input services.

**It is recommended that the laws be amended appropriately to allow cenvat credit in respect of inputs to works contractors who have opted for the composition scheme.**

## **Service Tax Credit for exports :**

In terms of service tax notifications 41/2007 dated 6.10.2007, 42/2007 dated 29.11.2007, 3/2008 dated 19.2.2008 & 17/2008 dated 1.4.2008 the exporters are required to obtain refund of the service tax paid in connection with exports by submitting refund applications to the Jurisdictional Assistant Commissioners once every quarter. This is a very time consuming task and increases paper work. This is a retrograde step as in the case of manufacturer assesses and who are having large domestic sales in addition to export sales, they can utilize such credits for payment of excise duty for domestic clearances.

### **Recommendation**

**The manufacturer exporters should be allowed to take credit of the service tax paid in connection with exports (like CENVAT credit) rather than applying for refund of service tax credit relating to exports like in the case of input service tax credits. This would be a revenue neutral measure and reduce the burden of paper work both for the assesses and the department.**

## **Service Tax on rentals paid for immovable property**

Service tax has been levied on rentals paid for immovable property occupied by retailers' w.e.f. June 2007. Leasing or licensing amounts to transfer of rights in an immovable property and is subject to levy of stamp duty as applicable. There is no service rendered in transfer of rights in an immovable property. Besides, the retailers who pay the State VAT on sale of goods have no output service tax liability which can be set off against the service tax paid by them. This has a cascading effect on product cost.

### **Recommendation**

**The levy of service tax on rental of immovable property may be withdrawn.**

## **Abolition of Double Taxation on Sale of Licensed Software (VAT and Service Tax)**

With effect from May 16, 2008, "IT Software Services" have been included as a taxable service vide Section 65(105)(zzzzz) of the Finance Act. The taxable service is defined as:

“any service provided or to be provided to any person in relation to information technology software for use in the course, or furtherance, of business or commerce, including, -

- (i) acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products.
- (ii) acquiring the right to use information technology software supplied electronically.”

Hence, where the right to use the IT software is granted the same is held to be exigible to Service Tax.

However the Supreme Court in Tata Consultancy Services v State of Andhra Pradesh (2004-TIOL-87-SC-CT) held that software is “goods”. Further, it was held that: “A 'goods' may be a tangible property or an intangible one. It would become goods provided it has the attributes thereof having regard to (a) its utility; (b) capable of being bought and sold; and (c) capable of transmitted, transferred, delivered, stored and possessed. If a software whether customized or non-customized satisfies these attributes, the same would be goods.”

Since software supplied electronically constitutes goods, the “right to use software” is exigible to VAT due to the fact that as per the 46<sup>th</sup> amendment of the Constitution the definition of “sale” in the respective State VAT legislations includes “right to use” also.

In view of the above, sale of licensed software is subjected to double taxation with effect from 16<sup>th</sup> May 2008 - once as a taxable service and the second time as ‘goods’. This is in spite of the fact that the principle that the levy of service tax and VAT are mutually exclusive was upheld by the Supreme Court in the case of Bharat Sanchar Nigam Limited v Union of India (2006-TIOL-15-SC-CT-LB) and Imagic Creative Private Ltd. Commissioner of Commercial Taxes (2008-TIOL-04-SC-VAT).

**Thus, it is recommended that clarifications be provided forthwith to ensure that sale of licensed software is taxed only once – either as a taxable service or under VAT.**

## **Ambiguities in service tax - whether customised software is a product or service**

Currently there is a lack of clarity on whether packaged software is a product or a service, and whether it is subject to value added tax (VAT) or service tax. Many companies are seriously impacted by the ambiguity over applicability of VAT and service tax, as the laws seem to suggest that the vendor products can be categorised both as products and services. Consequently, the cost table rises besides the implication on avilment of input service tax credit.

**There is a need to resolve this ambiguity until the system moves on to a uniform goods and services tax (GST) in 2010.**

## **Service Tax Credit for Conglomerates**

Currently the credit for service tax on input services can be utilized only if there is a direct correlation between such input services received and output goods or services. In case of conglomerate companies, there are many input services which are received in respect of businesses (especially those relating agriculture) which are not associated with output of any taxable goods or services. Due to the requirement of correlation , service tax paid on such input services is cannot be utilized and therefore adds to the cost table.

**It is recommended that input service tax paid on such input services be allowed to be utilized against excise / service tax payable on any other taxable outputs (goods or services) produced / rendered by other businesses of the company.**

## **Credit of Service Tax paid on input services up to Green Leaf threshing:**

Presently service tax is levied on 107 different services including that of Goods Transport Agency. As Leaf Tobacco is an excise exempt product, credit of service tax paid is not available on the various input services that are availed from the point of purchase of Leaf Tobacco at auction platform till the time they are threshed in the Green Leaf threshing plant. As a result, there is a heavy burden of service tax on exports, which is making the Indian Leaf Tobacco Exports uncompetitive.

**Hence it is suggested that credit of service tax paid on the various input services availed between the time the Leaf Tobacco is purchased in auction platform to the time it is threshed in Green Leaf threshing plant must be made available to the extent of exports even though the end-product is an excise-exempted commodity and such credits must be made**

**freely transferable to be set-off against other excisable commodities. If there are no other excisable commodities such unavailed credits must be refunded in cash.**

### **Decrease the rate of Service Tax from 12% to 10% :**

Credit of service tax paid on all services availed upto processing of Tobacco cannot be availed, as the final product unmanufactured tobacco is exempt from Excise Duty. Therefore, any increase in Service Tax will be an additional burden on the Exporter.

### **Service tax paid on imported services:**

Though there was an attempt to tax the imported services through certain clarifications given under circulars, for the first time such services were clearly brought into the Service Tax Net by inserting an explanation to Section 65(105) of Finance Act, 1994 through Finance Act, 2005, w.e.f. 16.06.2005, which reads as under:

“Explanation.- For the removal of doubts, it is hereby declared that where any service provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided, or has his permanent address or usual place of residence, in a country other than India and such service is received or to be received by a person who has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India, such service shall be deemed to be taxable service for the purpose of this clause;”

The aforesaid Explanation was omitted through Finance Act, 2006, w.e.f. 01.05.2006 and a new provision, Section 66 A was inserted, which reads as follows:

Section 66A Charge of service tax on services received from outside India  
(1) Where any service specified in clause (105) of section 65 is, —

- (a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and
- (b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall, for the purposes of this section, be taxable service, and such taxable

service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply :

**Provided** that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply:

**Provided** further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.

- (2) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

**Explanation 1.** — A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

**Explanation 2.** — Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.

**Post the insertion of Section 66A, necessary amendment is not carried out in Rule 3(1) (ix) of the CENVAT Credit Rules making the service tax levied under the said section also as an eligible amount for credit under Rule 3.**

Here, it would be relevant to quote paragraph no.4.2.13 of the letter of the TRU dt.19.04.2006 vide F.No.B1/4/2006-TRU, which reads as follows (it still holds field, independent of the Master Circular):-

4.2.13 The treatment of the recipient of service, as the deemed service provider under section 66A is only for the purpose of charging service tax on taxable services received from outside the country. Services provided from outside India and received in India, therefore, not treated as taxable service provided by the recipient for the purpose of CENVAT Credit Rules, 2004. However, where such service is used as an input for providing any taxable output, the service tax paid on such service can be taken as input credit.

## **Recommendation**

**Retrospective amendment should be carried out to Rule 3(1) (ix) of CENVAT Credit Rules, 2004 with a view to enable the utilization of input service tax paid on imported services. This would set to rest needless litigation in this regard and avoid issuance of show cause notices for denial of credit.**

## **Service Rendered Outside India**

Hotels are required to pay Service Tax on services received outside the territory of India, especially commission paid to Foreign Travel Agents. Hotel industry is one of the prime foreign exchange earners and is recognized as a service export industry.

**It is therefore recommended that hotel should be exempted from paying service tax on services received from Foreign Tour Operators.**

## **Service Tax on Food & Beverage**

Under the existing provisions, Banquet (outdoor as well as indoor catering) Guests are charged both the Service Tax on Food & Beverage and VAT. This amounts to double taxation for the guests.

**It is therefore recommended that only VAT be charged on Food & Beverage and provision regarding Service Tax in Banquet Catering be deleted.**

## **Liability for Service Tax**

As per Service Tax laws, it is the liability of the service provider to pay service tax after receiving the same from the service receiver. Some times the Service Receiver refuses to pay the Service Tax to the Service Provider, ultimately the Service Provider has to bear the burden, which is not the intention / spirit of the Law.

**In view of the above there should specific provision in the statute so that the Service Receiver is under statutory obligation to pay service tax to the Service Provider.**

## **Service Tax on outward Freight :**

The Clause (1) (ii) of Rule 2 of Cenvat Credit Rules, 2004 has been amended by substituting the word " Clearance of Final products up to the place of removal" with effect from 01.04.08 vide Notification No. 10/2008-CE (NT) dated 01.03.08, but

ambiguity still remains whether the credit of service Tax paid on freight for transportation of final products from factory/depot on FOR basis upto the buyer's place where the goods are actually sold for delivery would be available and such transportation cost would not be included in the value of goods for the purpose of charging Excise Duty.

**Suitable clarification in this regard is sought from the Government to avoid the dispute.**

## DIRECT TAXES

### Income Tax

#### Benefits under Section 80IA for Bharat Nirman

The government recently launched the ambitious **Bharat Nirman** programme towards upgrading rural infrastructure covering roads, irrigation, drinking water, electricity, housing and telecom. Clearly, this is an area with significant scope for public-private partnership.

Recognising the need for private sector participation in the priority of infrastructure creation, **Section 80 1A of Income Tax Act permits deduction in respect of profits or gains from industrial undertaking engaged in infrastructure development.** Such industrial takings include businesses carried out in the nature of provision of infrastructure facilities, telecommunication services, industrial parks and power generation and transmission. However, the definition of infrastructure facilities is restricted to road, bridge or rail; highway projects; water projects and ports and airports.

Rural infrastructure up-gradation also encompasses digital and physical infrastructure towards empowering farmers with knowledge and market connectivity.

**It is therefore recommended that the definition of infrastructure for the purposes of this deduction should definitely include rural based initiatives**

**The definition of rural infrastructure facility should include:**

- **Village kiosks housing IT infrastructure like computers, VSATs, Modems, smart cards, Projectors, Screens etc.**
- **Support infrastructure like solar-panels, UPS, batteries etc at these locations**
- **Water harvesting facilities like check dams, wells, ponds and other rain harvesting structures**
- **Storages including farmer facility center housing training centers, cafeteria, health clinic, pharmacy, bank counters and necessary parking area.**
- **Green houses & Poly houses**

➤ **Cold storages, freezing chambers & cold chain transportation system**

Currently PAN numbers of all payees in respect of whom tax has been deducted at source, should be quoted in the TDS returns. This poses practical problems in case of payments made to farmers, most of whom do not have any PAN numbers.

**It is recommended that the current provision of mandatorily quoting the PAN numbers in TDS returns be relaxed in case the payments are made to farmers.**

**Income-tax – weighted deduction for crop development and agri-extension**

Enhancing productivity lies at the root revitalizing Agriculture, together with effective linkages to markets – both domestic and international. In this context, effective agricultural extension services are crucial to enable effective absorption of technology and best practices at farms. In order to ensure widespread reach of effective extension services, the providers of such services and those engaged in crop development activities need to be recognized on par with Research and Development.

**Sec 35 (2AB) of Income Tax Act** permits a weighted deduction of 150% of expenditure on Scientific Research, in-house Research and development facility in specified industries.

**The Chamber suggests that this facility should also be extended to expenditure on agri extension and crop development being done by private companies. By this, all companies engaged in extension of services/research will be encouraged to invest in the upgradation of cultivation / agri practices for improved returns to the farmers.**

**Crop Development:**

**Section 33 A** of the Income Tax Act which permits Development Allowance for Tea plantations should also be extended to Tobacco Crop Development with a weighted deduction of 150%. By this, those engaged in Tobacco Crop Development / extension services / research will be encouraged to invest in the upgradation of tobacco cultivation for improving returns to the farmer and enhancing export competitiveness.

**The Chamber suggests that similarly, assistance given to farmers by the Tobacco Industry towards modernization of cultivation practices, e.g. Solar Barns, Seedlings, Irrigation Equipment, should be treated as business expenditure and given weighted deduction in the year it is incurred.**

### **Community / Social Development Expenses :**

**A similar weighted deduction of 150% should also be allowed on expenditure made on community / social development projects by the companies.**

### **Section 80 IA: Infrastructure Status for Hotel Industry to support Tourism**

The hotel industry is a highly capital intensive industry. Construction of a new hotel project in 5 Star category demands massive Capital Investment ranging from Rs. 300 to Rs. 500 crs. The bulk of investment in a hotel is on land and building which has a very long period of return on investment to the investors.

To accelerate the pace of construction of more hotel rooms, the hotel industry needs to be declared an infrastructure industry under section 80 I/A of the Income Tax Act 1961. It should be given full benefits of concession for infrastructure facilities available to other sectors like airports, seaports, power projects and gas distribution networks.

In the Union Budget 2007-08 tax holiday of 5 years for Two-Star, Three-Star, Four-Star Hotels and Convention Centers with a seating capacity of not less than 3000 in the NCR area of Delhi, Faridabad, Gurgaon and Gautam Budh Vihar, Ghaziabad was given to speed up the infrastructure of hotel rooms needed for the Commonwealth Games in 2010.

**The Chamber feels that such tax benefit needs to be extended to hotels of all categories (including 5 star hotels) across the country to give a boost to the growth of infrastructure for the Commonwealth games.**

### **Section 72 A – Amalgamation and Mergers**

Section 72 A of the IT Act, has been amended to include the hotel industry under its ambit to set off of accumulated losses and depreciation on amalgamation.

As per the amended section, an amalgamated company is allowed to carry forward and set-off of losses on the fulfillment of the conditions that:

- i) It has been engaged in the business for at least three years during which the accumulated business loss was incurred or the unabsorbed depreciation was accumulated;
- ii) As on the date of amalgamation, it has continuously held at least three-fourths of the book value of fixed assets, which are held by it two years prior to the date of amalgamation;
- iii) Three-fourths of the book value assets of the amalgamating company be held for at least five years;
- iv) Continues same business as that of amalgamating company for at least five years;
- v) Production level of at least fifty per cent of the installed capacity of amalgamating company to be achieved.

**To enable hotels to draw the benefits u/s 72/A, it is recommended that:**

- i) **The continuity to hold assets of the amalgamating company should be confined to 50% of the book value in order to make the amalgamation viable so that recycling is possible and assets can be procured and installed in order to upgrade to contemporary technology.**
- ii) **Continuance of business of amalgamating companies should be reduced from five years to two years to facilitate effective re-organization.**
- iii) **Achieving installed capacity is not relevant for service sector companies, which are given the benefit under this section, hence, this condition should not be made applicable to service sector companies.**

### **Section 115 (O) – Dividend Distribution Tax**

The effective rate of the Dividend Distribution Tax is 16.995% inclusive of surcharge and education cess. **It is recommended that this section be deleted as it results in double taxation.**

## **Tax Holiday under section 10 A / B of the Income Tax Act**

Tax holiday ends on 31<sup>st</sup> March 2010. Given the continuing submissions for rationalization consistent with the incentive given to the SEZs, and exacerbated by the recent developments triggered by events in the US, **it is recommended that the sunset clause be extended at least till 2012.**

Irrespective of being located in an STPI or an SEZ, businesses with growth potential should qualify for a tax holiday, given that tax sops typically, should not be vehicle dependent. There is no logic in phasing out STPs, which enable a number of smaller firms to flourish, particularly when the intent of SEZ formation was to generate additional economic activity and generation of wealth in hitherto neglected areas – particularly in Tier II and Tier III cities.

## **Fringe Benefit Taxes on ESOPS**

The rule to levy FBT on ESOPs has created several difficulties for the industry. As an example, an NRI in India would pay about 40% tax in the US and the regular 33% in India. The two cannot be set off against each other because the taxes are being paid at two different levels (in India, the tax is corporate, while in the US, it is a personal tax) and set-off is not permitted. This is a clear case of double taxation and some NRIs are, in fact, giving up their green cards to avoid this. At present, the only other option seems to be to stop giving ESOPs altogether, which is clearly an undesirable compulsion for the industry.

The only benefit of levying FBT on ESOPs is that the Government receives a part of its revenue upfront. But this revenue would anyway accrue to the Government, when shares were sold by the employee and tax was paid on capital gains. Also there would be complications if bonus shares were issued in the interim. Determining valuation of stock on the vesting date is also a challenge. FBT is currently payable on the difference between the cost of original shares and that at the time of vesting. This is both an excessive cost as well as an area of huge ambiguity. Additionally, the methodology of weighted average prices is open to too many interpretations, particularly as these are different in individual countries. Industries struggle therefore, to structure ESOPs optimally in light of this unclear tax burden. Unless all kinds of situations are covered in the rules, it becomes near-impossible to compute valuations.

The basic logic for the FBT was to tax benefits to employees that were not easy to quantify tangibly. But in the case of ESOPs, this is not true. Each employee's benefits are clearly identifiable and quantifiable and can be included in an employee's Form 16. Hence, they can simply be taxed as a perquisite and should not qualify for FBT. Such a categorisation would mitigate the problems to some extent. As a best practices measure, companies can be encouraged to

give employees a statement/certificate at the end of every year which clarifies valuations, calculations, etc, relating to ESOPs.

**The Chamber feels that only answer lies in a repudiation of FBT per se, or extreme clarity to be provided, particularly for those individuals who are globally mobile.**

1. **FBT on Travelling:**

There is no element of fringe benefit if traveling is undertaken for business purposes. **Therefore, FBT on traveling must be abolished.**

2. **FBT on contribution to Superannuation funds:**

Contribution to Superannuation funds is for the benefit of employees after their retirement. **Therefore, FBT on contribution to Superannuation funds in excess of Rs 1.00 L p.a must be abolished.**

## **Corporate Tax Rate**

The present rate of Corporate Tax at 30% increased by 10% Surcharge (which was initially levied at 2.5% and increased to 10% by finance Act, 2005) and 3% Education Cess is very high. In fact surcharge and Education cess is always levied to collect funds for specific purpose. The realization of Corporate tax over the budget estimates during F.Y. 2007-08 is more than the collection on account of surcharge and the education tax taken together. There are other taxes by way of Fringe Benefit Tax, Dividend Distribution Tax and Securities Transaction Tax. Further even otherwise the corporate tax rate itself is high as compared to the rates prevailing in other countries.

**The Chamber suggests that not only the levy of surcharge and education should be abolished but the Rate of corporate tax needs to be brought down from 30% to 25% in line with international standards.**

## **Depreciation Rates**

With fast development of the technology the Machinery installed in one year becomes obsolete after three four years and new Machines with advanced technology have to be installed. The depreciation rates on Plant and Machinery which was 25-30% a few years back is reduced 15% so also in respect of Motor cars. Such lower rates of depreciation have no justification.

**The Chamber suggests that depreciation rates on Plant and Machinery should be brought to the level of 30% on WDV method so that after five years its value may come down to about 20% even though 20% realization may not be possible after five years.**

### **Depreciation on Sale of Assets**

- i) No depreciation is allowed at present if an asset is sold during the previous year. When the allowance on depreciation has been tagged to user for less than 180 days or more than 180 days, then it is logical that before the sale for whatever period, the assets are used, depreciation should be allowed on the same.
- ii) Section 50 treats surplus or loss on sale of depreciable assets as short-term capital gains/loss.

### **Suggestions:**

- a) **Depreciation be allowed for the period of user if the Loss/Gain on sale of depreciable asset is treated as Short Term Capital Loss/Gain.**
- b) **On sale of block of assets, profits or loss arising should be treated as a business one as it relates to business assets. It should not be treated as short term capital gains or loss. Section 50 may be amended accordingly to bring it in line with Section 50A. The logic for treating it as Short Term Capital Gain or loss is not understood. The earlier provision before the insertion of Section 50 was that such loss or gain was to be treated as profit/loss of business, which was more logical.**

### **Section 32 – Depreciation on Hotel Buildings**

Hotels were eligible for the depreciation allowance of 20% on their plant (building) till 31<sup>st</sup> March, 2002. The depreciation allowance for hotels was, however, scaled down to 10% vide Notification No. 291/2002 dated 27.09.2002.

Hotel buildings constitute 'plants' for the hotel industry and their usage is round the clock for 24 hours. The industry has to make very heavy investments in renovation, up-gradation and upkeep of the hotel buildings.

**Section 32 of the IT Act should therefore be amended to restore the depreciation rate to 20%. The additional depreciation applicable to Plant &**

**Machinery u/s 32 1 (ii a) should also be allowed to hotels which have to make heavy investments in plant and machinery.**

### **MAT on Domestic Companies: Sec. 115JB**

Section 115JB relating to MAT on domestic companies is a tax payable even though overall the company is in loss. Further, originally section 115J (levy of MAT) was introduced keeping in mind that companies pay dividend to share holders but manage their affairs in such a way claiming various deduction and do not pay tax to the government. But after levy of dividend distribution tax the levy of MAT cannot be justified.

**Hence, the Chamber feels that the MAT should therefore be withdrawn.**

**In any case :**

- a. All the brought forward book losses (inclusive of business & depreciation) ought to be deducted as the provisions are applicable to all Companies whether they declare dividend or not. Hence, the explanation for the purposes of this clause, 'the loss shall not include depreciations' should be deleted.**
- b. Under provision of Section 115JA, the exemption was granted to the profits of the companies eligible for deduction u/s. 801B for computation of book profit. The withdrawal of such exemption u/s. 115JB is not desirable. Entrepreneurs are taking risk in setting up industries in the backward areas and they need encouragement for the period prescribed in the Section 801B. Accordingly, profit under Section 801B should be exempted for the purpose of levying tax on book profit.**

### **Interest on Refunds:**

As per Section 244A interest payable to Assessee on refunds is 6%p.a. whereas, the interest payable by the assessee on all short payments is 12%p.a.

### **Suggestion:**

**Interest rate on refunds due to assessee should be raised to 12%p.a, so that this anomaly is resolved.**

## **Business Loss: Section 79**

Sec. 79 is hampering the prospect of revival of closed industrial units, and **there is a need to amend the restrictive provisions of Sec. 79 relating to carry forward of losses.**

## **Filing of loss return u/s 139(3)**

As per requirement of section 80 read with Section 139(3), loss return must be filled within the time allowed under Section 139(1). Due to many reasons on which the assessee has no control, it is not possible to gather all the relevant documents necessary for filing of Return showing the loss within prescribed due date. As per existing provisions, if for any reason the loss return is delayed beyond prescribed due date, then there cannot be any carrying forward of any loss under aforesaid sections.

### **Suggestion:**

**Sub-section (4) of Section 139 viz., belated returns, should apply to loss returns. It is suggested that in sub-section (3) of section 139 for the words “within the time allowed under sub section (1)” the words “as per the provisions contained in this Section” may be substituted.**

## **Definition of Senior Citizen :**

For Railways and PSU banks, all persons above the age of 60 are “senior citizens”, but for Income Tax purposes, a person above the age of 65 is considered as Senior Citizen. Even the normal retirement age is in the range of 60 to 62 years.

### **Suggestion:**

The anomaly needs to be addressed immediately, so that the real purpose of the provision is fulfilled in spirit. **It is suggested that the age for Senior Citizenship under the IT Act be progressively reduced to 63 and then to 60.**

## **Wealth Tax 1957**

The Government gets very little revenue from Wealth Tax and there are a number of disputes about the valuation, which is not commensurate with the revenue earned by the Government.

## **Suggestion:**

**Like Gift Tax, Wealth Tax should also be abolished together with Fringe Benefit Tax under Chapter XIIH of I.T. Act, 1961.**

## **Inclusion of Orthodox Production Subsidy in the Tea Industry Scheme within the ambit of Section 10(30) of Income Tax Act, 1961 to make it eligible for exemption in computing total income**

In computing total income under the Income Tax Act, 1961 of an assessee who carries on the business of growing and manufacturing tea in India, the amount of any subsidy received from or through the Tea Board under the Scheme for Replantation or Replacement of tea bushes or for Rejuvenation or Consolidation of areas used for cultivation of tea is not included in terms of the provisions of section 10(30) of the said Act.

To encourage production of Orthodox Tea to meet the export demand, the Central Government introduced 'Orthodox Production Subsidy Scheme' for providing subsidy through Tea Board to the tea growers and manufacturers in India to boost production of high quality and competitively priced Orthodox teas. The Orthodox Subsidy Scheme came into effect from 1<sup>st</sup> January 2005.

**The Chamber suggests inclusion of the Orthodox Production Subsidy Scheme under Section 10(30) to make the Orthodox Production Subsidy eligible for exclusion from total income on the same ratio as applicable to the Replantation/Replacement/Rejuvenation Subsidy.**

The Orthodox Production Subsidy, in the same line of Replantation/Rejuvenation Subsidy, is revenue in nature and is also disbursed through the Tea Board. Hence, Orthodox Production Subsidy should be justifiably entitled to be exempted from total income u/s 10(30) of the Income Tax Act, 1961.

## **Valuation of Perquisites – Residential Accommodation in tea gardens : Rule 3 of the Income-Tax Rules 1962**

As provided in Rule 3 of the Income Tax Rules 1962, perquisites on account of Residential Accommodation provided by the employer is calculated @ 15% of the basic salary of the employees, although the Fair Rental Value at the market rate in most cases would be much lower, in view of the remote locations of Tea Plantations.

Moreover, perquisites in respect of the furniture provided in those Residential Accommodations in the tea garden is calculated at a flat rate of 10% whereas the actual depreciation allowable to the Company on account of those pieces of furniture would be much lower in view of their low written down value.

Since the tea estates are located in the remotest corners of the Country and no alternate accommodation is available locally, the managerial personnel, under force of circumstances, are to be provided with fully furnished residential accommodation to enable them to attend their routine duties round the clock.

**In view of above, the Chamber suggests that for calculation of perquisites in respect of residential accommodation and furniture provided to the employees working in the tea estate, such tea estate may be treated as 'remote area', like those working at a mining site or an onshore oil exploration site, or a project execution site or an accommodation provided in an offshore site, in consideration of these being considered as 'remote area'.**

### **Effect of Section 115JB of the Income-tax Act 1961 on Companies engaged in the business of growing and manufacturing tea**

By application of Rule 8 of the Income Tax Rules, 1962 - 40% of the income from the business of growing and manufacturing Tea is taxed under the provisions of the Income Tax Act, 1961 and the balance 60% is taxed under the relevant State Agricultural Income Tax Act where the Tea Estate is situated. Therefore, 60% of the income can not be termed as agricultural income exempt from tax u/s 10(1) and hence tea companies are unable to reduce 60% of its book profits as exempt income for computation of Book Profit u/s 115JB and land up paying tax @ 10% of the whole of the book profit which added with full agricultural income tax liability, is higher than the tax liability on total income.

Most of the companies will have a difference in depreciation as per books with what was computed as per Income Tax Rules.

**Therefore, the Chamber suggests that only 40% of the book profit of tea companies should be taxed u/s 115JB and the enabling provisions be inserted within the section.**

### **Section 44AB - Compulsory Tax Audit :**

Assesses covered u/s 44AB are also required to follow all the rules relating to TDS and FBT etc. and the threshold limit of turnover is still Rs. 40 lacs and Rs. 10 Lacs for persons carrying on business and those in profession respectively

The Chamber recommends for increasing the limit to at least Rs.200 Lacs and Rs. 50 Lacs respectively to provide relaxation in small assesses.

## **MAT Credit**

U/S 115JAA MAT Credit can be carry forward up to 5<sup>th</sup> assessment year immediately succeeding the assessment year in which tax credit becomes allowable.

**As an organization need some time to recover from the crisis situation, the benefit of carry forward of tax credit u/s 115JAA should be 8 years as same as the benefit of carry forward of Business Loss u/s 72.**

